

The Embassy wishes to receive a reply from the Department to this Note.

The Embassy of Japan avails itself of this opportunity to renew to the Department of Foreign Affairs and Trade the assurances of its highest consideration.

[Seal]

CANBERRA

9 July, 1999

Responses to questions from the Tribunal – Réponses aux questions du Tribunal

(a) Matters for Further Elaboration by the Parties: Response submitted by the Government of Japan on 19 August 1999

THE DISPUTE CONCERNING SOUTHERN BLUEFIN TUNA

Matters for Further Elaboration by the Parties:
Response Submitted by the Government of Japan

1. *More specific information on catches of SBT during the past five years, including up to date tables to TAC allocations and actual catches of the three States parties to CCSBT (according to CCSBT records or their own records, as the case may be).*

Please see attached Annex A.

2. *Geographical information*

- (a) *Are all the SBT catches of Australia, New Zealand and Japan under the CCSBT outside the EEZ of Australia and New Zealand?*

Japan. Until 1997, Japanese vessels caught some SBT within Australia's EEZ, under a fishing agreement between the Government of Japan and the Government of Australia but most of its catch was on the high seas. Catches within the EEZ as well as the high sea catches were a part of Japan's national allocation under the CCSBT. For 1998 and 1999, all of Japan's catches were on the high seas.

Australia and New Zealand. Responded by the applicants during their oral statements on August 18, 1999.

- (b) *Where is Japan's EFP taking place? What are the precise co-ordinates of Areas 7 and 8 referred to in [. . .] Japan's submission?*

Please see attached Annex B.

Currently, Japan's EFP takes place in Areas 7 and 8. The coordinates of Areas 7 and 8 are indicated in the map attached hereto as Annex B. For 1999 EFP, Japan divided the survey area into several sub-areas (each such sub-area, referred to as "Stratum") and assigned certain portions of operations to be undertaken in each Stratum in order to secure a wide geographic spread of survey efforts. The coordinates of each Stratum are also shown in Annex B. Target distribution of 1999 EFP operations in each Stratum is set forth below:

Target distribution of 1999 EFP operations within each Strata

Area 7	Stratum I – 25%
	Stratum II – 50%
	Stratum III – 25%
Area 8	Stratum I – 15%
	Stratum II – 15%
	Stratum III – 50%
	Stratum IV – 20%

3. *The relevance of non-party activities to the dispute:*

- (a) *the actual amounts of catches by non-parties;*

Please see attached Annex C.

- (b) *the impact of non-parties' catches on SBT stocks;*

Non-party catch became substantial since 1989 and increased rapidly in recent years. Non-party catch is now approximately one-third of the global catch of SBT. Preliminary estimates of 1998 non-party catch exceeds 5,000 mt. Indonesia operates mainly in the SBT spawning ground. Fish caught by Taiwan is considered to be smaller in size than those by Japan. All stock assessments and projections to date incorporate non-party catch into analysis. The concern by the Commission on the impact of non-parties' catch was expressed as follows: "CONCERNED that the catch of SBT by nationals, residents or vessels of some States or entities not party to the CCSBT (hereinafter referred to as Non-members) has been significantly and rapidly increasing in recent years, undermining the attainment of the objective of the Convention". (Report of the Resumed Fourth Annual Meeting of the Commission for

the Conservation of Southern Bluefin Tuna, Attachment F, Action Plan Concerning Promotion of Accession to, and Cooperation with, CCSBT by Non-Member States and Entities). Impact of non-parties' catches on SBT stocks will be further discussed in Japan's oral statement scheduled on August 19, 1999.

- (c) *do the TAC allocations to the parties take into account non-parties' catches?*

Non-party catches were taken into account.

- (d) *are catches in the EEZ of Australia and New Zealand included in their TAC allocations?*

The national allocations under the TAC applied, generally, to all catches by the vessels of the respective nations, regardless of where the fishing operation took place.

- (e) *relationship between the parties to CCSBT and the non-parties.*

1. Unrestrained catch outside of the Convention arrangement seriously undermines the management measures adopted by the Convention Parties since the late 1980's. The Commission remains seriously concerned about the increasing SBT catch of non-parties to the Convention and the lack of comprehensive data on SBT catch by them.
2. Based upon the recognition mentioned above, Parties have repeatedly requested Non-parties to become a Party of CCSBT or to cooperate with the measures taken by the Commission.
3. In 1998, the Commission adopted the Action Plan concerning Promotion of Accession to, and Cooperation with CCSBT by Non-member State and Entities. In this Action Plan, Commission determined:

to request Non-parties to accede to the Convention, or to decide to apply the measures adopted by the Commission;

to request Non-parties to collect comprehensive and accurate data of SBT catch and to provide them to the Commission;

that no more than 2,550 mt of SBT be provided in total to Non-Parties which accede the Convention or decide to apply the Commission's conservation measures; and

to consider a scheme to collect more accurate and comprehensive information on SBT fishing through trade.

4. In April 1998, based upon this Action Plan, Parties made a joint demarche to Republic of Korea and Taiwan to request them to accede to the Convention or to decide to apply the Commission's conservation measures, indicating possible quotas for respective country and area (Demarche to Indonesia could not be realized because of the political situation there).
 5. Further, in March of 1999, upon the request of Parties, Executive Director of the Commission sent a letter to the Republic of Korea and Taiwan to offer to hold a negotiation for new quotas, which is acceptable level to Parties, to be made available to non-parties (Attachment II). Japan undertook to seek cooperation of ROK and Taiwan and held the consultation with them on a bilateral basis in Seoul and Taipei in this April. For Indonesia, Australia undertook to prepare a proposal to it.
 6. In May 1999, during the Resumed Meeting of CCSBT, Members made same request to attending representatives from non-parties.
 7. In July 1999, the 2nd Trade Information Scheme Workshop was held in Tokyo. In this Workshop, the form of trade statistical document and basic procedures were agreed.
 8. Until now, accession or cooperation by Non-parties have not been attained. However, Parties agree to make more effort to attain the goal.
4. *Information on Japan's EFP for 1998:*
- (a) *the conditions and procedures of the EFP;*

The objective of the survey was to estimate CPUE ration between area with commercial operations ("fished" area) and area with no recent commercial operations ("unfished" area), in order to narrow a discrepancy of views derived from difference in interpretations regarding the fish density in "unfished" area.

The participating vessels were divided into two groups. One group was instructed to operate in pre-determined "fished" and "unfished" areas about half by half. The "fished" area was re-defined based on fishing area by the other group who was instructed to operate without restriction. Then, the CPUE ratio between "fished" and "unfished" areas was estimated using data collected from the first group. The CPUE of blocks where no survey data available was assumed to be zero for this calculation. The survey was designed to be conducted outside of normal commercial fishing season. Therefore, all data collected from the survey could be considered to belong to "unfished" area in a

temporal scale but the data were not so considered for data integrations.

All participating vessels were required to report their location and catch every day through fax to the Japanese Agency of Fisheries.

Activities of participating vessels was monitored through several measures including observers, participation of surveillance vessels, the global positioning system (GPS) through satellite.

The protocol of 1998 EFP is included in Japanese document of ANNEX 8, page 106754–106779.

(b) *the minimum catch envisaged for each year;*

Anticipated catch for 1998 EFP was 1,400 mt and realized catch was 1,464 mt. Anticipated catch for 1999 EFP was 2,000 mt with allowance of 20% (i.e. 1,600 mt – 2,400 mt).

(c) *results of the programme of 1998;*

The 1998 EFP was conducted from 10 July to 31 August, 1998 with participation of 65 longline vessels. This survey period was outside of normal commercial season. However, the average CPUE of the survey was 0.58t/operation, which was similar to that obtained during the normal commercial season. The CPUE ratio between “fished” and “unfished” was estimated as 0.39 to 0.56 when assuming that zero fish existed in the blocks where no operations occurred. When incorporating these results into assessment, the difference in views among parties on probability to realize management target was substantially reduced from 55% to 27%. At the same time, the average probability to realize management target increased from 31% to 82%.

The report of 1998 EFP results is available at the Japanese document, ANNEX 8, pages 106692–106733.

Summarized report of the 1998 EFP results is also available at the Japanese document, ANNEX 18, pages 00651–00652.

(d) *the basis on which Japan determines the amount of catches to be set aside under the EFP;*

Anticipated amount of catch was determined by multiplying the number of operations required with average commercial catch rate of 0.5t/operation. The required number of operations was determined after considering factors such as anticipated precision of estimates, the extent of the area to be covered by survey, potential number of vessels to participate to the survey, and overall movement pattern of Japanese fleet.

More detailed information on this matter is available at the Japanese document, ANNEX 8, pages 106758 and 106771 for the 1998 EFP and ANNEX 11, page 107029 for the 1999 EFP.

- (e) *the conclusion reached at the May 1999 meeting of the parties to the CCSBT on a joint EFP.*

During the resumed Fifth Annual Meeting of the Commission for the Conservation of Southern Bluefin Tuna (May 10–13, 1999), Parties continued efforts to establish the design of the possible joint experimental fishing program (EFP). Parties developed a provisional “agreed/not agreed” list of elements on the development of the joint EFP for future discussion among Parties (Attachment. Also see Annex 12, page 107379–107380).

Parties generally agreed on various issues including the following basic elements;

- (i) Objectives of the EFP (The EFP should be used primarily to address uncertainty associated with CPUE.)
- (ii) The EFP will be conducted in three years to obtain necessary results soon.
- (iii) Principles of Decision Rules
- (iv) The EFP will be composed by CPUE and tagging components (Tagging component will start as a feasibility study in 1999.)
- (v) Observer coverage for CPUE component (30%)

However, Parties did not reach a consensus on a few points. One difference toward the CPUE component among Parties was “deployment method of fishing vessels” for collecting necessary data. Japan’s proposal was designed to obtain fishing data in areas/seasons where currently no fishing is conducted in order to reduce the variability in the interpretation of existing CPUE data, realistically in the near-term. Australia, however, proposed random sampling survey which would develop entirely new indices to replace the current abundance indices and would not help resolve the existing problem. It was also not feasible and presented, at best, a long-term solution, not near-term.

Another difference was “perception of the meaning of the proposed amount of the EFP catch”. Australia insisted to use it as an upper limit of catch and to suspend the survey when the amount was realized. However, Japan considered it as an estimation of the potential catch, because it is important from a research point of view to obtain data throughout a sampling period. Japan could not agree on the idea to pre-

determine the upper limit of catch because that does not fit with a concept of research.

Further, research area/season for 1999 EFP could not be reached either. Although Parties once reached a consensus, at the third EFPWG Meeting, on survey area/season for the 1999 EFP as Area 7/June and Area 8/July & August, Australia and New Zealand altered their decision and opposed conducting the 1999 EFP in Area 7/June (but continued to agree to Area 8, where EFP is being conducted in July and August).

Japan could not accept the opposition by Australia [. . .] and New Zealand because conducting survey in Area 7/June in 1999 was essential to achieve the purpose of EFP in three years. (Please see pp. 23–25 of “Declaration of Dr. Sachiko Tsuji” attached as Annex 3 to the Response of the Government of Japan to Request for Provisions Measures.)

Parties had no sufficient time to fully discuss the other “not agreed points”.

These differences above, among others, could not be resolved either during high level diplomatic consultations between Japan-Australia and Japan-New Zealand, which were held in late May, 1999.

5. *Information concerning the fishing pattern of Australia, including methods and equipment used and the age-profile of SBT caught.*

Please see attached Annex D. Further matters related to this topic will be discussed in Japan’s oral statement scheduled on August 19, 1999.

6. *Further views of the parties on the precautionary principle/approach in considering the rights and obligations of the parties under the Convention (UNCLOS), or under the 1993 CCSBT or under customary international law.*

This topic will be discussed in Japan’s oral statement scheduled on August 19, 1999.

7. *Any views of the parties on the relevance of Article 282 of the Convention to the issue of the jurisdiction of the arbitral tribunal under Annex VII to the convention, including any implications of Article 16(1) of the 1993 CCSBT and the fact that the parties have accepted the jurisdiction of the ICJ.*

Please refer to the memorandum submitted by the Government of Japan dated August 18, 1999 regarding the same topic.

8. *The parties may elaborate further on the urgency of the situation, with reference to harm that may be caused if provisional measures requested by them are not prescribed before the constitution of the arbitral tribunal under Annex VII to the Convention.*

This topic will be discussed in Japan's oral statement scheduled on August 19, 1999.

(What significance is to be attached to the announcement by Japan that the EFP will terminate on 31 August 1999)

As the Agent for the Government of Japan, I confirm Japan's clear commitment that Japan's 1999 EFP will end by August 31, 1999.

9. *Australia and New Zealand to elaborate on the timing of the submission of the dispute to arbitration following the commencement of Japan's EFP at the beginning of June 1999.*

Australia and New Zealand to respond.

August 19, 1999

[Signed]
Kazuhiko Togo
Agent for the Government of Japan
Director-General, Treaties Bureau
Ministry of Foreign Affairs

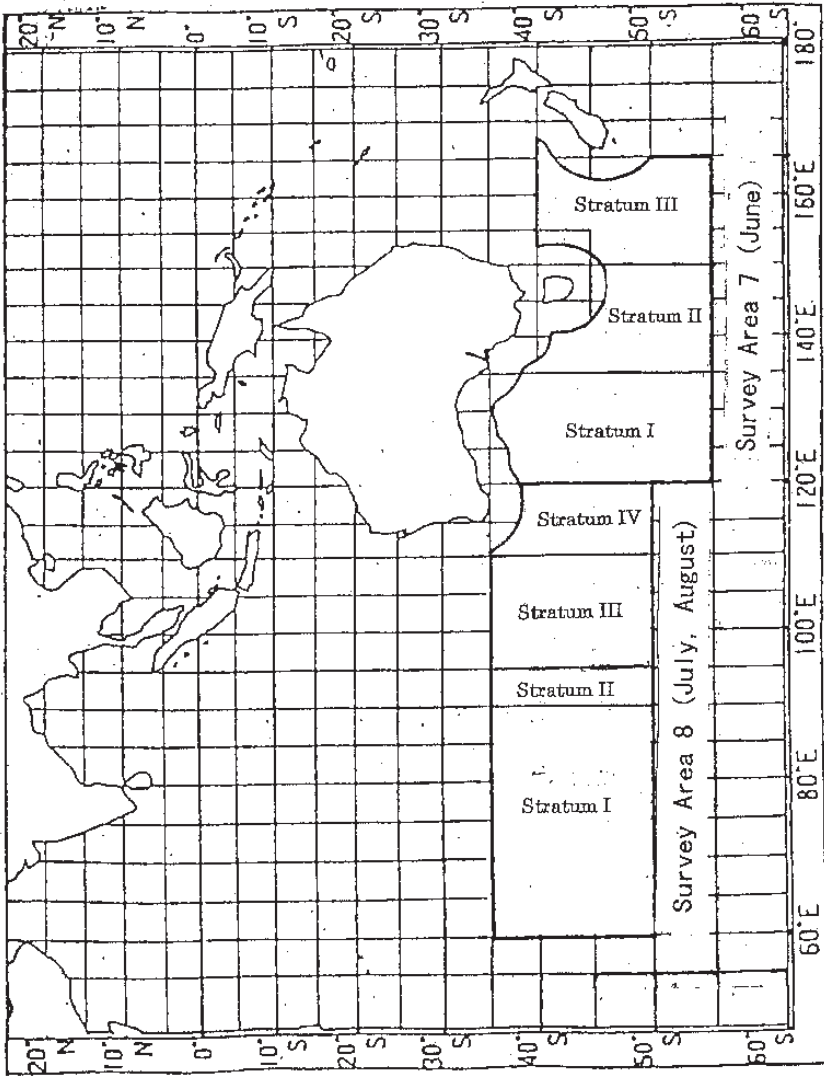
Annex A: TAC, National Allocations and Actual Commercial Catch Among CCSBT Parties (1994–1998) (mt)

TAC, National Allocations and Actual Commercial Catch Among CCSBT Parties (1994–1998) (mt)

	JAPAN		AUSTRALIA		NEW ZEALAND			Total Catch	TAC
	National Allocation	Total Catch	Catch Within Australia EEZ	National Allocation	Catch	National Allocation	Catch		
1994	6065	6064	430	5265	4937	420	277	11.278	11.750
1995	6065	5866	407	5265	4901	420	436	11.203	11.750
1996	6065	6373	360	5265	5188	420	139	11.700	11.750
1997	5757	5588	209	5265	4978	420	334	10.900	11.750
1998	None	6038	0	None	5087	None	[334]	<u>11.459</u>	<u>[11.750]</u>
					25091			56.540	58.750
Excess of TAC Over Actual Catch thru 1998									<u><u>2.210</u></u>

Annex B: Survey Area of EFP99

Survey Area of EFP99



Annex C: The actual of catches by non-parties**3 (a) the actual of catches by non-parties**

	Korea	Taiwan	Indonesia	Others	Total
1969		80			80
1970		130			130
1971		30			30
1972		70			70
1973		90			90
1974		100			100
1975		15			15
1976		15	12		27
1977		5	4		9
1978		80	6		86
1979		53	5	4	62
1980		64	5	7	76
1981		92	1	14	107
1982	6	182	2	9	199
1983		161	5	7	173
1984	1	244	11	3	259
1985		241	3	2	246
1986		514	7	3	524
1987		710	14	7	731
1988		856	180	2	1,038
1989		1,395	568	102	2,065
1990		1,177	517	4	1,698
1991	214	1,460	759	77	2,510
1992	36	1,222	1,232	141	2,631
1993	117	959	1,369	18	2,463
1994	147	1,111	926	55	2,239
1995	317	1,474	832	201	2,824
1996	1,179	1,610	1,609	291	2,689
1997	1,325	640	2,241	333	4,539
1998	1,562	1,439	NA	NA	NA

Data Source: Republic of Korea, Taiwan

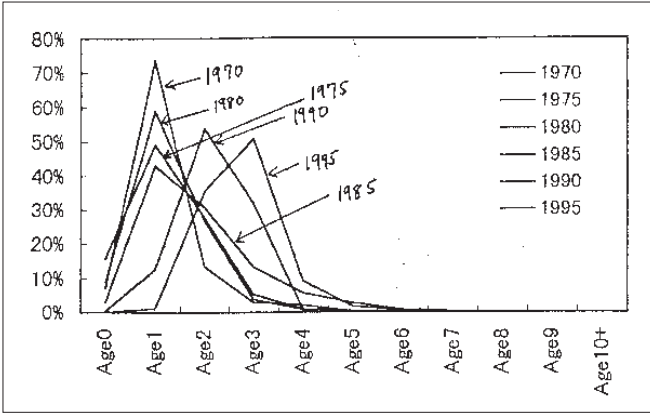
Report by them to CCSBT

Indonesia

Report by Australia based upon its estimation

Annex D: Age profile of Australian domestic catch

Age profile of Australian domestic catch



	Age0	Age1	Age2	Age3	Age4	Age5	Age6	Age7	Age8	Age9	Age10+
1970	7.2%	73.6%	13.6%	3.0%	2.3%	0.2%	0.0%	0.0%	0.0%	0.0%	0.0%
1975	15.9%	49.2%	27.9%	5.4%	1.0%	0.5%	0.1%	0.0%	0.0%	0.0%	0.0%
1980	8.9%	58.9%	26.9%	4.0%	0.8%	0.3%	0.2%	0.0%	0.0%	0.0%	0.0%
1985	3.0%	43.1%	30.9%	13.4%	5.7%	2.8%	0.8%	0.2%	0.0%	0.0%	0.0%
1990	0.3%	12.6%	53.9%	32.1%	1.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
1995	0.0%	1.2%	35.8%	51.1%	9.3%	1.7%	0.5%	0.2%	0.0%	0.0%	0.2%

(b) Matters for further elaboration by the Parties, Answers submitted by Australia and New Zealand on 20 August 1999

THE DISPUTE CONCERNING SOUTHERN BLUEFIN TUNA

Matters for further elaboration by the Parties

Answers submitted by Australia and New Zealand

- 1. More specific information on catches of SBT during the past five years, including up to date tables of TAC allocations and actual catches of the three States parties to CCSBT (according to CCSBT records or their own records, as the case may be).**