

Rights and obligations: regional fisheries organizations and cooperation among States to manage tuna fisheries

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ABSTRACT

Custom, and the United Nations Convention on the Law of the Sea of 1982 (UNCLOS), provide the right of all states to exploit stocks of tuna on the high seas, where roughly half of world tuna catches are taken. The UNCLOS also provides that states have the obligation to cooperate to conserve the stocks. This cooperation is carried out mostly through regional fisheries organizations (RFOs) concerned with tuna; in order of their establishment, the Inter-American Tropical Tuna Commission, the International Commission for the Conservation of Atlantic Tunas, the Commission for the Conservation of Southern Bluefin Tuna, and the Indian Ocean Tuna Commission. A convention that establishes the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean has been adopted, and when it comes into force will complete global coverage of RFOs for tuna fisheries.

Initially the management measures of these organizations were simply agreements among their members to conserve stocks through restraints upon their own fisheries. However, the open access provided by international law and confirmed by UNCLOS to fisheries on the high seas means that conservation can be assured only if the fishing activities of non-members, as well as those of members, is addressed. Recognizing this, the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Stocks and Highly Migratory Fish Stocks, (UN Fish Stocks Agreement) requires that States cooperate in the conservation and management of the relevant stocks whether or not they belong to these regional organizations. Independently of the UN Fish Stocks Agreement, the tuna commissions have sought the cooperation of non-members directly. Generally, their resolutions call upon non-members to comply with their measures. Increasingly, measures of these commissions, and associated measures taken by their members, effectively assert that non-members must comply with the conservation programs. If this approach is accepted more generally, a framework will develop for providing the details as to how the freedom to fish for tunas in all seas will be conditioned by the management measures of the appropriate RFOs, ultimately including rules regarding access to the fisheries on a region-wide basis. Such a framework will achieve legitimacy only if it provides fair and reasonable rules for participation by all States.

1.1. INTRODUCTION

The United Nations Convention on Law of the Sea of 1982 (UNCLOS) provides that vessels of all states have the right to fish on the high seas. That right, however, is subject to their obligations to cooperate with other states, if appropriate through regional fisheries organizations (RFOs), and to take measures necessary for the conservation of the living marine resources of the high seas.

Catches of tunas form just a small percentage of total world catches of marine fish; however, they are among the most international of all fish, as can be seen by the countries that participate in the meetings of the RFOs concerned with tuna. Tunas comprise nearly 5% by weight of the world catch of marine species and about 10% by value of the international trade of fishery products. Tunas have been fished and traded for centuries, but because the bulk of the stocks are accessible only far from land they could be fully exploited only with the development of distant-water fleets, which, for tunas, began after the Second World War. Since 1950, world catches have grown tenfold from less than 300,000 to nearly 4 million metric tons.

Compared to other species that support large-scale fisheries, tunas have two special characteristics, a relatively large proportion of the fisheries for them take place outside zones of national jurisdiction, and the mobility of the tuna stocks. Because of these two characteristics, international cooperation is necessary to ensure the fisheries for tuna are managed and the stocks conserved.

For the most part the international cooperation is mediated through the RFOs concerned with tunas. There are four such bodies with a fifth in the process of being created. The Inter-American Tropical Tuna Commission (IATTC) was established in 1950 with an area of application of the eastern Pacific Ocean (EPO). Its purview includes yellowfin and skipjack tuna and other types of fish taken by tuna fishing vessels. The International Commission for the Conservation of Atlantic Tunas (ICCAT) was established in 1969 with a mandate for the conservation of tuna and tuna-like species in the Atlantic Ocean and neighboring seas. The Commission for the Conservation of Southern Bluefin Tuna was established in 1994, with the objective of conserving southern bluefin tuna. The Indian Ocean Tuna Commission was established in 1996 with the objective of conservation of the tuna and tuna-like species in the Indian Ocean and adjacent seas. The global coverage of tuna management bodies will be completed when the recently concluded treaty creating the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean comes into force.

1.2. MANAGEMENT MEASURES FOR MEMBERS

The first management measure applied by a RFO concerned with tunas was a quota for yellowfin tuna agreed to by the IATTC in 1966 for its yellowfin regulatory area. The closure date was selected so that the of catch of yellowfin tuna plus the amount expected to be caught by vessels at sea on the closure date, by all vessels in the area would equal the quota. The quota was binding on all members of the IATTC. At the time all of the States whose vessels caught significant amounts of tuna in the area were members. However similar measures were also used later when there were substantial non-member fleets fishing in the area. Non-members fishing in the area were consulted, often by way of an inter-governmental meeting held in association with the IATTC meeting, and urged to comply voluntarily with the yellowfin management measures. In recent years the rather cumbersome mechanism of inter-governmental meetings has not been used. Most nations whose vessels fish in the EPO that have not yet joined, take an active part in the IATTC meetings, and the Commission strives to reach a consensus with non-members, which then have applied measures on a voluntary basis.

The management measures used by ICCAT for yellowfin and bigeye tuna (size limits and effort restrictions) have also been legally binding on members, and cooperation has been sought from non-members, with limited success.

The CCSBT adopted national quotas for its members in 1994. Between 1985 and 1994 there was informal agreement among Australia, Japan, and New Zealand to limit their own catches. After 1998, the members of an extended Commission adopted voluntary quotas in lieu of quotas determined by a Commission resolution. The CCSBT recognizes that southern bluefin tuna are taken by non-members, in addition to the quotas of the members.

1.3. COOPERATION OF NON-MEMBERS

Up to 1994, the tuna RFOs sought cooperation from non-members to ensure that their management measures were effective, but did little else to encourage cooperation.

Since the 1992 United Nations Conference on Environment and Development and the 1995 FAO Code of Conduct for Responsible Fisheries, there has been a much greater emphasis on the need for non-members to accept the obligation to cooperate with RFOs, by providing data and applying appropriate management measures. Most clearly, the 1995 UN Fish Stocks Agreement provides a specific framework for cooperation by States with RFOs. It provides that only States that are members of a relevant RFO or that agree to apply the measures of the RFO shall have access to the fishery resources to which those measures apply. It also provides that such RFOs will be open to membership by all States with a real interest in the fisheries concerned, and that the terms of participation shall not discriminate against any States.

Most States that have vessels fishing in areas covered by an RFOs of which they are not members accept the fact that cooperation to achieve conservation of the stocks is best achieved by applying the measures of those RFOs. Such cooperation may come about for one of three reasons. First, many States generally recognize that the most effective way to meet their obligation to cooperate with others is to be part of, cooperate with, or comply with the measures of RFOs. Second the UN Fish Stocks Agreement, which now has 31 Parties, requires that States that are not members of RFOs nevertheless cooperate in the conservation and management of the relevant stocks. Finally, trade measures have been used to encourage other States, for whom the first two considerations were not sufficient, to cooperate.

However, so far, a minority of States are Party to the UN Fish Stocks Agreement, and there is still significant difficulty with some vessels that fish under flags of States that do not fulfill their duty to cooperate or to take measures for their nationals necessary for the conservation of the stock. This is now often described as fishing in a manner that illegal, unreported and unregulated (IUU fishing) and is the subject of an FAO International Plan of Action.

The tuna commissions are starting to develop measures to ensure that all fishing for tunas is carried out in a way that does not undermine their conservation programs. ICCAT, IOTC, and the CCSBT have introduced catch documentation schemes that require cooperation from non-members in reporting some information about catches as a condition for importing some species of tuna. The ICCAT, and very recently the IATTC have introduced measures that go beyond requesting cooperation of non-members and that take steps to deter non-members from allowing their vessels to undermine their management measures. These developments are described in the following section.

1.4. MANAGEMENT MEASURES THAT MAKE STRONG CLAIMS FOR COOPERATION BY NON-MEMBERS

1.4.1. ICCAT

In the early 1990s ICCAT became concerned about the activities of vessels from States that were not cooperating with it, and did not report their catches of bluefin tuna in the Atlantic Ocean. To address this problem, ICCAT introduced a statistical document scheme in 1992, in which ICCAT members required any state that exported bluefin tuna to them to provide information identifying the source of the fish. As one of the ICCAT members, Japan, constituted almost the entire market for bluefin tuna, this provided a comprehensive coverage of catches. In 2000, the ICCAT decided to extend the system to swordfish and longline-caught bigeye tuna. The CCSBT introduced a similar system for southern bluefin tuna in 2000, the IOTC introduced the scheme for longline-caught bigeye tuna in 2001, and the IATTC is currently considering it for longline caught-bigeye tuna.

The 1994 ICCAT resolution on the action plan to ensure effectiveness of the conservation program for Atlantic bluefin tuna and the subsequent actions introduced a new aspect into tuna management. The resolution provided for the identification of non-Contracting Party vessels, which had been fishing in a manner that diminished the effectiveness of ICCAT's conservation program for bluefin tuna; it provided they be requested to rectify their fishing activities, and contemplated trade restrictive measures to be taken to ensure the effectiveness of the ICCAT measures.

In 1995, ICCAT identified Belize, Honduras, and Panama as States that were diminishing the effectiveness of the ICCAT bluefin tuna conservation measures and asked them to discontinue catching bluefin tuna. In 1996, ICCAT members agreed to prohibit imports of bluefin tuna from those states. In 1988, Belize and Honduras were similarly restricted in respect of swordfish measures, and in 2001 Belize, Cambodia, Honduras, and St Vincent and Grenadines in respect of bigeye tuna measures. Subsequently Panama joined ICCAT in 1998 and Honduras joined in 2000. Import prohibitions against Belize and St Vincent and Grenadines have since been lifted, after those States demonstrated satisfactory compliance with the relevant management measures.

1.4.2. IATTC

For several years the IATTC has been endeavoring to introduce a scheme to manage the capacity of the purse-seine fleet in the EPO. In 1998, it agreed on a resolution that provided a cap on the fleet size for each member and all of the non-members with purse-seine vessels fishing in the EPO. However, agreement could not be reached to extend that forward to other years. At its meeting in June 2002 the Commission agreed on the use of a register of purse-seine vessels (which had previously been established by the Commission to document vessels authorized to fish by them) as a means for controlling the size of the fleet operating in the area. Rules are provided to allow changes to be made to the register without allowing an increase in total capacity. Any purse-seine vessel fishing in the EPO that is not on the register will be considered to be undermining the Commission's conservation measures.

In this resolution, the IATTC is asserting that cooperation in the EPO requires any State that wishes to have purse-seine vessels fishing for tuna in the eastern Pacific can do so only with vessels that are already on the Commission's register or which replace vessels on the register. The resolution limits entry to the EPO tuna fishery for IATTC members and non-members alike.

In 2002, the Commission agreed on a yellowfin and bigeye tuna conservation resolution that imposed a closed season of one month for purse-seine vessels. This resolution called upon all Parties and other States to achieve the implementation of the conservation program, and included the discouragement of landings and commercial transactions of tuna and tuna products prohibited by the resolution. These measures will apply to members and non-members.

The IATTC has not yet determined concrete actions to be taken in respect of States whose vessels undermine its conservation and management measures. However, the change in the level of compliance by some States that were the subject of actions taken against them by members of ICCAT suggests that the threat of simply being so identified may be enough to discourage breeches of the resolution.

These examples mark a developing assertiveness of the tuna commissions, which claim that non-members must comply with their measures and provides actions to be taken if they do not. Undoubtedly the trade measures taken by ICCAT provided firm support to any obligation felt by the States that were allowing their vessels to fish on the high seas without regard to the need to conserve stocks. However, I believe that most states are now sufficiently concerned at the prospect of being identified as supporting IUU fishing that they will regulate their vessels.

The ICCAT measures have been in place unchallenged for seven years, and it seems that they have generally been accepted. The IATTC vessel register has not yet had sufficient time to be tested in practice, but as ICCAT has had notable success in dealing with non-member fishing, there is good reason to be hopeful that the IATTC capacity limitation will be respected by non-members.

1.5. CONCLUSION

UNCLOS provides that while all states have the right to fish on the high seas, the right is balanced by an obligation to cooperate to conserve and manage the fish stocks. While the obligation to cooperate was specified in greater detail in the UN Fish Stocks Agreement, that Agreement is in effect for a relatively small number of States. This paper describes more particular ways in which the tuna commissions have asserted that the obligation must be met by complying with their measures. Thus the freedom to fish for tunas on the high seas has been conditioned by a requirements imposed upon members and non-members by the tuna RFOs. I expect the Commissions will extend this assertion in future. This is likely to be successful only if they are open to membership by any State wishing to cooperate, and their measures are sufficiently flexible as not to unduly limit the rights of all to participate in the tuna fisheries on the high seas.

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