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The Role of Private Agreements in the International Management of Tuna Fishing

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THE ROLE OF PRIVATE AGREEMENTS IN THE INTERNATIONAL
MANAGEMENT OF TUNA FISHING

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SUMMARY

Three factors make the management of tuna fisheries difficult. First, the animals are highly migratory and spend portions of their lifetimes in waters claimed by a number of nations as well as the open ocean. Second, the vast majority of vessels in the world tuna fishing fleet are controlled by a few nations. Third, lesser developed nations in whose waters tuna are caught want to share in the harvest.

At one time, tuna fisheries were managed under multinational agreements such as the Inter-American Tropical Tuna Commission. However, tuna agreements have deteriorated to the point where major fisheries are either unmanaged or governed by short-term bilateral treaties. In a few isolated cases, private organizations representing a tuna industry have signed licenses with governments claiming territorial rights over the fishery.

In the short term such private arrangements are probably acceptable since the resource does not appear to be fully exploited and the supply of canned tuna exceeds demand. However, there are indications that the United States tuna industry is seeking governmental protection which, in the long term, may inhibit our ability to lead a movement to a comprehensive world wide tuna management scheme. The best prospects for equitable resolution lie in a world-wide regimen administered under the United Nations. In theory, the stated goals of the United States support such an approach, but the specific mention of highly migratory species in our rejection of the United Nations Law of the Sea Convention casts considerable doubt on the result.

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INTRODUCTION

To fully appreciate the problems of tuna fishery management it is important to understand some basic physical characteristics of the animal and harvesting methods. Tuna are grouped with billfish as highly migratory species. They live their entire lives in open water in the upper layers of tropical and temperate regions of the Atlantic, the Pacific, and the Indian Oceans. Tuna generally school and feed at the apex of the food pyramid. They maintain a body temperature higher than the surrounding water. They must swim constantly to maintain a flow of oxygen over their gills and to keep from sinking. In addition to continuous movement, tuna and billfish can swim at burst speeds exceeding 50 miles per hour. Recorded migrations of tagged animals include trips from Port Moresby, Papua New Guinea to Guayaquil, Ecuador, a distance of 7910 miles. Some have averaged over 16 miles per day. Although a mature female can produce up to 5 million eggs each year, present evidence indicates that only a few young survive to adult stages of development.¹

Ocean currents form distinct habitats for various species of tuna. Within the habitat, tuna appear to move passively, responding to changes in conditions of the habitat. When tuna change habitats, they do so rapidly in response to their physiological or ecological requirements. At least one model shows regular migrations back and forth across the Pacific by albacore from the age of "recruitment" into the temperate water fisheries from nursery grounds at about age two, through juvenile and adult stages, until departure to subtropical waters to spawn at about age six.²

In summation, tuna are constantly in motion, spending comparatively little time in the territorial waters of any one nation. Their migrations and swimming speed make harvesting difficult. Only relatively sophisticated fishing techniques will yield commercially useful quantities.

Pole and line, longline, and purse seining are the three methods used to harvest tuna commercially. Pole and line is the oldest technique. Live bait is chummed near a school of tuna while fishermen using poles, lines, and lures, pull attracted individuals on board the vessel. Longline fishermen stream a floated line to which baited hooks are attached at regular intervals on branch lines. The set may extend for miles, have several thousand hooks, and take hours to establish. Any fish attracted to the bait is caught. Purse seiners surround schools of tuna with a long, weighted and floated net that is then drawn or pursed to retrieve the catch. The diameter of the set may exceed one kilometer.

A typical United States vessel has more than 1,000 tons on board storage capacity. It may catch 4,000 tons of tuna in several voyages extending over 8 months of the year. Construction costs for a single vessel can exceed \$10,000,000. Vessels are usually manned by officers who are United States citizens and crews who are non-resident aliens. Individual vessels as well as fleets use helicopters to spot schools of tuna. The owners of most vessels belong to the American Tunaboat Association, a trade group active in operational and governmental matters. Approximately 25 of the 125 largest tunaboats are now idled. Nevertheless, the United States fleet is the world's second largest, trailing Japan's by a large margin.³

Major fishing grounds include the Pacific and Atlantic coasts of Central and South America, the Atlantic coast of Africa, the Pacific coast of West Asia, and most recently, in the vicinity of the Pacific Basin island nations. Vessels often fish in three oceans in a year's time. Commercial tuna fishing is a big, expensive business and there is great pressure on operators to harvest at maximum rates to recoup investments in capital equipment.

After the fish is caught it is frozen whole and stored on board the vessel until the end of the voyage. (There is a very small, specialized restaurant market for fresh tuna.) United States vessels offload at canneries owned by United States companies or ship the frozen tuna to such canneries for processing. Facilities are located in San Pedro and San Diego, California, Puerto Rico, American Samoa, Hawaii, and Guam. Virtually all the U.S. fleet are either owned by processors or receive substantial financial assistance from processors. In 1983, processors purchased tuna for \$917 per ton.⁴

The average retail consumer purchases the product in a can holding slightly less than one-half pound at a cost of less than a dollar. Packed in spring water, that portion contains the minimum daily requirement of protein for an adult and about 200 calories. Although such a portion is economical to the average American consumer, Joseph and Greenough point out that tuna's high place in the food chain and high catching and processing costs remove it as a source of nourishment for much of the world's population. Most national fleets harvest for the profitable sale to consumers willing to pay.⁵

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FISHERY MANAGEMENT

The conflict between large, wide-ranging fishing fleets and stable stocks of fish has inevitably led to either elimination of the stocks or demands to establish a fishery management scheme. J. A. Gulland has detailed the historical and theoretical development of the principles of fishery management.⁶ In 1906 the International Council for the Exploration of the Sea was established to provide scientific data to assist in resolving conflicts between various bottom fishing entities in the North Sea. However, concerted international action on the data did not take place until the mid-1950's.

Links between research and management were established much sooner in the Pacific Ocean, when, after World War I, the United States and Canada established what is now the International Pacific Halibut Commission to gather data and propose regulations to halt the depletion of that fishery.⁷ The rapid growth of marine science in the 1960's led to management schemes based on biological data. If data were available it, not the requirements of the fishing industry or other national interests, determined how many fish could be harvested. As will shortly be shown, tuna management was initially based on this approach. However, the current trend in regulating is to account for the political and economic factors as well as the dynamics of the fish stocks. Gulland suggests the following ideal approach to fishery management:

- a. Initially, encourage development of the fishery.
- b. As the limits of the stock are approached, slow development.
- c. Maintain the efficiency of the fishery by fishing at the maximum sustainable yield.
- d. Manage by restricting new entries rather than restricting the activities of those already involved.⁸

The fate of the California sardine illustrates that poor management can occur even in a scientifically advanced single-country fishery. While awaiting scientific data to support management decisions, the catch declined from 600,000 tons in 1943 to 150,000 tons in 1947; recovered to 350,000 tons in 1949 and 1950; then dropped to almost zero in 1952 where it has essentially remained. According to Gulland, failure to close the fishery in light of these sharp declines while instead, insisting action required more scientific data, permanently extinguished the industry.⁹

On the other hand, control of the harvest of North Pacific Fur Seals illustrates that at least in limited situations, a fishery resource can be successfully managed over an extended period of time. In the early twentieth century, unrestricted open seas and island hunting by Japan, Canada, the United States, and the Soviet Union had depleted the number of breeding animals to dangerously low levels. Japanese and Canadian sealers primarily hunted on the open seas while the U.S. and USSR controlled the islands. Under agreements now supervised by the International North Pacific Fur Seal Commission (INPFSC), high seas killing was prohibited and all harvesting was accomplished on the islands. The furs were then divided among the four nations. Stocks have been rebuilt to a very high level and everyone makes a profit.¹⁰

The Fishery Conservation and Management Act (FCMA) of 1976,¹¹ governing fishing in U.S. waters, combines the best qualities of the scientific and economic approaches and provides an interesting model for tuna management.¹² The legislation was hastened by concern over rapid depletion of fish stocks and the perceived intrusion of foreign fleets into waters traditionally fished by domestic fishermen. Roughly stated, the purposes of the Act were to:

- a. Take immediate action to conserve and manage fishery resources either found off the coasts and continental shelf of the United States or spawned in the fresh waters of the United States (anadromous species).
- b. Support and encourage implementation and enforcement of international agreements to conserve and manage highly migratory species.
- c. Promote domestic commercial and recreational fishing.
- d. Foster establishment of fishery management plans to maintain optimum yields from each fishery.
- e. Establish Regional Fishery Management Councils to prepare and monitor the fishery plans.
- f. Encourage development of under-used fisheries.¹³

The approach of the Act and its implementing regulations¹⁴ is to make use of scientific evidence to determine how many fish can be taken each year by species (and to some extent by region) so that productivity of the resource can be optimized. Domestic fishermen are given priority over the harvest. The remainder, if any, is allocated to foreign fleets on the basis of such factors as interest, its domestic

consumption, cooperation with U.S. research and enforcement efforts, and its barriers to imports of products from the United States. Enforcement is broad and effective. As a

condition to fish in waters covered by the Act, vessel masters are required to keep accurate records which are frequently monitored. The Coast Guard makes extensive sea and air patrols in the fishery and has the power to seize offenders. There is a comprehensive system of civil and criminal penalties to back up enforcement efforts. Through the Regional Fishery Management Councils, the affected states have a strong voice in tailoring the operation of the fishery to meet local needs. Finally, closure of the fishery is used to control the harvest.

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INTER-AMERICAN TROPICAL TUNA COMMISSION

The late 1940's brought the first effort to manage tuna fishing on an international scale. The Inter-American Tropical Tuna Commission (IATTC) was established on March 3, 1950 by the governments of the United States and Costa Rica.¹⁵ From that time until the present, as many as eight nations have been members. Membership has included nations who either exert territorial claims over waters of the eastern Pacific or who have large fleets of tuna vessels that harvest there. Present members are the United States, Panama, France, Japan, and Nicaragua.

The purpose of the agreement was to maintain populations of harvestable tuna in the eastern Pacific at a level to permit maximum sustained catches year after year. There was recognition of the need to obtain and use factual information to accomplish this. The mechanism for implementing the agreement was a Commission composed of representatives from the member nations. Joint expenses were to be shared in proportion to the total catch used. Each nation was to have one vote. A Director of Investigations was to administer the budget and technical resources and draft Commission reports. The Commission was empowered to conduct biological studies and investigations, monitor catches, study fishing methods, and publish the results of its efforts. It was also charged with the responsibility of recommending what joint actions by the contracting parties were needed to maximize the yield. As a practical matter, this usually resulted in a recommended date to close the fishery. Parties agreed to enact legislation to carry out the purposes of the agreement.

The United States implemented the Commission with the Tuna Conventions Act of 1950.¹⁶ Sanctions included fines for U.S. citizens obtaining fish caught in violation of the agreement and an embargo against tuna caught in violation of the agreement by other nations. This principle was strengthened in provisions of the Fishery Conservation and Management Act of 1976 that permitted trade-offs when bargaining for rights of foreign fishing vessels to harvest in the United States Fishery Conservation Zone (FCZ).¹⁷

After a decade of scientific study, the need for the first overall catch quota for yellowfin tuna was established in 1961. The management program was implemented in 1966. Initially the quota was not allocated. Whoever caught the fish first kept them. When the limit was reached, fishing ceased. In the mid-1960's the United States had 90 percent of the fleet capacity and our fleet got most of the tuna. Over the next 10

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years there was a 280 percent increase in fleet capacity and the United States share dropped to less than 75 percent. However, the increase in capacity far outstripped the increase in productivity of the fishery and severely threatened conservation ideals.¹⁸

In addition to overcapacity there were at least three other important challenges to IACCT in the 1970's. First was the concept of coastal state control of resources in their 200-mile exclusive economic zones. Although the United States specifically excluded highly migratory tuna from its 200 mile FCZ for the stated purpose of encouraging international agreements,¹⁹ cynics could not help but note only small commercial quantities of tuna are taken in U.S. waters and billfish that are caught in commercial quantities are regulated. Second, there was the trend (discussed earlier) in many LDC's to develop local fishing industries. Third, waivers of closure dates to allow vessels preparing to get underway for trips to make their voyages were seen as extra favors to the wealthy nations.

The Commission has not been able to accommodate the changes. With the exception of Nicaragua and Panama, member nations have large fleets. The budget, principally funded by the United States, was cut by over 25% in 1982. No catch quotas have been adopted since 1979. Despite a significant reduction in research programs, the data base has been maintained and fishing activity closely monitored.²⁰ Some former member nations, including Mexico and Costa Rica, have seized vessels. Fortunately, the movement of major portions of the United States fleet to the western Pacific and weakness in the retail tuna market have temporarily reduced fishing pressure in the eastern Pacific.²¹

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EASTERN PACIFIC OCEAN TUNA FISHING AGREEMENT

On April 22, 1983, a long series of multilateral and bilateral discussions among the United States and Central American nations culminated in an agreement between the United States, Costa Rica, and Panama to seek a replacement body for the IATTC. The purpose of the Eastern Pacific Ocean Tuna Fishing Agreement (EPOTFA) was to ensure the conservation and rational use of tuna resources in the eastern Pacific Ocean. All nations that fish for tuna or claimed jurisdiction were urged to participate.

Article I forseees a scheme based on licenses, implying a measure of control not present in IATTC. Article II defines the coverage area as that of the IATTC, but excludes areas within 12 miles of member nations and within 200 miles of non-member nations. All commercially important species were included. Article III established a one-nation one-vote council to issue licences, appoint a director, approve a budget, distribute revenue, establish regulations, and adjust boundaries. Collection of data is facilitated. Article IV required all vessels that fish to be licensed. Article V allows a nation to license its own vessels. Article VI forbids members from embargoing tuna from other members as a result of enforcement action under the agreement and requires each member to assure its own vessels comply with the agreement. Article VII allows coastal states and members of IATTC to be parties. Under Article VIII, any other nation can be admitted by unanimous agreement of the members. Article XI establishes the effective date as 30 days after deposit of the instrument of ratification of the fifth member. Article X designates Costa Rica as the depository. Article XI suspends operation if membership falls below five. Article XII established procedures for withdrawal. Article XIII preserves all territorial rights of member states. Article XIV encourages efforts to establish a new, permanent regional regime including quotas to coastal states based on the concentration of tuna in waters claimed by them. Article XV pledges interim cooperation. Article XVI allowed signature after March 15, 1983.

A protocol to EPOTFA allowed license fees of between \$60 and \$100 per net registered ton. Vessels up to 200 tons that fish within 200 miles of their own coasts do not have to be licensed. After deduction of 10 percent or less for administration, the license fees are to be returned to member coastal states in proportion to the amount of tuna caught within 200 miles of that coastal state. Catch data must be recorded and reported. Members are required to establish and enforce appropriate penalties for their vessels that fail to comply.

Theoretically, the management scheme has provisions to overcome all of the major weaknesses of IATTC. First, it goes a long way towards recognizing the modern claims by coastal states to resources within 200 miles of their baselines. Second, it provides for the development of regional fisheries in coastal states by allowing unrestricted fishing by coastal state vessels within 12 miles of the baseline and fishing by small coastal state vessels within 200 miles of the baseline. Third, the fee system returns reasonable amounts of money to the states where fish are caught.²² Fourth, the members have promised to seek a long term agreement based on the principle of allocation of catch. Fifth, member states have promised to put teeth into enforcement.

There has not been a rush to adopt this agreement by potential member states. Disagreements that led to the breakdown of IATTC have been intense and Mexico, a vital potential member with a growing international fleet, has been particularly tenacious in its negotiations with the United States. Furthermore, the lack of fishing pressure within the 200 mile limits of coastal states and the relative oversupply of canned tuna have reduced incentives for any regional agreement.

Nevertheless, EPOTFA, with its combination of scientific analyses, strict reporting, allocation of benefits to coastal states, and enforcement mechanism may yet be adopted. One year is a short period of time to expect full and complete discussions in the halls of governments with many other pressing problems. Adoption may still reasonably be expected to occur.

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PRIVATE AGREEMENTS

As United States tuna vessels began to harvest in the western Pacific for the first time in the late 1970's and early 1980's, they faced a new set of challenges to the concept of absolute right to the catch of highly migratory species. First, most of the nations were archipelagic states with claims for Exclusive Economic Zones (EEZ) that far exceeded the area of the land mass. For example, the nation of Tuvalu with a land area of 25 square kilometers has an EEZ of 760,000 square kilometers.²³ Second, the value of fish caught in a nation's EEZ by foreign vessels may exceed the gross national product. Tuvalu is an example.²⁴ Third, local fisheries are socially and traditionally significant.²⁵ Fourth, there is an existing regional fishery organization, The Forum Fisheries Agency (FFA) that has a potentially strong role in tuna management.²⁶ Fifth, Japan has historically fished in the region.

The United States has not been successful in negotiating a tuna treaty with either the FFA or individual island nations. To fill the vacuum, The American Tunaboat Association (ATA) has negotiated four short-term agreements with nations claiming territory where its members fish. These nations are Palau, Federated States of Micronesia, Papua, New Guinea, Kiribati, Tokelau, Niue, Tuvalu, and Western Samoa.²⁷

Each agreement differs in details and none has been released by the signing government. However, they contain the following general characteristics. ATA vessels are granted licenses to fish in territory claimed by the island state. Fishing is excluded in some traditional island fisheries. Vessels must keep catch records and agree to law enforcement inspections. An orderly procedure is established for arrests and seizures and for subsequent release of the vessel and its crew. Access rights to ports are specified. Vessels are to be protected with adequate bonds and insurance. Both parties recognize the need for scientific research. Fee schedules are based on vessel size.²⁸

Approximately 50 U.S. flag vessels will harvest in the western Pacific this year and be governed at least in part by these agreements. The great distance from homeports creates some special problems which include trips to American Samoa and Guam to offload for either canning or further transshipment to canneries for processing, morale problems on vessels due to restrictions on the ability of alien crewmembers to visit in U.S. ports, and severe restrictions on the ability to change crews or supply special services.

OTHER ORGANIZATIONS

There are three other regional organizations that influence tuna management decisions: The International Commission for the Conservation of Atlantic Tuna (ICCAT) was created in 1969 to study and manage tuna and billfish in the Atlantic Ocean.²⁹ Members have included many African nations that border on the fishery, Brazil, Cuba, and the harvesting nations of Japan, Republic of Korea, Canada, Spain, the United States and the Soviet Union. Member governments collect catch data and conduct biological studies. The staff is small. Size limits have been set for yellowfin and northern bluefin tunas. In addition numbers caught, net size, and seasons are limited. Vessels must report data. Substantial penalties are provided and dealers are strictly controlled. Imports from nations that diminish the effects of the recommendations of the Commission are prohibited.³⁰ There are no quotas for harvesting, primarily because of an inadequate data base and a reluctance of the bordering nations to accept quotas without an allocation of a share of the catch to them.³¹

The Indian Ocean Fishery Commission (IOFC) and the Indo-Pacific Fisheries Council (IPFC) are organized under the United Nations Food and Agricultural Organization. Their purpose is to promote development of the regional fisheries, encourage research, publish data, and examine management problems.³² Neither organization has a permanent staff and studies are performed by ad hoc groups of experts.

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TRADITIONAL AGREEMENTS

The American tuna industry has prospered under traditional tuna management agreements. Possessing the world's second largest and most modern fleet and leading the world in consumption, the United States dominates both the supply and demand sides of the economic equation. As a leader in marine science and technology we are comfortable with the concepts of modern fisheries management. Our own national fishery management scheme is a model for those of other nations. It is likely that our fleet can be competitive with any other for years to come.

We are also able to use our strong position to encourage other parties to comply with the terms of agreements they make. The Fisherman's Protective Act ³⁴ reimburses owners of fishing vessels for losses and costs incurred when a U.S. commercial fishing vessel is seized in territorial waters or on the high seas by a foreign country on the basis of rights or claims which are not recognized by the United States. Thus, if a U.S. vessel is seized in violation of a tuna management agreement, the owner recovers most of his losses and the amounts can be deducted from any foreign aid given to the seizing nation. ³⁵ Furthermore, the embargo provision of the Fishery Conservation and Management Act prohibits the importation to the U.S. of any fish or fish product from fisheries of nations that either do not allow U.S. vessels to fish for highly migratory species or that seize vessels fishing beyond the territorial sea in violation of tuna agreements or territorial claims in excess of those recognized by the United States. ³⁶ Any small coastal state without a tuna fleet receiving large amounts of U.S. foreign aid or any harvesting state that received a significant portion of its hard currency from exporting tuna to the United States could probably be forced to accept this type of agreement.

The United States has dominated the IATTC. It supplies all but a small fraction of its budget. ³⁷ The offices are located in La Jolla, California. We have persisted in defining highly migratory species as fish that belong to whoever catches them first - more than likely to be a modern, sophisticated U.S. vessel.

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This philosophical approach has encouraged nations to establish and modernize fleets far out of proportion to the changes in the market or the size of the harvest... For example, Joseph and Greenough report that the IATTC fleet capacity grew from 44,000 tons (approximately 40,000 US) in the mid 1960's to 169,000 tons (124,000 US) in 1975.³⁸ In 1982, vessels with 170,000 tons of capacity used the fishery (105,000 US)³⁹.

During those same years the catch of marketable tuna increased from approximately 176,000 tons in the mid 1960's to 366,000 tons in 1975 and decreased to 252,000 tons in 1982.⁴⁰ Thus, in a little less than 2 decades, a fleet whose size increased by 280% (with a U.S. fleet size increase of 163%) only caught 43% more fish. Over the same period of time raw tuna prices increased from \$300 per ton in 1965 to \$500 per in 1975 to \$1,000 per ton in 1982. In 1983, the raw tuna price fell to \$900 per ton.⁴¹ The net result is that this major fishery is not controlled by managers or economics.

What happened to Mexico provides an excellent example of the interaction of expansion, the embargo, and differing concepts of maritime jurisdiction. From 1979 to 1981 Mexico expanded its fleet from 15,000 tons to 50,000 tons.⁴² In 1979 30,000 tons of tuna were caught, all but 4,000 tons of it consumed in Mexico. Docks, canneries, and support facilities were built in anticipation of larger catches. In 1981 75,000 tons were landed. Domestic consumption in Mexico did not increase in the two years following 1979 and the balance of 50,000 tons was to have been processed and exported to the United States. In the meantime, Mexico asserted its jurisdiction to 200 miles and began to seize U.S. tuna vessels. That triggered the embargo provisions of the Fishery Conservation and Management Act and Mexico's anticipated market vanished.⁴³

Another symbol of dominance by the United States that has caused problems is the concept of the last open trip. Simply stated, this is a grace period that allows a vessel in port at the close of a season to fish one more time. Originally begun as a 10-day period after closure, it was extended to 30 days in a relatively short period of time.⁴⁴ In theory the closure date can be adjusted to account for the potential extra fishing, but the smaller nations tend to see the result as adding harvesting opportunities for big fleets at their expense.

The traditional approach does have the important advantage of organizational stability. It has a strong scientific base. Most nations of the world know the personnel of the commissions and organizations and cooperate in their studies. Much of the infrastructure could be adopted to accommodate new concepts of territorial claims and resource management. Joseph (IATTC's Director of Investigations) and Greenough have written eloquently on the evolution to

more satisfactory schemes.⁴⁵ For example, in the 1960's Chile, Peru and Ecuador began to claim jurisdiction over waters up to 200 miles from their shores and began to seize tuna vessels within the zone. In 1969, to stop similar claims and actions by other coastal nations, particularly in Central America, the IATTC reserved a share of the quota to be taken after closure by small vessels belonging to these nations. Gradually the share was increased and applied to vessels of any size belonging to the coastal state. It could be taken at any time during the year.⁴⁶ However, as was detailed earlier, even these concessions did not persuade most coastal nation members of the IATTC to remain in the organization.

This approach also continues the disparate regulatory treatment of tuna and billfish by the United States. Marine researchers have recognized the taxonomic similarity as well as the behavioral similarity between the two families of animals.⁴⁷ Billfish harvests are governed by the Fishery Conservation and Management Act of 1976. Quotas for foreign fishermen are allocated and fees are charged. In fact, the fee of \$549 per ton to harvest Pacific Striped Marlin is the highest for any species in the U.S. fishery conservation zone.⁴⁸

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AGREEMENTS THAT RECOGNIZE 200-MILE CLAIMS OVER TUNA

Recognition of the claims of coastal and island nations to resources including all highly migratory species found within 200 miles of their coasts and baselines would require reversal of traditional United States policy.

The United Nations Law of the Sea Convention (UNLOSC) was formulated to define the rights of coastal states to resources found near them. It was prompted by the desire to settle all issues relating to the law of the sea. Although based on traditional concepts of international and maritime law, the special interests of developing nations were also an important part of the resulting document. Article 56 grants coastal states the sovereign right to explore, exploit, conserve, and manage the natural resources found in their exclusive economic zones (EEZ). Article 57 limits the extent of this zone to 200 miles from the baseline from which the traditional territorial sea is measured. Article 58 generally requires other states to recognize the rights of coastal states and comply with the coastal state's laws and regulations within the exclusive economic zone. Article 61 requires the coastal state to determine the allowable catch of the living resources within its EEZ, ensuring that the best scientific evidence is used in conjunction with the expertise available in international organizations to maintain harvests at maximum sustainable yields. States are also required to exchange scientific information. Article 62's objective of optimum use of living resources requires a coastal state to give other states access to that portion of the harvest that it cannot catch itself. The coastal state is expected to consider such factors as the needs of land-locked states and the economic impact on states who have habitually fished in that EEZ or who have contributed to scientific research on the fishery. After receiving proper notice, fishermen from other states are required to comply with coastal state laws and regulations which may address the following topics:

- a. Require the payment of fees which may be used by developing coastal states to finance, develop, and equip their fishing industry.
- b. Specify the species to be caught, who can catch them, and how much can be caught.
- c. Regulate the fishing seasons and equipment.
- d. Regulate the size and age of the catch.
- e. Require vessels to provide catch, effort, and position statistics.

- f. Require participation in research programs.
- g. Require observers.
- h. Require vessels to use coastal state ports to land the catch.
- i. Regulate joint ventures.
- j. Require transfer of technology and expertise to the coastal state.
- k. Specify law enforcement procedures.

Finally, Article 65 requires the coastal state and all states who fish for highly migratory species to cooperate directly or through international organizations to ensure conservation and optimum use of each species throughout its entire range. If no organization exists, the states must establish one.⁴⁹

Even though the United States had actively participated in United Nations Law of the Sea Conferences since 1958, it did not sign the Convention. In his March 3, 1983 rejection, President Reagan pointed to problems with the deep seabed mining provisions. Simultaneously he announced three decisions to promote and protect the oceans interests of the United States consistent with international law and those portions of the Convention that were fair and balanced. First, the United States would recognize the rights of other states to traditional uses of their waters. Second, the United States would exercise its traditional rights and freedoms. Third, he proclaimed a 200-mile EEZ that continued "existing United States policies concerning the continental shelf, marine mammals and fisheries, including highly migratory species of tuna which are not subject to United States jurisdiction." He pledged to continue efforts to achieve international agreements for effective tuna management but reinforced the United States policy of promoting the United States fishing industry.⁵⁰

The remarkable similarity between the key provisions of UNLOSC and the Fishery Conservation and Management Act of 1976 did not diminish the ability of the politically strong United States tuna industry to postpone a change. The Eastern Pacific Ocean Tuna Fishing Agreement and the Forum Fishing Agency agreement guidelines have many of the characteristics of UNLOSC and between the two there are enough details to test some of the consequences on U.S. industry and government.

The first potential consequence of acceptance is economic. According to some critics, fees paid to the "host" coastal nation, a very important part of the UNLOS approach, could price tuna out of the reach of consumers. For a typical fee of \$100 per registered ton to a modern 1,200 ton U.S. tuna seiner, the added price to a serving size can of tuna would be less than a penny of its typical cost of a little less than a dollar.⁵¹ Of course the lump sum payment of a \$120,000 fishing fee will be difficult for an owner and profit margins for these vessels like profit margins for automobile assemblers rise and fall on small unit price changes. Nevertheless, this is a cost that could easily be passed to consumers without their notice. Since large national fleets would pay identical fees, U.S. industry would not be singled out.

Another cost is the obligation of foreign fleets to help develop the fishing industry of the coastal state (if it wants help) in addition to paying fees to the coastal state for the lease of the EEZ waters. If the decision is made to develop the following issues must be resolved:

- a. The extent of foreign investment.
- b. The scale of the industry.
- c. The kind of technology.
- d. The pace of development.
- e. The amount to invest in support facilities.⁵²

For developing coastal states, the World Bank sees an expanded fishing industry providing increased income, domestic dietary improvement, sources of foreign exchange, and opportunities for low income groups to be productive.⁵³ Although some coastal nations have developed large-scale tuna industries, notably Mexico, Thailand, and the Philippines, the more general approach emphasizes small-scale local fisheries and support for large fleets. Thus, it appears that the foreign fishing nation with large fleets need not finance future competition unless the large nation and coastal state chose to do so. For example, a recent Japanese agreement with the Federated States of Micronesia for tuna fishing rights proposed a \$1,200,000 cash payment with an added \$85,000 in goods and services.⁵⁴

Even if the coastal nation insists its tuna industry be developed, the tariff laws of the United States protect against unfair competition. At present, major elements of the U.S. tuna industry have petitioned the United States International Trade Commission for higher duties on imported canned tuna packed in spring water to offset increased imports from Thailand and the Philippines.⁵⁵

Another example of the ability of the tuna industry to influence the world tuna industry is provided by the Caribbean Basin initiative. Canned tuna has been excluded from duty free entry into the United States under Section 203 of the Caribbean Basin Economic Recovery Act of 1983. This product was excluded to protect U.S. canneries in American Samoa and Puerto Rico from being relocated to the Caribbean.⁵⁶

Official actions by the United States that avoid commitment to the principles of UNLOSC confuse and frustrate the developing states. Kenneth Larson, an attorney from Guam, sees Pacific Island leaders resenting the duplicity of the tuna-billfish problem. United States tuna policy is a "confused, inconsistent effort to protect a single, albeit very important, United States industry."⁵⁷ This resentment may be evidenced in other areas. The Christian Science Monitor reported that the Solomon Islands will no longer allow U.S. warships to call at its ports if they are either nuclear powered or armed.⁵⁸ In much stronger action, although the United States is a member of the South Pacific Commission we have been excluded from the derivative Forum Fishing Agency that specifically helps members develop tuna fishing policy.

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PRIVATE AGREEMENTS

Private agreements arose out of necessity when the U.S. tuna fleet rapidly began to shift from the eastern Pacific to the western Pacific in the early 1980's as the IATTC began to unravel. Although relatively unsophisticated, the Pacific Island nations had some law enforcement capability. For example, in 1982, the Guam-based tuna seiner Danica was seized by Papua, New Guinea.⁵⁹ Since the island states were willing to allow fishing in return for cash payments, the American Tunaboat Association was able to negotiate master agreements for its vessels.

The rapid shift of the fleet to fishing grounds in the western Pacific caught the United States unprepared either to establish an official regional tuna management organization or to negotiate bilateral treaties. In addition, the formidable policy roadblock of our UNLOSC position caused problems. Therefore, just as it let Jesse Jackson violate the Logan Act and negotiate for Lieutenant Goodman's release, the United States allowed the private tuna agreement to substitute for official action in the western Pacific. Other policy considerations inhibited formal contact with Syria, and the U.S. policy on tuna within 200 miles of the island states inhibited treaty negotiations with the Pacific Basin nations.⁶⁰

Over the short term it is hard to argue with a successful technique. United States vessels are fishing for tuna in an apparently productive region. ATA officials are apparently willing to spend the time to work out these treaty substitutes. Tuna do not seem to be overharvested so there is not a biological demand for a management regime. In addition, the position is compatible with what one commentator has identified as bias of the present Administration toward resolving economic problems in the private sector.⁶¹ Considering the relatively weak state of the island economies, the ATA is a formidable power across the bargaining table.

By insisting on our rather unique view of fishing rights we may miss a unique opportunity to use the tuna issue to develop a new economic, cultural, and social order in the Pacific Basin and in Latin America. The narrow focus in the monetary phase of our relationship necessitated when a private individual talks to government, puts United States interests in the same category as weaker nations such as Korea, Taiwan, and the Philippines. On the other hand, the Japanese are active in a broad program of overall development that easily outpaces anything the ATA can offer.

CONCLUSIONS

There is little chance that eastern Pacific coastal states will return to or join the Inter-American Tropical Tuna Commission. Except as a source of data on catches and stock size, its utility has evaporated. Similarly, the International Convention for the Conservation of Atlantic Tunas will not withstand the pressures of increased assertion of coastal states rights.

The basic decisions of the President to reject the United Nations Law of the Sea Convention while continuing to stress that tuna (but not billfish) are uniquely under the jurisdiction of no coastal nation; that we will continue to promote and protect the United States fishing industry with such techniques as embargoes, government insurance against seizure, and tariff barriers; and that at the same time we will seek international fishery management agreements are seen as inconsistent with international standards by the rest of the world. Of course, these decisions were made after careful consideration of all impacts of UNLOSC on the basic objectives of the United States. The rejection was primarily based on objections to the plan for seabed mining that required advanced nations to share technology, mining rights, and profits with the lesser developed countries.⁶² Unless the United States modifies its position it will become increasingly isolated from the nations that claim the Exclusive Economic Zones where tuna are caught.

If the world tuna market improves, United States vessels may be denied access to fruitful fishing areas. Although the U.S. can insure against loss from seizure, the relative ease with which even a small nation can mount a law enforcement effort must be an important consideration to boat owners. Furthermore, we as a nation can hardly ignore opportunities to enhance political relationships with Latin American, African, and Pacific Island developing nations. Helping another nation to gain economic independence and improve the living standards of its people is consistent with our national ideals.

The characteristics of the United States tuna industry allow for gradual changes to move it from a vertical, self-contained operation to one with important parts overseas, operated (and perhaps eventually owned by) coastal states. There is much room for developing new markets for tuna in the coastal states and in other nations throughout the world. This would broaden the economic base of the tuna industry and make it less dependent on the U.S. market. Generally, developed nations are better off transferring technology in labor-intensive industries and investing in more advanced ones.

We should take advantage of these opportunities and immediately adopt the fisheries portion of the United Nations Law of the Sea Convention.

Private agreements are economically practical and politically dangerous. Assuming that the agreements are truly private in the sense that the United States is not a hidden party, there is no guarantee that a particular agreement won't undermine some other important official negotiation. Certainly as a general proposition, these private agreements that recognize coastal and island claims over tuna in their EEZ's directly counter United States policy stated by the President. If these agreements buy precious time to conclude meaningful regional or worldwide tuna management treaties, then the risk will be worth taking. However, unless the United States moves quickly, the private agreements will only serve to postpone the inevitable realization that our position on UNCLOS was wrong.

FOOTNOTES

1. Joseph, James; Klawe, Witold and Murphy, Pat. Tuna and Billfish-fish without a country. La Jolla, CA: Inter-American Tropical Tuna Commission, 1979. pp. 4-11.
2. Nakamura, Hiroshi. Tuna Distribution and Migration. London: Fishing News (Books) Ltd., 1969.
3. Personal interviews with August Felando, President, American Tunaboat Association on December 1, 1983 and February 8, 1984.
4. Petition for Relief from Imports of Tuna, Prepared or Preserved in Any Manner, in Airtight Containers (Canned Tuna) Under Section 201 of the Trade Act of 1974. Submitted to the United States International Trade Commission on February 15, 1984 by United States Tuna Foundation, et. al.
5. Joseph, James and Greenough, Joseph W. International Management of Tuna, Porpoise, and Billfish. Seattle: University of Washington Press, 1979.
6. Gulland, J. A. The Management of Marine Fisheries. Seattle: University of Washington Press, 1974. pp. 1-9.
7. It should be noted that a bilateral agreement between two friendly neighboring countries at the same stage of economic development about fishing in waters contiguous to each is relatively easy compared to the problem of tuna management.
8. Gulland, note 6 supra, p. 4.
9. Gulland, note 6 supra, p. 8
10. Gulland, note 6 supra, p. 6
11. Title 16 United States Code Sections 1801-1882. (16 USC 1801-1882)
12. This Act specifically excludes highly migratory species of tuna from its management provisions.
13. 16 USC 1802.
14. Title 50 Code of Federal Regulations Parts 601-681. (50 CFR 601-681)

15. Volume 1 U.S. Treaties and Other International Agreements
Page 230 (1 UST:230), Treaties and Other International
Acts Series Number: 2044 (TIAS 2044)
16. 16 USC 951-961 (Amended October 15, 1962).
17. 16 USC 1825
18. Joseph and Greenough, note 5 supra, pp. 14-17.
19. Legislative History of Fisheries Conservation and Manage-
ment Act of 1976. 2 U.S. Code Congressional and Ad-
ministrative News 610-612, 629(1976).CMA.
20. 1982 Annual Report of the Inter-American Tropical Tuna
Commission, La Jolla, CA (1983)
21. Interview with Mr. Clifford Peterson, IATTC, on
February 9, 1984.
22. One anonymous commentator estimates that Costa Rica
would receive about \$1,500,000 per year based on
historic catch rates.
23. Kent, George. The Politics of Pacific Island Fisheries
Boulder: Westview Press, 1980. Table 2-1.
24. Kearney, R.F. "The Development of Tuna Fisheries and the
Future of Their Management in the Tropical, Central, and
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The Law of the Sea and Ocean Development Issues in the
Pacific Basin. (Proceedings of the Fifteenth Annual
Conference of the Law of the Sea Institute) Honolulu:
1983. p. 158.
25. Note 21 supra.
26. Kent, supra, pages 166-178.
27. Felando interview, note 3, supra
28. Felando interview, note 3, supra
29. Implementing legislation is found in 16 USC 971 et seq.
30. See 50 CFR 285.
31. Joseph and Greenough, note 5, supra, p. 19.
32. Gulland, note 6, supra, Table 8b, p. 172.

33. "Inside: Commerce," Washington Post, June 20, 1984
34. 22 USC 1971-1977 with implementing regulations at 50 CFR 258.
35. 22 USC 1975.
36. 16 USC 1825.
37. For 1982, the United States contributed \$1,714,500 out of a total budget of \$1,800,698. See note 20, supra, p. 13.
38. Joseph and Greenough, note 5 supra, p. 15.
39. IATTC 1982 Annual Report. See note 20 supra, Table 4, page 256.
40. IATTC 1982 Annual Report. See note 20 supra, Table 1, page 251.
41. 1965 and 1975 data from Joseph and Greenough, note 5, supra, Figure 6, p. 16. 1982 and 1983 data from Petition for Relief, note 4, supra, Graph 14.
42. In 1981 the US fleet capacity was approximately 130,000 tons assuming an average vessel size of 1,000 tons. See Petition for Relief, note 4 supra, Graph 6.
43. Joseph, James. "Management of Tuna Fisheries in the Eastern Pacific Ocean," note 24, supra, p. 153, 154.
44. Note 43, supra, p. 149.
45. Joseph and Greenough, note 3, supra.
46. Joseph, note 43, supra, p. 148, 149.
47. Joseph, Klawe and Murphy, note 1, supra, pp. 2, 3.
48. 50 CFR 611.
49. Convention on the Law of the Sea and Resolutions I-IV, Third United Nations Conference on the Law of the Sea, June 1982.
50. Statement by the President on the Exclusive Economic Zone Proclamation, Pres. Proc. 5030 dtd March 10, 1983.

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51. A 1,200 ton seiner would pay \$120,000. Expecting a catch of 4000 tons, the fee per ton caught is \$30, or \$0.015 a pound. Compare this with the U.S. fee of \$547 per ton caught for Pacific Blue Marlin. Note 48, supra, subpart 611.22.
52. "Fishery: Sector Policy Paper" The World Bank. Washington: December 1982. p. 24.
53. Fishery, note 52, supra, p. 38.
54. Article in January 30, 1984 issue of The National Union (An official publication for the People and the States of the Federated States of Micronesia).
55. Petition for Relief, note 4, supra,
56. Legislative History, PL 98-67. 5 U.S. Code Congressional and Administrative News 656 (1983 Advance Edition)
57. Larson, Kenneth. "Fisheries Case Study: United States Tuna Policy". Juda, Lawrence ed. The United States Without The Law of the Sea Treaty: Opportunities and Costs. Wakefield, RI: Times Press, 1983. p. 221.
58. Pritchard, Chris. "South Pacific Makes Waves for U.S. Ships," Christian Science Monitor, March 29, 1984.
59. Larson, note 57, supra, p. 215.
60. Kilpatrick, James J. "What About the Law?", Washington Post, January 5, 1984.
61. Rowen, Hobart. "China Spectacular: Beneath the Tinsel," Washington Post, April 26, 1984.
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