



Allocation of Rights in the International Environmental Context:

Lessons Learned and Their Applicability
to Multi-Lateral Fisheries



A Conference held in Napa, California, USA,
February 11-13, 2011



Background

In May 2010, ISSF sponsored the Bellagio Conference on Sustainable Tuna Fisheries. The Bellagio Conference highlighted three pillars of sustainable global tuna fisheries (control of fishing capacity, allocations and rights-based management and effective monitoring, control and surveillance (MCS) measures) and developed the “Bellagio Framework” to inform and guide efforts to address these issues at the global level. The Bellagio Framework highlights that international fisheries for tunas, billfish and other highly migratory species are at a critical juncture, and that urgent action is required to control and reduce fishing capacity and to allocate these shared resources in an efficient, effective and equitable manner.

The Napa Conference on Allocation was held to further develop and refine approaches to one of the three Bellagio pillars: Successful allocation of rights. The workshop convened a number of multi-disciplinary experts from academia, international organizations, non-governmental organizations and Governments of both developed and developing countries in order to draw from experiences in fields such as water, atmosphere, energy, fisheries and other complex environmental negotiations.

Conference participants shared their experiences and examined some of the major challenges faced in the multilateral tuna fisheries context and concluded that successful allocations require five key actions to be undertaken.



Five Key Actions to Successful International Allocations in Tuna Fisheries

As noted in the Bellagio Framework, rights-based management is an effective way to address excess fishing capacity, over-exploitation of tuna resources, conservation, and to create sustainable economic and social benefits and employment. Implementing rights-based management in an international arena, as would be required in tuna fisheries, would involve allocation of property rights over either catch or effort to nations, who in turn can further distribute use rights.

For such an allocation to be successful, five Key Actions are needed. These are not sequential actions; they need to be considered in unison. In addition, a successful allocation program should not be seen as an end in itself, but rather as a part of the overall management program for the resource. Together with control of fishing capacity, accurate stock monitoring and effective control and surveillance (MCS) measures, the five Key Actions to Successful International Allocations are a pillar of sustainable global tuna fisheries. The five Key Actions are as follows:

1. CLEARLY DEFINE AND BOUND THE RIGHTS TO BE ALLOCATED.

Rights must be carefully circumscribed to ensure they are maintained within established limits. Any program will be undermined if participants can increase their shares unilaterally or if entities that have not previously received allocations gain access to the resource without systematic incorporation into the allocation program (see 3.). Entry into the fishery and allocations are closely linked, and the fishery must first be closed in number of participants. In addition, every party needs to be able to value its allocation. Allocation of catch or effort rights are best expressed as shares of total sustainable levels that allow for periodic adjustments depending on the status of the stocks.

2. AGREE ON WHO THE RIGHTS ARE ALLOCATED TO, AND ESTABLISH TRANSFERABILITY MECHANISMS.

The issue of who initially holds the rights and how they are allocated and how they can be transferred must be clearly defined. Allocations must address the ownership and transferability of rights, in particular the question of whether allocations among participants from multiple countries belong to those countries, at the national level, or



to the individual participants in the program. There is no fixed answer to this question but clarity on this point is critical to transferability among participants. Transferability of rights is essential to realize the full benefits of rights-based management and create flexibility in adapting to changing circumstances. It is also important to define the duration or term of initially-allocated rights.

3. SET UP A MECHANISM TO ACCOMMODATE COASTAL STATES THAT HAVE RIGHTS TO INCREASED PARTICIPATION.

Many allocations are initially based on rights of first possession or grandfathering. But in highly migratory fisheries, it must be borne in mind that coastal states have a right to participate. In a fully exploited fishery (and most tuna fisheries are in this category), coastal states' rights to expand their participation must be accommodated by mechanisms for reducing the participation of others. Otherwise, the limits in 1, would be undermined. As participation by coastal states increases, participation by traditional participants should decrease by a commensurate amount.

4. SET UP A MECHANISM FOR EFFECTIVE MONITORING, COMPLIANCE AND ENFORCEMENT.

Key to successful rights-based management is an effective and transparent monitoring, compliance and enforcement system. RFMO governance procedures requiring consensus for most decisions are not appropriate for matters of compliance and sanctions. Allocation programs need to account for the absence of a central authority. Experience from various environmental negotiations shows that successful multilateral allocations of rights opportunities must be inherently self-enforcing, giving rise to the voluntary cooperation of nations.

5. MAINTAIN TRANSPARENCY.

Allocation programs must be fully transparent in all aspects of their development and implementation. The credibility and integrity of any program requires that participants have a high level of confidence that all others are abiding by the same set of rules and adhering strictly to the established limits. Allocations must be perceived to be equitable.

Next Steps

Experts attending the Napa Conference agreed that, while there are important challenges to successful allocation of rights in multilateral tuna fisheries, there are no insurmountable impediments. RFMO decision-makers should consider the five Key Actions identified above as necessary ingredients to one of the pillars of sustainable tuna fisheries. As a next step, decision-makers could consider some of the sample management options identified in the Bellagio Framework, in the context of these Five Key Actions, to move the process forward.

CONFERENCE ATTENDEES:

James Anderson

Scott Barrett

Richard T. Carson

Ray Clarke

Guillermo A. Compean Jimenez

William Fox

Bill Gibbons-Fly

Josh Graff Zivin

Theodore Groves

Geoffrey Heal

Susan Jackson

Mark R. Jacobsen

Lone Gronbaek Kronbak

Jacob Lariviere

John O. Ledyard

Simon Levin

Robert McKelvey

Andreas Merkl

Rhea Moss

Shingo Ota

Joseph Powers

Victor Restrepo

Don Saari

Dale Squires

Joel Watson





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PO Box 11110, McLean, Virginia, United States 22102
www.iss-foundation.org