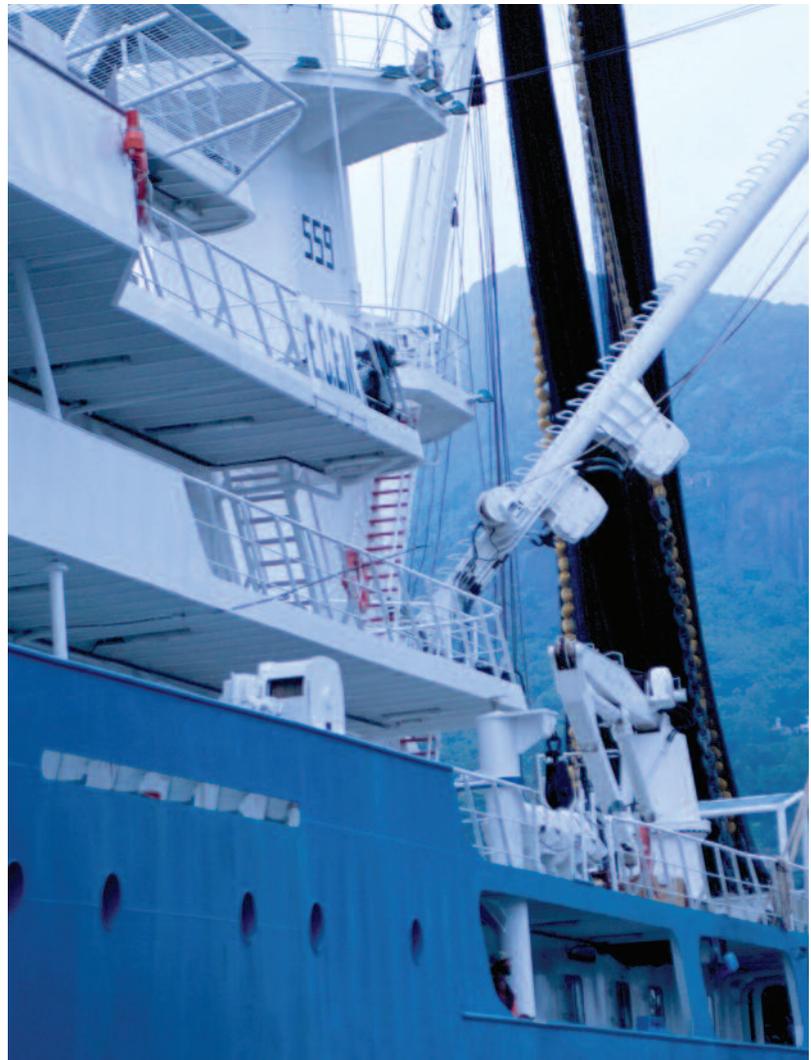




Cordoba Conference on the Allocation of Property Rights in Global Tuna Fisheries



Cordoba, Spain
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Introduction

The *Bellagio Conference on Sustainable Tuna Fisheries* recognized that the time is ripe to address the problems of overcapacity and over exploitation; without action the present situation with respect to tuna stocks will steadily deteriorate. The resulting *Bellagio Framework for Sustainable Tuna Fisheries* laid out the following action plan for addressing the problems of overcapacity and over exploitation of tuna stocks.

- The first step towards controlling capacity is to establish limited entry, possibly set up via a closed vessel registry, after which reductions in the number of vessels can be negotiated. In a fully exploited fishery, coastal states' rights to expand their participation in a tuna fishery must be accommodated by mechanisms for reducing the participation of others.
- Buybacks are a potential second step to voluntarily reduce excessive capacity, provided other measures are used to avoid subsequent capacity expansion.
- Rights-based management is an effective way to address overcapacity, over exploitation, conservation, create sustainable economic and social benefits, and employment.
- Implementing rights-based management in an international arena would involve allocation of property rights over catch or effort to nations, who in turn can further distribute use rights.
- Transferability of rights is essential to realize the full benefits of rights-based management and create flexibility in adapting to changing circumstances.
- Rights-based management also provides an effective means to address the rights of developing coastal states.

Pressure from a range of states to develop or further increase their participation in global tuna fisheries makes the implementation of rights-based management through allocation systems an urgent must.

The *Cordoba Conference on the Allocation of Property Rights in Global Tuna Fisheries* (Cordoba Conference) brought together a distinguished group of negotiators, scholars, representatives of RFMOs, industry, environmental NGOs and other international institutions. The conference provided an opportunity for the participants to engage in debate and discussion in a collaborative and neutral venue on the issue of allocation of property rights and subsequent use rights in multi-lateral tuna management programs. The participants took part in their personal capacity and are listed in Annex 1.

Recognizing the complexity and heterogeneous management of tuna stocks by all five RFMOs, the conference covered a wide range of common issues and problems, and proposed guidelines and recommendations. The conference recognized no one solution will be appropriate for all oceans.

This report covers the range of ideas presented at the conference but does not necessarily represent a consensus on all issues.



CONCEPTS FOR ALLOCATION

The *Napa Conference on Allocation of Rights in the International Environmental Context: Lessons Learned and Their Applicability to Multi-Lateral Tuna Fisheries* resulted in the identification of Key Actions for successful international allocations. The Cordoba Conference further elaborated these concepts as a component of the implementation of rights-based managed tuna fisheries.

The amount allocated must be scientifically based with the objective to maximize the benefits from the fishery, as well as ensuring the health of the stocks and their ecosystem.

Allocations of rights to tuna fisheries must take into account the rights and obligations of all states under United Nations Convention on the Law of the Sea (UNCLOS), including the rights of developing coastal states within waters of their jurisdiction.

To address issues of excess fishing capacity, both regionally and globally, coordination will be necessary to prevent vessels excluded from one ocean that has adopted an allocation scheme from moving to other oceans.

Allocation and Distribution of Rights

1. Limit the participants

It is essential to start an allocation of rights by closing the pool of participants to which rights are allocated. The United Nations Fish Stocks Agreement (UNFSA) establishes that participation in such programs should be open to those with a “real interest.” Although the criterion of “real interest” is not defined in the UNFSA, in practice, customary and legal frameworks appear to be evolving in support of programs that are able to limit the number of participants in an effective way.

2. Define the rights

Two different levels of rights exist. The Report uses the terms Property Right and Use Right. The Property Right is allocated to participating states. Use Rights are subsequently made available by those participating states to individuals or groups that operate in the fishery. States can either allocate Use Rights at their discretion among individuals or groups, or within a framework determined by the RFMO.

Rights can be established over fishing effort or catch. The right allocated must be expressed in units that are linked as closely as possible to the impact on the resource, and in general, this favors using catch rather than fishing effort. However, the allocation of rights should take account any currently existing management framework and build upon it where practical. It may therefore be necessary to evolve to a system based on catch rights. This may involve maintaining complementary management measures.

Total allocations should account for all removals from the fish stock, including those taken in archipelagic waters, territorial seas, EEZs and high seas. Any exemptions from existing controls must be accounted for in the allocations.



Fish stocks and the optimum catches from them fluctuate, and as a result, total allowable catch for each stock must be adjusted on a regular basis. Denominating rights as a percentage share of the total allowable catch or effort will avoid the need for reallocations as fish stocks and optimum catch levels fluctuate (i.e., the size of the total pie will vary regularly, but the relative share of the total pie that is allocated will remain constant). In an effort-based scheme, adjustments will be necessary to account for increases in fishing power over time.

At the same time, allocations should convey rights of sufficient duration to provide incentives for long-term conservation and security for rights holders' investments. Use Rights cannot exceed the term of the Property Right. The fine detail of the relationship between Use Rights and Property Rights will depend on the legal and technical details of the specific management system.

Initial allocations will necessarily result from negotiations among the RFMO members as there is no one formula that is either "best" or that will be acceptable in every situation. Many allocations are based on some measure of the historical catch by the different member nations of the RFMO. However, since catches may occur on the high seas or within the EEZs of coastal states, the nation to whom the catch is credited is a matter of negotiation.

The allocation process should not be seen as an end of its own, but as part of the movement to a self-enforcing rights-based management system, in which future fishing opportunities may be available through subsequent transactions and not only from the initial allocation.

3. Transfer the rights

As stated in the *Bellagio Framework*, transferability of rights is essential to realize the full benefits of rights-based management and create flexibility in adapting to changing circumstances. There may be three principal types of transfers: (1) Transfers of Property or Use Rights among states; (2) Transfers of Use Rights among individuals within states; and (3) Transfers of Use Rights among individuals in different states.

States' ability to transfer their allocated Property Rights to other states may be limited by national policy or by the program structure. An initial moratorium period before Property Rights transfers are allowed could help states understand the value of these rights, but would delay the full realization of the benefits listed above.

Transfers of Use Rights between gear types can be accommodated through use of a conversion factor to account for gear-specific impacts on the stock.

4. Limitations of Use Rights

Catch rights that can be exercised anywhere within a RFMO area do not eliminate the requirement of having access rights to EEZs. Despite holding an allocated Use Right, vessels wishing to fish within an EEZ must also obtain an access license.



Accommodating Increased Participation by Coastal States

Under UNCLOS, coastal states have sovereign rights over the management of highly migratory fish stocks within their EEZs. It is possible that some coastal states that were not involved in the initial allocation decisions may want to enter the rights-based system at a later time. It is also possible that coastal states that were part of the initial allocation may desire to increase their participation gradually as they develop their fisheries and institutional capacity.

In accommodating this new or increased participation by coastal states¹, it is important to ensure that the total of the allocations remains equal to the target of the rights-based system (for instance, the overall TAC). That is, the allocation to new entrants, or expanded participation of existing members, should not result in harvest levels that are inconsistent with the management objectives established in the first place. Otherwise, the overall efficiency and benefits of the system will be reduced for all participants.

One way to accommodate increased participation is to set aside some portion of the initially allocated rights for this purpose. Another way is through commensurate reductions by the other participants in the fishery over time. This will involve negotiations that are similar to those in the initial allocation. Increased participation may also be accommodated through established transfer mechanisms, including markets and buybacks.

Transparent Mechanisms for Effective Implementation and Compliance

Effective allocation systems require a high level of confidence among the participants that their rights are secure and that the rules are applied equally to all. This requires both transparent rules governing the application of the system and a transparent process for monitoring implementation and compliance to ensure all participants are operating under a uniform set of standards.

Developing the appropriate institutional arrangements for compliance and enforcement for the particular rights-based system is of critical importance. As these institutional factors may vary among systems, so too will the information needed to monitor implementation. The developers of each system will need to determine the specific information and other essential factors required for this purpose. Even so, some common elements should be considered for inclusion in all programs. In particular, a central register recording the Property Right allocation to each state is essential and there must be either a central or national system to record the distribution of Use Rights by each state down to the vessel level. This also requires a system to ensure accurate and up-to-date reporting so as to monitor and verify compliance in a timely manner. Systems that allow trading or leasing of rights among participants must ensure that such transactions are also recorded and available.

To create these systems, several critical elements must be considered, such as funding including sources, roles and responsibilities for governance, and incentives to promote compliance by the right holders. A framework for the design of such a system will be the subject of future work.

¹ Coastal states would be included in the states with a real interest whether or not they are fishing at the time of the initial allocation.



CONCLUSION AND KEY POINTS

An effective allocation framework is fundamental to the implementation of rights-based management.

An allocation is not necessarily an end in itself, but instead is designed to facilitate a final conservation and management objective. **The development of successful self enforcing rights-based management programs will require tailored allocation mechanisms drawing from the range of ideas presented in this report, and summarized below.**

1. The first step in an allocation of rights is to close the pool of participants to which rights are allocated. Catch rights that can be exercised anywhere within a RFMO area do not eliminate the requirement of having access rights to EEZs. Despite holding an allocated Use Right, vessels wishing to fish within an EEZ must also obtain an access.
2. Two different levels of rights exist. The Property Right is allocated to participating states. Use Rights are subsequently made available by those participating states to individuals or groups that operate in the fishery.
3. The duration or term of initially allocated rights can vary from indefinite to shorter time periods with corresponding pros and cons. The former provides certainty for investment and strengthens incentives for conservation and stewardship, while the latter provides flexibility simplifying reallocations of rights, including developing coastal states and new members.
4. The right allocated must be expressed in units that are linked as closely as possible to the impact on the resource, and in general, this favors using catch rather than fishing effort.
5. Total allocations should be science-based with the objective to maximize the benefits from the fishery as well as ensuring the health of the stocks and their ecosystem and, further, account for all removals from the fish stock.
6. Denominating rights as a percentage share of the total allowable catch or effort will avoid the need for reallocations as fish stocks and optimum catch levels fluctuate.
7. Transferability of rights is essential to realize the full benefits of rights-based management and create flexibility in adapting to changing circumstances.
8. When accommodating new or increased participation by coastal states, the total of the allocations must remain equal to the target of the rights-based system.
9. Effective allocations systems require a high level of confidence among the participants that their rights are secure and that the rules are applied equally to all. Therefore, any allocation system must be transparent in its establishment, implementation, compliance, and enforcement.
10. Compliance and enforcement are necessary components of any allocation agreement and must be considered as part of the agreement. Along with the rights that an allocation specifies, an obligation to abide by the agreement and enforce its provisions is a responsibility of every participating nation.



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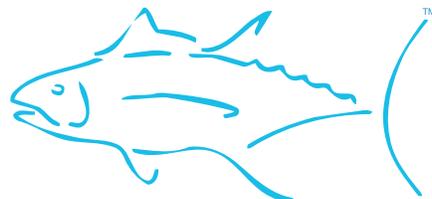
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