ISSF INTERNATIONAL SEAFOOD SUSTAINABILITY FOUNDATION

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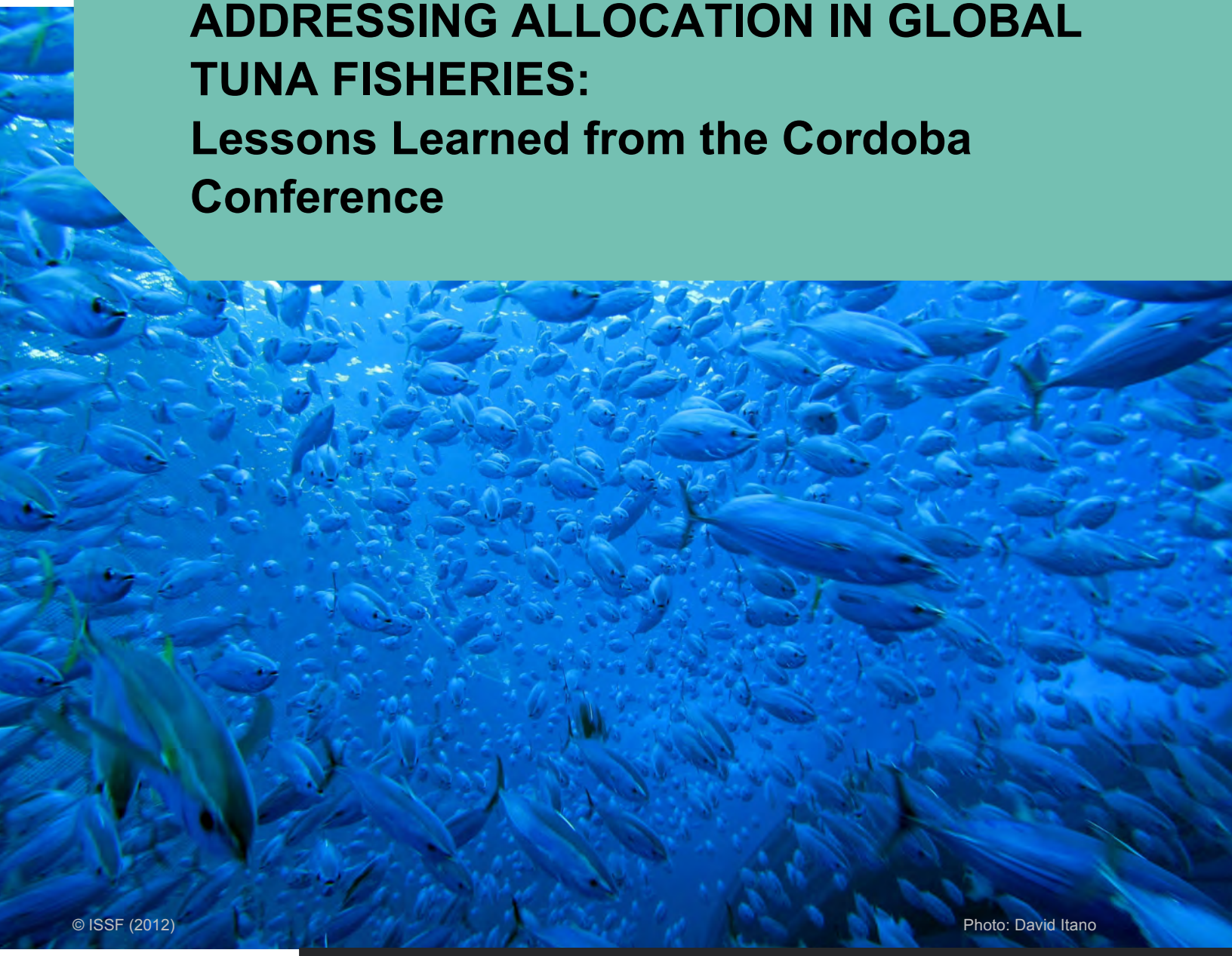
ADDRESSING ALLOCATION IN GLOBAL TUNA FISHERIES: Lessons Learned from the Cordoba Conference



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Abstract

This document, largely based on the Cordoba Conference on Allocation of Property Rights in Global Tuna Fisheries (ISSF 2011) organized by ISSF, provides guidance for negotiators engaged in allocation of fishing possibilities at RFMOs, which remains a contentious issue for many tuna stocks.

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Executive Summary

The 2011 Cordoba Conference on Allocation of Property Rights in Global Tuna Fisheries (ISSF 2011), organized by ISSF, brought together a distinguished group of negotiators, scholars, representatives of Regional Fisheries Management Organizations (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 allocations in multi-lateral tuna management programs.

Thirteen years later, allocation negotiations remain very thorny in most tuna RFMOs. We thought that the Cordoba Conference resulted in very useful insights that are still relevant today. In this document, we repeat the concepts and ideas that we believe are most relevant and also have added a few more points of our own.

An effective allocation framework is fundamental to the implementation of sustainable management. An allocation is not necessarily an end in itself; instead, it is designed to facilitate a final conservation and management objective. In general, the first step is to limit the participants in an effective way. Then, the fishing possibilities need to be defined — for example, fishing effort, catch, capacity, FADs, bycatch limits, or time and area. Initial allocations will necessarily result from negotiations among the participants, as there is no one formula that is either “best” or that will be acceptable in every situation. Other steps include specifying rules for transfers of fishing possibilities and understanding the limitations of allocations. Finally, there will be a need to establish transparent mechanisms for implementation and compliance.

Key Findings:

1. **Allocation of fishing possibilities remains a contentious issue for many RFMO-managed tuna stocks.**
2. **An effective allocation framework must be established, and this report provides guidance on steps to take.**
3. **An allocation is not necessarily an end in itself but instead is designed to facilitate a final conservation and management objective.**

Report Questions

- What questions does this report seek to answer?

This report provides guidance for negotiators engaged in the allocation of fishing possibilities at RFMOs, which remains a contentious issue for many tuna stocks.

- Is this original work?

Not entirely. Many of the ideas presented here come from the 2011 Cordoba Conference on Allocation of Property Rights in Global Tuna Fisheries. That conference was focused on allocation of property and use rights, and the current report is focused on allocation more generally.

- Does this report respond to other work?

Allocation (of catch or fishing effort) was a contentious area of fisheries management back in 2011. Now in 2024 it remains contentious for many tuna stocks. For this reason, we wanted to revisit the recommendations from the Cordoba Conference that we believe are still very appropriate.

Introduction

The Cordoba Conference (ISSF, 2011) was a follow up to another conference held the previous year: the Bellagio Framework for Sustainable Tuna Fisheries (ISSF, 2010), which was developed by another group of distinguished scholars who concluded that sustainable tuna fisheries could be achieved by successfully implementing three pillars: Capacity controls, rights-based management, and effective Monitoring, Control and Surveillance (MCS). The Cordoba Conference essentially expanded upon the second pillar, developing a series of concepts and recommendations for allocation of property rights (to flag states) and subsequent use rights (to individuals or groups within a flag state).

While the Bellagio Framework and Cordoba Conference were generally well received, the concept of rights-based management has not gained much traction in tuna RFMOs. However, allocation discussions continue to be of utmost importance involving difficult and contentious negotiations for many tuna stocks globally. This report essentially reiterates the allocation concepts of the Cordoba Conference, but without a focus on property rights. Some of the concepts have been expanded to make them more useful to stakeholders. We hope that this recasting of the report will be useful to those involved in allocation negotiations.

Concepts for Allocation

The amount allocated must be scientifically based with the objective to maximize the benefits from the fishery as well as ensure 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. Allocations also need to take into account the laws, regulations, and precedent of the RFMO of concern.

Allocation and Distribution of Fishing Possibilities

When fishing possibilities are allocated, a crucial condition is to:

1. LIMIT THE PARTICIPANTS

Ideally, the start of an allocation of fishing possibilities consists in closing the pool of participants to which fishing possibilities 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 FISHING POSSIBILITIES

Two different levels of fishing possibilities (shares) exist. At the RFMO level, shares are allocated to participating states. Shares are subsequently made available by those participating states to individuals or groups that operate in the fishery. States can either allocate shares at their discretion among individuals or groups or within a framework determined by the RFMO.

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

Fishing possibilities can be established over fishing effort, catch, capacity, FADs, bycatch limits, or time and area. The share 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. Linking to outcomes rather than process creates stronger incentives to achieve the desired outcome. However, the allocation should take into account any currently existing management framework and build upon it where practical. It may therefore be necessary to evolve to a system based on outcomes, such as catch shares, starting from a system based upon process, such as a limit on days or FADs. This may involve maintaining complementary management measures.

Total allocations should account for all removals from the stock of fish or protected species such as dolphins or seabirds, 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 or effort for each stock must be adjusted on a regular basis. Denominating shares as a percentage of the total allowable catch or effort will avoid the need for reallocations as fish stocks and optimum catch and effort 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 be of sufficient duration to provide incentives for long-term conservation and security for shareholders' investments. Shares at the fleet level cannot exceed the term of the share allocated to the participating state.

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 or effort 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 which the catch or effort is credited is a matter of negotiation.

Some RFMO allocation rules reward CPCs for voluntary past behavior — such as sacrifice, productive contributions to the greater good, or merit — and compensate states for involuntary differences, such as past injustices, socioeconomic status, or previously not enjoying the full benefits of their EEZ. Allocations must also reconcile competing principles, criteria, and parties' points of view. When no single allocation criterion prevails, a compromise that balances these competing interests and reconciles tradeoffs may be appropriate.

An allocation is a fair division, also called a fair bargain or fair share or impartial, when claimants decide voluntarily, unanimously, and directly rather than a third party. This definition of fairness makes allocations unanimously or consensually decided by RFMOs fair and impartial.

However, some allocation options are simply not tractable for various reasons. They may not be fair, efficient, sustainable, or homogeneous and divisible, or not be practicably applicable to the equitable distribution problem at hand.

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

3. TRANSFER THE FISHING POSSIBILITIES

States' ability to transfer their allocated fishing possibilities to other states may be limited by national policy or by the program structure. An initial moratorium period before share 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 fishing possibilities between gear types can be accommodated through the use of a conversion factor to account for gear-specific impacts on the stock.

4. LIMITATIONS OF ALLOCATED POSSIBILITIES

Catch or effort allocations that can be exercised anywhere within a RFMO area do not eliminate the requirement of having access rights to EEZs. Despite holding an allocated share, 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 fishery 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 states, it is important to ensure that the total of the allocations remains equal to the target of the management system (for instance, the overall TAC or TAE). 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 shares 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.

Transparent Mechanisms for Effective Implementation and Compliance

Effective allocation systems require a high level of confidence among the participants that the objects of the allocation, such as catch or effort shares, are secure and that the rules are applied equally to all (i.e., equal treatment of equals) since CPCs are juristically equal in RFMOs. 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 management 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 allocation to each state is essential, and there must be either a central or national system to record the object of the distribution (e.g., shares) by each state

down to the vessel level if relevant. This also requires a system to ensure accurate and up-to-date reporting so as to monitor and verify compliance in a timely manner. When relevant, systems that allow transfers of shares among participants must ensure that such transactions are also recorded and available or approved at the RFMO level.

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 stakeholders.

Conclusion and Key Points

An effective allocation framework is fundamental to the implementation of sustainable 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 management programs will require tailored allocation mechanisms drawing from the range of ideas presented in this report, summarized below.

1. The first step in an allocation of rights is to close the pool of participants to which fishing possibilities (shares) are allocated. Catch or effort allocations that can be exercised anywhere within a RFMO area do not eliminate the requirement of having access rights to EEZs. Despite holding an allocated share, vessels wishing to fish within an EEZ must also obtain an access license.

2. Two different levels of shares exist. The overall share is allocated to participating states. Shares are subsequently subdivided and made available by those participating states to individuals or groups that operate in the fishery.

3. The duration or term of initially allocated shares 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 for simplifying reallocations, including to developing coastal states and new members.

4. The allocated fishing possibilities 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 ensure the health of the stocks and their ecosystem and, further, account for all removals from the fish stock.

6. Denominating shares as a percentage of the total allowable catch or effort will avoid the need for reallocations as fish stocks and optimum catch levels fluctuate.

7. When accommodating new or increased participation by coastal states, the total of the allocations must remain equal to the target of the management system.

8. Effective allocation systems require a high level of confidence among the participants that their shares 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.

9. 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.

Acknowledgments

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