

Overcapacity in tuna fisheries: the challenge ahead

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1. Summary: Addressing overcapacity is KEY to sustainable tuna fisheries

The elimination of fishing overcapacity is unquestionably one of the most serious challenges of present-day fisheries management, including tuna fisheries. Overcapacity is one of the main reasons for overfishing. It is not only biologically unsustainable, but given the heavy reliance of the fishing industry on subsidies, it is also economically unsustainable. More than a decade ago Garcia and Newton estimated that world fishing capacity would need to be reduced by 25% for revenues to cover operating costs and by 53% for revenues to cover total costs¹. The World Bank and the FAO in 2008 estimated that globally the fishing industry was wasting US\$50 billion per year on inefficient fishing operations, mainly because of overcapacity². The combination of dwindling tuna resources, advances in fishing technologies (such as the use of Fish Aggregation Devices (FADs)) and the unchecked expansion of small, medium and large-scale tuna fleets, means that the situation can only get worse.

Far too little has been done over the last decades to address this increasing problem by the Regional Fisheries Management Organisations (RFMOs) in charge of managing global tuna resources. The capacity of the world’s tuna fleets is much larger than current stock levels can sustain or what is economically sensible to operate. Fishing fleets operate globally, migrating across vast expanse of oceans, both on the high seas and within countries’ Exclusive Economic Zones (EEZs) to target these valuable marine resources³. A large number of countries are involved in the

¹ <http://www.fao.org/fishery/topic/2898/en>

² World Bank, FAO (2008), Sunken Billions.

³ Movements of tuna fleets can occur for a number of reasons, not only due to changes in migration/concentration patterns or resource depletion, but also due to gear/practices restrictions (e.g. the Eastern Tropical Pacific AIDCP

tuna industry: industrialised and developing states; distant water and coastal fishing states; states involved primarily in catching or processing; and those which are the main markets.

A number of agreements have been made internationally to address this issue of overcapacity. Already in 1995 the UN Fish Stocks Agreement (UNFSA) required that "*In order to conserve and manage straddling fish stocks and highly migratory fish stocks, coastal States and States fishing on the high seas shall, in giving effect to their duty to cooperate in accordance with the Convention, take measures to prevent or eliminate overfishing and excess fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources*"⁴ [emphasis added].

The 1999 FAO International Plan of Action for the Management of Fishing Capacity requires States and regional fisheries organisations to "*limit at present level and progressively reduce the fishing capacity applied to affected fisheries.*" The development of most fisheries during the last decade shows that both these agreements have been blatantly disregarded. In fact they have been further undermined by public subsidy policies investing in more and better-performing fishing vessels, as well as efforts to ensure these new vessels get access to tuna resources. As a result, overcapacity is increasing at the expense of government budgets, while at the same time profitability of the fishing operations is decreasing.

Stock depletion, coupled with increasing fish consumption has led to cut-throat competition within the industry. The result is a downward spiral, of vessels cutting costs, which often leads to non-compliance with management rules such as fishing limits, technical measures, working and safety conditions and quality and hygiene requirements.

Tuna RFMOs have mainly focused their conservation and management measures on output controls (i.e. limits on the amount of fish which can be taken from the water), particularly through the setting of quotas, while it has been left to each of their members to decide on how much capacity and effort they would need to reach that quota. This has very often resulted in excessive fishing capacity.

This overcapacity is further compounded by the problem of illegal, unregulated and unreported (IUU) fishing, particularly in the context of diminishing resources and fierce competition in the industry. Monitoring, control, surveillance and enforcement (MCSE) measures in many tuna fisheries are inefficient, particularly on the high seas, resulting in high levels of illegal fishing and massive underreporting.⁵ The inability and/or unwillingness of many countries and operators to collect and submit accurate data and information on their tuna fishing activities and capacity, is widespread and is another serious impediment to RFMOs abilities to manage fishing capacity.

The issue of tackling overcapacity is complex and multi-faceted, and will require efforts on a number of different levels. Firstly, in order to ensure environmentally and economically sustainable exploitation of tuna resources, it is not only necessary to address how many boats should get access to the fishing grounds, but also to determine who will be authorised to fish and how the fishing will be conducted (fishing vessel and gear types and practices). In addressing the overcapacity problem, the international community must recognise that it is mainly major fishing nations who have historically benefited from the exploitation of tuna resources to date and so are largely to blame for the problem. The rights and needs of developing coastal states is a fundamental issue, and unless this equity issue is resolved, overcapacity will continue to be a challenge.

Secondly, effective management of fishing capacity requires the timely submission of extensive and accurate information, particularly if the objective is to control capacity in the first place, rather than to

which caused the migration of the US tuna purse-seiners to the WCP in the 1970s), piracy in the Indian ocean which is displacing some European vessels to the Atlantic and Pacific oceans etc.

⁴ Article 5 (h) - General principles.

⁵ See following links for more details: <http://oceans.greenpeace.org/en/documents-reports/plundering-pacific>, www.greenpeace.org/.../resources/.../defending-our-pacific-2008-su.pdf and <http://www.greenpeace.org/international/en/publications/reports/defending-our-pacific2009-summaryreport>

react to the problem once it has been created. The right to fish comes with obligations and responsibilities. In a context where overexploitation is widespread and competition for access to resources is greater than ever, then these obligations and responsibilities are even more salient. Parties to RFMOs have the obligation to report catches and other data fundamental to fisheries managers, and it is unacceptable to not comply with this important requirement.

Much greater compliance and enforcement will be key to eliminating overcapacity, especially in the fight against IUU fishing. This includes putting in place much stronger penalties and sanctions for non-compliance. To date the lack of deterrent actions, as well as penalties and sanctions, have been a clear incentive not to decrease capacity. Where penalty provisions do exist it is very difficult to get those applied to RFMOs contracting parties, as they are normally used for non-members. RFMOs must be in a position to tackle IUU fishing by their own Parties, or else becoming a member simply provides shelter for illegal operators⁶.

This briefing gives an overview of the main issues related to overcapacity, giving detailed recommendations on how overcapacity should be addressed by countries and regional organisations. In the annex are concrete examples of the problems of overcapacity within three regional management organisations – WCPFC, ICCAT and the IOTC. Time is running out for the tuna. We must seize the opportunity now to agree actions and measures that actually make a real change on the water.

2. Overcapacity in context

Given the declining trend in marine resources, the central debate in RFMOs revolves around reconciling the need to manage and reduce fishing capacity with the need to revise the allocation of fishing opportunities, which at the same time recognises the rights of some countries to develop their fleets. Furthermore, whilst management limits and quotas can serve to slow overfishing, if these management responses do not reduce overcapacity then excess capacity continues to drive overfishing within the fishery, legally and illegally, or it migrates into less regulated fisheries. Until these issues are adequately addressed, problems in fisheries management will not be solved.

2.1. Capacity vs. allocation: a false dichotomy

Currently the debate on how to tackle overcapacity has divided into two main camps:

- those who argue that the problem of excess capacity must be addressed before deciding how to allocate access to resources. Some (including the EU) have suggested as a first step a global freeze of tuna fishing capacity⁷, which would result in consolidating current access arrangements;
- those (mostly developing countries) who want to first ensure the adoption of a system of allocation of fishing opportunities that would grant them a greater share of the resources before agreeing on a plan to freeze and reduce capacity.

Both positions are closely linked to the role a few major fishing nations have had historically in the exploitation of global tuna resources. In previous decades, fishing fleets from a few industrialised countries dominated most tuna fisheries, leaving little or no space for others. However, some developing coastal States have recently started to develop or expand tuna fisheries both in waters under their jurisdiction and beyond, which has increased fishing pressure on already fully or over-exploited stocks.

⁶ In 1999, there were 345 ships on the ICCAT blacklist, today there are seventeen. The list got drastically reduced by the countries flagging those pirate vessels becoming members of ICCAT. In the IOTC, the IUU vessels list only applies to non-members and there are currently no sanctions or penalties for non-compliance in place.

⁷ Non-Paper TRFMO2-008/2009.

Too often, this exploitation has happened in the absence of adequate conservation and management plans, with some States even failing to provide crucial data on fleets and catches. In addition, beneficial owners from distant water fishing nations have also used the development potential of some developing coastal States, as well as flags of convenience, to transfer their fishing capacity, or even get additional access to resources, benefiting sometimes from more lenient management measures, as well as inadequate MCS. These factors further exacerbate the overcapacity problem, often leading to inequitable and destructive fisheries development, that jeopardises tuna stocks as well as the potential development and economic benefits to those coastal states that have not yet developed fisheries to exploit the tuna resources found in their own waters.

In this context, a global freeze of tuna fishing capacity that sustains the current situation would not only be unfair, but contrary to international legal requirements such as those contained in the UNFSA (see section 2.2). Clearly the *status quo* is therefore not an option. In order to avoid further resource depletion and the subsequent environmental, economic, food security and social impacts, the deadlock must be urgently resolved in a way that ensures:

- (a) a timely process that results in an overall rapid decrease of fishing capacity down to precautionary levels ensuring sustainable exploitation in the long-term;
- (b) access to tuna resources is transparent, fair and equitable; and
- (c) all States fulfil their obligations as members of RFMOs that operate consistent with the provisions of the UNFSA.

2.2. The challenge: eliminating overcapacity yet ensuring the rights of developing states

The rights of developing countries are well established and recognised under international law. The FAO International Plan of Actions (IPOA) for the Management of Capacity requires States to “achieve world-wide preferably by 2003, but not later than 2005, an efficient, equitable and transparent management of fishing capacity”.⁸ The FAO IPOA also requires that its implementation “be based on the Code of Conduct, particularly Article 5, in relation to enhancing the ability of developing countries, to develop their own fisheries as well as to participate in high seas fisheries, including access to such fisheries, in accordance with their legitimate rights and their obligations under international law.”⁹ [emphasis added]

Relevant legally-binding international instruments, such as the UNFSA, provide that States shall “agree on means by which the fishing interests of new members of the organization or new participants in the arrangement will be accommodated”¹⁰ and take into account “the interests of developing States from the subregion or region in whose areas of national jurisdiction the stocks also occur.”¹¹

It is important in this context to differentiate between new members or participants who are States that already exploit tuna resources in various oceans, and want to further increase their access to resources or compensate for the loss of access or lack of resources in another region, and those States, i.e. developing States as mentioned above, who want to exercise their rights to participate in tuna fisheries and receive an equitable share of the resources.

⁸ Paragraph 7.

⁹ Paragraph 10.

¹⁰ Article 10 - Functions of sub-regional and regional fisheries management organizations and arrangements.

¹¹ Article 11 - New members or participants.

In taking these interests into account developing states must be assisted to ensure that they not only have their rights respected, but that they are in a position to fulfil their obligations. Article 25 of the UNFSA (Forms of cooperation with developing States) further requires that States cooperate:

(a) to enhance the ability of developing States, in particular the least-developed among them and small island developing States, to conserve and manage straddling fish stocks and highly migratory fish stocks and to develop their own fisheries for such stocks;

(b) to assist developing States, in particular the least-developed among them and small island developing States, to enable them to participate in high seas fisheries for such stocks, including facilitating access to such fisheries subject to articles 5 and 11".

Despite the requirements noted above, the UN Convention on the Law of the Sea (UNCLOS) obliges coastal States that are not able to exploit resources occurring in waters under their jurisdiction to maximum sustainable yield (MSY) levels, to allow other states to do so.¹² Should a coastal State fail to allow access to these "unused" resources, the so-called "surplus", UNCLOS provides for legal recourse.¹³ It should however be noted that where stocks are already exploited at levels at or above MSY, it is only possible to reduce fishing capacity where necessary and equitably reallocate available resources

Most of the current mechanisms for the allocation of catch shares are largely based on so-called "historical rights", i.e. historically reported catches declared by States that have had the capacity to exploit fish resources, including on the high seas. However, these major fishing nations that have these historical rights have largely failed to meet their obligations to exploit resources sustainably, as provided by UNCLOS and UNFSA.

3. Addressing overcapacity

3.1. What is fishing capacity and how to measure it?

Fishing capacity is defined by the FAO as the amount of fish (or fishing effort) that can be produced over a period of time (e.g. a year or a fishing season) by a vessel or a fleet if fully utilized and for a given resource condition¹⁴. Measuring fishing capacity is complex. A major obstacle is the lack of accurate basic data, even for such fundamental aspects as the number and size of fishing vessels participating in a given fishery. Most indicators of fishing capacity are far too simplistic, relying on simple measures such as engine power or vessel tonnage. A transparent and verifiable system must urgently be put in place that guarantees the availability of necessary information on fleet size and activity.

A more precise measurement of the impact of a fishing fleet on a given stock would be by measuring fishing **power** (not to be confused with engine power), rather than fishing capacity, which is usually limited to number and size of vessels and engine power. Such a measurement would require more and better data and statistics on fishing activities such as the amount of gear, technological support systems, freezing and carrying capacity, time spent catching fish, setting the gear etc.¹⁵

¹² Article 62 - Utilization of the living resources.

¹³ Article 297- Limitations on applicability of section 2.

¹⁴ FAO. © 2005-2010. Fisheries Issues. Fishing capacity. Text by Rebecca Metzner. In: FAO Fisheries and Aquaculture Department [online]. Rome. Updated 27 May 2005. [Cited 12 April 2010]. Available at <http://www.fao.org/fishery/topic/2898/en>

¹⁵ Submission by Sidney Holt to the EU consultation on the reform of the Common Fisheries Policy, available at http://ec.europa.eu/fisheries/reform/docs/sidney_holt_en.pdf

It is also important to bear in mind that overcapacity is not just limited to fishing fleet capacity, but also includes processing capacity and transport capacity etc. Overcapacity in processing especially is clearly linked to maintaining and even further developing overcapacity in the fishing sector. Therefore, it will also be necessary to adjust the world's processing capacity to match sustainable and equitable fishing activities.

3.2. Addressing fishing capacity: 3 key steps

The current consensus-based decision-making process within RFMOs is one of the biggest obstacles to ensuring an adequate solution to the problem of managing fishing capacity. Environmental and social objectives must be at the core of decision-making in order to ensure truly sustainable and equitable exploitation of marine resources in the long-term. For example in the absence of a fair and equitable allocation process, the temptation will be great to simply increase fishing opportunities, in order to satisfy most participants' expectations, leading to unsustainable levels of fishing mortality. Accordingly, a decision-making process should be adopted based on environmentally-sound and socially just principles and criteria (see section 3.3). Ideally decisions should follow three main steps:

- adopt fishing mortality limits not based on the MSY but on precautionary fishing mortality limits and ecosystem-based approaches as provided by the UNFSA;
- establish fishing capacity/power limits and composition which are environmentally sustainable (gear types and quantity, technological support systems, etc), precautionary, and include social criteria (employment provided, working conditions, etc);
- allocate fishing opportunities among participants in a fishery based on environmental and social criteria, taking into account not only the interests and rights of developing states in whose areas of national jurisdiction stocks occur, but also the rights of coastal communities to benefit from the exploitation of tuna resources.

3.3. Developing and applying access criteria

Access to a given fishery should be granted on the basis of a set of transparent environmental and social criteria that would lead to positive competition to improve the standards and practices in the fishery. Such criteria should apply equally to all contracting Parties and Cooperating non-Contracting Parties (CPCs) and their operators and should include:

- environmental impacts: level of by-catch; damage to the marine environment, including impact on species composition and the marine food web
- history of compliance/flag State performance;
- amount and quality of data provided;
- energy consumption per unit of fish caught;
- quality of the fish produced and delivered to market;
- socio-economic benefits provided, especially to coastal communities.

3.4. Breaking the deadlock: Key principles and criteria for allocating capacity

Countries that have largely been excluded from tuna fisheries are reluctant to set fishing mortality and capacity limits and further conservation and management rules unless a new allocation system has been agreed. They fear, with reason, that those who currently have the largest share will attempt to keep it. Therefore, in order to evolve towards a level playing field for those nations and operators wishing to exploit tuna resources sustainably in the long term, based on the principles and criteria described in section 3.2 and 3.3 Greenpeace suggests that a system be devised where:

a) developing States from the subregion or region in whose areas of national jurisdiction the stocks also occur, in particular the least-developed among them and small island developing States (as provided for by the UNFSA):

- are granted an increased share of fishing opportunities (per stock/fishery);
- agree that fisheries are subject to increasingly strict conservation and management rules, including efficient monitoring, control and enforcement and compliance with precautionary management advice;
- are granted support to abide by such rules, implement obligations and/or new mechanisms for fisheries management to reflect economic and capacity disparities for those developing countries.

b) Fishing capacity/power must be:

- precisely evaluated based on extensive sets of data (such as described above in section 3.1 and required by Art 5 (j), 6.3 (d), 11 (c), 14, and Annex I of UNFSA) starting by the most overexploited stocks in each RFMO;
- adapted and/or reduced to ensure that resulting fishing mortality rates are consistent with precautionary scientific advice and that target as well as dependent and associated species are maintained at sustainable levels;
- in the absence of precise data, existing indicators need to be looked at and precaution applied in order to ensure that the probabilities of an overcapacity situation are low.

c) Allocation of fishing opportunities must be:

- combined with adequate fishing fleet capacity/power management plans;
- based on the principles and criteria described in section 3.2 and 3.3
- be commensurate with:
 - o the quality of data provided;
 - o compliance with conservation and management rules.

d) Allocation should be reviewed periodically taking into account:

- the performance of CPCs (as flag/coastal/port States and State of beneficial ownership);
- the benefit accrued to dependent fishing communities.

4. Suggested way forward – Greenpeace’s proposals for eliminating overcapacity

Greenpeace welcomes the Kobe process because it has provided an opportunity for the tuna RFMOs to collectively assess this structural problem within fisheries management. However, it remains to be seen if governments and industry have the will to act, adopt and implement the necessary measures to ensure a sustainable exploitation of tuna resources in the long-term. This workshop needs to recognise the urgency of the situation and develop a clear time-bound roadmap which should be adopted and implemented by RFMOs that puts the international community on a fast track to eliminate overcapacity.

In summary, Greenpeace urges that the following principles and mechanisms be agreed and incorporated into such a roadmap to ensure sustainable tuna fisheries:

1) Eliminating overcapacity requires addressing the rights and needs of developing coastal states, in particular small island and least developed States.

Tuna RFMOs must adopt a system that:

- sets fishing mortality and fishing capacity/power limits and composition based on the precautionary and ecosystem-based approaches;

- provides for an equitable allocation of access to resources using a set of environmental and social criteria that respects the rights of developing coastal States and communities to participate in and benefit from tuna fisheries.

2) Eliminating overcapacity requires reliable information

Tuna RFMOs must ensure that:

- data collection is improved and extended beyond catch of targeted species;
- data submission obligations are complied with;
- a global record of tuna fishing vessels is completed immediately which:
 - includes all tuna fishing vessels, transport vessels carrying tuna fishing products, as well as supply vessels, bunkers, carriers, and tug boats;
 - establishes a unique identifier system;
 - clearly distinguishes between active and licensed vessels;
 - includes mandatory information on areas and periods of authorisation to fish;
 - establishes a global blacklist of tuna vessels as well as information on the companies owning, managing and/or operating them; includes complete information on the compliance record of the vessel;
 - requires a genuine link between the owner and the flag State, based on the registry information; be publicly available;
- observer programmes are tasked with data collection for fishing capacity/power assessment such as verifying certain technical characteristics of the vessel and gear;
- centralised VMS systems are made mandatory in all fisheries and their data made available to regional management authorities for fishing capacity/power assessment.

3) Eliminating overcapacity will not be possible without compliance and enforcement

- The work of the Compliance Committees (COCs) of tuna RFMOs must be strengthened and a strict penalty and sanctions regime must be applied across RFMOs. Failure to comply must be linked to loss of access.

4) Urgent action is needed: start where problems are most evident

- Mandatory fishing capacity management plans must be adopted and implemented for each fish stock, starting with the most overexploited stocks and consistent with the principles outlined in section 3 of this report.
- Immediate measures to ensure effective MCS programmes and minimise by-catch would contribute to alleviating the problem in the short term. These should include a ban on all at-sea transshipments and the prohibition of the use of FADs in purse seine fisheries.