

# **COOPERATIVE MANAGEMENT OF SHARED FISH STOCKS IN THE SOUTH PACIFIC**

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## **Introduction**

The management of shared fish stocks present peculiar problems for fisheries managers because these stocks are not stationary. They move from one jurisdictional zone to another therefore it is not possible to manage such stocks unilaterally. The problem of managing shared fish stocks is that even if one country promulgates effective management and conservation measures, such measures can be undermined by uncontrolled fishing in a neighbouring country's waters or in the adjacent high seas.

The need for cooperative management of shared fish stocks underpin the principles found in article 63<sup>1</sup> and 64 of the 1982 *United Nations Convention on the Law of the Sea* (LOSC), and article 7 of the 1995 *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* (UN Fish Stocks Agreement). The challenge for States Parties to these instruments is to structure joint fisheries management arrangements in a way that facilitate effective conservation and management of shared fish stocks.

The purpose of this paper is to describe cooperative management of shared stocks in the South Pacific<sup>2</sup>. The most commonly shared fish stock in the South Pacific is tuna. Tuna is not only a shared fish stock, thus subject to the regime under article 63 of the LOSC, it is also a highly migratory fish stock which makes it subject to article 64 of the LOSC. By way of background, the paper begins by describing the geo-political characteristics of the region. This is essential to understanding cooperative management of shared tuna stocks in the region. This is followed by a discussion of the policy, management and legal approaches to tuna management in the South Pacific. The paper then discusses some contemporary issues pertaining to cooperative tuna fisheries management and future challenges to co-management of shared stocks in the South Pacific. The paper concludes that while cooperative management of shared stocks is essential, it is imperative that all interested States have a common objective in managing the stocks.

## **The Tuna fishery of the South Pacific: Its Geo-political Features**

Generally, the countries of the South Pacific share the same physical, economic and political characteristics. They are small, scattered across some 35 million square kilometres of ocean space, isolated from each other and the major metropolitan markets,

and tend to have a narrowly defined economic base. The combined landmass of the countries is only 2 percent of the total area of the region or the equivalent of 500,000 square kilometres. The largest is Papua New Guinea, which is approximately 330,000 square kilometres. In contrast, Tuvalu is only 26 square kilometres.

The countries are relatively young in political terms. The oldest is Samoa, which gained independence in 1962. The youngest is Palau, which only became independent in 1994. All countries enjoy constitutional democracy and universal suffrage with the exception of Tonga in which parliamentary elections is largely restricted to Nobles. Only 9 seats are allocated to commoners. For the most part, the countries are relatively free of political strife that has beset other nations. However, in recent years a number of countries, notably Solomon Islands, Papua New Guinea and Fiji have undergone constitutional difficulties. In 2000, there were coups in Fiji and Solomon Islands and in Papua New Guinea, problems with mutinous members of its Defence Force has compelled the political government to reverse decisions it has made on both the economy and structural reforms. Regional problems are dealt with under the auspices of the Pacific Islands Leaders Forum, a non-formal annual gathering of heads of governments of the Pacific Islands.

The Pacific Islands Leaders Forum affords the heads of governments the opportunity to discuss regional and national problems, identify solutions, and assist where necessary with the mechanisms to solve those problems. Regional problems and issues of concern therefore receive the highest political blessing from regional leaders. The need to tackle problems on a regional basis permeates every issue. The countries are small and because of their limited resources, they recognise that to maximise their resources they need to act in concert with each other. The fact that there are few issues on which each country dispute also helps. The Leaders can therefore discuss their problems frankly and freely. In terms of fisheries issues, disagreements that cannot be resolved by officials are normally taken to the Leaders to address. This ensures that issues receive the highest political consideration. The existence of a stable and coherent political structure within the region has facilitated cooperative fisheries management.

Differences of opinions and policies between the South Pacific countries have not resulted in conflict. Often disagreements are discussed openly and settled through a process of consensus commonly referred to as the "Pacific Way". The machinations of the Pacific Way are often hard to describe, but it generally refers to the process through which

decisions are arrived at through consultations and consensus. Divergent national interests are often discussed and resolved to serve the collective interests of the region. Conversely, regional interests can often be changed to suit situations where the national interest of one country is not consistent with regional policies. The process of consultations, however, which the South Pacific countries have developed is unique and reflect the cultural and traditional values of Pacific Islanders. These values inculcate in them a sense of consensus and consultations, which ultimately enable differences between to be discussed amiably and resolved amicably.<sup>3</sup>

The key shared stocks in the South Pacific are tuna. Tuna is defined as a highly migratory resource and is listed in Annex I of the LOSC. The four key tuna species that are of commercial value, and are the subject of cooperative management arrangements in the South Pacific are skipjack (*katsuwonus pelamis*), yellowfin (*Thunnus albacares*), albacore (*Thunnus alalunga*), and bigeye (*Thunnus obesus*). The fishery is dominated by three main gear types, namely, purse seining, longlining and to a smaller extent pole-and-lining. The largest fishery in terms of the volume of catch is taken by the purse seine fishery. The preliminary estimate of the 2000 purse seine catch was 1,038,748Mt. This represents an increase of approximately 1 per cent compared to the estimated 1999 catch of 1,029,450Mt. The breakdown by species of the 2000 catch is as follows: skipjack 812,880Mt (up 4 per cent from 1999), yellowfin 197,159Mt (down 8 per cent); bigeye 28,745Mt (down 15 per cent).<sup>4</sup>

In 2001, the Oceanic Fisheries Program (OFP) of the Secretariat of the Pacific Community (SPC), the premier organisation providing scientific advice to the South Pacific countries reported that the total catch of the four main species (South Pacific albacore, bigeye, skipjack and yellowfin) was 1,914,149 mt. It was the second highest after the 2,038,584 mt record of 1998. The dominating species was skipjack with a catch of about 1,203,099 mt (63%) for 2001. This was slightly lower than 2000 and well below the 1998 catch of 1,317,736 mt. Yellowfin catch was 475,501 mt (25%) and it was the highest since the record catch of 494,447 mt in 1998 and continue to comprise 35-40% of the global catch. The bigeye catch was 115,392 mt (6%) and albacore was 117,167 mt (6%), both species catches were similar to the 2000 levels, but not as high as the catches taken in 1999 (115,768 mt and 147,789 mt respectively).<sup>5</sup>

Cooperation is fundamental to management of the tuna in the South Pacific because ninety percent of the tuna is caught by vessels from Japan, Taiwan (Province of China), Korea, United States, and to a lesser extent by vessels from Indonesia, Philippines and China. European Union (EU) vessels (mainly Spanish owned) started fishing in 1999. A recent agreement signed between the EU and Government of Kiribati will see an increase in the number of EU vessels in the region. There are also vessels which are flag of convenience (FOC) vessels operating in the South Pacific. Most of these vessels are located, and land their catch in the region. Most of the catch eventually ends up in the Japanese sashimi market. The FOC vessels are mainly from Honduras, Belize, Panama and St. Lucia.

The fisheries interaction between the governments of the States whose nationals dominate the fishery and the governments of the South Pacific countries provide an important political and economic link between the two sides. The two sides do not often share the same common vision on how the tuna resource should be managed. Understanding the different dynamics at play in the fishery and the diverse national interests at stake, is fundamental to appreciating how regional cooperation has been shaped in the South Pacific. Cooperation can be seen at two different levels, namely, internal and external. Internal cooperation is the interaction amongst the South Pacific countries themselves, and the common position and initiatives taken to address fisheries problems. External cooperation is the interaction between the South Pacific countries and distant water fishing nations. This may be manifested through bilateral dialogue, or through subregional or regional forums.

The next section of this paper will look at the policy framework within which South Pacific countries manage shared stocks. This will be followed by a discussion of the achievements of cooperative management of shared stocks in the South Pacific.

### **The Policy Framework: The South Pacific Forum Fisheries Agency**

The vehicle through which cooperation is pursued in the South Pacific is the South Pacific Forum Fisheries Agency. The Agency is a subsidiary body that reports annually to the Pacific Islands Leaders Forum. The Agency was established in 1979 and has a facilitative and coordinating role amongst its members, all of whom are coastal States within the South Pacific region, to manage and conserve the tuna resource. The Agency does not have any fisheries management and conservation responsibilities. Neither can it enforce

decisions reached by its governing council. It merely provides a vehicle for South Pacific countries to consult with each other on matters of common interest to them with regards to the tuna resource. The Agency consists of a Secretariat which is located in Honiara, Solomon Islands, and a governing council known as the Forum Fisheries Committee consisting of representatives from all the South Pacific countries. In addition to providing a forum for South Pacific countries to consult on fisheries matters, the Committee is charged by Convention to promote intra-regional coordination and cooperation in: -

- Harmonisation of policies with respect to fisheries management;
- Cooperation in respect of relations with distant water fishing nations;
- Cooperation in surveillance and enforcement;
- Cooperation in respect of onshore fish processing;
- Cooperation in marketing; and
- Cooperation in respect of access to the 200 mile zones of other Parties.

Technical and policy input upon which management and conservation decisions can be taken by the Committee is provided by the Secretariat. By Convention, the Secretariat is required to: -

- collect, analyse, evaluate and disseminate to Parties relevant statistical and biological information with respect to the living marine resources of the region and in particular the highly migratory species;
- collect and disseminate to Parties relevant information concerning management procedures, legislation and agreements adopted by other countries both within and beyond the region;
- collect and disseminate to Parties relevant information on prices, shipping, processing and marketing of fish and fish products;
- provide, on request, to any Party technical advice and information, assistance in the development of fisheries policies and negotiations, and assistance in the issue of licences, the collection of fees or in matters pertaining to surveillance and enforcement;
- seek to establish working arrangements with relevant regional and international organisations, particularly the South Pacific Commission; and
- undertake such other functions as the Committee may decide.

While this arrangement has served the South Pacific countries well, it is recognised that effective cooperation for the conservation and optimum utilisation of the highly migratory species of the region will require the establishment of additional international machinery to provide for cooperation between all States in the region and all States involved in the harvesting of such resources.<sup>6</sup>

While the Agency provides scientific and policy advice to the South Pacific countries, scientific analyses and research is provided by the Oceanic Fisheries Programme (OFP) of the Secretariat of the Pacific Community (SPC). An annual colloquium is convened between the Agency and SPC at which issues concerning the work programme of the two organisations are discussed. The SPC is invariably represented at meetings of the Agency. Although the composition of the SPC is slightly different from the Agency because amongst its members are the United States, United Kingdom, France and their territories and dependencies, there is close collaboration between the two organisations with regards to the provision of scientific and policy advice for conservation and management of the resource.

The close nexus between the Secretariat of the Agency, its governing council (FFC) and the fact that FFC reports annually to the Pacific Islands Leaders Forum ensures that issues of concern receive the highest political attention. The interaction between the technical aspects of the Agency's work programme, the clear policy directives provided by FFC together with its direct links to the highest political body in the region ensures that conservation and management issues concerning the tuna resource are addressed.

The following section discusses the achievements of the Agency in various aspects of management of shared stocks.

## **Achievements of the Agency**

### **Policy Harmonisation**

South Pacific countries have been able to harmonise their policies with respect to a number of measures that aim to control and monitor the activities of fishing vessels that target the tuna resource. While these policies are developed regionally and receive political endorsement by the Pacific Islands Forum Leaders, the actual implementation of these policies at an operational level are left to individual countries to incorporate in their domestic fisheries legislation's.

**Vessel Monitoring System (VMS):** The VMS is a satellite-based vessel monitoring system that provides countries with near-time vessel position reports. A major characteristic of the tuna fishery in the South Pacific is the highly mobile nature of the fleets, and the multi-access arrangements that exist within the region. Most of the fishing vessels have access to more than one South Pacific country which raises difficulties for monitoring and control. While most of the EEZs in the South Pacific is contiguous, there are several high seas pockets in which fishing vessels operate. It is not unusual for fishing vessels to report their catch in these high seas pockets when in fact they have been fishing in the EEZ. Such misreporting of catch tend to distort information on fishing effort. This can have serious implications for fisheries management decisions. The hub of the VMS is located within the Secretariat of the Agency and is hooked up to all the Fisheries Departments of the South Pacific countries. The system enables the Fisheries Departments to monitor the activities of all the licensed vessels operating in their EEZs.

One of the drawbacks of the system is that it does not allow licensing countries to view vessels that are not licensed but are transiting through their waters. Discussions, however, are currently ongoing to develop a RADARSTAT system that would allow all vessels to be monitored through satellite visual technology. The Agency operates a VMS Register of Foreign Fishing Vessels. The regulations stipulated in the Register require all vessels wishing to fish in the region to register their automatic location communicator (ALC). The application form contains details about the ALCs Inmarsat Serial number and Inmarsat Mobile Number and information about the vessel, its call sign including confirmation of its installation by an authorised installer. Currently the system is designed to monitor the position of foreign fishing vessels. Plans are already in train to develop the system to enable countries to monitor catches and extend the system to domestic vessels.

**Minimum Terms and Conditions:** The Harmonised Minimum Terms and Conditions (MTCs) of Access for Foreign Fishing Vessels provides a list of conditions which the South Pacific countries are required to apply to all foreign fishing vessels operating in the region. The MTCs generally follow the measures stipulated in article 62(4) of the LOSC with respect to the conditions which may be imposed by coastal States on foreign fishing in the EEZ. The purpose and objective of the MTCs was to bring foreign fishing in the South Pacific region under some form of control and because most of the fishing vessels operated in more than one country, its application regionally ensured its effectiveness as

an instrument to deal with the fishery. The application and implementation of the MTCs is left to each individual country. This is done through legislation or application through access agreements.

**Transshipment:** In the 1980s, high seas transshipment of catch taken in the EEZ of the South Pacific countries was difficult to monitor. The management problem created by high seas transshipment was distortion in catch levels which created difficulties for estimating the volume of catch. It was not possible to calculate the volume of catch. This caused problems for access agreements for which the rate of return was based on the value of the landed catch. In the late 1980s, South Pacific countries agreed to control and monitor transshipment by banning at sea transshipment. They agreed to the principle that no operator of a foreign fishing vessel shall tranship at sea under any circumstances except for the transfer of catch by a licensed group seiner to its licensed carrier vessel.

Transshipment is only to take place at a time, port and approved designated areas authorised for transshipment by the licensing country. Foreign fishing vessels are required to provide at least 72 hours notice of its intention to tranship. The notification must include the name of the vessel, its international radio call sign, its position, the catch on board by species, the time and port where such transshipment is requested to occur and an undertaking to pay all the requisite fees.

**Monitoring, Control and Surveillance:** A high degree of cooperation exists within the framework of the Agency with respect to both the physical and non-physical aspects of monitoring, control and surveillance (MCS). The Niue Treaty on Fisheries Surveillance and Law Enforcement provides a framework under which two or more South Pacific countries can develop subsidiary arrangements to cooperate in the use of their respective physical enforcement platforms, particularly the use of their patrol boats. One of the innovative aspects of the Treaty is that South Pacific countries can allow fishing vessels pursued by a patrol boat from a country with which it has a subsidiary agreement to effectuate an arrest in its territorial waters. The Treaty is coordinated by the Agency and provides for South Pacific countries to exchange information on the operation of fishing vessels in their EEZs.

The South Pacific countries have also harmonised the requirements for enforcement, which are to be found in their legislation's. These relate to the powers of authorised

officers as well as to vessel marking requirements to differentiate between licensed and unlicensed vessels.

**Reporting, Catch Reports and Data Collection:** A high degree of harmonisation has been achieved with the modalities of providing catch reports and the collection of data from foreign fishing vessels. South Pacific countries licence foreign fishing vessels using a common regional licence form. A recent addition to the requirement is that no foreign fishing vessel is to be licensed unless the vessel has good standing both on the VMS Register of Foreign Fishing Vessels and the Regional Register of Foreign Fishing Vessels. Both Registers are maintained by the Agency. To obtain a better picture of the fishery the operators of foreign fishing vessels are required to complete in the English language daily reports of all catch, and by-catch caught in the EEZ and high seas. The Reports must be provided weekly, and daily while in the EEZ. The Reports must cover such information as the vessel name, international radio call sign, licence number, position, and catch on board.

**Observers :** Another area in which the South Pacific countries have harmonised their policy is in the use of observers. Observers have a very important part to play in monitoring and carrying out scientific investigations on the fishery. South Pacific countries require the operators of foreign fishing vessels to ensure there is 20 percent observer coverage of all fishing trips. Observers are empowered to board the vessel for scientific, compliance and monitoring purposes. The operators must give them full access to the bridge, fish on board, and areas, which may be used to hold, process, weigh and store fish. The operator is required to meet the full costs associated with the placement of observers including full insurance coverage and salary of the observer.

**Establishment of Limits through the Palau Arrangement for the Management of the Western Pacific Purse Seine Fishery:** A number of South Pacific countries have cooperated to limit the number of purse seine vessels fishing in the region. The instrument through which such cooperation is exercised is through the Palau Arrangement for the Management of the Western Pacific Purse Seine Fishery. Under the Arrangement, the Parties have agreed to licence up to 205 purse seine vessels at any one time. The licenses are allocated to fleets from Japan, United States, Taiwan, Korea, domestically-based vessels from the Philippines<sup>7</sup> and a special characterisation of vessels belonging to the domestic fleets of the Parties and members of the South Pacific Forum Fisheries Agency.

The Arrangement is currently being reviewed and the vessel licence limitation by fleet will be replaced by a system based on vessel days. The vessel days will be allocated to the Parties instead of being shared amongst the fleets. The Arrangement is a classical management instrument, which illustrates attempts in the South Pacific to manage, shared stocks. It has both conservation objectives, namely to prevent the overexploitation of stocks, and an economic objective, viz, to maximise the value of the licences and create competition amongst the fleets for the licences.

### **Reciprocal Access through the Federated States of Micronesia Arrangement for**

**Regional Fisheries Access:** The Federated States of Micronesia Arrangement for Regional Fisheries Access (FSM Arrangement) is a manifestation of the harmonisation of South Pacific countries policies to provide preferential access to purse seine vessels that are domestically based, land all their catch in the region and are involved in investment that provide direct and indirect benefits to the region. Vessels that fish under the FSM Arrangement are required to carry FFA approved ALCs, and provide regular reports on their catch, landings, and transshipment to the Administrator, who is the Director of the FFA , the licensing Party and the Party where the vessel is based.

### **Management Harmonisation**

The South Pacific countries have also been cooperating to harmonise management approaches at the domestic level with respect to shared stocks. Three key areas in which the countries have been actively harmonising management initiatives of shared stocks is through the formulation of tuna management and development plans, fisheries legislation's and the clarification of port State rights to enforcement.

**Tuna management and development plans:** With the assistance of the Agency, countries are now moving towards the establishment of a comprehensive framework for the management and conservation of shared stocks, in particular tuna. A number of countries have completed tuna management and development plans.<sup>8</sup> A key feature of the plans is the provision of guidelines for its development and investment in the fishery, guidelines for the collection of data, and recognition of the importance of cooperation. As an example of the objectives of the plans, the following objectives of the Fiji Tuna Management and Development Plan is illustrative of the goals of such plans: -

- to provide for maximum sustainable benefits to Fiji from the resource.

- setting the harvest levels at a level that will not damage the stock and putting into practice a licensing policy that will ensure the maximum benefits from fishing are enjoyed by Fijians.
- to help improve the disparity within the segments of the Fijian population by providing preferential criteria for Indigenous Fijians to have access to licenses consistent with the aims of the government through the Social Justice Act.

In Papua New Guinea, the objective of its Tuna Management Plan is to: -

- to give effect to the fisheries management objectives and principles contained in the *Fisheries Management Act*, and specifically to:
  - Maximise benefits to Papua New Guinea from sustainable use of its tuna resource,
  - Satisfy Papua New Guinea's regional and international obligations in regard to the management and conservation of tuna resources, while holding the country's national interests paramount;
  - Minimise any adverse impacts of tuna fishing and related activities on the marine environment;
  - Minimise any adverse impacts on the non-industrial sectors, including the artisanal and traditional sectors;
  - Improve decision-making in relation to the tuna fishery through effective communications; and,
  - Ensure that the provisions of this Plan are developed, implemented, administered and monitored in an efficient and cost-effective manner

**Harmonisation of Fisheries Legislation's:** It is vital when dealing with a common stock that countries in whose waters those stocks are found have the same management regime. South Pacific countries are now revising their fisheries legislation's to make them more comprehensive, and to provide a framework that would enable them to implement principles of ecological and sustainable development in the management of shared stocks. Through the Agency, South Pacific countries are ensuring the development of common provisions with respect to the application and implementation of conservation and management principles in the EEZ. Typical of recent legislation's is the provision for the application of the precautionary approach and prescription of processes that would ensure the holistic management of resources. This include recognition of the interest of stakeholders and the need for wider consultations including fishing States in the management of shared stocks.

**Port State Enforcement Provisions:** A common approach to port State enforcement adopted in the region is what is known as the Lacey Act type provisions. The Lacey Act is

a United States legislation, which prohibits the cross border importation of wildlife caught illegally in another State. The South Pacific countries have borrowed the idea from the US, which makes it illegal to import fish taken illegally from another State's waters. The offence is found in the importation of illegally caught fish, and not in its illegal taking in a third State. An example of such a provision can be found in section 56 of the Solomon Islands *Fisheries Act 1998*. Section 56 of the Act provides as follows: -

- (1) Subject to subsection (3), a person who -
  - (a) on his own account, or as partner, agent or employee of another person, lands, imports, exports, transports, sells, receives, acquires or purchases; or
  - (b) causes or permits a person acting on his behalf, or uses a fishing vessel, to land, import, export, transport, sell, receive, acquire or purchase, any fish taken, possessed, transported or sold contrary to the law of another State shall be guilty of an offence and shall be liable to a fine not exceeding one million dollars.
- (2) This section does not apply to fish taken on the high seas contrary to the laws of another State where Solomon Islands does not recognise the jurisdiction of that State to extend to the high seas.
- (3) Where there is an agreement with another State relating to an offence referred to in subsection (1) (b), the penalty provided by subsection (1), or any portion of it according to the terms of the agreement, shall, after all the costs and expenses have been deducted, be remitted to that State according to the terms of the agreement

The incorporation of these provisions in legislation is complemented by training conducted by the Agency in dockside boarding and inspection to enhance the skills of fisheries and enforcement officers in detecting violations.

### **Access Harmonisation**

Access harmonisation in the context of cooperative management refers to the collapsing by the South Pacific countries of their EEZs for the purpose of access so that the same degree of limits apply to all vessels operating within the access harmonisation regime. The classical example of such collaboration in the region is the *Treaty on Fisheries between the Governments of certain Pacific Island States and the Government of the United States*. Under the Treaty, the United States Government and tuna industry pay for the right to fish. In consideration of payment of such fees, the South Pacific countries agree to provide access for up to 40 US purse seiners in their EEZs. US purse seiners operate in all sixteen EEZs of the South Pacific countries on similar terms and conditions

although individual reporting requirements have to be complied with when fishing in the EEZs.

### **Challenges to Cooperative Management of Shared Stocks in the South Pacific**

Cooperative management of shared stocks in the South Pacific is manifested through a mixture of political, legal and economic instruments spawned under the auspices of the South Pacific Forum Fisheries Agency. It is beyond the scope of this paper to explore the effectiveness of these instruments in terms of achieving their objectives suffice to say that the tuna resource is still largely healthy. The only exception is bigeye tuna, which according to scientists from the OFP may be nearing overexploitation. Cooperative management in the South Pacific has been highly successful because of a number of factors. Firstly, membership of the Agency is largely restricted to coastal States who share the same economic interests and conservation and management objectives. Internally, therefore they do not need to negotiate and go through a complex political process in order to arrive at decisions. Secondly, the countries all have similar political structures and experiences. With the exception of Tonga, all the countries were either colonised by Great Britain, United States, Australia and New Zealand. Most of them became independent at the same time, and in particular, at the time when the UN Conference on the Law of the Sea was discussing the concept of extended maritime jurisdictions. They all shared the common view that the EEZ provided them with hope for economic independence. Thirdly, they shared similar problems in that they were all young, newly independent and lacked resources necessary to manage the resources. Thus, they saw regional cooperation as a means to an end. The end was maximisation of the economic benefits from the shared resources, and the means was through the common pooling of their meagre resources through the Agency. The Agency was able to work successfully because there were no competing interests amongst the South Pacific countries. They had a common adversary, namely the distant water fishing nations (DWFNs), and therefore it was easy for them to define their interests vis-sa-viz the goals of the DWFNs.

Despite these positive developments, cooperative management in the region is still confronted by a number of challenges. These constrain the effective management of the resource and need to be addressed by the South Pacific countries.

**Determination of the total allowable catch:** The LOSC requires the determination of an allowable catch as an instrument for managing the fisheries resources. While article 61 of the LOSC empowers coastal States to determine an allowable catch, they are constrained by article 64 to cooperate with DWFNs in the establishment of an allowable catch. It has been argued that article 64 requires the establishment of an international organisation with broad-based membership to conserve shared stocks and promote their optimum utilisation. Article 7 of the UN Fish Stocks Agreement however clarifies that coastal States and DWFNs who fish on the high seas should cooperate to ensure measures adopted for areas under national jurisdiction and high seas are consistent and compatible. The determination of an allowable catch for the highly migratory fish stocks in the South Pacific remains a challenge more so because the countries are so dependent on the resource. The only regional arrangement which has the potential to constrain fishing effort is the *Palau Arrangement for the Management of the Western Pacific Purse Seine Fishery*. The lack of any other framework which could provide the basis for the determination of an allowable catch for the shared stocks poses some problems for the South Pacific countries. An additional layer to the complexity of determining an allowable catch is that other coastal States with important tuna fisheries in the region are not members of the Agency. These are Indonesia and the Philippines. It would not be possible to set a regional total allowable without consideration for the catch in Indonesia and the Philippines.

**Problems with development:** While as a group the South Pacific countries share a common interest in the conservation and management of the tuna resource, they all have individual national interests to develop the resource which can often clash with their regional interests. With the exception of their dealings with the US in which they act collectively, most dealings with DWFNs have been through bilateral dialogue. While the advantage is that they are able to tailor the outcomes to suit their national interests, DWFNs have been successful in playing one country off against another resulting in dissipated returns in access fees. It is argued that collective bargaining and having a centralised licensing system would strengthen rather than weaken the South Pacific countries negotiating powers and potentially increase revenue from the resource.

**Capacity to deal with the challenges:** One of the biggest challenges facing the South Pacific countries is the capacity to address the problems identified above. Many of the countries still do not have adequate resources to deal with the problems of science and

how to interpret the science for management purposes. While they have collective capacity through the Agency, there are quite obvious inadequacies at the national level. Enforcement, particularly investigative skills in detecting and investigating violations is still not sufficient. Although the Agency conducts in-country prosecution and dockside boarding and investigation training, considerably more support is required before the South Pacific countries are able to undertake comprehensive physical enforcement of their fisheries laws.

### **Lessons from Cooperative Management of Shared Fish Stocks in the South Pacific**

Cooperative management of shared fish stocks in the South Pacific provides an interesting backdrop for any analysis of regional fisheries cooperation because the countries involved are so diverse with varying degrees of dependency on the shared fish stocks. On one extreme are the Small Island developing States (SIDS), resource poor and heavily dependent on aid and are overwhelmingly dependent on the resource. On the other, are the DWFNs who are amongst the richest and most powerful in the world. Against such a background it would not be difficult to envisage that the objectives of the two groups would be diametrically opposed to each other. The success of cooperative management in the South Pacific may be attributed to the following factors: -

- The South Pacific countries all share a common interest and objective for the conservation and management of shared fish stocks;
- The objectives of the South Pacific countries are explicit;
- The object and purpose of establishing an organisation was to assist South Pacific countries deal with their lack of resources in dealing with DWFNs;
- The strong links between the Agency and the Pacific Islands Forum ensured fisheries problems received the highest political consideration;
- Member countries had a clear role in providing policy and administrative guidance in the work program of the Agency;
- The flexible role and functions of the Agency enabled it to respond to different management challenges in a timely and effective manner; and
- The clear delineation between the functions of the technical Secretariat and the governing council of the Agency enabled it to operate effectively as an organisation

The experiences of the Agency and the instruments it has spawned over the past 23 years clearly show that it could not have been achieved with a broadly based organisation. Having a clearly defined mandate and a membership that is united by a common purpose is obviously one of the ingredients for the success of the Agency, and cooperative management of shared stocks in the South Pacific. It could not have been done otherwise than through an organisation with limited membership, and with the constitutional structure that the Agency has under its Convention.

## **Conclusion**

Cooperative management of shared fish stocks in the South Pacific can be broadly categorised into three phases. The first phase, from 1979 – 1988, can be characterised as a period of consolidation and growth. This was a period during which the Agency was established, not without controversy, because there were countries which wanted to join the Agency that did not recognise the sovereign rights of coastal States over highly migratory fish stocks. Cooperative management during the first phase was also characterised by two levels of cooperation – internal and external. Internally, South Pacific countries had to make adjustments to their fisheries relationship as it became more formal and institutionally administered. They also had to commence negotiations of their maritime boundaries both internal boundaries such as the territorial seas, and archipelagic waters and EEZ boundaries. This was important for fisheries management. Externally, the South Pacific countries through the Agency had to quickly establish rules that would bring the tuna fishery under control since, until the establishment of the EEZ most of the vessels targeting shared stocks in the region had been fishing under the principle of freedom of fishing. This was the period during which the Harmonised Minimum Terms and Conditions of Access for Foreign Fishing Vessels, Regional Register of Foreign Fishing Vessels and the *Treaty on Fisheries between the Governments of certain Pacific Island States and the Government of the United States* were developed.

The second phase of the Agency, the period from 1989 – 1995, can be characterised as the period of management growth. During this period, the Agency had to respond to a number of management problems that occurred in the fishery. The first was the emergence of the driftnet fishery in the region and the use of long driftnets, which threatened the development of the local Longline tuna industries which were only just being established by some South Pacific countries. The response of the South Pacific countries was both

global and regional. At the global level, South Pacific countries sponsored a resolution through the United Nations General Assembly (UNGA) calling for the cessation of the use of long driftnets. Their regional response was the conclusion in 1989 of the *Convention for the Prohibition of the Use of Long Driftnets in the South Pacific*. The Driftnet Fishing Convention prohibits the use of long driftnets. Another problem addressed during that period was the difficulties of enforcement, and the need to share whatever physical resources were available for fisheries enforcement amongst the countries. A framework agreement was thus concluded known as the *Niue Treaty on Cooperation in Surveillance and Fisheries Law Enforcement in the South Pacific*, which allowed two or more Parties to agree to authorise a Patrol vessel and crew from State A to enforce the fisheries laws of State B in State B's EEZ. The increase in fishing capacity in the purse seine fishery in the late 1980s saw the development of two subregional instruments discussed in the paper. These were the *Palau Arrangement for the Management of the Western Pacific Purse Seine Fishery*, and the *Federated States of Micronesia Arrangement for Regional Fisheries Access*. The response of the Agency, however, was *ad hoc* and reactive rather than prescriptive and determinative.

The Third phase, from 1996 – to the present time has been a period of reform. The Agency has attempted to bring its management initiatives in line with the principles of international law found in the 1995 UN Fish Stocks Agreement and the FAO Code of Conduct for Responsible Fisheries. An additional layer to the work of the Agency is the establishment of the new Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific following the conclusion in September 2000 of the *Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean*. The Agency however continues to function very much in the manner for which it was established; coordinating positions and promoting close cooperation amongst its members. In the context of the new management paradigm in the region, its role and responsibilities will become more important and relevant to the Small Island States of the South Pacific.

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<sup>1</sup> Art. 63 of the 1982 United Nations Convention on the Law of the Sea states as follows:

<sup>2</sup> For the purpose of this paper reference to the South Pacific shall be taken to mean the waters of the States and territories members of the South Pacific Forum Fisheries Agency. These are: Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. Tokelau's application has recently been accepted by the

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Forum Fisheries Committee at its 51<sup>st</sup> meeting in May 2002 and a recommendation has been made to the Pacific Islands Forum Leaders

<sup>3</sup> See Neemia Ueetabo, *Co-operation and Conflict: Costs, Benefits and National Interests in Pacific Regional Co-operation*, (Suva: Institute of Pacific Studies, 1986)

<sup>4</sup> Forum Fisheries Agency, *Economic Overview of the Tuna Fishery*, Paper presented at the 4<sup>th</sup> Standing Committee on Tuna and Billfish, 9-16 August 2001, Noumea, New Caledonia.

<sup>5</sup> Report of the Standing

<sup>6</sup> Art. III(2) South Pacific Forum Fisheries Agency Convention

<sup>7</sup> The locally based purse seine vessels from the Philippines are those based in one or more of the Parties.

<sup>8</sup> South Pacific countries that have tuna management and development plans are: Cook Islands, Federated States of Micronesia, Fiji, Palau, Papua New Guinea, Solomon Islands, Tonga, Tuvalu and Vanuatu