

Working Group A: Resolving Allocation Issues

Discussion Guide

Background

In reviewing the history of the management of shared fish stocks, it becomes clear that there are very few such resources that do not require effective cooperative management among the states/ entities exploiting them, if the resources are to be harvested on a sustainable basis. Achieving effective cooperative management regimes is, however, difficult. Cooperative management regimes, once established, can readily disintegrate, if based upon weak foundations.

If a stable and robust cooperative fisheries management is to be established, the first issue, which must be addressed successfully, is that of allocation. It is obvious that, for the cooperative management regime to be stable, the criteria established for allocation, and the application of those criteria, must be seen by all participants in the cooperative regime to be fair and equitable. At a minimum, each and every participant must be assured of being at least as well off under the cooperative regime as it would be in the absence of cooperation.

History also tells us that that the allocation system must be flexible over time, in order to accommodate unexpected shocks to the cooperative regime. If this flexibility is absent, then, what may have appeared to have been a fair and equitable system of allocation at the beginning of the cooperative management regime, may, over time, come to be viewed, by one or more participants, as grossly inequitable.

Before considering what is required to ensure ongoing fairness and equity, it is necessary to decide what in fact is to be allocated. The answer would seem to be obvious, namely shares of the TAC, or the equivalent thereof, to the fleets of the participating states/entities. Yet, it can be argued that what in fact is being allocated, or what should be allocated, is shares, over time, of the net economic (social) returns from the fishery (however one may attempt to measure these returns).. To quote the 1992 FAO document, *Managing Fisheries and the Law of the Sea: A Decade of Change (FAO Fisheries Circular No. 853)*, “---the model is that of an international regime that achieves stability by sharing the benefits deriving from the use of the resource---“. The author of the FAO document cites the case of the Convention for the Preservation and Protection of Fur Seals in the Northeast Pacific. Four countries participated in what proved, over its 73 year history, to be a cooperative management regime that was very successful, in both economic and conservationist terms. In order to maximize the net economic returns from the resource, it was agreed that harvest allocations to the fleets of two of the four countries should be set equal to zero. These two countries were then compensated by their partners in the Convention, to ensure that both shared equitably in the economic returns from the fishery.

If the view is accepted that what is to be allocated is shares of the net economic (social) returns from the fishery, then the allocation of harvest shares to the participants' fleets is to be seen as but one of many ways of achieving that goal. If it is decided that this should be the only way that the goal is to be achieved, then bargaining constraints, perhaps severe constraints, will be imposed upon the participants over time.

Determining fair and equitable allocation criteria that are seen to be applied in a fair and consistent manner should be relatively straightforward in the management of transboundary stocks. Attached is a set of proposed allocation criteria prepared by ICCAT. Although concerned, by definition, with highly migratory stocks, which are not under discussion at this Expert Consultation, the ICCAT criteria should, nonetheless, prove to be relevant to the discussion (although item 27 in the ICCAT document is contrary to the previous discussion on the sharing of the net economic benefits from the fishery).

The formulation of allocation criteria and principles is likely to be a considerably more difficult undertaking in the case of straddling stocks. One is now concerned with establishing cooperative management arrangements, involving both coastal states and distant water fishing nations (DWFNs). It is one thing, if both coastal states and DWFNs are developed. It is quite another, if the DWFNs are developed, while the coastal states are developing, as is found to be the case in several parts of the world. Then it becomes necessary to consider the special needs of the developing coastal states.

The ICCAT criteria are particularly useful in this regard. They recognize the interests of artisanal, subsistence and small-scale coastal fisheries, the needs of coastal fishing communities and of coastal states' regions whose economies are overwhelmingly dependent on fisheries, and the contribution of the fisheries to the national food security/needs, domestic consumption, export income and employment. The ICCAT negotiations of these criteria were influenced by, on one hand, the interest of long-distance fishing nations to maintain their fishing possibilities with reference to historical and present exploitation of the stocks in question, and, on the other hand, by the interest of developing countries to allow the future development of their fisheries. The latter group of countries argued their case with reference to Article 24 of the UN Fish Stocks Agreement that calls on states to

“... give full recognition to the special requirements of developing States in relation to conservation and management of straddling fish stocks and highly migratory fish stocks and development of fisheries for such stocks. , in particular: (a) the vulnerability of developing States which are dependent on the exploitation of living marine resources, including for meeting the nutritional requirements of their populations or parts thereof; (b) the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and women fishworkers, as well as indigenous people in developing States, particularly small island developing States; and (c) the need to ensure that such measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing States.”

Perhaps the most difficult allocation issue to be confronted in the management of straddling stocks is that of allocations to prospective New Members, and to those countries, which at the time of the establishment of a RFMO, express a “real” interest in the fishery, while not being engaged in the fishery. The problem is to develop allocation criteria for these two groups, which, at one and the same time, do not contravene the UN Fish Stocks Agreement (see Articles 8 and 11, in particular), and do not undermine the efforts of those engaged in establishing the RFMO. The ICCAT criteria provide some suggestions, but the suggestions are, in this instance, limited in scope and value. This important problem remains largely unresolved. One of the most useful contributions, which the working group could make, is to point towards solutions to this problem.

Expected Outcomes

The Concept Paper for the Expert Consultation lists, as one of the key issues for the Consultation to discuss, “the use of decision-making procedures criteria for the allocation of shared resources based upon transparent and equitable criteria”. It is expected that the deliberations of the Working Group will bring forth a discussion of the appropriate decision making procedures for bringing forth a set of equitable and transparent criteria for the allocation of the economic and social benefits arising from fisheries based upon:

- (a) transboundary fish stocks
- (b) straddling fish stocks

It is also expected that the Working Group will identify key allocation criteria pertaining to each of the two classes of fish stocks.

The Working Group should elaborate specifically on the following points:

- Means of ensuring that the procedures and mechanisms for making allocations are flexible through time
- Determining allocation criteria for New Members to RFMOs that are seen to be equitable, but which also ensure the long term stability of the RFMO
- Allocation criteria that will meet the special needs and requirements of developing coastal states.

At its discretion, and with time permitting, the Working Group may discuss, and report upon, additional points, which it deems to be important.

ANNEX**ICCAT CRITERIA FOR THE ALLOCATION OF FISHING POSSIBILITIES****I Qualifying Criteria**

Participants will qualify to receive possible quota allocations within the framework of ICCAT in accordance with the following criteria:

- 1 Be a Contracting or Cooperating Non-Contracting Party, Entity or Fishing Entity.
- 2 Have the ability to apply the conservation and management measures of ICCAT, to collect and to provide accurate data for the relevant resources and, taking into account their respective capacities, to conduct scientific research on those resources.

II Stocks to Which the Criteria Would be Applied

- 3 These criteria should apply to all stocks when allocated by ICCAT.

III Allocation Criteria***A Criteria Relating to Past/Present Fishing Activity of Qualifying Participants***

- 4 Historical catches of qualifying participants.
- 5 The interests, fishing patterns and fishing practices of qualifying participants.

B Criteria Relating the Status of the Stock(s) to be Allocated and the Fisheries

- 6 Status of the stock(s) to be allocated in relation to maximum sustainable yield, or in the absence of maximum sustainable yield an agreed biological reference point, and the existing level of fishing effort in the fishery taking into account the contributions to conservation made by qualifying participants necessary to conserve, manage, restore or rebuild fish stocks in accordance with the objective of the Convention.
- 7 The distribution and biological characteristics of the stock(s), including the occurrence of the stock(s) in areas under national jurisdiction and on the high seas.

C Criteria Relating to the Status of the Qualifying Participants

- 8 The interests of artisanal, subsistence and small-scale coastal fishers.
- 9 The needs of the coastal fishing communities which are dependent mainly on fishing for the stocks.
- 10 The needs of the coastal States of the region whose economies are overwhelmingly dependent on the exploitation of living marine resources, including those regulated by ICCAT.
- 11 The socio-economic contribution+ of the fisheries for stocks regulated by ICCAT to the developing States, especially small island developing States and developing territories¹ from the region.
- 12 The respective dependence on the stock(s) of the coastal States, and of the other States that fish species regulated by ICCAT.
- 13 The economic and/or social importance of the fishery for qualifying participants whose fishing vessels have habitually participated in the fishery in the Convention Area.
- 14 The contribution of the fisheries for the stocks regulated by ICCAT to the national food security/needs, domestic consumption, income resulting from exports, and employment of qualifying participants.
- 15 The right of qualified participants to engage in fishing on the high seas for the stocks to be allocated.

D Criteria Relating to Compliance/Data Submission/Scientific Research by Qualifying Participants

- 16 The record of compliance or cooperation by qualifying participants with ICCAT's conservation and management measures, including for large-scale tuna fishing vessels, except for those cases where the compliance sanctions established by relevant ICCAT recommendations have already been applied.
- 17 The exercise of responsibilities concerning the vessels under the jurisdiction of qualifying participants.
- 18 The contribution of qualifying participants to conservation and management of the stocks, to the collection and provision of accurate data required by ICCAT and, taking into account their respective capacities, to the conduct of scientific research on the stocks.

¹ For the purposes of this document, the term "territories" refers only to the territories of those States that are Contracting Parties to the Convention in respect of those territories alone.

IV. Conditions for Applying Allocation Criteria

- 19 The allocation criteria should be applied in a fair and equitable manner with the goal of ensuring opportunities for all qualifying participants.
- 20 The allocation criteria should be applied by the relevant Panels on a stock-by-stock basis.
- 21 The allocation criteria should be applied to all stocks in a gradual manner, over a period of time to be determined by the relevant Panels, in order to address the economic needs of all parties concerned, including the need to minimize economic dislocation.
- 22 The application of the allocation criteria should take into account the contributions to conservation made by qualifying participants necessary to conserve, manage, restore or rebuild fish stocks in accordance with the objective of the Convention.
- 23 The allocation criteria should be applied consistent with international instruments and in a manner that encourages efforts to prevent and eliminate over-fishing and excess fishing capacity and ensures that levels of fishing effort are commensurate with the ICCAT objective of achieving and maintaining MSY.
- 24 The allocation criteria should be applied so as not to legitimize illegal, unregulated and unreported catches and shall promote the prevention, deterrence and elimination of illegal, unregulated and unreported fishing, particularly fishing by flag of convenience vessels.
- 25 The allocation criteria should be applied in a manner that encourages cooperating Non-Contracting parties, Entities and Fishing Entities to become Contracting Parties, where they are eligible to do so.
- 26 The allocation criteria should be applied to encourage cooperation between the developing States of the region and other fishing States for the sustainable use of the stocks managed by ICCAT and in accordance with the relevant international instruments.
- 27 No qualifying participant shall trade or sell its quota allocation or a part thereof.