

TERRITORIAL WATERS—AGREEMENT PROVIDING FOR THE ISSUANCE OF INTERNATIONAL LICENSES FOR FISHING TUNA IN THE EASTERN PACIFIC OCEAN—AN ATTEMPT AT UNIFORMITY IN AN AREA WHERE CONFLICTING JURISDICTIONAL CLAIMS HAVE CREATED TENSIONS AND CONFLICTS

The Eastern Pacific Ocean Tuna Fishing Agreement (Agreement) was opened for signature on March 15, 1983;¹ the United States, Costa Rica and Panama were the first nations to sign it.² Upon ratification or adherence to the Agreement by five coastal states, the Agreement will enter into force.³ This Agreement is the latest step toward the resolution of a longstanding and bitter conflict arising from differing views on the extent of control which coastal states can exercise over ocean resources.⁴ The Agreement calls for cooperation among Pacific coastal states to ensure the conservation and optimum utilization of tuna species in the area.⁵ To accomplish this, the Agreement creates an international body which will issue regional licenses for fishing tuna in a broad area of the eastern Pacific Ocean.⁶ It is through issuing these licenses that the parties to the Agreement hope to bridge the large gap between

¹ The Agreement was signed and deposited in San Jose, Costa Rica. Eastern Pacific Ocean Tuna Fishing Agreement, March 15, 1983, — U.S.T. —, T.I.A.S. No. —, *reprinted in* S. TREATY DOC. No. 3 (1983) [hereinafter cited as Agreement].

² The United States Senate ratified the Agreement on July 27, 1983 by a unanimous vote with no abstentions. 129 CONG. REC. S10,951 (daily ed. July 27, 1983). As of that date, neither Costa Rica nor Panama had ratified it. Telephone interview with Dennis Weidner, Foreign Affairs Officer of the National Marine Fisheries Service, United States Department of Commerce (Aug. 30, 1983).

³ Guatemala and Honduras have recently signed but not yet ratified the Agreement. Telephone interview with Dennis Weidner, *supra* note 2. The Agreement will enter into force "thirty days after the deposit of the fifth instrument of ratification or adherence by a Coastal State." Agreement, *supra* note 1, art. IX.

⁴ Other attempts to resolve the conflict include: Inter-American Tropical Tuna Commission, Convention Between the United States of America and the Republic of Costa Rica for the Establishment of an Inter-American Tropical Tuna Commission, May 31, 1949, 1 U.S.T. 230, T.I.A.S. No. 2044, 80 U.N.T.S. 3 (entered into force Mar. 3, 1950) [hereinafter cited as IATTC]; The Third United Nations Conference on the Law of the Sea, *opened for signature* Dec. 10, 1982, — U.N.T.S. —, *reprinted in* U.N. Doc. A/Conf.62/L.98/Rev.4, art. 64 (1981) [hereinafter cited as Law of the Sea Treaty].

⁵ The preamble to the Agreement states that the contracting parties have resolved to cooperate "for the purpose of ensuring the conservation and rational utilization of tuna resources in the eastern Pacific Ocean." Agreement, *supra* note 1, preamble.

⁶ The Agreement establishes an implementing council in which each contracting nation has one representative and one vote. The main authority vested in the Council is to issue

the conflicting jurisdictional claims.⁷ *Eastern Pacific Ocean Tuna Fishing Agreement*, March 15, 1983, — U.S.T. —, T.I.A.S. No. —, reprinted in S. TREATY DOC. No. 3 (1983).

The dispute over tuna fishing rights is a consequence of conflicting views on the extent of control which coastal states should exercise over ocean resources. Canada, Mexico, and other coastal nations claim exclusive jurisdiction over resources located within 200 miles of their coasts.⁸ The United States, on the other hand, refuses to recognize coastal state regulation of the highly migratory tuna in any area other than the traditional twelve mile territorial sea.⁹ This difference in views has caused a seemingly endless cycle of seizures of United States tuna vessels by coastal nations with exclusive 200 mile limits and subsequent embargoes against those nations by the United States.¹⁰

This conflict in the Pacific has existed for more than thirty

licenses to fish tuna in a broad area of the eastern Pacific. Agreement, *supra* note 1, art. III(B).

⁷ *Eastern Pacific Ocean Tuna Fishing Agreement: Hearings on S. Treaty Doc. No. 3 Before the Senate Comm. on Foreign Relations*, 98th Cong., 1st Sess. 2 (1983)(statement of August Felando, President, American Tunaboat Association) [hereinafter cited as *Hearings*].

⁸ Mexico claimed an exclusive 200 mile zone in 1976; Canada made a similar claim in 1977. Moore, *National Legislation for the Management of Fisheries Under Extended Coastal State Jurisdiction*, 11 J. MAR. L. & COM. 153, 178-80 (1980). Over 90 nations now claim exclusive jurisdiction over all fishing activities in their 200 mile zones. 128 CONG. REC. H839 (daily ed. Mar. 11, 1982).

⁹ Although the United States claims a 200 mile fishing zone, it refuses to assert the right to control migratory fishing within that zone. The Fishery Conservation and Management Act of 1976 (FCMA), 16 U.S.C. §§ 1801-1882, prohibits the United States from recognizing a fishing zone claimed by any country which "fails to recognize and accept that highly migratory species are to be managed by applicable international fishery agreements, whether or not such nation is a party to any agreement." *Id.* § 1822(e). The FCMA defines "highly migratory species" as tuna only. *Id.* § 1802(14). For the definition of "highly migratory species," see *infra* note 15. The FCMA defines "international fishery agreement" as a fishing agreement, convention or treaty to which the United States is a party. 16 U.S.C. § 1803(15) (1976). The term "conservation and management" is defined as all rules, regulations, and other measures required to maintain or restore any fishery resource and assure that fishery resources can be taken on a continuing basis with options available for future uses of these resources. 16 U.S.C. § 1802(2) (1976). The exact duties of the regional or international agency are not addressed by the FCMA, but the definition of management and conservation is broad enough to include all those duties which are required to manage the fish stocks so that their continued supply for a variety of uses is ensured. The definition, however, does not require that fish stocks be managed so as to ensure maximum or optimal economic returns.

¹⁰ Under the FCMA, if a foreign country seizes a United States tuna vessel based on a claim of jurisdiction not recognized by the United States, the Secretary of the Treasury may be required to impose an embargo upon the importation of all tuna products from that country. 16 U.S.C. § 1825(a)(4) (1976). For the text of the provisions, see *infra* note 37.

years.¹¹ The first boat seizure occurred off the coast of Ecuador when Ecuador claimed that a United States tuna boat had violated its territorial waters.¹² After reaching a peak in the mid-fifties,¹³ the number of incidents in the dispute lessened considerably until the late 1970's when Canada and Mexico claimed exclusive jurisdiction over 200 mile zones.¹⁴ Their claims directly opposed the United States refusal to recognize exclusive coastal state jurisdiction over tuna except within a twelve mile limit. Thus, it is with Canada and Mexico that the most recent conflicts have arisen.

While the United States has claimed a 200 mile fishing zone of its own, it does not claim exclusive jurisdiction in the zone since it does not control the fishing of "highly migratory species," which means tuna, within this zone.¹⁵ Under the Fishery Conservation

¹¹ In 1945 President Truman, acting in response to fish depletion and food shortages caused by World War II, declared that the United States could legally control areas adjacent to its coasts. The Truman Proclamation stated that the United States would exercise jurisdiction and control over the natural resources of its contiguous continental shelf. Proclamation No. 2667, 10 Fed. Reg. 12,303 (1945). Although no specific outer limit to the shelf was given in the Proclamation, an accompanying legal memorandum suggested the 100-fathom (600-foot) isobath as the maximum depth. See A. HOLLICK, U.S. FOREIGN POLICY AND THE LAW OF THE SEA 49 (1981). The Proclamation was unilateral; no other country had advanced such a claim. It also specified that the superjacent waters, those waters beyond territorial limits, would continue to have the status of high seas. Proclamation No. 2667, 10 Fed. Reg. 12,303 (1945). However, an accompanying Proclamation stated that within the high seas areas contiguous to the United States coast the Government reserved the right to establish fishery conservation zones, should these prove necessary. Proclamation No. 2668, 10 Fed. Reg. 12,304 (1945).

The United States soon abandoned the Truman Proclamation; nevertheless, it unleashed a flurry of new maritime claims by other nations. In October 1945 Mexico proclaimed jurisdiction over its continental shelf and established a fishery conservation zone of unclear limits. The following year both Argentina and Panama claimed control of the resources of their adjacent shelves and of the superjacent waters, and in 1947 Chile and Peru declared sovereignty over the resources of their contiguous waters to 200 miles from shore. In 1952 Peru, Ecuador, and Chile joined in the Santiago Declaration which proclaimed their sovereignty and jurisdiction to 200 miles from shore. The United States refused to recognize these extended zones. Krueger & Nordquist, *The Evolution of the 200-mile Exclusive Economic Zone: State Practice in the Pacific Basin*, 19 VA. J. INT'L L. 321, 326 (1979).

¹² Hollick, *The Roots of U.S. Fisheries Policy*, 5 OCEAN DEV. & INT'L L. 61, 84 (1978).

¹³ In 1955 Ecuador seized 53 foreign fishing vessels, the greatest number of such seizures during a single year. Carl, *Latin American Laws Affecting Coastal Zones*, 10 LAW. AM. 51, 56 (1978).

¹⁴ See *supra* note 8.

¹⁵ The United States established a 200 mile economic zone in 1976 but exempted tuna from its jurisdiction on the ground that tuna is a highly migratory species. Although Annex I of the Law of the Sea Treaty, *supra* note 4, lists 17 different categories of "highly migratory species," including marlins, swordfish, sailfish, and sharks as well as eight types of tuna, the United States restricts its definition of "highly migratory species" to "species of tuna which in the course of their life cycle, spawn and migrate over great distances in waters of

and Management Act of 1976 (FCMA), the United States does not claim domain over tuna within its 200 mile fishing zone; the basis for the refusal to assert exclusive jurisdiction is that a country should not be allowed to exercise control over such highly migratory fish merely because they swim within 200 miles of its coast.¹⁶ The United States view is that since highly migratory species are often available outside a coastal authority of even 200 miles, the questions of how much stock can be taken, where, and by whom cannot be resolved by the unilateral actions of coastal states.¹⁷ The United States contends, therefore, that such species can be managed effectively only through international cooperation and agreement.¹⁸

Canada, like Mexico and nearly all other nations except the United States, insists that it can establish an exclusive economic zone of 200 miles and claim jurisdiction over all resources found therein.¹⁹ In 1977 Canada and the United States avoided the problems arising from their conflicting views by agreeing to allow reciprocal fishing in their respective 200 mile zones.²⁰ Canada allowed this agreement to expire a year later and immediately undertook to enforce its exclusive 200 mile zone.²¹ The Canadian decision to increase enforcement was prompted in part by difficulties in bargaining with the United States. Prior to the seizures, United

the ocean." FCMA, *supra* note 9, § 1802(14).

¹⁶ FCMA, *supra* note 9. See G. KNIGHT, *MANAGING THE SEA'S LIVING RESOURCES: LEGAL AND POLITICAL ASPECTS OF HIGH SEAS FISHERIES* 50 (1977).

¹⁷ Because of the tuna's highly migratory nature, developments in one portion of a stock's range affect the stock throughout its entire range. Scientists have warned that all nations participating in a region's fisheries must cooperate if conservation and optimum utilization are to be achieved. One commentator has noted that "if coastal states alone were to be given management authority for highly migratory species, they might well find themselves, as a result of overfishing in mid ocean, exercising sovereign rights over 200 miles of empty water." Joseph, *The Management of Highly Migratory Species*, MARINE POL'Y, Oct. 1977, at 275, 282. See also J. JOSEPH & G. GREEMOUGH, *INTERNATIONAL MANAGEMENT OF TUNA, PORPOISE, AND BILLFISH* (1979); S. SALLA & V. NORTON, *TUNA: STATUS, TRENDS, AND ALTERNATIVE MANAGEMENT ARRANGEMENTS* (1974); G. KNIGHT, *supra* note 16.

¹⁸ H.R. REP. NO. 54, 97th Cong., 1st Sess. 4 (1981), *reprinted in* 1981 U.S. CODE CONG. & AD. NEWS 1669, 1671-72.

¹⁹ Ninety nations claim exclusive jurisdiction over all fishing activities in their 200 mile zones. The United States is nearly the only country which continues to deny exclusive coastal state jurisdiction over tuna. 128 CONG. REC. H839 (daily ed. Mar. 11, 1982)(statement of Rep. McCloskey).

²⁰ 79 DEP'T ST. BULL. 68 (May 1979).

²¹ Canada seized 19 United States tuna vessels in late August 1979. Canada claimed that the vessels were fishing inside Canada's 200 mile zone. The tuna vessel captains were released after the United States Government paid their bail. L.A. Times, Sept. 23, 1979, § IV, at 11, col. 1.

States vessels had expanded fishing for roe herring within the 200 mile conservation zone established by the United States in 1976.²² This expansion reduced the quantity of roe herring which ordinarily would migrate into Canadian waters.²³ Canadian officials were willing to allow United States vessels continued access to tuna within Canadian waters if the United States had permitted Canadian fishermen to harvest herring in the United States conservation zone.²⁴ The United States, however, refused to accept this bargain.²⁵ The United States Government apparently reasoned that herring in the 200 mile zone were subject to exclusive United States control because herring is not a "highly migratory species."²⁶ Tuna, in contrast, are highly migratory; thus, the United States did not recognize Canada's claims to regulate tuna within the Canadian economic zone.²⁷ Under this rationale, Canada did not have a valid claim over tuna with which to bargain in the herring controversy. Another factor prompting Canada's decision to permit the lapse of the 1977 agreement was the acute shortage of albacore, the most expensive grade of tuna, which is the primary species for which the United States and Canada compete.²⁸ Canadian officials feared that United States fishermen would over-exploit the already diminished stocks of albacore if allowed to fish in the Canadian 200 mile zone.²⁹

Shortly thereafter, a similar conflict arose between the United States and Mexico when Mexico also began to prohibit fishing by foreign ships within its 200 mile zone.³⁰ A multilateral arrangement

²² N.Y. Times, Sept. 2, 1979, § I, at 33, col. 3.

²³ *Id.*

²⁴ *Id.*

²⁵ Telephone interview with Barbara Rothschild, Acting Chief of Office of International Fisheries, United States Department of Commerce (Aug. 31, 1983).

²⁶ For the United States singular definition of "highly migratory species," see *supra* note 15.

²⁷ Telephone interview with Barbara Rothschild, *supra* note 25.

²⁸ U.S. DEP'T OF COMMERCE, FISHERIES OF THE UNITED STATES 1979, at 2 (1980).

²⁹ This fear proved to be well founded as the stocks of albacore fell dramatically in 1980 and 1981. Canadian fishermen took in a 30% smaller catch in 1980 than 1979 and nearly a 40% smaller catch in 1981 than 1979. Telephone interview with Harold F. Cary, President of the United States Tuna Foundation (Oct. 11, 1983).

³⁰ On July 3, 1980 Mexican officials warned United States fishermen that Mexico would enforce its 200 mile limit after July 7, 1980. L.A. Times, July 4, 1980, § II, at 1, col. 1. Article 27 of the Mexican Constitution asserts exclusive control over the exploitation of all resources within a 200 mile economic zone, including the harvesting of marine life. MEX. CONST. art. 27. The 1976 Exclusive Economic Zone Proclamation amended Mexican law to provide a new regime for the control of fishing by foreign ships. Law on Exclusive Economic Zone, Diario Oficial [D.O.], Feb. 13, 1976.

known as the Inter-American Tropical Tuna Commission (IATTC)³¹ has established since 1950 the total permissible catch of certain tuna per year based on independent scientific data.³² Acting as a quasi-advisory board, the IATTC's principal duties are to study the tuna's biology and to suggest ways for member nations to work together in maximizing the potential tuna catch.³³ The IATTC had diffused somewhat the tensions between the United States and Mexico over tuna fishing for some years.³⁴ In 1980, however, Mexican officials, upset with a deadlock in negotiations over the portion of the regional catch to be allocated to the coastal nations under the provisions of the IATTC, announced Mexico's intent to enforce strictly its 200 mile limit after July 7, 1980.³⁵ Days later, Mexico began seizing United States tuna boats.³⁶ The United States responded to these seizures by placing an embargo on all

³¹ IATTC, *supra* note 4.

³² The IATTC provides the institutional framework for conservation measures in the Pacific Ocean. Although initially the IATTC was signed only by the United States and Costa Rica, it was subsequently adhered to by most of the major Pacific nations. While IATTC members do not formally negotiate quotas, each year they have managed to establish conservation goals and to conduct the tuna fishery in a manner satisfactory to the members through cooperative measures and informal agreements. Dyke & Keftel, *Tuna Management in the Pacific: An Analysis of the South Pacific Forum Fisheries Agency*, 3 U. HAWAII L. REV. 1, 20-28 (1981).

³³ The Commission shall perform the following functions and duties:

1. Make investigations concerning the abundance, biology, biometry and ecology of . . . tuna in the waters of the eastern Pacific Ocean. . . .
2. Collect and analyze information relating to . . . fishes covered by this Convention.
3. Study . . . information concerning methods and procedures for maintaining and increasing the population of fishes. . . .
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5. Recommend . . . proposals for joint action . . . designed to keep the population of fishes . . . at those levels of abundance. . . .

IATTC, *supra* note 4, art. II.

³⁴ J. JOSEPH & G. GREEMOUGH, *supra* note 17, at 14.

³⁵ Mexico argued that because of its proximity to the tuna stocks it was entitled to larger shares than it could take under a first-come, first-served approach and demanded that national quotas be established. The United States refused to recognize any special allocation claims based on resources adjacency. *Id.* at 53. Mexico withdrew from the IATTC due to its dissatisfaction with the situation. *Id.* at 54. In July 1980 Mexico decided to enforce strictly its 200 mile zone. *See supra* note 30.

³⁶ On July 10, 1980 Mexican naval vessels seized a United States tuna boat fishing approximately thirty miles from the Mexican coast. Mexican authorities confiscated the catch, valued at over \$60,000, and the ship's nets, which were worth \$150,000. Mexico also seized two other United States fishing vessels that day. L.A. Times, July 11, 1980, § I, at 1, col. 2. Subsequently, Mexico seized 14 United States vessels and fined the owners more than \$6,000,000. San Diego Union, Aug. 7, 1982, § B, at 3, col. 6.

Mexican tuna.³⁷ Mexico then refused to negotiate seriously the problem and further deepened the rift by announcing that it was going to terminate the only remaining fishing agreement between the two countries.³⁸ That bilateral agreement had allowed small United States vessels to fish within the 200 mile zone claimed by Mexico and had allowed Mexican vessels to fish resources in United States waters if such resources were determined to be in surplus of the needs of United States fishermen.³⁹

Similar disputes between the United States and various other nations in Central and South America⁴⁰ prompted the United

³⁷ Letter from Harold F. Cary, President of the United States Tuna Foundation, to John Gavin, United States Ambassador to Mexico 3 (Aug. 5, 1983). This action was in accord with the following:

(a) Determinations by Secretary of State. If the Secretary of State determines that -

.....
 (4) any fishing vessel of the United States, while fishing in waters beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States, is seized by any foreign nation . . .

.....
 (c) as a consequence of a claim of jurisdiction which is not recognized by the United States; he shall certify such determination to the Secretary of the Treasury.

(b) Prohibitions. Upon a receipt of any certification from the Secretary of State under subsection (a), the Secretary of the Treasury shall immediately take such action as may be necessary and appropriate to prohibit the importation into the United States -

(1) of all fish and fish products from the fishery involved, if any; and

(2) Upon recommendation of the Secretary of State, such other fish or fish products, from the foreign nation concerned, which the Secretary of State finds to be appropriate to carry out the purposes of this section.

FCMA, *supra* note 9, § 1825.

³⁸ On December 29, 1980 the Mexican Government formally notified the United States that the Fisheries Agreement would be immediately terminated. 81 DEP'T ST. BULL. 31 (March 1981). See Fisheries Agreement, Nov. 24, 1976, United States—Mexico, 29 U.S.T. 823, T.I.A.S. No. 8853.

³⁹ The United States responded to the termination with resigned regret:

In expressing its regret over the Mexican decision and in voicing its willingness to continue consultations toward a new framework for a positive fisheries relationship, the United States must, nonetheless, express that it, too, has been disappointed with the results of the relationship initiated in 1976 with such bright hopes. For the United States, the fisheries relationship has been found not only dissatisfying but frustrating.

81 DEP'T ST. BULL. 31 (March 1981).

⁴⁰ In the last five years United States fishing vessels have been seized by Ecuador, Peru, and Costa Rica as well as by Mexico and Canada. Costa Rica seized three United States tuna vessels on January 18, 1979. Costa Rica claimed that the vessels were fishing 140 miles off Punta Leona in Costa Rica's 200 mile zone. The United States Government paid the fines, and the vessels were released. 93 U.S. JOINT PUBLICATIONS RESEARCH SERVICE, TRANS-

States to initiate talks about these issues with other nations in the area.⁴¹ The objective of these talks was to set up an international organization to secure optimum use of tuna resources both within and beyond the 200 mile limits.⁴² The talks resulted in the drafting of the Eastern Pacific Ocean Tuna Fishing Agreement.⁴³ The Agreement is a positive step toward ending the dispute over tuna fishing in the eastern Pacific Ocean. Whether the Agreement achieves its purpose depends first upon its ability to resolve jurisdictional disputes and second upon the willingness of the major parties in such disputes to participate in the Agreement.

The Agreement, through its licensing arrangement,⁴⁴ seeks to render moot divisive conflicts in the jurisdictional claims.⁴⁵ It provides for regional fishing licenses which allow tuna fishing within the territorial waters of all participating nations.⁴⁶ Thus, if effective, the pattern of licenses would diffuse the most divisive effects of the conflicting jurisdictional views simply by sidestepping the substantive issue, conflicting views on the territorial limit.⁴⁷

The Agreement reflects the United States view that highly migratory species cannot be subject to regulation by the unilateral

LATIONS ON THE LAW OF THE SEA 10 (1979). On February 16, 1979 the United States placed an embargo on all tuna and tuna products imports from Costa Rica. 44 Fed. Reg. 10,171 (1979). During 1980 Costa Rica, Mexico, Ecuador, and Peru seized 22 United States tuna vessels. The fines and other charges paid by United States fishermen totaled over \$9.6 million. 127 CONG. REC. S11,565 (daily ed. Oct. 16, 1981).

⁴¹ Hearings, *supra* note 7, at 10 (statement of Theodore G. Kronmiller, Deputy Assistant Secretary for Oceans and Fisheries Affairs).

⁴² *Id.*

⁴³ See Agreement, *supra* note 1.

⁴⁴ *Id.* art. II.

⁴⁵ In his testimony before the Senate Committee on Foreign Relations, Mr. Kronmiller said that the Agreement "does not compromise the formal juridical positions of the parties. It represents an equitable balance among the interests of Coastal States and distant-water fishing nations." Hearings, *supra* note 7, at 8 (statement of Theodore G. Kronmiller, Deputy Assistant Secretary for Oceans and Fisheries Affairs).

⁴⁶ Article IV of the Agreement establishes a system of international licenses to be administered by the Council. See *supra* note 6. The Agreement states that in order to fish tuna in the area, "vessels . . . shall be required to have a valid license, issued in accordance with this Agreement." Agreement, *supra* note 1, art. IV. The fee for the international license for the first five coastal countries joining the Agreement is set at \$60 per net registered ton of the vessel to be licensed, but may be increased in increments up to a maximum of \$100 per ton as more nations become parties to the Agreement. The fees collected are to be distributed among the member nations in proportion to the annual amount of tuna taken within 200 miles of their coasts. *Id.* protocol.

⁴⁷ Nowhere in the Agreement is a position or stand taken on the substantive question of whether a nation can claim exclusive jurisdiction of the highly migratory tuna within a 200 mile exclusive economic zone. See Agreement, *supra* note 1.

actions of the coastal nations.⁴⁸ In so doing, it notes both that tuna are highly migratory⁴⁹ and that any attempt at tuna conservation in the area cannot be effective and equitable unless all nations which fish tuna therein are participants.⁵⁰ The latter point follows closely the longstanding contention of the United States that such highly migratory species can be managed effectively only through international agreement.⁵¹

The Agreement, by implication, also reflects the view of those nations claiming exclusive jurisdiction in a 200 mile zone.⁵² It prohibits any fishing within another nation's 200 mile zone unless the vessel carries a license issued by the Council organized under the Agreement.⁵³ Therefore, if a vessel did not have such a license, a nation could prohibit all fishing, including fishing for tuna, by that vessel, thereby effectively claiming exclusive jurisdiction with respect to the unlicensed vessel.

This licensing arrangement seems to be the only viable method to overcome the sharply contrasting views on tuna policy. The major states involved in the dispute have recently reiterated adherence to their respective views;⁵⁴ thus, it appears that any compro-

⁴⁸ For the United States view, see *supra* note 9. For the basis of that view, see *supra* note 17.

⁴⁹ "The Contracting Parties, recognizing . . . the highly migratory character of the tuna resource agree to continue their efforts to establish a new regional regime for the conservation, management, and orderly exploitation of tuna resources in the eastern Pacific Ocean." Agreement, *supra* note 1, art. XIV.

⁵⁰ The preamble to the Agreement states that "a tuna conservation regime for the eastern Pacific Ocean cannot be effective and equitable unless it is comprehensive and has the participation of all states that fish tuna in that region on a meaningful scale. . . ." *Id.* preamble.

⁵¹ The necessity of participation by all nations which fish tuna also reflects the view of the Law of the Sea Treaty, *supra* note 4, which recognizes the right of coastal nations to establish 200 mile economic zones, but includes an exemption for migratory species such as tuna. The Law of the Sea Treaty defers consideration of definite standards for international regulation to later international agreement. Article 64 requires coastal nations and other interested nations to cooperate in tuna regulation, either directly or through international organizations, to secure optimum use of tuna resources. If no international organization exists in the area, article 64 requires the interested states to work toward establishing such a body. Law of the Sea Treaty, *supra* note 4, art. 64.

⁵² See *supra* notes 8 and 19.

⁵³ See *supra* note 46.

⁵⁴ On March 10, 1983 President Reagan stated that the policy of the United States continues to "neither recognize nor assert jurisdiction over highly migratory species . . . including tuna." *Hearings, supra* note 7, at 13 (statement of Theodore G. Kronmiller, Deputy Assistant Secretary for Oceans and Fisheries Affairs). Mexican officials answered by simply stating that they "disagree" with this position. Letter from Harold F. Cary, President of the United States Tuna Foundation, to John Gavin, United States Ambassador to Mexico, *supra* note 37, at 3.

mise on the substantive issue of territorial waters would be impossible. Fortunately, the licensing arrangement makes such a compromise unnecessary.

In order for the Agreement to succeed completely, however, the participation of all states that fish tuna in the region is required.⁵⁵ The participation of the major fishing states in the area, the United States, Mexico and Canada, is especially important if the Agreement is to be more than merely a grand scheme with only a patchwork of fishing zones under its jurisdiction.

Canadian participation in the Agreement, while very important, is not urgent. Most tuna have fled cold Canadian waters for warmer areas.⁵⁶ Recent Canadian seizures of United States vessels, however, underscore the desirability of Canadian participation in the Agreement.⁵⁷ There is also a longstanding series of disagreements between Canada and the United States concerning both fishing rights and territorial sovereignty over the continental shelf.⁵⁸ Because four such boundary disputes between the two nations remain unresolved,⁵⁹ Canada has tied participation in the Agreement to a satisfactory resolution of these disputes.⁶⁰

Whether Mexico will ratify the Agreement is uncertain at this time.⁶¹ Although the Agreement offers Mexico the attractive possibility of having the United States lift its embargo on Mexican

⁵⁵ See *supra* note 50.

⁵⁶ Only when the Canadian waters have been warmed due to seasonal temperature variations or ocean current movements are the tuna found in waters off the Canadian coast. N.Y. Times, Sept. 16, 1979, § I, at 12, col. 1.

⁵⁷ See *supra* note 21.

⁵⁸ Canada and the United States still deny each other access to their 200 mile zones for reciprocal fishing. The seabed boundaries are important not only because of fishing rights but also because of growing interest in other seabed resources. A key problem area is the Georges Bank region, located on the Atlantic Coast. The continental shelf in this area is a promising source of oil and gas, and both nations consider the recovery of such resources in the area an important step in reducing dependence on foreign oil. R. LOGAN, CANADA, THE UNITED STATES AND THE THIRD LAW OF THE SEA CONFERENCE 2-3 (1978).

⁵⁹ The most highly disputed boundary involves the Georges Bank area. See *supra* note 58. Three other disputes also remain unsettled: the Beaufort Sea on the Alaska-Yukon border; the Dixon Entrance near the coast of British Columbia and Alaska; and the entrance to the Strait of Juan de Fuca between Washington and Vancouver Island. The Beaufort Sea may eventually yield oil and gas reserves, and both nations fish in the disputed waters of the Dixon Entrance and the Strait of Juan de Fuca. R. LOGAN, *supra* note 58, at 57, 60-61.

⁶⁰ Telephone interview with Barbara Rothschild, *supra* note 25.

⁶¹ While Mexico had not signed the Agreement as of January 1984, the country appears willing to consider participation in the Agreement. On August 12, 1983, Mexico invited the United States to a meeting where the two nations "might agree on the conditions which can make possible the solution of this matter." Letter from Pedro Ojeda Paullada, Secretary of Fisheries for Mexico, to John Gavin, United States Ambassador to Mexico (Aug. 12, 1983).

tuna, Mexico would like to restrict the right to fish its territorial waters to Mexican fishermen.⁶² Mexico's intransigence in this matter has been at the expense of that country's tuna industry. Unable to export its tuna to any substantial foreign markets other than the United States, many Mexican vessels have been forced to reduce fishing operations.⁶³ It is anticipated that many Latin American countries in addition to Costa Rica and Panama soon will join the Agreement, and diplomatic efforts are currently underway to secure their signatures.⁶⁴ If a substantial number of other nations join the Agreement, Mexico may be forced to enter the Agreement or risk the possibility of a self-contained tuna economy.⁶⁵

One possible weakness of the Agreement is its lack of any effective enforcement mechanism. On its face, the Agreement merely asks the contracting nations to avoid prohibitions of tuna imports from other contracting nations who take enforcement actions consistent with the Agreement.⁶⁶ However, there is no mention of the penalties or consequences for a nation that does impose such an embargo. The Agreement's requirement that each contracting nation codify articles of compliance within its domestic law places the enforcement of the Agreement squarely upon each individual nation.⁶⁷ This self-regulating compliance scheme has already aroused the suspicion of many United States fishermen who feel that Latin American countries have ignored regulations in past agreements.⁶⁸ It has been suggested that a multinational policing

⁶² Telephone interview with Dennis Weidner, *supra* note 2. There appears to be a political split in Mexico concerning that country's participation in the Agreement. The Foreign Ministry, cognizant of the complexities of international relations, favors Mexican participation. The Fisheries Ministry, however, is opposed to the Agreement because of concern about preserving Mexico's 200 mile territorial limit. Telephone interview with Barbara Rothschild, *supra* note 25.

⁶³ Mexico has been forced to drastically curtail plans to expand its tuna fleet as a result of the United States embargo on the Mexican tuna industry. Weidner, *The Latest Developments in Latin American Fisheries*, DEP'T COM. BULL., June 1983, at 2.

⁶⁴ *Hearings*, *supra* note 7, at 12 (statement of Theodore G. Kronmiller, Deputy Assistant Secretary for Oceans and Fisheries Affairs).

⁶⁵ Telephone interview with Barbara Rothschild, *supra* note 25.

⁶⁶ Article VI states that the members "agree not to prohibit the importation of tuna and tuna products from another Contracting Party, as a result of any enforcement action by that Contracting Party consistent with this Agreement as long as such Party is acting in conformity with this Agreement." Agreement, *supra* note 1, art. VI (a).

⁶⁷ *Id.* art. VI (b). Article VI also provides that each contracting nation "shall adopt, as soon as possible, such provisions in its national law as may be necessary to ensure that its own flag vessels comply with the provisions of" the Agreement. *Id.*

⁶⁸ "[T]he U.S. is the only country whose tuna catch is really regulated. We suspect that

agency employing devices such as satellites and patrol boats is necessary to ensure equitable enforcement of this type of agreement.⁶⁹ Weaknesses in the enforcement provisions of the Agreement, however, will not necessarily render it ineffective. As long as the Agreement conveys benefits to each of the participating nations, flexible enforcement mechanisms will allow the Agreement to operate smoothly.⁷⁰

Contingent upon the participation of the major nations involved in the dispute, notably Canada and Mexico, and upon the degree to which the Agreement can be enforced, the Eastern Pacific Ocean Tuna Fishing Agreement could be an important step toward the final resolution of the bitter conflict over the extent and character of territorial waters.⁷¹

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most other countries are ignoring the present suggested yellowfin catch quotas." *A Raid on U.S. Tuna Rights*, BUS. WEEK, May 14, 1979, at 59 (remarks of August Felando, general manager of the American Tunaboat Association).

⁶⁹ See Fisher, Wood & Burge, *Latin American Unilateral Declarations of 200-Mile Off-shore Exclusive Fisheries: Toward Resolving the Problems of Access Faced by the U.S. Tunafish Industry*, 9 SW. U.L. REV. 643, 661-62 (1977).

⁷⁰ Mexico argues, however, that from its viewpoint the disadvantages outweigh the benefits and that it is therefore hesitant to join the Agreement:

For Mexico the gains from the fishing of its resources by its nationals are greater than in the case of fishing by foreigners, even if in such a case fees equivalent to those agreed to in the interim Agreement are collected. Besides the foregoing, one must take into account the important social benefits derived from the capture by its nationals to supply the populace and export surpluses.

Letter from Pedro Ojeda Paullada, *supra* note 61.

⁷¹ A primary concern permeating the Agreement is the creation of a long-term regional tuna conservation regime. This Agreement, though merely interim, is a major step toward such a regime. Agreement, *supra* note 1, preamble.