Discussion Paper
Proposal For A Sub-Regional Licensing Arrangement

Cook Islands, Niue, Tokelau, Tonga And Western Samoa
Alofi, Niue
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FFA Report 92/19
Introduction

1. In February 1992 the Government of Niue notified FFA of an initiative to establish a sub-regional fisheries licensing scheme for all distant water fishing fleets operating in the waters of Cook Islands, Niue, Tonga and Western Samoa. The secretariat was asked to prepare a background paper for general discussion. It was also suggested that Tokelau might be asked to participate in the discussions. The purpose of this paper is to provide a general outline of a possible sub-regional fisheries licensing scheme and to articulate some of the options that may be available.

Existing Licensing Arrangements

2. The only distant water fishing fleets which have been licensed to fish in the Polynesian sub-regional group under bilateral access arrangements are Taiwan and South Korea. Cook Islands and Western Samoa are the only States which currently licence Taiwanese longline vessels under bilateral access agreements. Cook Islands has had the longest involvement in licensing Taiwanese and South Korean longliners. Tonga has had discussions with Taiwan on possible access arrangements for Taiwanese longliners but although a draft access agreement has been prepared it has never been activated. Niue has also had inquiries from Taiwanese and Korean fishing interests with a view to possible access arrangements for longlining.

3. All foreign fishing vessels licensed under bilateral arrangements are longliners. The main species of tuna targeted by these vessels is southern albacore tuna. Table 1 summarizes the types of arrangements, types of vessels and access fees currently being paid by distant water fishing fleets operating in the Polynesian sub-regional group (The Western Samoa licence fees of WST 2,900 per vessel per year have been converted to US$ at approximate exchange rates).

4. All countries are parties to the Multilateral Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America. Under the Treaty, U.S. purse seiners are permitted to fish within the exclusive economic zones of Cook Islands, Niue, Tokelau, Tonga and Western Samoa. The U.S. Treaty is the only regional
licensing scheme operating in the region at the moment. However, since the Treaty came into
force in 1988 there has been no fishing effort in any of the five countries except Tokelau.
Between January 1989 and March 1992 29 licensed U.S. vessels fished in Tokelau waters, taking
a total of 14,240 s.t. of catch.

5. Table 2 shows the numbers and composition of foreign fishing vessel licenses available
in 1992 in the Polynesian sub-regional group. The longline fleet is significantly larger than any
other fleet by gear type. In fact longliners are the only gear type that is licensed under current
bilateral arrangements. Longline catches are clearly the most valuable to the Polynesian sub-
group.

<table>
<thead>
<tr>
<th>Country</th>
<th>Type of Arrangement</th>
<th>Number of vessels licensed</th>
<th>Total Fees (US$)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cook Islands</td>
<td>Lump Sum</td>
<td>55</td>
<td>156,530</td>
</tr>
<tr>
<td>Niue</td>
<td>Nil</td>
<td>Nil</td>
<td>0</td>
</tr>
<tr>
<td>Tonga</td>
<td>Nil</td>
<td>Nil</td>
<td>0</td>
</tr>
<tr>
<td>Western Samoa</td>
<td>Lump Sum</td>
<td>39</td>
<td>46,800</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>94</strong></td>
<td><strong>203,330</strong></td>
</tr>
</tbody>
</table>

Table 2: Distant Water Fishing Fleet Composition by Gear Type

<table>
<thead>
<tr>
<th>Country</th>
<th>Pole &amp; Line</th>
<th>Long Line</th>
<th>Single PS</th>
<th>Group PS</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cook Is.</td>
<td>0</td>
<td>55</td>
<td>50</td>
<td>0</td>
<td>105</td>
</tr>
<tr>
<td>Niue</td>
<td>0</td>
<td>0</td>
<td>50</td>
<td>0</td>
<td>50</td>
</tr>
<tr>
<td>Tonga</td>
<td>0</td>
<td>0</td>
<td>50</td>
<td>0</td>
<td>50</td>
</tr>
<tr>
<td>Samoa</td>
<td>0</td>
<td>39</td>
<td>50</td>
<td>0</td>
<td>89</td>
</tr>
</tbody>
</table>

Comparison of Bilateral and Multilateral Access Agreements.

6. Japan, South Korea and Taiwan each have bilateral access agreements with a number of
FFA member countries including Cook Islands and Western Samoa. The only existing
multilateral access agreement is the Fisheries Treaty with the United States. Most bilateral access
agreements include a Government to Government agreement which sets down the broad
principles under which the countries are to cooperate in the exploitation of the living marine
resources. The Government to Government agreements are activated by commercial agreements
between Fisheries Associations or individual companies and the Government of the licensing
country. For political reasons some member countries have chosen to avoid Government to
Government agreements and enter into direct commercial agreements with vessel operators. This
would be the situation with those countries which do not recognise Taiwan, Republic of China.
7. Many of the existing bilateral agreements with Japan are based on a per vessel per trip fee payment system. However, FFA member countries have realised that by accepting the per vessel per trip system they lose the opportunity rental where a lump sum payment is made whether fishing takes place or not. Further, the per vessel per trip system requires and estimate of the value of fish taken from the zone. This is a function of both the amount and price of the fish. Since both these are provided by the DWFN without any easy method of independent verification the system operates as a strong incentive for DWFN to under report. Realising this, FFA member countries are pressing Japan to return to the lump sum system of fee payment.

8. South Korea and Taiwan on the other hand are more flexible and agreements are generally based on the lump sum payment system. The Treaty with the United States is effectively a Government to Government agreement with a guaranteed lump sum payment.

9. Bilateral access agreements generally yield a rate of return of approximately 4 - 6 percent. The return under the U.S. Treaty is approximately 10 percent. Through application of the regionally agreed minimum terms and conditions and the Regional Register Rules FFA member countries have attempted to improve compliance with bilateral access agreements. In general, Japanese vessels have a better record of compliance than South Korean and Taiwanese vessels. The U.S. Treaty contains comprehensive provisions governing flag State responsibilities and there is little doubt that the vessels licensed under the Treaty have the best record of compliance. The minimum terms and conditions specifically address the question of flag State responsibility, but in the case of Government to industry agreements there is a limit on the degree of legal responsibility the foreign industry or fishing association is able to accept. Understandably, foreign Governments are reluctant to enter into binding commitments on behalf of industry unless a Government to Government agreement is in place.

10. The most notable weaknesses of bilateral access agreements are that there is usually no provision for high seas catch reporting, no port sampling provision, less comprehensive rights and protection for observers and enforcement officers and no dispute settlement mechanism.

Summary of Activities of Distant Water Fishing Fleets in the Polynesian Sub-Group.

11. In preparing this discussion paper it has not been possible to draw any particular inferences from the activities of DWFN fleets operating in the Polynesian sub-group because of the lack of comprehensive data. The only DWFN fleets that have been active in the region are the Taiwanese and South Korean longline fleets. The reporting and compliance records of these fleets are amongst the worst in the region and therefore it is difficult, if not impossible, to obtain a realistic picture of their operations in the region.

Advantages of Bilateral Licensing

12. Before giving detailed consideration to a sub-regional licensing scheme it is important to be sure that such a scheme would be more advantageous than continuing with bilateral arrangements. There are undoubtedly some advantages to bilateral arrangements. The question is whether the benefits of a sub-regional scheme outweigh the benefits of bilateral licensing. The advantages of bilateral licensing include the following:

(1)Better returns as direct negotiations allow national priorities to be put forward;
(2) there is no dilution of benefits by sharing with those countries in whose zones little or no fishing takes place;

(3) bilateral negotiations allow an opportunity for other benefits such as employment as crew, access to markets and provisioning at ports, etc;

(4) better quality data and information from the zone is available;

(5) management of fisheries is easier and should be more efficient under national jurisdiction;

(6) surveillance and law enforcement is simpler and easier to coordinate when the role is beyond the fisheries authority;

(7) bilateral negotiations can influence aid considerations;

(8) strengthening of bilateral relations will promote broader cooperation and national investment.

Possible Advantages of a Sub-Regional Licensing Scheme

13. It can be argued that sub-regional licensing provides the best opportunities for providing viable fishing operations, which in turn would allow for maximum vessel fees. It would also ensure maximum control and allow the introduction of management measures which have so far not been possible under coordinated bilateral management. At the same time regional licensing could provide the following benefits.

(1) It is possible that a sub-regional licensing scheme could generate an increase in fees from higher compliance requirements. It would also be possible for the countries to negotiate higher fees;

(2) improved compliance, especially in the prevention of possible unlicensed fishing;

(3) better information in the areas of high seas catch and effort, landing data and port sampling data;

(4) alleviate the constant belligerent reaction by DWFNs to regional measures such as the Regional Register and minimum terms and conditions;

(5) protect the interests of those countries with occasional fishing in their zone and with little or no surveillance and enforcement capability;

(6) insist on flag state responsibility for control and law enforcement as is the case with the U.S. Treaty;

(7) put pressure on DWFNs to invest in shore based facilities especially for zones with comparatively high activity;
(8) improve the cost effectiveness of administration and surveillance;

(9) allow the most effective use of monitoring and surveillance equipment. Transponders could be centrally controlled and, subject to the entry into force of the Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region, the most effective use could be made of surveillance hardware.

Likely Responses from Distant Water Fishing Fleets

14. The idea of a Polynesian sub-regional licensing scheme has not been mooted with any of the DWFNs operating in the region and therefore it is not possible to gauge their reaction. Taiwan has indicated that it is contemplating a multilateral approach to the purse seine fishery and it may therefore be more amenable to the idea of a similar approach to the longline fishery in the sub-region. South Korea on the other hand appears to be opposed to a multilateral approach, having stated that it prefers to negotiate bilaterally.

Possible Options

15. A number of options are available to the Group. One option is to enter into a formal agreement similar to the Nauru Agreement. Alternatively, the Group may wish to restrict itself to developing a management regime specifically aimed at the longline fishery. Until the basic aims of the proposed scheme have been decided upon there is little purpose in examining the options in very great detail. However, some of the issues which would need consideration include the constitution of a management body and the definition of a management area, powers of the management body on the high seas, participation by DWFNs, information and reporting requirements, surveillance and enforcement considerations, the nature and functions of the central clearing house for licensing.