Trading in fishery commission quota under international law

Andrew Serdy
School of Law
University of Southampton
Definitions

- “member” includes not only each State that is party to the treaty establishing the commission, but any other State or fishing entity formally cooperating with the commission and accepting a quantified catch limit in token of that cooperation.
- “quota” means a quantified catch limit.
- “national allocation” means a particular member’s quota.
Freedom of fishing on the high seas – UNCLOS Article 116

- A State has the right for its nationals to fish on the high seas, subject to:
  (a) its treaty obligations;
  (b) rights, duties and interests of coastal States fishing in their EEZs for straddling stocks and highly migratory species; and
  (c) the obligations in Articles 117-119 (most importantly, the Article 118 duty to cooperate with other States fishing for the same stocks).
Trading of national allocations – the simple case (1)

- 3-member commission (A, B, C)
- TAC = T
- National allocations are
  A: x
  B: y
  C: z
- x + y + z = T
Trading – the simple case (2)

- B sells $q$ tonnes of its national allocation to C

- New national allocations:
  A: $x$
  B: $y - q$
  C: $z + q$
Trading – the simple case (3)

- C owed both A and B a duty to limit its catch to z tonnes

- B has waived its right to hold C to this limit...

- ...but A has not

- so A’s consent is needed for the transaction
RFMOs and trading

- In a large fisheries commission there will be lots of As
- So it’s easier to get the approval of the commission as a whole...
- …by majority rather than consensus?
Scenarios not considered

- Trading to cover overcatch
- Differential impacts on stock per tonne of catch
RFMOs in which quotas are traded

- ICCAT: opposed in theory (Allocation Criteria para 27), approves trades in practice

- NAFO and NEAFC: in certain species, subject only to notification

- IBSFC: all species, subject to notification, incl to non-members (NB: no high seas)
RFMOs whose treaties neither prohibit trading directly, nor indirectly by mandating national allocations exclusively

- ICCAT
- NAFO
- NEAFC
- CCAMLR
- IBSFC
- IOTC
- SEAFO
- ICCAT
- WCPFC
No direct prohibition on trading?

- …and probably CCSBT and Bering Sea pollock
Problem when stock is depleted

- More efficient use of quota through trading should mean you need less of it, or actual catch will rise
- But whose quota should decrease?
**Conclusion**

- Same arguments would permit permanent quotas (international ITQs)
- Commissions needn't amend their treaties to introduce trading mechanisms – a well-crafted resolution will do
- Quota trading may itself induce limited entry
- And all live happily ever after?