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Negotiating equitable fisheries access agreements:

A capacity-building & reference
manual for developing coastal states

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NEGOTIATING EQUITABLE FISHERIES ACCESS AGREEMENTS A CAPACITY-BUILDING & REFERENCE MANUAL FOR DEVELOPING COASTAL STATES

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Foreword

Fish and fish products provide important trade and livelihoods opportunities in many coastal developing countries. West Africa is blessed with coasts that have a significant amount of resources and this has also attracted the attention of many European and Asian fishing fleets. Therefore, fishing access agreements have become the focus of increasing attention throughout the world. It is often said that fishing access agreements do not result in fair and equal arrangements and that they contribute to the overexploitation of the fisheries resources and also threaten the food security of these countries.

Whilst there is a need to review these agreements, they should not be regarded as the sole factor contributing to resources overexploitation. For example, in Senegal 85% of the catch is done through small-scale fisheries. Nor should be concluded that they do not provide benefits to the developing States. In Mauritania, the revenues generated by fishing agreements and licenses contribute to 25% of the GDP. Furthermore, some of the countries do not have the fishing capacity to exploit a good part of their resources themselves.

In order to improve upon the existing situation, a number of issues will have to be addressed so that these coastal countries can get the maximum benefits from these agreements. These issues include the requirements of distant water fishing nations in fisheries products; the financial revenues generated by the sale of the access agreements, and how to improve their contribution to national development and a more efficient contribution of halieutic resources to food security. Touching upon these issues, the project called «Fishing Agreements» and funded by The Netherlands started in 2005.

The project, initiated by IUCN (International Union for Conservation of Nature), WWF (World Wildlife Fund) and the SRFC (Sub-Regional Fisheries Commission) under the umbrella of the PRCM (Programme Régional de conservation de la zone Côtière et Marine en Afrique de l'Ouest), organized a workshop in June 2005 with high-ranking officials from the Fisheries Departments of the 7 SRFC member countries. As a result of the workshop, a program was developed which included a training program to strengthen negotiating capacity of the delegations involved in designing the fishing access agreements. This program was accorded a very high priority.

The present manual comes as a response to that need and will be used at national levels to reinforce the negotiating capacity, not only, of officials from the Fisheries Ministries but also from the Ministries of Finance, Trade, Foreign Affairs and representatives from professional organizations involved in fisheries.

Based on the experience so far, we expect that the manual and the associated workshops will assist the SRFC member states to conduct better negotiations and to benefit more fully from their halieutic resources now and for the generations to come.

His Excellency Johannes W.G. JANSING
Ambassador of The Netherlands in Senegal

Foreword

The waters off West African are blessed with a large variety of fish species, and are some of the most productive in the world. The fisheries sector of the member states of the Sub Regional Fisheries Commission (SRFC) is a pillar of their respective national economies and plays an important role in food security.

Created in 1985 by way of a Convention, the SRFC is an intergovernmental organisation for regional cooperation. It regroups seven countries – namely Cape Verde, the Gambia, Guinea, Guinea Bissau, Mauritania, Senegal and Sierra Leone. Its objective is to ensure the sustainable use of the marine resources in the sub-region. To reach this objective, the Conference of the Ministers of the SRFC adopted in July 1993 a Convention on Conditions for Minimal Access to the EEZ of the member states. Acknowledging that fishing agreements are a particular type of access to resources from which foreign fishing fleets can benefit, the SRFC organised in November 2000 in Cape Verde a workshop to promote a regional dialogue on fishing agreements. The workshop recommended that the member states initiate a process leading to the adoption of a common access regime for foreign industrial fishing vessels, taking into account interaction with - and impact on - small-scale fisheries.

Fishing agreements keep on drawing a lot of attention, mainly due to the perception that they negatively impact the marine resources of coastal states. Fishing agreements have often been described as unfair, non-equitable and unsustainable. Part of the problem are procedural inefficiencies and limited negotiation skills of delegations that have to deal with fishing agreements. Indeed, they are quite often facing professional negotiators, who easily move around and negotiate for their governments to conclude commercial agreements. But agreements which are not well structured, badly implemented and with a poor follow-up have a negative impact on resources and marine ecosystems, and, thus, cannot pretend to ensure sustainable development of the fisheries sector in the sub-region.

The current manual on «Negotiating Equitable Fisheries Access Agreements» is the result of a collaboration between IUCN (International Union for Conservation of Nature), WWF (World Wildlife Fund) and the SRFC under the umbrella of the PRCM (Programme Régional de conservation de la zone Côtière et Marine en Afrique de l'Ouest).

Through this manual and the follow-up trainings, the SRFC, IUCN and WWF focus on strengthening skills and know-how for negotiating fisheries agreements. To negotiate professionally and to maximise benefits for a country require a certain number of prerequisites, such as the will to coordinate common approaches at regional level, tools for the management of trans-boundary stocks, the quality and availability of data for stock evaluation, etc.

In this regard, it is of utmost priority that the States accept to better share information and consult with neighbouring countries before they sign new agreements. Intergovernmental collaboration is at the heart of the SRFC. Its skills and competences are a key to better serve the interests of the region. While a large portion of the marine resources is declining, it is increasingly necessary to work at regional level. The days of narrow-minded nationalisms should be gone. Today, we need to form a large regional consensus if we wish to survive. At a time when countries join forces all over the world and globalisation opens an ever increasing number of markets, SRFC countries must unite and work together for the benefit of their population and of future generations.

I hope you will enjoy reading this important work.

Kane Ciré Amadou, Ingénieur Halieute
Permanent Secretary of the SRFC

ACRONYMS

ACP	African, Caribbean and Pacific Group of States
BATNA	Best Alternative to a Negotiated Agreement
CCP	Crisis Communication Plan
DWFN	Distant Water Fishing Nation
DWFS	Distant Water Fishing State
EC	European Commission
EEZ	Exclusive Economic Zone
EU	European Union
FAO	Food and Agricultural Organisation
FPA	Fisheries Partnership Agreement(s)
CSNT	Coastal State Negotiating Team
ICFA	International Coalition of Fisheries Associations
IMF	International Monetary Fund
IUCN	International Union for the Conservation of Nature
IPOA	International Plan of Action
IUU	Illegal, Unreported and Unregulated Fishing
JV	Joint Venture
LOSC	Law of the Sea Convention
MSC	Marine Stewardship Council
NGOs	Non Governmental Organisations
ORPT	Organisation for Responsible Tuna Fishing
PNA	Post Negotiations Analysis
PRC	Peoples Republic of China
QMS	Quota Management System
RFMO	Regional Fisheries Management Organisation
SRFC	Sub-Regional Fisheries Commission – Senegal, Gambia, Cape Verde, Mauritania, Sierra Leone, Guinea, Guinea-Bissau
UN	United Nations
US	United States of America
VIP	Very Important Person
VMS	Vessel Monitoring System
WTPO	World Tuna Purse-seine Organisation
WTO	World Trade Organisation
WWF	World Wildlife Fund
ZOPA	Zone of Possible Agreement

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Chapter 1

Introduction & How to Use the Manual

1.1 | Aim of the *Manual*

This *Manual* provides a practical, theoretically informed handbook to support the negotiation of bilateral fisheries access agreements by Coastal States. Typically such agreements are negotiated by a team of officials from different departments, and Ministries who come together from time to time to compose a Coastal State Negotiating Team (CSNT). Members of the CSNT typically have different disciplines, training, responsibilities and experience – an advantage as well as disadvantage in negotiations. The *Manual* seeks to provide CSNTs with guidance on process as well as *content* issues as Coastal States enter an increasingly challenging and competitive environment for access to their resources.

By process we mean “how” negotiations are conducted, whilst by content we mean “what” is being negotiated. The *Manual* covers both aspects in detail with more of an emphasis on issues of process. As far as process is concerned, the *Manual* seeks through Chapters 1-15 to provide Coastal State negotiators with:¹

- theoretically informed inputs into their practical work;
- practical examples and questions to stimulate systematic and structured reflection by individual negotiators;
- practical examples and exercises that can be used during team-based simulations, rehearsals and debriefings;
- usable assessment and evaluation tools specifically adapted to the requirements of fisheries negotiations.

Box 1-1 Highlights

Key issues addressed are:

- The objectives and structure of the *Manual*;
- How to use the *Manual*;
- An overview of exercises which can be used to strengthen Coastal State negotiator skills;
- An overview of tools and checklists to assist with preparations, bargaining tactics, communication skills, compiling negotiations intelligence and evaluation of previous or ongoing negotiations;
- A discussion of the changing competitive and turbulent global context for negotiation of agreements;
- The significance of skills and capacity in negotiations;
- The challenges faced by Coastal States as they seek to develop their capacity;
- An overview of attributes of good fisheries negotiators;
- A description of the resources used to compile the *Manual*.

As regards content, the principal aim of the *Manual* is to provide a reference or basic source of information for the CSNT. Generally speaking, information on the global fisheries framework is extremely scattered. Chapters 16-24 seek to address this problem by providing essential information on key access demanders and policy issues in one easily accessed reference manual. The information and analysis provided in these Chapters will need to be kept up-to-date by the CSNT as this aspect of the *Manual* provides only a *reference* or starting point.

The *Manual* is based on:

- insights from negotiations theory;
- the practical experience and insights of a range of fisheries negotiators;
- experience and insight from negotiators working in a variety of non-fisheries contexts (international business; oil and gas; commercial sales; international politics; international law, international diplomacy).

¹ - See generally, RS. Fortgang, Taking Stock: An Analysis of Negotiation Pedagogy across Four Professional Fields Negotiation Journal Volume 16 2000 325-338

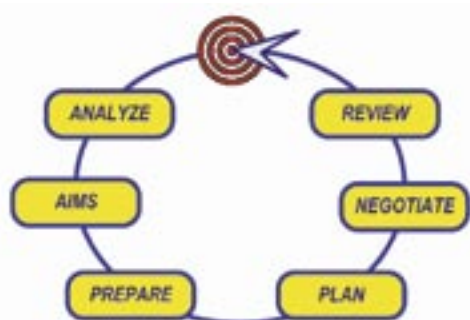
1.2 | Structure of the Manual

Taking the elements of the negotiations cycle into account (see Figure 1-1) the *Manual* is structured as follows:

- a general introduction is provided (this Chapter);
- Part I introduces the reader to (1) key elements of the access agreement as an instrument of diplomacy, international relations, international law, economics and fisheries policy (2) key applicable concepts from negotiations theory;
- Part II discusses various facets of preparing for negotiations, including generating intelligence to support decisions, management of the government team as well as internal and external stakeholders;
- Part III discusses bargaining or table processes, including effective communication, managing concessions and dealing with bargaining failure;
- Part IV discusses monitoring and evaluation of negotiations as applied to individual events but also as part of a strategy for institutionalising bestpractice approaches to negotiations;
- Part V shifts focus and discusses issues substantive issues providing a profile of the key access demanders in the international fisheries system – Japan, China, Taiwan, Korea and the European Union;
- Part VI provides introductory descriptions of emerging or key issues in the access agreements arena focusing on IUU fishing; fisheries subsidies; access fees and eco-labelling.

The approach does not follow the negotiations cycle model strictly. It re-arranges its elements to better support analysis and discussion.

Figure 1-1 The negotiations cycle



1.3 | Fisheries access negotiations – a definition

A fisheries access negotiation is a joint decision-making process in which two or more parties, usually governments, share information, ideas and options in order to reach a mutually acceptable agreement with respect to the commercial extraction of fisheries resources found in the EEZ of one or more of the parties. It is either bilateral (two parties only) or multilateral (more than two parties). It is a joint process in the sense that each participant contributes to the outcome. Because the process involves sharing information, it can also be described as a direct dialogue between the parties.

Because it is a dialogue, effective communication between participants is crucial.

Figure 1-2 - Daily shipments of tuna to Tsukiji market from all over the world

Source: <http://www.nationalgeographic.com/photography/galleries/tokyo/>

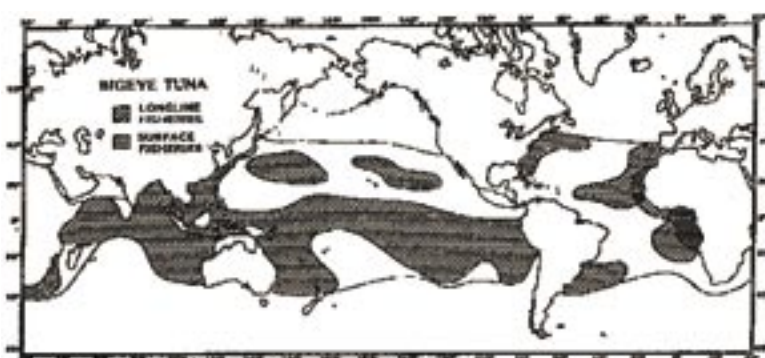


Viewed as a process, fisheries access negotiations can be roughly divided into three phases: preparation, bargaining, and post-negotiation. In the preparation phase, negotiators collect information about their opponent(s), study previous negotiations, and identify both the strengths and the weaknesses of their opponent(s). In the bargaining phase, both sides state their positions, bargain with each other and where necessary, make concessions. The bargaining phase either closes with the formulation of an agreement, or a deadlock (a failure to agree). Finally, in the post-negotiation phase, the parties analyze the negotiation outcome, identify possible mistakes made during the bargaining phase, and ideally adjust their tactics in preparation for future negotiations.

1.4 | Access agreements and international law

Access negotiations are necessary because Coastal States have the power under current international law to prevent other States from fishing in their exclusive economic zones (EEZs). Under current international law, it is only after access negotiations have been completed that Fishing States and the fleets associated with them – we call them access demandeurs – have the right to enter a Coastal State’s EEZ. To govern the relationship between Coastal States and the different types of access demandeurs, there are now many types of access authorisation. As Box 1-2 shows, access agreements are in reality only one of a number of different types of access authorisation. Despite the many types of authorisations that currently exist, access agreements remain one of the most important forms since they can be structured to cover a very wide range of issues, not just purely economic ones. Additionally many of the other types of access authorisations are linked to access agreements; for example one type of authorisation, a licence to fish, is generally linked to a framework or master access agreement. Access agreements are governed by international law in other ways. In particular both Coastal States and access demandeurs have obligations to conserve fish stocks and to engage in responsible fishing and responsible management. Figure 2.9 below sets out the international law rules which are part of the framework for negotiation and implementation of access agreements. In this Chapter and throughout this Manual the main focus is on access agreements rather than other access authorisations (See Box 1-2). It should be noted, however, that many of the issues which are discussed by the Manual also apply to other types of access authorisations.

Figure 1-3 The global market in access rights - production regions and fishing grounds for Bigeye tuna Source: FAO



1.5 | The global market in access rights

There is also a global market in access rights. In this market the laws of supply and demand operate in the same way as they do elsewhere.² Coastal State negotiators who understand the interactions of supply and demand in this market will become seriously effective long-term negotiators even if their States are poor or otherwise disadvantaged. To help advance this understanding, the Manual contains a set of case-study maps or vignettes demonstrating the global market in access rights for most commercially important species. It is the realities of geography, biology, climatology and other marine conditions shown by these maps which shape the search for access. Figures 1-3 to 1-5 provide the first illustrations of the global market in access rights – the examples used are bigeye, yellowfin and skipjack tuna – all species of importance to Coastal States.

1.5.1 The demand for access rights

Following the logic of the market, access demandeurs (fleets, fishing associations, transnational companies, Nation-States) all desire one thing above all else – a right of secure and long-term access to rich fishing grounds which constantly produce high quality fish that consumers will pay high prices for. The right of access is a valuable commodity that the demandeur wants to buy, except he wants to pay the lowest possible price. Access demandeurs have a diverse profile – they are not all the same.

1.5.2 The supply of access rights

In terms of supply, suppliers to this global market are Coastal States which have commercially viable fishing grounds in their EEZs or adjacent high seas. Like access demandeurs Coastal States also have a diverse profile. Some have a strong natural comparative advantage – by this we mean naturally rich fishing grounds. Such a

² - See for example, R Hannesson, Effects of Liberalizing Trade in Fishing Services and Investments in Fishing Vessels, OECD Papers Offprint Series (2001); Asche, F., and R. Hannesson. (1997). On the Global Integration of the Markets for Whitefish. Foundation for Research in Economics and Business Administration. Report R98/97; N Roy and WE Schrank, The Econometric Modelling of the World Trade in Groundfish (1991).

State may have a position of some strength in negotiations. Others may not have a strong natural advantage. However, progressively they have created competitive advantage - they manage their EEZ well and have excellent ports and air facilities. This fact becomes known in the global market place and many access demandeurs are attracted to the EEZ of such a State. In negotiations, the position of this State is strong because of sound management rather than an accident of nature.

1.5.3 The global market in access rights - a Japanese example

To illustrate the concept of the global market for access rights further, have a closer look at Figures 1-3 to 1-5. Consider the issues described there from the perspective of a top official of a Tuna Fisheries Association based in Japan (see Chapter 16 on Japan as an access demandeur). From this perspective these maps set out the global marine production space for bigeye, yellowfin and skipjack tuna. Marine farming of tuna is also important but we leave that aside for a moment. Such an association is typically owner of a bundle of access rights located all over the world - all of them are however located in the areas shown by Figures 1-3 to 1-5. The access authorisations/rights are:

- an access agreement with State A;
- a joint venture arrangement with State B;
- yearly licences with State C.

Box 1-2 - Types of fisheries access authorisation

There are many types of access authorisations in use for fisheries. Bilateral agreements are the most complex and are also the most important form of authorisation. The types of authorisations in wide use globally are:

1. State-to State bilateral agreements
2. State-industry bilateral agreements
3. Regional agreements containing harmonised access conditions
4. Joint-ventures with local companies
5. Direct fishing by foreign fleets under license
6. Operation as a foreign-owned company within a Quota Management System(QMS)
7. Establishment of a local company
8. Local Agents
9. Chartering of foreign fishing vessels
10. Access authorisations for mobile small-scale/artisan fleets.

Each type has its own requirements and issues as far as negotiations are concerned.

Clearly the legal form of these access rights is different. The end result however is the same - these rights provide the framework within which our Japanese access demandeur secures desired supplies of fish from all over the world. Additionally, fish caught under these access rights or authorisations competes in the Japanese marketplace with imports flown directly to Japan. Such imports are flown in on a daily basis to giant markets like Tsukiji (see Figure 1-2 above). Daily shipments also arrive on refrigerated vessels. To increase the supply of tuna caught directly by the Association's vessels, this Association periodically searches for other States prepared to supply a right of access on terms equal to or more favourable than those currently offered under the arrangements in force with States A, B and C. It can be seen from this example that the negotiation of access agreements takes place in a highly competitive environment, including competition from imports. This environment must be well-understood by Coastal State negotiators. That is why throughout the Manual, we systematically set out the full dimensions of the global market in access rights by means of the case-study maps or vignettes. This is how the world looks to the access demandeur.

1.6 | Skills and capacity are crucial to negotiations

As the discussion above has shown, fisheries access negotiations are not a simple matter. Negotiators and the teams they are part of, require a complex mixture of many types of knowledge and skill. Key capacities in this regard are:

- strategic preparation capacity;
- strategic bargaining capacity (including table or conference skills);
- technical fisheries policy capacity;
- technical fisheries management capacity;
- legal capacity;
- supporting non-fisheries capacity - trade, economics, environment, rural development etc;
- skills in effectively integrating a range of stakeholders into the negotiating process.

During the preparatory phase, strategic skills are required to guide the preparations, to identify key interests and to assess the impact of concessions that may be required. For the bargaining phase, skills in conference or table processes are also required, together with the ability to undertake post-negotiation analysis and evaluation. After the negotiations are complete, agreements must then be drafted and implemented. Finally, the implementation of agreements must be monitored and the benefits gained assessed. The results of evaluations then have to be fed back into the negotiations cycle. At all stages, negative impacts or results must be identified, and measures to manage or limit the extent of these negative aspects devised and applied.

Figure 1-4- The global market in access rights - production regions and fishing grounds for Yellowfin Tuna

Source: FAO

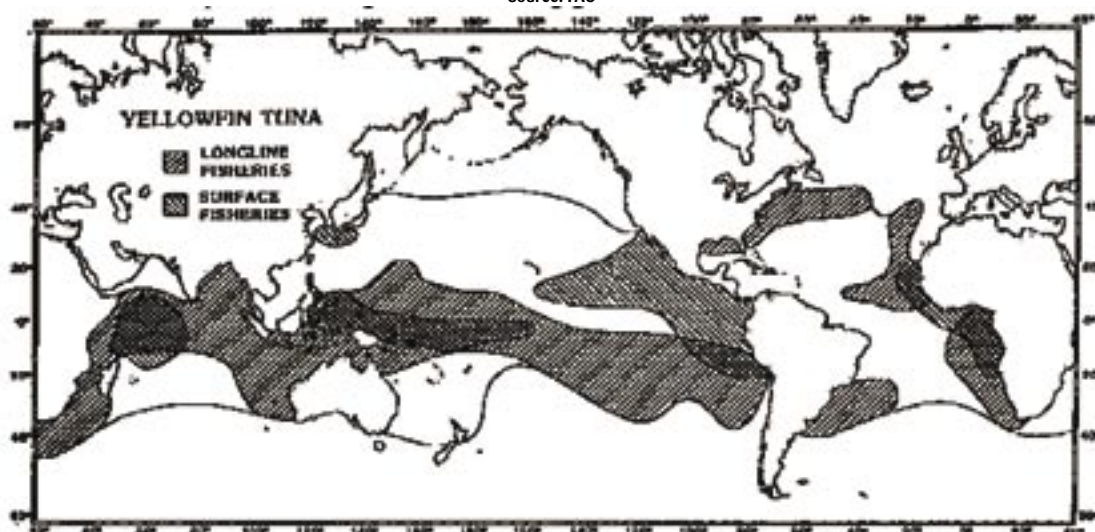
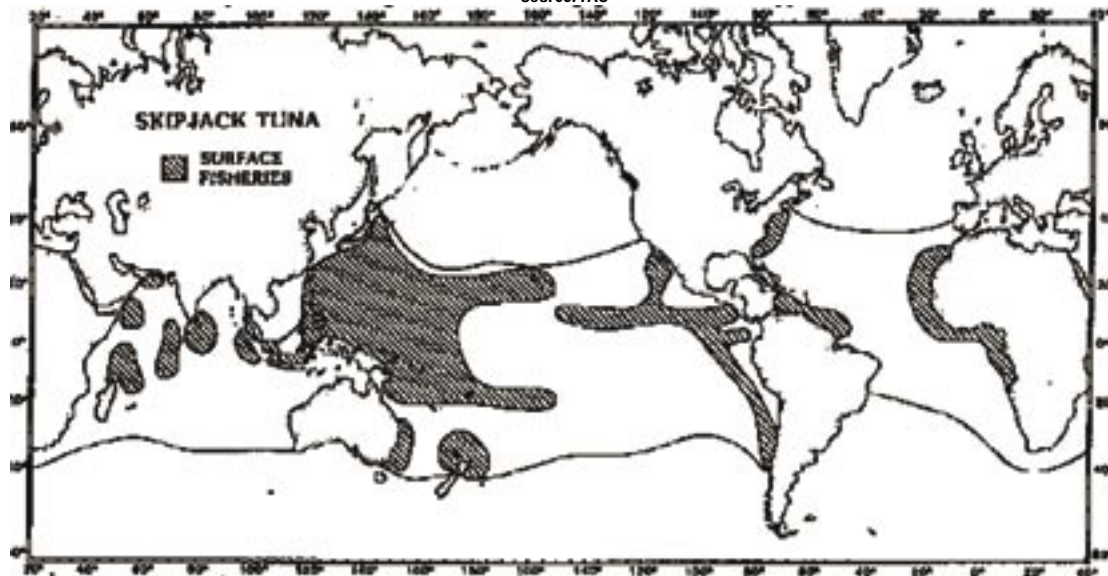


Figure 1-5 - The global market in access rights - production regions and fishing grounds for Skipjack Tuna

Source: FAO



1.7 | Broadening and deepening Coastal State Capacity – the current challenge

All Coastal States have evolved a significant level of strategic capacity as well as bargaining skills and proficiency in table processes over the course of time. This capacity, however is currently vested in a small number of senior officials, and is not backed by systematic training. The number of individuals with strategic capacity in fisheries negotiations and implementation needs to be broadened and deepened for a number of reasons. These reasons include:

- recent complex changes in the international fisheries arena;
- the risks posed to each country by high staff turnover and loss of key staff;
- the absence of a well developed institutional memory and institutionalised capacity;
- a trend towards deeper professionalisation and development of strategic capacity in key DWFS such as the European Union.³

1.8 | Enhancing strategic capacity

Strategic capacity, as applied to fisheries access agreements (preparation, negotiation, implementation, monitoring, evaluation) is difficult to define precisely. It includes an indepth understanding of the many linkages and relationships operating within a nation's fisheries sector at both national and regional levels. It also consists of a wide range of skills, and refers to the broad knowledge required to effectively link the fisheries agreement arena to the larger stage of national (as well as global) political, legal, economic and other considerations. It also involves a sound understanding of interactions between the fisheries sector and other policy areas such as trade, industrial development, and shipping- as well as internal political and social relations. Finally, strategic capacity includes the ability to rapidly acquire and constantly improve insight into the comparative advantages that different fishing fleets and companies bring to negotiations, and also their implementation. Strategic capacity, more than anything, is else built through experience. To some degree, it can also be acquired through training. Strategic capacity matures best when experience and training are closely linked, and thus operate to strengthen each other. This Manual contributes to the strengthening of strategic capacity.

Figure 1-6 - The global market in access rights - production regions and fishing grounds for Senegalese Hake Source: FAO



1.9 | Strengthening bargaining skills and proficiency in table processes

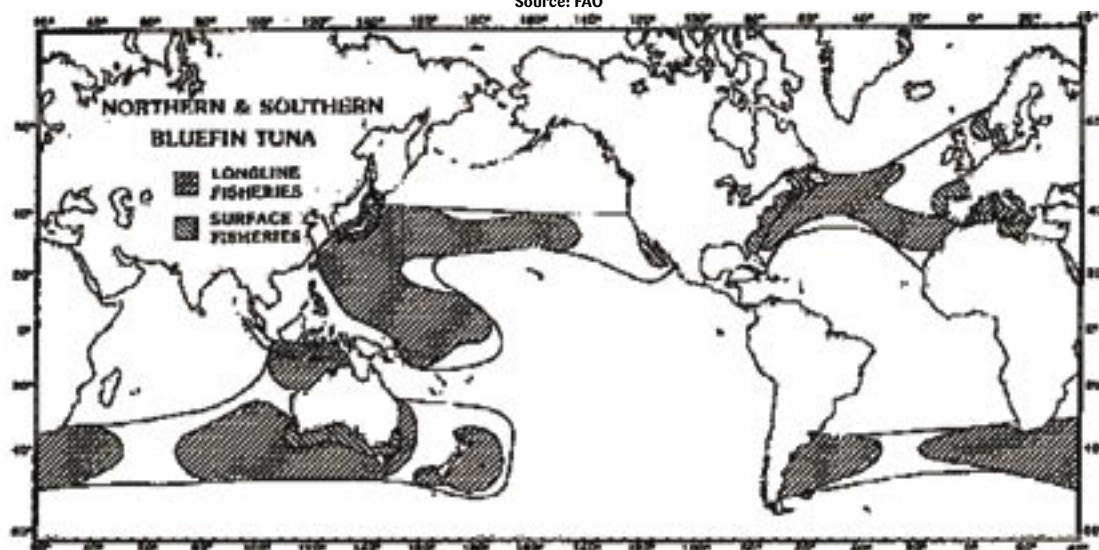
Proficiency in the use of table processes and a well-developed ability to bargain and make tradeoffs under pressure are crucial to the successful conduct of Negotiations Conferences, a key feature of the access agreements process. As noted above, while on the job training is important (i.e. experience matters), training is also critical indeed, the two should go together. This Manual offers a menu of checklists, practical exercises and illustrations to provide a basis for in-depth training in this aspect of negotiations.

³ - See for example the complex methodologies and detailed analysis used in the publication, IFREMER, Evaluation of Fishing Agreements Concluded by the European Community (1999).

1.10 | More effective integration of legal capacity into the negotiations process

The importance of law to access agreements is well known. Its importance has become even more pronounced given the multiplicity of global and regional negotiations in the trade sector (WTO; EU-Cotonou etc), and the need to link commitments in these areas with access agreement commitments. Whilst the Manual does not provide legal training in the strict sense, lawyers can benefit from the Manual's cross-disciplinary approach to understanding access agreements. Communication between lawyers and non-lawyers, furthermore, will hopefully be improved by the approaches outlined in this Manual, as well as the substantive information provided.

Figure 1-7 The global market in access rights - production regions and fishing grounds for Northern and Southern Bluefin Tuna
Source: FAO



1.11 | Improving negotiations intelligence capacity

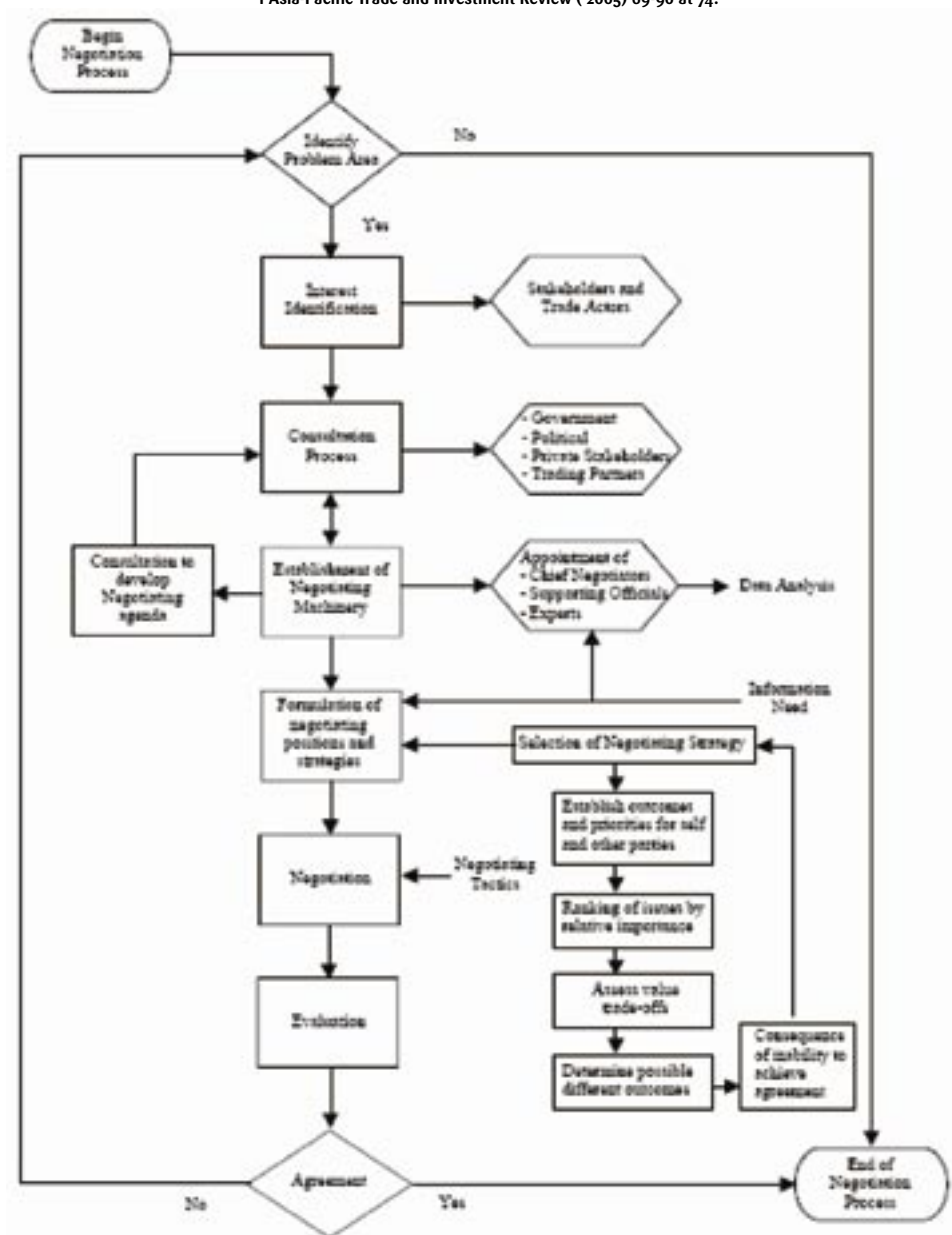
Research and analysis underpins effective bargaining. Negotiations intelligence capacity refers to

1. the capacity to conduct and analyse research;
2. the ability to present research in a format that is relevant and which is easily absorbed by negotiators.

Research during the preparatory stage has a broad ranging character as it helps build up a profile of the negotiating partner. Research requirements become much more narrowly focused during the bargaining phase since at that stage, what is required is the involvement of research analysts skilled at quickly assessing the likely impact of specific proposals made by the negotiating parties. After the conclusion of negotiations, research expertise take a different form again – their role being that of undertaking impact assessment of the likely results of the negotiations. To make research relevant to the needs of access negotiations, the users of research, negotiators, and the producers of the research themselves, have to work hard to ensure that the results of research are useful for negotiations. This requires Coastal State negotiating teams to work closely with targeted researchers, to develop approaches that closely support the specialised character of fisheries negotiations. Negotiators may also need training in how to quickly absorb and incorporate research results into their work. The Manual has been designed to be of some use in this regard as well.

Figure 1-8 - An overview of the negotiations process

Source: D Bhattacharya, «Least Developed Countries in Trade Negotiations: Planning Process and Information Needs»,
 1 Asia-Pacific Trade and Investment Review (2005) 69-90 at 74.



1.12 | Improving the participation of non-fisheries departments

In all Coastal States, there is a lead agency or department responsible for fisheries negotiations. In some countries, it is the fisheries department, in other countries, it is the Ministry of Foreign affairs or the Ministry of Finance/Economic Planning. To compose the Coastal State Negotiating Team (CSNT) as well as monitor all aspects of the implementation of agreements, the lead agency for fisheries negotiations are responsible for drawing in specific supporting expertise from other government departments. Despite the need for other departments to participate in negotiations, the reality is that in many other Ministries and departments, understanding of the fisheries sector is poor with very little focus on and insight into issues under negotiation. Capacity-development therefore also involves improving the negotiations capacity of non-fisheries departments. The Manual assists in this arena as well.

1.13 | Integrating diverse stakeholders into the negotiations process

A striking development in recent years is the sharp increase in stakeholders in the access agreements arena. With respect to globally harvested and traded species such as tuna the following stakeholders in access agreements can be identified. Stakeholders include:

- Coastal State governments;
- Distant Water Fishing States governments (in the case of the EU – the EU institutions);
- Port State governments;
- states in which transshipment of product takes place – either on land or at sea;
- Market States for the product;
- sectors and regions dependent on fisheries activities in developed countries;⁴
- relevant International Organisations and RFMOs;
- NGOs (transnational and local);⁵
- harvesting companies and associated economic operators under access agreements;
- local fleets and other economic operators competing for resources with foreign fleets under access agreements;
- processing companies (transnational and local);⁶
- retail enterprises especially transnational enterprises sourcing their products globally;⁷
- fishing communities specifically impacted on by activity under access agreements;⁸
- final consumers in key affluent markets;⁹
- sectors and regions dependent on fisheries activities in developing countries.¹⁰

Figure 1-9 The global market in access rights - production regions and fishing grounds for Albacore Source: FAO



4 - The European Union for instance maintains and updates information on fisheries dependent areas in Europe. It therefore always has an accurate picture of what its interests are with respect to this issue. See generally, European Commission DG-XIV, (1999) Regional Socio-economic Studies on Employment and the Level of Dependency on Fishing (1999).

5 - WWF and Greenpeace are the best examples. See generally, FAO Committee on Fisheries, 'Initiatives of Non- Governmental Organizations Regarding Sustainable Resource Use & Environmental Protection in Fisheries' (Paper presented at Twenty-Second Session, Rome, Italy, 17-20 March 1997) available at <<http://www.fao.org/docrep/meeting/w3954e.htm>> 1

6 - For example, Heinz Foods.

7 - A good example is Unilever with its support for the Marine Stewardship Council initiative. For discussion of retailer and consumer aspects, see, for instance, E Gudmundsson and CR Wessells, 'Ecolabeling Seafood for Sustainable Production: Implications for Fisheries Management' 15 (2000) Marine Resource Economics 97- 113.

8 - See for instance, CFFA/CREDITIP, Fishing for a future: artisanal fishing in Senegal and EU fisheries agreements (1996) Brussels.

9 - For discussion of consumer aspects, see, for instance, CR Wessells, RJ Johnston, and H Donath, 'Assessing Consumer Preferences for Ecolabeled Seafood: The Influence of Species, Certifier and Household Attributes' 81 (1999) American Journal of Agricultural Economics 1084-1089.

10 - M Diop, 'Artisanal Fishery Stakeholders in Casamance Discuss Their Problems' 9(2) EC Fisheries Cooperation Bulletin 26-27; CFFA/CREDITIP, Fishing for a future: artisanal fishing in Senegal and EU fisheries agreements (1996) Brussels.

The presence of stakeholders in the access agreement process may also be said to be direct or indirect. Stakeholders with a direct presence either take part in negotiations or have their interests strongly represented in negotiations. The less visible the actor in the negotiation process, the more they can be described as an indirect, although not necessarily unimportant stakeholder. As discussed in more detail immediately below, calls for reform of access agreements effectively implicate a much wider range of stakeholders in the negotiation, implementation and monitoring of access agreements than used to be the case. In particular, NGOs are becoming important and effective actors within the access agreements framework. An important skill that was previously not required of Coastal State negotiators is an ability to identify and then manage the wide range of stakeholders who can affect all stages of the negotiations cycle for a fisheries agreement. Some stakeholders are globally influential (for example international NGOs like Greenpeace, Marine Stewardship Council (MSC) and WWF) and their activities can affect markets for DCS products. Chapter 6 on stakeholder management discusses ways of managing stakeholder issues in the access agreements process.

1.14 | How to use the Manual

1.14.1 Style of presentation

Users of this Manual will find that in the same way that negotiations shift style and tone, we also shift style and tone as appropriate. For example some parts of the discussion require a more distanced tone, whilst in other sections, the Manual is more direct, referring specifically to the reader in the first person. The tasks required of the user determine the tone and style of the Manual.

1.14.2 Using the Manual to acquire a quick in-depth overview of fisheries negotiations practice

1. Go to Chapter 2 – please read closely – we recommend you take notes.
2. Go to Chapter 3 – please read closely taking notes as you go.
3. Then read Box 5-3 and complete the practice exercise on style and strategy at the end of that Box.
4. Follow-up with Section 8.4 comprising Table 8-1 and Box 8-2 - please read closely.
5. Look closely at Figures 8-2, 9-1, 9-5, 9-6 and then read all of Section 9.8.
6. Go next in sequence through Figure 10-2, Figure 10-3, Table 10-1 and finally, Box 12-4.
7. Read Chapter 15 on evaluations closely.
8. Use the Index to identify page references to the key concepts – preparation, bargaining, evaluation etc and read more closely.
9. Look more casually at Parts II and III and take notes on those aspects which interest you.
10. Attempt as many practice exercises in Parts II and III as you can.
11. Return to the Manual at another point in time.

1.14.3 Using the Manual to assist with negotiations tasks generally

1. List the tasks that you have to perform – preparation, evaluation etc..
2. Explicitly identify for yourself what assistance you think the Manual can provide - e.g. you may be consulting it to refresh your mind; strengthen your experience or introduce you to negotiations theory and practice for the first time.
3. Use the Index to identify page references to the key concepts – preparation, bargaining, evaluation etc and read more closely.
4. Go to Chapter 15 on evaluations read and take notes paying particular attention to the tools described there.
5. Look at the materials covered by Parts I-IV - read the relevant sections, take notes and consider how best to use the information to support the task ahead;
6. Look closely at the checklists, examples and practice exercises in Parts II-V and see which ones are of use.
7. Read relevant access demandeur profiles – Japan, EU, China, Korea, Taiwan - Chapters 16-20
8. Read and take notes from Chapters 21-24 if relevant

1.14.4 Using the Manual to assist with preparations for a negotiation

1. Orient yourself by using the Index to identify specific pages which discuss preparations.
2. Go to Annex I on recommended Coastal State approaches to preparing for negotiations – read and take notes on the types of information required.
3. Review Annex II on preparation approaches currently used by the European Union – read and take notes paying particular attention to the range of information that the EU uses during preparations.
4. Go to Part II on preparation for negotiations – read and take detailed notes paying particular attention to the checklists at the end of that Part.
5. Go to Chapter 15 on evaluation – read and take notes paying particular attention to the tools described there.
6. Go to Chapter 3 on theory issues – read and take notes to provide general conceptual background.
7. After undertaking some preparation, honestly evaluate your preparations using the evaluation procedure set out at Chapter 15 of the Manual.
8. Finalise your preparations.

1.14.5 Using the Manual to assist with negotiations tactics

1. Go to Chapter 3 on theory – read and take notes from sections 3.23-3.31 – pay particular attention to the sections on distributive and integrative approaches to negotiations.
2. Read and take notes from Chapter 5 on strategy and style in negotiations.
3. Read and take notes from Chapter 12 on tactics and techniques – attempt exercises set out there in your head or on paper as you go.
4. Read and take notes from Chapters 10 and 11 on verbal and non-verbal communication – attempt exercises set out there in your head or on paper as you go.
5. Now read Chapter 12 again and select tactics which appear to be suitable for the kind of negotiation you intend to conduct.
6. Rehearse the tactics selected with other members of your negotiating team.

1.14.6 Using the Manual to assist with improving communication skills

1. Go to Chapter 3 – read sections 3.17 to 3.34 closely and take notes.
2. Read Chapters 10 and 11 on verbal and non-verbal communication – read, take detailed notes and attempt exercises set out there as you go.
3. Return and read the sections on the use of questions in Chapter 10 again and rehearse the different question types set out there.
4. Return and read the sections on effective listening at section 10.5 and rehearse the techniques set out there.

1.14.7 Using the Manual to provide background information on access demandeurs

1. Read Chapter 7 on generating usable negotiations intelligence
2. Go to Chapters 2 as well as 16-20 and take detailed notes.
3. Go to Chapters 21-24 and take detailed notes.
4. Look carefully at all the Figures/vignettes on the global market in access rights sprinkled throughout the book.
5. Prepare your own short notes on the access demandeurs of interest.
6. If the demandeur is not covered in this Manual, prepare or commission a short report using the headings provided at Chapters 16-20 or other headings as appropriate.

1.14.8 Using the Manual to assist with evaluation of ongoing or previous negotiations

1. Go to Chapter 15 on monitoring and evaluation – read and take notes.
2. Read Annexes I and II on Coastal State and EU approaches to negotiations.
3. Use the Index to identify all sections on process observers – read and take notes.
4. Attempt using the Excel versions of the tools provided in Chapter 15 – enter in figures and manipulate them to score your own imaginary negotiations process.
5. Go to Chapter 5 on Strategy and Style – read and take notes.
6. Adapt tools in Chapter 15 to suit your evaluation requirements.

1.14.9 Using the Manual to support training and capacitybuilding

1. Identify training needs.
2. Use Chapter headings to design a timetable for training – you probably do not need to use all the Chapters.
3. Prepare training notes using the Chapter headings and sub-headings provided.
4. Encourage participants to use the Index to explore topics of interest to them.
5. Look closely at the exercises in the Manual and decide how you will use these for individual as well as group work.
6. Get participants to do selected exercises in discussion groups as part of the training.
7. Design the training so that participants have to use the worksheets and checklists provided.
8. Design the training so that participants have to use the evaluation tools provided in Chapter 15.
9. Ensure that you have frank group discussions on at least 50% of the exercises, worksheets and checklists – their usefulness, adaptability etc.
10. Ask participants to identify elements of CSNT practice in their country which could be improved even with the limited resources available to poor States.

1.14.10 Experienced negotiators - using the Manual to reflect on and improve your experience

Experienced negotiators may well find portions of the Manual useful as they reflect on their skills and experience, in an effort to make their approach even more effective.

Chapter 3 on negotiations theory and Chapter 15 on evaluations will hopefully prove particularly useful.

1.14.11 Using the Manual - less experienced negotiators

Less-experienced negotiators should use the Manual as a general source of information by way of the content headings and index.

1.15 | Practical exercises and tools

1.15.1 Practice exercises and other capacity-development tools

Users of the Manual will find that there is a strong emphasis on short strategy exercises. These are intended to focus negotiator attention on scenarios which will test their skills, knowledge and judgment. The exercises are sprinkled throughout the Manual and ask users to:

1. actively reflect on their own experiences;
2. think systematically about the kinds of strategic situations they might be faced with in future.

The exercise types are:

Table 1-1 - Exercises

Exercise type	Explanation
Reflective exercise	This type of question asks the user of the Manual to reach into their past experiences with international fisheries negotiations or other negotiations which they may have been engaged in on behalf of their country. Negotiations undertaken in negotiators' personal lives may also provide a basis for reflection. The Manual does not suggest that there is any correct answer to the questions posed. Negotiators should aim to consciously pause and reflect on these issues as they progress through the Manual, in order to help integrate the issues addressed with personal experiences and approaches. These exercises can also be used to conduct training and orientation exercises for the CSNT

Strategy exercise	Strategy exercises raise hypotheticals and ask the user of the Manual to answer specific questions. Suggested correct answers are provided at section 14-7. The answers are suggested only and are intended to provide guidance from more experienced negotiators. These exercises can also be used to conduct training and orientation exercises for the CSNT
Opendiscussion questions	The Manual does not provide any answer to this last category of question. The questions are placed at various points in the Manual to get users thinking. These exercises can also be used to conduct training and orientation exercises for the CSNT

Other practical tools such as checklists, templates and worksheets are also included. All of these practical tools can be used for training sessions and can also be adapted for use in actual negotiations.

1.15.2 Practical tools for measuring and evaluating performance

Chapter 15 is of particular importance in this regard. It sets out two tools which can be used to evaluate negotiations on a before, during and after basis. Another tool for monitoring and evaluating foreign fleet performance under agreements is also provided. All three tools are simple, easy to use, and can be quickly adapted to suit the circumstances of Coastal States. Officials will thus be able to systematically and effectively monitor, evaluate and compare performance across a range of issues.

1.16 | The theory dimension

Finally, a word on theory. As all negotiators know, a Negotiations Conference requires that both teams think and act fast – negotiating is an intellectual as well as practical activity. It follows then that the more a negotiator understands about negotiations as a whole – the more theoretical insight they have – the better they become at what they do. This is the philosophy behind this Manual. We take the view that learning about negotiations involves:

1. absorbing practical suggestions on the “how” of negotiations;
2. absorbing theoretical insights along with these practical tips;
3. imaginatively adapting both elements to suit your specific situation.

In short, learning about negotiations is not about memorising a magic formula or set of rules which will guarantee a perfect outcome – it is about gaining insights and being able to apply those insights imaginatively.

Another reason a basic level of theory is useful is because it introduces practitioners to various criteria, against which they can judge:

1. what is effective and what is not effective;
2. what is a good and what is a bad outcome.

This Manual’s theoretical discussion seeks to further support the practical suggestions and tips offered. We hope this mixture of theoretical discussion and selected practical examples will make the Manual a useful resource for negotiators and other fisheries sector stakeholders in the SRF

1.17 | Resources used to compile the Manual

A range of resources have been used to compile this Manual. The sources of information, analysis and commentary consulted is very diverse. The sources used can however be classified as follows:

- practically oriented publications from the sales and commercial contracts literature;
- practically oriented publications from the international business literature;
- practically oriented publications from the literature of international relations, politics and diplomacy;
- academic publications from the social sciences and law literature - the authors in this group research how day-to-day, commercial, legal and other negotiations are conducted;
- academic publications from the management information systems and computer sciences literature - the authors in this group research effective systems for electronic commerce and negotiations;
- academic publications from the modelling and game-theory literature - the authors in this group view negotiation as a special type of game - they research the best ways for players of this game to achieve what they want.

Each group of publications contributed to the Manual in its own special way. Suggestions for further reading on a topic are also contained in the body of the Manual where appropriate. It should be noted that due to the status of the publication as a Manual full referencing and attribution of sources has not always been possible. All publications consulted are referred to in the Bibliography at the end of the Manual.

1.18 | Attributes of good fisheries negotiators

The experienced negotiators consulted in the preparation of this Manual were all asked to suggest three principles which in their view could be set out as goals that good fisheries negotiators should aspire to. The following principles emerged from those contributions. We commend them to users of this Manual. They are:

Figure 1-10 Tsukiji market
<http://www.joshsphear.com/item/japan-picture-installment-tsukiji/>
 Copyright Josh Spear - used with kind permission (2006)



1. good fisheries negotiators plan and prepare carefully for all negotiations, renegotiations and reviews, however minor;
2. good fisheries negotiators develop a suite of negotiating styles and strategies and creatively adapt these to the changing situation;
3. good fisheries negotiators learn a range of bargaining techniques and apply them effectively;
4. good fisheries negotiators rehearse all their most important interventions;
5. good fisheries negotiators communicate effectively;
6. good fisheries negotiators tolerate conflict while searching for agreement;
7. good fisheries negotiators project honesty;
8. good fisheries negotiators foster team cooperation;
9. good fisheries negotiators apply sound business judgment;
10. good fisheries negotiators consider available alternatives;
11. good fisheries negotiators focus on positive tactics to resolve differences;
12. good fisheries negotiators gain the support of their stakeholders and their political superiors.



PART I – NEGOTIATING FISHERIES AGREEMENTS – THEORY AND GENERAL BACKGROUND

Chapter 2

Access Agreements & Access Authorisations

2.1 | Introduction

The evolution of the international fisheries system has generated a range of access authorisation types to suit a variety of needs and circumstances. Negotiators with a sound understanding of access authorisation types can more effectively match authorisation to access demandeur requests and needs.

2.2 | State to State bilateral agreements

State to State agreements are bilateral treaties between:

- a Coastal State with sovereign rights over fisheries resources in its exclusive economic zone (EEZ); and
- another State whose fishing enterprises wish to harvest these resources - Fishing States usually called Distant Water Fishing States or Nations (DWFS/DWFN).

Use of state to state bilateral agreements: This approach is in wide use internationally.

2.3 | State-industry bilateral agreements

State-industry bilateral agreements are agreements in which a Coastal State contracts with an industry association representing a foreign fleet. Taiwanese, South Korean and Japanese fishing industry associations have entered into many such agreements with Coastal States across the world. The willingness of many countries to enter into agreements with fishing associations, rather than their governments reflects the following factors:

- the closeness of links between industry associations and the governments of Japan, South Korea and Taiwan;
- the importance of the markets for fish in the countries concerned;
- the power and influence of these fishing associations in their countries of origin;
- the knowledge power and influence of these associations in the global market for marine products;
- the uncertain diplomatic and international relations status of Taiwan and South Korea.

Box 2-1 Chapter 2 Highlights

Key issues analysed are:

- The different types of bilateral fisheries access agreements: state to state, state to industry and regional access agreements;
- The different types of access authorisations currently in use globally - joint ventures; fishing under license, establishment of a local company, use of local agents, charter of foreign fishing vessels and other issues;
- The respective generic interests of Coastal States and access demandeurs;
- legal aspects of access agreements, including current responsibilities of Distant Water Fishing States & Coastal States under international law;
- the typical parties involved in fisheries negotiations and what each party has to offer;
- The use of development assistance programs in the access agreements arena;
- The current debate on reforming fisheries access agreements - its scope, merits and implications for Coastal States.

Box 2-2 Typical contents of bilateral agreements

Provisions in the two types of access agreements described immediately above, usually cover:

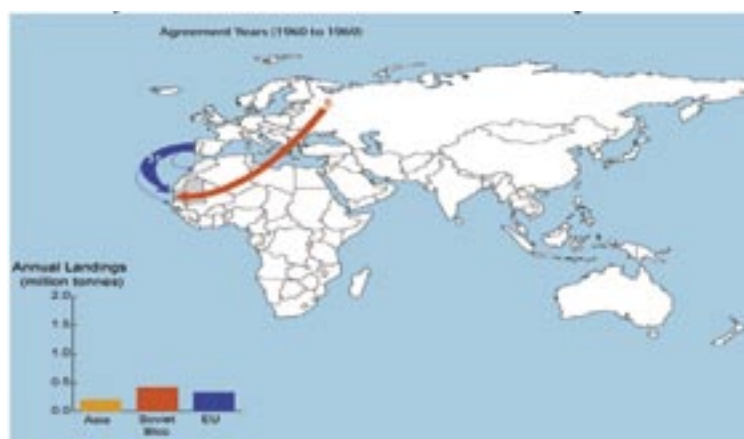
- flag-State enforcement of Coastal State laws and the agreement itself;
- protection of essential fisheries habitat;
- by-catch;
- scientific research;
- exploratory fishing;
- fees and payments;
- restrictions on foreign fishing operations;
- compliance control;
- monitoring, control and surveillance;
- the content of fisheries management plans;
- offences and defences;
- reporting requirements;
- enforcement;
- forfeiture and seizure of vessels;
- penalties for foreign fishing;
- technical measures (closed areas; prohibited areas, prohibited and endangered species, controls over essential fish habitat, prohibited gear);
- dispute settlement.

Bilateral agreements may also cover the establishment of joint ventures; grant of access to markets; provision of aid and technical assistance, construction of ports and harbours.

Responsibility for compliance with the terms of the agreement by individual companies and vessels is assumed by the industry association. Such agreements may cover the same issues as State-to-State bilateral access agreements (see above). Such agreements are not governed by international law, and require special attention in order to decide which party's laws will govern the agreement.

Use of state-industry bilateral agreements: This approach is in wide use internationally.

Figure 2-2 Activity of access demandeurs in the North-West African region 1960-1969 Source: Sea Around Us University of British Columbia (2004)



2.4 | Legal aspects of access agreements

From the point of view of legal analysis, the content of access agreements can be categorised as follows:

- measures and obligations that are responsibility of the Coastal State;
- measures and obligations that are responsibility of the DWFS or the Fishing Association representing the fishing companies;
- measures and obligations that are the responsibility of the Fishing Company.

In negotiating these types of agreements it is always important to be clear about which party to the agreement is required to implement a specific obligation or whether such obligations are to be implemented jointly.

Figure 2-3 - Activity of access demandeurs in the North-West African region 1970-1979

Source: Sea Around Us University of British Columbia (2004)



2.5 | Other types of access authorisation

2.5.1 Regional access agreements

Access can be granted to foreign fishing companies and fleets through regional agreements. Such regional fisheries management agreements are treaties in which a group of Coastal States establish coordinated fisheries management measures amongst themselves. Regional fishing Registers, which store information on vessels fishing in the region, are often an essential part of such arrangements. Decision making on granting access can then be made by member countries, taking into account the vessel information held on the register. Regional registers also include requirements which allow suspension or withdrawal of the right to fish of vessels on the register where such vessels have infringed against specified rules. Regional agreements often include the following provisions: (a) authorization of a person, body or organization to perform functions required by an access agreement, including (but not limited to) the allocation, issuance and denial of fishing licences valid in the region or part thereof, including the exclusive economic zone; (b) regional observer programmes; and (c) fisheries monitoring control and surveillance. Such agreements are governed by international law. Regional access agreements have significant advantages over bilateral agreements. They also have significant problems in sharing the benefits that accrue under them.

Use of regional access agreements: This approach is currently under discussion in the SRFC Region. It is in wide use in the South Pacific region.

Box 2-3 Imposing pre-conditions on the grant of access

Some States condition the grant of rights of access on particular issues or performance in relation to certain specified matters. To date the United States has the most elaborate list of requirements of all Coastal States. As shown by the following extract from US law the US takes these factors into account in deciding whether or not to grant access to its resources:

whether, and to what extent, such nation imposes tariff barriers or non-tariff barriers on the importation, or otherwise restricts the market access, of both United States fish and fishery products, particularly fish and fishery products for which the foreign nation has requested an allocation;

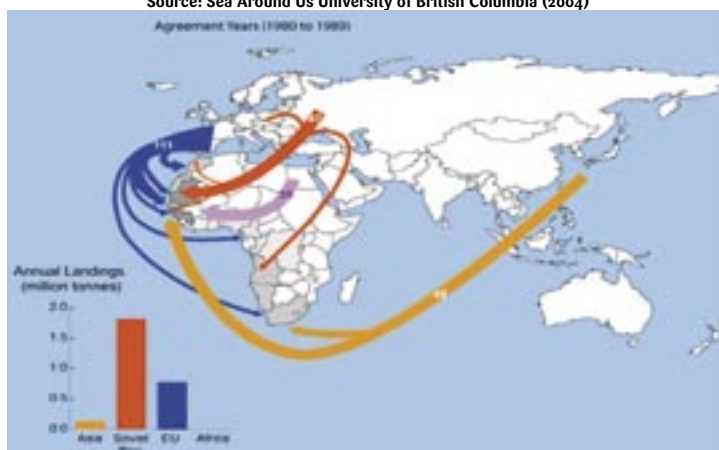
whether, and to what extent, such nation is cooperating with the United States in both the advancement of existing and new opportunities for fisheries exports from the United States through the purchase of fishery products from United States processors, and the advancement of fisheries trade through the purchase of fish and fishery products from United States fishermen, particularly fish and fishery products for which the foreign nation has requested an allocation;

whether, and to what extent, such nation and the fishing fleets of such nation have cooperated with the United States in the enforcement of United States fishing regulations; whether, and to what extent, such nation requires the fish harvested from the exclusive economic zone [or special areas]* for its domestic consumption;

whether, and to what extent, such nation otherwise contributes to, or fosters the growth of, a sound and economic United States fishing industry, including minimizing gear conflicts with fishing operations of United States fishermen, and transferring harvesting or processing technology which will benefit the United States fishing industry;

whether, and to what extent, the fishing vessels of such nation have traditionally engaged in fishing in such fishery; whether, and to what extent, such nation is cooperating with the United States in, and making substantial contributions to, fishery research and the identification of fishery resources; and such other matters as the Secretary of State, in cooperation with the Secretary of Commerce deems appropriate (Sec 201 (E)) Title II to the Magnuson-Stevens Act Fishery Conservation and Amendment Act 1976

Figure 2-4 Activity of access demandeurs in the North-West African region 1980- 1989
Source: Sea Around Us University of British Columbia (2004)



2.5.2 Joint-ventures with local companies

A joint venture (JV) is an operation by a foreign company with a local company relating to fishing, in which the two parties undertake joint activity without merging their identities. It covers joint activity and investment in relation to research, exploratory fishing, catching, scouting, processing and marketing.

Figure 2-5 Activity of access demandeurs in the North-West African region 1990- 1999
Source: Sea Around Us University of British Columbia (2004)



Vessels owned by joint-ventures established initially under bilateral agreements may be able to apply locally for licenses in some countries, since they would be classified as local vessels. Joint venture agreements may also allow vessels owned by joint ventures to fish by applying for licences without them being classified as local vessels.

Use of JVs: JVs are in wide use internationally.



Figure 2-6-Factory trawler belonging to overseas joint venture company (Argentina)
Source: <http://www.ofcf.or.jp/english/3/3-3.html>

Box 2-4 - Interaction between joint ventures and access agreements

The most common type of joint venture company is an equity-based company involving private or government interests from the local State and a foreign partner. The host partner provides access to resources, land for shore-based facilities, infrastructure support and willingness of government to underwrite or guarantee loans. The foreign partner is normally required to provide the major share of the capital and technology in the form of vessels or processing plants as well as the expertise necessary for commercial management and marketing. The agreement may specify that a certain part of the catch should be landed locally or that the foreign partner should agree to train the fishermen of the host country. The most compelling argument in favour of joint ventures is that they provide unique opportunities for transfer of technology. Even if the joint venture is not permanent, the coastal state may eventually be able to take on many of the activities once the technology transfer is complete and personnel employed in the host country have acquired the skills necessary to set up and manage the fishing operation. In practice, many joint ventures fall short of expectations. In most cases, the difficulty stems more from conflicting objectives or poor judgement in choice of partner than inherent weaknesses in the economic rationale behind the venture. In several cases, foreign companies may have cost advantages over domestic companies in the provision of fishing services that are not based on comparative advantages. Foreign companies may receive subsidies from governments concerned with overcapacity in the fleet or service industries. Foreign owned companies may also have better access to foreign markets either through preferential treatment such as tariff concessions but more importantly through market power represented by brand names, broader product ranges, developed distribution channels or lower costs through vertical integration. As such, the value of the fishing resource may be higher to the foreign company than to local operators and the foreign company will share some of this premium through the payment of higher access fees than what domestic operators can pay.

See: FAO, Services Supplied Under Different Organizational Arrangements (1998), available at <http://www.sadl.uleth.ca/nz/collect/fi1998/import/faolc/www/waicent/faoinfo/fishery/meetings/cofi/co_fi98/cofi98-7.htm> at 19 April 2006.

2.5.3 Direct fishing by foreign fleets under license

In this form of fishing, the foreign company or fleet approaches the Coastal State and applies directly for a fishing licence. No agreement between the State of origin of the company or fleet or an industry association is required. The foreign firm may have to register as a local firm before it can fish directly under license. This approach may be an advantage where local firms enjoy more advantageous conditions than foreign firms- for example, local firms may qualify for government assistance or taxation exemptions, export bonuses or other incentives. Vessels owned by joint-ventures established initially under bilateral agreements may be able to apply locally for licenses in some countries, since they would be classified as local vessels. Joint venture agreements may also allow vessels owned by joint ventures to fish by applying for licences without them being classified as local vessels.

Use of direct licensing: This approach is in wide use internationally and supplements access agreements.

Figure 2-7 - Japanese long-distance fishing vessel
Source: <http://www.ofcf.or.jp/english/3/3-3.html>



2.5.4 Operation as a foreign-owned company within a quota management system

Some countries use a quota-management system (QMS) to operate their fisheries (e.g. New Zealand, Iceland, some fisheries in Australia and the United States). In these fisheries, only people who own quotas can fish. Quotas clearly grant rights to catch specified quantities of fish in specific geographical areas known as Quota Management Areas or Fisheries Management Areas. Quotas are bought and sold. Provided that foreign companies are allowed to own quotas, foreign-owned firms have to purchase quotas to participate in the fishery. They do not sign agreements to participate. Many QMS schemes place restrictions on foreign firms owning quotas for fear that foreign companies with superior financial resources will purchase the quota right to harvest fish in the richest grounds thereby squeezing out local firms. In addition to owning quota rights, participants in the QMS

Use of the QMS approach: Very few fisheries in the developing world are managed through a QMS. Only South Africa and Namibia used this approach extensively.

Figure 2-8 - Fisheries and Law of the Sea terminology

Source : FAO

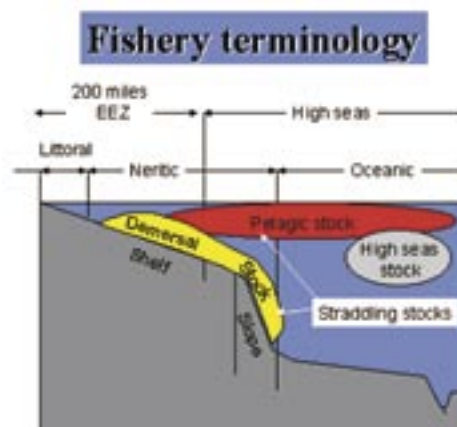
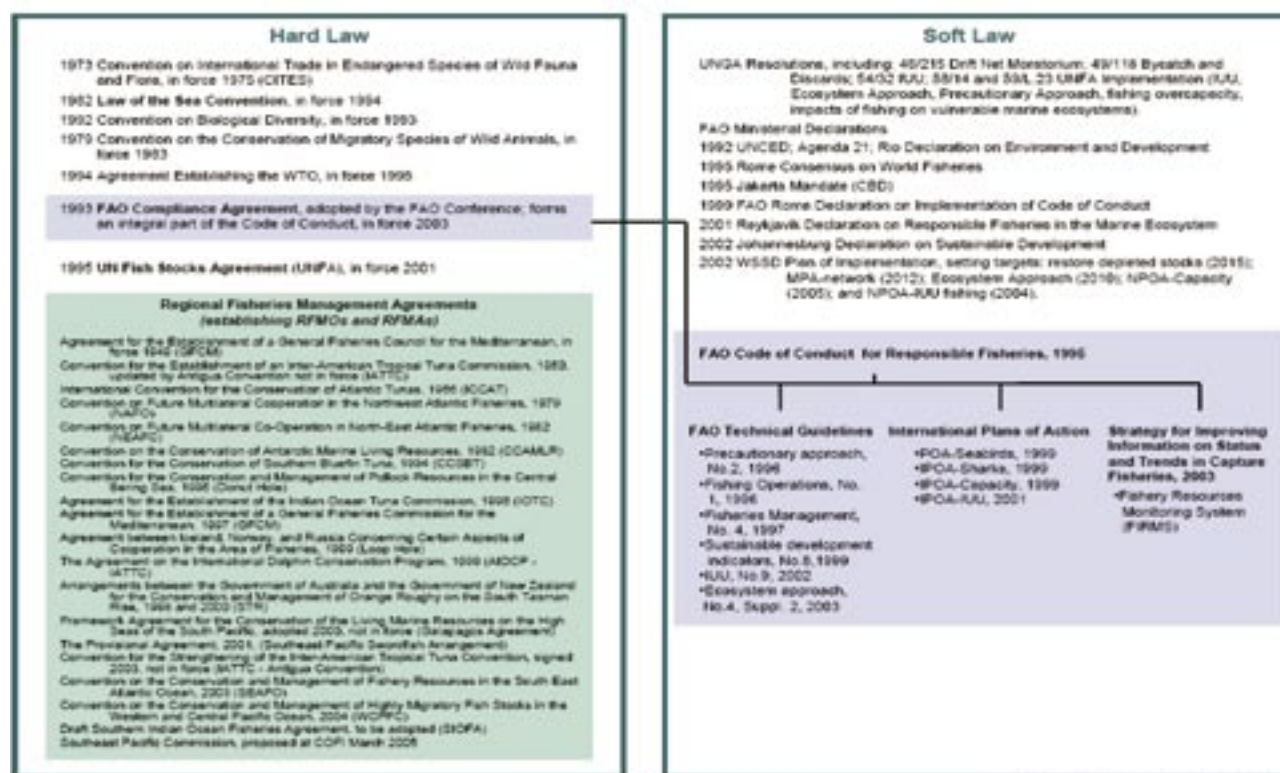


Figure 2-9- International law applicable to access agreements - Source: Evelyne Meltzer - High Seas Governance Arrangements International conference - Governance of High Seas Fisheries and the United Nations Fish Agreement (St. John's, Newfoundland and Labrador May 1-5, 2005)
http://www.dfo-mpo.gc.ca/fgc-cgp/documents/meltzer/FigureC_e.pdf



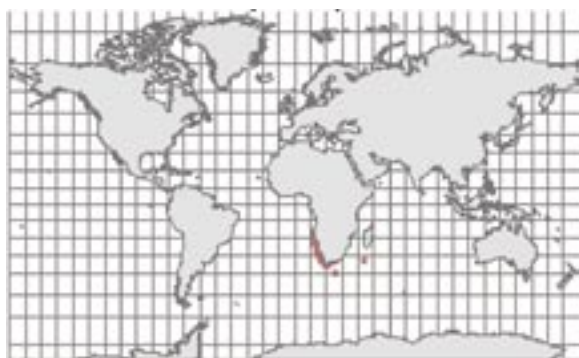
Erwin M. Mitter, working copy 04/2005

2.5.6 Local agents

Local agents are people or companies who are usually citizens of the Coastal State who are appointed to undertake a range of duties on behalf of the foreign fleet or company. They may also be the legal representative of the foreign company and in that role can be taken to court by local authorities and can be served with official documents on behalf of the foreign fishers or fleets. Some countries make appointment of local agents with some level of financial resources a compulsory part of their legal framework.

Use of local agents: This approach is in wide use internationally especially in the South Pacific region.

Figure 2-10 - The global market in access rights - production regions and fishing grounds for Deepwater Cape Hake Source: FAO



2.5.7 Charter of foreign fishing vessels

Under this method, a locally based company charters a fishing vessel from a foreign source. The locally based company may be owned fully by nationals of the Coastal State; the Coastal State government itself or a joint venture between Coastal State interests and foreigners.

Payment for the charter can be in cash or in agreed portions of the fish caught by the vessel. Such chartered vessels may be required to register on local registers of chartered vessels or local fishing vessels. They may also be required to register as vessels with the nationality of the Coastal State. Vessel charter is becoming very important in international fishing since the person seeking to charter vessels need not invest in purchasing vessels. Chartered vessels regularly service QMS fisheries and joint-venture arrangements. Chartered vessels

normally need the following types of authorisation: (i) a fishing permit; (ii) documents specifying their relationship with the local entity hiring their services; (iii) documents relating to their crew and conditions of employment on the chartered vessel; (iv) documents showing the flag flown by the vessel; (v) insurance and other documents. The move to reduce capacity in the European Union; the collapse of the fishing fleets of the former Soviet bloc and difficulties in the fishing and ship-building industries of Japan, South Korea and Taiwan have created a large pool of ships available for charter.

2.5.8 Types of charter arrangements

The principal types of charter arrangements are bareboat charters and time charters.

A bareboat charter is an arrangement in which Party A (the bareboat charterer - fishing company) leases a fishing vessel for a period of time from Party B - the vessel-owner/shipowner. The ship comes to Party A completely bare - hence the name. Party A must provide the crew of the vessel together with all stores and bunkers (fuel) and pays all operating costs. Many persons who have no direct interest in fishing, own fishing vessels which they then lease out to companies which actually fish or own access rights or licenses under access agreements. Entities without a direct interest in fishing may for example include financial institutions or banks. There is often an incentive for the bareboat charterer to assemble a multinational crew. This may lead to further problems if the vessel and crew are arrested under Article 73 of the International Law of the Sea Convention (see Box 2-6 for more on enforcement).

A time charter is an arrangement in which the fishing vessel is hired by a fishing company for a period of time. The shipowner places the vessel with crew and equipment at the service of the fishing company. During this period, the charterer pays the vessel owner a sum of money. A time charter will be used where the fishing company wishes to utilise the specialised experience and equipment of the vessel and its crew. Thus for example, many vessels and crew members from the former Soviet Union fishing fleet are available for time charter hire. Payment is made by allowing them to sell the fish caught and sharing the proceeds with the fishing company which hired them.

The chartering of vessels has a number of implications for access agreements. Some of the most important are:

1. widespread use of chartering arrangements affects enforcement as such vessels seldom fly the flag of the DWFS which signed the access agreement;
2. there appears to be a relationship between charter arrangements and IUU fishing.

Chartering of vessels does however provide commercial flexibility and lowers costs. Therefore it is likely to continue as a cornerstone of foreign fishing under access agreements and other arrangements.

Chartering of foreign fishing vessels: This approach is in wide use internationally.

Box 2-5 - Implications of bareboat charters for access agreements

Coastal State A signs an access agreement with DWFS B. Companies from State B are authorised to fish in the waters of Coastal State A under this agreement. Company B1 then enters into a bareboat charter arrangement with Global Shipowners Ltd to lease a purse seiner – Requesta Glacial for 5 years. Requesta Glacial is flagged to Vanuatu. Company B1 crews the vessel with fishing nationals from Bangladesh, China, Sri Lanka and Ghana. No nationals of State B are employed on the vessel. Company B1 is not registered in State B – it is registered in Panama – although the company has offices in State B and lands its catch in State B. The Requesta Glacial is arrested for fishing in breach of the terms of its licence under the access agreement.

Do the provisions on flag state responsibility in the agreement apply?

Answer: They do not as the Requesta Glacial does not fly the flag of DWFS B. DWFS B is also not in a position to take any action against Company B1 as Company B1 is not a national of DWFS B under its company law. The result is that officials of Coastal State A will have to deal with Bangladesh, China, Sri Lanka and Ghana with respect to the arrested crew. In such a situation it would be advisable for Coastal State A to demand a performance bond from all companies fishing under the agreement. The requirement that all companies post a performance bond before they are allowed to fish is a requirement for example in all the fisheries agreements of Papua New Guinea. The typical PNG clause reads:

Performance Bond Payable by the Frabelle Corporation

The Frabelle Corporation shall during the term of this Agreement, arrange an irrevocable Performance Bond of US\$250,000 payable within one (1) week after the issuance of the licences and shall promptly advise the Managing Director of such payment. The guidelines and procedures of the Performance Bond are prescribed in Schedule 13 of the Appendix to this agreement.

Figure 2-11 - Territorial Sea and inshore EEZ fisheries - typical resources, vessels and gear Source: FAO



2.5.9 Access authorisations for mobile small-scale/artisan fleets.

The question of the status of non-industrial fleets from neighbouring countries is a major issue in Western Africa and in parts of Asia. Many such fleets operate without formal authorisation and in many cases may operate with a concept of boundaries which is different from that of the Coastal States concerned. The best example is where a sub-national group straddles the boundaries of two States. This is common in West Africa, where the boundaries recognised by tribal, clan, language or lineage groupings are quite different from those recognised by nation states. Policy under the FAO Code of Conduct on access authorisation is required to respect these subnational forms of governance and authority and the boundaries generated by them. Bilateral agreements are thus required to take account of these differing boundary practices during their negotiation.

Box 2-6 - Case-Study - SRFC Member States, the Law of the Sea Convention and the Exclusive Economic Zone General

The LOSC grants all Coastal States sovereign rights to conserve and manage living marine resources in its EEZ (Articles 56, 61 and 62). The Law of the Sea Convention requires that Coastal States that have declared EEZs accept and implement a number of conservation obligations in the EEZ. All SRFC Member States have declared EEZs and have the following rights and duties under the Law of the Sea Convention:

- To determine the allowable catch of the living resources in the EEZ of each SRFC State (Art. 61 (1));
- To take proper conservation and management measures to ensure that the living resources in SRFC EEZs are not over-exploited (Art. 61 (2));
- To cooperate with competent international organizations (subregional, regional or global) to achieve the conservation objectives (Art.61(2));
- To take measures to ensure that species associated with or dependent upon harvested species are not endangered (this requires the development and implementation of by-catch policy and measures (Art. 61 (4));
- To take measures to ensure collection of relevant scientific information, including catch and fishing effort statistics and exchange of such information (Art. 61 (5));
- To take measures or procedures to determine the harvesting capacity of each SRFC State (Art. 62 (2));
- To implement a system of allocation of surplus to foreign nationals where the SRFC State does not have the capacity to harvest the entire allowable catch of the living resources in its EEZ (Art 62(2));
- Cooperation with States whose EEZs overlap to ensure coordination of management measures in respect of the shared stocks (Art. 63(1));
- Cooperation with States whose nationals fish for stocks occurring both within the EEZ of the coastal State and on the adjacent high seas (straddling stocks) to agree upon the measures necessary for the conservation of such stocks in the adjacent area (Art. (392);
- Cooperation with States whose nationals fish for highly migratory species in the same region to implement conservation measures for such species (Art. 64(1));
- Conservation of marine mammals and cooperation with competent international organizations to manage and conserve marine mammals (Art. 65);

Terms and conditions of fishing SRFC Member States can Impose in the EEZ under the Law of the Sea Convention

Nationals of other States permitted to fish in the EEZs of SRFC Member States must comply with the terms and conditions established in the laws and regulations of Coastal States. These laws can cover a range of issues, including the following (Article 62(4) LOSC:

- licensing of fishermen, fishing vessels and equipment, including the payment of fees and other forms of remuneration;
- determining the species which may be caught, and fixing quotas of catch;
- regulating seasons and areas of fishing , the types, sizes and amount of gear, and the types, sizes and number of fishing vessels, including catch and effort statistics and vessel position reports;
- requiring, under authorisation of the coastal State, the conduct of specified fisheries research programmes and regulating the conduct of such research, including sampling of catches, disposition of samples and reporting of associated scientific data;
- the placing of observers or trainees on board such vessels by the coastal State;
- the landing of all or any part of the catch by such vessels in the ports of the coastal State;
- terms and conditions relating to joint ventures or other co-operative arrangements
- requirements for the training of personnel and the transfer of fisheries technology, including enhancement of the coastal State's capacity of undertaking fisheries research
- enforcement procedures.

Enforcement Action SRFC Member States can take in the EEZ under the Law of the Sea Convention

Under Article 73 LOSC and pursuant to their sovereign rights in the EEZ, each SRFC Member State is permitted to take enforcement action against foreign vessels and foreign nationals fishing in its EEZ. The permissible enforcement actions include: (a) boarding, inspection, arrest and judicial proceedings. In taking enforcement action against foreign vessels and nationals in its EEZ under Article 73, the procedures an Coastal States must comply with include:

- Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security;
- Penalties imposed for violations of fisheries laws and regulations must not include imprisonment in the absence of agreements to the contrary by the States concerned;
- In the case of arrest or detention of foreign vessels the SRFC State must promptly notify the flag State, through appropriate channels, of the action taken and of any penalties imposed.

SRFC Member States and Law of the Sea Instruments

Treaty	Is signature/ratification required?	Ratification & other action by SRFC Member States
The Law of the Sea Convention	Required	Most SRFC Member States have ratified
The UN Fish Stocks Agreement	Required	Some SRFC Member States have ratified
The FAO Compliance Agreement	Required	Some SRFC Member States have ratified
The Code of Conduct for Responsible Fisheries	Signature not required	No ratification required Voluntary national action only
The IPOA Seabirds 1999	Signature not required	No ratification Voluntary national action required
The IPOA Sharks 1999	Signature not required	No ratification Voluntary national action required
The IPOA Fishing Capacity 1999	Signature not required	No ratification Voluntary national action required
The IPOA-IUU 2001	Signature not required	No ratification Voluntary national action required

2.6 | Access- agreements - the generic interests of Coastal States

Against the background of the rights and duties described above, the most important generic interests of the Coastal State can be summarized as follows:

- access to convertible currency through fee payments;
- taxation revenues;
- port and customs revenues
- bunkering taxes;
- financial and development assistance;
- joint ventures;
- second-hand vessels; and
- supply of catch to the local market.

Additionally, food security and support for the local economy are also important.

The Coastal State is also at least in theory interested in sound management of its EEZ resources and should in theory dedicate part of the proceeds from resource access agreements to better management of the resources. The Coastal State is also interested in building up a profile of the resources in its zone for later exploitation by national fleets. Where Coastal States have well developed national fleets and nationally based processing industries, these sectors are also interested in securing access to the markets of the access demandeur and will want lower tariffs and guaranteed market access in return for granting fisheries access. Finally all Coastal States seek to protect the interests of their artisan and national sectors with respect to the resources in the inshore zone (Figure 2-11) and the EEZ itself (Figure 2-12)

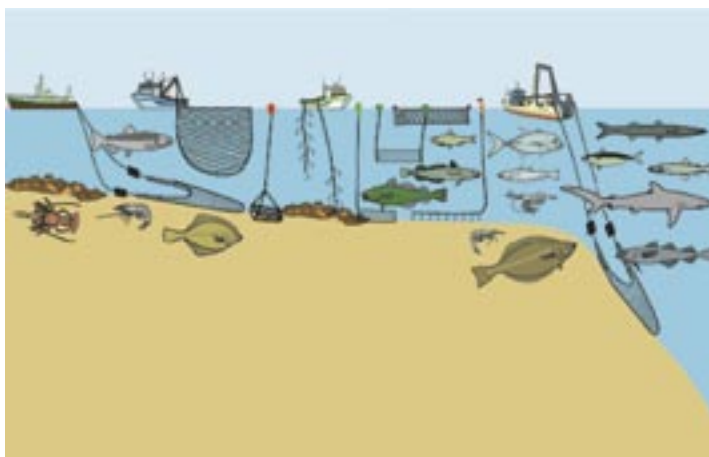


Figure 2-12 Fisheries Resources, Vessels & Gear Types Exclusive Economic Zone
Source: FAO

2.7 | The management tasks of the Coastal State

Figures 2-11 and 2-12 show the inshore and EEZ resources which fall within the control of Coastal States under international law. The management task of the Coastal State is to manage interactions between the vessel, gears and resources present in these two zones. Figure 2-13 shows the key species, gear and vessel types requiring management on the High Seas. Here too, the Coastal State must manage the resources in co-operation with Fishing States or access demandeurs.

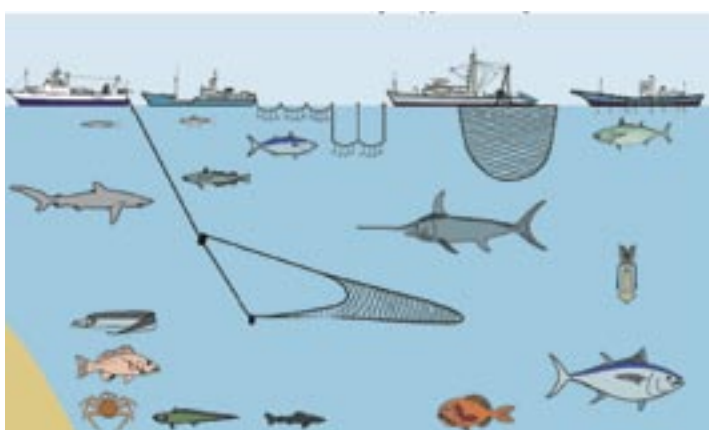


Figure 2-13 Fisheries resources, vessels & gear types - the High Seas
Source: FIGIS/FAO

2.8 | The generic interests of access demandeurs

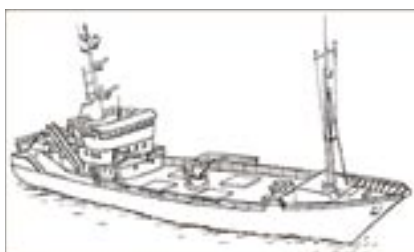


Figure 2-14 European seiner - FIGIS/FAO

Research shows that access demandeurs have the following generic interests:

- national food security interests based specifically on access to fish and fishing grounds (eg. Japan);
- national economic interests especially maintaining employment in areas dependent on fisheries and fishing (eg. EU, Spain);
- securing supplies of fish for domestic markets with specific tastes (eg. markets in Hong Kong, China and Japan);
- supplying fish to highly traded sectors – sashimi tuna, canned tuna, surimi products, shrimp, groundfish - all access demandeurs supply these sectors;
- responding to political demands by influential political groups based on fisheries and fishing interests (eg Spain – the cofradias and key political regions such as eg Galicia);

- political interests with respect to maintaining an international relations profile (Taiwan, South Korea);
- displacing surplus fishing capacity to overseas waters (China, EU);
- serving as a middleman between fish-hungry markets and areas rich in fish (Korea, Taiwan with respect to the Japanese markets).

The drivers of interest in access are always multiple and also shape how much the access demandeur is prepared to pay for access. Another factor shaping how much the demandeur is prepared to pay is the extent to which the species of interest can be imported into the markets of the demandeur. If imports can satisfy most or all of the domestic demand in the demandeur's market, they are unlikely to pay highly for access.



Figure 2.15 Japanese Pole and line vessel Pacific
FIGIS/FAO

2.9 | Current management tasks of the Distant Water Fishing States

Article 18 of the UN Fish Stocks Agreement, paraphrasing Article 117 of the LOSC requires that Flag States or DWFS should ensure that their flagged vessels: (i) comply with subregional and regional conservation and management measures; (ii) do not engage in any activity which undermines the effectiveness of such measures. A Flag State should only authorise a vessel flying its flag to fish on the High Seas where it is able to effectively exercise its responsibilities over such a vessel. The Flag State is expected to take the following measures as part of its duties on the High Seas:

- issuance of fishing authorisations;
- establishment of high seas fishing regulations;
- establishment of a national record of fishing vessels authorised to fish on the high seas and provision of access to information therein on request by other States;
- establishment of requirements for the marking of fishing vessels and fishing gear in accordance with the FAO Standard Specifications for the Marking and Identification of Fishing Vessels;
- establishment of requirements for supplying fisheries data;
- establishment of requirements for verification mechanisms for fishing effort
- adoption of monitoring, control and surveillance schemes at the national, subregional, regional and global levels;
- regulation of transshipment on the high seas;
- regulation of fishing activities to ensure compliance with subregional, regional and global measures;
- harmonisation of its internal monitoring, control and surveillance schemes with those agreed on at the subregional, regional or global level.

Article 19 of the UN Fish Stocks Agreement requires the Flag State ensure compliance by its vessels with sub-regional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks. To achieve this, states are obliged to:

- take enforcement measures wherever violations occur;
- investigate alleged violations immediately and in full;
- report back to the State alleging the violation on the measures taken and also to the relevant sub-regional organisation or arrangement;
- require any vessel flying its flag to provide all relevant information to the investigating authority;
- prosecute the case itself if the investigation so warrants;
- ensure that a vessel engaged in serious violations of conservation and management measures does not engage in high seas fishing until it has complied with sanctions imposed for earlier transgressions.

Sanctions are to be of a severity to deter future serious violations and may include the refusal, withdrawal or suspension of authorisation to serve as a master or officer on a fishing vessel. Flag States are also responsible under international law for maintaining two types of registers to assist them to implement their differing types of Flag State responsibility. These two types of Registers can be summarised as follows:

Table 2-1

Register Types	Register Type Type of Responsibility Supported by Register	Legal Authority
Register of Merchant Ships	Navigation responsibility	Customary international law LOSC
High Seas Register	Fishing vessel responsibility	FAO Compliance Agreement UN Fish Stocks Agreement

2.10 | Principal counterparts typically exchanged in fisheries negotiations

With the generic interests of Coastal States and access demanders having been identified, it is now possible to specify the types of counterparts typically traded innegotiations. They are:

Table 2-2 Exchange counterparts in negotiations

What the Coastal State has to offer	What the access demandeur has to offer
- fishing possibilities; - nationality and flag criteria; - technical conservation measures; - conservation controls for biodiversity; - right to establish joint ventures; - concession on joint ventures and other enterprises; - air cargo rights.	- financial compensation/access fees; - market access – concessions on tariffs and rules of origin; - development assistance to the fisheries and other sectors; - measures with an impact on the local economy; - assistance to support management of the zone; - investment in all aspects of the fisheries sector and other sectors.

Figure 2-16 Japanese Overseas Fisheries Aid



2.11 | Development assistance and access agreements

Access agreements are also closely linked with aid or development assistance. Japan and the EU have particularly active programmes in this regard. Both the Japanese¹¹ and EU¹² development assistance programmes in fisheries have been criticised

Figure 2-17 EU-Africa fisheries development assistance programs

Source: ADE, (2002) Evaluation of the Relationship between Country Programmes and Fisheries Agreements. Final Report. Brussels: European Commission, Annex 3 (1)

	No of Projects / Total	Type					Main Output				
		Fishing policy & administ. manag.	Fishery development	Fishery research	Fishery education/training	Fishery services	TA/training/studies	Supplies	Subventions	Investment finance	Info n.a.
Country programmes	131	82	37	4	5	3	97	11	2	10	11
% by number	100	62	28	3	3	2	74	8	1	7	8
% by value	100	36	58	1	1	2	46	9	3	27	15
Angola	8	5	3				6			1	1
Cape Verde	1	1								1	
Comoros	12	9	3				9			1	2
Equatorial Guinea	1	1					1				
Gabon											
Gambia	4	3	1				2				2
Guinea	9	5	2			2	7	1			1
Guinea Bissau	4	1	2		1		2	2			
Ivory Coast											
Madagascar	20	12	8				16	2		2	
Mauritania	20	13	4	2	1		15	3		2	
Mauritius	2	2					2				
Mozambique	21	14	4		3		16	2		1	2
Sao Tome e Principe											
Senegal	17	9	7	1			12	1	2		2
Seychelles	10	5	3	1		1	7			2	1
Regional programmes	57	35	6	12	4		48		6		3
% by number	100	61	10	21	7		84		10		5
% by value	100	69	14	15	1		61		38		2
ACP general technical coop.	19	12	4	2	1		17		1		1
East Africa	2			2			2				
Gulf of Guinea	3	2		1			2		1		
Indian Ocean	7	6		1			5		2		
SADC countries	3	3					3				
Southern Africa	2			2			2				
West Africa	21	12	2	4	3		17		2		2
Total	188	117	43	16	9	3	145	11	8	10	14
% by number	100	62	22	8	4	1	77	5	4	5	7
% by value	100	52	39	7	1	1	52	5	18	15	9



Figure 2-18 Manta Ray caught incidentally during purse seining in the Atlantic Source: Globalpictures.com(2006)

11 - S Tarte, Japan's Aid Diplomacy and the Pacific Islands (1998) National Center for Development Studies and Institute of Pacific Studies, Canberra and Suva

12 - A Acheampong, 'Coherence Between EU Fisheries Agreements and EU Development Co-operation: the Case of West Africa', ECDPM Working Paper No. 52. Maastricht ECDPM (1997).

2.12 | Calls for reform of access agreements

In recent years access agreements (especially those between highly industrialized States and developing States) have come under sustained criticism especially in the European political arena. The criticisms (not all of which are necessarily well founded) attribute a range of problems substantially or partially to access agreements. Whilst some of the issues highlighted by the reform movement relate to the poor operating context for agreements in developing States, others would appear to arise from the underlying assumptions, obligational content and practical focus of the agreements themselves. The basic thrust of criticism is that most agreements currently support or encourage irresponsible fishing due to:

- an absence of adequate knowledge about the stocks and species exploited under these agreements;¹³
- an absence of continuous assessment of the ecological, economic and social impacts of agreements;¹⁴
- poor economic returns from agreements for developing States;¹⁵
- poor data collection;¹⁶
- poor monitoring, control and surveillance;¹⁷
- lack of attention to access rights and customary tenure of artisan and semiartisan fisheries stakeholders despite recognition of such rights in the legal text;¹⁸
- unequal and damaging competition for resources between artisan and semiartisan interests and DWFS fleets;¹⁹
- export of overcapacity from industrialised States through the operation of localised joint venture vessels and chartered vessels under access agreements;²⁰
- the use of aid under access agreements to exercise improper influence;²¹
- the transfer of inappropriate models of industrial fishing to developing States via the terms of access agreements including vessel and gear types;²²
- ecologically damaging subsidisation of distant water fleets through access fees paid by Fishing State governments (a view held by prominent NGOs but challenged by Coastal States);²³
- the lack of incorporation of existing guidelines for sustainable fishing into access agreements.²⁴

Additionally, matters of human rights, food security and issues of development and poverty have entered the picture with arguments that fish caught under access agreements may be depriving affected communities and groups of access to fish – a matter of food security.²⁵ This range of concerns has led to various NGO proposals and campaigns aimed at

- 1 • subjecting access agreements to closer and more extensive public scrutiny;
- 2 • bringing access agreements into line with the concept of responsible fishing;
- 3 • subjecting access agreements to WTO disciplines on the basis that they are supported by ecologically and economically unsound subsidies.

13 - Caddy, J., Lodge, M., Martin, W., and Mfodwo, K., A Handbook for Negotiating Fishing Access Agreements (2001) at 4; IFREMER, Evaluation of Fishing Agreements Concluded by the European Community (1999) at 40.

14 - Caddy, J., Lodge, M., Martin, W., and Mfodwo, K., A Handbook for Negotiating Fishing Access Agreements (2001) at 3-7; IFREMER, Evaluation of Fishing Agreements Concluded by the European Community (1999) at 152-157 (criticising EU practice in this arena and making recommendations for improvement).

15 - See for example the extensive comparisons of value-added and economic returns as between African States and the EU provided at 101-149 of IFREMER, Evaluation of Fishing Agreements Concluded by the European Community (1999).

16 - IFREMER, Evaluation of Fishing Agreements Concluded by the European Community (1999) at 15.

17 - FAO. (n. d.) Assessing the impact of foreign fishing agreements in West Africa. Unpublished GCP/RAF/302/EEC (on file with authors).

18 - In the South Pacific see for instance, Michelle Lam, «Consideration of Customary Marine Tenure System in the Establishment of Marine Protected Areas in the South Pacific.» (1998) 39 Ocean & Coastal Management 97-104. For the African context, see for instance, Mika Diop, 'Artisanal Fishery Stakeholders in Casamance Discuss Their Problems' 9(2) EC Fisheries Cooperation Bulletin 26-27; CFFA/CREDITIP, Fishing for a future: artisanal fishing in Senegal and EU fisheries agreements (1996), Brussels.

19 - See for instance, Parlement Européen. (n. d.) Cohabitation entre peche artisanale et peche industrielle au Senegal. France: W-29/Final (EP Agriculture - Peche - Forets); Mika Diop, 'Artisanal Fishery Stakeholders in Casamance Discuss their Problems' 9(2) EC Fisheries Cooperation Bulletin 26-27; CFFA/CREDITIP, Fishing for a Future: Artisanal Fishing in Senegal and EU Fisheries Agreements (1996), Brussels.

20 - See Gareth Porter, 'Euro-African Fishing Agreements: Subsidizing Overfishing in African Waters' in Subsidies and Depletion of World Fisheries: Case studies (1997) WWF, Washington D.C.

21 - Sandra Tarte, Japan's Aid Diplomacy and the Pacific Islands (1998) National Center for Development Studies and Institute of Pacific Studies, Canberra and Suva; Sandra Tarte, Diplomatic Strategies: The Pacific Islands and Japan (1997), Pacific Economic Paper No.629, Australia-Japan Research Centre, Canberra; Ronni Alexander, "Japan and the Pacific Island Countries" http://www.upf.pf/recherche/IRIDIP/RJP/RJP_HS01/o8_Alexander.doc

22 - Sevaly Sen, EC Fisheries Agreements with ACP States and Their Likely Impacts on Artisanal Fisheries (1989) Rugby, Intermediate Technology Development Group.

23 - Compare Gareth Porter, 'Euro-African Fishing Agreements: Subsidizing Overfishing in African Waters' in Subsidies and Depletion of World Fisheries: Case studies (1997) WWF, Washington D.C. (the NGO view) with Roman Grynberg and Martin Tsamenyi, 'Fisheries Subsidies, the WTO & the Pacific Island Tuna Fisheries' (1998) 32 Journal of World Trade 127 (the Coastal State view).

24 - Caddy, J., Lodge, M., Martin, W., and Mfodwo, K., A Handbook for Negotiating Fishing Access Agreements (2001) at 3-7 and proposals for improvement offered there.

25 - On fisheries and food security generally, see the proceedings and conclusions of the FAO-Japan Conference on the Sustainable Contribution of Fisheries to Food Security (Kyoto, December 1995 <<http://www.fao.org/DOCREP/006/AC442e/AC442e00.htm>> at 16th April 2002.

2.13 | Implications of the reform agenda for Coastal State negotiators

Until the recent reform movement gained traction, the typical access agreement covered a narrow range of issues under the following heads of implementation responsibility:

- measures and obligations that are the responsibility of the Coastal State;
- measures and obligations that are the responsibility of the Distant Water Fishing State;
- measures and obligations that are the responsibility of the Fishing Company.

The calls for change have however brought new issues onto the negotiations agenda. In the years ahead Coastal State negotiators will benefit from developing an ability to negotiate effectively with respect to these new issues. The new issues are:

- establishment of a closer relationship between access agreements and various management instruments of the Coastal State (Fisheries Management Plans; laws relating to environmental protection, protected areas and bio-diversity law etc);
- reduction of fishing capacity;
- increased use of marine protected areas and other ecological management measures in access agreements;
- increased attention to issues of food security;
- incorporation of responsible fishing requirements into access agreements;
- increased use of evaluations and impact assessments before and after negotiations;
- the removal of fisheries subsidies;
- rules of origin and tariffs;
- eco-labelling;
- traceability.

An example of a new technique that would advance ecological objectives significantly is the use of impact assessments²⁶ during the time period of the agreement or during multiple time periods. Impact assessments could incorporate both technical and community input and could thus become an important aspect of

- the negotiation and re-negotiation of access agreements;
- a pre-condition for the negotiation or re-negotiation of an agreement.

The UN Fish Stocks Agreement explicitly requires impact assessments in Article 5(d). As Chapter 20 and Annex II shows, the EU is moving to an increased use of evaluations and assessments. These calls for reform have had an impact since even in institutions like the World Bank which had previously not paid much attention to access agreements, there is now growing interest in how access agreements help or hinder development. To help Coastal State negotiators meet these future challenges Chapters 21-24 describe the key features of each key new issue and sets out useful reference information to assist with addressing this issue during negotiations. In the years ahead, the reference or introductory information provided by the Manual will need to be expanded on and kept up-to-date by Coastal State negotiating teams or units.

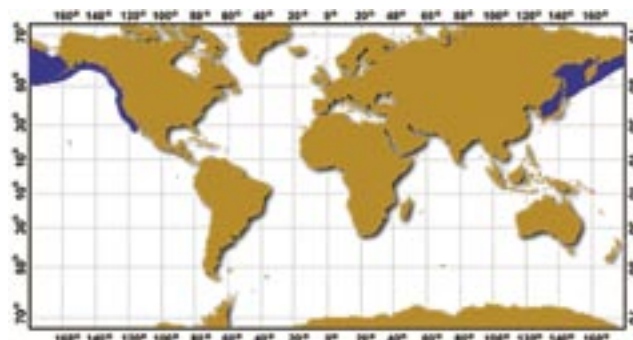
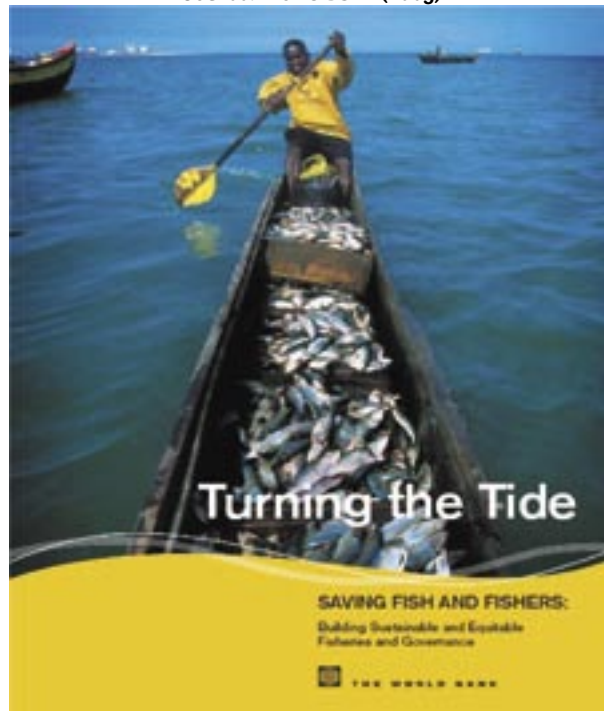


Figure 2-19 The global market in access rights - production regions and fishing grounds for Salmon
Source: FAO

26 - Impact assessments as discussed here are conceptually different from stock assessments as commonly understood - these focus on a narrow range of parameters and are principally statistical and probabilistic in focus.

Figure 2-20 World Bank 'Turning the Tide' Report on saving fish and fishers
Source: World Bank (2005)



Chapter 3

Applying Negotiations Theory To The Fisheries Agreements Arena

3.1 | Why some theory is useful

Each time a negotiator undertakes a bargaining process they have to make choices about what to say and do in order to achieve the objectives or goals set for them by their government. How are these choices made? Some negotiators act on the basis of instinct (ie. without consciously thinking). Others act on the basis of what seems to have worked for them or for others in the past. In either case, in acting without a fuller and systematic understanding of what goes on in the negotiation process, they perhaps run the risk of jeopardising their prospects of success. This is where a sound grasp of basic elements of negotiations theory can be useful.



Figure 3-1 Factory vessel net with cod-ends
Source: Anon.

An understanding of basic concepts from the rich theoretical literature on negotiations can support Coastal State negotiators in two critical ways. Firstly, it can provide them with a descriptive theoretical framework. Descriptive theories are useful because they help negotiators understand what's going on, and what choices they have in a range of

situations. Secondly a sound grasp of basic elements of theory opens up prescriptive or advisory possibilities for both the negotiator themselves, as well as for other less experienced participants in the process. A prescriptive theoretical framework can guide negotiator choices about how to prepare for and conduct negotiations in an increasingly complex and turbulent environment. Because negotiations are ultimately a practical exercise, the basic elements of theory that are required must be specific enough to be helpful and, at the same time must be comprehensive and flexible enough to cover the range of negotiations that negotiators are likely to face. This Chapter provides an introductory description of various concepts used in negotiations theory. It provides a solid foundation for practical application and, ultimately, informed action.

Box 3-1 Chapter 3 Highlights

Key issues addressed are:

- Negotiations theory as a useful contribution to negotiations practice;
- Key concepts in negotiations theory, including: , negotiation policy, negotiating context, issues, interests/ needs, positions, issue space, bargaining power, negotiations strategy, negotiations transaction, negotiations segment, resistance point/ reservation price, acceptance region
- Research and information discovery in negotiations;
- The value of considering negotiations as a dialogue;
- Distributive vs integrative approaches to bargaining;
- The need to identify zones of possible agreement, if a negotiations conference is to reach a successful outcome;
- The value of negotiators pre-developing a Best Alternative to a Negotiated Agreement (BATNA), and using BATNAs in the event of unsuccessful talks;
- How to frame issues- interests, fairness, needs;
- Techniques for making progress in complex negotiations- simplification, fractionation and sequencing.

3.2 | Defining negotiations

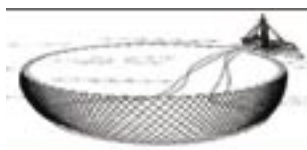


Figure 3-2 A purse seine operation.

Source: FAO/FIGIS

A negotiation is a multi-participant decision-making process. Each participant contributes to the outcome, agreement or solution. It is thus a joint decision-making process. In the case of bilateral negotiations, there are only two entities, whilst multilateral negotiations have more than two parties. Negotiations have three major aspects: content, process and context. Negotiations can be undertaken in a competitive way or in a collaborative way.

When negotiations are conducted competitively, this is known as distributive, positional or adversarial bargaining. When negotiations are undertaken collaboratively, this is known as integrative or co-operative bargaining.

Distributive strategies seek to maximize individual profit whilst integrative strategies seek to maximize joint profit or joint gains. Both integrative and distributive approaches are strategies used to implement goals. In practice most negotiations have both distributive and integrative elements. Fisheries negotiations are no exception. Whilst negotiations about the access fee tend to be distributive, negotiations about the contributions to be made by the Fishing State towards building up the technical capacity of the Coastal State tend to be more integrative in character. A negotiation may also start as a distributive negotiation and end up as an integrative one. Movement the other way – from integrative to distributive – also occurs.

3.3 | Negotiations policy



Figure 3-3 A drum seiner

Source: FAO/FIGIS

A negotiations policy is a set of general guiding principles aimed at achieving defined goals within a certain context. A negotiations policy is intended to influence and help determine which types of negotiations will be undertaken. It also seeks to influence the decisions or actions to be taken in specific negotiations. A negotiations policy does not specify what specific decisions and actions should be taken to achieve the goals of a particular negotiation. A negotiations policy addresses issues going beyond individual negotiations whilst individual negotiations have their own goals, these goals should fit within a broader policy framework. Negotiations policies are

the outcome of higher level political or company decisions.

Policies are a framework within which goals are set and expressed. Policies change from time to time. Thus for instance, the fisheries negotiations policy of the EU has changed to now embrace a fisheries partnership concept, in which there is in theory much more scope for collaboration between the EU and Coastal States such as the SRFC Member States or the Forum Fisheries States of the West-Central Pacific. At the same time however, one of the aspects or goals of the new EU negotiations policy is that the EU will undertake much more systematic (ex-ante) before as well as (ex-post) after evaluation of fisheries agreements and that these evaluations will influence decisions on individual negotiations and the goals to be aimed at in these negotiations.

Japan is another country which has long had a well developed negotiations policy and set of strategies to support its fundamental national goal of ensuring that Japan always has access to natural resources, especially food resources. This goal is driven by Japan's very limited natural resources when compared to its population and industrial capacity. With high domestic demand for fish resources, Japan strives to ensure it has access to fisheries resources around the world. China has also recently shown signs of developing a policy-based approach towards securing access to natural resources in Africa, with the announcement of an official African Policy.²⁷

27 - China's African Policy January 2006, <http://www.fmprc.gov.cn/eng/zxxx/t230615.htm>

3.4 | Negotiating context

Negotiating context refers to two aspects all of which shape specific negotiations events: (1) the immediate context; and (2) the broader external environment

The immediate context is likely to be more controllable than the broader external environment. Importantly, both immediate and external contexts have to be taken into account during preparation, bargaining and implementation.



Figure 3-4 Negotiating context

Source: Jean-Claude Maswana Management Communication (Business Negotiation) Kyoto University open-courseware http://ocw.kyoto-u.ac.jp/en/gs_economics/course02/index.htm

3.5 | Issues

Issues are the matters with respect to which there must be joint assessment and decision-making during negotiations. Issues reflect the needs of the parties. The majority of issues that need to be negotiated are usually identified in the prebargaining phase, and should then be set out in a general way in the Negotiations Conference Agenda. This is done through pre-negotiation exchanges of information between the parties and also during the process of preparation for the negotiation.

Issues can be classified into at least four types:

- 1 • primary issues are matters that must be negotiated, for which concessions should not be taken lightly. The access fee's price is an issue of this type;
- 2 • fixed issues are matters of such absolute importance to the party that under no circumstances is any compromise possible with respect to this issue. In many cases, a primary issue may also be a fixed issue. A good example is the question of whether a country recognises Taiwan or the People's Republic of China (PRC) and the implications that this then has for fisheries agreements negotiations between that country and Taiwan or the PRC;
- 3 • auxiliary issues are important enough to be negotiated but are not important or relevant enough to be either primary or fixed issues – they may form the basis for concessions. A good example is the issue of whether or not a foreign fleet will take on domestic fishermen or seamen. In many agreements, this issue is present but it may be addressed by the foreign fleet paying a sum of money if it is not willing or able to take on domestic crew.
- 4 • Inconsequential issues are unimportant so that the party is willing to agree to whatever the other side has proposed – inconsequential issues are essentially concessions that can be given away without much harm to the side proposing them.



Figure 3-5 A Negotiations Conference
Source: Anon.

Issues are presented during negotiations conferences as positions. Positions on issues are supported by arguments. Arguments in turn are communicated and debated. Compromises on positions are then made. Compromises made do not however mean that the party concerned has compromised on that particular issue. During the next round of negotiations, the issue may again be raised – the form in which it will be raised will however be different.

A finalised set of issues constitutes a negotiations agenda and will always contain primary issues. Auxiliary issues and inconsequential issues can be added later. A negotiations agenda, however, is seldom altered substantially once it has been finalised. The negotiation is successful if solutions

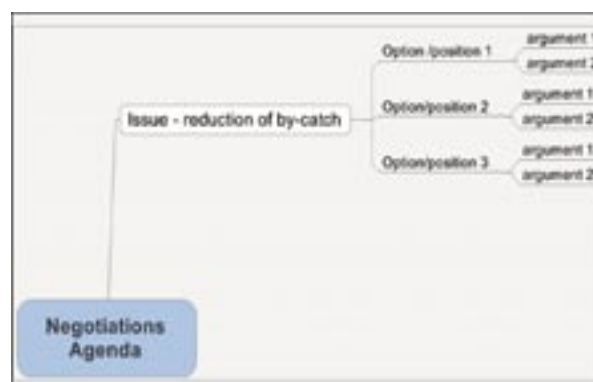


Figure 3-6 Relationship between Issues, Positions and Supporting Arguments

are jointly created to manage the issues. The negotiation is unsuccessful if solutions are not found. Fisheries negotiations of the type discussed in this Manual can be classified as bilateral multi-issue negotiations. They have a rich set of issues and trade-offs. A sample negotiations agenda is to be found at Figure 9-4. Finally, it should be noted that positions or proposals are presented on issues. Bargains centre on the positions and whether these can be reconciled.

3.6 | Interests or needs

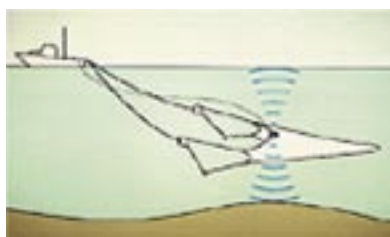


Figure 3-7 A midwater trawler.
Source: FAO/FIGIS

Interests are the underlying needs, desires, concerns, wishes of the principals in the negotiation. Interests underlie and drive positions with respect to an issue. An issue for example might be the ways and means of disposing of by-catch. By-catch can be dumped at sea or landed in the port of the Coastal State. The Coastal State might have several interests with respect to bycatch. A state's interest in food security might require that the by-catch be landed. Conservation interests might also support by-catch being landed since then it is possible to keep track of how much by-catch is actually happening. Artisan fishers (who focus on the by-catch as their main catch) might reduce industrial fishers bycatch with respect to that species. And further, the overall

joint interest of both the Coastal State and Fishing State is that by-catch be minimised in accordance with the requirements of ecologically sound fisheries management and current international law.

It can be seen that there are many interests associated with the specific issue in the negotiation. A good negotiator will be able to identify the interests underlying the positions that are taken on the issue, and will be able to join the other negotiator in jointly fashioning a solution to the problems or conflicts posed by the different dimensions of the issue.

3.7 | Positions

A position is a preference for a specific result with respect to an issue. Positions can be changed more easily than interests. Positions are expressed by a negotiating entity in the course of the negotiations. Positions are expressed at the start of the negotiations and are altered by the process of bargaining. A good negotiator seeks to go beyond the positions expressed by a party so as to identify the underlying interests driving the position.

3.8 | Issue space

Issue space refers to the range of matters associated with a particular issue, and includes underlying interests. For example, the grant of a right of access is a central issue in negotiations. Part of the issue space associated with this issue is the rate of utilisation of that right of access. Thus if a right of access is granted by a Coastal State to State X and the vessels associated with State X only utilise that right of access at a 30% rate, the rate of utilisation is part of the issue space. If the Coastal State in question is highly dependent on revenues from fisheries, then the rate of utilisation becomes an issue in its own right. Thus for example, the Coastal State may set a bottom-line in its negotiations strategy that it will not accept a rate of utilisation of less than 50% and will seek to be compensated should rates of utilisation fall below 50%. Alternatively, the Coastal State may use poor rates of utilisation from previous years as an argument for demanding some other counterpart from the Fishing State in the next round of negotiations.

3.9 | Bargaining power

Bargaining power in the context of negotiations has a number of sources. First and foremost, bargaining power is shaped by a State's share of market power and production capacity with respect to the subject-matter of the negotiation. The strength of the EU and Japan in negotiations is based on this fact. A country with a large domestic market to which other countries want access is in a position to make credible threats (as well as credible promises of payment and technical assistance). The capacity to make credible threats is a critical determinant of a negotiation.²⁸

A second source of bargaining power is what might be termed the ability to gather and effectively use commercial intelligence through 'commercial intelligence networks'. These are networks that gather, distribute and analyze information relating to trade, economic and business performance for both companies and countries. A State which has good networks is effective and powerful in negotiations. Included in such networks are the bureaucracy, business organizations and associations and individual corporations. The more integrated commercial networks are in terms of information sharing and analysis the more effective the country is in negotiations. All the leading DWFS have progressively developed sophisticated networks. China is relatively new to distant-water fishing but also has a very powerful commercial intelligence network. A third source of bargaining power is the capacity of a State to enroll other actors, both state and non-state, in a coalition (enrolment power) supporting its interests. A fourth source of bargaining power is a State's domestic institutions. Internal decisionmaking rules and rules on the delegation of negotiating authority to a negotiator affect the degree of bargaining power a State possesses. A State that binds its negotiators may, for example, in some negotiating contexts increase its bargaining strength. The negotiators cannot concede and this may produce a better outcome than untying the hands of the negotiators.

Of these sources of bargaining power, the two of most importance are market power, which underpins the capacity to make credible threats, and commercial intelligence networks. Whilst many Coastal States cannot immediately counter-balance the market power and industrial capacity factor, they can improve their bargaining power through improved commercial intelligence, better preparation and improved table skills.



Figure 3-8 Grading Prawns – Australia.
Source: AFMA (2006)

3.10 | Negotiations strategy

A negotiations strategy is a plan setting out decisions or actions that can be taken to achieve a negotiations goal. A negotiations strategy sets out a broad framework within which negotiation experts choose particular tactics or actions that they will take to achieve the defined goals or objectives for the negotiation. Negotiation experts implement strategies to achieve negotiation goals or objectives. They may do so within the framework of a formal negotiations policy or an ad-hoc one. The kinds of questions that a negotiations strategy addresses include:

- should I change my acceptance region?
- should I attack all dimensions of an issue as a whole package or settle them one by one? If handled one by one, what should the sequence be?
- should I solve the easy one first or the difficult one first?
- on which dimensions should I remain firm and on which should I be more flexible? Could I use a linkage strategy among the dimensions of an issue?
- what kind of pace should I have in making concessions?
- how open should I be?
- should my initial position or location within the issue space be reasonable or should it be extreme, allowing me greater latitude for adjustments?



Figure 3-9 Combined squid-jig vessel & purse seiner Australia Source: AFMA (2006)

²⁸ - Peter Drahos, When the Weak Bargain with the Strong: Negotiations in the World Trade Organization 8 International Negotiation 79-109, 2003 at 82-85

The responses to these questions can be ad-hoc and unplanned. It could be said that there is no strategy where responses are ad-hoc. Strategy can be planned to a significant degree on the basis of significant preparation. A negotiator constructs a strategy on the basis of a number of factors:

- their overall goals;
- analysis of the issues in the negotiation as well as its context;
- their self-assessment of their own personal negotiation style;
- an assessment of the possible strategies and needs of the access demandeur.

A well-organised CSNT will have institutional arrangements which allow its members to refer back to previous negotiations as they plan for future ones. Using this kind of historical memory negotiators may decide to keep the same strategy, shift to another strategy selected from recorded strategies, or design a new strategy to suit the circumstances. Chapter 15 discusses the contribution that formal debriefing and evaluation of past negotiations can make to the selection of strategies for future negotiations.

3.11 | Negotiations event

A negotiations event is an identifiable negotiation. It has three phases – prenegotiation; bargaining and post-negotiation. It also consists of negotiation segments. A good example is provided by Senegal, who has had at least 8 negotiation events with the European Union since the late 1970s, when the nation's relationship with the European Economic Communities first started. Successful negotiations events typically produce agreements or contracts.

3.12 | Negotiations conference

A negotiations conference provides a venue for bargaining by the parties to the negotiation. It typically lasts more than one day. It is the central part of a negotiations event. It is not however the entire event. Focusing on it too heavily is to the detriment of the preparation and post-negotiation phases, which are equally important. Source: Anon



Figure 3-10 A Negotiations Conference

3.13 | Negotiating party

A negotiating party is a participant in a negotiation whose agreement must be attained in order for a solution to exist. In the past it was well known who the parties in a negotiations event or conference would be- on the access granting side, they were typically the Coastal State and fishing industry, whilst on the access demandeur's side, the parties were the Fishing State and its industry. In recent years this has begun to change as global and locally based NGOs successfully call for reform in the negotiation and context of access agreements. The system of the past was very stable, whereas today, the situation is very fluid and complex. Modern stakeholders in the fisheries negotiation are many and the situation is highly unstable.

3.14 | Negotiations messages

Negotiations are an ongoing series of interactions. Interactions are conducted by emails, letters and telephone conversations- usually culminating in face-to-face conferences. Negotiations messages are sent in these interactions, and may be verbal or non-verbal.

In practice, they are a combination of both types. Important negotiations messages that are typically sent relate to the following matters:

- the initiation of a negotiations transaction (issuing the initial negotiation proposal);
- the acceptance of a proposal;
- seeking clarification of the content of a proposal;
- seeking clarification on the reasoning behind a proposal;
- the rejection of a proposal;
- the modification of a proposal;
- the withdrawal of a proposal;
- the generation of a counterproposal;
- the acknowledgment of receipt of a proposal;
- the making of a concession;
- the acceptance of a concession;
- the rejection of a concession;
- the termination of a negotiation transaction.²⁹



Figure 3-11 Artisan fishers harbour
– Mauritania Source : Anon

3.15 | Negotiations transaction

A negotiations transaction is a sequence or set of negotiation messages exchanged between the entities or parties to a negotiation. Transactions are shaped by the goals, policies, strategies and tactics at play in the negotiation. A number of negotiation transactions or exchanges constitute a negotiation segment. Verbal and non-verbal communications are at the heart of a negotiation transaction. From the point of view of making negotiations more professional, it is important to note that the quality of the communication underpinning a negotiations transaction can always be improved.

3.16 | Negotiations intelligence

Intelligence is a term associated with spies, James Bond and espionage. Intelligence is distinguishable from information and data in the sense that it is well analysed and targeted information. Although the term is seldom used in the fisheries management and fisheries policy literature, the information that shapes negotiator decision-making is in fact a form of intelligence - to be precise, it is a sub-set of that field of decisionmaking which is called Competitive Intelligence, Business Intelligence or Economic Intelligence. Related concepts which further explain the concept of negotiations intelligence are:

- analysis - the examination of complex information in order to ascertain its constituent elements and to more easily understand its meaning;
- benchmarking - a continuous, systematic process for evaluating and comparing your activities, products, services with those of entities that are recognized as representing best practices for the purposes of performance improvement. A secondary purpose is to reveal useful practices or ideas that may be adopted or adapted with advantage. Coastal States could for example benchmark their approaches to EEZ management and access agreement issues with best-practice performers elsewhere;
- competitor is any entity that offers the same, a similar, or a substitute product or service. Coastal States are

²⁹ - Haifei Li, Stanley Y. W. Su, Herman Lam, Yihua Huang, Automated E-business Negotiation: Model, Life Cycle and System Architecture http://www.cise.ufl.edu/tech_reports/tr01/tr01-005.pdf

all competitors with each other;

- business intelligence is any combination of data, information, and knowledge concerning the business environment in which an entity operates. Coastal States can improve their business intelligence dramatically using some of the procedures set out in Chapter 7;
- competitive intelligence is a systematic program for gathering, analyzing, and managing information about the current and proposed activities of competitors and opponents in negotiations. Coastal States can improve their competitive intelligence dramatically using some of the procedures set out in Chapter 7;
- competitor profiling is the systematic analysis of competitors in order to learn from their strengths and exploit their weaknesses. The knowledge acquired is used to gain and maintain a competitive advantage;
- opponent or co-contractor profiling serves the same purpose in the access agreements arena.

The concept of negotiations intelligence is discussed in more detail by Chapter 7 and Chapter 15.

3.17 | Negotiations segment

The concept of a negotiation segment is set out below. It is a set of negotiations transactions. The concept is different from that of the phase of a negotiation.

A negotiation segment can end in an adjournment, an impasse, a solution or a breakdown. Impasses may be encountered those that cannot be overcome resulting in the end of the negotiation segment, and may ultimately lead to a breakdown. In this situation, the negotiation has been a failure by any standards. Equally, the negotiation segment can also start with a normal interaction, followed by an adjournment, a return to a normal interaction and then end with a breakdown. Again the negotiation has ultimately been a failure. Figure 3-12 shows the different sequences that are possible in the negotiating process.³⁰

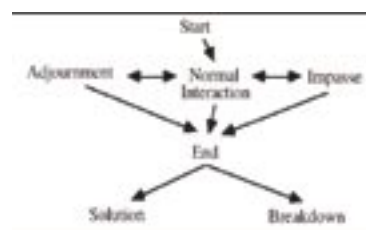


Figure 3-12 Negotiations Segment
Source - Holsapple (1997) 220.

3.18 | Resistance point/reservation price

A negotiator's resistance point is their minimum bargaining goal or their set of barely acceptable terms. At the other end is their target point or aspiration representing complete success or the most desired outcome. It is typical for the relationship between a resistance point and a target point to be placed along a continuum. In a multiple issue negotiation such as a fisheries negotiation, there is no straightforward continuum. Instead there are packages of different combinations of resistance points and target points, with each package combining different sets of issues.

3.19 | Acceptance region

For each party in a negotiation some points within an issue space may be acceptable and some are not. The acceptable points within an issue space are generally different for both parties. The acceptance region is shaped by many factors.

Time and timing is one of the most important issues, as shown in the example below. The acceptance region for each entity can be defined

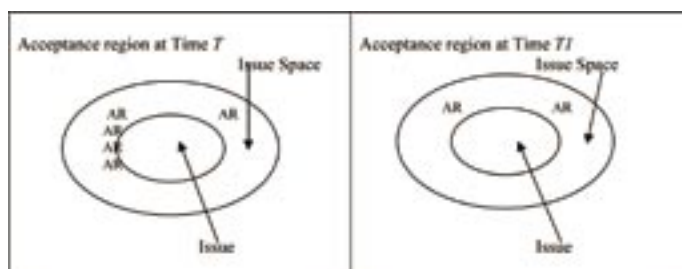


Figure 3-13 Acceptance Region
Source: Mfodwo (2006)

30 - Holsapple, 1997 220.

as the set of all outcomes that are acceptable to the entity at time T. How the acceptance regions of the two parties intersect will form the basis for reaching an agreement. The task of the preparation stage in negotiations is to try to estimate the acceptance region of the other side. During negotiations, attention must be constantly paid to changes in the factors affecting the acceptance region. At the same time, during the negotiations, the interchange of offers and counter-offers is designed to establish what the acceptance region is at that point in time, for the package of offers on the table. Each entity has a framework for determining its acceptance region at any time T. The decisions on acceptability from within this framework depend on the issue space, rules of negotiation, the entity itself, time and sometimes the intervention of a third party. The points within an entity's acceptance region may have different degrees of acceptability to the entity. Also the relative acceptabilities among these points may change overtime for an entity. Among the points within an entity's acceptance region, the least acceptable point is sometimes referred to as the reservation price, limit or break point/resistance point. In Figure 3-13 it can be seen that at time T that there are five locations within the overall acceptance region. Each space marked AR represents a space which can be filled by different packages of offers. However by Time T₁, the AR has narrowed considerably due to changes in the internal or external environment of the receiving entity.

Box 3-2

Example - Acceptance Region and Time - Coastal State

For a country highly dependent on revenue from fisheries and with a high level of external debt, the pressure to have funds available to pay external creditors means the country is likely to accept a much lower sum of money as it may not have the time to be able to patiently bargain for a larger amount of money.

Example - Acceptance Region and Time - Fishing State

For a country which has important political regions where fishing is an important source of employment, the acceptance region for offers of access is shaped in part by the political pressure from fishers who are out of work. Pressure is greatest at the start of the fishing season for the species of interest to these fishing fleets – the fishing season is shaped by natural factors (spawning; recruitment to the fishery, weather etc.). The acceptance region for the Fishing State at time T₁ (start of the fishing season) may be much larger

3.20 | Rules of negotiation

The term rules of negotiation describes the rules that govern negotiations. There is no authoritative source of negotiation rules. However, the rules recognised by the parties to a negotiation play an extremely important role in the negotiation process. The nature of rules can differ widely depending on the parties, and what aspects they seek to regulate. As a result, negotiation rules are too diverse to be comprehensively listed in this Manual. Although it is unwieldy to discuss all possible rules of negotiation, it is nevertheless possible to partition these rules into several major categories. These categories are concerned with time constraints, rules governing communication; rules of behaviour (such as for example negotiating in good faith) and rules for intervention by third parties. In terms of context, the context of international relations, rights of sovereignty, and free market principles relating to access rights are important aspects. Some examples of fisheries negotiations rules that have evolved over the last thirty years in international politics and international law are:

- fisheries negotiations can legitimately include non-fisheries issues such as development aid;
- third party interventions are rare – deadlocks and impasses are resolved by the parties or the need of the parties for revenue or access to fish resources;
- Coastal States are free to compete with each other or act co-operatively – countries in the South Pacific act more co-operatively than countries in the Indian Ocean or the SRFC region;
- Coastal States can play one Fishing State off against the other but must ultimately negotiate with each State in good faith.



Figure 3-14 Tuna being prepared for sale Tsukiji market Source: WWF/anon

In terms of negotiations process, the parties also set their own rules which are a mixture of international diplomatic rules and rules drawn from international business negotiations. Previous negotiations also provide precedents for later negotiations so that over time Country Y comes to conduct its negotiations with Country A in a different way from how it conducts its negotiations with Country B. One rule in the SRFC context appears to be that with the European Union, fisheries issues are closely linked with relations under Lome and Cotonou and also that the EU drafts the text of the final agreement. A new rule that appears to be emerging is that fisheries negotiations between the EU and ACP States should not take place in the absence of an assessment of the state of the stocks. In 2001, WWF published a Handbook for Negotiating Fishing Access Agreements setting out a number of principles to guide fisheries negotiations.³¹ They are a mix of rules to do with process as well as the substantive content of negotiations. They can be viewed as important rules of negotiation in the fisheries arena. The WWF Principles argue that a responsible fisheries access agreement or relationship is one in which the following phenomena can be observed:

- permitted total catch and total fishing capacity of the fleet is consistent with a sustainable level of fishing based on a clear scientific assessment of the state of the stocks;
- DWFS assume a proportionate share of the environmental costs of sustainable fishing;
- protection of interests of small-scale artisanal fishers of the Coastal State is assured;
- there is effective co-operation between the DWFS and the Coastal State in carrying out scientific research on the status of the stocks;
- DWFS undertake to collect and report catch and effort data in a timely and accurate manner;

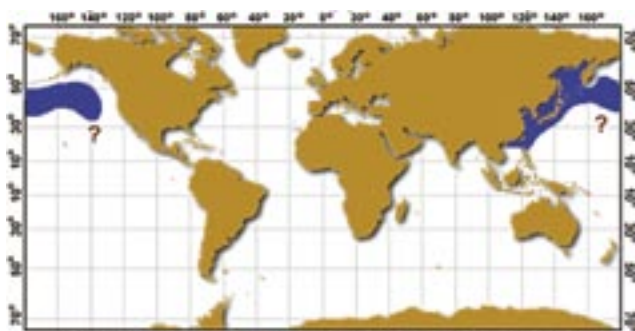


Figure 3-15 The global market in access rights - production regions and fishing grounds for Pacific Squid
Source: FAO

- coastal state ensures that its MCS capabilities are adequate to enforce fisheries law and regulations;
- terms and conditions of access are based on best practice fisheries management practices;
- negotiation of terms and conditions of access is transparent;
- parties conduct a thorough review of status of fishery resources before renewal of agreements;
- flag States take action to ensure that flag vessels comply with national laws;
- flag States ensure that flag vessels are subject to prosecution and appropriate punishment under Flag State law for serious violations.

3.21 | Negotiations protocols



Figure 3-16
Sorting Fish Australia
Source: AFFA (2006)

Negotiations Conferences or bargaining sessions are unique events. As such they require that both parties jointly agree to a set of rules of engagement. The rules of engagement that are agreed or that have come gradually to govern specific sets of negotiations are called negotiation protocols. Negotiations protocols are specific to particular relationships and negotiation events. These rules are based partly on precedent, culture, traditions of diplomacy and are influenced by additional factors. Thus the negotiations protocol followed by SRFC countries or Forum Fisheries countries differs according to whether the negotiation is with the EU, China, Japan, Korea or Taiwan. Some rules are part of the general framework of negotiation rules that is also part of international commercial diplomacy. However particular rules are also part of specific negotiation protocols. A general negotiation rule is that communication must be as effective as possible so as to facilitate joint decisionmaking. Therefore there is an obligation on both sides to ensure that translators/interpreters are available. However where the language (French) is shared – for example between Senegal and the EU, the negotiation protocol does not necessarily include interpretation/translation. On the other hand, Japan's negotiation protocol requires the provision of interpretation/translation. Negotiations protocols also have a lot to do with the type of bargaining that takes place during the negotiation conference.

31 - See JF Caddy, M Lodge, W Martin and K Mfodwo, A Handbook for Negotiating Fishing Access Agreements (2001) at 2-3.

For example it is possible for both parties to agree to a set of rules which would have the effect of encouraging integrative bargaining rather than distributive bargaining. Such a set of rules would include:

- jointly agreeing that negotiations are to be interest-based and are to avoid the adoption of inflexible positions;
- negotiating teams are empowered to address and resolve all issues in a fashion that the party believes to be reasonable;
- negotiating teams are not to negotiate to a deadlock;
- negotiating teams are to clearly identify the interests which each party believes should govern with respect to each unresolved matter where they cannot agree;
- joint procedures to further discuss the unresolved issues are then to be applied.

Setting ground rules in this way is however not currently used in fisheries negotiations.

3.22 | Information search and discovery in negotiations

Information search and discovery in bilateral fisheries negotiations has the following characteristics:

- 1 • at the start of the negotiating process each negotiator has sufficient information to be able to decide on a set of proposals which it prefers, and can determine an acceptance region for itself consisting of various combinations of offers;
- 2 • the preferences of the negotiators are not mutually exclusive, that is, there is enough of an overlap of the acceptance regions of both parties that it is possible to arrive at settlements which to some extent bring together the different preferences of the negotiators;
- 3 • neither negotiator has prior knowledge of the acceptance region or the preferences of the other;
- 4 • at the start of the negotiating process each negotiator has a strategic objective and a bargaining orientation or strategy. However, neither negotiator has specific prior knowledge of the bargaining orientation of the other although it can estimate what the strategy might be;
- 5 • evidence about the other negotiator's preferences and their bargaining orientation is only available via the information disclosed-either intentionally or unintentionally- by the other negotiator during the negotiating process;
- 6 • negotiators must therefore jointly search through a potentially large number of alternative settlements to locate those which satisfy the goals or objectives of both and which fall within the negotiating policies of both. They must find each other's acceptance regions on each issue or a combination of acceptance regions which satisfies both parties.

3.23 | Negotiations as dialogue



Figure 3-17 Automatic Squid jigging machine

Source: AFFA (2006)

A dialogue is a conversation between two parties. An interesting contribution to understanding what happens during negotiations comes from writers in linguistics, discourse theory and artificial intelligence. The focus of all these schools is to understand what happens when two sides engage in a conversation with each other – a dialogue. Despite their divergent fields of expertise, many of these academics come to more or less the same conclusion: negotiations are a dialogue, and under the broad umbrella of each specific negotiation, different types of dialogue or sub-dialogue take place. The questions they seek to answer are of practical interest to negotiators of fisheries access agreements. Far from having no connection with the practical world of access agreements, these fields relevantly all seek to answer the following questions:

- what types of dialogue are there?
- what are their building blocks – or better still, what negotiations messages are sent during different dialogue types – questions, listening, answers, statements etc?
- how is it possible to distinguish between the different types of dialogue?
- what negotiation messages (for example – questions) are sent during a particular dialogue?
- how do experienced negotiators recognize dialogue type?
- how do experienced negotiators shift gear to accommodate change in dialogue type or force change in dialogue type?
- how do experienced negotiators return negotiation to dialogue Type A when previously it has been of Type B?
- can new negotiators be taught the different types of dialogue?



Figure 3-18 The global market in access rights - production regions and fishing grounds for Common Sole
Source: FAO

Before discussing some of the useful themes associated with the concept of negotiation as dialogue, it is useful to specify the contexts in which dialogues take place. Essentially, there are three arenas for dialogue:

- 1 • The formal negotiations conference³² which has the following structure:
 - a • the full conference involving both sets of negotiators;
 - b • sub-conferences set up with the authority of the full conference – for example a brain-storming session involving environment and conservation experts from both teams working in a side group to explore the outlines of a new framework for setting up marine reserves within the framework of the access agreement.
- 2 • Hallways and corridors of the formal conference during breaks and other social events – this arena may be important even though officially communication of serious type may be forbidden. Many solutions to problems are in reality found during such conversations.
- 3 • Caucuses of the parties – essentially venues for internal dialogues within each team. Caucuses are of interest because a dialogue initiated during the formal conference by Party A may continue in the caucus of Party B. This is the case when for example, Party B tests out Party A's ideas during a caucus. Such a test may take the form of role-playing or “devil's advocate”. Effectively this is a continuation of a dialogue initiated by Party A. The danger is that Party B may end up unconsciously absorbing the assumptions and logics of Party A. The danger of such a “take-over” of mental processes happening is of course significantly lessened if Party B is well prepared and understands both its positions and those of Party A.

The main finding from the research work of the various schools (linguistics, artificial intelligence, discourse theory, communications theory) is that experienced negotiators handle different types of dialogue with skill, and are able to shift between dialogue types with ease. This is because through both experience and practice they have learnt to recognize when such dialogues start and end. The dialogue types are:

- joint-enquiry dialogues;
- information-seeking or unilateral enquiry dialogues;
- clarification dialogues;
- resource allocation dialogues;
- plan-definition or role allocation dialogues;
- deliberation dialogues;
- eristic dialogues.

However depending on the phase of the negotiation, some dialogue types are more dominant than others.

It is useful to deal with eristic dialogues first because they really should have no place in negotiation. An eristic dialogue is basically a quarrel or a violent argument. This kind of dialogue either leads to a deadlock or stalemate or is evidence that the negotiation has reached a dead end. Once eristic dialogues start occurring, it is time for the most sensible party to call off the negotiation.

The dialogues of interest to negotiations theory and practice are:

³² - Part III of the Manual discusses the negotiations conference in more detail.

- 1 • The resource allocation dialogue: this occurs when the two parties attempt to jointly divide a resource and the competing claims of the participants potentially cannot all be satisfied simultaneously. Here, although co-operation is required by both parties in order to allocate the resource at the same time, each participant has an incentive to try to achieve the best possible deal for him or herself. The Distributive phase of negotiations as well as the Cooperative phase are both examples of stages of the negotiation where the dialogue is about allocation rather than enquiry.
- 2 • The enquiry dialogue: this occurs when the two participants jointly seek to determine the answer to a question, because the question is important to the negotiation. Both sides know that they are ignorant of the answer and they both know that a false or incomplete answer to the question may prejudice the interests of both sides. The incentives to co-operate are clearly quite high in such a situation. The result is an enquiry dialogue in which the types of questioning and listening procedures that are used are co-operative.

Integrative negotiation will have a large number of enquiry dialogues, as both parties knowing negotiation to be about “increasing the size of the pie” will genuinely and jointly seek full answers to questions important to the negotiations. Indeed a fully integrative negotiation based on a high level of trust, is nothing but one long enquiry dialogue. At the end of the enquiry dialogue, the parties then undertake a resource allocation procedure which is also a joint deliberation:

- Party A: Okay now we have both found out the full picture, I will do X and you do Y;
- Party B: That sounds okay. I think I can also do Z when we have finished doing X and Y.



Figure 3-19 Turtle excluder device in trawl net AFFA (2006)

- 3 • Distributive negotiations also have enquiry dialogues. Their character, however, is different. For example, the preparation process makes certain matters 50% clear to one of the partners. They have an incentive to collaborate in a joint-enquiry dialogue with the other partner who is only 25% clear on the issues involved. However because their information level is higher, there is a much greater incentive to stop participating in the enquiry dialogue as soon as, say 75% of what they need to know has been answered. A good example of situations where joint enquiry occurs is with respect to the state of the resources in the zone or levels of IUU fishing where both parties have a genuine commitment to tackling the problem. Enquiry dialogues are also more likely to occur where the parties to the negotiation have a high level of negotiating authority, the size of both teams is small and there is a history of co-operation between the parties.
- 4 • The unilateral information-seeking dialogue: this occurs when one party to the negotiation, X does not know the answer to a question and believes that the other party Y does. X then seeks to find the answer from Y. The dialogue that follows consists of question types by X in an effort to get Y to reveal the answer. Y has a number of response options open, including being completely truthful or being completely deceitful. Where the negotiation is distributive the incentive to provide a deceitful answer is much greater than when the negotiation is integrative in character.
- 5 • The plan-seeking dialogue: this type combines most of the dialogue types described above. The purpose of the dialogue is to determine a course of action over a defined period in the future. Both parties wish to participate in a planned way but need to seek information from each other as to how exactly they will allocate their resources over the foreseeable plan period. Planseeking dialogues are thus a mixture of unilateral-information seeking as well as joint enquiry dialogues. Plan-seeking dialogues should not occur right at the start of a negotiation because not enough information is available for a sound plan to be identified.

- 6 • The deliberation dialogue: this type of dialogue involves reflection on the meaning of an event or action for the position of the person deliberating. Here the participants jointly attempt to settle the meaning of an action or a situation that is critical to their negotiation. Deliberation dialogues are seldom undertaken at the formal conference table. However whenever each side goes into a caucus they are engaged in a deliberation dialogue.
- 7 • The clarification dialogue: this dialogue is essentially a sub-set of each dialogue type presented above. It focuses on clarifying the meaning of a segment of each of the dialogue types above. Party X makes a statement or asks a question. Party Y then asks a question to clarify the meaning. Once this is done, the parties return to whichever dialogue they were previously engaged in.



Figure 3-20 The Global market in access rights production regions and Fishing Grounds for Northern Shortfin Squid
Source: FAO

3.24 | Distributive vs integrative approaches³³

Distributive bargaining is the name given to an approach to bargaining or negotiation that is used when the parties are trying to divide up or distribute what is available. The goal in distributive bargaining is not to ensure that both sides win, but rather that one side (your side) wins as much as it can. This generally means that the other side will lose, or at least get less than it had wanted.

Table 3-1 Distributive vs Integrative Approaches

Characteristic	Distributive approach	Integrative approach
Relationship	Temporary	Long-term
Consideration	Self	Both parties
Atmosphere	Distrust	Trust
Focus	Positions	Interest
Aim to gain	Advantage, concession	Fair agreement
Information	Concealed, power	Shared, open
Strategy	End justifies means	Objective and fair rules
Tactics	Coercion, tricks	Stick to principles
Outcome	Win-lose	Win-win

Negotiations theory contrasts distributive with integrative bargaining in which the parties are trying to make more out of what is available. The most common analogy used is that of a pie. With integrative bargaining, the parties work together to make the pie bigger, so there is enough for both of them to have as much as they want, whereas with distributive bargaining the parties focus on cutting the pie up, trying to get as much as they each can for themselves. In general, integrative bargaining tends to be more cooperative, and distributive bargaining more competitive. With distributive bargaining, common tactics include:

- trying to gain an advantage by insisting on negotiating on one's own home ground; having more negotiators than the other side;
- using tricks and deception to try to get the other side to concede more than you concede;
- making threats or issuing ultimatums; generally trying to force the other side to give in by overpowering them or outsmarting them, not by discussing the problem as an equal (as is done in integrative bargaining).

³³ - International Online Training Program On Intractable Conflict Conflict Research Consortium, University of Colorado, USA <http://www.colorado.edu/conflict/peace/treatment/distbarg.htm>

Often these approaches to negotiation are framed as incompatible. Fisher, Ury, and Patton, authors of the negotiation best-seller *Getting to Yes* (1981) argue integrative bargaining is superior to distributive bargaining in most, if not all, circumstances even in situations in which something is to be divided up. By cooperating and be enlarged or some other way can be found to provide gains for all sides. Other theorists suggest this is unrealistic and does not correspond to how negotiations - and especially international negotiations - work. Conflict theorists Lax and Sebenius have suggested that most negotiation actually involves both integrative and distributive bargaining which they refer to as «creating value» and «claiming value.» Negotiators should do as much as they can to «create value;» once the pie is as big as they can make it, they should claim as much of the value they can for themselves. Knowing which approach to take when is what they refer to as the «negotiators dilemma.»

3.25 | Zone of possible agreement³⁴

Finally, a Zone of Possible Agreement (ZOPA) must exist. As a negotiator, you must start out by knowing what your settlement range is. The task is to discover what the ZOPA is - this means you need to discover what the settlement range of the other side is. If it overlaps with yours then there is a ZOPA and the possibility that a bargain can be struck somewhere within that ZOPA.

Figure 3-21 Zones of Possible Agreement
ZOPA Access Fees

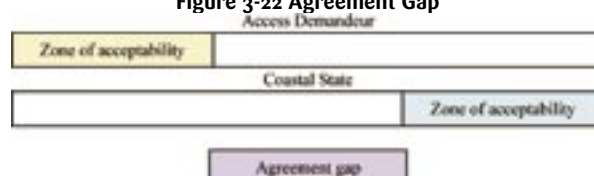


Because fisheries access negotiations are multi-issue negotiations there are in fact multiple ZOPAs - one for each issue. However trade-offs and bargains occur with respect to each ZOPA. Thus the access demandeur will be prepared to move upwards and pay more if he is allowed to establish a joint venture in which he has 70% control. However he will want to pay less because he wishes to establish a joint venture in which he has 70% control but the laws on joint ventures only permit 50/50 joint ventures. If, however, the Coastal State agrees to make an exception to this law and allow a 70% joint venture then the access demandeur wins and so does the Coastal State as far as the amount of the access fee is concerned.

3.26 | Agreement gap³⁵

When the zones of acceptability do not overlap, then there is an effective agreement gap and reaching a satisfactory conclusion is unlikely.

Figure 3-22 Agreement Gap



Where this occurs, there are three possible outcomes:

- one person compromises and moves outside their zone of acceptability;
- both people compromise, giving way on things where they really did not want to concede;
- bargaining failure occurs because neither party concedes sufficiently and they depart without reaching any substantive agreement.

34 - See David Straker, Agreement in Negotiations - http://changingminds.org/disciplines/negotiation/articles/zone_agreement.htm

35 - See David Straker, Agreement in Negotiations - http://changingminds.org/disciplines/negotiation/articles/zone_agreement.htm

3.27 | BATNA/walk away

A highly influential branch of negotiations theory based on the writings of Fisher and Ury (originally from Harvard University), who argue that an effective negotiator must have a Best Alternative to a Negotiated Agreement (BATNA).³⁶ This school of thought argues that a key part of the preparations prior to beginning negotiations should be developing a BATNA to provide options during the negotiations. With this approach at the end of the preparations period, a negotiator should have:

- 1 • a strong ability to conduct effective negotiations with the other side;
- 2 • a well-developed ability to walk away from the negotiations with minimum regret and fear because they have an alternative.

Although a party's BATNA may change to some degree as negotiations proceed, a negotiator is expected to use their BATNA as a reference point throughout the negotiation process. There is a large body of evidence which shows that a negotiator with a BATNA never feels cornered or under pressure to yield to pressure from the other side—this is because they already

- 1 • know very clearly when negotiations are no longer profitable and should thus be ended;
- 2 • what options they have once they walk away from the negotiating table.

Having a strong walk-away alternative is more than just a comfort blanket. When a person in a negotiation realizes that agreement may not be reached they are forced to think about what they will do if the negotiation fails. If a person does not have a very good alternative then in negotiating they are driven as much fear of not reaching agreement as by the prospect of reaching a satisfactory agreement. They are therefore more prepared to accept a poor deal.

3.27.1 Developing a possible BATNA

BATNA theory argues that having a walk-away alternative or BATNA can prove to be one of a negotiator's most powerful tools. However the BATNA must be ready. There is no time to prepare one during actual negotiations. BATNA theory argues that preparing a BATNA is in itself a valuable exercise, as it readies the negotiator emotionally for the possibility of not reaching a satisfactory conclusion. It also prepares the negotiator for the prospect of walking away from the negotiation, and stimulates them to think about what would happen next. The steps in developing a BATNA are:

- 1 • contemplate the possibility of being unsuccessful in the negotiation;
- 2 • assess possible things that the country can do if the negotiation is unsuccessful. - this requires the honest assessment of a range of possibilities;
- 3 • choose a limited set of alternatives that you would be prepared to contemplate and that is within your capacity to implement;
- 4 • explore and prioritize amongst the alternatives - in doing this, reduce the list to a realistic few alternatives, typically one to three, that the country will have time and other resources to develop.

3.27.2 Developing your BATNA/walk-away

After a set of feasible alternatives are identified, BATNA theory suggests the negotiator/country spend some time developing the walk-away alternative(s), so as to bring them to a situation of readiness so that they can be implemented immediately if necessary. This requirement is central, given that BATNA theory states that if you do not succeed in the negotiation, you should be able to walk away to another situation which although not as good as the desired outcome, is nevertheless anticipated and perfectly acceptable.



Figure 3-23 A West African port scene
- Source CAPE/CFFA website(2006)

3.27.3 Strategic dilemma - using the BATNA/walk-away

Once the BATNA is developed, the next question is how the country will actually use it in practice. The most important thing to remember is that walking away is a last-ditch action and the main purpose of having a walk-away is to help keep the other person negotiating. It also defends you, preventing them from using their walkaway as a threat to gain concessions.

36 - BATNA, or Best Alternative To a Negotiated Agreement (Fisher and Ury, 1981).

Question 1 - Should you hint at your BATNA during negotiations?

It is typical for poorer countries not to develop a BATNA. Very often, the other person will not know that you have such a strategy. They may well not have one themselves (many do not) and have not even thought about it. Just a hint, a small sniff, that you have an alternative to reaching agreement may well alarm them enough to consider your real offer. A way to hint is to indicate that if agreement is not reached then this is not the end of the world for you. Thus the “rather” in a following phrase- «I would rather reach agreement»- indicates to the other party that there is an acceptable alternative to agreement. ‘Rather than what?’ is the thought that such a phrase is intended to convey.

Question 2 - when do you actually show your BATNA?

If, after hinting that you have a walk-away, the other party still does not act in the way you want, BATNA theory argues that you should make the walk-away more visible. Showing that you have actually put effort into developing an alternative indicates that you are serious and are not bluffing when you hinted at alternatives. BATNA theory suggest that you show that you have a walk-away alternative in a number of smaller revealing steps, each time giving the person the chance to collaborate more and accept your offer. BATNA can be revealed in a variety of ways:

- at the negotiations conference itself;
- through mass media reports about what your country is doing with other competitors;
- through mass media and other reports demonstrating that the country has options other than those currently under negotiation.

Question 3 - when do you actually use your BATNA?

BATNA theory holds that if the other party is still not ready to negotiate collaboratively, even after you have shown that you can walk away from the table without losing too much, then you may need to show that you are prepared to do this. Do this with dignity and grace, never with anger or bad favor. Express sorrow that agreement was not reached and wish them well (they may yet call you back). Then leave. Depending on the situation, you might like to wait a few days before actually deploying your walkaway, just in case they call you back.

3.28 | Relationship between reservation point and BATNA

The point at which a party chooses to exercise their BATNA is not always the same as their reservation point. It may fall below their BATNA or be above their BATNA point.

3.29 | How relevant is the distributive approach to fisheries negotiations?

This approach is extremely relevant. Indeed the distributive approach dominates fisheries agreements negotiations in the SRFC region and the rest of the world.

3.30 | How relevant is the integrative approach to fisheries negotiations?

This approach would yield better results both for the resources themselves, their habitat as well as for the people whose livelihoods are bound up with fisheries. Communities and commercial interests in Coastal States and in the home countries of access demandeurs would all benefit if more information were freely shared and options

for sustainable extraction and management of resources were jointly brainstormed, modelled and explored. For instance the EU and Japan could share their extensive knowledge of the region's resources more widely. This is not the case at present. Fisheries partnership agreements could provide a basis for more integrative negotiations. However this potential is yet to be realised.

3.31 | How applicable is the BATNA concept to fisheries negotiations?

Yes - this concept is highly applicable. In a broad strategic sense, the EU has recently investigated what the results of non-conclusion of fisheries agreements would be for (a) EU markets, fleets and dependent regions;³⁷ (b) key partner countries.³⁸ In terms of specific negotiations, most access demandeurs also estimate what their options are should an agreement not be negotiated. For Japan, the general BATNA is to source more imports. For the EU the general BATNA includes managing a period of unemployment for key fleets and heightened imports of the resources desired under a particular agreement. In the case of the EU, legislation explicitly provides compensatory money for shipowners and crew for up to two years whenever a agreement cannot be reached. This is the so-called principle of temporary cessation of fishing.³⁹

3.31.1 Are any States using the BATNA approach in fisheries negotiations?

Yes - both Japan and the EU use this approach. It would appear that Senegal, Mauritania and Morocco - North-West African States which have from time to time walked away from negotiations with the EU - use their version of BATNA to support their negotiations.

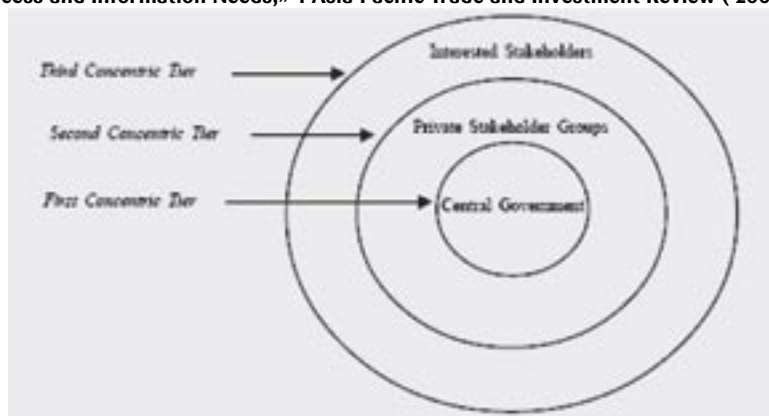
3.31.2 Can Coastal States use BATNA more widely in their fisheries negotiations?

Yes. They can do so. It will however require that governments consciously plan ahead and develop BATNA options.

3.32 | Stakeholders

Figure 3-24 - Stakeholders

Source: D Bhattacharya, «Least Developed Countries in Trade Negotiations: Planning Process and Information Needs,» 1 Asia-Pacific Trade and Investment Review (2005) 69-90 at 76.



Stakeholders can be divided usefully into tiers. The primary concern would be first tier and second tier actors. Stakeholder issues are discussed more fully in Chapter 6 on Stakeholder management.

37 - See IFREMER Report (1999) at 137-159

38 - See generally, IFREMER Report (1999). The report page numbers identify where the BATNA type assessments for each country are discussed: Greenland - 104-105; Norway - 107-108; Latvia Lithuania & Estonia - 108- 109; Faroes - 110; Iceland - 112; Morocco - 114-117; Mauritania 118-119; Angola 119-120; Senegal 120-121; Guinea-Bissau - 122; Guinea-Conakry - 123-124; Gambia - 124; Sao Tome - 125; Ivory Coast - 126-127; Cape Verde - 127-128; Equatorial Guinea - 128; Seychelles - 129; Madagascar - 130; Comoros Republic - 131; Mauritius - 131. The EU uses the terms strategic adhesion and strategic interest rather than BATNA.

39 - For the EU framework of support for fishing fleets, see for example, Articles 23 and 26 of the proposed European Fisheries Fund http://eur-lex.europa.eu/LexUriServ/site/en/com/2004/com2004_0497en01.pdf and EU Factsheet - EU aid available for socio-economic measures and temporary cessation of activities http://ec.europa.eu/fisheries/cfp/structural_measures/socio_economic_en.htm

3.33 | Cultural dynamics in negotiations

Culture is a specialised aspect of negotiations which requires a discussion in its own right. To assist Coastal State negotiators, detailed appendices setting out guidance on how to negotiate with officials from Korea, Japan and China are provided as appendices to this Manual. The Manual does not itself however devote specific attention to the issue as it is a highly specialised subject in its own right.

3.34 | Framing

A frame is a way of looking at a situation. Framing is important in negotiations since it shapes the way in which issues, needs, interests, issues and positions are eventually presented during a Negotiations Conference.

3.34.1 Interest-based framing

Interest-based framing describes situations in terms of interests, rather than positions. Often, interests are compatible, even when positions are not. Thus interest-based framing enables the parties to identify win-win solutions to problems that might not have been evident when the issues were described in terms of the parties' positions.



Figure 3-25 The global market in access rights - production regions and fishing grounds for Northern White Shrimp - Source: FAO

3.34.2 Fairness-based framing

In fairness-based framing, the parties approach the negotiation as an effort to obtain what is rightfully theirs. In doing this, they base their arguments on principles of fairness which are accepted by the larger society, including their more reasonable opponents. Fairness is a criterion that can be increasingly used by Coastal States given increasing global concern that access agreements be equitable. Coastal States which have good information on negative impacts of agreements can use such arguments to blunt the sharp edge of some of the demands made by access demanders. Demands for fairness must however be based on solid and impartial research.

3.34.3 Needs-based framing

This approach frames a conflict as a collective effort to fulfil the fundamental human needs of all parties. By eliminating the tensions that arise when these needs go unmet, the approach can sharply reduce the level of conflict.

3.34.4 Joint reframing/assisted reframing

When parties to a negotiation each define, or frame, the issues in very different terms it can make cooperative problem solving very difficult. An exercise in joint reframing can help each side see the issues as the other side sees it, which can help both sides address issues in a more constructive way. It can even be helpful to get an outside observer to help one side alone assess the situation to be sure that its view is reasonably fair and accurate.

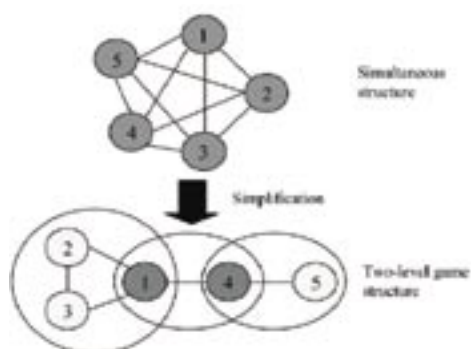
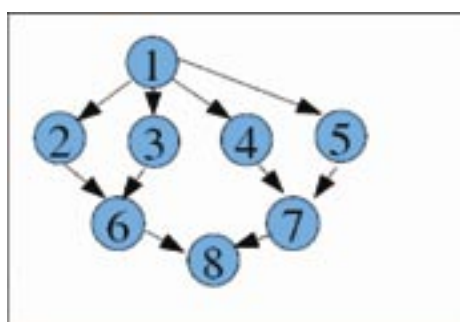
3.35 | Techniques for making progress in complex negotiations

Making progress in complex negotiations involves analysis and the ability to use various techniques. Common techniques applied to difficult techniques are explained immediately below:

Table 3-2 Common techniques for making progress in difficult negotiations

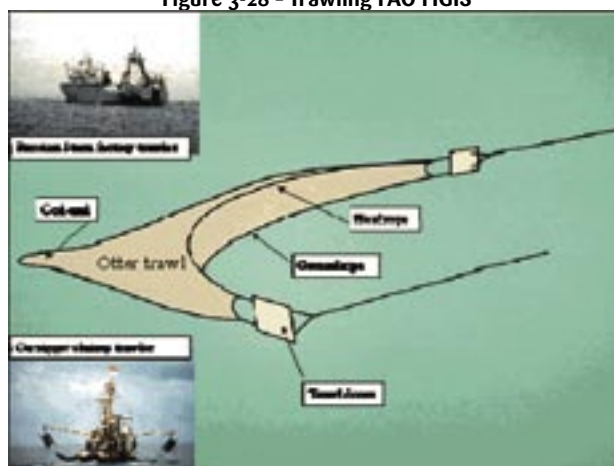
Approach	Elements
Subtracting issues	this requires eliminating particular elements from the issues to be negotiated – this can be done by agreement, by pressure or through deception
Subordination	this involves combining elements of an issue or of different issues and making the most difficult one less important or providing a framework for managing more difficult issues. For example, it may be useful to negotiate guiding principles to provide a framework for the discussion rather than negotiating detailed and difficult issues first
Sequencing	Addresses issues in sequence so that progress on one issue builds momentum to make progress on other issues
Fractionating	This approach divides the issues into two or more subsets to allow for easier negotiation.

In Figure 3-6 issues are complicated and no progress is being made. However, once simplification is applied, it becomes possible to make progress because Issue 1 is linked with Issues 2 and 3 and Issue 4 is linked with Issue 5. Dealing with Issue 1 in the form of a trade-off against Issue 4 leads to overall progress.

Figure 3-26 - Simplification⁴⁰

Figure 3-27 - Fractionation and sequencing⁴¹


In this example, Issue 1 is very complex. However it is possible to address it by using both fractionation and sequencing. Splitting the issue up into fractions is the first step creating sub-issues 2, 3, 4 and 5. Because 4 and 5 are related, their resolution allows a result 7 to be created. The resolution of 2 and 3 leads to the creation of Result 6. The final result is creation of the solution – 8 by combining 6 and 7. It can be seen that sequencing principle has also been followed throughout. The sequence is not however a linear sequence. This approach is however only possible where both negotiating teams are prepared to engage in integrative bargaining behaviour; they learn as they progress and can see how to convert 1 into 8. The process is also iterative or step-by-step in character.

Figure 3-28 - Trawling FAO FIGIS

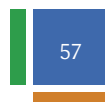


40 - Adapted from M Watkins, 'Strategic Simplification: Toward a Theory of Modular Design in Negotiation' 8 International Negotiation (2003) 149-167.

41 - Adapted from Mark Silberstein, Condor High Throughput Distributed System Lecture 2, http://webcourse.cs.technion.ac.il/236370/Spring2005/ho/WCFiles/Condor2005_2.pdf



PART II – PREPARING FOR NEGOTIATIONS



OVERVIEW - PART II

PREPARATION

Preparation is the most important element in the negotiations process. Expert negotiators are of the view that many of the problems encountered during a Negotiations Conference can be dealt with by good preparation and rehearsal. This may come as a surprise since many people would expect actual, spontaneous bargaining (see Part III) to be the most important part of negotiations. However, the ability to bargain can never be a substitute for adequate preparation. Why? Because bargaining without sound knowledge of the situation of your co-contractor is nothing more than a gamble. Eventually, this kind of gambling fails and is exposed. Whilst in everyday life you can often afford to go into a negotiating situation saying that you will just see what happens and react accordingly, access negotiations are more complex, with more at stake. It is best to go into an access negotiation as thoroughly prepared as possible. Preparation must cover both process and content and should cover the following matters in as much detail as possible:

- a full analysis of what the Coastal State really wants, together with what realistically you think your State is actually likely to get;
- a full analysis of the facts of the Coastal State case, including a clear statement of its strengths and weaknesses for negotiation purposes;
- a full analysis of your priorities and choices – access negotiations are multi-issue negotiations – the partners exchange packages of offers;
- at least a partial analysis of what your BATNA is and a basic plan on how you intend to implement your BATNA if it seems there is not going to be agreement;
- as much analysis as possible of the case of your co-contractor (their needs, objectives, issues, positions, strategy, tactics, strengths, weaknesses etc.);
- a full consideration of how you would bargain;
- a full consideration of how the negotiation should be structured;
- consultation at an appropriate level with all key stakeholders.

Additionally, good preparation will help your confidence and will also help you to do your best even where your country is objectively in a weak position. Finally, preparation also ensures that the Coastal State negotiator has a certain degree of control over the flow of events during a Negotiations Conference. It is important to note that although the Negotiations Conference has phases or stages (see Part III) it does not really have a formal, inflexible structure. Negotiators frequently move backwards and forwards between the phases and stages during the course of a Negotiations Conference. The Coastal State negotiator needs therefore to be totally in command of all the facts and figures he/she thinks relevant to the negotiation and also needs to be able to deal with all aspects fluently and flexibly and also on the spur of the moment.

Coastal State negotiators can address the following aspects of preparation to considerable advantage:

- task-oriented selection, orientation and psychological preparation of the CSNT - Chapter 4;
- paying close attention to road-map issues (strategy, style) for both sides - Chapter 5;
- paying close attention to management of relations with relevant stakeholders - Chapter 6;
- securing and using relevant commercial intelligence and information to back the negotiation - Chapter 7;
- identifying and managing physical environment considerations to advantage - Chapter 8.

This Part of the Manual also provides the user with selected checklists, mind-maps and sample plans to assist negotiators prepare for negotiations

Perspective adopted in the discussion

The discussion in this segment of the Manual looks at issues from the point of view of the leader of a CSNT. As such the language moves between the impersonal and the more direct tone of voice as appropriate.

Figure 3-29 Indian Ocean tuna super -seiner AFFA (2006)



Chapter 4

Selecting And Orienting The Government Team

4.1 | Introduction

The CSNT is the principal instrument for realisation of national fisheries access objectives. It must have a sound composition. Technical as well as strategic elements must all be fully addressed. CSNT members must fully understand the objectives of the specific negotiation but also of negotiations in the fisheries arena in general. Negotiations can also drain energy both physically and emotionally. Members of the team should thus be physically able to withstand intense periods of stress and also be psychologically prepared. There must also be adequate preparation and orientation through pre-negotiation rehearsal of bargaining strategies and tactics. These issues are discussed in more detail by this Chapter. We begin the discussion by addressing some general and strategic considerations.

Box 4-1 Chapter 4 Highlights

Key points discussed in this Chapter are:

- Strategic considerations in orienting and selecting the CSNT;
- advantages and disadvantages of different approaches to team size and composition;
- Roles within the CSNT- team leaders, principal negotiators, technical analysts, process observers, content observers, proceedings recorders etc.;
- Rules and procedures for maintaining discipline in a CSNT;
- The role of playbooks and other documentation led approaches to negotiations;
- Using rehearsals, role-plays and simulations to orient and improve CSNT performance;
- Methods for managing government teams which lack continuity.

4.2 | The ideal negotiator – benchmark and reference point

In deciding the composition and size of a CSNT the following questions should be considered:

- what is the significance of the negotiation?
- should the negotiation be contracted out to highly skilled private negotiating firms or should it be done internally?
- what are the advantages or disadvantages of one person only; a duo or a team?
- to what extent will on-the-spot authority be required?
- is it necessary for your side to provide evidence of power and authority?
- how many people will the other party bring to the negotiation?
- what should we be looking for in the personalities of the persons selected?
- to what extent is technical expertise crucial?
- are third parties likely to become involved in the negotiation at some stage?
- should the negotiation be used as an opportunity to train junior negotiators and build up national fisheries negotiation capacity and experience?
- is there a need to limit possibilities for corruption by for example varying negotiators?
- is team composition to be used as a bargaining tactic?

4.3 | Strategic considerations in selecting the government team⁴²

In deciding the composition and size of a CSNT the following questions should be considered:

- what is the significance of the negotiation?
- should the negotiation be contracted out to highly skilled private negotiating firms or should it be done internally?
- what are the advantages or disadvantages of one person only, a duo or a team?
- to what extent will on-the-spot authority be required?
- is it necessary for your side to provide evidence of power and authority?
- how many people will the other party bring to the negotiation?
- what should we be looking for in the personalities of the persons selected?
- to what extent is technical expertise crucial?
- are third parties likely to become involved in the negotiation at some stage?
- should the negotiation be used as an opportunity to train junior negotiators and build up national fisheries negotiation capacity and experience?
- is there a need to limit possibilities for corruption by for example varying negotiators?
- is team composition to be used as a bargaining tactic?

Box 4-2 Reflections - Strengths and Weaknesses of Negotiators

- List those personal qualities which you think are strengths or advantages in a negotiator. (When you have listed all you can think of, try to put them in order of importance by numbering them 1, 2, 3 etc., starting with the most important.).
- List those personal qualities which you think might be weaknesses in a negotiator or cause problems for a negotiator. (When you have listed all you can think of, try to put them in order by numbering them, starting with what might cause most difficulty.)

4.4 | The solo negotiator⁴³

There are advantages and disadvantages to using a single negotiator rather than a team of negotiators. The choice between individual negotiator and team negotiations should be periodically reviewed. Some experts suggest this should be done before every negotiation, whilst others believe a periodic review is good enough.

Box 4-3 Reflections Solo Negotiations

Recall negotiations you have been involved in as a solo negotiator. What kinds of pressures did you feel during the process? Knowing what you know now, what would you have done differently?

Table 4-1 The solo negotiator

Advantages	Disadvantages
• vests responsibility in one person preventing divided opinion; • can make on-the-spot decisions to gain concessions.	• may be used to signify that the negotiation is not considered important; • requires competence in all aspects of relevance to the negotiation (legal, technical, etc) ; • can have back-up team but communication and coordination costs are high; • Highly open to corruption; • The important roles of process observer and recorder of negotiation minutes are unable to be performed - and the other side may capitalise on their absence.

42 - Raiffa, The Art and science of negotiation, 60 and also generally, DW., Hendon, «Who: More or Less, the composition of the Negotiating Team» Chapter 7 of DW Hendon, RA Hendon and P Herbig, Cross-Cultural Business Negotiations (1996) 93-106.

43 - The Art and Science of negotiation, 60

4.5 | Using a team⁴⁴

Nowadays most important international negotiations, whether political, trade or commercial are carried out by a team. The advantages are significant given that very few people can be master all of the many relevant areas of expertise. As the value and complexity of the transaction increases the tendency is for team size to get larger. The disadvantage (trade-off) of a larger team is a higher incidence of problems with team management and co-ordination.

Table 4-2 Teams

Advantages	Disadvantages
• provides wide expertise, skills; better fact-finding; • allows pooled judgment in decisionmaking, idea-generating; • presents larger opposition (for political, PR, surprise) ; • allows larger participation (useful for training); • allows use of sub-teams to concentrate on specific issues.	• danger of disagreement amongst team members; • team control during negotiations becomes more difficult; • team communications become more complex; • personnel cost associated with the negotiation increases.

The problems of team co-ordination are usually overcome by appointing a lead negotiator, and giving each team member a specific role or function to perform. A high degree of management and co-ordination prevents the other side from seeking advantage by either:

- creating divided opinion in other party's team;
- aiming questions at the weakest member;
- asking for everyone's opinion;
- getting members of the team to talk out of turn or to vent their emotions.

Although teams are a good approach a smaller CSNT normally functions better than a larger one and you should always question whether a proposed additional member(s) can make an effective contribution.

4.5.1 Using team size and composition as a tactic

It is well known that some countries use team size as a tactic, bringing large and sometimes intimidating teams to the table. Coastal State negotiators should not feel pressured by this tactic. Sound preparation more than matches any impressions of power and competence that a large team provides. Team composition can also be used as a tactical weapon. With this approach, the CSNT can be consciously composed of people who are seen as hard-liners or soft-liners on the issues at stake.

4.6 | Composition and roles of CSNT members.

The table below identifies common roles in negotiations and potential team members to fill those roles.

Table 4-3 Team composition

Team role	Potential team member
Team leader	Likely to be government official but can be subcontracted outsider or specialist or academic
Technical analysts- experts on fisheries; environment; trade; conservation; marine biodiversity, etc.	Government ministries; NGOs; contracted personnel from overseas; from fisheries sector; from international organisation; industry sector
Pricing / monetary issues analyst	Contracted personnel from overseas; economists; international NGOs; industry sector

⁴⁴ - The Art and Science of negotiation, 61.

Implementation expert- a person knowledgeable on aspects ie. monitoring, evaluation aspects agreement	Officer in charge of implementing the agreement (usually from Fisheries and/or Treasury)
Process observer	This role can be taken by an expert or by a trained technical analyst
Recorder of negotiation proceedings/Content observer	This role can be taken by an expert or by a trained technical analyst
Legal issues and drafting specialist	Specialised legal staff if available

Box 4-4 Strategy

When acting as a solo negotiator, consider taking at least one other person with you so that after each round of bargaining you can jointly debrief and evaluate the progress of bargaining. Also consider using a formal evaluation tool.

4.6.1 Team leader⁴⁵ vs principal negotiator⁴⁶

In all negotiations the team leader is the person with official political authority to negotiate for the Coastal State. The principal negotiator is the person who represents the government during negotiations and does most of the bargaining. The team leader is usually the principal negotiator. However, the team leader may delegate the principal negotiator role to another person, or even persons. This is particularly appropriate where the situation requires presentation of issues by an expert. Switching team leaders may also be used as a tactic to destabilise the opposition, or purely to give one team leader a rest. A change from a hardliner to a soft-liner or vice versa is likely to be read as a tactical move. Provided all members of the CSNT have had sound training in negotiation, and knows their specific role, it may sometimes be useful to change tactics with a swap of principal negotiator, so that for example a fisheries scientist might negotiate technical issues (e.g. catch rates and establishment of marine protected areas) while a price analyst negotiates access fee rates. When using this approach the team leader must be particularly vigilant to assure that the various negotiators share information and work toward the same objectives.

Box 4-5 Reflections

Look at the list of attributes that an ideal negotiator should have. Which of these attributes appear to be contradictory? Are there any other attributes you would want to add to this list. Think of some people you know who are excellent negotiators. They can be from your country or anywhere else. Do any of these attributes come to mind when you think of them? Which of these characteristics is missing? How does what is missing affect their effectiveness?

4.6.2 Other team members

Individuals should only be selected for team membership when they can add to the efficiency and effectiveness of the team. Individuals should not be added to a team purely to reward them with foreign travel or because of their personal relationship to people of importance – their presence could impede the effective functioning of the CSNT as a whole.

Box 4-6 Reflections

In your country, what procedures are used to select negotiators? Can these procedures be improved upon?

If there are problems with the procedures for selection, consider providing a pool of possible candidates with extensive training in negotiating technique. It will then matter less if from time to time members of the CSNT are selected on grounds other than merit.

45 - <http://www.acq.osd.mil/dpap/contractpricing/vol5toc.htm> FAI Guides <http://www.acq.osd.mil/dpap/contractpricing/vol5toc.htm>

46 - FAI Guides - <http://www.acq.osd.mil/dpap/contractpricing/vol5toc.htm>

4.6.3 The process observer

The process observer is your team's assessor of what actually goes on within the bargaining process. The process observer is also crucial to your team's ability to conduct a sound evaluation of its performance after each bargaining round. This role is thus an extremely important one and should not be entrusted to junior officials. It requires close attention, practice and training. To improve the performance of their process observers it is suggested that Coastal State team leaders should consciously address and practice aspects of table procedure relating to process observation. Clear guidelines must be given to the process observer and also to members of the team. The table aspects include:

- where the observer will sit;
- how the observer will signal to others;
- how and in what format the observer will take notes whilst observing;
- how the observer will intervene – most importantly, to get the lead negotiator or team leader to call a break or a caucus;
- how the process observer can provide feedback during a bargaining session.

Issues the process observer looks out for include:

- atmosphere - is it tense? relaxed? which issues generated excitement?
- energy level - is it high? low? excited? exhausted?
- control - how much control over teams was there? how was it exercised? who lost control?
- quality of interaction - how well did the participants listen to each other? speak to each other? did conflict arise? how was it handled?
- clarity - did people understand each other? was there any confusion?
- questions - what questions arose re: process or content?

Countries which do not currently use process observers should strongly consider using them. Chapter 13 discusses the role of the process observer in more detail. Sample process observation sheets are also provided together with worked examples.

Box 4-7 Reflections - Negotiator Self-Analysis

- have you carried out a negotiation before?
- in what section of government?
- how successful was the negotiation?
- do you think you could have been more successful?
- If so, how?
- what tactics might you use in negotiating?
- have you found that these tactics work?
- are you worried by any tactics that might be used against you in a negotiation?
- have you found ways of dealing with tactics that worry you?
- do you tend to plan for a negotiation?
- would your tendency be to be conciliatory or to go in fighting?
- if you carry out a negotiation, do you try to get it over quickly or take as long as it takes?
- what strengths do you feel you have as a negotiator?
- what would worry you most in negotiating?
- are there any negotiating skills that you feel you do not have but which you wish to acquire?

4.6.4 Expert support external to the CSNT⁴⁷

This type of support is generally only needed in the period before the differences/similarities between government and co-contractor positions are clearly defined. After this phase of the preparations process, expert support should only be introduced into the rest of the preparations or the Negotiations Conference itself if it is fully integrated into the team. Support which is not fully integrated into the team often acts as a destabiliser and may actually be detrimental to the negotiation (See Chapter 12 for discussion of destabilisers and how to deal with them). This is because such experts are not fully part of the team and find it difficult to make the concessions that may be required to achieve final agreement especially where such concessions relate to their specific areas of expertise. They may be so convinced that their relatively narrow position is correct that they may consciously or unconsciously sabotage efforts at compromise. Even so, it should be remembered that highly expert support may be needed throughout negotiations which are complex or highly technical. Clear protocols establishing and documenting the roles and limitations on non-integrated expert support are necessary when such support is relied upon periodically throughout a negotiation.

47 - FAI Guides - <http://www.acq.osd.mil/dpap/contractpricing/vol5toc.htm>

4.7 | Playbooks

A playbook is a document which sets out a preferred approach to negotiations. It can be used by a State or a company. Playbooks set out

- a range of likely positions;
- supporting rationales for these positions;
- acceptable alternatives to the preferred positions at the heart of the book.

Playbooks are written and tested by experienced negotiators, and combine their experience with what is known about a country's needs and preferences. Playbooks are best used as a support tool when resources are stretched and there is little team continuity. By using playbooks (these always include detailed checklists and forms) a country or company with limited resources can empower negotiators with talking points and fall back positions to rely upon in negotiations. Good playbooks address points which are most often raised as well as points on which the country or company is willing to compromise. One individual or a team with a good playbook may be able to do quite well in relatively simple negotiations even though they are not highly prepared. The use of playbooks is recommended for countries which have a significant problem with team continuity- they do, however have to be updated periodically. Commercial negotiation firms can assist with the generation of playbooks. Categories of information that may be found in playbooks include:

- customs and traditions of negotiations in your country and other countries you deal with frequently;
- procedures and rules that affect negotiations;
- basic elements of strategy, tactics, and technique;
- legal and ethical standards that affect negotiations;
- objective factors and criteria to be used to evaluate issues;
- alternative options that have been employed by that country in the past to resolve other negotiations;
- innovative, creative proposals that you have used or encountered in the past;
- characteristics and preferences of other negotiators;

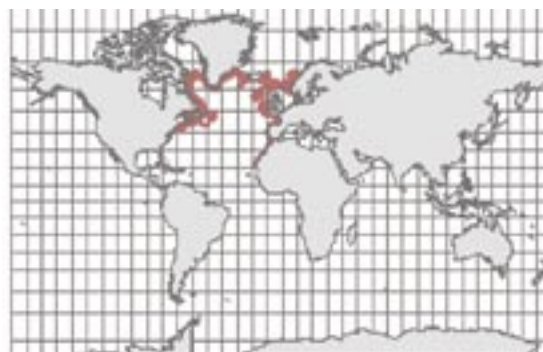


Figure 4-1 The global market in access rights production regions and fishing grounds for Round-nose grenadier

Source: FAO



Figure 4-2 The global market in access rights in access rights - production regions and fishing grounds for Northern Brown Shrimp

Source: FAO

Box 4-8- Strategy exercise

During practice sessions with the CSNT make videotapes of how you do the following:

- accept a proposal;
- seek clarification of the content of a proposal;
- seek clarification of the reasoning behind a proposal;
- reject a proposal.

Invite comments and criticisms from other members of the CSNT. If you feel unable to do this, observe these tapes privately and work on improving those aspects of your communication with which you feel uncomfortable

Adapted from Mulholland, The Language of Negotiation 1991 (selected pages)

4.8 | Orienting the CSNT

A key orientation principle is that every member of the CSNT should take part fully in preparations. This can be achieved through regular scheduled meetings and other forms of best practice in the management of teams. During preparations, the CSNT leader should encourage debate, so that diverse views are heard. As much as possible the CSNT should also have a mixture of personalities and styles in the group. It is also useful to arrange for the CSNT to be briefed by relevant experts and stakeholders such as NGOs. Finally at the orientation stage it is important to identify members of the team who are likely to be destabilisers (see Chapter 9 for discussion of destabilisers as a key part of the dynamics of bargaining). Destabilisers may need to be replaced or kept under control. This should be done in such a way that they can still contribute constructive ideas to the work of the team. Drafting a negotiations plan together is also a good way of orienting the government team. Content will vary depending on the negotiation in question, but generally speaking negotiations plan should include information such as the following:

- background (e.g., agreement; co-contractor, and negotiation situation);
- major and minor negotiation issues and objectives (price and non-price);
- negotiation priorities and positions on key issues (including minimum, objective, and maximum positions on price);
- favoured negotiations approach.

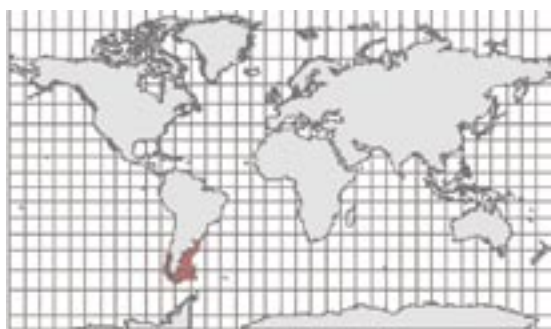


Figure 4-3 The global market in access rights production regions and fishing grounds for Patagonian Grenadier
Source: FAO

A sample negotiations plan is set out at Box 8-1.

It is possible to use the negotiations plan as part of the orientation process as follows:

- present the plan to the team;
- encourage input from team members to identify weaknesses and alternatives - you should give special attention to input from those with more experience in negotiations with the same cocontractor;
- revise the plan as necessary;
- define the role each team member will play in putting the plan into action;
- role-play or rehearse relevant parts of the plan.

4.9 | Rehearsals

It is emphasized throughout this Manual that rehearsals are crucial to success in negotiations. Skilled negotiators prepare not only what they are going to say, but also how they are going to say it, and rehearse a number of options. This not only develops their competence, but also considerably enhances their confidence in managing the overall process. Rehearsals are crucial during preparations and also have a role during bargaining especially with respect to effective closing. (See Part III). Rehearsals can usefully cover both issues of content and process. With respect to process, rehearsal of these areas (all of which are covered in detail by Part III) pays real dividends. Negotiators should rehearse and be confident in their approach, for each of the following features:

- questioning;
- listening;
- closing;
- making and tracking concessions;
- the use of tactics;
- integrating the process observer into the work of the negotiating team;
- the different bargaining phases;
- transition between the different phases;
- comparing distributive with integrative approaches.

Box 4-9 - Exercise- rehearsal and role reversal: comparing distributive bargaining with integrative bargaining

Break your team into two groups – DWFS and Coastal State.

Provide each side with real information drawn from a previous negotiation that your country has conducted.

Select 5 items for offer by each side.

After each phase discuss the results of the negotiation.

Phase 1 - Distributive Bargaining - 45 minutes

1. At the start of the process each side receives information setting out the 10 issues under negotiation;
2. Each side then decides its reservation point, target point and its estimation of a realistic price or result;
3. Each side must choose and use at least one tricky or dishonest tactic during the negotiation;
4. Each side must begin negotiations by exchanging written offers with their opponent;
5. Have a period of 10 minutes in which each side goes into caucus, studies the offers made and decides what tactics it is going to use;
6. Start bargaining after this 10 minute period is over;
7. Teams must proceed to the stage of exchanging concessions with each other as rapidly as possible;
8. Conclude the negotiation after 45 minutes;
9. Discuss the process.

Phase 2 - Integrative Bargaining -- 45 minutes

1. Use the same information from the distributive bargaining phase;
2. Change the roles of the participants;
3. Participants must begin their negotiation with a 15-minute discussion of their needs and interests and also explore the possibilities for integration and collaboration;
4. During this time, they are not permitted to discuss any monetary figures or make any direct or specific offers;
5. At the end of 15 minutes they can then start bargaining;
6. Conclude the negotiation after 45 minutes;
7. Discuss the process and compare the two phases.

You may choose to extend or change the allotted times or allotted items

Box 4-10 - Instructions for role playing and role reversal

Role-playing is an activity in which negotiators assume the roles of other negotiators and act these roles out. In a role play participants are usually given an open-ended situation in which they must make a decision, resolve a conflict, or act out the conclusion to an unfinished story. Role-playing is designed to promote understanding of the actions of other negotiators as they interact with members of the CSNT.

By acting out the role of another individual it is easier to see other points of view. Role-playing can also give negotiators the opportunity to learn or improve their behaviour with respect to various situations. Role-playing is also useful for developing critical thinking, decision-making, and assertiveness skills.

Procedure

Selection of the Role Play Situation: Role-playing can be used to develop many of the skills set out in this Manual, especially those require to be effective in bargaining. Select any of the scenarios set out in the strategy exercises or reflections segment of the Manual and develop a role-play around them. In particular role-play how to address the tactics of negotiators known to you and your CSNT.

Preparation and Warm-Up: Members of the CSNT or trainees should be told the situation or problem and instructed as to the various roles. If role-playing is new to the class, «warm-up» or introductory activities may be helpful. For example, participants might be asked to role-play greeting a long-lost friend, or to role-play the way someone who had just won a large sum of money would act.

Select Participants: Negotiators can either be assigned roles or the Instructor/CSNT Team leader can ask for volunteers. Role plays may be conducted in front of the entire group or a number of simultaneous role plays could be conducted by dividing the class into small groups. Negotiators who do not participate in the role play should act as observers and use the observer process sheet provided in Chapter 13 of the Manual

Conduct the Role Play: Direct negotiators to act out the role the way they think someone faced with the same situation would act in real life. The Instructor/CSNT leader should not interrupt the role play. However, if the role-playing negotiator need some help in getting started the Instructor/CSNT Team leader should assist and provide examples. After conducting the role-play it is sometimes useful to have negotiators reverse roles or to conduct the same role play using different participants. For example, two negotiators might role play an information exchange section of the Negotiations Conference between a Coastal State and a delegation from Taiwan, Korea or the European Union.

Use Role Reversal: After conducting the role play once, the negotiator who acted as the DWFS representative should assume the role of the Coastal State official and vice versa.

Debrief: All aspects of the role-play should be debriefed and evaluated. Typical debriefing questions include the following:

- how did you feel about the role play and each of the various roles?
- was the role play realistic? How was it similar to or different from negotiations you have been involved with? Was the issue addressed resolved well? If so, how? If not, why not?
- what, if anything, could have been done differently? What other outcomes were possible?
- what did you learn from the experience?
- compare the initial role-play to the role-reversal;
- get observers to feedback their comments to the role-players.

Chapter 5

Developing A Road Map

Issues Of Strategy & Style

5.1 | Introduction

All negotiations end up travelling down a particular road. The question is whether the road that is followed is mapped properly or comes about by accident or chance. In referring to road maps we are drawing attention to all three aspects of negotiation - substance, strategy and style. Substance relates to the content of what is said, whilst style relates to how it is said - the behaviour of the person sending the negotiations message. Strategy covers both style and content. In this Chapter we focus on both strategy and style because it is these inter-related aspects which constitute the essence of the road-map followed by a negotiation. As a central feature of preparing for your negotiations you will need to consider how you will combine style and strategy to achieve an effective road-map. We shall start first with style and then discuss strategy to illustrate the differences as well as close relationship between the two.

Box 5-1 Chapter 5 Highlights

Key points discussed in this Chapter are:

- Developing a negotiation 'road map' including a BATNA;
- Prioritising issues and preparing trade-offs;
- Predicting your competitor's road map;
- The impact of negotiators' personal style on negotiations;
- The value of matching personal style to strategic needs;
- Methods for conducting pre-negotiation exchanges (telephone, written, face to face);
- The place of written materials in the negotiation;
- Crisis communication plans when negotiations fail;
- Being prepared to say "no";
- Avoiding and managing typical problems at the preparations stage.

5.2 | Style

Style becomes evident at the bargaining table itself. At this level, style can be evaluated by asking whether a person is accommodating, combative or instinctively co-operative. Style also includes the particular language a person uses, their tone, the volume of voice at which they speak as well as their physical attitude - how do they sit? Stand? Project themselves? What is their style of dress? Style is also about a person's relationship with others - are they rude, sarcastic or condescending? In reality, style includes much more than what is revealed at the bargaining table. It covers a whole range of factors, some of which are natural to the person concerned; others learnt. Style includes personal psychological attitudes towards bargaining, debate and the handling of conflict.

Styles can be competitive/distributive or integrative/co-operative. A person's style does not however necessarily match their strategy. For example a person who is very charming and friendly- their style- may nevertheless be employing a highly competitive strategy. At what point might you discover this? During the exchange of concessions! At this point you might find that your "friend" is very good at implementing any one or more of the tactics discussed in Chapter 12. This absolute charmer may "salami" or "blanket" you to great effect. They may even deliver an ultimatum in a suave and charming tone of voice and with extreme politeness. You may find it hard to respond effectively to this type of negotiator.

5.3 | Strategy

Strategy sits between substance and style. It is the overall approach taken to achieve the objectives sought by the contestants in the negotiation. It has internal and external aspects. Internal strategy addresses both preparation as well as bargaining or table processes. Strategy in an internal sense can be analysed as follows:

- persuasion strategy – general and specific tactics (See Chapter 5 - this Chapter & Chapters 11-13 for more detail);
- concession strategy – general and specific tactics (See Chapter 9 for more detail);
- closing strategy – general and specific tactics (See Chapter 9 for more detail);
- stakeholder relationships management strategy – general and specific tactics (See Chapter 6 for more detail).

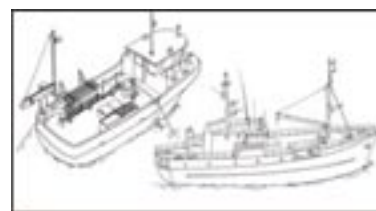


Figure 5-1 Longliners - FIGIS/FAO

Box 5-2 - Case study - strategy, substance and style Taiwan's status in international politics and international law

Substance

It is well known that there is a conflict between China and Taiwan over the international law status of Taiwan. China maintains that Taiwan is a province of China, whilst Taiwan maintains that it is an independent State. For both China and Taiwan this issue is one of substance and a matter of content in negotiations. Taiwan in general prefers not to discuss the issue, whilst China may make it an issue in negotiations and may condition entry into an access agreement on the country in question breaking off any relationships with Taiwan.

Taiwanese strategy

As a matter of strategy, Taiwan may wish to avoid discussing any issues which bring up the question of its relationship with China. Thus for example discussion of the nationality of crew on Taiwanese vessels will bring up the fact that many crew-members on Taiwanese vessels are in fact from China. A Coastal State may wish to discuss this issue since enforcement action by the Coastal State will lead to China entering the picture as the State of nationality of the crew-members concerned. Should enforcement action be taken, it is China which is to be informed that its nationals have been detained, not Taiwan. This is because Article 73 of the Law of the Sea Convention requires that the state of nationality of arrested persons should be informed that their nationals have been arrested once enforcement action has been taken. This in tactical terms would be a forbearance (see Chapter 12)

Chinese strategy

China as a matter of strategy may bring up the issue of de-recognition of Taiwan as part of the negotiations and may explicitly or implicitly condition delivery of assistance promised under the agreement on the Coastal State abrogating its previous agreement with Taiwan. This in tactical terms would be an ultimatum. (see Chapter 12).

Style

The style of both the Chinese and Taiwanese negotiator in addressing these issues may initially be polite and then may very quickly turn hostile. The hostility may be a rude hostility including shouting or may be a polite hostility – a long stony silence and a stubbornness to concede on other issues. A previously co-operative style is then found to turn into a competitive and highly distributive style. The change in style may be planned in advance or may be natural and spontaneous. It will however be part of the strategy of both China and Taiwan not to concede on any points to do with the China-Taiwan question. The style chosen to convey this message may differ from negotiation to negotiation or from negotiator to negotiator. The strategy is however the same – no concessions will be made by either side on the question of China-Taiwan relations.

Strategy in the external sense refers to how you will manage those who are not present at the negotiating table, including your own stakeholders. It also refers to how you will seek to shape the external environment to work for you and against your opponent. In terms of managing the external environment a detailed strategy might for example involve a menu of written and oral communications such as white papers, briefings, lobbying, press releases, speeches, conferences, and other communication tools that will be used to reach the targeted stakeholder communities. The discussion on the dynamics of bargaining in Chapter 9 further fleshes out the meaning of external aspects of strategy. Finally, strategy also involves having contingency plans for dealing with common problems that arise during both the preparations and bargaining phases.

5.4 | Strategy and style – is there a personal element?⁴⁸

The answer is yes. It is important to remember that each of us has a basic stance that we are inclined to take when bargaining. We tend either towards taking a hard-line position or a softer position. These approaches have developed over our lifetimes and we tend to unconsciously operate with our basic or “natural” position when faced with a bargaining situation. However using your natural orientation is not always appropriate. It is important to be able to recognise your «natural» position, and that of your opponent so that you may consciously adjust your behaviour as appropriate during bargaining. That is why skilled negotiators reflect upon their own personal underlying approach to bargaining and either consciously use or exaggerate this approach or modify it to suit the circumstances. Where a particular approach may not be appropriate, a skilled team leader changes the negotiator or takes some other measures to compensate. In short, a skilled negotiator makes a conscious style choice that is purposefully selected to best meet the specific requirements of each negotiation and the outcome sought. Assessing convergence between strategy and style is a key part of preparation.

5.4.1 Matching personal negotiating styles to strategic needs

Table 5-1 lists different negotiating styles in a general way. As a general principle you would not want to have people with accommodating styles on your team as they would give in easily to your co-contractor. Where of necessity people with a significantly accommodating style are part of your CSNT you should view them as destabilisers. You should have well developed control strategies for maximising their contribution whilst minimising how they weaken your team- if you are an accommodator you should not be leading a CSNT. Alternatively, you should have in place a range of strategies and procedures to ensure that your natural urge to accommodate does not lead to significant losses for your country.

Table 5-1 – Personal negotiating styles

Accommodating	Competitive	Balanced
behaves like a friend;	behaves like an adversary;	looks for solutions;
wants agreement;	always wants to win;	seeks realistic outcome;
makes concessions;	demands concessions;	Approaches concessions reasonably;
is soft on people and problems;	is hard on people & problems;	is soft on people & hard on problems;
trusts his/her opponent;	distrusts his/her opponent;	Can generate trust and can work without trust;
changes position easily;	digs in and concedes reluctantly;	focuses on interests not positions;
makes offers;	makes threats;	explores interests;
discloses bottom line;	misleads on bottom line;	has a reasonable bottom line;
expects and accepts loss;	demands gain;	comes up with options for mutual gain;

looks for acceptable answers;	looks for one answer that opponent develops;	will accept multiple options;
yields to pressure;	applies pressure;	yields to principle not pressure;
has low aspiration levels.	has high aspiration levels.	has high aspiration levels;

Figure 5-2

Team Member Evaluation Checklist*

Team Member	Team Member
Name	Name
Job Title	Job Title
Phone No.	Phone No.
Fax No.	Fax No.
E-Mail:	E-Mail:
Strengths	Strengths
1	1
2	2
3	3
Weaknesses	Weaknesses
1	1
2	2
3	3
Interests	Interests
1	1
2	2
3	3
Date Prepared:	Lead Negotiator:

Box 5-3 Worksheet - understanding negotiating strategies & styles ⁴⁹

Instructions:

Review the process observation sheets for Negotiations Conferences I and II below:

- Which behaviours do you think are unproductive?
- Which negotiator do you think is likely to be more successful during negotiations and why?
- In your view, which behaviour or activity probably reflects that negotiator's fundamental personal style, character or orientation?
- In your view, which behaviour or activity probably reflects a conscious strategy choice?
- Do you think any of these behaviours can be altered by training?
- Do you feel your mix of strategy and style is similar to any type exhibited in during these conferences?
- Create an ideal style and strategy profile for Negotiator E in the space provided at the end of the work sheet.

Process observation sheets Negotiations Conference I

Negotiator A - Style & strategy profile	Negotiator B - Style & strategy profile
Preparation	
Leaves things open-ended without identifying possible issues;	Thinks carefully about issues & what is being negotiated;
Spends little time gathering information, uses what is at hand;	Gathers information from wide network and variety of sources;
Makes no assessment of the balance of power;	Assesses the balance of power;
Concentrates on narrow range of possible courses of action;	Considers a wide range of possible consequences or courses of action;
Focuses on a single-point for each issue;	Defines range of outcomes, or bargaining range, for each issue;
Bases supporting case around likely final outcome;	Bases supporting case around ideal position;
Gives little thought to where may get stuck, plays it by ear;	Anticipates where may get stuck and considers options;
Opening phase	
Keeps their distance and avoids shows of personal warmth;	Welcomes other party in warm and friendly manner;
Does not attempt to identify every possible issue at the outset;	Establishes issues & what is being negotiated at outset;
Flexible about the sequence in which issues are dealt with;	Seeks to agree a fixed agenda for dealing with issues at outset;
Favours arguments that appeal to either "head" or "heart" ;	Uses arguments that appeal to both "head" and "heart" ;
Targets arguments on the other party, what is in it for them;	Concentrates on getting own position across not what is in it for other party;
Generally avoids asking questions unless really unclear;	Has no hesitation in asking for clarification if at all unclear;
Movement to reach agreement	
Thinks personal style and behaviour of little relevance;	Thinks personal style and behaviour are relevant;
Tries to get exactly what wants, without making concessions;	Willing to concede on an issue provided there is reciprocity;

49 - Tables adapted from T Manning, B Robertson , ' Influencing and negotiating skills: some research and reflections - Part II: influencing styles and negotiating skills' 35 Industrial and Commercial Training 2003 60-66 <http://www.emeraldinsight.com/Insight/ViewContentServlet?Filename=Published/EmeraldFullTextArticle/Articles/0370350204.html>

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Does not attempt to identify every possible issue at the outset;	Establishes at outset what issues are what is being negotiated;
Seeks to agree a fixed agenda for dealing with issues at outset;	Flexible about the sequence in which issues are dealt with;
Willing to dominate the floor to get what wants;	Allows both parties an opportunity to present their case;
Concentrates on getting own position across not what is in it for the other party;	Targets arguments on the other party, what is in it for them;
Uses questions as opportunity to repeat own key messages;	Gives specific answers to all questions even where difficult;
Movement to reach agreement	
Thinks personal style and behaviour has little impact on outcomes;	Thinks it is important to be aware of own personal style and behaviour;
Focuses on presenting own case more than looking for signals from other party;	On the lookout for signals showing a preparedness to move;
Clarifies and reflects on proposals before making counter proposals;	Responds immediately to proposals with counter-proposals;
Signals a preparedness to change position;	Even when prepared to change, likes to keep it to self and wait;
When making concessions, considers only what can give afford to give away;	When conceding considers what can afford to give and what other party wants
Uses behaviour labelling to indicate kind of thing going to say;	Says what wants to say without preamble – blunt and to the point;
Avoids personal attacks even when challenged;	Prepared to get personal when challenged;
Recaps or summarises at regular intervals;	Prefers to move briskly and does not recap or summarise at regular intervals;
Closure	
Before finishing, agrees detailed record of outcomes;	Leaves detailed record of agreed outcomes until afterwards;
Sees little point summarising once agreement reached – sees this as a waste of time;	At end considers it important to give summary of how he/she sees the agreement;
Leaves establishment of monitoring and review procedures until afterwards;	Establishes procedures for monitoring and reviewing agreement;
If negotiations fail, sees little point in agreeing to meet again;	If no settlement reached, considers it important to agree to meet again;
At the end believes what is important is getting what you wanted.	At end, likes to comment positively on what was achieved.

Negotiator E Style & Strategy Profile	
Preparation	
Opening phase	
Movement to reach agreement	
Closure	

Box 5-4 Reflections Setting the Agenda

In the negotiations your country conducts who usually sets the agenda - the access seeking State or company? Or your government? If it is your government, what factors do you take into account in establishing the agenda? Would it be useful to change your established practices with respect to deciding the agenda?

5.5 | Exchanges prior to negotiations or fact-finding⁵⁰

The objective of pre-negotiation exchanges is to exchange information. Some people refer to exchanges prior to negotiations as fact-finding. Fact-finding provides an opportunity to exchange information and eliminate misunderstandings or erroneous assumptions that could impede the upcoming negotiation. There is a special temptation to negotiate during fact-finding. However, it is especially important for both parties to avoid this temptation unless they are expressly authorised to negotiate.

Negotiations during fact-finding are dangerous because although well-intended, they may inadvertently harm the Government position because issues are negotiated before analysis is complete, and matters agreed to may be in conflict with what later comes up during the negotiation. Fact-finding issues which have significance for the formulation of negotiated agreements should always be assessed during the introductory phase of the Negotiations Conference.

5.5.1 Methods for conducting pre-negotiation exchanges or factfinding⁵¹

Table 5-2 evaluates several methods commonly used to conduct exchanges. All forms of pre-negotiation communication have implications for substance, strategy and style. Section 10.2 also discusses the use of these media. The two sections of the Manual should be read together.

⁵⁰ - FAI negotiation guides - <http://www.acq.osd.mil/dpap/contractpricing/vol5toc.htm>

⁵¹ - FAI negotiation guides - <http://www.acq.osd.mil/dpap/contractpricing/vol5toc.htm>

Table 5-2

Methods commonly used to conduct exchanges prior to negotiations	
Method of exchange	Comments and evaluation
Telephone	• commonly used when questions are relatively simple; • may be used to request a written response to relatively simple questions; • should not be used as a substitute for the two-way exchanges which occur during a Negotiations Conference; • should not be used in situations when questions are relatively complex; • all records should be kept and with the permission of the other party should ideally be taped;
Written	• commonly used to assure complete documentation of the information relevant to the negotiation has been requested and received; • can be used to initiate, settle and exchange agendas.
Face-to-face – involving single representatives or several team members from each side.	• negotiating authority of the parties is very important in this situation; • may be used to clarify technical matters but with proviso that matters settled are to be finalised as part of the negotiations; • all proceedings and caveats must be recorded.

5.5.2 Telephone exchanges⁵²

Telephone exchanges permit personal and timely communications related to less complex issues. When using telephone exchanges, there are several points that you should always address:

- identify all questions to be covered before initiating an exchange. The telephone is a casual medium of exchange, meaning there is a great temptation to pick up the phone whenever we have a question. Before you do so, however, bear in mind that multiple conversations may confuse negotiators about the issues involved;
- make a checklist of the points you want to cover – it is easy to get sidetracked during a telephone conversation. The checklist will help keep you on track;
- document all information requested or received as a telephone conversation does not normally provide one. Generally, a written summary is the most practical approach to documenting a telephone conversation. Some negotiators use audio recordings, but many people do not like having their conversation taped. Never record a conversation unless all parties to the exchange give their permission. Make sure that they give permission and that permission is recorded each time a conversation is taped;
- request a written response to complex questions or in situations where the exact wording of the response is important. A good example is where the conversation relates to pricing or other monetary issues.

5.5.3 Written exchanges

Written exchanges are particularly useful where it is important to have complete and accurate documentation of the question asked and the exact response. There are several points that you should consider before initiating a written exchange:

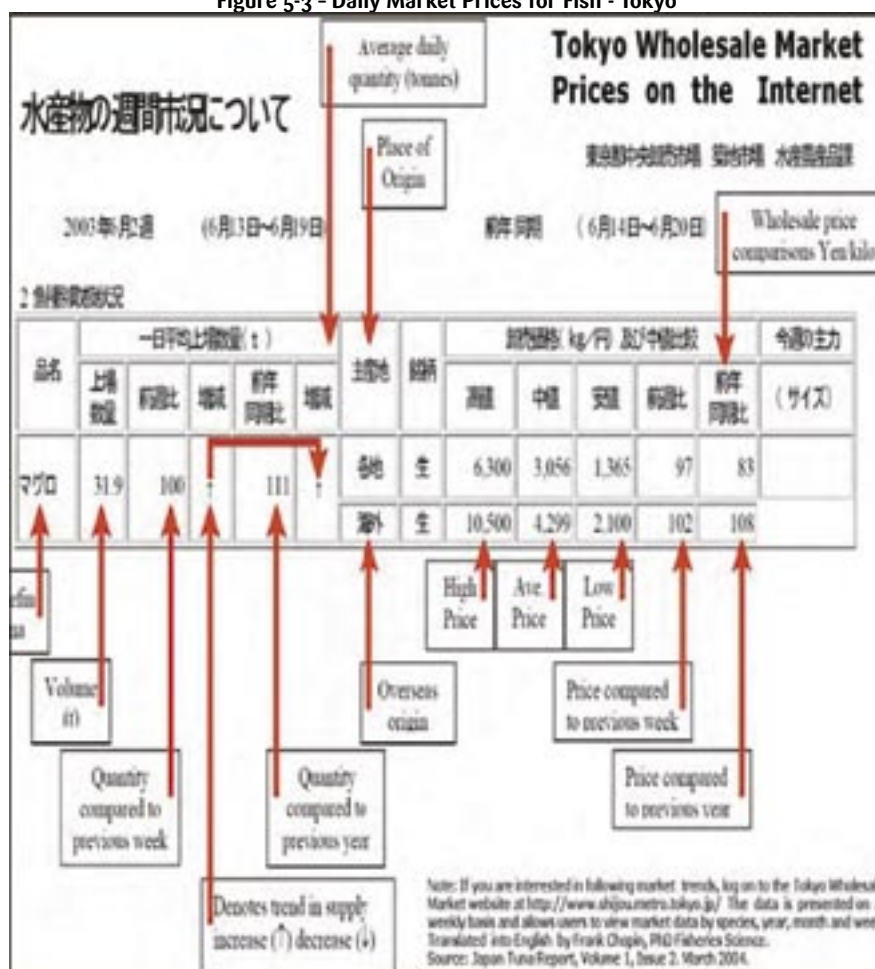
- make sure that your written document asks exactly the question you want answered. The co-contractor may misinterpret a poorly written question;
- make sure that your written exchange meets time constraints.

5.5.4 Face-to-face exchanges

With some complex technical issues, face-to-face exchanges with the co-contractor are often desirable. Exchanges overseas may be needed when issues are complex and the money value is large. Often this is done by diplomatic staff on behalf of the country. Ideally, there should be a member of the negotiating team present to ensure continuity and proper incorporation into the negotiations. Where this is not possible the diplomatic officer must be well briefed and must record the face-to-face exchange and if possible get the signature of the foreign partner certifying what occurred during the exchange.

52 - FAI negotiation guides - <http://www.acq.osd.mil/dpap/contractpricing/vol5toc.htm>

Figure 5-3 - Daily Market Prices for Fish - Tokyo



5.6 | Predicting the co-contractor's road map⁵³

The CSNT also needs to try and identify the road-map that is likely to be used by the co-contractor. This can be done as a completely separate exercise before or after you have prepared your own road-map or can be undertaken in tandem with preparing your own road-map. The pertinent questions that you need to answer, in predicting the co-contractor's road map are:

1. what objectives and priorities has the co-contractor probably established for the negotiation?
2. how will the co-contractor's general business objectives and priorities affect the negotiation?
3. how will the individual objectives and priorities of the co-contractor's negotiator affect negotiations?
4. what negotiation styles and tactics will the co-contractor's negotiator probably use?
5. what pressures and constraints will affect the co-contractor's approach to negotiations?

5.6.1 Information sources⁵⁴

Information on your co-contractor's likely road map will come from a wide variety of sources. As Chapter 7 shows, collecting such information, analysing it and presenting it in a useful format creates what can be called negotiations intelligence a sub-set of commercial, economic or business intelligence. Information sources include:

- any proposals or requests made with respect to that specific negotiation, as previous proposals and agreements may provide an idea about how flexible the co-contractor is during negotiations;
- previous PNA prepared as part of debriefings following negotiations with the same co-contractor or a co-contractor with a similar profile or set of needs (Chapter 15 provides guidelines for conducting PNA);

⁵³ - Federal Acquisition Institute (FAI), Contract Pricing Reference Guides, Negotiations - Chapters 1-8 <http://www.acq.osd.mil/dpap/contractpricing/vol5toc.htm>

⁵⁴ - Federal Acquisition Institute (FAI), Contract Pricing Reference Guides, Negotiations - Chapters 1-8 <http://www.acq.osd.mil/dpap/contractpricing/vol5toc.htm>

- economic or national origin profiles may provide helpful information on where and how the co-contractor is likely to be flexible in negotiations and where and how the co-contractor is likely to be firm – Chapter 3 on cultural issues in negotiations addresses this issue further;
- information from administrators, negotiators, and other Government employees who have had previous dealings with the co-contractor- e.g. on strategy, style and the approach taken by individual negotiators;
- information from pre-negotiation exchange sessions may also provide information on flexibility/firmness;
- other information from your files may indicate how proposals compare with actual performance. For example, during previous negotiations, the cocontractor may constantly have pointed out the high risk for it of performing certain activities under the agreement. Assessing how this issue has been dealt with in practice in the past will help gauge whether the issues raised by the cocontractor are genuine or not. This is particularly the case for long-running obligations to do with investment in joint ventures and similar issues.

Other rules of thumb are that:⁵⁵

- a well supported proposal suggests that the co-contractor expects to negotiate an agreement close to the figures and issues set out in the proposal, and has done their homework;
- minimally supported proposals may indicate that the co-contractor is not firmly committed to negotiating an agreement and may be testing the water or may be engaged in some other type of strategic exercise;
- a poorly supported proposal may mean that extensive negotiations will be required to attain a good result for your side.

5.7 | Solidify your own strategy and style

5.7.1 Prioritize issues & create tradeable packages.⁵⁶

Within the context of your goals and objectives determine the status of each issue as follows:

- non negotiable issues, or «must haves», for which you cannot make concessions because of their importance to the Government position;
- issues open to concession, or «give points» - issues that have relatively low importance to the Government but may be valuable to the co-contractor;
- issues to avoid during negotiations or «avoid points» - issues that you do not want to discuss during negotiations. For example, they may be controversial or are weak areas in the Government position;
- issues open to bargaining or «bargaining points.» These are issues where the Government may be willing to make meaningful concessions in return for meaningful concessions by the co-contractor.



Figure 5-4 The global market in access rights - production regions and fishing grounds for Atlantic Cod
Source: FAO

Create packages or clusters of issues to be exchanged taking their status into account.

5.7.2 Develop explicit and well-costed/ evaluated tradeoff positions.

You should also identify several trade-off positions that you would consider accepting.

- in some situations, you can use these previously explored positions to evaluate the co-contractor's final proposal;
- in other situations, you can use these positions to develop counteroffers and establish your negotiation limits.

Price is not the only important issue in access negotiations. In most agreement negotiations, you will also need to develop trade-off positions for several other key issues such as conservation, tax and customs issues.

55 - Federal Acquisition Institute (FAI), Contract Pricing Reference Guides, Negotiations – Chapters 1-8 <http://www.acq.osd.mil/dpap/contractpricing/vol5toc.htm>

56 - FAI Guides - <http://www.acq.osd.mil/dpap/contractpricing/vol5toc.htm>

5.8 | Playbooks and strategy⁵⁷

The role of the playbook has already been mentioned. Playbooks can either be general or specific to a negotiation. A negotiator may progressively compile information in one permanent notebook – this then effectively becomes a more specialised and personal playbook, specific to that particular negotiator. This kind of playbook is different from the general playbook written to support an entire CSNT or a country which is short of personnel or lacks continuity in personnel as discussed in Chapter 4. The type of information that should be included in a notebook for a specific negotiation will depend upon the type of negotiation and the preferences of the negotiator. Typical types of information collated by a negotiator in such a playbook could include:

- a summary of vital data & facts;
- a description of authority limits;
- a description of the overall negotiation approach;
- questions to be asked of the other negotiator;
- a summary of strong points and weak points for each side;
- a description of the interests and needs of your side;
- a projection of the interests and needs of the other side;
- a comparison of which interests and needs are different, which conflict, and which are complementary;
- a list of strategies, tactics and techniques that may prove effective;
- an initial offer, demand, or position supported by reasons;
- outlines of alternative concession strategies with supporting reasons;
- objective criteria that support the various positions;
- a list of sources of satisfaction for both sides;
- alternative solutions including creative options that provide gains for both sides.

The content of a negotiations notebook is often an extended form of the negotiations plan that you have at the negotiating table. Plans are discussed at Chapters 8 and 9.

5.8.1 A word of caution - written materials are not a magic tool

A negotiator should not rely too heavily on written materials. Much occurs during a negotiation that cannot be anticipated, and a negotiator needs to be flexible and responsive to situations. An over-reliance on written preparations may reduce flexibility, spontaneity, and intuition.⁵⁸

5.8.2 A word of caution - security of written materials

Country or individual playbooks are clearly an extremely valuable asset. Maximum security will need to be maintained over such documents whether you are in your own country or a foreign one. Protocols need to be designed and implemented to ensure this. A document which is personal to a negotiator may also usefully be labelled by employee code (rather than personal name) in order to protect privacy and confidentiality.

Box 5.5- Reflections - Saying No

Consider times when country has said no in international negotiations. What were the consequences?

Could anything have been guarded against?

5.9 | Saying no – the need to be prepared

Current ideas of national sovereignty give a country the right to say no to foreign requests. Saying no may have consequences, but as long as the country is prepared to live with those consequences it has the right to say no. There may be a number of reasons why a country may want to say no. Saying no is clearly a strategy issue and should as much as possible be related to the country's BATNA. A country saying no will have to have options and allies

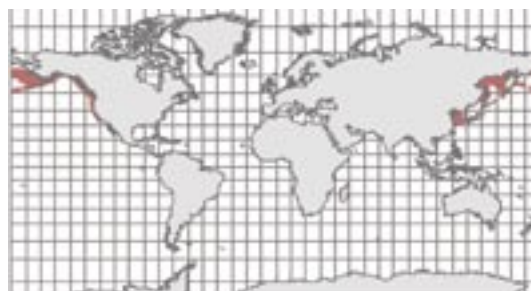


Figure 5-5 The Global market in access rights - production regions and fishing grounds for Pacific Cod
Source: FAO

⁵⁷ - R. S. Haydock, Negotiation practice (1984) 49-50

⁵⁸ - Haydock, Negotiation practice 49-50

as the other countries' allies, third countries, influential leaders and NGOs will all have opinions. Finding allies in a bilateral dispute is clearly more of a challenge than in multilateral negotiations, but it can be done.⁵⁹ Chapter 14 builds on the points made here through its discussion of deadlocks, ultimatums and withdrawals.

5.10 | Managing typical problems during the preparations phase

There are a number of problems which often occur during the preparations phase. A good team leader tries to anticipate such problems and always has some form of contingency plan or means of quick response available to him or her. Sometimes however it is not possible to respond effectively to a problem principally because there is no time in which to do so or because the team leader or his or her Minister does not have enough political authority to be able to address the problem. Typical problems that arise during preparations and which can be quickly handled so that they do not derail the negotiations process can be outlined as follows:

Table 5-3

Problem	Response
Political superiors gives the team too little authority or changes authority mid-stream;	• extend pre-negotiations or fact-finding phase if possible whilst the problem is resolved; • have a political patron already identified who is able to make a case to political superiors; • adjourn negotiations.
Team members have inconsistent goals;	• use consensus decision-making techniques; • remove destabilising team member(s) if possible.
Team or political leadership lacks experience or continuity;	• consider experience and continuity when selecting team; • conduct training and education of the team; • conduct direct or indirect education of political leadership if politically feasible.
Other work or responsibilities disrupts team;	• more effective time management; • delegation of duties; • use a playbook approach.
Lack of team procedure causes confusion;	• get ground rules and strategy in force early; • conduct training; • provide written procedure; • rehearse relevant issues to demonstrate importance of sound team procedure.
Fluid external environment disrupts goals or strategy;	• public – do public relations work; • political leadership – improve communications; • economic climate – improve negotiations intelligence mechanisms and economic techniques.
Crisis in negotiations process suddenly occurs;	• utilise pre-prepared crisis communications approach.

Figure 5-6 Tsukiji market



5.11 | Have a crisis communication plan

As Chapter 14 shows, negotiations failure - deadlock, ultimatum or withdrawal - occurs from time to time. In such a case you may need to rapidly communicate with your stakeholders and the mass media. This may even include global market in access rights mass media as the market in access rights is a global market. A key part of preparation is to have a basic and very simple plan ready for situations of crisis. Your crisis communication plan (CCP) may never have to be used – but it is always better to be safe than sorry. Another good reason to have a basic plan is because you may need to respond rapidly to one or more of the following:

- destabilising statements made by your co-contractor either locally or abroad;
- destabilising statements made by others in the negotiations environment (NGOs, other stakeholders).

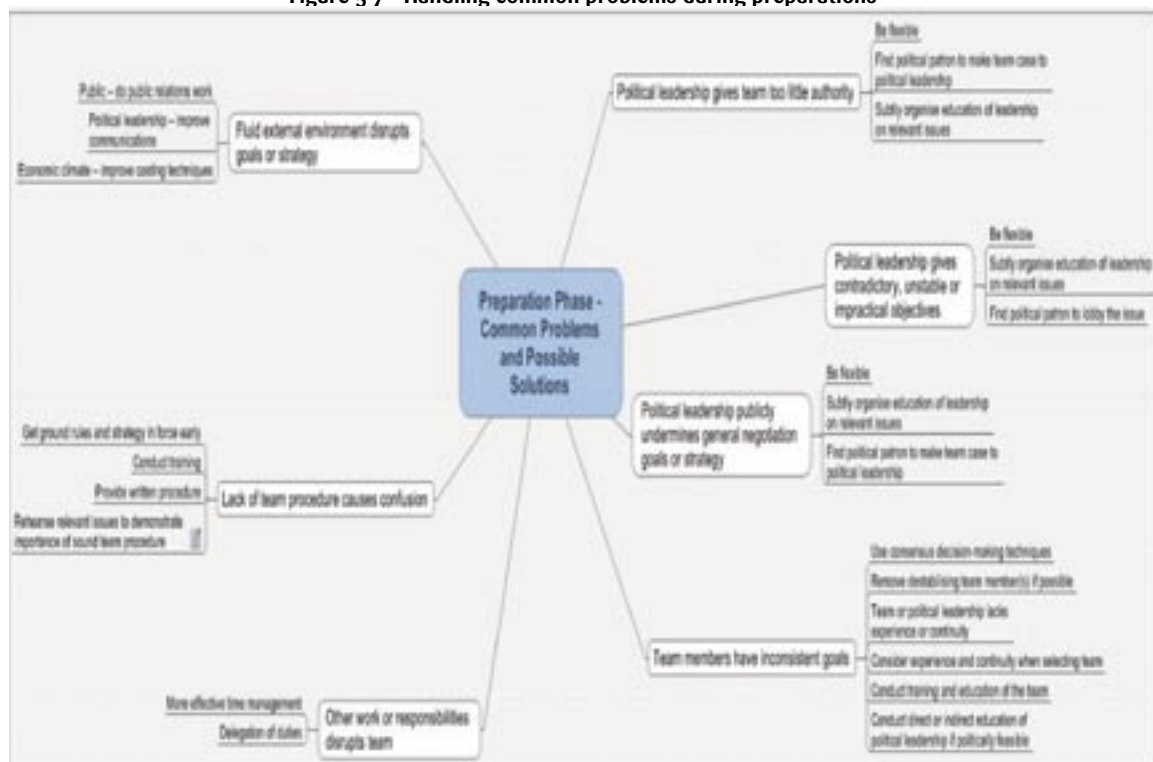
Where you have back-to-back negotiations scheduled, rapid and truthful communication can be critical as it reassures the international market place and provides stability for other negotiations in the pipeline. Remember that the pending negotiations may well be your BATNA with respect to the negotiations which have just collapsed. A failure to rapidly communicate your version of events may cripple your ability to exercise your BATNA.

The following crisis communication guidelines are suggested:

- identify the types of crisis that might occur;
- develop a strategy - the primary goal of this strategy should be the protection of national interests with respect to the negotiations. Having a strategy set in advance will allow for quick action, which will decrease the time the media is out looking for answers on their own and also reduces space for rumours to spread amongst your stakeholder groups. Also, when providing explanations to the media or to stakeholder groups;
- identify a single spokesperson and ensure that other personnel refrain from comment. Ensure all enquiries are addressed by the appropriate spokesperson. Brief an alternate/additional spokesperson to deal with excessive demands for information;
- monitor media attention - evaluate how the media is covering the crisis in order to respond appropriately.

It may even be useful to have a simple and basic plan prepared for your CSNT by a professional firm.

Figure 5-7 - Handling common problems during preparations



Chapter 6

Stakeholder Management

6.1 | Managing stakeholder relations

The various stakeholders in access agreements have already been broadly identified by section 1.13. Box 6-2 (immediately below) uses current stakeholders in North- West African and Moroccan access agreements as a case study. Section 3.32 has also discussed stakeholders in a conceptual way dividing them broadly into governmental and non-governmental stakeholders. It is clear that a new challenge for negotiators of fisheries agreements in both Coastal States and DWFS is the increase in the number of issues addressed by access agreements and the increase in the number of stakeholders. Integrating stakeholders into the negotiations and implementation process has thus become a matter of increasing importance. In this

Chapter, we discuss aspects of integration principally from the point of view of the preparation phase. Once again a reasonably systematic approach is useful. The comments made here apply equally to the bargaining, implementation and evaluation phases. Other sections of the Manual that can usefully be read together with this Chapter are: ss. 9.8 (dynamics of bargaining) and 15.3 (evaluating the negotiations process). We begin with a discussion of the situation with governmental stakeholders, cover nongovernmental stakeholders and introduce a few simple tools which can make the process of stakeholder management more structured and predictable.

Box 6-1 Chapter 6 Highlights

Key points of this Chapter are:

- Managing relations with political superiors- briefing, receiving feedback, and clarifying the limits on negotiator' powers;
- Methods for compiling information on stakeholders and assessing their respective influence;
- Tools for managing stakeholders of particular interest

Box 6-2 Stakeholders and interest groups North-West African and Moroccan Agreements

The following stakeholders currently operate in the access agreements arena for this region. Not all are necessarily visible participants. However because of developments in the global mass media, including the internet, it possible for a very broad range of stakeholders to rapidly become visible and active around any issue which grabs global attention.

Coastal State governments of the SRFC Region and Morocco	SRFC Member States and Morocco
Distant Water Fishing States	European Union (in the case of the EU – the EU institutions) Japan, Korea, Taiwan, People's Republic of China
Flag State governments - Governments in whose jurisdiction and national shipping registers, fishing vessels are registered	European Union (in the case of the EU – the EU institutions) Japan, Korea, Taiwan, People's Republic of China
Port State governments – States in whose ports fish products are landed and transhipped	Spain with respect to Las Palmas
Flag of Convenience States	Belize, Panama, Liberia,
States in which Transhipment of Product takes place;	Spain with respect to Las Palmas

Market States for SRFC fish product	Key markets include: EU, Japan, US, China, Hong Kong, Korea, Taiwan, China, Nigeria, Ghana, other Francophone States – Mali, Niger, Burkina Faso, Ivory Coast
International Organisations	ICCAT; CECAF
Harvesting Companies	All fleets active in SRFC waters (foreign, local, artisan, industrialised etc.)
Trading companies (importers and exporters)	All companies trading significantly in species caught in SRFC waters as well as species which are close substitutes for those caught in SRFC waters
Associations representing harvesting companies	• International Coalition of Fishing Associations; • Japan Deep Sea Trawlers Association • Japan Fisheries Association • Korea Fisheries Association
Processors based locally and/or overseas;	Examples include Peche et Froid, Heinz ; Saupiquet
Retail Enterprises based locally and/or overseas;	Marks and Spencer, Safeways, Unilever, Aldi
NGOs based locally and/or overseas;	IUCN, WWF, Greenpeace, CAPE/CFFA, Seafood Watch, etc. (see Box 6.6)
Fishing communities disadvantaged by Market-dominant Actors;	Communities in SRFC countries
Final consumers based locally and/or overseas.	Consumers in the West African sub-region and consumers in key markets – Japan, US and EU

6.2 | Relations with governmental stakeholders

Bargaining with other parts of the government system takes place during both the preparation phase and the bargaining phase. During preparation, the main issues in internal government relations include:

- the authority to exercise supervision over foreign fleets;
- the provision of information;
- the generation of useful negotiations intelligence;
- the development of a common government position balancing the needs and interests of different sections of government;
- which section of government should have authority on key issues.

These five areas are all affected by a difficult issue - how access revenues are to be divided up. As shown by Figures 6-1 & 6-2 internal government relations can be a complex environment. Unfortunately the Manual can offer no solutions to the problems that are likely to be encountered from country to country. However, common problems such as communication failure and lack of co-ordination can be identified in advance and can be managed to some degree. Lessons learned from previous negotiations should always be applied to the next one so problems in internal government relations can be better managed.

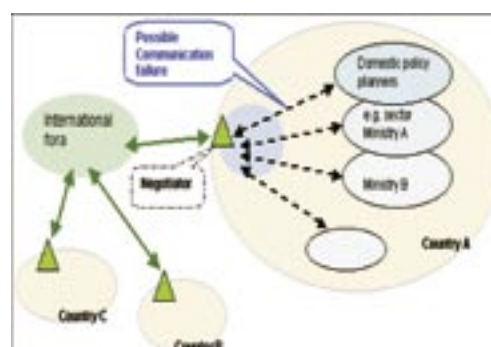


Figure 6-1 – Interactions with other government organisations and the international arena

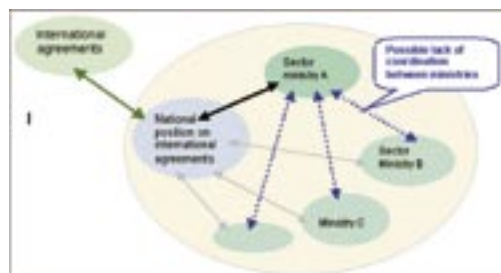


Figure 6-2 – Relations with other government organisations 2

Box 6-3 The final destination of access fee revenues

The question of where fisheries revenues finally go has always been a key area of tension in internal government relations. Some prefer that revenues go directly to the finance ministry for use as national revenue, whilst others prefer that revenues go principally or in substantial proportion to the fisheries sector. There is no easy answer to this question. It should be noted however that key access demandeurs like the EU are increasingly interested in revenues from access agreements being returned in substantial part to the fisheries sector. This trend seems likely to deepen under the FPA system.

6.3 Managing relations with political superiors

To be successful in an access agreements negotiation, the team leader must have high level political support. If you do not have such support, other CSNT and the cocontractor team will soon know. When this happens, team members and the cocontractor will no longer come to you for guidance and answers. Instead, they will go above you. You should have continuing communications with your political superiors just as you do with the cocontractor and members of the negotiation team. For agreements that attract a relatively low level of political interest, communications will likely be of a routine character. For agreements that are of higher level political importance communications with political superiors should focus on the key issues involved. Typically, these communications will involve a briefing on key elements of the negotiation plan, especially the team's negotiation objectives.

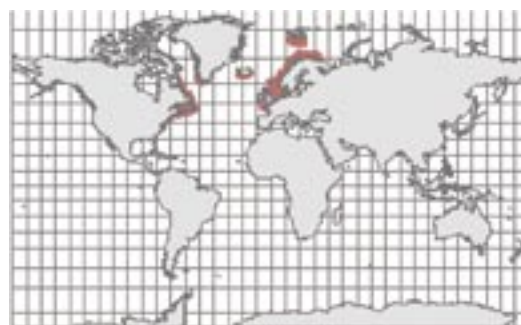


Figure 6-3 The global market in access rights - production regions and fishing grounds for Saithe
Source: FAO

6.3.1 Briefing political superiors

Briefing your superiors gives you an opportunity to obtain policy guidance and relevant observations on the strengths and weaknesses of your approach. Multiple briefings may be required to involve different levels of higher level political authority in the negotiation process. The pre-negotiation briefing can take many forms, including:

- an informal oral presentation;
- a formal oral presentation; or
- a written document (e.g., a request for government to grant a pre-negotiation clearance).

The choice of an appropriate briefing format will depend on many factors including government policy, sensitivity of information and the personalities involved. For example, some political superiors may feel that they can better evaluate an oral presentation, while others may want the detail that a written request for clearance provides. Briefings can also be used to address internal government disagreements.

6.3.2 Feedback from political superiors

Whatever the form of the pre-negotiation briefing, there must be provision for feedback. In particular political superiors should be provided with the opportunity to:

- approve or reject the negotiation plan;
- identify any larger political limits on negotiation flexibility;
- the CSNT must also know what happens if the team changes its evaluation of one or more key issues during negotiation (e.g., an access fee higher than the original objective now appears reasonable).

6.4 | Authority⁶⁰

It is essential that negotiators are clear on the power limitations constraining them. Remembering that negotiators are merely working to represent their Governments (gaining the instructions of that Government (through personal contact and discussions with political superiors) is essential. Receiving written clarification of instructions prior to entering negotiations is advisable. At the conclusion of negotiations, before any agreement is agreed to, it is essential that political superiors are contacted for their final approval.

Unlimited authority - this is rare but means that the negotiator has final authority. Political superiors grant all decision-making authority.

Range of authority - the political superior provides the negotiator with instructions setting out the range within which the negotiator can accept or reject a proposition.

Alternative authority - the Negotiations will invariably include alternatives to reach an accord. A negotiator will need to obtain authority if an alternative is being proposed beyond their authority

Specific authority - The government knows exactly what they want. Action is guided by specific instructions.

No authority - there is no authority to accept an agreement or resolve a problem. The Any proposed results will need to receive approval before a result can be obtained.

6.5 | Managing relations with non-governmental stakeholders

Stakeholders all have a degree power, whether it is the formal power invested in a position of authority, or the social power of being able to persuade others to support or oppose an access agreement. Until recently the main NGOs active in the arena were environmental and conservation NGOs. New actors are emerging as we show below. Environmental and conservation NGOs like IUCN and WWF are well known and are therefore not profiled here.

6.5.1 Environmental and conservation NGOs (EC-NGOs)⁶¹

Environmental and conservation NGOs are now highly influential in the access agreements arena. Their interests are sometimes in alignment and sometimes in opposition to those of Coastal States. Internally within the EC-NGO camp, there are also many differences of opinion and orientation. All access agreement issues are of concern to these groups. Key organisations in the US and the EU include WWF, IUCN, Seafood Watch, MSC, Birdlife International and a range of other organisations. Box 6.6 profiles the activity of Seafood Watch a company with wide media-reach throughout the US and provides an excellent example of how environmental NGOs are currently seeking to directly change consumer behaviour in the US market through the provision of science-based information on key tuna species of global commercial interest. In the years ahead, Coastal State negotiators and policy-makers will benefit from developing a sound and sophisticated understanding of how key EC-NGOs operate. Using Tables 6-1 to 6-4, it should be possible for Coastal State CSNTs and policy-makers to progressively construct profiles of the key EC-NGOs affecting their access agreements and key species both locally and internationally.

6.5.2 Development and anti-poverty NGOs (D-NGOs)

This group is concerned with development and the needs of the poor rather than the needs of the environment. Their views are sometimes radically different from those of the EC-NGO group. Key organisations in this sector with strong international influence include OXFAM, World Vision and other groups active in advocacy and implementation activities in Africa, Asia and Latin America. It is this group which has for instance argued that access agreements affect food security in Africa in a negative way. Again, using Tables 6-1 to 6-4, it should be possible for all CSNTs to construct profiles of the key D-NGOs affecting their access agreements both locally and internationally.

60 - Haydock, Negotiations practice 46-47

61 - See generally, FAO Committee on Fisheries, 'Initiatives of Non-Governmental Organizations Regarding Sustainable Resource Use & Environmental Protection in Fisheries' (Paper presented at Twenty-Second Session, Rome, Italy, 17-20 March 1997) available at <<http://www.fao.org/docrep/meeting/w3954e.htm>> 1

6.5.3 Local artisan sector NGOs

In recent years NGOs in Coastal States as well as in the EU and the US have become more and more influential in the access agreements process. A good example is the growth in influence of CONIPAS – an umbrella NGO for artisanal stakeholders in Senegal. Similar associations are becoming active in the SRFC region including in Guinea, Guinea-Bissau and Mauritania.



Figure 6-4 Artisanal stakeholders organised as CONIPAS meet in SENEGAL

Box 6-4 A Profile of CONIPAS

Créé en août 2003, suite à des diagnostics participatifs conduits avec l'appui de l'Agence Nationale de Conseil

Agricole et Rural (ANCAR) dans le secteur de la pêche, le Conseil National Interprofessionnel de la Pêche Artisanale (CONIPAS) regroupe cinq grandes fédérations de pêche, mareyage et transformation :

- la Fédération Nationale des GIE de Pêche (FENAGIE/ Pêche) ;
- le Collectif National des Pêcheurs du Sénégal (CNPS) ;
- la Fédération Nationale des Mareyeurs du Sénégal (FENAMS) ;
- l'Union Nationale des GIE de Mareyeurs du Sénégal (UNAGIEMS) ;
- et la Fédération Nationale des femmes Transformatrices de produits halieutiques et Micro Mareyeuses du Sénégal (FENATRAMS)

Box 6-5 An analysis of the emerging role of CONIPAS

Les négociations UE-Sénégal dans le secteur de la pêche suscitent des préoccupations au sein de la pêche artisanale. Le magazine Grain de Sel a publié à la fin juin 2005 un article sur l'organisation interprofessionnelle du secteur de la pêche artisanale au Sénégal, Conipas, et sur son plan d'action. Il a également fait état de la participation de Conipas à la préparation des négociations de l'accord UE-Sénégal dans le secteur de la pêche. Conipas a été établie en 2003, au terme de différentes consultations et plusieurs ateliers. Elle rassemble désormais la plupart des fédérations existantes du secteur artisanal : pêcheurs, hommes et femmes travaillant dans le secteur de la transformation du poisson, et mareyeurs. Les priorités de Conipas sont entre autre la participation à la gestion des ressources naturelles, l'amélioration de la qualité et de l'hygiène des produits de la pêche, la sécurité en mer et la formation pour les négociations. En ce qui concerne les négociations, Conipas estime que les pêcheurs doivent renforcer leurs capacités de négociation pour établir une relation équilibrée avec les agences d'État et les agences de financement. Par ailleurs, l'organisation se propose également de représenter les pêcheries dans les négociations des accords dans le secteur de la pêche.

6.5.4 Transnational commercial associations

A new type of stakeholder is the NGO representing access demander fishing fleets. The two prominent ones are OPRT and ICFA. Groupings within the EU operate at national, regional or EU level are also very important for Coastal States and should all be fully identified. An emerging trend of importance for Coastal States is the trend towards voluntary agreements between fishing fleet owners. Such voluntary agreements restrict catch in an effort to raise prices or to serve some other objective. CSNTs will have to be aware of current internal agreements within these organisations as such agreements and arrangements can have a serious effect on the implementation of access agreements. Additionally some countries may also make market access for fish products conditional on product or fleet compliance with internal arrangements within an organisation. Due to their increasing importance and power, annual reports, speeches and resolutions of these organisations as well material posted on their websites are all materials that need to be read before negotiations are undertaken. Key recently established commercial organisations are briefly profiled below:

OPRT - Organization for the Promotion of Responsible Tuna Fisheries

The OPRT was originally established between the Federation of Japan Tuna Fisheries Cooperative Association, which represents all Japanese high-seas longline vessels (large-scale, ultra-deep-freezing catch and reefer or transport vessels) and a similar industry organization representing the Taiwanese longline fleet. Its objectives are to track tuna coming into the Japanese market to ensure that it is from cooperating nations, to monitor the

removal and scrapping of vessels, and to assist in the reimbursement of Japanese and Taiwanese fishermen for the costs of removing their vessels from the fleet. Since the founding of OPRT, longline fleets of Indonesia, the Republic of Korea, the People's Republic of China and the Philippines have joined it.

Table 6-1 Membership of the Organization for the Promotion of Responsible Tuna Fisheries (OPRT)

1.	Federation of Japan Tuna Fisheries Cooperative Associations
2.	Japan Tuna Fisheries Association
3.	National Ocean Tuna Fishery Associations (Japan)
4.	National Offshore Tuna Fisheries Association (Japan)
5.	Taiwan Deep Sea Tuna Boat Owners and Exporters Association
6.	Korea Deep Sea Fisheries Association (Tuna Long-Line Fisheries Committee)
7.	OPRT Philippines, Inc.
8.	Indonesia Tuna Association (ASTUIN)
9.	China Fisheries Association (Distant Water Fisheries Branch)
10.	Foundation for the Promotion of Responsible Tuna Fisheries (Ecuador)
11.	Japan Fish Traders Association
12.	All Japan Fish Wholesalers' Union of Central Wholesale Market
13.	National Federation of Middle Wholesaler's Association for Aquatic Products (All Japan Fish Brokers Union)
14.	All Japan Fish Retailers Union
15.	National Liaison Committee of Consumer's Organization - Japan
16.	Overseas Fishery Cooperation Foundation

The role of OPRT is better appreciated after Chapters 16-19 have been read

The International Coalition of Fisheries Associations (ICFA) <http://www.icfa.net/>

The ICFA is a coalition of the national fish and seafood industry trade associations from the world's major fishing nations. ICFA members represent countries harvesting more than 85% of the globe's fish. The group was formed in 1988 to provide decision-makers with a unified voice on global fish and seafood issues.

EU commercial organisations

EU-based commercial organisations, especially Spanish organisations are not profiled here. They should be profiled in detail for negotiations to be more fully informed.

6.5.5 Tools for managing NGO stakeholders

NGO stakeholders are diverse. They all have a degree of power and are thus likely to be useful supporters or difficult opponents. Power or influence analysis will help to sort out the more from the less powerful so that limited resources can be used to manage those of importance. For each fish species of importance to a Coastal State, it would probably be useful for the CSNTs to progressively build up a profile of relevant stakeholders with respect to that species both locally as well as overseas. This information will doubtless prove useful at some stage in the preparations, bargaining, implementation or evaluation phase of negotiations. Some tools to make the process more systematic are offered below by Tables 6-2 to 6-5. The profiling approach suggested here is part of the competitive intelligence approach suggested by sections 7.2 and 7.5.

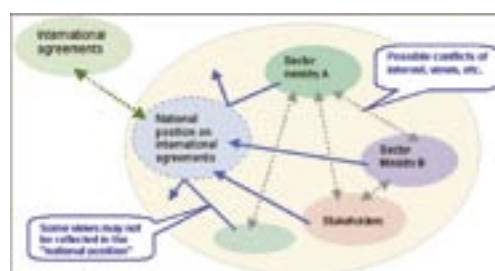


Figure 6-5 Relations with government organisations and stakeholders

Table 6-2 A sample stakeholder profile sheet

Item	Details/Instructions for Use
Group or individual name	Commercial Association/NGO/etc.
Key representative	Enter here name of key representative(s) locally/internationally.
Type – advocacy, commercial, regulatory etc.	Enter here stakeholder type NB – Stakeholder may have multiple positions – advocacy, commercial etc.
Internal or external National or international etc.	Internal stakeholder refers to commercial or regulatory stakeholder impacted on directly by agreement External stakeholders are indirectly affected (eg EU based advocacy NGOs). External stakeholders can be hard to manage, so it is particularly useful to be able to identify external stakeholders with high potential or actual impact on the agreement
Stakeholder self-assessment of needs relative to agreement	Enter here what the stakeholder perceives as their needs What are their principal issues and concerns? during negotiation? during implementation? Are needs subject to change?
CSNT assessment of impact of agreement on stakeholder	Enter here CSNT assessment of how access agreement has affected the stakeholder – past; present; project into future
Involvement with implementation/legitimacy	Is the stakeholder directly involved with implementation of agreement or is the stakeholder a peripheral player? Can they affect legitimacy?
What are stakeholder goals / success criteria with respect to the access agreement	Participation; side payments; blockage???
Projected future relationship with agreement	Enter here details on how the stakeholder can affect the agreement or how the access agreement needs to adapt to fit them.
Does negotiation/implementation of agreement need anything from this stakeholder?	Enter here CSNT assessment
CSNT assessment of priority of stakeholder needs for access agreement process	Enter here CSNT assessment (high, medium, low) of importance of the stakeholder goals and needs re negotiating and implementing the agreement
CSNT assessment - what are the stakeholders resources?	Enter here CSNT assessment of national networks; international networks; media expertise etc.
CSNT assessment - does the CSNT need the stakeholder for information and commercial intelligence aspects of negotiation?	Assess broadly – past; present; future
CSNT assessment - does the CSNT need the stakeholder for strategic and tactical aspects of negotiation	Assess broadly – past; present; future
CSNT assessment - does the CSNT need to consult with the stakeholder	Enter here whether consultation required Stage to consult - preparation/bargaining/post-negotiation Mode of consultation Extent of consultation/participation required
CSNT management strategy / method of communication	Enter here whether communication required Stage to communicate - preparation/bargaining/post-negotiation Mode of communication Extent of communication required

Table 6-3 Worksheet for scoring and rating stakeholder influence

Table 5.3 Worksheet for Scoring and Rating Stakeholder Influence						
Stakeholder Group	Interest(s) at Stake in Relation to Program	Effect of Access Agreement on Interest(s)		Importance of Stakeholder for Success of Agreement U - Unknown 1 - Little/No Importance 2 - Some Importance 3 - Moderate Importance 4 - Very Important 5 - Crucial Player	Degree of Influence of Stakeholder over Agreement U - Unknown 1 - Little/No Influence 2 - Some Influence 3 - Moderate Influence 4 - Significant Influence 5 - Crucial Player	Score
		+	-			

Table 6-4 A stakeholder power assessment tool

		Opposition			Support	
		Active opponents	Passive opponents	Fencesitters	Passive supporters	Active supporters
Stake holder Power	High					
	Medium					
	Low					

Table 6-5 A sample stakeholder management tool⁶²

Influence of stakeholder	Importance of stakeholder			
	Unknown	Little/No Importance	Some Importance	Significant Importance
Significant Influence		C		A
Somewhat Influential				
Little/No Influence		D		B
Unknown				

Table 6-5 Instructions for Use

Using the information provided by Tables 6-2 to 6-4, Table 6-5 can be used to manage relations with stakeholders in the following way:

- Box A: Enter here all stakeholders who appear to have a high degree of influence on the agreement and who are also of high importance for its success For stakeholders in Box A the CSNT and associated agencies will need to construct good working relationships with these stakeholders to ensure an effective coalition of

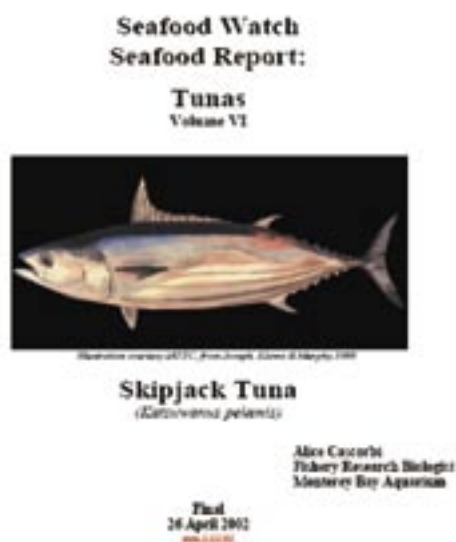
62 - Adapted from DFID (Department for International Development), United Kingdom. 1993. Guidance Note on How to Do Stakeholder Analysis of Aid Projects and Programmes. London: DFID

- support for the agreement
- Box B: Enter here all stakeholders of high importance to the success of the agreement but with low influence. This implies that they will require special initiatives if their interests are to be protected. An example may be relatively poor people for whom the access agreement would have a large social impact, but who have little “voice”.
- Box C: Enter here stakeholders with high influence and who can therefore affect access agreement outcomes, but whose interests are not necessarily aligned with the overall goals of the agreement. Entities listed in Box C may be a source of significant risk, and will need careful monitoring and management.
- Box D: Stakeholders in this box have low influence on, or importance to access agreement objectives. They may require limited monitoring or evaluation, but are of low priority.

Entities entered into boxes A, B and C are the key stakeholders relative to the access agreement. Entities in Box D are not critical to the agreement.

Box 6-6 Promoting Ecologically Responsible Consumption of Tuna in the US

Case Study 1 - Skipjack Tuna



The report highlighted in this case-study is produced periodically by the Monterey Bay Aquarium to inform consumers of seafood in the United States of the ecological status of key species. Skipjack tuna is one of the key species caught under access agreements. Coastal State negotiators need to note that the reports have a high degree of scientific credibility and are based on the latest peerreviewed scientific information

Seafood Watch seafood reports are “living” documents that synthesize the best available and most up-to-date scientific information on the current status of seafood items found in the United States. As the information on each species changes, so too will each report, in order to reflect those changes.

In developing these reports, Seafood Watch uses the best available scientific information. Research published in academic peer-reviewed journals is used whenever possible. Other sources include government data, fishery management council data, personal communications with fisheries scientists and aquaculture experts, industry data, and personal communications with fishers and fish farmers.

These reports provide a source of unbiased scientific information on the status of commercial species of fish, crustaceans and shellfish. Individuals or agencies interested in fishery/aquaculture issues and the status of marine stocks are welcome to use this information in any way they find useful.

For more information regarding Seafood Watch seafood reports, please contact the Seafood Watch program at the Monterey Bay Aquarium by calling 831-647-6873 or emailing seafoodwatch@mbaqua.org.

Chapter 7

Generating Usable Negotiations Intelligence

7.1 | The Role of Negotiations Intelligence

Access negotiations are a highly specialised type of decision-making. This is because negotiators have to take their decisions under the following conditions:

- information uncertainty;
- time pressure and stress;
- ambiguity;
- situations which encourage the use of deception and other tricky tactics. The more distributive the negotiation, the more likely that one or more of the above constraints strongly affects the situation. It is clear then that to be successful in negotiations you need more than good strategy and style. You also need sound, timely and well analysed information about the substantive issues – access fees, costs of fishing, environmental issues, tariff barriers etc.

Box 7-1 Chapter 7 Highlights

This Chapter discusses how to prepare for negotiations. Preparation is analysed at two levels:

the micro-level of the individual negotiation and the macro level of establishing a robust institutional structure to prepare for a variety of negotiations. Issues addressed are:

- The difference between data, information and intelligence in the negotiations context;
- The concept of negotiations intelligence;
- Conducting a negotiations intelligence audit;
- Establishing repositories of information to support negotiations;
- Building profiles of competitors and negotiations partners;
- Preparing for specific negotiations.

Analysis is really the application of common sense and experience to raw information. Leonard M Fuld The New Competitor Intelligence

Box 7-2 Key Commercial NGOs - EU Tuna Associations

The European tropical tuna fishing fleet is organised through a number of groups. Key groups active in the system because they have producer organisation status within the EU CFP arrangements are:

- ORTHONGEL - Organisation des Producteurs Francais de Thon Congele/Organisation of French Producers of Frozen Tuna
- OPAGAC - Organización de Productores Asociados de Grandes Atuneros Congeladores de España/Organisation of Associated Operators of Large Tuna Freezing Vessels
- OPTUC- Organización de Productores de Túnidos Congelados/Frozen Tuna Producers' Organisatio
- ANABAC - La Asociación Nacional de Armadores de Buques Atuneros Congeladores

The publications and websites of these groups and their members are a useful source of negotiations intelligence

Because of this requirement it can be argued that the role played by information during the negotiations process makes it a form of intelligence. The definition of intelligence that we are using here that it is information that has been (1) specially prepared for the unique circumstances of a negotiation or set of negotiations;⁶³ (2) evaluated for credibility; (3) enriched by attention to context; (4) made more valuable due to its insights and/or foresight. (see Figure 7-1 below). Viewed this way negotiations intelligence is a subset of that field of intelligence called business intelligence, competitive intelligence or commercial and economic intelligence. In this Chapter, we focus on how to provide the CSNT with useful negotiations intelligence. We address the issue of generating usable negotiations intelligence from two overlapping perspectives



Figure 7-1 A well known market intelligence document

63 - Lisa Krizan, Intelligence essentials for everyone, http://www.scip.org/2_getintell.php

Box 7-3 Reflective exercise

Identify Annex II of the Manual - the European Union approach to fisheries partnership agreements negotiations. Read it closely and take notes of the main items that the EU is gathering information on.

Questions

- What are your initial reactions to this document?
- How would you feel sitting across the table from somebody who you know has all this information about you?
- Would it make a difference to your confidence that you know the other person has this information? Would you prepare a similar dossier for yourself about the other side? Would you prepare a similar dossier for yourself about your country's situation?
- Should the EU share this information with Coastal States?
- If the EU decides to share this information, is the negotiating context becoming more integrative or more distributive?

- negotiations intelligence as a short term task or project - preparing your country's position for an upcoming negotiation in three months time is a good example;
- establishing a robust negotiations intelligence capacity or system - a capacity which will serve the country for some time to come but which will also allow you to respond quickly and effectively to new opportunities with new partners.

Chapter 15 addresses this issue more generally under the theme of institutionalisation. The two aspects of negotiations intelligence capacity are related. A country with a robust negotiations intelligence capacity will always be able to effectively meet shortterm requirements. Sudden requirements to negotiate with a new access demandeur will not pose a problem as the country has a system in place to meet its needs.



Figure 7-2
Moving from data to intelligence

Box 7-4 Exercise - The relationship between data, information and intelligence

Look closely at the questions set out below and reflect on the questions immediately below

- who is fishing?
- where - in the EEZ? Adjacent?
- what are they fishing with?
- how does the who and where of fishing relate to what is authorised?
- what does the fishing gear catch and how much of the fish does it catch?
- how much by-catch is taken and how much is discarded? (at sea; on land?)
- what relationship does actual catch have with what is authorised?
- where is the catch landed and/or transshipped?
- what is landed/transshipped and how does this relate to what is authorised ?
- how much is the fish sold for?
- to whom is the fish sold and with what final destination?
- how do commercial returns affect fishing effort and resource yield?
- to what extent are any stages of the fishing process subsidised and/or overcapitalised?
- do you have real-time data on any of these questions?
- is near real-time data good enough?
- do you have historical information on fishing patterns and practices?

Reflective questions

1. If a country routinely collected information on these parameters – would it have data, information or intelligence?
2. Does your country collect any, most or all of this information?
3. Once collected, what is done with it?
4. How much of it is available to your CSNT in a form that is usable – targeted to the circumstances of specific negotiations?
5. Given what you know about you're the needs of your country and the access demandeurs it faces, can anything be done to transform the data you have into more and better intelligence?

7.2 | Negotiations Intelligence – some fisheries examples

Sound negotiations intelligence does the following:

- it identifies the factors at play
- it estimates how various actions may affect outcomes
- it suggests what to do to meet your agenda

It can also be divided into various categories – Strategic intelligence (SI); Warning intelligence (WI); Current intelligence (CI); Estimative intelligence (EI); Negotiations Conference Intelligence (NCI); and Tactical intelligence (TI). Table 7-1 explains what these definitions mean in the fisheries negotiations context. The EU fisheries partnership agreement preparations dossier set out at Annex II to this Manual is for instance an excellent example of SI. This is because once the contractors hired by the EU have finished their work, the EU will have an SI document relevant to every country of potential or actual interest. Strategy and tactics against that country can thus be planned with a high degree of certainty.

Table 7-1 Examples of fisheries negotiations intelligence

Intelligence type	Explanation and fisheries sector examples
Strategic intelligence (SI)	• Explanation - SI is geared to the bigger picture. • Fisheries context - Infofish international is an example of a publication which directly provides SI or would be used to produce an SI document
Warning intelligence (WI)	• Explanation - WI sounds an alarm or carries urgency, and implies the need for a quick policy action in response • Fisheries context - WI might be found in or based on discussions in Infofish International or reports carried in any of the other Globefish publications profiled in this Chapter
Current intelligence (CI)	• CI - addresses day-to-day events and informs decision makers of new developments so they can assess the significance of such developments • Fisheries context - CI is provided by or can be generated from all publications profiled in this Chapter
Estimative intelligence (EI)	• Explanation - EI deals with what might be or what might happen; it may help policymaker's fill in gaps between available facts, or assess the range and likelihood of possible outcomes in a given scenario • Fisheries context - EI is unlikely to be provided directly by any of the publications listed on this page. Negotiators will need to develop their own EI based on their own knowledge and insights and the raw data or information provided in these publications

Negotiations Conference Intelligence (NCI)	• Negotiations Conference Intelligence is produced in a tailored, focused, and timely manner to support a particular negotiations conference or event • Fisheries context – NCI is unlikely to be provided directly by any of the publications listed on this page. Negotiators will need to develop their own NCI based on their own knowledge, other sources of information/intelligence/insights and the raw data or information provided in these publications
Tactical intelligence (TI)	• Tactical intelligence provides information about players and decision makers and what tactics they are likely to use in a negotiations process or during a Conference • Fisheries example – TI is unlikely to be provided by any of these publications. TI would be provided by PNA of previous negotiations, discussion with others who have negotiated with your opponent before etc.

7.3 | Generating usable negotiations intelligence – some pointers

Given the above background, how then should the CSNT go about generating usable negotiations intelligence? The task can be undertaken at two levels: (1) to meet short-term impending negotiations; (2) to build up a longer term capacity. We provide some comments about longer term capacity first.

7.3.1 Developing longer term capacity

This involves the following activities:

- establish your own information repository – it does not matter if it is small;
- maintain and steadily increase your own information repository;
- gain and maintain access to other information repositories;
- collect information;
- analyse that information;
- produce analytical outputs that can be used by negotiators.

7.3.2 Organise an intelligence audit

An intelligence audit is an examination of an organization's current level of intelligence activities with the objective of improving those operations in order to gain, and maintain, competitive advantage. It involves:

- identifying those people engaged in relevant activities;
- locating relevant collections of information;
- locating relevant human sources of knowledge;
- establishing a set of key intelligence topics around which repositories will be.

Longer term capacity will clearly be helped by undertaking an intelligence audit. This should look closely at how you currently organise your intelligence gathering processes and how it should be possible to improve them in association with other government departments, embassies in the capitals of the key access demandeurs, outside institutions like the Universities and also the key international NGOs like IUCN and WWF. The process may even be contracted out in part to a private consulting firm or individual knowledgeable in fisheries policy and fisheries negotiations to design the outlines of a long-term capacity framework.



Figure 7-3 – an influential strategic information publication – FAO

7.3.3 Create action-oriented repositories and a current awareness information system

Negotiations require two types of support. Action-oriented immediately usable support and more basic research support. It is the action-oriented support which is of most interest. You should have a small but up-to-date repository of key information – in contrast to a library it should act as a directory, not a repository. It should contain the following:

- industry directories;
- professional association membership lists;
- hard copies of emailed newsletters from FAO; Globefish; CTA;
- brochures from international fisheries trade fairs etc.
- a collection of relevant trade literature;
- co-contractor, competitor, market, and country files;
- seminar and conference brochures;
- seminar and conference reports;
- lists of Internet sources;
- a Thesaurus;
- a glossary of terms;
- how to negotiate guides and books
- guides to negotiating with other cultures



Figure 7-4 - A well known market information publication - FAO

A librarian or information collection management person should be able to help design such a small repository. It does not have to be more than a couple of filing cabinets. It may also be a small room with a table and a white board. A few relevant maps are also useful. A current awareness system makes you aware of what is being done in the fisheries world through (1) documents & database records (notes, abstracts, clippings, email, and database records); (2) oral briefings (such as face-toface or telephone conversations).

7.4 | Preparing for specific negotiations

For the more immediate needs of negotiations occurring in the next few months, the tasks are simple:

1. identify your intelligence needs.
2. gather the information.
3. analyze the information.
4. act based on your analysis.

The key in defining your needs is to define or establish the key negotiations topics (KNTs). It is these which then drive your key intelligence questions (KIQs). Answers to these questions provide you with the negotiations intelligence that you require. Annex I to the Manual has worksheets which illustrate some useful KNTs and KIQs



Figure 7-5
A Basic Negotiations Intelligence Cycle

7.5 | Acquiring information and building profiles



Figure 7-6 A Globefish price information document - FAO

Acquiring information for a specific negotiation or more generally to build up your intelligence capacity should be a structured process. It probably requires a minimal collection plan especially for key opponents. To provide some structure, you can think about the arenas for collection as follows:

1. internal information arena
2. external information arena
3. internal knowledge arena
4. external knowledge arena

Internal information arena covers all the formal and informal records that are likely provide you with information from within either your Ministry, your department or the government system as a whole. External information arena covers sources of information like libraries,

journals, the Internet, Databases and other sources of information. Internal knowledge refers to the experience that is present within the CSNT, the Ministry or department. This is not information that is written down or recorded but comes from the experience, education, training and knowledge of people with respect to your specific negotiation, negotiations with a particular country or negotiations in general. To tap into internal knowledge requires contacts, conversations, discussion, briefings and other types of meeting. The final collection arena is that of external knowledge – embassies, trade attaches, businesses experienced in dealing with your co-contractor fishing companies themselves etc.

You should also progressively prepare profile documents for the key countries, companies and personalities you deal with. Figures 7-8 and 7-9 show useful contents of such profiles. Chapters 16-20 provide examples of such profiles for key access demandeurs – Japan, EU, Korea, Taiwan and China. Such profiles must be kept upto- date. Fleet profiles are useful as well.

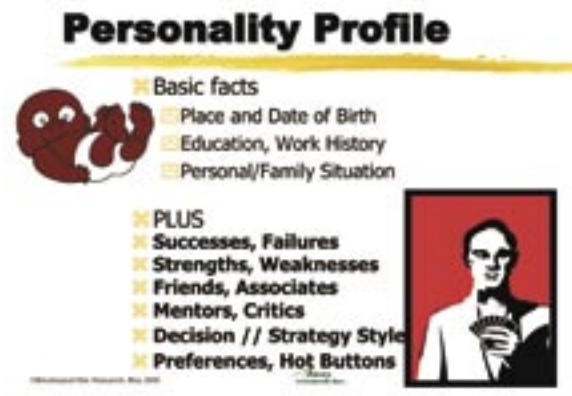
Figure 7- 7

FAO's fishery country profiles - example of a data/information source

FISHERY COUNTRY PROFILE: MALAYSIA		
FISHERY COUNTRY PROFILE	Food and Agriculture Organization of the United Nations	FID/CP/MAL April 2001 
PROFIL DE LA PÊCHE PAR PAYS	Organisation des Nations Unies pour l'alimentation et l'agriculture	
RESUMEN INFORMATIVO SOBRE LA PESCA POR PAISES	Organización de las Naciones Unidas para la Agricultura y la Alimentación	
GENERAL ECONOMIC DATA		

Figure 7-8

A sample personality profile



Source: Ibis Research 2000

Figure 7-9

A sample company profile



Source: Ibis Research 2000

Chapter 8

The Physical Environment

8.1 | Understanding how the physical environment affects negotiations⁶⁴

The physical environment transmits non-verbal messages that can be extremely important to negotiators. Key elements of the environment include:

- the negotiation conference facility;
- conference table configuration, size, and seating arrangements;
- physical distance between negotiators;
- relative elevation of the negotiators; and
- visual aids.

Box 8-1 Chapter 8 Highlights

Key features of this Chapter are:

- The importance of the physical environment in negotiations;
- Choosing and managing a conference facility to advantage;
- A general preparations checklist, and sample basic negotiations plan.

8.2 | The conference facility⁶⁵

Your negotiations conference facility says volumes about you, your organization, and the importance of the negotiation. Messages are sent by the entire facility not just the conference room. A dirty or substandard rest room might actually send a stronger message about your organization than a sub-standard conference room. Negotiators will react to subliminal messages related to the negotiation facility even though they may not realize that the messages exist. Superior negotiation facilities convey positive messages about the host and the importance of the negotiation. These messages may increase the self-assurance of the host and lower the confidence of the guest negotiators. Substandard negotiation facilities convey unflattering non-verbal messages. These unflattering messages may lower the confidence of the host team while increasing the self-assurance of the guest negotiators.

Negotiators' reactions may be affected by plush carpet or expensive furniture but they are affected more by physical comfort. Key aspects of physical comfort are adequate furnishings, lighting room temperature as well as space for everyone involved. The quality of accommodation for guests is also crucial together with their ability to communicate with their home governments. The security of such communications – namely that they should not be recorded or monitored by the host country – is also critical. In short, physical discomfort negatively affects the attitudes of people already under pressure. It would particularly affect the attitude of the guest team, if they perceive the discomfort as a deliberate tactic by the host. Coastal State negotiators are doubtless aware that some countries actively use physical comfort as one of the tactics in negotiations.

8.3 | Table issues⁶⁶

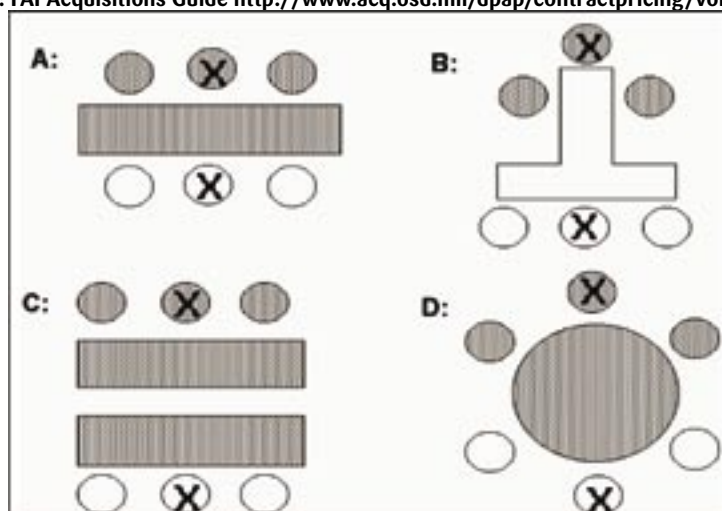
Table arrangement transmits important conscious and subliminal messages. Those messages are so important that the negotiations to end the Vietnam War were delayed for almost a year while the parties involved negotiated the shape of the negotiation table! As can be seen from the examples below, each table configuration sends a different message.

64 - Peter Monge et al. "The Effects of Cooperative and Competitive Physical Environments and Communication on Negotiation Outcomes in Ultimatum and Communication Games" <http://sonic.ncsa.uiuc.edu/Nosh/externalfunded/Steelcase97.pdf>

65 - FAI Acquisitions Guide - <http://www.acq.osd.mil/dpap/contractpricing/vol5toc.htm>

66 - FAI Acquisitions Guide - <http://www.acq.osd.mil/dpap/contractpricing/vol5toc.htm>

Figure 8-1 Table Configurations
Source: FAI Acquisitions Guide <http://www.acq.osd.mil/dpap/contractpricing/vol5toc.htm>



- arrangement A is a typical configuration for negotiations. The two parties sit together to indicate and foster unity. Each team is on a different side of the table and the teams are facing each other so each team member can clearly hear what anyone on the other team has to say;
- arrangement B may tend to give one party an advantage over the other because the arrangement suggests only one important person, the person at the end of the vertical extension;
- arrangement C shows a need for space between the two parties. That space could result in more formality or reduced trust.
- arrangement D may be the most conducive to win/win negotiations because the round shape is usually associated with equality.

8.3.1 Table size⁶⁷

The conference table(s) should be large enough to comfortably seat participants from both teams with adequate space for their work papers, reference material, and briefcases. Depending upon the complexity of and probable length of the negotiation, more chairs may be needed if specialists or observers are added to the group. However, any additional furniture should be positioned so as not to interfere with the action at the negotiation table.

8.3.2 Principal negotiator's position at the negotiations table⁶⁸

The physical position of the principal negotiator is generally at the centre of the negotiation team. The ideal place for the principal negotiator in each arrangement shown above is the middle seat flanked by team members. The central position conveys a message of authority and sends an image of a unified negotiation team. Besides sending a negative non-verbal message, positioning the principal negotiator somewhere other than at the centre of the team also has other consequences. In particular, an end position will likely make it more difficult for some team members to whisper advice, give cues, or pass notes to the principal negotiator.

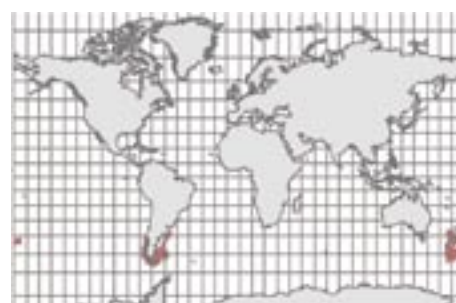


Figure 8-2 The global market in access rights - production regions and fishing grounds for Southern Hake (Hoki) Source: FAO

8.3.3 Physical distance between negotiators⁶⁹

People in different cultures require different amounts of physical distance for communication. Too little or too much space between people can have a negative effect.

67 - FAI Acquisitions Guide - <http://www.acq.osd.mil/dpap/contractpricing/vol5toc.htm>

68 - FAI Acquisitions Guide - <http://www.acq.osd.mil/dpap/contractpricing/vol5toc.htm>

69 - FAI Acquisitions Guide - <http://www.acq.osd.mil/dpap/contractpricing/vol5toc.htm>

8.3.4 Relative elevation of the negotiators⁷⁰

Most people are conditioned early in life to defer to people on a higher physical level and that training continues throughout their lives. Teachers stand while students sit. Judges preside from raised platforms. Political leaders address supporters from raised stages. Some negotiators attempt to take advantage of this conditioning by raising themselves above the other negotiator. Some make key points while standing or walking around as the other negotiator sits. Others have gone so far as to raise the chairs for their team to a level higher than those for the other team. Do not allow another negotiator to intimidate you by physically talking down to you. If necessary, stand yourself or ask the other negotiator to sit down, to equalise your heights.



Figure 8-3 The global market in access rights - production regions and fishing grounds for North Pacific hake
Source: FAO

8.3.5 Visual aids⁷¹

Ensure that adequate visual aids are available to support both negotiating teams. Marker boards and chalkboards can be a useful addition to meetings if you do not currently use them. When you are abroad, make it a point to ask for them as their mere presence in the room can easily encourage brain-storming and other more collaborative forms of negotiating. Marker boards and chalkboards are excellent for summarizing the negotiation agenda, issues, and agreements. However, you need to remember that the person who is writing on the board has the power of the marker. By controlling what is written, that person can modify the agenda, define key issues, or draft agreements. That power can substantially affect negotiation progress and results. Finally, visual aids may also include overhead projectors or VCR or DVDs with televisions. Computer screens may also be used to show maps or other necessary supporting data.

8.4 | PREPARING FOR NEGOTIATIONS- CHECKLISTS AND OTHER TOOLS

Table 8-1 General preparations checklist ⁷²

ACTIVITY	EXPLANATION
A. Set the scene for the preparation phase	• establish communications with top levels of government; • identify communication channels to use throughout negotiation process; • determine needs and goals of top government level; • begin internal negotiations to influence goals and strategies; • determine limits of team's authority; • lower top government level's expectations; • establish team operating procedures; • determine timeline for preparation phase taking into account: • relevant bargaining deadlines; • availability of personnel for team and other support requirement; • availability of resources to support the team.
B. Developing the team	• select team members; • determine limits of team's authority; • establish communications within team ; • conduct team-building exercises; • educate team members about different styles of thinking; • determine each member's strengths and roles. • train team in negotiation process; • lower expectations of team members; • balance stabilizers and destabilize; • assign preparation phase tasks to each member.

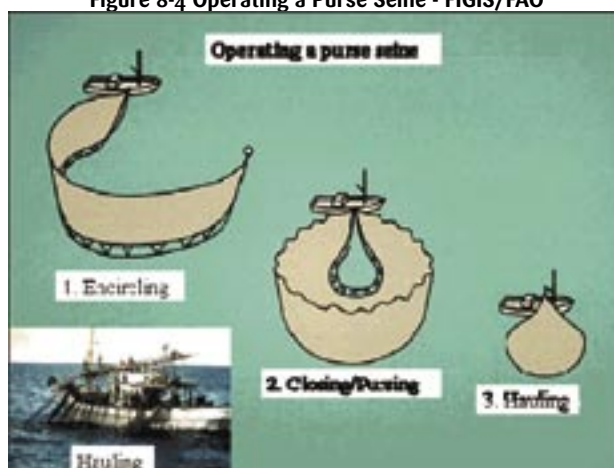
⁷⁰ - FAI Acquisitions Guide - <http://www.acq.osd.mil/dpap/contractpricing/vol5toc.htm>

⁷¹ - FAI Acquisitions Guide - <http://www.acq.osd.mil/dpap/contractpricing/vol5toc.htm>

⁷² - Adapted from Miller, J.G. and Colosi, T.R. Fundamentals of Negotiation: A Guide for Environmental Professionals (1989) 57.

C. Gathering information and identifying data needs	- gather information for your side's position; - gather information for the other side's position; - identify external consultants and resources; - identify members of other team and determine: ; - their relationship with the top levels of their government or company as appropriate; - the needs of the opposing government or company as appropriate.
D. Analyse past negotiations and implementation of past agreements	- review past negotiations of both teams; - assess past negotiations asking: 1. did the team achieve what it sought? 2. what procedures did it use 3. what were strengths and weaknesses of past negotiations?
E. Assess implementation of past agreements, asking:	- what items were difficult for you to comply with? - what items were difficult for the other side to comply with?
F. Identify and prioritise issues in Current Negotiation	- determine negotiable and non-negotiable items; - determine items that can be given up or "thrown away"; - determine likely sticking points or areas of difficulty.
G. Identify all interested and affected parties	- perform consultation activities; - perform public relations activities; - educate key parties about negotiation process and team goals; - educate key parties about anticipated difficulties and thereby lower expectations; - educate key parties and thereby lower possibilities of surprises and sabotage.
H. Prepare a basic flexible table strategy	Issues to be covered include: - how to open; - the order in which you will address issues; - how to close; - what information will be sought by you; - what information will be given by you; - what information will be withheld by you; - how you will present the information you give; - how you will ask for the information you want; - what concessions you will make; - what concessions you will seek; - when and how to make or seek these concessions; - what tactics you will use.

Figure 8-4 Operating a Purse Seine - FIGIS/FAO



Box 8-2 Sample basic negotiation plan⁷³

1. Agenda

- what issues do you plan to discuss and in what order;
- what issues do you anticipate the other party may want to discuss?

2. Objectives, interests, positions

- your Side;
- the other party's;

3. Strengths and weaknesses

- strengths and weaknesses of your position, including key elements of your BATNA;
- strengths and weaknesses of the other party's position including your assessment of their BATNA;

4. Information

- what information do you need to learn during the negotiation?
- what information do you want to reveal during the negotiation?
- what information do you want to hide during the negotiation?

5. Strategy

- which strategy will you adopt at first (competitive, cooperative)?
- what tactics do you plan to use to execute your initial strategy?
- what will you do if the initial strategy does not work?
- how will you decide it is not working?

6. Bargaining range

- your minimum acceptable settlement package & supporting rationale;
- your target/aspiration package & supporting rationale;
- your opening position with rationale/justification.;
- your estimate of the other party's opening position - rationale/justification;

7. Questioning plan

8. Concession strategy

- what concessions can you afford to give away?
- what must you not give away?
- key elements of strategy 1;
- key elements of strategy 2;
- what concession strategy will you use?
- how will you switch concession strategies if Strategy 1 is not working;
- how will you respond to unethical tactics/surprise;

A Basic Plan should be approximately 2-4 pages of typed text.

73 - Adapted from Archer, Introduction to Negotiations, Loyola School of Law Los Angeles, Spring 2006-10-30 <http://classes.lls.edu/spring2006/intronegot-archer/index.html>



PART III – BARGAINING

Overview of the Bargaining Phase

As stated in Chapter 1 a fisheries access negotiation is a dialogue between two or more parties – typically the Coastal State and an access demandeur – in which they bargain over a package of issues. The technical description is that a fisheries access negotiation is a multi-issue bilateral negotiation. It is now typical practice for most of the bargaining to take place during formal face-to-face sessions. In this Manual such face-to-face sessions are referred to as Negotiations Conferences. During the face-to-face meeting(s) a large number of negotiations messages of different types are exchanged.

Key aspects of Negotiations Conferences include:

- making proposals;
- accepting proposals;
- clarifying the contents of proposals;
- seeking clarification on the reasoning behind proposals;
- generating counterproposals;
- rejecting proposals;
- modifying proposals;
- withdrawing proposals;
- making concessions;
- accepting concessions;
- rejecting concessions;
- terminating negotiations as a whole.

Although Negotiations Conferences appear to go backwards and forwards, they do actually have a structure in the sense that they go through distinct phases. These phases can all take place in one session, they may take place over months, or exceptionally, over a period of years. There is also often movement backwards and forwards between the phases. Conferences always start with an Introductory phase during which the parties establish their identities and set the tone of the interaction. They then move into the phase of Information Exchange, during which experienced negotiators ask questions designed to induce the other side to disclose their underlying needs, interests and positions. At the end of the Information Exchange phase, the parties have a good idea of what is available to be distributed. The Distributive phase is next, during which each side seeks to claim a share of what is available to be divided up. The Settlement and Closing phases follow. In the Settlement phase the details of exactly what has been agreed are more precisely defined. It is during this phase that issues start to be recorded in a semi-final form. The Closing phase requires that negotiators check that agreements made on behalf of political superiors are in fact acceptable. The Closing phase may also involve statements as to the anticipated results from the negotiations. Finally, the Closing phase may be followed by a Cooperative phase in which further adjustments to the agreement are made because the competitive element has been substantially removed.

Skilled negotiators develop a framework for controlling entry into and out of each phase. The questions and tactics used by a skilled negotiator are directed at maximising the gains that are possible from each phase of the process. This Part of the Manual discusses how to manage the different phases of bargaining by discussing the following aspects of the bargaining phase:

- Managing the Negotiations Conference – opening, bargaining, concessions, and closing: Chapter 9
- Managing communications during bargaining: Chapter 10
- Managing tactics: Chapter 12
- Managing the government team: Chapter 13
- Managing the failure of negotiations – deadlocks, ultimatums and walkouts – Chapter 14.



Figure 8-2 Phases of a Negotiations Conference

Perspective adopted

The discussion in this part of the Manual looks at issues from the point of view of the leader of a CSNT. As such the language tone moves between impersonal and direct as appropriate.

Box 8-3 Reflections

Consider a recent instance of a major negotiation in which you were involved. Try to remember the ways in which the discussion (its movement from phase to phase, its priorities, etc.) progressed. Who were the major agents of change? How did the other parties react to them? What tactics were involved? What role did you take? What tactics might have resulted in a better outcome?

Chapter 9

Managing The Negotiations Conference

«The complete negotiator should have a quick mind, but unlimited patience, know how to dissemble without being a liar, inspire trust without trusting others, be modest but assertive, charm others without succumbing to their charm, and possess plenty of money and a beautiful [spouse]».

Anon, 18th century Negotiation Manual

Box 9-1 Chapter 9 Highlights

Key points addressed and practice exercises offered relate to:

- The key phases of the negotiations conference
- The dynamics of bargaining;
- Key phases of integrative versus distributive conferences;
- Easing into negotiations;
- Setting a negotiations Agenda;
- Options for starting and proceeding with negotiations;
- Transition between conference phases;
- Techniques to keep the ball moving (the parking lot concept, brainstorming, natural pauses, conducting periodic review of progress, addressing points of disagreement in a structured way, consulting with the CSNT's process observer);
- How to compensate for a weak position;
- Managing concessions, and concession plans;
- Recognising and managing losing trends.
- Closing techniques.

9.1 | The introductory phase

The way in which a negotiations conference opens helps establish the negotiating climate. A good opening requires the leader of the team which is hosting the conference to extend cordial greetings to members of the other negotiation team and also to lead both teams in appropriate politeness and icebreaking activity. Introductions may not be necessary if all the participants know each other. Otherwise, the few minutes required for introductions will pay dividends throughout the negotiation.

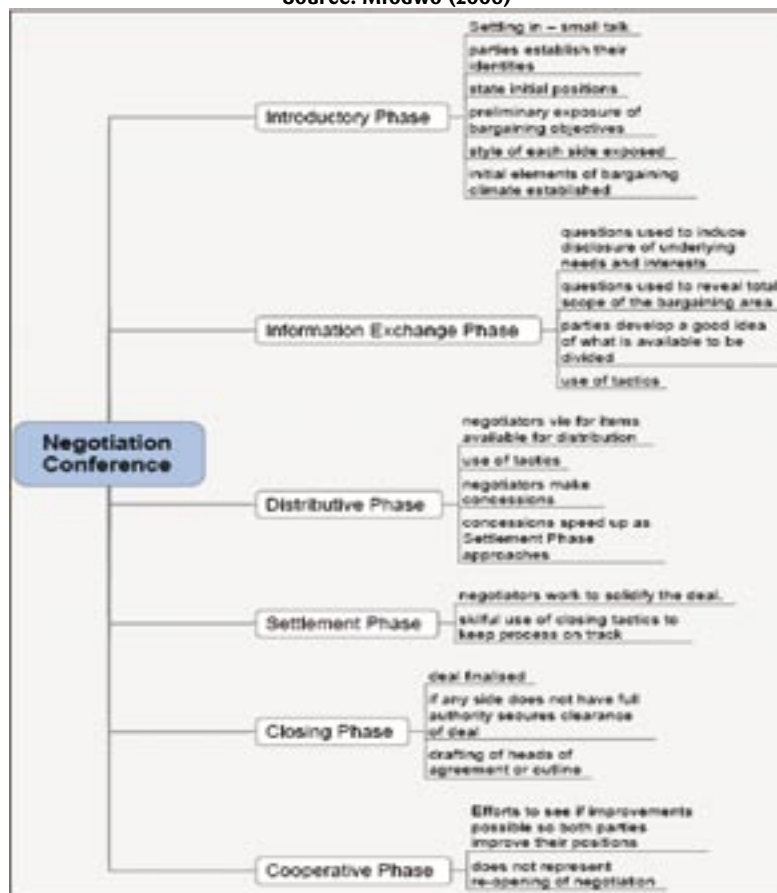


Figure 9-1 Freezer trawler - FIGIS/FAO

The team leader of the country hosting the conference may introduce each Government team member himself or herself, or alternatively may have team members introduce themselves. Each introduction should include full name, title or position, and the person's role in the negotiation. It is always useful to develop a clear protocol to be used to manage introductions to prevent any unwanted moments of awkwardness. An ability to pronounce names properly is important in order to foster respect and can be undertaken with the help of relevant language experts. This seemingly small gesture pays dividends. To

help participants remember each others' names, a good approach is to have both an attendance roster and name place-cards for all participants at the conference table. If the place-cards have been pre-positioned on the table, it is good to allow time for teams to rearrange seating in accordance with their seating preferences. Casual conversation often dispels the tension present at the start of every negotiation and helps attendees feel more at ease. The tone of the opening is critical as it can "lock-in" or anchor negotiators positively or negatively, and significantly affect the probability of securing agreement.

Figure 9-1 Phases of a Distributive Negotiations Conference
Source: Mfodwo (2006)



9.2 | Reviewing background information

A good way to set the tone is for both sides to briefly review information relating to the situation under negotiation. This review is not an official statement by either of the parties. Instead, it is an opening intervention to facilitate mutual understanding and ensure that both parties feel that the general facts and issues at stake are clear. Where the intention is to create an integrative atmosphere this approach is particularly valuable.

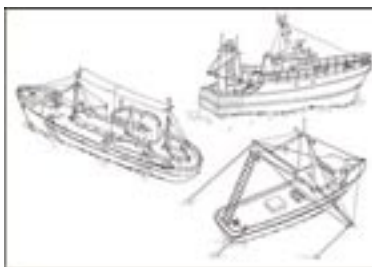


Figure 9-2 Trawlers (side trawler, stern trawler & outrigger trawler)
Source: FIGIS/FAO

Also, if any exchange preceded the formal negotiations conference, it is useful to summarize the results of that exchange. It may sometimes also help if any unusual constraints that may affect the negotiations process are mentioned. This should however be done without giving advantage to the opponent. Where key general facts and issues are not clear, the leaders of the teams may also conduct additional fact-finding before opening negotiations. Such fact-finding could for instance, be delegated to a joint sub-committee. Where an agenda already exists, this can be jointly reviewed. The host CSNT should ask for comments from the other team. Specifically they should ask if there are any items that need to be added to the agenda. Fact-finding during a negotiations conference is not part of the negotiations itself.

Box 9-2 Reflections

Consider an instance where your own expectations of a negotiation turned out to be inappropriate. What caused your expectations, and why did things occur differently? Do you think the way the conference opened helped to substantially shape events?

Adapted from Mulholland, *The Language of Negotiation* (1991) (selected pages)

Figure 9-4 Sample Negotiations Agenda
Source: G.A. Garrett, Contract Negotiations (2005) CCH

Sample Negotiations Agenda¹

Negotiations Between Country X and Country Y		
Title	Date	
Location	Time	
Topics of Action ☐ Introduce team members ☐ Provide overview and discuss purpose of negotiation ☐ Exchange information on key interests and issues ▪ Topic 1 ▪ Topic 2 ▪ Topic 3 ▪ Topic 4 ☐ Have a break ☐ Review agreement on all key interests and issues ☐ Agree on detailed terms and conditions ☐ Agree on price ☐ Review and summarize meeting		
Date Prepared: _____		Lead Negotiator: _____

9.3 | Settling the negotiations agenda

In many cases the negotiations agenda is decided before the Negotiations Conference starts. In other cases the agenda itself must be negotiated before the conference begins. When an agenda requires negotiation, clearly the first step following the introductory opening is to negotiate the agenda. The considerations to be addressed in deciding an agenda have already been discussed in Chapters 4 and 5.

Box 9-3 Reflections

In the negotiations your country conduct, is the agenda usually settled before the negotiations conference or is it negotiated as part of the conference itself? Has your approach to the agenda helped you in the past or has it given an advantage to the other side? Would it be useful to change your country's established practices with respect to deciding the agenda?

9.4 | Structuring movement through the phases of bargaining

9.4.1 Negotiating issues - the order to be followed

This question is one of the key elements of the negotiator's dilemma. There is no right answer. The only guidance that can be offered is to know the options that are available, and to use a sequence which suits both your style of negotiation as well as the circumstances of the particular negotiation. It is also useful to vary one's approach from time to time, as predictability makes the other side's task much easier.

Table 9-1 Starting a Negotiation

Option 1	• negotiate the issues of greatest importance first, then go on to address the secondary issues; • once you begin discussing issues of secondary importance, you can attempt to trade these secondary issues for the more important unresolved issues.
Option 2	• negotiate secondary issues first, then go on to address issues of greatest importance as agreement on secondary issues often creates a climate of mutual cooperation;
Option 3	• negotiate the other side's demands first. • by first making concessions on issues important to the other side, you create a win/win environment and may be more likely to receive comparable concessions.
Option 4	• negotiate your government's demands first

9.4.2 Is the first move really important?

Although some authors emphasise the importance of making the first move, there is no correct first move in an access negotiation. The principal possibilities are:

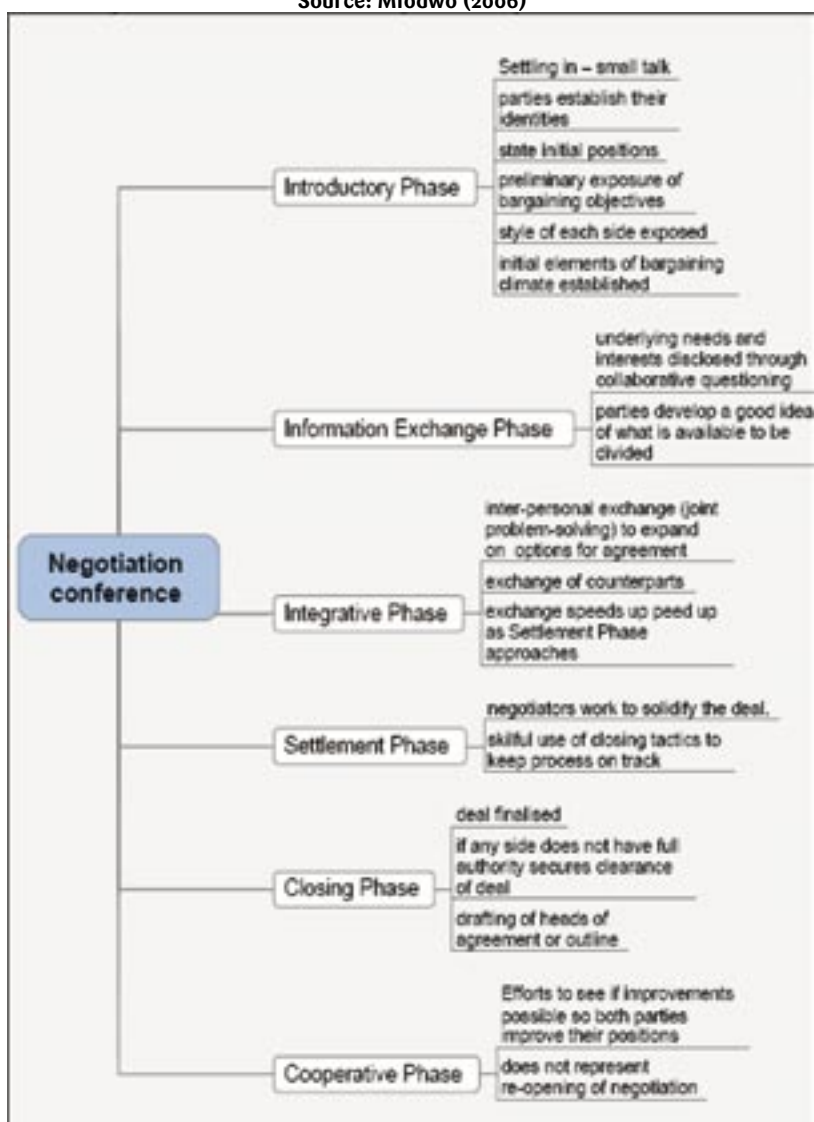
- one side may choose to make an opening offer. This has a degree of danger attached as it may involve making a leap in the dark, and requires confidence in your prediction of the other side's case (as well as confidence in your own position). Conversely, making an early move can valuably result in you gaining control over early stages of the negotiation;
- one possibility is simply for one side to open, as they have a strong point that they wish to promote from the outset. This may be particularly appropriate if one side has taken the initiative or is the host or even the guest;
- alternatively, each side may in turn summarise their view of what is achieved in the negotiations and their own starting position, putting their case in the best possible light;
- rather than exploring the whole arena it may be valuable for the parties to try to define their differences - ie each side simply outlines the problems they perceive to be in need of resolution, rather than stating their whole case;
- as a further possibility, the sides can simply agree to start by addressing one particularly important issue, and then proceed from there. Decide in advance which form of opening you favor, and if you think your opening is particularly important it may be necessary to take the initiative to ensure it is effective.

9.4.3 The flow of the negotiation

Clearly after the first move the negotiation can flow in many different directions. However to provide order and structure it is best to choose from this set of possibilities:

- if a particular issue has been chosen as a starting point, it should be fully pursued, either to a conclusion, or to the point where another issue or suggestion genuinely comes up. Remember to maintain some structure and do not be diverted onto other points for no good reason;
- if the starting point is examining the whole case or range of problems, the issues and problems thrown up should each be examined in turn;
- if the starting point is an offer, the other side will have to react, which will normally be accomplished by exploring the benefits and drawbacks of the initial offer – this then leads to counter-offer and so on

Figure 9-5 Phases of an Integrative Negotiation Conference
Source: Mfodwo (2006)



Box 9-4 Strategy problem 1 opening a negotiation

Your country is about to start negotiations with an industry association with whom you would like to develop a long term relationship. You have just been introduced to the concept of integrative bargaining and feel this is a good chance to use an integrative approach. Is it wise to put forward an extremely generous offer at the start of the relationship to demonstrate your intended commitment to the relationship? If not, why not? For a suggested answer go to section 14.7

Figure 9-6
Offer Evaluation Sheet Adapted from G.A. Garrett, Contract Negotiations (2005) CCH

Objective: To Increase access fees for shrimp, tuna and squid by X% over previous agreement

Worst Case	Most Likely	Best Case
Shrimp	Shrimp	Shrimp
Tuna	Tuna	Tuna
Squid	Squid	Squid
Trade-offs		

(Plot your position/progress on arrow as negotiation proceeds)

Date Prepared: _____ Lead Negotiator: _____

9.5 | Using Integrative Procedures to facilitate movement

9.5.1 The parking lot concept

The parking lot is a list of open items which are discussed at the end of a bargaining segment. Under this approach, each time you are unable to come to agreement on a specific issue, you allocate it to the 'parking lot'. Once all parking lot items are identified it is time to begin addressing them. This approach allows the parties to define the extent of disagreement before 'real' compromises begin.

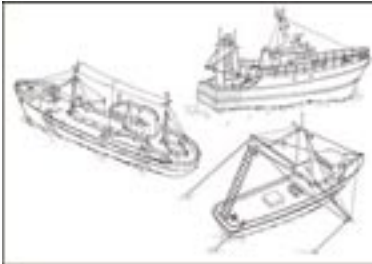


Figure 9-7 Beam trawler - FIGIS/FAO

Provided that the parking lot idea is acceptable as part of the negotiating process, there are a number of options for implementing it. Where there is a lot of trust between the parties, and the negotiation is integrative rather than distributive, the two teams may agree to maintain a separate, visible notice-board on which these items can be recorded. It serves to remind both teams of the outstanding issues, and encourages creativethinking with respect to them. In situations of lesser trust, each side can designate a team member to record parking lot content. As appropriate the items can be reconciled and then discussed more intensively.

9.5.2 Brainstorming

This approach is a clear application of the integrative approach. However it requires a high level of trust between the parties. It can be implemented as follows:

- set up a separate, visible notice-board on which proposals or alternatives will be recorded and appoint a recorder from both sides
- invite all team members from both sides to make contributions to a free flowing discussion - be creative in what you propose - high levels of trust will lead to honesty and good proposals as each side will not be afraid to expose its weaknesses;
- consider the acceptability of the alternatives generated;
- select the best alternative - if there are multiple alternatives, select the one that provides the highest mutual satisfaction. For example, your Government wants the company to provide all the technical data from fishing. The other party does not want to give you information which may be passed on to competitors. This type of problem can often be worked out by contractual language that protects the rights of both parties.

Box 9-5 - Strategy problem 2 - responding to pressure tactics during bargaining

You are trying to clarify an item that you believe has been agreed to by the other side. You need to do this in order to record the details. However the other side seems very keen to move on to the next item on the agenda. Would you sacrifice recording these details in the interest of progressing the negotiations? Yes? No? For a suggested answer go to section 14.7

9.6 Coming to a natural halt in the flow of the process

It is not uncommon for negotiations to feature natural pauses. Unless a line of discussion succeeds in reaching a conclusion, this will almost certainly happen when one point has been fully explored and it is not obvious where to go next. There is no reason to be concerned at the occurrence of natural pauses. In the worst case, you can simply use the pause to review your own progress, in your own mind. Other possibilities are:

- the parties may review and summarize discussions up to that point (encouraging a joint understanding of progress), and then move on to the next point on the agenda;
- one or both parties may state a position or a revised position;
- you may state what problems remain for you in reaching an agreement;
- you may ask the other side to state what their main problem is;
- either or both parties may suggest what might still be discussed.

9.7 What you can do to maintain control

It is clear that the flow of bargaining can go in many different directions. How do you ensure you do not lose control? Control can be maintained as follows:

- preparation and internal team discipline is crucial to control – a poorly led and poorly prepared team can be led all over the place – see Part II on preparation;
- follow your negotiations plan;
- systematically evaluate and record offers;
- use your process observer;
- caucus as much as you need – do not be ashamed or shy to do so;
- periodically review areas of agreement;
- identify and systematically address areas of disagreement.

9.7.1 Periodically reviewing areas of agreement

Periodically review matters on which both parties agree helps provide a sense of progress and makes the parties see the extent to which there is movement towards an overall agreement. Periodic reviews of areas in which there is agreement also helps to improve the atmosphere of the negotiations as they demonstrate that areas of agreement are more significant than the areas of disagreement. Disruptive tactics lead to a loss of control. They are less likely to be used if there is a good atmosphere.

9.7.2 Addressing areas of disagreement in a structured way

There are several different approaches to dealing with areas of disagreement. Trading off issues is one approach. Simplifying issues is another. Using the parking lot approach is another method. The issues being negotiated, circumstances surrounding the negotiation, and the negotiating styles of the negotiator determine the method most likely to succeed. Having strategies to address this issue is very important and again can be rehearsed to ensure effectiveness.

9.7.3 Using the process observer

Process observers are fundamental to effective participation during each phase of the bargaining process. Without their careful assessments, team leaders may not be able to appreciate which phase of the negotiation conference they are in and thus may not be able to facilitate movement forwards. The role of process observers is discussed in more detail in Chapter 13 - Managing the Government Team.

Box 9-6 Strategy problem 3 – should you disclose areas of weakness?

You are negotiating with a fishing company new to your waters. You have recently started having low level problems with IUU fishing, which has not yet affected the resources available in your zone. Would you discuss the emerging IUU problems with these new negotiating partners? For a suggested answer go to section 14.7

9.8 The dynamics of bargaining⁷⁴

Negotiations theory has extensively studied the interactions that occur between individuals and groups during bargaining. A few useful insights are set out below. The basic principle established by negotiations theory is that it is important to identify and attempt to manage all the bargaining configurations that are present within your negotiations space. Typical bargaining types include:

- internal bargaining within the CSNT itself;
- bargaining with your co-contractor – horizontal bargaining;
- vertical bargaining with political superiors – vertical constituency bargaining;
- bargaining within the Governmental system – horizontal/vertical constituency bargaining;
- bargaining with non-governmental stakeholders;
- shadow bargaining.

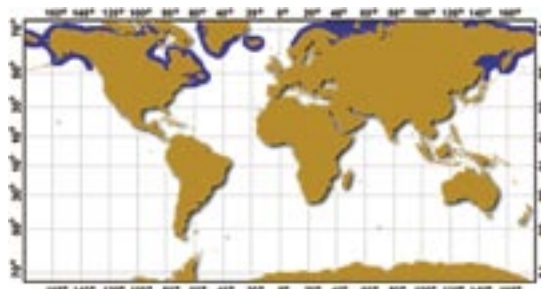


Figure 9-8 The global market in access rights - production regions and fishing grounds for Capelin
Source: FAO

9.8.1 Bargaining within the CSNT internal bargaining

9.8.2

The CSNT (as well as the negotiating team for the other side) is typically composed of a range of people with different personalities, official positions and technical expertise. Some people bring stability (S) to the negotiation, others bring instability or act as destabilisers (DS), whilst others tend to mediate between these two factions (QM).

Negotiations theory makes the following observations about bargaining within the CSNT. Firstly, there is significant evidence to suggest that some of the most difficult bargaining of a negotiations event takes place within the CSNT itself. During the negotiations, each team continually conducts active internal negotiations (See I in Figure 9-10) to decide whether, when, how, how far and in what direction it will move. The likely directions of internal bargaining are usually already identifiable during the preparations phase, when the positions of different government Ministries and officials becomes clear. These positions may be expressed through the members of the CSNT.

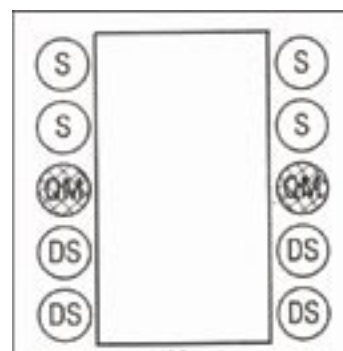


Figure 9-9 Stability in internal bargaining⁷⁵

Studies of bargaining suggest that in most cases, there are individuals who act in a manner which serves to stabilise (S) the milieu of the negotiations. The team leader effectively acts as a quasimediator (QM) as set out in Figure 9-9. During caucuses, internal bargaining within both teams takes place - though internal bargaining has usually already started during the preparations phase, often with the effect of destabilizing (DS) arguments and behaviour. In Figure 9-10 the sites of internal bargaining are shown by the sign I. Chapters 4 and 13 discuss matters relating to the CSNT in more detail.

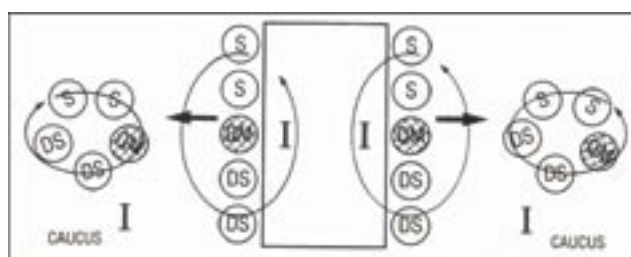


Figure 9-10 Complexity of internal bargaining⁷⁶

74 - Fundamentals of negotiation - A guide for environmental professionals, 6-8 and 17-42.

75 - Fundamentals of Negotiation for Environmental Professionals, 20.

76 - Source: Fundamentals of Negotiation for Environmental Professionals, 7.

9.8.3 Horizontal bargaining

Bargaining horizontally with the other team arguably constitutes the most important aspect in the negotiation. It is discussed more fully in the rest of this Chapter. In a difficult negotiation, horizontal bargaining at the negotiating table may be much less difficult than the scenario taking place within the various teams shown above in Figure 9-10.

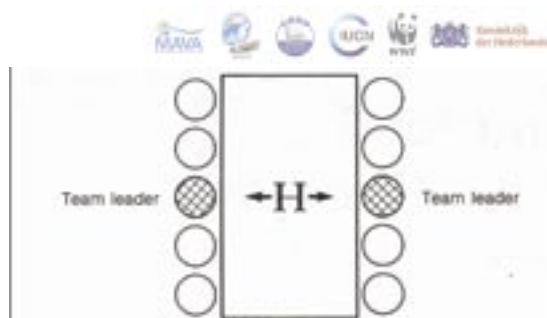


Figure 9-11 Horizontal bargaining⁷⁷

9.8.4 Bargaining with your constituencies

Each team has constituencies whom it must satisfy. Chapter 1 has already described the increased number of stakeholders involved in the access agreements arena, and the explosion in the range of associated issues now part of the arena. Vertical bargaining with one's superiors is one of the most important tasks facing the team-leader of the government team.

Horizontal and/or vertical bargaining with other government organisations crucial to the negotiations occurs throughout a negotiation.

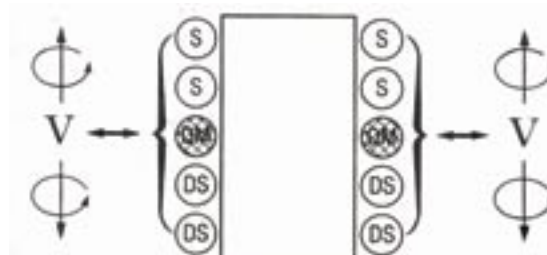


Figure 9-12 Bargaining with political superiors⁷⁸

9.8.5 Shadow bargaining⁷⁹

Shadow bargaining refers to informal negotiating activity outside of official sessions. Shadow bargaining takes many forms, including:

- off-the-record meetings between team leaders and political superiors to discuss a specific intractable issues;
- meetings of lower-level technical experts from both sides to brainstorm their way around a particular problem.

It is often conducted by VIPs (very important persons) from both sides (see Figure 9-13). Official sessions are characterised as meetings between the CSNT and its cocontractors, as well as caucuses and meetings between the CSNT and its constituencies/stakeholders. Sometimes shadow meetings are fully authorised by team leaders or their political superiors and sometimes they are not.

Shadow bargaining may be counterproductive where it is unauthorised by team leaders/ political superiors, resulting in any deal made outside the negotiations framework being rejected by stakeholders. Shadow bargaining may easily lead to agreements which do not address all the issues that need to be addressed.

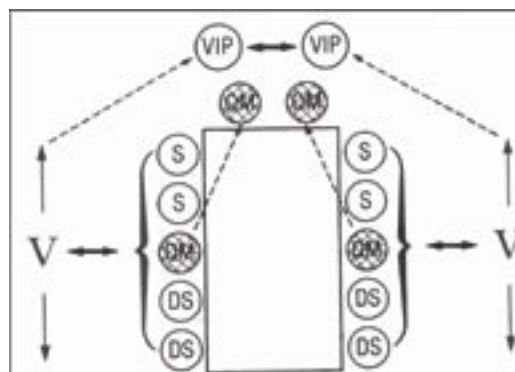


Figure 9-13 Shadow bargaining⁸⁰

77 - Source: Fundamentals of Negotiation for Environmental Professionals, 6.

78 - Fundamentals of Negotiation for Environmental Professionals, 7.

79 - Fundamentals of Negotiation for Environmental Professionals, 25.

80 - Fundamentals of Negotiation for Environmental Professionals, 26.

9.9 | Compensating for a weak position

Confident appearance, adequate preparation and positive attitudes help compensate for a weak position. Some situations will place one negotiator in a weak position and the other in a strong one. The reality of a weak position causes some negotiators to become very defensive and leads them to adopt a defeatist attitude. This loss or lack of confidence can be very clear to the access demandeur, emboldening them further. This is certainly the structural nature of the relationship between many Coastal States and DWFS like the European Union. It is nevertheless still possible to significantly balance this situation of weakness at the negotiating table. The best response is to:

1. project a positive attitude;
2. have a confident appearance;
3. ensure you are backed by adequate preparation and knowledge as this will further build your confidence.

A clear lack of confidence weakens and damages your position. An effective negotiator must be aware of this issue and maintain a positive and confident attitude. If they are well prepared this will always make a difference in negotiations and will always improve a weak position to a noticeable degree.

9.10 | Managing concessions⁸¹

9.10.1 Concession trading

To a large extent negotiating is the art of knowing how to exchange concessions. Despite this simple description, it is nevertheless a difficult task. This is because making concessions involves losses at two levels:

- firstly a loss in terms what is given up;
- secondly and more importantly a loss at the psychological level, the negotiator losing a certain amount of “face” when they make a concession.

Indeed, part of the personal psychological attitude that a good negotiator has to develop is the ability to be prepared to suffer losses, and to also concede such losses gracefully. In terms of personal psychology, some individuals cannot do this (even after training). Such individuals make bad negotiators and will often lead a team into a situation of deadlock.

9.10.2 Overcoming

psychological blocks This is why it is crucial that concession making is planned carefully. Advance planning is the answer to a poor ability to make concessions whether at the level of personal psychology, or for any other reason. Knowing what you are most likely going to need to concede is arguably useful for two reasons: (1) the psychological impact on members of the team is less, and they are able to negotiate better; (2) materially you already have some sense of what you are losing because you have modelled it already.

Box 9-7 Reflections

During negotiations with representatives of Fishing Association X, they make an acceptable opening offer to your country. It falls right within your target or aspiration zone. What would you do? Immediately accept the offer? Negotiate for a higher fee? Continue the negotiations to find out more about the reasoning behind the offer? Has this situation happened to your CSNT before? What did you do? What factors might lead you to accepting an offer immediately when it is made?

9.10.3 Avoid making the first major concession

Another psychological element relates to making the first major concession. It is important to work hard to avoid being the first party to make a major concession. The psychological victory gained by the winner of this first major movement can sometimes be important enough to shape the overall outcome of the talks. If you do however find yourself in this unenviable position then try to obtain an equally important concession in return, and attempt to maintain a sense of calm, confidence and overall perspective.

⁸¹ - The discussion on concessions draws significantly from Deepak Malhotra, «The Fine Art of Making Concessions.» Negotiation 9, no. 1 (2006).

Box 9-8 Reflections

How does poor preparation hinder a systematic approach to concession-making? Does your country systematically prepare its concessions in advance and cost the impact of these concessions on what you actually desire?

9.10.4 Label your concessions

In a positional or distributive negotiation, don't assume that the other party understands that you have made a concession. You should clearly label your concessions because your counterpart may well be motivated to overlook, ignore, or downplay the fact that you have made a concession. It is therefore necessary to clearly communicate:

1. that you have made a concession;
2. that the concession is costly to you;
3. that the concession is clearly beneficial to the other side – in other words, you are helping them reach their objectives at some cost to yourself and therefore you need something in return.

Advance planning means you will have sound arguments to address all three points above persuasively.

9.10.5 Make concessions slowly and with reference to your original position

Make concessions slowly but also always with reference to your initial position. Refer to your original offer and then use it as a reference point when labelling your concession. Where possible point out that your concession is closer to their original position than it is to your own initial position. A well presented initial position makes it clearer that concessions have been made.

9.10.6 Make contingent concessions

A concession is contingent when you state that it applies only if the other party agrees to make a specified concession in return. For example, if the DWFS negotiator wants you to lower your access fee, you should request an increase in the amount of technical assistance provided in return. Alternatively, if the issue is trade and market access, you might say

«This is literally the best we can do on the access fee right now. But if you can adjust some of your tariffs we might be able to reopen the monetary issues...»

Contingent concessions enable you to signal to the other party that while you have room to make more concessions, it may be impossible for you to budge if reciprocity is not guaranteed. Keep in mind, however, that an over-reliance on contingent concessions may ultimately be counterproductive. If you demand immediate compensation every time you make a concession, your behaviour may appear self-serving rather than oriented toward achieving mutual satisfaction.

9.10.7 Make concessions in instalments

There are a number of reasons for making concessions in instalments. First, most negotiators expect that they will trade offers back and forth several times, with each side making multiple, incremental concessions before the deal is done. If you give away everything in your first offer, the other party may think that you're holding back even though you've been as generous as you can be. Instalments may also lead you to discover that you don't have to make as large a concession as you anticipated. When you give away a little at a time, you might find that you have got everything you want from the other side before your set of concession runs out. Finally, making multiple, small concessions tells the other party that you are flexible and open to bargaining.

Box 9-9 Discussion exercise - trading concessions

If your country was asked by a State or a Fishing Industry association to accept a highly reduced access fee on the understanding that this would lead to a long term relationship between your country and the other side, what would you do? How would you seek to bind the other side to keep their word, given the fact that there is an active free market in access rights, and they may freely go somewhere else another day?

9.10.8 Presenting your concession

This can be done in two ways:

Putting your demand before your offer

“If you were to increase your contribution toward assisting us establish marine reserves by \$100,000, then we might be prepared to look at lowering the access fee by around 5%.”

Putting your offer before your demand

“We might be able to lower the access fee by around 5% if you can increase your funding commitment to our new marine reserves programme by \$100,000.”

Notice that in both examples the offer is tentative but the demand is precise. “We might be prepared to...” amounts to no firm commitment, whereas a clear demand for \$100,000 is made. Of course, having made this general offer, the other party is going to expect you to meet your offer, but importantly, making it contingent and somewhat vague (may / might) leave you some room for manoeuvre. Naturally, as the discussion progresses you will more precisely define both the offer and the demand. It is useful to be mindful of both alternatives as individuals react differently to the terminology by which concessions are offered.

9.10.9 Offer concessions in reverse priority order

When the other side offers to make a concession they will usually expect you to make a concession in return. It is important to have your concessions listed in reverse priority – the least important first – so that you can offer a lower-value concession of your choice without the stress of searching for and weighing the value of each particular concession, on the spot.

9.10.10 Behave as if every concession that you make is important

The other side will not usually know how much importance you attach to the concessions that you make. If you give them the impression that a concession that you have traded is of little consequence to you, then the other side may push for further concessions before significantly changing their position. When concessions are being traded, be wary of the negotiator who gives in too easily. They may be naive, know something that you don't or they may have misunderstood the consequences of agreeing to your demands.

9.10.11 Unless the negotiation is highly integrative avoid goodwill concessions

In distributive as well as low-level integrative negotiations, unless it is clearly labelled, every concession is likely to be read either as a goodwill gesture, or as a sign of weakness. Where a concession is given as a sign of goodwill there is no compelling reason for the other side to respond in kind. Indeed experienced negotiators will accept your concession and seek more – you are clearly a party prepared to make gifts and what is worse, a weak negotiator. In short, goodwill concessions should generally be avoided.

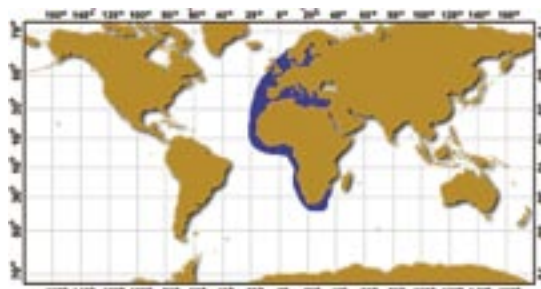


Figure 9-14 The global market in access rights - production regions and fishing grounds - Cuttle-Fish

Box 9-10 Reflections - label your concessions

Clearly identifying your concessions helps trigger an obligation to reciprocate. It is however even more helpful to explicitly—but diplomatically—demand reciprocity.

For example, consider the following negotiation between a government team and a Taiwanese partner. The Taiwanese partner thinks that the fee being demanded is too high and that the demand of the government for installation of VMS on all Taiwanese boats is too costly, since no other neighbouring State is demanding VMS. The government believes that the access fee demand is appropriate but in the longer term wishes to build up a more accurate picture of the profile of Taiwanese fishing and therefore wants the Taiwanese fleet to agree to install VMS on all its boats. If the Coastal State is willing to trade a concession on the access fee, in order to gain a concession on the installation of VMS, the leader of the CSNT might say:

«This isn't easy for us, but we are prepared to make some adjustments to the level of the access fee to accommodate your concerns. With this lower fee, we expect that you are now in a better financial position to move on agreeing to the installation of VMS compatible with our systems. Agreeing to this as a trial for the next year would help us greatly in our effort to build a more accurate picture of fishing activity in our EEZ and improve our management of the resources.»

Note that this statement achieves three goals:

1. The concession is clearly labelled («This isn't easy for us, but we are prepared to make some adjustments ...»);
2. The statement tactfully demands reciprocity («We expect that you are now in a better financial position to ...agree.»).
3. It also begins to define the precise form that reciprocity should take – by linking the concession on the access fee to the demand on the VMS.

What do you think the next stage should be? Arguably a worthwhile exercise at this point could be balancing the financial aspects. A well prepared government side which has already prepared and done the financial modelling for a trade of reduced access fee for more knowledge about the Taiwanese fleet (VMS data) will be positioned to propose an amount it is prepared to concede on the access fee in return for a commitment to fund the VMS. The strategy of defining and then demanding reciprocity is applicable throughout the negotiation. A Coastal State government team which has explicitly considered its concessions and has a concession strategy based on attempting to model the needs of the other side will be able to systematically define and demand reciprocity throughout the negotiation

9.10.12 Concessions and the process observer

Important information is conveyed by how concessions are made – it is possible to convey a real sense of psychological strength even as you make a major concession. At the same time, you need to watch how the other party makes a concession, and learn what you can from their manner. This requires that you closely observe the sequence and content of the other party's concessions, whilst monitoring your own activities! The key to do this effectively is to use a process observer (see section 4.6.3) and to have a concession plan.

9.11 | Concession Plans

9.11.1 Your concession plan

1. carefully consider the value and plan the process of concession-making – if it is part of your overall strategy, prepare and rehearse it;
2. continually assess what your sequence of concessions may be conveying to your opponent;
3. offer your concessions on a tentative basis. (e.g. “What would you say if I were to offer ...” ?) and then closely monitor your opponent's reaction (both verbally and non-verbally) to your cautious offer;
4. require your opponent to provide you with good reasons why you should concede, and make sure you frame your concession as a «reward» for their hard work and their «effective negotiating».

9.11.2 Understanding their concession plan

The key points are:

1. note the types of concessions made, their magnitude, their frequency, and the rate of change in concession-making;
2. continually review your assessment of their strategy. This can be done during the caucus (where you will benefit of the views of others) but also needs to be done at the conference table;
3. The questions to be kept constantly in mind are:
 - does the concession suggest any change in the other party's strategy? (style, tactics, climate);
 - does the concession suggest any change in the other party's objectives? (needs, settlement point, BATNA);
 - does the concession suggest any other possible areas where the other party might make concessions?;
 - does the concession suggest any change in the other party's perception of you? (do they view you as capable or do they see you as a pushover?);

9.11.3 Recognizing and managing a losing trend

Sound and well practiced table communication with your process observer and content observer is invaluable. They can either send you a note or you can send them a note asking for the meaning of a concession just made. It helps, for instance, if the process observer sits close to the head of the negotiating team.

In long negotiations, it is typical that advantage swings back and forth between the two sides. Occasionally, however, you may find yourself on a losing trend when you feel that despite your best efforts, you are consistently coming off second best. Expert research suggests that you are most probably on a losing trend where:

- you make three unilateral concessions in a row;
- you cannot keep the other side focused on issues which you feel are important;
- you find yourself persuaded by the arguments of the other side on three or more successive points.

There are a number of possible ways of responding to a losing trend:

- break for a caucus;
- change the focus - a losing trend can result from the negotiations becoming centered on your weak areas. Try to move the debate on to areas where you are stronger;
- trade a concession - a good way to stop a losing trend is to gain a concession from the other side - this shifts

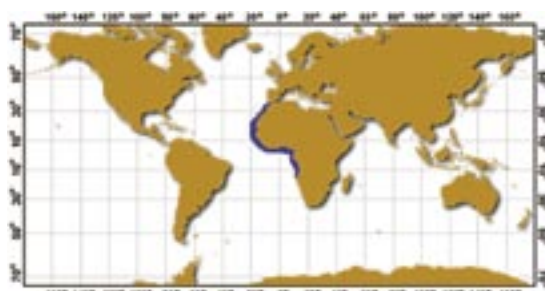


Figure 9-15 The global market in access rights - production regions and fishing grounds for Cunene Mackerel Source: FAO

the momentum back in your favour.

Box 9-11 Open discussion exercise - responding to a request to lower your access fee

It is time for renegotiation of your access agreement with Fishing Association Q. The ex-vessel price of skipjack tuna has fallen sharply on world markets, due to an over-supply of product. You are expecting the negotiating team from Q to lobby hard for a reduction in the access fee. What should you do?:

1. accept the request for an access fee reduction?;
2. argue that the current fee levels should remain the same?
3. undertake research on the cost factors - current and prospective - for their fleet to demonstrate that the drop in ex-vessel prices is not significantly affecting fleet profitability?
4. identify areas of Q fleet non-performance under the agreement and use this as a bargaining chip to argue for maintenance of the current fee?

How does your country usually respond to requests for lowering of the access fee?

9.12 | Closing negotiations

9.12.1 Closing signals

The closing of a negotiation needs to be handled carefully. There are a number of signs that indicate that the opportunity for closing negotiations is approaching. These include:

- the difference in the position of the two parties has narrowed significantly;
- objections and counter arguments are less frequent and intense;
- the other side indicate they would like to see a draft final agreement.

In complex negotiations it is often necessary to wait before making a final commitment. This allows both sides the opportunity to reflect, to gain perspective on the whole proposal, and to decide whether they are genuinely happy with the terms set out. In complex agreements the pause required between agreeing in principle and formalizing the agreement is also due to the need for other stakeholders to evaluate and endorse the agreement.

9.12.2 Last minute tactical moves

This is one of the most testing issues in negotiations. Just as matters appear to be settled, the other side makes a last minute tactical manoeuvre. Or perhaps you are instructed by your political superiors to engage in such a tactic yourself. Such an example is as follows:

“Well, we’ve examined your latest draft proposal carefully and subject to the issues we’ve just agreed we will recommend acceptance ... on one condition - we really would like to see one further matter inserted into the agreement[insert relevant demand here]...”

The basis for this well established psychological tactic is that both sides have invested a great deal of time and energy in the negotiations, and are more likely to accommodate last minute requests in order to push the agreement across the line, rather than jeopardize it entirely. It makes sense, then to always be prepared for a last minute tactic especially where your co-contractor has repeatedly raised an issue that you have refused to resolve to their satisfaction. It makes sense to practice how you would react to such last minute manoeuvres, especially when you are inclined to reject any such tactic. The objective is to aim for a calm and professional exterior regardless of how shaken up or annoyed you are feeling. In general, an appropriate response to a last minute demand will depend on the importance of the deal,, the positions reached whilst bargaining, the state of the competition and the nature of the request. You should be aware that if you re-open negotiations on any last-minute points this may postpone or even destroy the opportunity to close that had arisen.

9.12.3 Timing your closing request

The time to seek closure is when the bargaining phase is effectively over. A good preliminary tactic is to request a short adjournment. This enables you to take a few minutes to gather your thoughts and consult with your team in caucus. Experienced negotiators will develop their own approach to actually asking for commitment from the other side, and this approach should be adapted to each specific negotiation. Useful transition phrases include:

‘That was an excellent point - I think in light of that we have the basis for agreement’;
‘I think we’ve made a lot of progress today, and I would like to table this draft agreement’.

9.12.4 Techniques for closing

There are many techniques for moving from the Settlement phase of negotiations into the closing phase. A few of these techniques are discussed below. The important point about all of these techniques is that they require a good sense of timing, and require rehearsal in order to be effective. The techniques are:

- the concession close;
- the conditional close;
- the balance-sheet close;
- the alternative close;
- the adjournment close;
- the trial close.

Both the concession and conditional techniques are “opportunistic” in the sense that they are a tool to be used when an opportunity presents itself. The other two approaches are more elaborate, and require more detailed planning, and more time in terms of actual execution.

9.12.5 Concession close

The concession close offers the other side a particularly important item that they have requested up until that point. It is important that you make it clear that you expect they will agree to close the deal, in return for the substantial concession. The concession close is also sometimes referred to as a trade-off close. The concession close will come easily to a team which is:

- well prepared;
- working to a concession plan;
- keeping good records of the progress of the meeting;
- reviewing progress regularly in caucus as well as during the meeting itself;
- holding a number of concessions important to the other side in reserve.

Box 9-12 Reflections - concession close

Recall the last three negotiations you were involved in. Consider whether you demanded or were forced to accept any last minute trade-offs before reaching agreement. Which side demanded the concession? Who do you think ultimately had the upper hand? Were you happy when negotiations concluded? How do you rate your performance- is there anything you would do differently? If so, what and why?

Knowing what is in your concession “bank” is easy to determine if you have a concession plan. A good process observer would also have used caucus sessions to keep firm track of the concessions process.

9.12.6 The conditional close

In a conditional close, when a substantial objection or issue arises, one party indicates they will respond positively to that issue as a pre-condition to closing the deal. It is important that the conditional close ‘option’ is presented in a manner which does not sound like an ultimatum - as this may alienate the other party.

9.12.7 The balance-sheet close

This approach works by appearing to take an outwardly fair and balanced approach. It is designed to shape the other party’s thinking by appearing to be objective in the way that it balances or weighs up the positives and negatives of the proposed agreement. This type of close works particularly well if throughout the negotiation, one or both of the parties have been compiling an ongoing summary of points of agreement and disagreement. The approach has a number of elements, and must be practised to be successfully used, given it involves a fine balance between focusing on the positive, and focusing on the negative aspects of the agreement. A good negotiator who often utilises this approach will soon develop a sense of the right time at which to employ it. Its elements are:

1. summarise what you see as the key points in what has been agreed so far;
2. list the benefits gained by the other side as well as the areas where their objectives have not been achieved;
3. before presenting these results to the other side, make sure that the positives/benefits outweigh the negatives by a clear margin. It may even help to write things out in balance sheet form;
4. suggest that on this balanced basis it is best to close the deal now.

Box 9-13 Strategy problem 4 - closing

You are close to the end of negotiations with a team from East Asia. During an earlier phase of the negotiations, the foreign team raised an issue which you were unable to address to their satisfaction. As the negotiations start coming to an end, which of the following is likely to be the best course of action?

1. raise the outstanding issue with the intention of resolving it ahead of closing?; or
2. prepare a contingency position that could be used if the other side raises the outstanding question?

For a suggested answer go to section 14.7

9.12.8 The alternative close

The alternative close is another option which requires preparation. It works by offering the other side more than one clearly defined alternative. The number of alternative offered should be very few – limiting the alternatives to two or three is often sufficient. The alternatives presented must also, to some extent, attempt to match the thinking of the other side. Sound preparation before the negotiations and good modelling of the position of the other side makes this close quite easy to achieve. Practicing this kind of close within the caucus session is also possible; and it is particularly wise to earlier practise it during preparations.

9.12.9 The psychological overload close

This approach works by waiting until the other side is approaching physical and/or emotional overload, or only has a part of its rational mind on the issues. At such a time, they may not be thinking very clearly, and may well agree to close negotiations in order to take some of the pressure off their minds. This is a closing procedure often used in multilateral negotiations.

9.12.10 The adjournment close

This type of close gives your co-contractor time to think. It may also be tied to a deadline. Because it gives time to think, it is not wise to use it with most of the other closing procedures. Given favourable conditions, it may however work effectively with the balance-sheet close or the alternative close. The adjournment close is best used in the following circumstances:

- when the other side is not prepared to immediately close the deal – their behaviour, or pressure from external political or economic events indicate that this is the situation;
- when a relationship with the other side is important to you, and pressuring them into making a wrong decision could affect overall long-term relations.

The research that you've done in the preparation phase, combined with all of the information that you've gained during the negotiations conference should be used to guide you in utilizing the adjournment close. Your decision to use this type of close should be based on an awareness of the options available to the other side, the importance of the deal, the risks inherent in delaying and those associated with applying too much pressure.

9.12.11 The trial close

A trial close is not really a full 'closing technique' but a test to determine whether the other side is ready to close. It works by putting the idea of closure into the person's mind. Their response will tell you whether they are ready or not.

Box 9-14 Reflections evaluating closing

Recall the last three negotiations you were involved in. Compare and contrast how different negotiators closed these negotiations. How did your side close the negotiations? How did you feel after each of these closures? Would you do anything differently in any of these cases? If so, why?

Figure 9-16 Negotiation Results Summary - adapted from G.A. Garrett, Contract Negotiations (2005) CCH

Negotiations Results Summary ²⁰	
Agreement Title	Date
Parties Involved	Date(s) of Negotiation
Brief Description	Location
Access Fee and Other Terms Agreed to	
Extent of difference from Original Proposal	
Date Prepared: _____ Lead Negotiator: _____	

9.13 | Suppress the urge to publicly celebrate or blame

When a final agreement has been reached, there are still a couple of matters that require attention. The first matter is the need to actively manage both sides' feelings. Experienced negotiators emphasise that it is not a good idea to openly celebrate. It is far better to make the other side feel that they have come out of the negotiations with the best deal that they could have possibly secured. This will help to create maximum stability in the new agreement; whereas celebrating wildly could lead the other side to doubt the strength of deal agreed to. Additionally, by disguising private feelings of elation you will pave the way for easier passage of any future negotiations with that particular set of co-contractors.

Additionally, as Chapter 15 of this Manual emphasises, it is a good idea to assess your team's performance following the conclusion of an agreement. Assessing performance should be done in a structured way, and in particular should not lead to the singling out of individual team members, or public rebuking over perceived errors that they may have made in private. A private discussion with them, however, positively counselling them on how to avoid repeating such mistakes in the future may prove worthwhile. Such a conversation should be conducted in the context of an overall evaluation of the negotiation. Chapter 15 provides a structured methodology and set of questions for undertaking evaluations in a professional way.

Box 9-15 Strategy problem 5 - strategic silence

You are conducting negotiations with a Fishing Association which has a very detailed knowledge of the waters within your region. There are areas of your position which are quite weak. To date they appear not to have picked these points up - or if they have, they have not mentioned them. Their questions, however, are focusing on the detailed terms of your proposal - with more and more specific questions being asked. Whilst they show every sign of being eager to commit to an agreement, they are unlikely to close the deal if they focus closely on the areas of weakness in your position. What should you do?

1. should you pre-emptively reveal the area of weakness and promise to address it in some way as a condition for finalizing the deal; or
2. should you wait and see whether they finally address the areas of weakness in your position or not?

Go to section 14.7 for a suggested answer

Chapter 10

Managing Communications During Bargaining

«You can tell whether a man is clever by his answers. You can tell whether a man is wise by his questions.»
(Naguib Mahfouz – the late Egyptian Nobel Prize Laureate for Literature)

Box 10-1 Chapter 10 Highlights

Key issues addressed and practice exercises offered relate to:

- Forms of communication and their context;
- The significance of questions, and planning which ones to ask;
- Different question types and the insights that can be drawn from the other party's use of them;
- Techniques for responding to questions;
- The importance of listening.

10.1 | What is communicated during negotiations

A number of issues are communicated during negotiations. The most important include: offers and counteroffers; information about alternatives; information about outcomes, the context of the negotiations, and information about the negotiating process.

10.2 | Forms of communication and their context

There really are only two forms of communication: verbal and non-verbal. In the context of negotiations, they are often inter-related in various combinations, together achieving the objectives of the particular negotiation. In other situations, verbal communication and non-verbal communication can alternatively completely contradict each other. In such a case, research shows that the non-verbal communication is likely to be more truthful than the verbal communication. For negotiations, this means that communication should ideally take place in the richest context possible – namely person-to-person and face-to-face. This is perhaps why negotiations conferences are so commonly used to settle complex multi-issue negotiations. In negotiations conferences, both parties get a chance to communicate in context through:

- informal contact (e.g. in the hallway outside of the meeting);
- direct physical exchanges (conversations, greetings);
- environmental cues (table seating order);
- non-verbal cues (facial expressions, hand gestures);
- immediate verbal feedback;
- voice tone;
- control over the format of a given message;
- the words themselves.

As shown overleaf, as negotiators move away from personal meetings towards e-mail, the number of these communication 'cues' available significantly decreases.

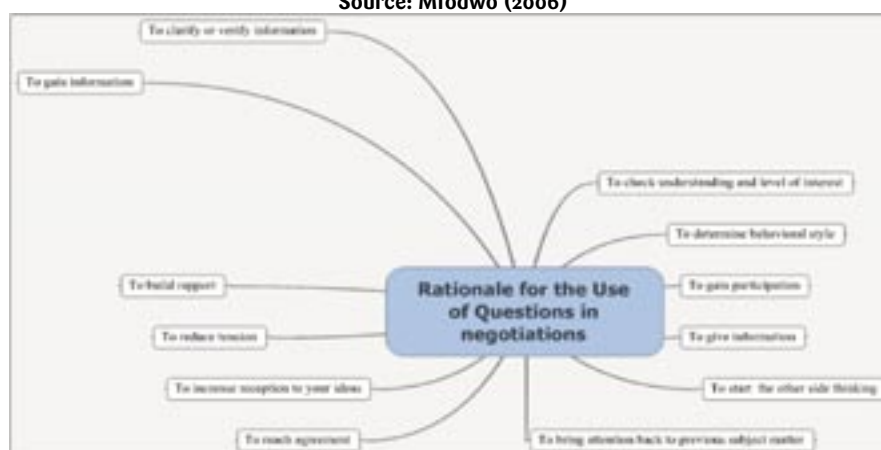
	Words	Control over Format	Voice Tone	Immediate Feedback	Non-verbal Cues	Environmental Cues	Direct Physical Exchange	Informal Contacts
Person to Person								
Video Conferencing								
Phone								
Voice Mail								
Fax & Groupware								
E-Mail								

Figure 10-1
Source: Anon

10.3 | Questions and questioning⁸²

Questions are the backbone of negotiations. The purposes served by questions are truly diverse, as Figure 10-2 shows. The design and delivery of questions requires careful attention and can be considered a delicate form of art.

Figure 10-2
Source: Mfodwo (2006)



10.3.1 Question goals and question plans

It is important to identify an objective you wish to achieve through your questions. You can then base the design of a questioning plan around achieving that goal. In order to prepare a question plan, it is important to have a clear idea of what you seek to learn during a Negotiations Conference. Designing a question plan can be helped by realizing that information typically acquired during a Negotiations Conference falls into one or more of the following categories:

- information that your preparation process tells you is relevant before the session begins – questions that relate to information in this category could include clarifying questions; repetition questions or direct questions, but need not take up too much of your time;
- information that will be readily revealed because it is of no strategic significance – thorough preparation, a good team and experience will enable you to recognize this type of information. No further questions about this type of information should need to be asked;
- information that will be readily revealed because it will usually mislead you – thorough preparation will allow you to recognize this type of information. If too much of this type of information is presented you may wish to cancel the negotiation or move towards a hard bargaining posture (see Chapter 12 on Tactics, and the integrative vs distributive bargaining discussion at section
- information that is vital to assist your claims, and which will therefore not be disclosed to you willingly – the full range of questioning techniques is required here;
- information that you already know but which you are not sure is relevant until its status is confirmed during the session – if your preparation is poor or your listening skills are poor, you will miss this type of information;
- completely unknown information which will be revealed within the session – only good listening and process/content observation will ensure you gain, and grasp the significance of this type of information.

Box 10-2 Reflections – evaluating your phone manner

To check on how you negotiate over the phone it would be useful to record yourself to see how you send and receive negotiation messages.

What routines do you follow? Speak to a colleague on the phone, and ask them to inform you how they react to your telephone manner and routines. Try and identify the routines used by people who you consider to have good telephone technique.

Adapted from Mulholland, The Language of Negotiation 1991 (selected pages)

⁸² - This section draws from the following sources: Tillett & French, Resolving Conflict (2006) 60-64; http://changingminds.org/techniques/questioning/probing_questions.htm.

A question plan can be designed bearing the above-mentioned attributes of information in mind. Thus for instance, you might want to find out why there has been a low rate of utilization of fishing opportunities offered under a previous agreement. There are many potential reasons for what appears to be non-performance under the agreement. You should design your questions with the objective of obtaining as much information as possible about all the factors which might be affecting the fleet in utilizing or not utilizing the opportunities in your zone.

Your questions, for example, could focus on:

- factors that are due to the nature of resources in your zone;
- market factors;
- weather issues (for example climatic shifts) etc;
- factors that are the fault of your government;
- commercial decisions within the company;
- the strategic decision of the company/fleet to use the resources of your zone as complementary/supplementary resources after they have used up their possibilities under other agreements in the region or in other parts of the world.

Box 10-3 Practice exercise - evaluating the quality of your arguments

Rehearse negotiation sessions within your CSNT, and videotape the results. Look closely at how you present your arguments or propositions. Are there any particular ways of developing a proposition or argument that you favour? Do you regularly overlook particular ways of presenting your argument? Are there any negotiators you have met whose strategies you find effective and persuasive? How might you adapt some of their methods to suit and support yours? The exercise is probably best done privately if people are likely to be embarrassed by the results. However there are benefits from allowing yourself to be constructively criticised

Adapted from Mulholland, The Language of Negotiation 1991 (selected pages)

In the above scenario, it is clear that there are many potential reasons why the rate of access utilization in your zone is low - a good questioning plan can provide you with information going beyond the immediate subject matter, including information about the general commercial strategy of the fleets or companies you are dealing with. This enables a broader understanding of the various factors at play.

10.3.2 Direct vs indirect questions

Some negotiators prefer to mask the reasons they are seeking information, and so will ask indirect questions. A negotiator who relies principally on indirect questions usually believes that the other side will respond evasively to direct questions. They themselves are also likely to respond in an evasive way. Too much indirect questioning as a clear tactic leads to the other side becoming suspicious and distant, and increases the likelihood of evasive or untruthful answers.

On this basis, direct questioning appears overall to be a much more useful approach in negotiations as most people give direct answers to direct questions. Direct answers are given for a variety of reasons:

- the question properly seeks information on an important evaluation factor;
- the information mutually benefits both sides;
- the respondent feels tactically unable to evade the direct question;
- an evasive answer will be transparent and will make the real position obvious;
- direct answers foster trust and cooperation and facilitate satisfactory conclusions to the negotiation.

Becoming adept at discreetly using indirect questions requires a lot of practice and experience. A skilled negotiator who successfully uses indirect questions will be successfully able to mask their real intentions, and thus be a major asset. They will be able to mix friendly and innocent questions with important questions. For example, apparently innocent questions about a negotiator's work over the last few months may be designed to assess a negotiator's abilities/workload/work ethic. Alternatively, an exaggerated remark about the cost of an item under negotiation may produce a response which yields and confirms the correct information. Seemingly innocent questions can thus unintentionally reveal valuable information.

Box 10-4 Reflections: identifying poor communication

Try and recall from previous negotiations, some examples of poor communication on your part, and on the part of your opponents? What impact did this poor communication have? How did you try to repair the damage? Did your opponent try to repair the damage? Was it effective?

Adapted from Mulholland, The Language of Negotiation 1991 (selected pages)

10.3.3 Match question types to negotiation phase - move from broad to narrow

Wide-ranging questions can be particularly useful at the start of the negotiation, especially when the parties do not know each other and the Government team desires to obtain or confirm broad information on the access demandeur. In addition, at the start of the negotiating process, some people may be uncomfortable with detailed questioning, as they feel that they are being interrogated. Detailed questions on specific issues are to be used only once the negotiation gets fully under way. Detailed questioning can be used to get to the heart of a specific issue.

10.3.4 Appreciate the role of silence

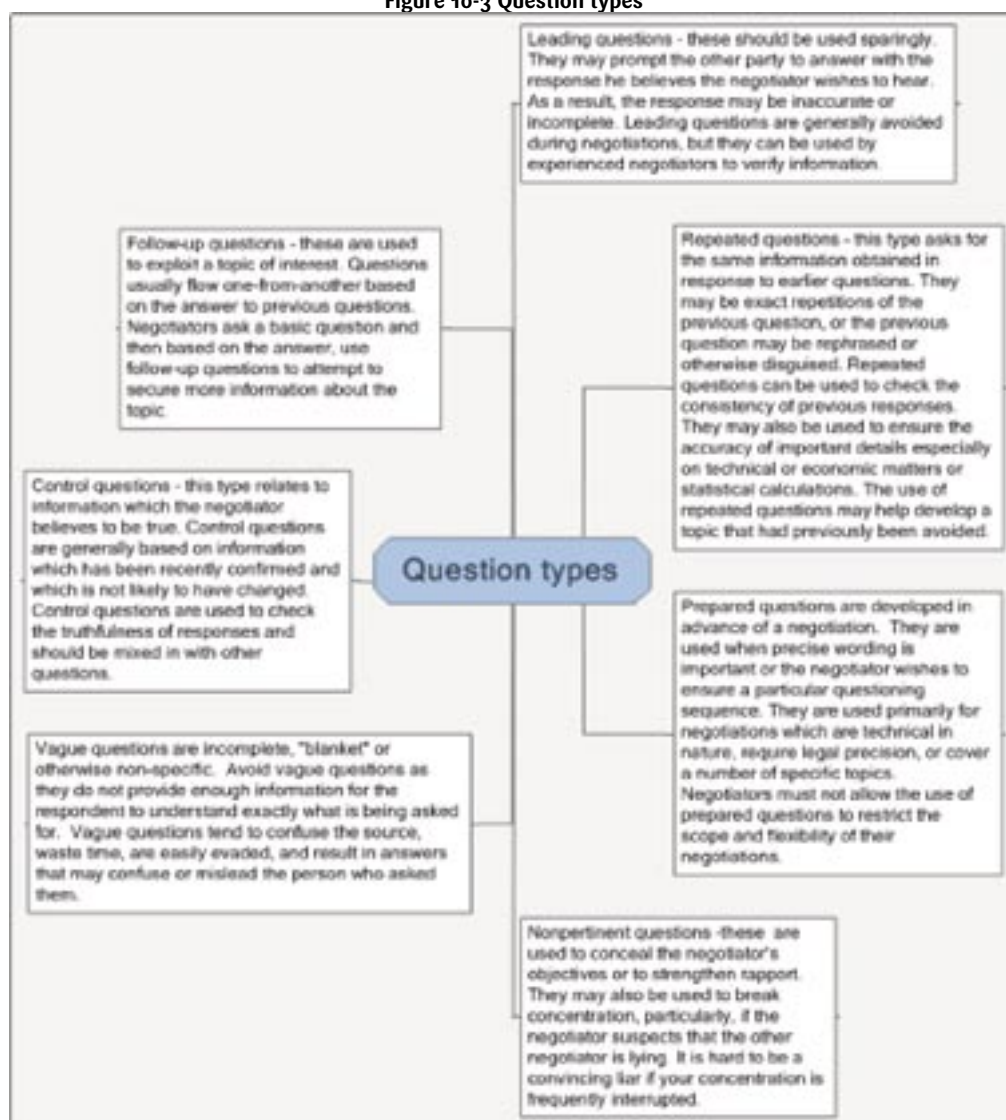
Novice negotiators are uncomfortable with silence. Silence is a void, and they feel an overwhelming need to fill it. In fact, some negotiators will even try to answer the question for their counterpart if there is no response! The discussion on listening at section 10.5 emphasizes the importance of proper listening during negotiations.

Box 10-5 Reflections - Identifying Effective Communication

Consider a recent negotiation you were involved in. Try to remember the ways in which the negotiation flowed (its movement from phase to phase, its priorities etc.) Who were the major agents of change from one phase of the negotiation to another? How did they go about shifting the pace and flow of the negotiation? What tactics were used? Why were the tactics effective? If they were not effective, try and explain why not.

Adapted from Mulholland, *The Language of Negotiation* 1991 (selected pages)

Figure 10-3 Question types



10.3.5 Clarification questions

This question type is fundamental to negotiations. It is used a great deal in the information exchange phase. Examples include:

- “you said XXX earlier - what exactly did you mean by ‘XXX’?”;
- “could you tell me more about YY?”;
- “why did you say that?”;
- “what were you thinking about when you said XX?”;
- “why are you saying that?”;
- “what exactly does this mean?”;
- “how does this relate to what we have been talking about?”;
- “what is the nature of ...?”;
- “what do we already know about this?”;
- “can you give me an example?”;
- “are you saying ... or ... ?”;
- “can you rephrase that, please?”;
- “could you tell me more about that, please?”;
- “what, specifically do you see your fleet doing during the exploratory fishing voyage?”.

Box 10-6 Reflections - Clarifying a Communication

What happened the last time another negotiator used a term whose meaning you did not know for certain? Were you able to ask for clarification? If not, why not? What happened as a consequence?

Adapted from Mulholland, The Language of Negotiation 1991 (selected pages)

10.3.6 Repetition questions

One of the most effective ways of getting more information from the other side is simply by asking a previously unsuccessful question again. You could either use the same words, or you could rephrase the question. Alternatively again, you could elect to repeat what they said to you (an ‘echo question’), perhaps with emphasis on the area where you want more detail.

10.3.7 Probing questions

Probing questions are crucial to negotiations. Probes can be general or can be quite specific. Probes test the reliability of positions and seek to uncover information about a range of issues, including:

- assumptions behind positions taken;
- the validity of explicit rationales or supporting evidence offered;
- possible alternative positions or explanations which have not been considered by one or both of the parties.

Table 10-1 Varieties of Probe

Probing of assumptions	Useful questions are: • <i>What else could we assume?</i> • <i>You seem to be assuming ... ?</i> • <i>How did you choose those assumptions?</i> • <i>Please explain why/how ... ?</i> • <i>How can you verify or disprove that assumption?</i> • <i>What would happen if ... ?</i> • <i>Do you agree or disagree with ... ?</i>
Probing rationale, reasons and evidence	Probing specific rationales or evidence offered is similar to probing assumptions but also quite different. Useful questions are: • <i>Why is XXX happening?</i> • <i>How do you know this?</i> • <i>Can you give me an example of YYY?</i> • <i>What do you think causes ZZZ ?</i> • <i>What is the nature of this?</i> • <i>Are these reasons good enough?</i> • <i>How might this be refuted?</i> • <i>How can I be sure of what you are saying?</i> • <i>Why is ... happening?</i> • <i>What evidence is there to support what you are saying?</i> • <i>On what authority are you basing your argument?</i>

Probing implications and consequences from initial positions	The argument that they give may have logical implications that can be forecast. Do these make sense? Are they desirable? • <i>What are the consequences of that assumption?</i> • <i>What are the implications of ... ?</i> • <i>How does ... affect ... ?</i> • <i>How does ... fit with what the scientific evidence from ICCAT seems to be saying?</i> • <i>Why is ... important?</i> • <i>What is the best way of doing this?</i>
Questioning viewpoints and perspectives	Most arguments are made from a particular position. So attack the Questions designed to explore or expose equally valid, viewpoints. would include: • <i>Another way of looking at this is ..., does this seem reasonable?</i> • <i>What alternative ways of looking at this are there?</i> • <i>Why it is ... necessary?</i> • <i>Who benefits from this?</i> • <i>What is the difference between... and...?</i> • <i>Why is it better than ...?</i> • <i>What are the strengths and weaknesses of...?</i> • <i>How are ... and ... similar?</i> • <i>What would ... say about it?</i> • <i>What if you compared ... and ... ?</i> • <i>How could you look at this another way?</i>

10.3.8 Relevance questions

If the other party appears to be going off-topic you can ensure that the matters they are discussing remain relevant to the main purpose of inquiry by saying:

- *is that relevant to the main question?;*
- *how is what you are saying related to what I asked?*

10.3.9 Completeness and accuracy

You can check that they are giving you a full and accurate account by probing for more detail, and checking the information you receive against information you have from other sources. You may ask:

- *is that all? Is there anything you have missed out?;*
- *how do you know that is true?;*
- *how does that compare with what you said before?*

10.3.10 Seeking examples

When the other negotiator speaks very generally about a matter, this should ring warning bells for you - ask for specific examples. Where you wish to test both truthfulness and the depth behind what they are claiming, ask:

- *sorry, I don't understand. could you help by giving an example?;*
- *could you please give me an example of when your fleet successfully did XXX?*

10.3.11 Evaluation questions

To discover both how scrutinizing the other side's judgment is, and to determine how they evaluate matters, use evaluative questions such as:

- *how good would you say it is?;*
- *what are the pros and cons of this situation?*

Box 10-7 Strategy exercise

When you are preparing for a negotiation, think about the communication style that negotiator known to you uses when seeking clarification of an argument. Remember that everyone has their established routines and behaviours. Does this negotiator always ask about the consequences that flow from a proposition; Do they typically ask for more information? Do they typically want statistical evidence? Remember that anticipating their behaviour can help you to make well-planned impacts on their thinking. You can disrupt their thinking or advance their thinking to your advantage by influencing their mode of response and assimilation of information.

Adapted from Mulholland, The Language of Negotiation 1991 (selected pages)

Box 10-8 Reflections - communicating proposals

During practice sessions with the CSNT make videotapes of how you do the following:

- accept a proposal;
- seek clarification of the content of a proposal;
- seek clarification of the reasoning behind a proposal;
- reject a proposal.

Invite comments and criticisms from other members of the CSNT. If you feel uncomfortable doing this, observe the tapes privately and work on improving those aspects of your communication with which you feel uncomfortable

Adapted from Mulholland, The Language of Negotiation 1991 (selected pages)

10.3.12 Review questions

Review questions are used to summarize and test your understanding of what you have heard so far. Summarise your understanding, and ask for agreement or otherwise. Review points can be used at natural break points in the discussion, or when things appear to have slowed down. They are also an excellent way of changing from one phase of a negotiation to another. They are also useful at the end, to summarize the overall picture.

Review points can also be used to 'squeeze the lemon' for any more information, through specific questions such as:

- is there anything else that you can tell me about this?;
- what else were you expecting me to ask?

Box 10-9 Reflections - identifying effective communication

Try and recall from a recent negotiation a set of messages (words, phrases, mode of presentation of argument) which had a strong impact on you? Examine which features of the message might explain the strength of its impact. What was the nature of the impact and what were its consequences? Try and recall one of your own negotiation messages which appear to have had an impact in a negotiation. Why do you think it did? How about situations in which your message did not make an impact

Adapted from Mulholland, The Language of Negotiation 1991 (selected pages)

10.4 | Responding to questions

It is also necessary to be able to respond effectively to question. Here are a few ways of doing this. Practice may be required if your natural instinct when asked a question is to immediately tell the truth.

10.4.1 Pause for thought

Rather than try to answer the question straight away, pause for a moment. Don't be hurried - hurrying is a technique that can be used to try and stop you from effectively and thoroughly thinking. If the other person is talking fast, it may be because they are trying to hurry you up. Pausing for thought can help your credibility too. It seems as if you are taking the other person seriously as you carefully consider their question. This is considered to be normal and polite in some countries (e.g. Japan).

Box 10-10 Reflections - identifying poor communication

Ask yourself what you dislike most about the verbal manner of negotiators you have worked with - on your team and opponents' teams. What is it about their behaviour that you dislike? How do you react to the negotiation messages sent by this person? Consider also features of your communicative style that may be irritating to others. Consciously identify negative reactions to your communication manner from others - displays of anger, irritation, or mistaken interpretations. Question what behaviour/ approaches could have caused these responses. Make a list of your communication acts and see whether there is anything you can do to adapt or change your negotiation behaviour.

Adapted from Mulholland, The Language of Negotiation 1991 (selected pages)

10.4.2 Shower them with detail

Give them more information than they expected. If you shower them with lots of detail, it may well cause cognitive overload (especially if you use technical detail and jargon).

10.4.3 Answer a question with a question

Answering a question with a question is a great way of avoiding answering, at least for a moment - giving you valuable time to think. Done well, it can result in the other party trying to answer your question, and perhaps forgetting the question they initially asked (it is at the very least a good test of how interested and determined they are!).

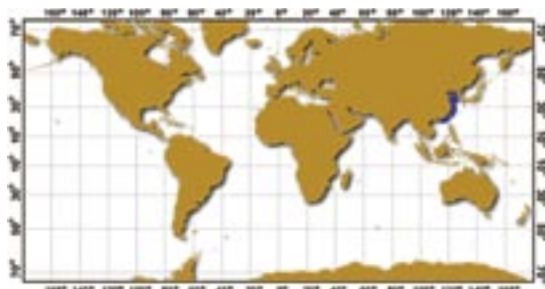


Figure 10-5 The Global Market in Access Rights production regions and Fishing Grounds for Fleshy Prawn
Source: FAO

10.4.4 Question the question

Challenge the question being asked. Ask whether it is the right question to ask. Suggest there are other questions which come first:

- shouldn't we be talking about Issue X first?;
- what was the point of asking that question?

10.4.5 Ask a completely different question

You can also ask a completely different question. This will usually throw the other person off their track, particularly if you persist with further questions on the same (new) track.



Figure 10-6 Sample dredge net - FIGIS/FAO

10.4.6 Ignore the question

A technique that can be usefully practised is simply to ignore the question and say what you have to say anyway. A typical way of doing this is to say:

'That's a very good question, but what I really want to say is...'

If you can get away with ignoring questions at the start of the session, you will have acquired a form of power that lets you repeat this action.

Box 10-11 Reflections: communicating concessions

During practice sessions with the CSNT make videotapes of how you do the following:

*The making of a concession
The acceptance of a concession
Assess your performance and consider potential improvements*

Adapted from Mulholland, The Language of Negotiation 1991 (selected pages)

10.5 | Listening

Listening is critical during negotiation. Effective listening will almost always increase the amount of information received - which can be then utilized in the interests of the listener. Individuals have the mental capacity to understand 600 words per minute, and people speak at an average rate of 120 words per minute. What the mind does with its spare 'processing' capacity determines how effective a listener the negotiator will be. Skilled negotiators realize the advantage of listening. Whilst many negotiators enter negotiations planning to out-talk and outwit the other negotiator - this is a misguided tactic, as in talking more, they reveal more about their position. A negotiator who listens and does not talk excessively avoids making concessions. A negotiator who listens and understands the other side's interests and needs will be better equipped to suggest an advantageous settlement proposal, than

Box 10-12 Strategy exercise - listening and questioning

Imagine yourself listening to the other side making their opening statement during which they say: the amount that we are prepared to pay under this agreement is fixed. The amount cannot deviate from that set out in the documents that I am tabling today. I have no room for movement on this" What meaning should you take from this statement? 1. Access fees are not negotiable; 2. The speaker does not personally have authority to negotiate a different access fee. What should you do to clarify the meaning of this statement?

one who has listened to nobody other than himself. A negotiator has to learn to listen while talking, as well as while not talking. Listening includes observing and making mental or written notes about what is said and how it is said.

It is not always easy to concentrate and listen while negotiating. Negotiators questioned about barriers to listening reported that the following factors contributed to instances of poor listening on their account:

- they were thinking about how they were going to respond;
- they considered what was being said repetitive and a waste of time;
- they were mentally or physically tired;
- what they heard was not what was intended but rather was what they wanted to hear;
- they improperly interpreted what was communicated;
- they felt that if they did listen carefully they might be persuaded by what was being said (and thus deliberately tuned out);
- they did not want to learn about the weak points of their position.

10.5.1 Levels of listening

Generally speaking, we can say that there are three levels of listening - each characterized by certain behaviours that affect listening effectiveness. Level 1 has the highest potential for understanding, retention and effective communication; level 3 has the lowest. The three categories are general categories that assist us in understanding the type of listening that supports effective negotiation. In reality levels overlap and interchange depending on the situation- relevant factors including physical tiredness, environmental conditions, and mental stress. If you find you are not operating at Level 3 most of the time, then it is time to call a break or have a caucus

Box 10-13 - Levels of listening

Level 1

Active Listening: The Active Listener gives full attention when another is talking and focuses on what is being said.. He pays attention to the speaker's total communication, including non-verbal, and he exercises direct eye contact.. The active listener knows that specific words mean different things to different people and he does his best to understand the intended meaning of the speaker. The active listener becomes directly involved in the communication process and will often restate or paraphrase the message back for the speaker to hear. In doing so, he gives feedback to speaker concerning the clarity and accuracy of his message.

Level 2

Passive Listening. The Passive Listener hears words but does not really listen. Such a listener stays at the surface of the communication and does not understand the deeper significance of what is being said. He does hear the words but he does not make much attempt to understand or to empathize with the speaker's intention. The Passive Listener tends to listen logically and is more concerned for content than for feeling; he remains emotionally detached from the conversation. He receives information as though being talked to rather than as being an equal partner in the communication process. He assumes that the responsibility for the success of the communication is the speaker's.

Level 3

Non-Listening. The Non-Listener tunes in and tunes out. He is somewhat aware of others, but mainly pays attention to himself and his own thoughts. He follows the discussion only enough to get a chance to talk. His listening is quiet, passive and unresponsive. Such a listener will often fake attention, while thinking about unrelated matters, forming rebuttals, or preparing what he wants to say next. His aloofness may be displayed in his blank stare or his detached posture.

Box 10-15 Reflections

Can you recall an instance in any negotiation you have been involved in when a particular negotiation message caused problems? A joke? A mis-statement? A message that made out of place? Or perhaps a story told by somebody which was embarrassing?

Why do you think it caused problems? What were the consequences? Was there an attempt to repair the damage? Did it work? Have you been in such a situation yourself before? How did you repair the damage?

Adapted from Mulholland, The Language of Negotiation 1991 (selected pages)

Box 10-16 Additional practice exercises

Exercise 1

Prepare at least two compelling opening statements relating to the resources available in your waters. These statements should be in the following formats:

- delivery by you in person as head of a CSNT;
- delivery by you on the phone;
- delivery by email;
- delivery by letter.

Exercise 2

Prepare the following:

- at least two responses to each of the top three objections you are likely to hear from the other side;
- at least two responses to an objection by an access demandeur that your access fee is too high;
- two different statements seeking to move an access demandeur who is price sensitive towards a discussion of the value of your access right despite its seemingly high cost;
- two statements to be delivered by you in person which sets out at least two points which differentiate access to your waters from those of your competitors;
- two statements which allow your negotiating team to comfortably exit from a negotiation exchange which is no longer worth your time.

Exercise 3

Create a list of questions that you hope the other side will not ask. Prepare answers to these questions.

Exercise 4

Practice question and answer sequences in which you answer a question appropriately but end your negotiations message with a return question so as to regain control of the negotiations.

Chapter 11

Undertaking Negotiations: Non- Verbal Communication

Box 11-1 Chapter 11 Highlights

Issues addressed are:

- Types of non-verbal communication (body language, movements, appearance, subliminal messages);
- The importance of unconscious and involuntary messages, and how to interpret them;
- Understanding how body language affects negotiations, and applying body language insights to advantage.

11.1 | Introduction

Chapter 10 has dealt extensively with the issue of oral or verbal communication, particularly spoken communication during the negotiations conference. In this Chapter we focus on those aspects of non-verbal communication that research shows has the greatest impact on negotiations. Non-verbal communication can be defined as all the forms of communication outside the language or languages that we speak and write. Negotiations theory and practice pays particular attention to non-verbal communication because it considers that our true selves are more easily revealed by our non-verbal communications than by our verbal. Non-verbal contexts can be subtly or crudely manipulated by experienced negotiators to produce striking results – making the management of non-verbal communication of central importance for effective management of the Negotiations Conference, and the negotiations process as a whole.

For the Coastal State negotiator, skills in interpreting non-verbal communication can see them gain valuable information from others involved in the negotiation. Conversely an awareness of non-verbal communication issues can protect a CSNT, as it can consciously try to limit the extent to which it sends non-verbal signals; confidential information and positional weaknesses are better protected.

11.2 | Non-verbal communications and the negotiations process

There are many sorts of non-verbal communications. The following are the most important for the negotiations process:

- body language - facial expressions, body movements, gestures, and posture – the scientific term for this type of communication is kinesic communication;
- personal attributes in the form of physical appearance (including all manners in which communicators alter their appearance) – the scientific term for this is artifactual communication;
- personal attributes relating to the communicator's voice – the scientific term is auditory communication;
- personal attributes relating to touch, particularly the handshake - the scientific term is tactile communication;
- the use of the physical environment in and around negotiators – the scientific term for this type of communication is proxemic communication.

11.2.1 Conscious and subliminal messages

Non-verbal communications involve conscious as well as subliminal messages.



Figure 11-1 The global market in access rights - production regions and fishing grounds for Jumbo Flying Squid
Source: FAO

11.2.2 Conscious non-verbal communications

Senders of conscious non-verbal communications are aware that they are sending a message and appreciate the general meaning of that message. For example, the individuals extending a hug know that they are embracing someone and that action is normally perceived as demonstrating affection. Receivers of conscious non-verbal communication are generally aware that they were sent a message, and usually appreciate the meaning intended by the sender. The receiver of a hug (as above), for example, generally realizes that the message is a sign of friendship.

11.2.3 Subliminal non-verbal communications

Subliminal messages are communicated to the subconscious mind of the receiver. Receivers of subliminal messages are not consciously aware of the message. However, these messages are nevertheless important.

- gut reactions are frequently based upon your subconscious reading of subliminal non-verbal communications;
- police and military uniforms subliminally communicate the authority of those wearing them;
- well-dressed executives project success and credibility;
- poor dress style transmits messages of failure and a lack of credibility.

Although subliminal messages do not create awareness on a conscious level, they still influence the receiver. In fact, subliminal messages are often more powerful than conscious messages. The advertising world is replete with examples of the value of subliminal non-verbal messages. Thus for example, young, beautiful people often feature in advertisements in order to communicate a subconscious message that the advertised product is associated with youth and beauty.

11.3 | Voluntary and involuntary messages

Conscious and subliminal messages can both be transmitted voluntarily or involuntarily.

11.3.1 Involuntary non-verbal communications

Every day, people unintentionally convey non-verbal signals by their facial expressions, gestures and posture. Most non-verbal messages are thus involuntary. In fact, many negotiators are not even aware that they communicate non-verbally. Body language is one area where the involuntary nature of non-verbal communication is particularly evident. People telling falsehoods, for example, often involuntarily blink their eyes - sending a telltale non-verbal message to listeners. Because involuntary non-verbal communications represent unplanned physical responses, this communication form tends to be particularly revealing and more honest than verbal communication or even conscious non-verbal communication.

11.3.2 Voluntary non-verbal communications

Non-verbal communication can also be controlled by a person who is knowledgeable in both the nature of body language and the demands of negotiations. Thus a person who knows that people telling falsehoods often blink their eyes can take special care not to blink when telling a falsehood - confusing the other parties. A person who knows that a hug indicates friendship can consciously hug his/her worst enemy in an attempt to put the person off guard, or as part of an effort to improve their relationship.

11.4 | Interpreting non-verbal messages

You must interpret non-verbal messages as part of the overall communication system.

1. typically, an individual non-verbal message is difficult to accurately interpret in isolation, because most messages have several possible meanings. For example:
 - a yawn might indicate a lack of interest, physical fatigue, or both;
 - rapid eye blinking can indicate deceit, or equally ill-fitting contact lenses.
2. a non-verbal message is easiest to interpret when it is consistent with other communications you are receiving at the same time. For example, you might be more likely to interpret rapid eye blinking as indicative of dishonesty if the person also avoids eye contact while speaking;
3. an inconsistent non-verbal message may be impossible to interpret with any accuracy – it should, nevertheless, raise a red flag indicating that you should look more carefully for related verbal or non-verbal clues. Look for messages that correlate with each other so that you can make a more accurate interpretation.

11.5 | Culture and non-verbal communication

Always consider cultural differences when you send or receive non-verbal messages. A message that has a particular meaning in one society can have a completely different meaning in another society.

11.6 | Building up an understanding of culture and nonverbal communication

Coastal State negotiators may usefully seek out briefings from current or former diplomats, other officials and businesspeople who have worked in the key countries that require attention: Japan, Korea, Taiwan and PRC. Coastal State negotiators themselves have a rich experience of negotiating with officials from these key countries. Preparing a dossier and exchanging information in workshops as well as during training and rehearsals are all useful ways of assisting Coastal State negotiators understand the verbal and non-verbal communication they should be familiar with when negotiating with officials and fishing association representatives from these key countries.

11.7 | Understanding how body language affects negotiations

11.7.1 Body language and attitudes

Body language research has catalogued 135 distinct gestures and expressions of the face, head, and body. Eighty of these expressions are face and head gestures, including nine different ways of smiling. These gestures and expressions provide insight into the attitude of the expresser. Simultaneous physical signals often reinforce each other and reduce the ambiguity surrounding a message. For example, eagerness is often exhibited with the simultaneous physical displays of excessive smiling and frequent nodding of the head. Body language types relevant to negotiations are:

- aggressive body language: indicates a risk of physical threat;
- submissive body language: demonstrates a preparedness to give in;
- bored body language: reflects the disinterest of a party;
- closed body language: indicates the person has already made up their mind;
- deceptive body language: indicates an attempt to cover up lies deceit;
- defensive body language: shows a need to protect from anticipated attack;
- emotional body language: indicates the influence of strong emotions;
- evaluative body language: shows a person is judging/deciding something;
- open body language: demonstrates a person is possibly open to persuasion;
- power body language: reflects a person's sense of/ actual power;
- ready body language: indicates a person is waiting for a trigger;
- relaxed body language: indicates a person is comfortable and unstressed;

Common attitudes communicated through body language during negotiations can be further grouped into two broad classifications -- positive attitudes and negative attitudes. Rather than go through all the types listed above, the remainder of this discussion focuses more on the differences between positive and negative body language. There are many books on body language which can be usefully studied by the Coastal State negotiator to deepen understanding of some of the general points made here.

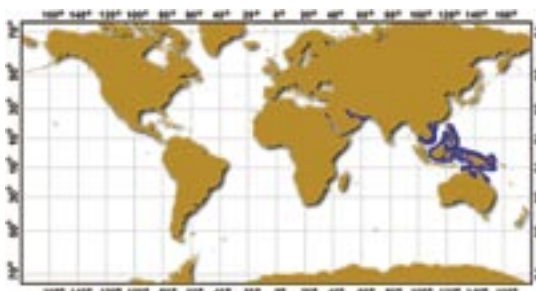


Figure 11- 2 The global market in access rights - production regions and fishing grounds for Banana Prawn
Source: FAO

11.7.2 Positive attitudes in body language

Key indicators of positive attitudes are listed below.

- speakers from Western cultures indicate respect and honesty by keeping their eyes focused on the eyes of the listener(s) – this though is culturally dependent as many body language experts have pointed out. Confidence is often exhibited by:
 - hands in pockets with thumbs out;
 - hands on lapel of coat;
 - steepled fingers or hands;
 - good body posture (e.g., square shoulders and a straight back); or
 - hands on hips.

A person's heightened interest may be exhibited by one or more of the following:

- tilted head toward speaker;
- sitting on edge of chair;
- upper body leaning in sprinter's position; or
- eyes focused on speaker.

Careful consideration by the listener of what is being said is frequently indicated by one or more of the following:

- peering out over eyeglasses;
- chin cupped between thumb and fingers;
- putting hands to bridge of nose; or
- stroking chin.

Eagerness is often demonstrated by:

- rubbing hands together;
- smiling excessively; or
- frequent nodding of the head.

11.7.3 Negative attitudes in general

A bored person looks anywhere but at the person who is talking to them. Listener boredom or indifference is obvious where the following behaviours feature:

- eyes not focused at speaker or looking elsewhere;
- head in hand;
- sloppy or informal body posture;
- preoccupation with something else;
- doodling on a pad in front of them;
- frequent glances at their watch or a wall clock.

The disinterest may also be false if they do not want you to see that they are interested. Watch for leaking signs of readiness in these cases.

Repetition and boredom

Bored people often repeat actions such as tapping toes, swinging feet or drumming fingers. The repetition may escalate as they try to signal their boredom.

Tiredness and boredom

A person who feels that they are unable to act to relieve their boredom may show signs of tiredness. They may yawn and their whole body may sag as they slouch down in their seat, lean against a wall or just sag where they are standing. Their face may also show a distinct lack of interest and appear blank.

The Paradox - Ready to Sign but Bored

Finally, a bored person may actually be ready to close the negotiations. Negotiators are known to keep on persuading long after the other party is ready to sign on the dotted line!

11.7.4 Other negative attitudes in body language

Negative attitudes indicated by body language may signal a deceitful nature, or a highly distributive approach to negotiation. Common indicators of negative attitudes are listed below. Deception and dishonesty are commonly demonstrated by:

- frequent eye blinking;
- a hand covering one's mouth while speaking;
- frequent coughing;
- looking away while speaking; or
- quick sideways glances.

Defensiveness may be indicated by the following:

- arms crossed high on chest;
- crossed legs; or
- pointing an index finger at another person.

Insecurity is often exhibited by:

- hands completely in pocket;
- constant fidgeting;
- chewing on a pencil;
- frequent coughing;
- biting fingernails; or
- hand wringing.

Frustration is frequently shown by:

- tightness of a person's jaw;
- a person rubbing the back of their neck;
- a person drawing their eyebrows together.



Figure 11-3 American seiner
- FIGIS/FAO

11.8 | Applying body language insights

11.8.1 Preparation phase

As you prepare for the negotiation conference, you should briefly review key elements of body language with members of the Government team.

- a negotiating team exhibiting positive attitudes will attract heightened trust and respect, as they explain and justify their Government's position.
- a negotiating team exhibiting negative attitudes will bring their support into question, and may raise questions about the entire Government position.
- a questioning look by one team member when another team member makes a statement may bring their credibility into question.
- a lack of interest exhibited by one team member may convince the cocontractor's negotiator that the issue being addressed is not important to the Government.

11.8.2 Bargaining phase

During the negotiation conference, you can use your knowledge of body language in several ways. You can:

- gain greater insight into the attitude of the co-contractor's negotiator;
- look for confirming communications (either verbal or non-verbal);
- concentrate on using body language that supports your verbal communications (e.g., eye contact will support your truthfulness);
- be aware that unless you are experienced and skilled, you will not be able to completely suppress your natural body language;
- however, unless your natural body language indicates a negative attitude, your use of positive body language should strongly support your position;
- consider body language as you listen to the positions taken by other Government team members;
- if they appear uncertain, you might interject by offering support;
- if they appear negative, you might ask for a brief caucus to remind them of the importance of positive body language.



Figure 11-4 A fisheries monitoring centre - FIGIS/FAO

11.8.3 Final reminders - the importance of culture

- similar types of body language can have substantially different meanings;
- body language can be controlled by a knowledgeable negotiator;
- do not take one element of body language and make grand assumptions.
- culture is always decisive

The illustration above depicts the body language exhibited by two teams. The non-verbal messages provided by their body postures, facial gestures, and appearance provide substantial information about both teams. Note that the team on the:

- right transmits non-verbal messages exuding confidence and success;
- left transmits non-verbal messages that convey negative attitudes and other unflattering characteristics.

Exercise task:

- identify and list the specific items of non-verbal communication that support this description of the two teams;
- consider alternative explanations that can be offered for the positions taken by each of the team members.



Figure 11-5
Exercise analysing non-verbal communications during the Negotiations Conference
Source: FAI Guides

Chapter 12

Using & Responding To Tactics⁸³

12.1 | Tactics – an overview

Conventional tactics are tactics that all negotiators use. They do not give rise to fundamental ethical problems. Key examples you are already familiar with are discussed in this Chapter together with some more problematic or tricky ones. In general terms, conventional tactics can be classified into three broad groups: preparatory tactics; opening tactics and general tactics. They are useful in two aspects. Firstly, they are used by the experienced negotiator to help shift the position of the co-contractor, and are central to convincing him or her that their position has less merit or value than they think. Secondly, tactics have a defensive role. They are used to counter those that the other party seeks to use against you. Using tactics in a defensive way is the more difficult aspect. This is because you must first be able to recognise the tactic in use against you and then assess how to either resist its use, or quickly adapt it to suit your purposes. Preparation and rehearsal are once again crucial. Without rehearsal, feedback and reflection, tactics cannot be used to full effect by SRFC negotiators.

Box 12-1 Chapter 12 Highlights

This Chapter discusses the full range of tactics used in negotiations. The focus is more on tactics appropriate to distributive negotiations. Each tactic is described, followed by discussion of countermeasures together with the context in which it is likely to be used.

Although all three – tactics, strategy, negotiations plan – are inter-related, it is important not to confuse your tactics with your strategy or your negotiations plan. Whilst tactics are a key part of negotiation strategies, they must fit into a larger picture. Merely having tactics without knowing why you are using them (or when it is best to use them) is not particularly useful.

Tactics relate to strategy in a number of ways. Firstly, particular kinds of tactics are central to the integrative or distributive approach. If your strategy is to have a mixture of integrative and distributive elements in the negotiation, then you must be ready to deploy a mixture of tactics accordingly. If however, your strategy is to be a hard positional or distributive negotiator, then the tactics to be rehearsed will to some extent be different. For instance, brain-storming is not a central tactical element in distributive bargaining since this tactic involves sharing ideas and options in an atmosphere of trust. It may be used in distributive bargaining, but would not be the first tactic you would call upon. Indeed if it is used at all, it would be more to surprise the opponent to think that you intend to be integrative, when in fact you are preparing a surprise or shock for them after they have been lulled into a false sense of security.

The range of tactics within your strategy should be set out in broad outline in your negotiations plan. The preparation process itself generally reveals some of the key tactics that can be used in the negotiation. Preparation and tactics are also closely linked because your team may need to practise how to implement, or equally resist, a tactic. The key issue to bear in mind is that once the negotiation tactics being used against you are understood, they lose a great deal of their power.

12.2 | Questions – the basic instrument of tactics

The ability to use questions effectively is a key element in the successful use of tactics. As Chapter 10 pointed out, questions are fundamental to negotiations since they are the principal way of probing the position of the other party. Many tactics cannot be used effectively if you:

- cannot distinguish between different types of questions and questioning approaches;
- lack practice in many of the different approaches to questioning.

⁸³ - This Chapter is based substantially on the discussion of tactics provided in Gavin Kennedy, Field Guide to Negotiation: a glossary of essential tools and concepts for today's manager (1994).

country has a strong need for foreign currency or there is domestic instability. However DWFS are also subject to time pressure – a good example is the pressure that EU officials in Brussels periodically come under when an agreement of importance to the EU (such as the agreement with Morocco) are not renewed and the fishing season is about to commence.

Box 12-4 CASE STUDY – THE EU’S APPROACH TO PREPARATION

INSTRUCTIONS TO CONTRACTORS HIRED BY THE EU TO PROVIDE RESEARCH TO SUPPORT EU PREPARATION FOR FISHERIES PARTNERSHIP AGREEMENTS

CURRENT SITUATION IN THE COASTAL STATE

1.1. Presentation and analysis of the general situation

The contractor must provide factual information and a pertinent analysis of the institutional, political, economic, financial, social and environmental aspects of the coastal state concerned. This entails examining: the political, institutional, administrative and legal framework. The contractor must study the political situation of the country concerned, its institutional, administrative and financial organisation, and its operating methods; the macro-economic and financial framework¹ (including breakdown of budget revenue and expenditure). The contractor must provide:

- A. an analysis of the national development strategy, including the fiscal strategy and the development strategy for sectoral policies; To this end, the contractor must analyse in particular the government’s main macroeconomic policy documents (such as the poverty reduction strategy paper, economic policy framework paper, budget/finance law, Court of Auditors’ audits, etc.) and those of the bilateral and multilateral fund donors who support the government’s policy (Community strategy papers, IMF documents for Article 4 negotiations, World Bank memoranda, HIPC documents, country financial accountability assessments, etc). The contractor may also refer to other documents and information sources.
- B. an assessment of the macro-economic situation, and of the potential for increased public support to the sector and private investments. In this context, the contractor should focus on the following aspects: financial and budgetary procedures in the country concerned (programming and budget implementation), the quality of public finance management, relations with bilateral donors and multilateral institutions, growth perspectives and an overall assessment of the situation of public finances;
- C. detailed analysis of the budget and public finances, looking at:
 - how the annual budget is drawn up, the budget breakdown, budget trends, the transparency and credibility of public finances;
 - the connection between policy objectives and expenditure;
 - programming and the implementation of multiannual expenditure;
 - the process of making budget transfers from the government’s general account to those of the sectoral ministries (delays, proportion compared to the amount provided for in the budget, tranches, etc.);
 - how much of the forecast expenditure is actually incurred.
- D. the conditions for private sector development and development of investment. The contractor will have to study the investment environment for both national and foreign operators, and also public investment policy and any synergy with private investment policy. It should also examine whether there is a private sector promotion policy, a commercial code, an investment code, a company law and competition law, a public-private partnership policy, a privatisation policy, a commercial policy and regional integration policy, etc. and whether or not these are actually applied.

The contractor must also describe the current environment, and the trends and main constraints and pressures affecting the country as well as the presence and role of any other parties (NGOs, international organisations, etc.); relations with the main external partners in the field of development cooperation and political, economic and/or trade agreements, giving an outline of the main donors of funds supporting the country, the areas in which they are active, the contribution to the national budget, and the main agreements concluded by the country. The contractor must provide a matrix of assistance from the various donors and international financial institutions.

1.2.2. Spending on fisheries

Here the contractor will be required to analyse the available resources and how they are used in the framework of the sectoral strategy. It should concentrate on aspects relating to the coastal state's budgetary allocation to the various institutions responsible for managing and monitoring fisheries policy, the spending programme for the sector, and in particular the budgetary allocation for management, development, monitoring and control of fisheries policy. If there is already an agreement between the coastal state and the Community, the contractor should study:

- how transfers of the financial contribution paid by the EC are registered on the treasury account and whether, in the case of targeted measures, these are passed on to the sectoral ministry/ministries;
- whether or not the Community funds are additional to the initial budget provided for by the government in the fisheries sector
- whether the funds are actually used for the planned targeted measures;
- whether the financial contribution is actually recorded in the initial budget or in the revised finance act at the end of the budget year;

The contractor must also study more closely the capacity of the national fisheries authorities to develop a sectoral approach to fishing and develop a fisheries management plan; the extent to which budget forecasts can actually be made in the fisheries sector. If there is a mediumterm spending framework, the contractor should examine:

- how spending is planned in the fisheries sector;
- targeting (objectives, results, activities, etc.);
- any duplication and inconsistencies;
- management of public finances in the sector.

Box 12-5 Reflective question - pressure on external revenues and finances

A country with limited foreign exchange reserves will be at a disadvantage in negotiations. The same is true of a country expecting a disbursement from the IMF or the World Bank, but which is experiencing delays (e.g. because not all the conditionalities of the IMF or the World Bank have been met). It can be seen that the EU intends to acquire comprehensive information on a large number of matters which are likely to put pressure on SRFC countries and negotiators. Setting times to negotiate at these times may well increase the pressure on Coastal States to accept low access fee offers.

Has your country ever been in a time pressure situation immediately prior to negotiating an access agreement? What type of time pressure factor was it? Were you able to guard against it in some way? Did this external factor end up affecting the negotiations in any way?

12.5.3 Time and harmful information

It is also sometimes the case that a party to an agreement will want to settle quickly before information that is harmful to its position is made public.

12.5.4 Imposing deadlines

Another time based tactic is imposing deadlines. This occurs where Party A sets out a definite period of time in which its offer must be accepted by Party B. It has subtle as well as highly obvious uses.

Use

You can increase acceptance time by making an offer toward the end of the day and then suggesting a break in negotiations until the next day. Overnight, the negotiator will have time to think about your offer and maybe discuss it with political superiors. Negotiators, like people in general, need time to accept something new or different. More negatively, acceptance time can be used as a delaying tactic. This can be particularly useful when one side is under severe time pressure, or the momentum of the negotiation appears to be in favour of the one using the tactic aggressively.

Countering

Do not take too much time to respond to an offer because the momentum could be lost for quick agreement. Taking too much time could also allow a experienced negotiator an opportunity to develop further delaying tactics.

12.5.5 Managing time pressure in a co-operative way

Using time pressure as a major tactic is closely associated with distributive or positional bargaining. Integrative or co-operative approaches should in principle be able to integrate or absorb time considerations into the negotiations process. This requires joint effort on the part of both parties.



Figure 12-1 The CECAF Region

12.6 | Other general tactics

12.6.1 Tactic: issue-linkage or association

Linking an issue to another outside the immediate negotiating context

Use

This issue is very common in fisheries negotiations, where the fisheries agreement may be explicitly or impliedly linked to some other aspect of the overall relationship such as development assistance in the fisheries sector or loans or grants in some other aspect of the relationship. Japan in particular is well known for using this tactic. The rapid emergence of the People's Republic of China as a key source of loans and development assistance also increases the scope for their use of this tactic considerably. The comprehensive debt and foreign currency profiles that the EU is developing will also provide it with much more information on the possibility that other countries are using issue-linkage in negotiations.

12.6.2 Tactic: forbearance

Forbearance is the act of refraining or abstaining from action. During negotiations, forbearance allows both parties to agree to disagree and move on to the next issue without making a commitment one way or another. Forbearance is closely tied to the parking lot concept seen in Chapter 9 at 9.5.1.

Use

When the SRFC negotiator and the other side's negotiator disagree on an issue, they can choose to use forbearance to prevent the negotiation from bogging down on that issue. Instead, you can search for issues where you can agree. Delaying action affords both sides more time to look at the unresolved issue in a different light. Forbearance is being used positively in this case, to enhance the prospects of reaching agreement. However, forbearance can also be

Box 12-6 Open discussion question - competitive pressure

Your CSNT has just arrived in the capital of Country M, a country which is very important to your access agreements goals and objectives. Country M has a large market for your products and has significant investments in your country.

Scenario 1.

At the airport you see a delegation from Country Z. It is clear that they are also in the country to negotiate an agreement. They come from the other side of the world but their fishery resources have the same general profile as yours.

How should you react during the upcoming negotiations?

Should the presence of a competitor lead to you lowering your expectations?

Scenario 2.

At the airport you see a delegation from Country W. It is clear that they are also in the country to negotiate an agreement. Country W is your next door neighbour and shares virtually all the stocks of commercial value that you have. However they have a much better managed EEZ.

How should you react during the upcoming negotiations?

used to support a competitive or domineering style. In such a situation, forbearance is instead used to stall agreement on any issue, and also to place increasing pressure on the other party to make concessions.

Countering Forbearance

The SRFC negotiator may offer to trade concessions on areas of disagreement – e.g. make a concession on one issue, in return for a concession of equal importance on the same/another issue, by the other side.

12.6.3 Tactic: trial balloon

A trial balloon is a tentative plan offered to test the reaction of a particular audience. You can offer a trial balloon by making the other side an offer prefaced with the words «*what if....*» Alternatively, you might say, «*How would your government/company feel about this alternative?*»

Use

This tactic supports integrative bargaining slightly more than it supports distributive bargaining, although it can be used in both approaches. It can be particularly useful if you phrase the trial balloon in a way that encourages the other negotiator to offer alternative solutions. A more aggressive or distributive use of a trial balloon is when it is used as a trap. For example, Negotiator A might offer a specific price for something that is on offer (ie “what if we were prepared to pay X?”), however Negotiator A finds a reason to withdraw this offer once Negotiator B shows interest in it, or even accepts it. Negotiator A thus gains insight into the acceptability range of Negotiator B without giving up anything. Fortunately, a tricky or positional use of a trial balloon can only be done once. After it has been done, there is no reason to trust the other side’s trial balloons.

Countering the trial balloon

When in doubt about the acceptability of a trial balloon, take time to formulate your response. Trial balloons often require substantial time to answer and generally cannot be analyzed on the spot. Be particularly careful when considering accepting a trial balloon that requires you to move to the limit of your negotiating range.

12.6.4 Tactic: offering alternative positions

By offering two or more alternative positions at the same time, you can indicate that you would be willing to accept more than one way of settling a particular issue or group of issues. It is different from the trial balloon, because you are making a commitment to accept whichever option the other negotiator selects, out of those presented.

Use

You offer alternatives that are acceptable to your Government. The other negotiator has the opportunity to select the option or alternative course of action most favorable to their position. You gain an acceptable (and swifter) resolution, and the cost to the other government/company’s position is minimized. In addition, the selection process gives the other negotiator a sense of ownership in the outcome. That sense of ownership may improve the general negotiation atmosphere and lead to the satisfactory resolution of other issues (not to mention a positive longer-term relationship). More negatively, in a distributive negotiation, the other negotiator might offer two or more unacceptable solutions to key issues. When the SRFC negotiator refuses them all, the other negotiator could use your refusal to support a charge that you are being unreasonable.

Should the presence of a competitor lead to you lowering your expectations of a good deal?

Alternatively, suppose you know the head of Country W’s CSNT very well. You went to University in Europe together and have often worked together on regional projects and during multilateral negotiations. You meet him at least 4 times a year at FAO and other fisheries conferences.

Should you both have a private chat to better co-ordinate the positions of your countries in these negotiations, in which it is possible you are going to be played off against each other?

Box 12-7 Strategy problem 6 - trust and the integrative approach

After the initial opening cocktail party on Monday night, a good relationship seems to be developing between the two sides. On Tuesday morning, should you then reveal the full details of your position and rely on the honesty and integrity of the other side?

For a suggested answer go to section 14.7

Countering the alternative positions approach

The pros and cons of each alternative position may not be readily apparent. Ensure you spend enough time to thoroughly analyzing the merits and drawbacks of the various options before presenting them, or alternatively, before making a selection between options. Never accept an unreasonable solution simply because it is the most attractive one offered. If all alternatives are unacceptable, offer another alternative rather than simply rejecting them.

12.6.5 Tactic: brainstorming.

Brainstorming is a technique where alternative solutions are developed through an unrestrained exchange of ideas. Negotiators using this tactic think out loud and openly discuss many alternative solutions or ways to resolve issues. No value judgment is placed on any idea during the brainstorming session. Ideas are simply recorded for later evaluation and possible use.

Use

When negotiators are sincere and open to new ideas, brainstorming can be a useful tactic to identify a wide variety of alternatives on ways to reach a win/win result. During the brainstorming session and later evaluation of ideas, new insights can be gained on the hidden pressures and needs of the parties involved. For brainstorming to work, the negotiators must be sincere and open to new ideas. An experienced negotiator who is not sincere could use a brainstorming session to gain information about alternatives that another negotiator might be willing to accept, while revealing nothing in return. That insight could then be used to experienced negotiator's advantage for the remainder of the negotiation.

Countering brainstorming

Reject a brainstorming approach

12.6.6 Tactic: salami

The negotiator using this tactic makes demands one small inter-related demand at a time rather than requesting everything all at once.

Use

The salami approach permits you to divide complex issues into more understandable components- with the opportunity to fully explain and sell each position before moving on to another issue. An experienced negotiator can use this technique to win concessions on a variety of issues, before you realize just how many issues there are. Before you know it, you have negotiated away all your flexibility and you have not even made it up to the tough issues yet.

Countering the salami

The first line of defence is to recognise that a salami is in progress. The second line of defence is to put a stop to it. You will need to be assertive about this, but the response is quite straightforward. The salami tactic works because the person being sliced does not recognise what is happening. Once you recognize it you can fight it proceeding any further. Simply refuse agreement on any one slice until you have everything out on the table. For example, question "Is there anything else you want to discuss as part of these negotiations?", "Do you want to include a discussion on (something you want to raise anyway)?" and most importantly, "Is that everything?". Once everything is out in the open then may be possible to bargain in a less risky manner.

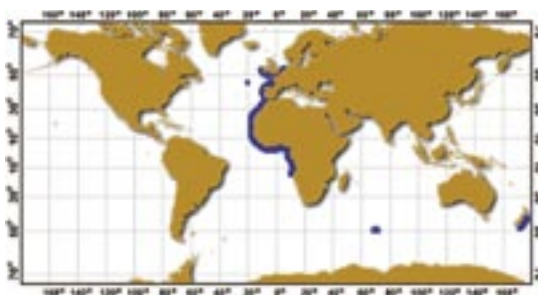


Figure 12-2 The global market in access rights - production regions and fishing grounds for Orange Roughy
Source: FAO

12.6.7 Tactic: blanketing

Blanketing is the opposite of the salami approach. It is designed to get all the issues on the table at the beginning of the negotiation. Negotiators utilising the blanketing tactic open the negotiations with an overall outline of all their demands.

Use

When used effectively this tactic puts all of the issues on the table, so that everyone understands the magnitude of the negotiation task. This can successfully avoid substantial time being wasted on trivial issues, and key issues having to be squeezed in at the end. An experienced negotiator can use this tactic to bury you, and if you are not well prepared this leads to paralysis. The negotiator hopes that you will be overwhelmed with the extent of all their demands, and that you will not be able to distinguish and debate the key issues until it is too late. A single weak issue can be buried among strong ones.

If you elect to utilise the blanket approach, you may be able to assess how strong your opponent considers him or herself to be on individual issues, from the order in which he or she responds to your blanket. Blanketing can also be used to gain agenda control since presenting a group of issues all at once may allow you to keep control during the entire discussion as opposed to presenting just one or two issues.

Countering blanketing

Before making any concessions, prioritize the issues involved to determine what is really essential to the other party and how important each issue is to the Government.

12.6.8 Tactic: bracketing

A bracket is a group or class of issues or solutions that are thematically or practically linked together. Negotiators can use the bracketing technique to identify issues that are critical to a mutually satisfactory result.

Use

You can use bracketing to group major issues in an attempt to reach a mutually satisfactory result on those issues. This tactic can be particularly useful when there are a large number of issues, but only a few are critical. It may be impossible to reach a satisfactory result on every issue in the bracket, but you can reach a result that provides overall satisfaction. Once you reach a satisfactory result on the critical issues, you should be able to resolve the relatively less important issues more quickly. An experienced negotiator might attempt to group issues in a way that resolves the issues critical to him/her, but leaves your critical issues unresolved. In that situation, you might trade away your flexibility only to find that the really important issues to you are still unresolved.

Box 12-8 Reflections

Consider an instance where your own expectations of a negotiation turned out to be inappropriate. What caused this variation of expectations, and why did things occur differently?

Adapted from Mulholland, *The Language of Negotiation* 1991 (selected pages)

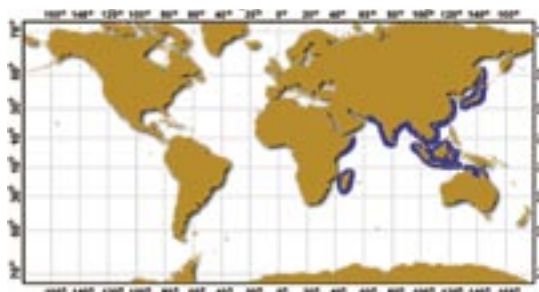


Figure 12-3 The global market in access rights - production regions and fishing grounds for Giant Tiger Prawn
Source: FAO

Countering bracketing

Make sure the brackets include your critical issues. To maintain more flexibility, you might also consider qualified or tentative acceptance of the results. Later if you feel that the results are unfair, you can withdraw your acceptance.

12.7 | Tricky tactics and appropriate countermeasures

The tactics in this section are tricky for a number of reasons. Some of the tactics are acceptable when used in a moderate way – for example, delay, lock-in tactics and unreasonable first offers. Others are considered hard and uncompromising behaviour, whilst others are deceitful in a way which can damage relations between the countries concerned. Whilst it is generally true that a tricky ploy is often used by a person who doesn't want you to walk away, it may also be used because they want the negotiation to fail so they can take advantage of a new and better opportunity that has suddenly emerged.

Because of the nature of these tactics, they are not recommended for use by negotiators seeking an integrative outcome or a reasonably fair distributive result. They do exist however, and are relied on from time to time. By understanding them you will be better able to defend your CSNT against their successful application. Recognition is the universal countermeasure. In addition, the employment of some these tactics by SRFC negotiators may well be necessary when you are facing an experienced negotiator who does not hesitate to use them against you.

12.7.1 General comments on dealing with tricky tactics

According to an experienced negotiator consulted during the preparation of this manual the best response to a clear use of any of these tactics is to implement MGR meaning:

1. Maintain your composure;
2. Gain time to think ; and
3. Respond then or at a later and more appropriate time.

MGR is not easy to do and requires practice and rehearsal. Good preparation will help you to identify the true nature of a tricky ploy, and how best to respond.

12.7.2 Tricky tactic: surprise

Negotiators may introduce a behaviour, issue, or goal at an unexpected point in the proceedings. The negotiator plans an apparently spontaneous event (e.g., an emotional outburst) to surprise or shock the other negotiator.

Use

In general, the surprise tactic is used to disrupt negotiations and move you away from your negotiation plan. The experienced negotiator hopes that you will have an emotional response (e.g., anger, shock, or even fear) to the surprise. The further hope is that emotion will adversely affect your negotiation efforts. Anger might cause you to lash out and make statements that can later be used to show that you are unreasonable. Shock or fear might cause you to capitulate on a particular issue to avoid further and possibly more intense conflict.

Countering surprises

Knowledge and preparation are the best countermeasures. Some negotiators are known for their use of surprise tactics (e.g. outbursts of anger). Such displays might be frightening if you do not expect them, but can be almost entertaining if you do! Surprised or not, do not respond until you are prepared. When necessary, call for a team caucus to make sure that you are responding with reason and not emotion (e.g., anger or frustration).

Box 12-9 Tricky tactics

Situation-dependent tricky tactics

- lock-in tactics - publicly committing to a position before the bargaining starts, in an attempt to force you to be the one to make any concessions;
- lock-in tactic - unreasonable first offer;
- time tactic - calculated delay;
- emotional appeals;
- attempts to reopen settled issues.

Psychological dominance tactics

- setting up the physical environment in ways that create stress and discomfort;
- insulting the other party indirectly by making statements that make them feel uncomfortable, pressured, or threatened;
- making the other party wait, refusing to listen or make eye contact;
- using aggressive body language, such as pounding the table, pushing objects away, and leaning forward;
- emotional appeals - accusing the other party of acting unfairly in not agreeing to offers made;
- stressing his or her sacrifices;
- expressing offense at your ungratefulness for favours done.

Outright deception

- misrepresenting facts (lying);
- misrepresenting authority (giving you the impression that he or she has the power to approve an agreement when that isn't so);
- misrepresenting intention to comply with agreed-upon terms.

12.7.3 Tricky tactic: funny money

Many issues in fisheries agreement negotiations relate to percentages, factors, or other estimating relationships. Bargaining on these relationships is essential to reaching a mutually satisfactory result. However, these relationships can become funny money if you allow the other negotiator to use them to distract you from their effect on the total contract. An experienced negotiator might use these relationships to distract your attention from the true effect on cost or price.

Countering funny money

Translate all funny money terms to their actual monetary equivalent. For example, when negotiating indirect costs, always consider the effect of rate changes on total cost or price. Take a caucus break if you are not sure

12.7.4 Tricky tactic: bullying

The negotiator using this tactic attempts to put the other party on the defensive using threats, insults, or ultimatums. Although this tactic often backfires because most people resent verbal attacks, it can sometimes be effective when used against an easily intimidated negotiator.

Use

The negotiator using this tactic hopes to gain concessions by bullying the other party. He/she uses the tactic to lower the confidence of the SRFC negotiator by making negative comments about the competence of Government personnel and their frustration with the «red tape», and sometimes even corruption involved in dealing with your country.

Countering bullying

There are several ways of responding to bullying

1. explain the long-range risks and costs that would result if the other party decides to carry out the threat;
2. play dumb- pretend you don't understand the threat, and go on to the next issue;
3. do not become shaken or emotional when this tactic takes the form of an insult. Insist on respect but continue to be businesslike and polite;
4. if the threat is unethical, unlawful, or immoral, state that you may well report the threat to the proper authorities (e.g., the negotiator's superiors or your political superiors).

Box 12-10 - Responding to Tricky Tactics (MGR)

Maintain composure

- Remain calm;
- Do not respond with a similar tactic;
- Refocus the discussion – for example, take a moment to sum up the goals of the negotiation for the other person or ask the other person what his or her priorities in the negotiation are;
- Gain time to think – go into a short caucus;
- Use information strategically to defuse the tactic immediately or upon your return;
- Identify the real meaning of tricky tactics – is the person desperate?;
- Lighten up the situation with humor – involving the rest of the team including his team weakens the impact of the tactic;
- Pay close attention to the other person's body language.
- Gain Time to Think
- Pause and say nothing for several or many seconds;
- «Play back» the conversation; for example, «Let me just make sure I understand what you're saying.»;
- Take careful notes about what your counterpart is saying;
- Suggest a quick break;
- Resist any urge to make important decisions on the spot – that is precisely why the tactic is being used;
- Remember that a tricky ploy is often used by a person who doesn't want you to walk away.

Raise the issue directly during the negotiation

- After recognising or confirming the use of the tactic bring it up frankly and respectfully immediately or later in the negotiation;
- Use a firm and respectful way of raising the matter – not anger or humiliation.

Box 12-11 Strategy problem 7 - pressure tactics during the opening phase

You are outlining the key points and rationales of your position during your opening statement. You realize that the other side is showing clear signs of impatience and are close to the point of being openly rude. What do you do?

1. try to speed up your presentation by leaving most of your key positions out
2. continue your presentation as planned
3. break your opening statement and go into caucus with your team

For a suggested answer go to section 14.7

12.7.5 Tricky tactic: feinting

Feinting is the use of a pretense or action designed to mislead. In negotiations, this tactic normally involves the use of true but misleading statement or behavior.

Use.

Feinting gives a false impression or deceives one side into believing something that is not true. For example, a DWFS negotiator might feint by telling the SRFC negotiator that an outstanding and previously promised project has already been approved by his government.

Countering feinting

Ask probing questions to determine the real situation or bring out the hidden topic. This kind of tactic will be of no use if the CSNT has prepared well and has a full list of all aid and other projects which might possibly be used as bargaining chips in the negotiations. Again if the Coastal State team is well prepared it will simply be a matter of checking whether the kind of aid offered in negotiations is indeed offered by the country in question.

12.7.6 Tricky tactic: bogey

A negotiator using the bogey tactic justifies their position by arguing that a standard set by a third party, or a situation beyond the negotiator's control (e.g., government policy) determines their position. However this statement is either completely false or only partially true. Any reason can be used as a bogey so long as it is beyond the negotiator's control.

Use

Experienced negotiators using the bogey tactic attempt to convince you that they do not have authority to negotiate the issue because the bogey is beyond their control. They hope that this lack of authority will lower your expectations without you blaming them. Many Government negotiators use this tactic when they make statements like «*This is what the scientific/technical people recommend we have to use*» Commercial negotiators are often using a bogey when they say «*our suppliers/ customers require this*»

Box 12-12 Strategy problem 8 - responding to a surprise

Tomorrow, you are about to start a negotiations conference with representatives from Fishing Association Y. You have just become aware from today's newspaper that they have negotiated an agreement with Country P (your next door neighbour) under which they have agreed to a fee which is 15% less than what you hope to negotiate tomorrow. Should this information fundamentally affect your strategy and tactics in this upcoming negotiation? Go to Box ? for an answer.

Countering the bogey

Good intelligence ensures that you can spot bogeys easily. Bogey countermeasures include:

- questioning the reasonableness of the bogey and standing firm on your position – this is easy if you have good intelligence.
- offering to negotiate with the person or persons supposedly responsible for the bogey;
- countering the bogey directly - again this requires good intelligence.

12.7.7 Tricky tactic: crunch

The crunch tactic is designed to enable the other party to take another bite at your position, no matter how reasonable it is. The user of this tactic is never satisfied and responds in words such as, «You have to do better than that,» or «That is not good enough.»

Use

Experienced negotiators using this tactic are attempting to make you doubt the reasonableness of your own position, without offering a specific alternative.

Countering the crunch

Keep the burden of proof on the other side by asking their negotiator for specifics.

12.7.8 Tricky tactic: decoy

A decoy is a person or thing that lures you into danger. In negotiations, the danger is an unsatisfactory outcome. The lure is a position or issue that appears important to the negotiator, but in reality is not. The issue or position could be completely fabricated, or one whose importance is simply blown way out of proportion.

Use

Negotiators using this tactic intend to trade the decoy for a concession of value. For example, the other side might offer to grudgingly concede on a minor estimating error in return for your concession on a more important issue. The actual error might be real or deliberately placed for you to find.

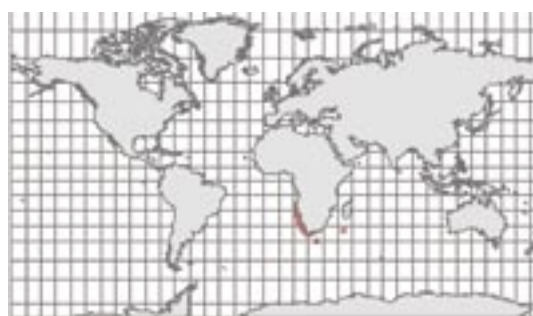


Figure 12-4 The global market in access rights - production regions and fishing grounds for Deepwater Cape Hake
Source: FAO

Countering the decoy

Decoy countermeasures include:

- conceding the decoy issue and holding out on the important issues;
- calling the negotiator's bluff by challenging the validity or importance of the decoy issue.

12.7.9 Tricky tactic: false legitimacy.

Legitimacy is the state or condition of complying with established rules and standards. Negotiators often rely on commonly accepted standards (e.g., past practice, official policy, or written documents) to support a negotiation position.

Use

Experienced negotiators might use questionable or nonexistent standards to support their negotiation position. For example, the negotiator might say «This is the price that is offered in Country X» By conveying legitimacy on the price, the negotiator hopes to reduce or eliminate questions. Most people are reluctant to challenge the status quo or question a position that is supported by an official document. This is where the value of good advance preparation comes in, as you need to be prepared and able to spot errors or over-assessments in stated pricing.



Figure 12-5 Freezer trawler
- FIGIS/FAO

Countering false legitimacy

Consider generally accepted standards, but do not accept them blindly. Insist that everything is negotiable.

12.7.10 Tricky tactic: silence

Silence is the absence of mention. In other words, a negotiator using this tactic does not say anything about a negotiation point. The primary hope is that the issue will not come up. If the issue does come up, the negotiator remains silent or avoids it by talking about something else.

Use.

This tactic is generally used when negotiators do not want to disclose weaknesses in their position. For example, a company trying to sell fishing vessels to your SRFC might not want to mention the fact that the equipment is extremely old. The tactic is also used when negotiators want to obtain information by letting the other party do the talking. In this case, some negotiators feel obligated to talk and reveal information on their position, whilst the other party is deliberately silent. Sometimes these negotiators will even end up talking themselves into accepting the other party's positions.

Countering silence

Persistently ask effective questions to uncover information on the avoided topic.



12.7.11 Tricky tactic: attempts to re-open settled issues at the end of the deal

This tactic involves re-visiting the past. The user of the tactic hopes that you have already emotionally finished with the negotiation. They hope you will make significant concessions just to get the agreement completed (and avoid the pain of reopening negotiations).

Countering re-opening

- you should consider carefully whether your opponent's request is justified;
- remember the request may be genuine - he or she may have made a mathematical error, or may have discovered new facts that alter the premise on which an issue was negotiated;
- suggest that the issue is dealt with after the final agreement is reached;
- always write down points of agreement as they are reached - re-opening is thus made more difficult;
- if the settled issue resulted in an agreement disproportionately in your favor; and you still have bargaining room left, it is probably better to reopen than risk an eventual rejection of the final settlement proposal.

Box 12-13 Strategies for taming the hard bargainer

1. Brainstorm hard-bargaining behaviour from key DWFS
2. Create a hard-bargaining group (two or three people) to role-play all the difficult tactics that you identify during the brainstorming
3. Video-tape the role plays and analyse
4. Come up with strategies for dealing with the behaviour observed

Chapter 13

Managing The Government Team

13.1 | Introduction

There are a number of simple procedures which can be used to effectively manage the performance, focus and effectiveness of a government team during negotiations. Whilst all SRFC countries use these procedures to some degree, the discussion offered here is intended to offer an overview of best practice in a number of distinct areas. Taken together and applied consistently there is significant potential to enhance the performance of Coastal State negotiating teams for relatively little effort.

Box 13-1 Chapter 13 Highlights

This Chapter discusses a range of issues and provide supporting tools:
Issues are:

- Guidelines for leading a negotiating team;
- Controlling team member participation;
- Using caucuses and breaks to manage team dynamics and performance;
- Observing content and process;
- Observing process.

Tools to support team management are:

- A sample process observation checklist;
- A worked example of a process observation sheet;
- An offer and counter offers summary sheet;
- A tool for evaluating offers.

13.2 | Guidelines for leading a negotiating team⁸⁴

From the negotiation conference's outset, the team must function as a single entity. This requires preparation before the negotiation conference, and active leadership throughout the negotiation conference. The team leader must assume leadership responsibility during the negotiation conference even if they are not the team leader at other times. This includes:

- opening the negotiation conference;
- actively leading the team throughout the conference;
- controlling team member participation;
- reviewing facts and identifying negotiation issues;
- bargaining on the issues;
- reaching agreements on the issues;
- closing the bargaining round.

Before every negotiation session, the team leader must ensure that all necessary preparations are complete. In particular, the team leader should ensure that the meeting room is properly set up and that team members are available and prepared to perform their assigned roles in implementing the negotiation plan.

84 - H Raiffa, The Art And Science Of Negotiation; (1982), 61; FAI Guides.

13.4.3 Use breaks to relieve tension and control the pace of negotiations.

A break is different from a caucus in that it signals an intention to halt the entire phase of the negotiation for a period of time. Consider calling a break when you want to:

- provide relief from the stress of the negotiation;
- give the other team leader an opportunity to re-evaluate their position or consider a possible concession;
- help restore a cordial and unemotional atmosphere after someone has made a provocative or emotional statement; or
- calm down an individual who has become contentious.

13.5 | Observing content and process

13.5.1 Observing content

Chapter 4 has already discussed the role of a records keeper. The records keeper can fulfill the same role as the content observer. You may wish to combine the roles of content observer and process observer. However this is not advisable for highly important negotiations or when you are facing large delegations of the type typically presented by Japan, Korea or Taiwan. A sample sheet setting out offers and counteroffers is provided below.

Table 13-1 - Sample Content Observer Worksheet - Round 2

Issue	RP	MP	AP	OP	RND 1	RND 2	Comments
Access Fee							
Fishing possibilities Purse-seine tuna							
Fishing possibilities Long-line tuna							
Local landings							

Figure 13-1 Hauling catch on board with grappling hooks
Source: Anon



Figure 13-2

Officers and Counter Officers Summary⁸⁸

DWFS	Coastal State
Offer	Counteroffer
Offer	Counteroffer
Offer	Counteroffer

Source: G.A. Garrett, Contract Negotiations (2005) CCH.

13.6 | Observing process⁸⁸

Team negotiations provide the opportunity for one or more members of the team to be process observers. Process observers are a powerful tool in the hands of a strategyoriented CSNT, because they provide effective opportunities to influence the outcome. Of course, to be effective in this role, the process observer must know what to listen and watch out for, and must be fully integrated into table processes. Thus as part of the preparation process, it is necessary for the process observer to:

- have a clear understanding of the team's strategy;
- be able to anticipate the strategy of the other side;
- be informed as to the key points they must be alert to.
- be provided with a clear procedure with respect to their seating, signalling, and modes of feedback.

88 - Art and science of negotiation, 79-82; Kathleen J.; Matthews, Connie; Wade, John; Pricken and others, Evaluation of the Process Observer Method: Group Leader, Member, and Observer Perspectives Journal for Specialists in Group Work v23 n1 p50-65 Mar 1998; Bieschke, Kathleen J and Others, Training Group Counselors: The Process Observer Method, Journal for Specialists in Group Work, v21 n3 p181-86 Sep 1996.

There are two types of process observers: passive observers and active observers. Passive observers make no interventions during the Negotiations Conference. They provide their feedback during adjournments, breaks or caucuses. Active process observers make interventions during the negotiation. Indeed skilful active observers can manage the negotiation as effectively as the team leader. Thus for example an active process observer can undertake one or more of the following:

- provide a short summary of points raised and agreements made;
- suggest process options;
- provide timekeeping reminders.

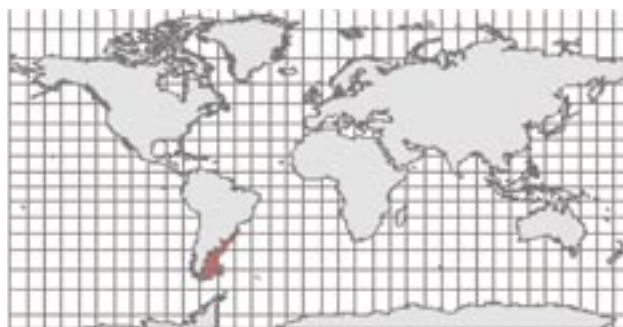


Figure 13-3 The global market in access rights - production regions and fishing grounds for Argentine Hake
Source: FAO

Table 13-2 - Sample process observation checklist

Issues Assessed	Coastal State	Access Demandeur
Overall phase management and phase shift	Introductory phase	Introductory phase
	Information exchange phase	Information exchange phase
	Distributive phase	Distributive phase
	Settlement phase	Settlement phase
	Closing phase	Closing phase
Strategy	Flexible vs rigid?	Flexible vs rigid?
	Integrative vs Distributive?	Integrative vs Distributive?
	Other	Other
Assessing preparation	Quality of preparation?	Quality of preparation?
	Clarity of objectives?	Clarity of objectives?
	Apparent understanding of position of other side?	Apparent understanding of position of other side?
	clear team roles?	clear team roles?
Assessing the negotiating climate	Who is in control - who is active, passive?	Who is in control - who is active, passive?
	Venue: set up of room, table, chairs etc	Venue: set up of room, table, chairs etc
	Time and timing - constraints? Pressure?	Time and timing - constraints? Pressure?
Diagnosis of needs	What are the real organisational needs?	What are the real organisational needs?
	What are the personal needs of the negotiators?	What are the personal needs of the negotiators?
	How well are opponent needs incorporated into strategy?	How well are opponent needs incorporated into strategy?
Opening tactics	Opening tactics-co-operative or competitive?	Opening tactics-co-operative or competitive?
	Shift in power balance?	Shift in power balance?
	Impact on climate/outcome?	Impact on climate/outcome?
	Response to tactics?	Response to tactics?

Identify general tactics	Co-operative versus competitive?	Co-operative versus competitive?
	Shifts in power Balance?	Shifts in power Balance?
	Any marked changes in tactics used ?	Any marked changes in tactics used ?
	Response to tactics?	Response to tactics?
	Impacts on climate/outcome?	Impacts on climate/outcome?

Issues Assessed	Coastal State	Access Demandeur
Approach to concessionmaking	Type and amount of concessions Eg. process concessions versus content concessions?	Type and amount of concessions Eg. process concessions versus content concessions?
	timing,	timing,
	impact	impact
	how offered (definitely, tentatively)	how offered (definitely, tentatively)
	getting something in return	getting something in return
Note deadlocks (if any)	how created	how created
	how overcome	how overcome
Approach to communication questions, statements use of different types of questions? balance between verbal /non- verbal		
Observe listening	Make comparison between team members	Make comparison between team members
Observe body language	Make comparison between team members	Make comparison between team members
Purposeful moves towards outcomes?	Yes/No	Yes/No
Approach to locking in of agreements?	Active? Passive?	Active? Passive?
Addressed implementation and monitoring of compliance		
Other Issues		

Table 13-3 Worked example - process observation sheet
Tuna access agreement negotiation between coastal state A and DWFS X, 2005

Coastal State A	DWFS X
Preparation	
Left things open-ended without identifying every possible issue	Had thought carefully about what the issues were & what was being negotiated
Had spent little time gathering information, uses what is at hand	Gathered information from wide network and variety of sources and was fully informed of the Coastal State situation
Had made no real assessment of the balance of power	Assessed the balance of power
Concentrated on narrow range of possible consequences or courses of action	Had considered a wide range of possible consequences or courses of action
Focused on a single-point for each issue wanted to argue	Defined a range of outcomes, or bargaining ranges for each issue
Based supporting case around likely final outcome	Based supporting case around ideal position
Gave little thought to where might get stuck & left matters to chance	Anticipated where might get stuck and considered ways to overcome any impasse
Opening phase	
Welcomed other party in warm and friendly manner	Kept their distance and avoided shows of personal warmth
Did not attempt to identify every possible issue at the outset	Established at the outset what the issues were & what was being negotiated
Was flexible about the sequence in which issues were dealt with and left it to DWFS to decide	Seeks to agree a fixed agenda for dealing with issues at outset
Favored arguments that appealed to either the “head” or to the “heart”, not both	Used arguments that appealed equally to both the “head” and the “heart”
Targeted arguments on what was of benefit for the other party	Concentrated on getting own position across not what was of benefit for other party
Generally avoided asking questions unless was really unclear as to what was going on	Had no hesitation in asking for clarification if at all unclear and used a large range of clarificatory questions
Movement to reach agreement	
Thinks personal style and behavior has little impact on outcomes	Thinks it is important to be aware of own personal style and behavior
Willing to concede on an issue, providing got something that wants in return	Tried to get exactly what they wanted without making any concessions
Liked to respond to a proposal with an immediate counter-proposal	Liked to clarify and reflect on any proposal before making a counter-proposal
If persuaded, conceded immediately and accepted the lesser outcome	If persuaded by an argument, reflected and took time before responding
Say whatever wanted to say without preamble	Used behavior labeling to indicate kind of thing going to say
Avoided testing understanding, unless there was a real misunderstanding	Tested understanding of what the other party was saying
Moved briskly rather than recapping throughout	Summarised at regular intervals throughout
Liked to comment on feelings	Liked to keep feelings to self
Prepared to get personal when challenged	Avoided making personal attacks, even when challenged

Closure

Left detailed record of agreed outcomes until afterwards	Before finishing, agreed detailed record of outcomes
Left establishment of monitoring and review procedures until afterwards	Established procedures for monitoring and reviewing agreement
At end sought to comment positively on what was achieved	At the end, believed what was important was getting what they wanted
If negotiations failed saw little point in agreeing to meet again	If no settlement reached, considers it important to agree to meet again

Chapter 14

Managing Bargaining Failure

14.1 | Introduction⁸⁹

Negotiations fail for a variety of reasons. The common reasons relate to misunderstandings, or the parties not working well together. Sometimes one side may even generate a bargaining failure so they can exit from the negotiation to pursue a better opportunity. Sometimes deadlocks occur because the wrong people are at the negotiating table - there may be too many people for productive discussion, or the people there may lack authority or the necessary technical knowledge. There are also situations where there is a genuine and extensive agreement gap (see section 3.26). In such a case even though the parties are working well together (in other words process is fine) negotiations will still deadlock over content - the parties simply cannot find a mutually acceptable solution. The result is then a deadlock; a unilateral walkout or a mutually agreed termination of the negotiations. Ultimatums - a demand that particular actions be undertaken by a deadline - often also accompany various forms of impasse.

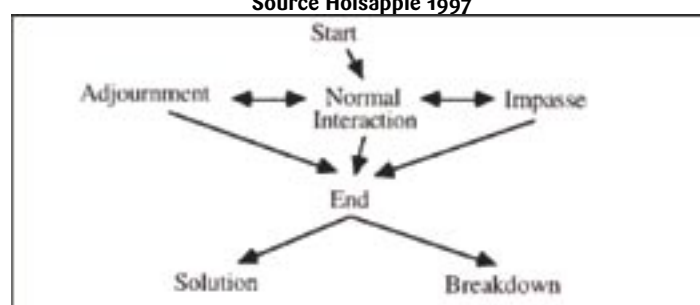
Box 14-1 Chapter 14 Highlights

This Chapter discusses:

- The concept of bargaining failure;
- Walkouts;
- Terminating negotiations as part of strategy;
- Termination based on a BATNA assessment;
- Opportunistic terminations;
- Deadlocks.

In the fisheries sector, bargaining failure can have major consequences for all interests whether they are associated with the access demandeur or the Coastal State. This is principally because marine fishing as a form of production based on natural conditions (including seasons) is a time-dependent activity. A failure to gain timely access to fishing grounds can thus be economically disastrous for fishing fleets. Difficulty in securing access fees can also be economically disastrous to countries where revenue from fishing is a large part of the national budget. This Chapter discusses the typical causes of bargaining failure and explores some methods for resolving different types of bargaining failure. It has a close relationship with the Chapter on tactics and communications during bargaining.

Figure 14-1 Negotiations Segment
Source Holsapple 1997



14.2 | Walkouts

Your opponent may walk out quietly or dramatically at any time. A walkout may be a genuine expression of your opponent's inability or unwillingness to negotiate further, or may be just a tactic to try and scare you into a major concession. In either case you have two choices: offer a concession to encourage the other side to return, or do nothing and hope your opponent comes back.

89 - S Persson, "Deadlocks in International Negotiations" 29 Cooperation and Conflict (1994) 211-244; Susan L. Carpenter and W.J.D. Kennedy, «Removing Roadblocks,» in Managing Public Disputes 1988) 258-277; Michael Babineaux, "Negotiating After Deadlock: Moving from Confrontation to Collaboration, Even After They've Said NO!" 89th Annual International Supply Management Conference, April 2004.

14.3 | Terminating negotiations as part of strategy

From a strategic point of view there are two types of termination. Type 1 is based on a good faith use of your BATNA and is acceptable and is even to be encouraged after all options have been explored in the Negotiations Conference. Type 2 is a bad faith use of your right to exercise your alternatives.

14.4 | Termination based on a BATNA assessment

Earlier discussion emphasized the concept of BATNA. Your BATNA or walkaway option is to be exercised once the negotiations appear to be reaching a point where staying in the negotiations appears to be worse than the alternatives you have available to you. In such a case your self-interest requires that you walk away from the negotiation unless the other party drastically improves their offer to you. BATNA may lead to a walkout after a situation of deadlock, but part of the BATNA approach is also being prepared to come back to negotiations if the other party decides to move in the direction that you desire. A BATNA driven walkout is thus a soft rather than a hard form of deadlock.

14.5 | Opportunistic terminations

This other type is not ethical – here, one party walks out of the negotiation without exploring options with the other party, merely because a better opportunity has suddenly presented itself. Such bad faith termination of agreements is rare but should still be reckoned with. Although the emergence of a new opportunity presents a better alternative than the negotiations the party is currently involved in, it is good practice to honestly table the new information and see whether the current negotiations partner is willing to make a better offer.

Box 14-2 Exercise – Ultimatums

You are negotiating with a fishing association who are exerting a lot of pressure on you to lower the access fee you wish to charge, because they have a better offer from one your leading competitors. Which of the following do you think would be your best course of action?

1. Lower the fee you are prepared to charge as far as you can;
2. Break off negotiations; or
3. Ask for more details of the offer from your competitor so that you can match the offer.

Answer: lowering your price without asking any questions is a poor approach and damages your credibility. Breaking off negotiations in a competitive market is also very bad negotiating strategy. A much better course of action is to ask the fishing association to outline what it is that is offering precisely what. If you have undertaken adequate preparation, you should have modelled this possibility and have enough information to critique the offer closely and point out:

- the difficulties and limitation associated with fishing in the EEZ of your competitor; and
- the much better advantages that your zone, ports and airports have to offer.

In critiquing the situation of your competitor your comments must be brief, as it would be diplomatically improper to engage in a detailed negative commentary on the situation in another country. A detailed analysis of the alternative offer may well show that it is not that much better than what you have to offer. It may well show that what you have to offer is quite different from what is being offered in the other zone.

Box 14-3 Reflections Breakdown of Negotiations

In your experience which of these factors has been responsible for negotiations you have been involved with breaking down?

- There is a serious mismatch between the requirements of both sides
- Financial issues are too far apart even though there is agreement on other issues
- The negotiations themselves have become politicized and are subject to too much media and public scrutiny – both sides feel under pressure
- One side has got a better offer and wants to back out of the deal for this reason

14.6 | Deadlocks

A negotiation is «deadlocked» when there is no reasonable expectation that the gap between the parties can be bridged. There are a number of steps that can be taken to try and bridge the gap. They include:

- trying to find agreements in principle;
- brainstorming through small expert groups or other subcommittees;
- informal sessions between lead negotiators – a “walk in the woods” ;
- Minister to Minister meetings;
- adjourning but not ending the negotiating session and reconvening at the later date;
- bringing in other parties;
- developing new information independently or jointly;
- changing venue, including moving to a more informal setting;
- coercion;
- package deals;
- changing team members, leaders or teams;
- change of procedure;
- third party intervention;
- splitting the difference;
- terminating the negotiation permanently after a number of options have been tried.

Box 14-4 Strategy Questions- Unblocking a Deadlock/Impasse

Which of the following courses of action would be appropriate when you are faced with a deadlock or an impasse? Note that more than one option may be correct.

Options

1. ask the other side to make a concession;
2. offer a concession tied strictly to a concession on their part;
3. offer a concession that is of little significance to your side and which relates to another completely separate aspect of the negotiation;
4. identify the issue around which you are deadlocked and refer it up to negotiation between your political superiors;
5. suggest suspending negotiations in order to consider your position.

Answer:

Option 1 will only work if you are in a strong negotiating position. The other side may reject your request if by this stage of the negotiation it is obvious to them that your overall position is weak.

Option 2 is a good way of moving the process forward.

Option 3 can also be useful as it shifts focus away from the area of disagreement. It may serve to remind both sides that agreement is possible, and create a better climate for moving on beyond the impasse

Option 4 is recommended when you are genuinely concerned that the situation of impasse risks taking you beyond the limits of your authority. It is also useful when you need time to consider your next move in more detail. Indicating that you have reached the limit of your authority secures you the necessary breathing space

Option 5 gives the parties time to breathe and re-assess their positions and undertake any detailed supporting analysis (financial, political, etc) on the issues that are deadlocked.

14.7 | Answers to Strategy Problems

Answer to strategy problem 1 - opening a negotiation

You should never open a negotiation with your best offer. You leave yourself no room to move. Opening with your best offer is not an example of how integrative bargaining works – with integrative bargaining you jointly explore ways of giving both sides more – putting forward your best offer closes off the opportunity to jointly explore even more beneficial options than the one you have just tabled.

Answer to strategy problem 2 - responding to pressure tactics during bargaining

It depends on the atmosphere of the negotiations. If there is a stable atmosphere then your side loses nothing by slowing things down and recording these fine details. If however, the atmosphere is fragile and any slight event might derail the negotiations then it is best to leave detailed recording until later. You should quickly record the areas of uncertainty and return to these later.

Answer to strategy problem 3 - self-exposure of areas of weakness

No – It is important not to highlight your problems or areas of weakness, unless the situation is one of completely integrative bargaining and you have a very high level of trust in the other party. From the facts we have you do not yet have any basis to trust this new actor. Attempt to address the IUU problems yourself. If they are well prepared they would know about these problems anyway. If they do know about these problems they may well have already factored them into the access fee they are prepared to offer. Any unilateral disclosure by your side would only provide an opportunity to further lower the price that that they are prepared to pay. In the interests of integrative bargaining, you would merely have assisted them in lowering the price they are prepared to pay.

Answer to strategy problem 4 - closing

Prepare a contingency position. If the other side has not raised the issue until now, it may not be that important an issue to them any more. It may not even have been important to them in the first place – that is why they have not raised it again. By raising the issue yourself you are making an unneeded concession to them. It may prompt them to search for more concessions that they can extract from you. By having a contingency position, you can respond if needed. If they do not raise the issue again – there is no need for you to raise it.

Answer to strategy problem 5 - strategic silence

Wait and see what they do – they may be setting you up for what is called a conditional close. They will only close the deal if you make substantial concessions so that they will be prepared to overlook the area of weakness.

Answer to strategy problem 6 - trust and the integrative approach

No – You should never reveal the full details of your position in the opening phase – don't risk confirming that you are in a weak position. In the opening stages, they should be left uncertain as to whether you may have hidden advantages up your sleeve.

Answer to strategy problem 7 - pressure tactics during the opening phase

Continue your presentation as planned. Your opening statement should be based on careful preparation and should have been rehearsed at least a couple of times

Answer to strategy problem 8 - responding to a surprise

Answer: No. Each country's negotiating situation is different. Resist the temptation to lower your access fee because of this information. Have an argument ready to counter any attempt to lower your fee to the other country's level. If you are well prepared this information should come as no real surprise. You should have been aware that negotiations were in progress, and you should have modelled some version of this scenario during your preparations.

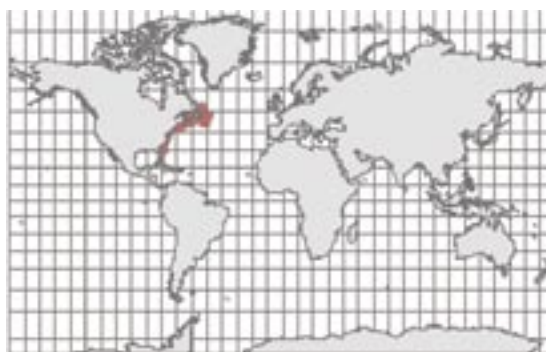


Figure 14-2 Global production regions and fishing grounds North American Hake



PART IV – MONITORING, EVALUATION & INSTITUTIONALISATION

Chapter 15

Monitoring, Evaluation & Institutionalisation (ME&I)

15.1 | Introduction

Learning negotiation skills and gaining practical experience in applying these skills are essential steps in becoming a proficient negotiator. Parts I-III of this Manual have addressed these issues in detail. In this Part, we change direction slightly to offer two further contributions to the process of improving the capacity of the Coastal State CSNT.

First, we provide examples of useful monitoring and evaluation tools which we believe can be adapted to suit the Coastal State context. The tools use spreadsheets and questionnaires to provide simple and effective ways of:

1. evaluating the overall negotiation process itself (or segments of it as required);
2. monitoring the performance of foreign fleets during the period of the agreement;
3. undertaking well-structured and effective post-negotiations analyses (PNA) or debriefings.

Monitoring and evaluation has become more important now because the EU requires much more monitoring and evaluation under FPAs.

Second, we offer some reflections on how Coastal States can institutionalize negotiations capacity and ensure continuity of effort. The discussion of institutionalisation recognises that there is a strong interest in continuity in all Coastal States. However, practical realities often make continuity difficult. The suggestions offered here may help with overcoming those realities which often defeat efforts at institutionalisation.

15.2 | Evaluating negotiations and agreements – some general points

Evaluation can be used in a variety of ways to support the negotiations process. These include:

- evaluating overall government preparedness before negotiations start- an input into preparations;
- evaluation of government performance during ongoing negotiations – an input into bargaining;
- evaluation of performance immediately after bargaining – post-negotiations analysis;
- monitoring of performance during implementation of the agreement – a contribution to the next round of negotiations;

Evaluations can be applied to a single negotiation or to the full spectrum of Coastal State negotiations.

Box 15-1 Chapter 15 Highlights

This Chapter discusses

- The importance of monitoring and evaluation
- The importance of institutionalising negotiations capacity.

Adaptable tools to implement ME&I that are described in detail are:

- A tool for evaluating negotiations processes and procedures;
- A tool for monitoring & evaluating foreign fleet performance;
- A tool for implementing post-negotiation analysis.

15.3 | A tool for evaluating the negotiations process

The tool set out in this section of the Manual is widely used in the international oil and gas industry.⁹⁰ It covers all phases of the negotiations process as well as key aspects of context and institutional capacity. It has the particular strength that it allows negotiations to be systematically and thoroughly assessed before, during, and after the bargaining process.

15.3.1 Using the tool

The tool works by the evaluator assigning a numerical score to each of 10 facets of the negotiations process (see Figure 15-3 for an example). The facets which are measured are:

Table 15-1: Measurable Facets of the Negotiations Process

• Preparation	• Alternatives and options
• Relationships	• Teamwork and support
• Options for strategies and tactics	• Inducements and concessions
• Documentation and legal text	• Vested interest
• Understanding goals and risks	• End games/pre-closure issues

Each facet is measured by more closely examining five issues associated with it or expressing its essence or critical features. Table 15-4 sets out the full list of 50 issues that should be considered in order to carefully and thoroughly score performance. Coastal State evaluators can of course decide to further adapt or change these items to suit their specific needs. Indeed, readers comparing the issues set out in Table 15-3 with those set out in Figure 15-4 will realize that some adaptations have already been made in light of the differences between fisheries access agreements and oil and gas extraction agreements.

Each facet is assigned a numerical score, based upon whether the overall numerical rating associated with that facet is favourable or unfavourable at the time of the assessment. «Favourable» and «unfavourable» for each issue refers to whether, in the assessment of the evaluator, the status of that issue impacts positively or negatively on the outcomes of the negotiation. The assessment scores for each issue are entered into a spreadsheet (see Figure 15-3) where they are calculated to provide an overall score for the facet they relate to. The ten facets are then also further aggregated and summarized. Various ways of presenting data can then be used to graphically highlight the strengths and weaknesses of the current negotiating position. Through the use of computer macros, the scores can also be archived and compared with earlier or later performance assessments – showing improvement or deterioration over time. The before, during, and after assessment approach is useful in the context of a single negotiation, but is most powerful as a tool if it is used as a part of a long-term learning process aimed at making future negotiations progressively more and more successful.

15.3.2 Scoring issues - favourable or unfavourable?

A number of possible numerical scoring systems can be applied to produce a meaningful and systematic scale. In our example, the numerical scale adopted for scoring each of the 50 issues is shown by Table 15-2.

Table 15-2

Strongly unfavourable	-5
Unfavourable	-3
Do not know but suspect risk	-2
Neutral (or not an applicable question)	0
Do not know but suspect opportunity	2
Favourable	3
Strongly favourable	5

90 - David A. Wood, Evaluating Negotiations: A Systematic, Quantitative Method for Assessing Status and Performance, An Oil & Gas Journal Executive Report (2001, Pennwell Corp)(all materials taken from this report are reproduced with the kind permission of the author)

Clearly, different issues are more relevant to certain types of negotiations, circumstances and relationships than others. Where issues are considered to be irrelevant to a specific case, such issues can be scored as zero (or replaced with more relevant issues, if appropriate). Alternatively, where one or more issues (or perhaps whole facets of the negotiation process) are considered to be critical for a specific case or cases, then scores for those issues or facets may be enhanced by a weighting system which rates those facets more heavily. The scoring system adopted here is therefore recommended only as a guideline rather than presented a fixed un-negotiable scale. Whatever scoring system is applied, it needs to be simple enough to be applied quickly but with enough scoring levels between extremes to distinguish grey areas and maybes from clear-cut positions. The point of scoring against a defined but flexible scale is to enable performance and progress to be monitored systematically but fairly across a broad range of relevant issues. In the method suggested in this Chapter, the scores of the five issues for each negotiating facet are added together and then adjusted by dividing the subtotals by ten. On this basis each facet can score within the range -2.5 to +2.5. The adjustments are applied to generate a manageable range of possible combined facet scores for comparative purposes.

Table 15-3

Facet assessments (Scores from -2.5 to +2.5)	Subtotal scores
Preparation	-0.20
Relationships with other parties	0.30
Options for strategies and tactics	0.50
Documentation and contracts	1.90
Understanding goals and risks	0.70
Creative opportunities	0.00
Teamwork and support	1.40
Inducements and concessions	0.30
Vested interests	-1.00
End games	1.10

As shown in Table 15-3 the facet scores can be usefully displayed in tabular form or in radar diagram form (Figure 15-2). Such a display serves to focus the analyst on those facets of the negotiation process that are positive or negative for the negotiation being assessed. The negotiator is then in a position to decide what actions are required to capitalize on the positive facets and what actions are required to overcome or minimize the negative facets. Having such a scored assessment available from a previous negotiation or an earlier round of the current negotiation can prove invaluable in preparing for the next negotiation. Expressing these subtotal scores in graphical form, such as the radar diagram (Figure 15-2) is a visually effective way of emphasizing the relative strengths of the assessed facets for any negotiation. By colour-coding the radar diagram scale it is possible to highlight the high and low performing facets of a negotiation.

Combined Status Scores Signify		
Negotiating Category Assessment		
-25 to -15	=	Very Weak
-14 to -6	=	Poor
-5 to +5	=	Neutral
+6 to +14	=	Good
+15 to +25	=	Very Strong

Figure 15-1 - Status of Negotiations
- Tabular Display

In the hypothetical example shown it is clear from both Table 15-3 (the tabular display) and Figure 15-2 (the radar diagram) that documentation and teamwork have been assessed as quite positive (i.e., enhancing the chance of a successful outcome) In contrast, vested interests and preparation have been assessed as being quite negative (i.e., hindering a successful outcome). By adding the 10 adjusted subtotals for all facets of the negotiation assessed, a single figure can be derived for each overall assessment. This combined facet score, if using the numbers suggested in this Chapter, could vary from -25 (worst case) to +25 (best case). The combined facet score within this range enables a negotiation to be assigned an overall status category - as set out in Figure 15-2 below, where the outcomes was assessed as "Neutral". On the

scale suggested, negotiators should become seriously concerned for an acceptable outcome to a negotiation if the overall facet score is below -5. They might consider either delaying the negotiation or taking prompt action to improve the status of any facet assessed as unfavourable. For combined status scores of less than +5, there is also room for improvement before being able to conduct and complete a negotiation with confidence.

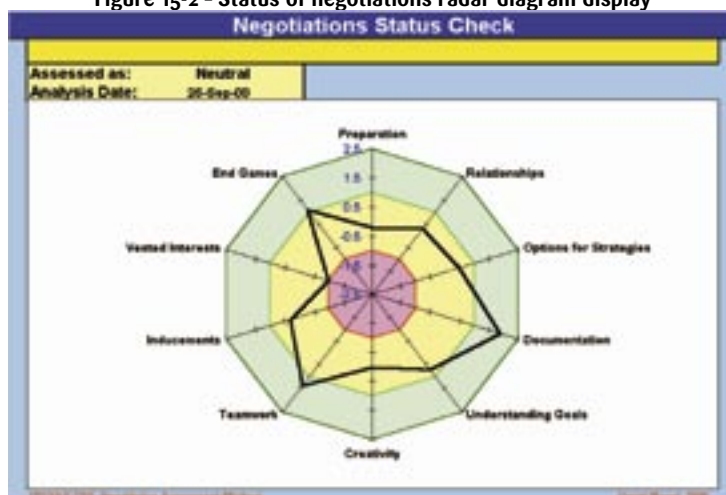


Table 15-4: Evaluating a fisheries negotiations process - issues to be assessed

Facet 1 Preparation	1. Is there a detailed plan or other document that establishes the desired objectives of the negotiation? Can this document provide a basis for monitoring negotiating performance? 2. Have appropriate tools (for example sensitivity analysis) been used to test financial and economic data and projections? Are the parameters and risks that the negotiating team is using acceptable, realistic, and manageable? 3. Are sufficient resources (funding, people, equipment) available to achieve the negotiating objectives and fulfill terms of negotiated agreements? 4. Are you or your negotiating team clear on interim and final negotiating objectives? Do you understand the longer-term implications of possible outcomes? 5. Is the timeframe for the negotiations established, adequate and realistic? Are time pressures and deadlines that constrain all parties understood, acceptable, or flexible or is there an over-pressing and over-urgent timetable?
Facet 2 Relationships	6. Does the other party have sufficient power to impose constraints on you? Are perceptions of the distribution of power distorted? Is there potential to bluff or be bluffed in this regard? 7. Do you know who or what is the main competition or obstacle to securing a agreement? Do you know how to tackle identified obstacles? Have you assessed the pros and cons of your proposals versus those that can be offered by competitors? 8. Have you taken a close look at the track record and current business performance (financial and market perceptions) of other parties? Is there the possibility of a wider or longer-term relationship? 9. Do you understand the needs and aspirations of the other parties from this negotiation? Do you understand their culture and can you empathize with their position? Have you assessed how they fit with yours? 10. Have you negotiated successfully with the other parties before? Do the other parties favour cooperative or combative negotiating styles?
Facet 3 Options for Strategies and Tactics	11. How certain are you of assumptions and perceptions about the other parties? Do they have a track record or reputation for being fair, or conversely underhanded? Do you know what tactics to expect and how to counter them? 12. Do you have a strategy for presenting your proposals in the best possible light in order to convince the other parties to accept your terms? Have you considered how the other party will counter your tactics? 13. Have you established what strategic questions need to be asked and at what stage of the negotiations? How do you plan to gain insight into the other parties' true positions and expose any bluffs? 14. Is a win-win approach feasible? Can you increase the size of the benefits for more than one of the parties by cooperative negotiations and extending the scope of issues currently on the table? 15. Are you aware of negotiating tactics that have worked well for you or other parties in similar negotiating positions? Have you considered how likely countertactics can be manipulated to your advantage?

Facet 4 Documentation and Legal Text	16. Has the agenda been prepared and reviewed by all parties prior to negotiating meetings? Have you or the other parties taken the initiative in preparing it? 17. Do you have detailed minutes of meetings for the current negotiation, file notes on research of the other parties, and accessible files on previous relevant negotiations? Are they in usable formats – for example, can you quickly flick to the information you need, in the midst of a heated exchange? 18. Are you able to take the initiative in drafting clauses and agreements related to agreements agreed verbally? Do you, or your team, have experience that is relevant to agreements in this field? 19. Have you considered key clauses, related to technical, commercial, operational and possible disputes for inclusion? Do you have prepared wording for those clauses available? 20. Does the legal team advising you or drafting the agreements have technical, commercial, and operational experience in the field of this negotiation?
Facet 5 Understanding Goals and Risks	21. Do you know why you are negotiating this agreement in terms of your strategies? Have other options been fully explored? 22. Do you have an adequate technical understanding of the issues being negotiated? Can you call on quality technical expertise that can offer objective advice? 23. Are technical team members and advisors fully briefed on the objectives and primed not to reveal valuable information to the other party during negotiation meetings? 24. Do the technical members of the team agree on the technical issues and risks? Have risks been evaluated objectively and economic and financial projections been properly adjusted for risk? 25. Are the risks associated with this agreement manageable? If high, how can they be reduced?
Facet 6 Alternatives & Options	26. Have attempts been made to apply lateral thinking or formal problem-solving techniques to establish alternative solutions to the agreement being negotiated? 27. Have related benefits that might evolve from this agreement been identified or discussed? Are there synergies that may be exploited? 28. Can this agreement or parts of it be linked to existing agreements or with potential future agreements in order to add value and lead to a larger overall agreement? 29. Will the outcome of this agreement influence your organization's experience or reputation, or potentially affect its future prospects of securing agreements of a similar type? 30. Have you considered or discussed with the other parties future agreements related to other assets or geographic areas where they have more experience?
Facet 7 Teamwork & Support	31. Is your team's morale high? Do the members of the team work well together and communicate with each other constructively providing valuable feedback? Are they praised for their efforts as well as for results? 32. Is your team creative, positive, optimistic, and dynamic in its outlook? Is it open to new ideas and keen to embrace change? Is the reward system geared to encourage this and benefit those that create solutions and add value? 33. Are clear roles established within your team? Do members accept their roles? Does the leader make most key decisions alone or with the support of the team? 34. How well does your team support each other when under pressure or when things go badly? Is responsibility taken fairly for mistakes, and is there a culture of «learning from» rather than «blaming for» errors? 35. Does your team benefit from strong support of your political superiors? Are political superiors fully on board with this agreement and aware of all the risks?

Facet 8 Inducements & Concessions

36. Do you know what can and cannot be conceded during this negotiation? Have you ranked possible concessions in terms of value to your organization and planned an order in which to offer them?
37. Do you know your bottom line or best alternative to this agreement? Have the consequences of failing to reach agreement, deadlocking, or delaying agreement been evaluated in financial and operational terms?
38. Do you know and understand the financial and operational value to the other parties of the concessions and inducements you plan to offer to them? Do they differ significantly from their value to your organization?
39. Have you considered the concessions and inducements the other parties might offer your organization? Have you evaluated their relative strategic, financial, and operational value to your organization?
40. Have possible gain-sharing, profit-sharing, alliance, and incentive terms been evaluated? Have you considered performance penalty clauses and risksharing options?

Facet 9 Vested Interests

41. Does your organization have specific preferences or biases in the way it likes to conduct business or negotiations? Are these beneficial or detrimental to this negotiation?
42. Are vested interests of your organization or its directors, senior managers, or other stakeholders likely to enhance or inhibit the outcome of this specific agreement?
43. Does your organization have an ulterior motive, or is it under pressure to conclude this agreement quickly, even at less than the optimum terms that could be achieved?
44. Are vested or external interests of your organization or its directors, senior managers, or other stakeholders likely to influence judgments and decisions with respect to this negotiation, either adversely or positively?
45. Are the other parties focused on issues beyond those specifically being discussed? Will vested interests of other parties disadvantage you, or can they be manipulated to your advantage?

Facet 10 End Games & Pre-Closure Issues

46. Do you have the power to close the agreement without seeking approval from higher authority? Is internal higher authority likely to constrain your negotiating options?
47. Do the negotiators of the other parties have the power to close the agreement from their side? Do you know where such power lies and the likelihood of such authority being granted without delay?
48. Have similar agreements been closed cleanly and promptly with the other parties in the past? Are they known for coming back with extra demands after you think you have a done deal?
49. Have both parties addressed the immediate operational practicalities of commencing operations (e.g. permits and access to infrastructure)? Have you considered the best grievance procedures to ask to be incorporated into the agreement?
50. Are you sure the other parties can deliver what they say they can deliver? Do they have the resources, motivation, and management skills to enable the agreement to function as intended?

Figure 15-3 Sample Excel worksheet - Negotiations process evaluation tool

PHASE/ACTIVITY	Themes				REMARKS
1. Sound Preparations?					
	Detailed plan Clear objectives Sound financial & economic analysis Sound preparation timeframe Adequate resource mobilisation for preparation and negotiations?				
	Sub-Total Preparations	0			
2. Sound strategic options & tactics (S&T)?					
	Reliable information other party and likely tactics? Sound strategy own tactics? Adequate practice own tactics? BATNA clearly identified Previously implemented S&T evaluated?				
	Sub-total S&T	0			
3. Managing vested interests					
	Interaction your country's biases & this negotiation Interaction own country vested interests & this negotiation Is your country under time pressure in this neg? Can/will vested interests affect negotiation? Interaction vested interests external environment and negotiations				
	Sub-total vested interests	0			
4. Goals/risks well understood?					
	Sound team understanding of negotiation objectives and strategy? Sound internal technical expertise and understanding Sound internal discipline and agreement on goals and risks? Sound objective (if/science, business case, political) evaluation of risks associated with objectives and goals? Are risks well understood and manageable even when high?				
	Sub-total goals/risks	0			
5 Sound teamwork & support?					
	Team cohesiveness and morale? Team energy, dynamism, orientation & innovativeness Sound structure - effective leadership? settled and effective division of labour? Team cohesiveness and morale under pressure Strong support from political superiors?				
	Sub-total teamwork & support	0			
6. Relationships well managed?					
	Scoping and assessment of power and stakeholder issues Identification of obstacles to agreement Assessment of track record & current business situation of other party Sound understanding of culture etc. of other party? History of previous negotiations and relationships				
	Sub-total relationships	0			
7. Inducements & concessions well managed?					
	Well planned concession strategy Interaction between BATNA and concessions Knowledge of value of your concessions Knowledge of value of their concessions Other key aspects of concessions				
	Sub-total concessions	0			
8 Alternatives & options fully explored?					
	Application of formal problem-solving techniques to issues? Full scope of benefits and synergies from agreement explored? Full scope of linkages with other agreements explored? Future reputational and other implications of agreement explored? Exploration of options with other parties				
	Sub-total alternatives/options	0			
9. Legal & non/legal text					
	Unilateral or joint review of relevant documents as appropriate? Up-to-date, accessible and usable record of all relevant information? Ability to quickly draft relevant legal and other text as required? Templates of relevant/foreseeable clauses/protocols available? Adequate legal and other experience relevant to agreement documentation available?				
	Sub-total legal & non-legal text	0			
10. Pre-closure issues under control?					
	Authority to close issues - your side Authority to close issues - other side Negative or positive closure experience with this party? Immediate post-closure practicalities addressed? Ability to deliver as per agreement				
	Sub-total pre-closure issues	0			
	GRAND TOTAL	0			

15.4 | A tool for performance monitoring & assessment of foreign fleet performance

It is well known that most Coastal States are at a significant disadvantage when trying to assess agreement implementation and foreign fleet performance. There are at least two areas of disadvantage:

- difficulty in collecting information about foreign fleet performance;
- limited ability to convert such information into usable negotiations intelligence

In contrast, leading DWFS like Japan, the EU, Korea and Taiwan all actively monitor different aspects of the performance of their distant-water fleets. They do so for different reasons (controlling over-capacity; monitoring use of subsidies etc.) Irrespective of rationale, the result is that they have access to useful information about actual fleet performance and use such information in preparation and bargaining. For Coastal States, simple but powerful performance monitoring tools that provide a reasonably accurate (not perfect) picture of foreign fleet performance under agreements would be welcome and would help lessen the superior bargaining power of DWFS. The performance monitoring and assessment tool presented in this section of the Manual (Figure 15-4) provides a degree of assistance with this problem. It is important to note that the tool does not focus on the collection of information. Rather, using the balanced scorecard methodology it matches key issues under the agreement with clear performance criteria and a simple ratings system to provide a reasonably sound picture of how a specific fleet is performing under an agreement. . The tool can also be redesigned so that it provides an early indication of emerging issues that may require remedial action. Applying this instrument across all the agreements of a Coastal State will allow negotiators or other decision-makers to: (1) more accurately identify issues to pursue during negotiations or consultations with DWFS (2) make fairly accurate comparisons across agreements.

Combined Status Scores Signify Negotiating Category Assessment		
-25 to -15	=	Very Weak
-14 to -6	=	Poor
-5 to +5	=	Neutral
+6 to +14	=	Good
+15 to +25	=	Very Strong

Figure 15-4 Artisan Fisheries Harbour
- West Africa Source: Anon

Table 15-5 Monitoring & evaluating foreign fleet performance: sample scoring sheet

Objective & Agreement reference	FF/FS obligations	PT	PA	APE	Comments
Issue: Foreign fleet respect for ecological conservation measures					
Biological rest period period Article BBB of the Agreement	Foreign fleet/State must do [insert requirement]				
Marine reserves and refuges Article CCC of the Agreement	Foreign fleet/State must do [insert insert requirement]				
Minimum mesh size Article DDD of the Agreement	Foreign fleet/State must do [insert insert requirement]				
Scientific Observers Article EEE of the Agreement	Foreign fleet/State must do [insert insert requirement]				
Respect for by-catch controls - Article FFF of the Agreement	Foreign fleet/State must do [insert requirement]				
Respect ICCAT prohibitions Article GGG of the Agreement	Foreign fleet/State must do [insert requirement]				
	Sub-total respect ecological measures		Insert sum function here	Insert sum function here	
Issue: Flag responsibility and prevention of IUU activity					
Reduced use of FOC vessels - Article FFF of the Agreement	Foreign fleet/State must do [insert requirement]				
Reporting exit and entry - Article FFF of the Agreement	Foreign fleet/State must do [insert requirement]				

Fully functioning VMS - Article FFF of the Agreement	Foreign fleet/State must do [insert requirement]		
Other misc reporting	Foreign fleet/State must do [insert requirement]		
	Sub-total prevention IUU	Insert sum function here	Insert sum function here
Issue - Rates of utilisation of fishing possibilities			
Tuna vessel - utilisation of opportunities	Foreign fleet/State must do [insert requirement]		
Crustaceans vessels - utilisation of opportunities	Foreign fleet/State must do [insert requirement]		
Demersal trawlers - utilisation of opportunities	Foreign fleet/State must do [insert requirement]		
Bottom long-liners - utilisation of opportunities	Foreign fleet/State must do [insert requirement]		
Freezer tuna seiners - utilisation of opportunities	Foreign fleet/State must do [insert requirement]		
Surface long-liners - utilisation of opportunities	Foreign fleet/State must do [insert requirement]		
Pelagic vessels - utilisation of opportunities	Foreign fleet/State must do [insert requirement]		
Pole-and line tuna vessels - utilisation of opportunities	Foreign fleet/State must do [insert requirement]		
Freezer fin-fish - utilisation of opportunities	Foreign fleet/State must do [insert requirement]		
Cephalopods - utilisation of opportunities	Foreign fleet/State must do [insert requirement]		
	Sub-total utilisation fishing possibilities	Insert sum function here	Insert sum function here
Support for the local economy			
Local landings	Foreign fleet/State must do [insert requirement]		
Local crew on-board	Foreign fleet/State must do [insert requirement]		
Payments of harbour and other dues	Foreign fleet/State must do [insert requirement]		
Local spending in ports	Foreign fleet/State must do [insert requirement]		
	Sub-total support local economy	Insert sum function here	Insert sum function here
Issue - reducing negative impacts of foreign fleets on food and employment security			
No fishing adjacent to areas used by local fleets	Foreign fleet/State must do [insert requirement]		
Refrain from "over-the-side" purchases from local fleets	Foreign fleet/State must do [insert requirement]		
Timely disbursement of assistance for small-scale fisheries	Foreign fleet/State must do [insert requirement]		
	Sub-total food and employment security	Insert sum function here	Insert sum function here

Issue - respect for rights of locally based fleets			
Respect for nationally reserved fishing Zones	Foreign fleet/State must do [insert requirement]		
No fishing adjacent to areas used by local fleets	Foreign fleet/State must do [insert requirement]		
	Sub-total respect rights local fleets	Insert sum function here	Insert sum function here
Issue - DWFS contributions to responsible management of zone			
Timely supply of scientific and technical support	Foreign fleet/State must do [insert requirement]		
Timely action - release of funds for Studies and TA	Foreign fleet/State must do [insert requirement]		
Timely action - release of funds for training & studies	Foreign fleet/State must do [insert requirement]		
Timely action - support for international meetings	Foreign fleet/State must do [insert requirement]		
Timely action - release of funds institutional support	Foreign fleet/State must do [insert requirement]		
	Sub-total management of zone	Insert sum function here	Insert sum function here
TOTAL		Insert total function	Insert total function
		Total points 100	Total during monitoring period

COMMENTARY

1. This spreadsheet summarizes critical components to be measured – this is a new requirement under EU FPAs
2. It allows Coastal states to measure actual performance against targets & can be used to compare agreements
3. Columns permitting comments to be made about each area of performance are also provided
4. It is designed for quick consultation and use at the bargaining table
5. Performance can be quickly tracked and discussed - 6 monthly; yearly; 3 years; 5 years - whatever is required

ABBREVIATIONS

1. FF - Foreign Fleet
2. FS - Foreign State
3. CS - Coastal State
4. PT - Performance Target
5. PA - Points Available
6. PE - Points Earned

SCORING STRUCTURE

1. 90-100 Points - Outstanding
2. 80-89 Points - Excellent
3. 70-79 Points - Good
4. 60-69 Points - Marginal
5. below 60 - Unsatisfactory

Box 15-1 POST-NEGOTIATION EVALUATION QUESTIONNAIRE SAMPLE ¹⁹¹

1. Was your pre-negotiation preparation sufficiently thorough? Did you fully understand your client's nonsettlement alternatives? Did you carefully estimate your opponent's nonsettlement options?
2. Was your initial aspiration level high enough? If you obtained everything you sought, was this due to the fact that your objectives were not high enough?
3. Did your pre-bargaining predictions prove to be accurate? Did your opponent begin near the point you thought he/she would begin? If not, what caused your miscalculations?
4. Did you use the preliminary stage to establish rapport with your opponent and to create a positive negotiating environment?
5. Did the information stage develop sufficiently to provide needed knowledge?
6. Who made the first offer? The first "real" offer? Was a "principled" initial offer articulated by you?
7. What specific bargaining tactics were employed by your opponent and how were these tactics countered by you?
8. Which party made the first concession and how was it precipitated? Were subsequent concessions made on an alternating basis?
9. Were "principled" concessions articulated by you? By our opponent?
10. Did the parties resort to cooperative/integrative bargaining to maximize their aggregate return?
11. Did either party resort to deceitful tactics or deliberate misrepresentations to enhance its situation?
12. What finally induced you to accept the terms agreed upon or to reject the final offer made by the other party?
13. Did either party appear to obtain more favourable terms than the other side, and if so, how was this result accomplished?
14. If no settlement was achieved, what might you have been done differently with respect to client preparation and/or bargaining developments to produce a different result?

91 - <http://classes.ils.edu/spring2006/intronegot-archer/documents/PostNegotiationChecklist.doc>.

Box 15-2 - POST NEGOTIATION EVALUATION QUESTIONNAIRE SAMPLE 2

The negotiation:

- How did it start? In retrospect, might any alternative have been better?
- What main stages did it pass through? In retrospect, were any of these stages unnecessary or unproductive?
- Did the negotiation encounter problems? How were these dealt with?
- Was the negotiation conducted ethically? On both sides?

If you reached agreement:

- What precisely did you settle for?
- How does this relate to what you hoped for?
- Did you achieve all or most of your country's objectives?
- How did you record the terms of settlement, or how would you record them?
- In retrospect, is there anything you could have agreed on that you did not in fact address?

If you did not reach agreement:

- What was the reason for failing to agree?
- Were any partial agreements or concessions made?
- Did you get any information during the negotiation that you can use in preparing for a later negotiation or another negotiation?
- Was it better for your side that there was no agreement than to accept any offer that was made?

Your case:

- Did you make effective use of the arguments and facts you had available to you?
- Did your planned strategy work as you had hoped? Was any change of strategy necessary and did that work?
- Did any tactics you used work as you hoped?
- What did you learn of the case of the other side?
- Did you have to review your objectives in the light of what you learned?
- Did anything learned from the other side surprise you? If so, how did you react?
- Did you reveal anything you did not intend to reveal?

The case for the other side

- In answering these questions the intention is to look at how the case against you was conducted to see if you can learn anything from it.
- Did you feel that the argument for the other side was put effectively?
- What strategy did the other side use? Did you feel this was effective?
- Did the other side use any tactics? Did you feel they were effective?
- Do you think the other side achieved their objectives?

In general

- Did you learn anything from the way you negotiated?
- Did you learn anything from the way the other side negotiated?
- What aspects of the way you conducted the case were you particularly pleased with?
- What aspects of your negotiating skills do you feel you should work on as a result of this negotiation?

15.6 | Why is institutionalisation important?

Many governments and individual negotiators concentrate on and judge success purely in terms of the commercial outcome of the deal finally secured. As a result, there is often a failure to systematically record the many features of the negotiating process that enabled the CSNT to secure a good deal or which may have prevented it from securing a better deal. Moreover, many negotiations need to be repeated. Much valuable information is lost if comprehensive records and ongoing assessments are not made of the last negotiation round. Such losses may be particularly great where the next round of negotiations only occurs after several years, increasing the possibility that the individuals involved in the original negotiation (on each side) may no longer be present.



Figure 15-6 The global market in access rights - production regions and fishing grounds for BulletTuna Mackerel - Source: FAO

Absence of institutionalisation is also a major drawback with protracted multi-year negotiations. As Coastal State officials are aware, negotiations with some key access demandeurs are often protracted. There are usually several rounds with the process sometimes lasting many months or even years. This is the case if we take into account deadlocks, walkouts and the strategic breaking off of negotiations. In such situations, a failure to systematically assess the situation and monitor performance round by round can lead to a negotiating team failing to focus on key issues and consequently selecting inappropriate negotiating strategies and tactics.

Finally, in the absence of a good system information on what actually happened in previous negotiations is buried in a series of incomplete file notes or minutes of meetings. These records are often time-consuming to access and difficult to rapidly convert into a format that is suitable for a performance evaluation or for identifying key issues. Even worse, key knowledge of past negotiations, why specific decisions were made and particular strategies adopted often resides in the heads of negotiators who subsequently move on to other positions, leave the country or may even pass away. It is to address these problems that this Chapter advocates institutionalisation.

Table 15-6 - Institutionalising Negotiations Capacity⁹²

Stages in the negotiation process	Evidence of poor institutionalisation	Sound institutionalisation	Evidence of sound institutionalisation
Determining objectives	- Objectives are set on a case-by-case basis and with little prior work; - Objectives are focused principally or solely around short-term foreign exchange returns.	- Objectives for each negotiation are tied to a larger set of national goals and objectives; - Objectives take larger political-economic relationships into account; - Each negotiation event with the country relates to these larger goals.	- Negotiation instructions template; - Using balanced scorecard to evaluate agreements; - Database of information and assessments of past negotiations.
Preparing for the negotiation	Preparations are ad-hoc; little time devoted to preparation; limited consultation with stakeholders.	Preparations are well structured; negotiators draw on prior experience.	- Database of information and assessments of past negotiations; - Worksheets for understanding cocontractor choices.

92 - Source: Harvard Business School Essentials of Negotiations Fact-Sheet 2001

Conducting the negotiation	• Negotiators operate without supervision; • Negotiators act as “Lone Rangers”; • Success or failure is seen to depend on personal ability and luck.	• Team is well oriented and have a shared vocabulary; • Team follows best practice and well defined internal rules.	• Team uses negotiations playbook/manual linking strategies to categories of negotiations; • Training programmes for negotiators; • List of contacts which allows consultations with more experienced colleagues both nationally and internationally.
Reviewing the negotiation	• Reviews are rare and sporadic and do not have any real long-term objectives; • Reviews are conducted when negotiations fail, not when they succeed.	• Systematic reviews to capture information to apply to future negotiations; Review focus is on both results & process; • Reviews extract lessons rather than apportion blame or praise.	• Structured review questions that focus on outcomes as well as process; • Debriefing worksheets that feed directly into a best-practices database; • Training in constructive debriefing.



PART V - ACCESS DEMANDEUR PROFILES

Chapter 16

Access Demandeur Profile - Japan

16.1 | Current importance of access agreements

Japan is the world's largest importer of fish and fish products. Around 50% of all fish consumed domestically is imported. Key product groups imported are:

- fresh/frozen fish;
- fresh/frozen crustaceans and molluscs.

The other 50% of Japanese consumption is supplied by access agreements with countries from all over the world (see Figure 16-1). A full list of access agreements is provided by Table 16-4 below.

Figure 16-1 Current Global Operations of Japan



Box 16-1 Chapter 16 Highlights

Key themes of this Chapter are:

- The importance of fisheries access agreements to Japan
- Current strategic imperatives driving access agreement policy;
- The Japanese regulatory framework governing distant water fishing,
- Major Japanese private sector organizations involved in fisheries;
- The relationship between the private sector and government;
- An overview of financial institutions supporting fisheries;
- Japanese companies seeking access to COASTAL STATE waters;
- Relationships between the processing, retailing and catching sectors;
- Relationships between imports/tariff policies and access agreements policy;
- The relationship between access agreements policy and development assistance policy;
- Flag of convenience, IUU and traceability issues.

16.2 | Access agreements and Japan's high level national policy objectives

It is a fundamental principle of Japanese national policy that Japan should aim towards food self sufficiency and also maintain a large food reserve or stockpile.⁹³ To ensure this Japan has an active programme of food diplomacy and a comprehensive intelligence gathering system to support securing access to food. Japan's food diplomacy is part of a strategic commitment to ensure Japan has firm access to essential raw materials, particularly petroleum. The rationale is Japan's poor natural resource base, its large population and the need to maintain its highly developed industrial infrastructure.

Food self-sufficiency policy is not viewed purely as domestic self-sufficiency. It also includes a right of access to food resources around the world. It is argued by Japanese diplomats that this includes:

- the right to access fish resources in foreign EEZs through access agreements;
- the freedom to fish on the high seas without interference by other countries or environmental NGOs;
- the freedom to import fish from anywhere in the world subject to Japanese quality and health standards;
- the use of the strong Japanese yen to encourage exporters to direct exports to Japan.

93 - See various articles, The Basic Law on Food, Agriculture and Rural Areas <http://www.maff.go.jp/soshiki/kambou/kikaku/NewBLaw/BasicLaw.html>; Fred H. Sanderson, Japan's food prospects and policies (1978).

Figure 16-2 Japanese fisheries for Northern bluefin tuna

Japan's long history of fishing, including fishing off the coasts of Africa is well known and does not require further discussion here. The result however is that Japanese fishing fleets and the fisheries authorities have a detailed knowledge of African waters. Figure 16-2 shows the importance of African waters for the Japanese fishery for Northern Bluefin tuna and was one of the first factors which brought the Japanese to the COASTAL STATE region.

Japanese companies and the Japanese government seek access to fish resources principally to supply the Japanese domestic market. Unlike fleets from Taiwan or Korea, Japanese fleets are not “middle-men.”

Distant water fishing is called Far Seas fishing. It cannot be undertaken without a licence from the government. The fishery licensing system directly controls fishing capacity for major fishery operations. The number of licenses are strictly limited and closely controlled by the government. The license specifies the name of the receiving fishing entity and one fishing vessel. Consequently, one fishing license corresponds to one fishing vessel. The license specifies detailed terms and conditions for the operations, including limitations on fishing areas, fishing seasons, base port, gear use, and fishing methods. Distant water fishing falls under either a designated fisheries licence or a permitted fisheries licence. For both categories, the Minister of Agriculture, Forestry, and Fisheries must specify and publicly announce the types of fisheries that require licenses. The Minister is also required to publish the number of vessels, by gross tonnage and by operational area/season, to be licensed in each fishery. When the number of applications for the licenses exceeds the pre-announced number, first priority is given to existing fishery operators using existing vessels. After this, licenses are issued through a lottery. In principle, licenses are valid for five years (this may be shortened), and licenses expire on the same day for all ships in the same type of fishery. A new license must be issued if a fishing boat sinks and another boat is used to operate fisheries or if permits are transferred to another person. “Designated Fisheries (Shitei-gyogyo)” with impact on the SRFC region are:

- Distant-water trawl-fishery using vessels over 15 gross tons;
- Medium and large-size purse seine fishery using vessels over 40 gross tons;
- Distant-water tuna fishery using vessels over 120 gross tons;
- Offshore tuna fishery using vessels of 10-120 gross tons;
- Squid jigging using vessels over 30 gross tons.

“Permitted Fisheries (Shonin-gyogyo)” with impact on the SRFC region are the long-line fishery in the Atlantic ocean. The result of this system is that there is very little direct use of Flag of Convenience vessels by Japanese companies. Enforcement and inspections are carried out throughout the world by a global fisheries patrol. It operates as far away from Japan as the Mediterranean and the Atlantic off the coast of Las Palmas.

The principal government organizations are:

- Ministry of Agriculture, Forestry and Fisheries (MAFF) – a policy agency
- Japan Fisheries Agency – a mixed regulatory, policy and policy implementation agency
- Japan International Co-operation Agency (JICA) – a policy and implementation agency
- Japan Fisheries Association (JFA), a non-profit quasi-government corporation representing the entire fishing industry of Japan - (Dai Nippon Suisan Kai)⁹⁴
- Overseas Fishery Cooperation Foundation (OFCF)

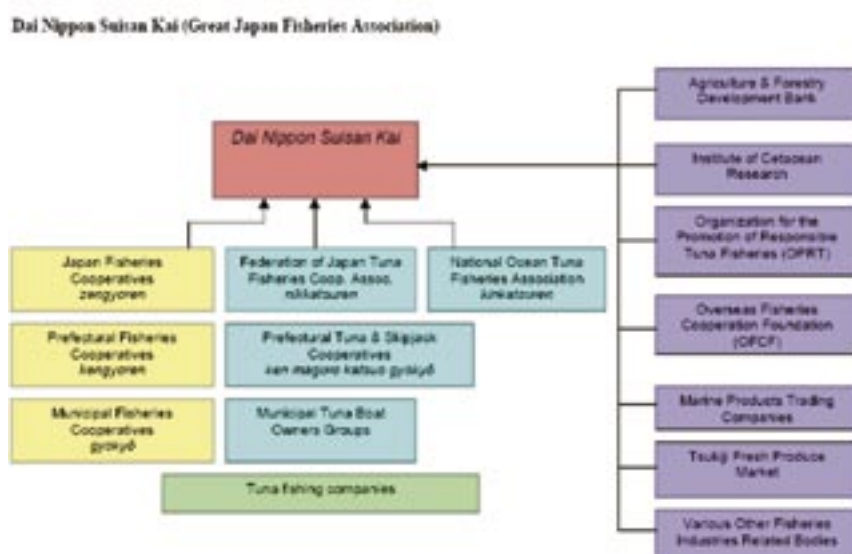
16.5 | Private Sector Organisations

Japan Fisheries Association (Dai Nippon Suisan Kai)

Established in 1882, the Japan Fisheries Association is the umbrella organization for the entire fishing industry of Japan. It has more than 400 members. Its purpose is to promote the fishing industry and contribute to the economic well-being and cultural heritage of Japan. Members include the major Japanese fishing companies, fishery associations, and other entities from related industries - marketing, processing, shipbuilding and gear and net manufacturers. The major Japanese fishing companies include the Taiyo Fishery Co., Ltd., Nippon Suisan Kaisha, Ltd., Nichiro Gyogyo Kaisha, Ltd., Kyokuyo Co., Ltd., Nippon Reizo Kabushiki Kaisha, Hoko Fishing Co., Ltd., Hokoku Marine Products Co., Ltd., Hakodate Kokai Fishery Co., As the diagram below shows, it is closely interlinked with a number of government supported bodies like the OFCF and much of Japanese fisheries policy is coordinated through it.

Figure 16-3 - Japan Fisheries Association (Dai Nippon Suisan Kai)

Source: Kate Barclay , Koh Sun-Hui, ‘Neoliberalism in Japan’s Tuna Fisheries? Government Intervention and Reform in the Distant Water Longline Industry’



94 - http://www.suisankai.or.jp/index_e.html

Other peak private sector organisations or associations which group thousands of operators all of whom are served by access agreements are:

Table 16-1 Japanese private sector fisheries organisations and associations

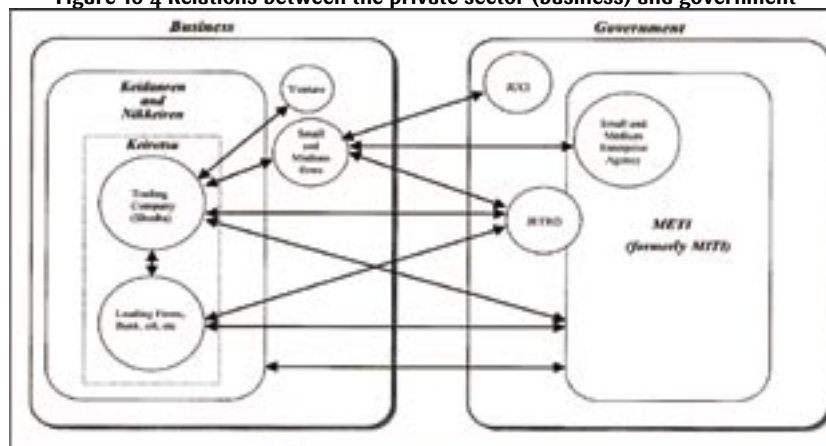
Organisation	Major purpose	Membership	Main activities
Federation of Japan Tuna Fisheries Cooperative Associations Established July 13 1950	- enhance socio-economic status of members through promotion of business projects - improve efficiency in fishery business of members by implementing cooperative business activities among members.	Local tuna and skipjack fisheries cooperative association, whose members are tuna or skipjack fishermen, established under the provisions of the Fisheries Industry Cooperative Association Law. 15 member organisations	- supply material necessary for fishing; - sales of fish; - guidance.
Japan Tuna Fisheries Association Established February 24 1977	- promote and stabilize tuna and skipjack fishery business through establishing appropriate measures; - conduct survey and research concerning tuna resources and tuna fishery business; - contribute to the development of the fishing industry of Japan.	Tuna and skipjack fishermen who agree to the objectives of the Association 9 member organisations	Guidance
National Ocean Tuna Fishery Associations (Japan) Established March 19 1979	- secure fishing grounds; - enhance cooperation among members; - improve knowledge and techniques related to tuna fishing; - contribute to the development of distant water tuna and skipjack fishing industry.	Organizations established by local fishing cooperative associations or distant water tuna and skipjack tuna fishermen 6 member organisations	- secure overseas fishing grounds; - collect and supply information to improve knowledge and technique concerning distant water tuna industry; - promote communication & mutual cooperation among members.
National Offshore Tuna Fisheries Association (Japan) Established December 24 1982	- ensure business stability for members and sound development of the offshore skipjack and tuna fishing industry; - improve the industry's structure; - secure fishing grounds; - develop technology;	Skipjack and tuna fishermen and companies operating a fishing vessel less than 120 gross tonnages (including some vessels over 120 gross tonnages) 19 member organisations	- secure overseas fishing grounds; - guidance; - enhance socio-economic status of members; - improvement of industrial structure, business stability, etc; - undertake survey and research - development of technology; - undertake survey and research - development of technology;
Japan Fish Traders Association Established September 10, 1979	- ensure balanced development of fish trade; promote internationalization of fish diet culture; - contribute to promote international cooperation in international trade and economy.	Legal entities and individual persons who are engaged in the fish trade business 46 companies	- research related to production, trade, distribution and consumption of fish; - collection and supply of documents and information related to fish trade; - dispatch and receipt of survey mission concerning fish trade etc.

All Japan Fish Wholesalers' Union of Central Wholesale Market Established March 7 1974	- modernization of Central Wholesale Markets and fish wholesalers; - rationalization of transactions of fish at Central Wholesale Markets; - modernization of facilities of markets; - survey and research concerning business of fish wholesalers; - providing guidance to members, thereby contribute to ensure stable fish supply and food security of the nation.	Those who are licensed by Minister of Agriculture, Forestry and Fisheries in accordance with the Wholesale Market Law and operate fish wholesale at Central Wholesale Market 88 member organisations	- Rationalization of fish transactions at Central Wholesale Market; - survey and research concerning modernization of market facilities and guidance; - survey and research concerning business of fish wholesalers and guidance; - collection and supply of information concerning fish trade.
National Federation of Middle Wholesaler's Association for Aquatic Products (All Japan Fish Brokers Union) Established March 10 1979	- ensure sound business as the middle wholesalers under the Marine Products Division of the Central Wholesale Market, in accordance with the Wholesale Market Law - promote socio-economic status of members.	Organizations classified as middle wholesalers under the Marine Products Division of the Central Wholesale Market 42 member organisations	- survey and research; - improvement and rationalization of distribution systems; - improvement of member businesses; - collection and supply of information; - coordination and communication with Japanese government and other bodies.
All Japan Fish Retailers Union Established February 22 1954	- conduct cooperative business for members in compliance; - enhance voluntary business activities of members; - promote the economic status of members.	Co-operative association and a federation for persons/ companies in fish retail business 103 member organisations	- co-operative purchasing; - improvement of skills and business management; - education and information supply; - welfare etc.

16.6 | Relations between the private sector and government

There is a very close relationship between the Government and the private sector in Japan. Different kinds of associations – Keidanren, Nikkeiren and Keiretsu - all relate closely to key government Ministries and organizations. The relationship is a two-way relationship. Guidance and information/intelligence flows from the government agencies to the private sector, whilst the private sector provides intelligence/information on its operating environment and those of its global competitors. The fisheries sector is a prime example of this relationship.⁹⁵

Figure 16-4 Relations between the private sector (business) and government



16.7 | Financial institutions supporting fisheries

Finance for fisheries ventures is available from many sources including:

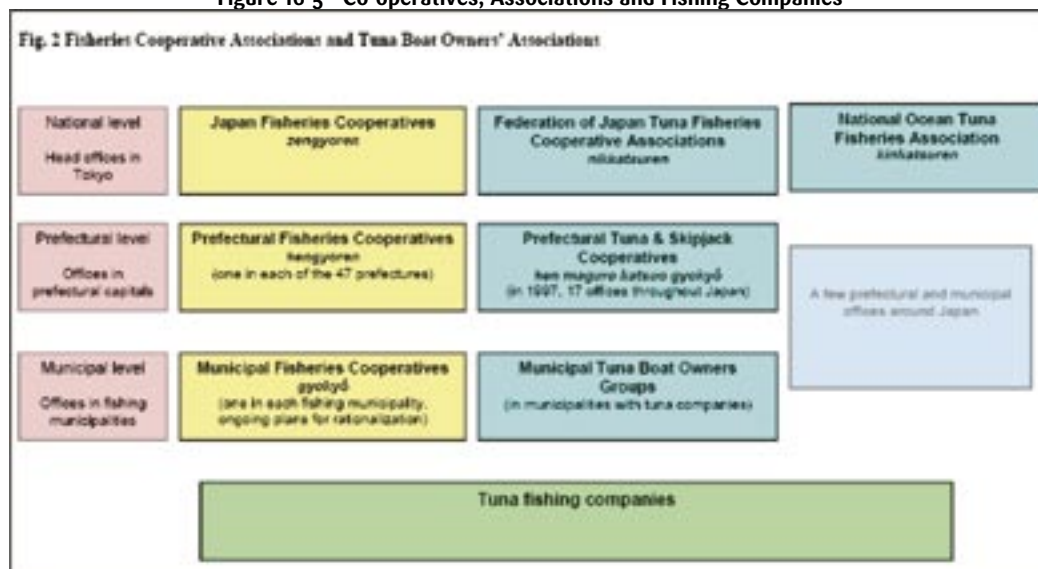
- Agriculture, Forestry and Fisheries Finance Corporation (Nōringyogyō Kinyū Kōko), Fisheries Resources Development Corporation (Suishigen Kaihatsu Kōdan)
- Nōrinchūkin Bank (Nōrin Chūo Kinkō) with the assistance of MAFF provides financial services to agriculture forestry and fisheries employees and businesses

For high risk projects that the Nōrinchūkin Bank or other financial organizations cannot fund, low interest capital is provided by the Agriculture, Forestry and Fisheries Finance Corporation. This organization is in turn subsidized by the central government through the main MAFF budget, and through another arrangement called the Government Affiliated Agencies budget, as well as through the Fiscal Investment Loan Program (FILP).

16.8 | Which Japanese companies seek access to Coastal State waters?

Two types of groups seeks access to resources outside Japan - fisheries associations and tuna fishing companies. Fisheries associations group a large number of smaller and middle level operators and As Figure 16-5 shows, Fisheries Associations have a national structure. Fishing companies are much larger and may also be members of Associations.

Figure 16-5 - Co-operatives, Associations and Fishing Companies



16.9 | Joint ventures

Japanese companies operate joint ventures overseas in the following ways:

Table 16-2 - Japanese joint-venture strategy

Method	Explanation
Transfer of vessels to joint ventures	Japanese fishing vessels are transferred to joint ventures. The crew may include Japanese fishers but are intended to be gradually replaced by local employees through training programmes
Chartering of Japanese vessels to local partners	Under these arrangements the vessels operate under the Japanese flag, thus the arrangement is in essence the continued operation of Japanese fisheries. This kind of participation is common in countries where direct access by distant water fisheries is prohibited or highly controlled by the government. Japanese companies use this method in Latin America; South Africa and Namibia
Direct investment	Japanese involvement in fisheries related sectors such as storage, processing and aquaculture.

16.10 | Employment and Labour Supply

A key area of concern for Japanese fisheries associations and the government is the sharp drop in the number of Japanese workers prepared to go to sea. A mixed crewing system, allowing foreign based crew, has been introduced for distant-water fishing vessels and some 4000 foreign seafarers, 75% of whom are Indonesian, have been accepted under the so-called Maru system. Seafarers are also hired from China, the Philippines and Bangladesh.



Figure 16-6 Changes in the number of fishery workers between 1993 and 2003
Japan Ministry of Agriculture and Fisheries (2004)

16.11 | Civil society and NGOs

Unlike the EU or the US, there are no environmental NGOs working actively in domestic politics to promote responsible fishing in the way that WWF, IUCN, Greenpeace, CFFA/CAPE and other organisations operate. There is a very powerful National Liaison Committee of Consumer's Organization. It has a membership of 24 million people. It is however targeted towards the consumption of fish. Currently it supports country of origin labelling but not eco-labelling. Greenpeace-Japan⁹⁶ and WWF-Japan⁹⁷ operate in a reasonably indifferent atmosphere and are not politically effective.

16.12 | Final market destination for catches

Virtually all catch harvested under access agreements is returned to Japan by sea or air. Huge fish markets like Tsukiji distribute fish throughout Japan using the organisations described in Table 16-1 above.

⁹⁶ - http://www.greenpeace.or.jp/index_en.html

⁹⁷ - <http://www.wwf.or.jp>

16.13 | Relations between processing, retailing and catching sectors

There is a degree of conflict between the interests of the processing and retailing sector which is fundamentally interested in securing the best quality fish throughout the year. Dependence on the catching sector alone cannot meet the needs of the processing and retailing sector. This is the reason the level of imports is so high. However internal fisheries sector conflicts are managed within the framework of the organisations listed in Table 16-1. There is virtually no open conflict (for example blockades and demonstrations) that is seen in the EU between the catching sector, the European Commission, EU Member State governments and the processing/importing sector.

16.14 | Relationship between imports/tariff policies and access agreements policy

There is a very close relationship between imports and access agreements. A finely tuned policy of tariffs, non-tariff barriers and quality standards is used to manage imports into Japan. The main attractant however is the strong currency. The system is highly complex and cannot be properly discussed here.

16.15 | Relationship between access agreements policy and development assistance policy

Japan uses fisheries aid as a means of maintaining (or attaining) access to foreign waters for Japanese fishermen.

Figure16-7 Global Profile - Japanese Overseas Fisheries Aid



Government fisheries aid projects generally provide such items as equipment necessary for fisheries development (fishing nets, small fishing boats, outboard motors, conventional freezing plants, ice-making equipment, refrigerated trucks, etc.), fishery training vessels, and the construction of fishery training/research facilities (laboratories, aquaculture facilities, and fishing ports). The principal organisation is the Overseas Fishery Cooperation Foundation (OFCF). Founded in 1973, its official purposes are:

- to implement economic and technical cooperation which contributes for development and promotion of overseas fishery as well as management of fish resources;
- to secure overseas fishing ground thereby to contribute the stable development of fisheries industry of Japan;
- to ensure safety of fishing operation of fishing vessels in Japan.

16.16 | Credits/loans

Credits or loans for fisheries purposes are only one category of economic development assistance within Japan's Overseas Development Assistance (ODA) program general budget account. Although fisheries credits like all ODA is administered by the Ministry of Foreign Affairs (MOFA), the Fisheries Agency of Japan (FAJ) plays a key role in the allocation process. The FAJ effectively controls both fisheries aid policy and grants, because of its role in developing fisheries projects and its veto power over applications for fishery grants-in-aid. To maximize controls the Japanese Government, usually provides fisheries assistance on a bilateral, year-by-year basis, rather than on a long term or multilateral development basis. This allows the aid to be withdrawn should the particular country not satisfy Japanese objectives in some way. In addition, the Government employs only Japanese consultants and contractors in administering aid projects.

16.17 | Grants

Japanese Government grant assistance (including fisheries aid) is implemented by the Japan International Cooperation Agency (JICA). JICA provides the technical expertise for feasibility studies and planning of all aid projects. FAJ is consulted and has veto power over all fisheries aid projects. This gives FAJ effective control over fisheries aid.

OFCF instruments supporting access activity by Japanese companies are:

Table 16-3 - Overseas fisheries sector finance

Modality	Explanation
Interest bearing loans	OFCF extends interest-bearing loans to Japanese fishery companies and organizations to cover all or part of their costs in establishing fisheries joint ventures overseas
Low interest loans	OFCF extends low-interest loan in Japanese yen or US Dollar to Japanese fishery companies and organizations to cover the costs of overseas investment in equity holding, forming fixed tangible assets or establishing fishery joint venture companies.
Non-interest loans	OFCF extends non-interest bearing loans to Japanese fishery companies and organizations when they carry out technical cooperation projects that are classified as constituting: • transfer of installations, equipment or materials to foreign governments • contributions to the promotion of fisheries development research • contributions to international living marine resources management.

OFCF also conducts investment climate surveys for Japanese companies with presentations to explain investment surroundings in countries of interest held throughout all Japanese localities using the structures of the Fisheries Associations at local and regional level (see Figure 16-8). OFCF also provides individual consultation sessions to companies and individual investors. OFCF also finances surveys and exploratory fishing operations in countries of interest.

Figure 16-8 OFCF Organisational Structure
Source: <http://www.ofcf.or.jp/english/3/3-3.html>



16.18 | Flag of convenience and IUU issues

Officially there are no FOC fishing vessel in Japan. This is because of the highly regulated and effective licensing system and the Japanese system of global fisheries patrols of Japanese distant-water vessels, especially tuna vessels.

16.19 | Traceability

In recent years, Japan has introduced country of origin labelling, a type of traceability. The main laws on country of origin labelling are:

- Article 19 of the Law Concerning Standardization and Proper Labelling of Agricultural and Forestry Products (Law No. 175 1950);
- Quality Labelling Standard for Processed Foods (Notification No. 513 of the Ministry of Agriculture, Forestry and Fisheries of March 31, 2000)

Figure 16-9 – Costs of sending Bluefin Tuna to Japan from the Mediterranean

The costs of sending BFT to Japan		
Commissions and costs paid in Japan and Origin	Through Tokyo wholesaler	
	Sold in Tokyo	Sold in Osaka
Fish weight (Net-weight in the market) in kg	215	215
Example Original price Yen / kg	3,800	3,800
Auction Price = Weight x Price	817,000	817,000
Auction Price in Euro based on 1 Euro = Yen 142	5,753,52 €	5,753,52 €
Japan Consumption Tax (5%)	40,850	40,850
Selling Price (Tax paid)	857,850	857,850
Tokyo auction commission (5.5%)	47,182	
or Tokyo commission on local market (2.0%)		17,157
and Local market commissions (5.5%)		47,182
Customs clearance Broker fees	19,248	19,248
Trucking fee in Japan	3,990	22,050
Long Fee in Japan	1,725	1,725
Bank remittance fee	1,500	1,500
Other fees (Market expenses)	921	921
Duties (WTO) 3.5%	25,130	23,996
Consumption Tax 5%	37,156	35,479
Value after all fees deducted in Japan (yen)	717,998	685,592
Total fees removed by Japanese company and Japan Government in Euros	6,427,201 €	4,924,311 €
Money deposited to European bank account based on 1 Euro = Yen 142	5,056,32 €	4,828,11 €
Plant charge Euro 1.46 per kg	313,90 €	313,90 €
Monitor	14,28 €	14,28 €
Packing material	102,85 €	102,85 €
Ice/labour/trucking	142,85 €	142,85 €
(Freight forwarding)	914,28 €	914,28 €
Total Origin expenses (Deduction)	1,486,16 €	1,486,16 €
Total Deductions by Japan and Origin	2,185,36 €	2,413,57 €
Net Payable to Origin Exporter	2,556,16 €	2,329,95 €
As a % of Japan Side price	62.38%	58.48%

Notes:

1. These commissions are based on dealing directly with a large wholesaler in Japan
2. No additional middlemen involved and no "finders fee" paid by Japanese side
3. A Euro/Yen exchange rate based on a spot rate of 142 Yen

Source: Japan Tuna Report, By Frank Chopin, 03/2004.

Table 16-4 Current Key Agreements between Japan and Coastal States

Country	Year	Description	Region of the World
Cape Verde	1996	Private agreement granting Japanese tuna longline access to EEZ of Cape Verde.	Africa – SRFC Region
China	2000	Intergovernmental agreement establishing joint management zones in the East China Sea.	Asia
Cote d'Ivoire	2002	Private agreement granting Japanese tuna longline access to EEZ of Cote d'Ivoire.	Africa – Gulf of Guinea
France	1979	Intergovernmental agreement granting Japanese tuna longline fleets access to EEZ of French Polynesia, New Caledonia and Wallis and Futuna. Access to French Polynesia suspended in 1992, Wallis and Futuna in 1996 and New Caledonia in 1997. Access to New Caledonia was renegotiated in 2003.	Pacific FFA - WCPFC
Fiji	1998	Private agreement granting Japanese tuna longline and purse seine and skipjack pole-and-line fleets access to EEZ of Fiji.	Pacific – FFA - WCPFC
Gabon	2000	Private agreement granting Japanese tuna longline fleets access to EEZ of Gabon.	Africa- Gulf of Guinea
Gambia	1992	Private agreement granting Japanese tuna longline and purse seine fleets access to EEZ of Gambia.	Africa - SRFC
Guinea	1995	Private agreement granting Japanese tuna longline fleets access to EEZ of Guinea.	Africa - SRFC
Guinea Bissau	1993	Private agreement granting Japanese tuna longline and purse seine fleets access to EEZ of Guinea Bissau.	Africa - SRFC
Kiribati	1998	Private agreement granting Japanese tuna purse seine fleets access to EEZ of Kiribati.	Pacific – FFA - WCPFC
Madagascar	1997	Private agreement granting Japanese tuna longline fleets access to EEZ of Madagascar.	Indian Ocean - IOTC
Marsall Islands	1993	Private agreement granting Japanese tuna purse seine fleets access to EEZ of Marshall Islands.	Pacific – FFA - WCPFC
Mauritania	1991	Private agreement granting Japanese tuna longline and purse seine fleets access to EEZ of Mauritania.	Africa - SRFC
Mauritius	2000	Private agreement granting Japanese tuna longline fleets access to EEZ of Mauritius.	Indian Ocean - IOTC
Micronesia	1992	Private agreement granting Japanese tuna longline and purse seine and skipjack pole-and-line fleets access to EEZ of Micronesia.	Pacific – FFA - WCPFC
Morocco	1985	Intergovernmental agreement granting Japanese tuna longline fleets access to EEZ of Morocco.	SRFC region
Mozambique	1997	Private agreement granting Japanese tuna longline fleets access to EEZ of Mozambique.	Indian ocean
Nauru	1994	Private agreement granting Japanese tuna longline and purse seine and skipjack pole-and-line fleets access to EEZ of Nauru.	FFA – WCPFC - Pacific
Palau	1992	Private agreement granting Japanese tuna longline and purse seine and skipjack pole-and-line fleets access to EEZ of Palau.	FFA – WCPFC - Pacific
Portugal	1979 (Expired in 1986)	Intergovernmental agreement granting Japanese tuna longline fleets access to EEZ of Portugal.	Atlantic Azores, Madeira – next to SRFC region

Russian Federation	1998	Intergovernmental agreement granting Japanese gillnet fleets access to waters around the disputed Kuril Islands.	North Pacific
Saint Helena (UK)	1988	Private agreement granting Japanese tuna longline fleets access to EEZ of Saint Helena.	African Atlantic
Sao Tome and Principe	2003	Private agreement granting Japanese tuna longline fleets access to EEZ of Sao Tome and Principe.	Gulf of Guinea
Senegal	1992	Intergovernmental agreement granting Japanese tuna longline and purse seine fleets access to EEZ of Senegal.	SRFC region
Seychelles	1990	Private agreement granting Japanese tuna purse seine fleets access to EEZ of Seychelles.	Indian Ocean - IOTC
Sierra Leone	1993	Private agreement granting Japanese tuna longline and purse seine fleets access to EEZ of F	SRFC region
South Africa	1977 (Expired in 2003)	Intergovernmental agreement granting Japanese tuna longline fleets access to EEZ of South Africa. Expired in 2003.	African Atlantic/Cape region
South Korea	1999	Intergovernmental agreement establishing joint management zones in the East China Sea and the Sea of Japan.	East Asia - adjacent waters
Tanzania	1998	Private agreement granting Japanese tuna longline fleets access to EEZ of Tanzania.	Indian Ocean
Tuvalu	1998	Private agreement granting Japanese tuna purse seine fleets access to EEZ of Tuvalu.	FFA - WCPFC-South Pacific

Figure 16-10 - Tsukiji market
<http://www.nationalgeographic.com/photography/galleries/tokyo/>



Chapter 17

Access demandeur profiles - Korea

17.1 | Current importance of access agreements

The principal drivers of Korean distant-water fishing are:

- to serve as a supplier of fish to the highest buyer – principally the Japanese market;
- to provide a market for the shipbuilding industry;
- to provide domestic Korean fish markets with tuna and squid.

A previous objective was to project South Korea in the world at the expense of North Korea. With the collapse of the North Korean regime, this goal is no longer important.

Box 17-1 Chapter 17 Highlights

Key themes of this Chapter are:

- The importance of fisheries access agreements to Korea;
- Nature and history of the Korean fishing industry, current fleets and overseas support bases;
- Policy context of fisheries access agreements within Korea- relationship to high level policy;
- Institutional arrangements for distant water fishing, and major fisheries organisations;
- Profile of major Korean fisheries- tuna, squid and trawl;
- Global regulatory arrangements;
- Fisheries decommissioning programs;
- Major Korean firms active in distant water fishing

17.2 | Current global operations⁹⁸

Figure 17-1 Current areas of operation- Korean fleets



Countries which currently have or have had fisheries agreements with Korea are: Japan, Australia, Iran, France, Kiribati, Solomon, Cook, Tuvalu, Mauritania, Ecuador, Russia, Papua New Guinea and China. Countries in which Korean vessels are operating under direct licensing arrangements or joint ventures are Japan, New Zealand, Suriname, Guinea, Gabon, Marshall, Angola, Peru, Nauru, FSM, PNG, South Africa, UK(Falklands), Indonesia, Seychelles, Kenya and Madagascar.

98 - Source - KODEFA - http://www.kodefa.or.kr/english/e_fish/e_fish1.asp

17.3 | Historical background

Korean long-distance fisheries dates back to the mid-1950s with small experimental longline fishing for tunas in the Indian Ocean. The three distinct arms that have developed are: (1) tuna fisheries; (2) high seas/deepwater trawling; (3) squid-jigging. With tuna fishing, many vessels migrate between the Pacific and Indian Ocean, depending on the conditions of each fishing ground. The Atlantic fleet is slightly more stable. The system of overseas bases (see Figure 17-5 below) provides this stability.

17.4 | Overseas support bases⁹⁹

As an extensive system of support bases (transshipment; repairs etc.) covering 21 bases in 18 coastal states supports Korea's global operations: 9 in the Pacific, 8 in the Atlantic and 4 in the Indian Ocean. The number of vessels which operate making use of the bases are 242 in the Pacific; 139 in the Atlantic and 29 in the Indian Ocean. Major bases by ocean are Guam, Tahiti, Fiji, Ambon and Timaru in the Pacific; Stanley, Paramaribo, Conakry and Luanda in the Atlantic; Muscat, Maputo in the Indian Ocean. The full list is:

- Pacific Ocean: Butan, Guam, Timaru, Ambon, Tahiti, Suva-Fiji, Pusan, Callao, Lyttleton;
- Atlantic Ocean: Luanda, Paramaribo, Stanley (off the Falklands), Bissau, Conakry, Freetown, Monrovia, Cape Town.
- Indian Ocean: Muscat, Maputo, Salalah and Cape Town.

Figure 17-2 - Overseas Fishing Bases - Korean Fleet



17.5 | Relationship of access agreements to high level national policy in Korea

Korea views itself as the 10th Ocean Power in the world. It has:

- the largest shipbuilding industry in the world (12.7 mn tonnes);
- 8th largest number of registered ships (25 mn tonnes);
- the 3rd largest distant-water fishery
- the 6th highest level of seaborne cargo. (0.5 bn ton).

⁹⁹ - Source: KODEFA - http://www.kodefa.or.kr/english/e_fish/e_fish1.asp

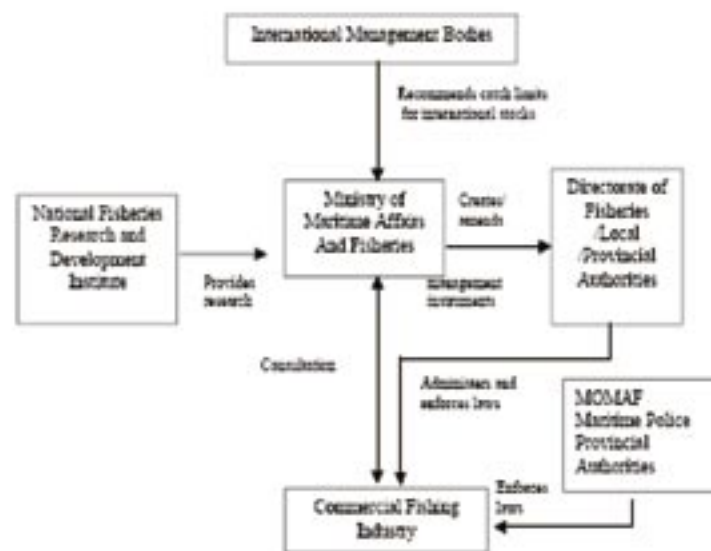
Access agreements fit into Korea's policy of making itself a global maritime power. Aspects of global maritime status have already been achieved with the shipbuilding industry's status as the world's largest.

17.6 | Institutional arrangements

The principal institutions are: the Ministry of Maritime and Fisheries Administration (previously Korean National Fisheries Administration (KNFA) and for the industry – the Korea Deep Sea Fisheries Association (KDSFA/ KODEFA). The KDSFA is a trade organization and functions like a fishermen's club. Members include company representatives and owners of trawlers and other open ocean fishing vessels. Every member pays dues. The Association mostly lobbies the government about regulations, taxes, and loan guarantee programs.

Figure 17-3 Korean Fisheries Management- Institutional Arrangements

Figure II.3. The system of fisheries management

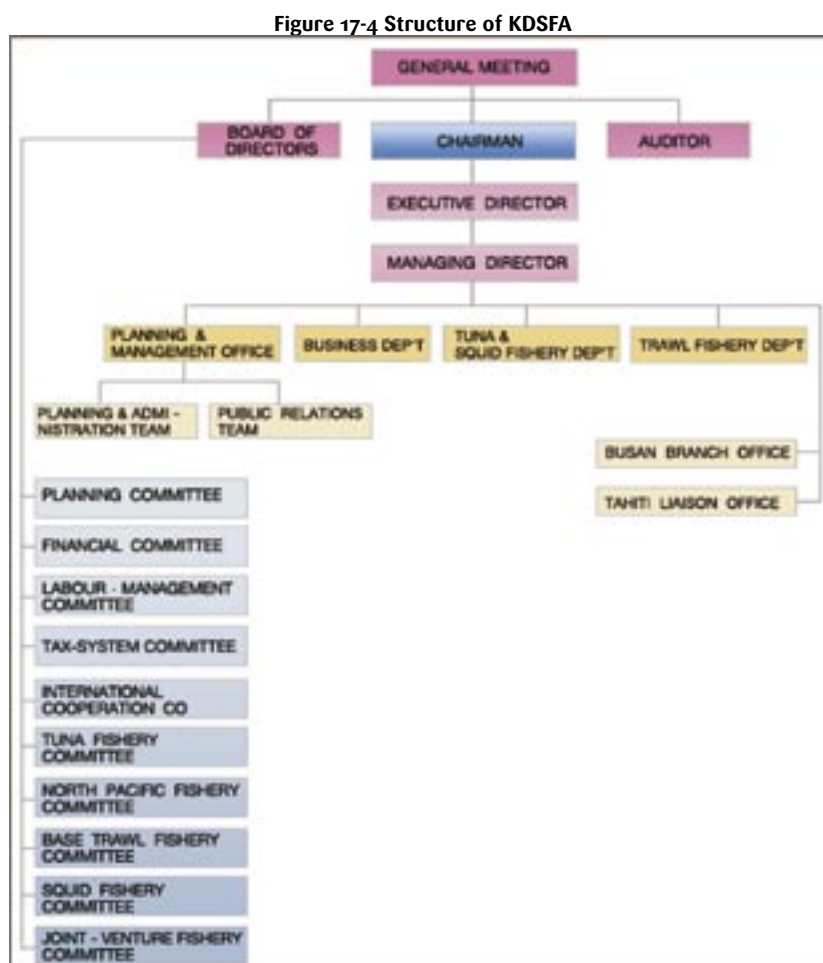


Source: Ministry of Maritime Affairs and Fisheries (MOAMF).

17.7 | The Korea Deep Sea Fisheries Association

Established in 1964, its purpose is:

- to contribute to the sustainable use and effective conservation of living marine resources by implementing a national, regional and international commitment for responsible tuna fisheries;
- to develop and improve members' maximum profits in both economic and social well-being terms by helping them in production, processing and marketing, etc.



Membership is open to all companies which have (own, lease) more than one largescale tuna longliner(s) and which are duly authorized to fish in distant waters by the Korean Government. Currently there are 27 member companies. KDSFA's main activities are:

- securing fishing ground access rights through cooperating and negotiating with coastal states etc;
- planning and making policies for sustainable and long-term fisheries-based objectives through exchange of views among members;
- strengthening cooperation with regional and international fisheries bodies;
- making efforts to increase tuna consumption in the domestic market.



Figure 17-5 Korean Deep Sea Trawler
Source: KODEFA - http://www.kodefa.or.kr/english/e_fish/e_fish1.asp

17.8 | Tuna fisheries¹⁰⁰

Tuna longliners operate throughout all three oceans and in selected EEZs exporting their catches mainly to Japan. Domestic sashimi demand in Korea itself is also increasing. African Atlantic operations are important to the overall strategy of Korean tuna fisheries as shown by the number of bases and agreements.

Year	Longline		Purse seine	
	Amount	Value	Amount	Value
2001	43,820	109,981	81,829	72,184
2002	50,893	200,939	91,894	77,438
2003	38,626	189,104	84,476	62,396
2004	40,266	206,177	91,111	52,567
2005	32,693	159,833	78,491	72,239

Figure 17-6 Korean Fisheries Income

17.9 | Squid fisheries¹⁰¹

Squid fisheries were started in 1979 using drift-nets. These were phased out after the 1992 global ban on drift-net fishing. Squid-jigging now takes place off New Zealand and Australia and in the Falkland Islands region.

17.10 | Trawl fisheries¹⁰²

Korean distant-water trawling was initiated with 8 vessels in the Atlantic Ocean in 1966 growing to 319 in 1976. Since 1977, the establishment of EEZs has led to vessel numbers dropping to 146 vessels (end 2004). The trawler fleet is demarcated into locally based trawlers (North Pacific grounds: 7) and foreign-based ones (123). Of the foreign based vessels, 50 operate in the Pacific, 68 in the Atlantic and 12 in the Indian Ocean as their main fishing grounds. The main focus of trawl fishing in the Pacific is for Pacific pollock. There is also a strong focus on the Atlantic with a more diverse catch. Las Palmas is the main supply and transshipment base for this fleet. There is however currently dispersal of the Atlantic fleet towards parts of the Indian Ocean, to exploit Indonesian, Omani and Somalian fishing grounds. The presence of overseas bases in Oman and Indonesia reflects this shift. There is also some trawling around deep-ocean seamounts.

Figure 17-7 Active Korean Fisheries Vessels

Number of fishing vessels by ocean and year

Waters	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Pacific Ocean	323	322	301	365	341	331	323	288	270	242
Atlantic Ocean	205	197	160	163	144	140	127	130	139	139
Indian Ocean	79	83	84	22	50	36	32	46	24	29
Total	607	602	545	550	535	507	482	464	433	410

Vessel numbers and types by year (Unit : No.)

Type of Fishery	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Tuna Longline Fishery	218	218	203	202	197	193	193	190	182	177
Tuna Purse Seine Fishery	28	27	26	26	26	27	26	27	28	28
Squid-Jigging Fishery	124	114	99	97	88	85	75	70	50	31

Source: KODEFA - http://www.kodefa.or.kr/english/e_fish/e_fish1.asp

100 - Source: KODEFA - http://www.kodefa.or.kr/english/e_fish/e_fish1.asp

101 - Source: KODEFA - http://www.kodefa.or.kr/english/e_fish/e_fish1.asp

102 - KODEFA - http://www.kodefa.or.kr/english/e_fish/e_fish1.asp

17.11 | Data collection¹⁰³

There are two systems for the collection of Korean tuna fisheries data. The first system is operated by the Korean Deep-Sea Fisheries Association and collects total catch by species. All Korean distant-water fishing vessels report their catch records in terms of weight by species to their companies once a week or at 10-day intervals. The Association compiles the data by month and by FAO fishing area to submit to the Ministry of Maritime Affairs and Fisheries for final review and publication. Both the Association and the Ministry publish annual compilations of catch statistics. The second data collection system samples catch and effort data based on logbooks and is run by the Ministry of Maritime Affairs and Fisheries. Under this system distantwater fishing vessels have to submit reports of their fishing operations within 30 days (home-based) or 60 days (foreign-based) after completion of their operations to the National Fisheries Research and Development Institute (NFRDI). This information is not published widely.

17.12 | High Seas Fisheries Observer Scheme¹⁰⁴

To meet its RFMO obligations, the Ministry of Maritime Affairs and Fisheries (MOMAF) began to operate a small fisheries observer program for distant-water fisheries in 2002. The initial focus has been on fisheries like the Southern Bluefin Tuna longline fishery in the CCSBT Convention Area due to its controversial stock status and Korea's status as a co-operating non-party to that treaty.

17.13 | Final market destination for catches¹⁰⁵

Although domestic consumption is rising, the Korean marketplace does not absorb all the catch of the Korean distant-water fleet. The Korean distant-water fleet therefore operates as an international "middle-man" catching fish around the globe and selling it in the most lucrative markets – principally Japan, the EU, the US and other South East Asian markets. The number of bases around the world reflects and supports this international "middleman" role. Depending on global price levels, the Korean longline fleet sells 64-82% of its tuna catch outside Korea principally in Japan. For instance in 2004, Japan's sashimi market absorbed 97% of all Korea's exports of frozen tuna. Again depending on price, 33-46% of the total catch of the purse seine fleet is sold outside Korea. Korean vessels are thus major suppliers of purse-seine caught tuna (skipjack, albacore, big-eye) for use as raw material in key global canneries located in American Samoa, Thailand, Mauritius, Seychelles, Ivory Coast, Senegal and Ghana.

17.14 | Relations between processing and catching sectors

There is no publicly available information in English or French. Analytical work will certainly be available in Korean but has not been translated.

17.15 | Civil society and NGOs

There are no effective fisheries sector NGOs in Korea.

¹⁰³ - National Report of the Republic of Korea, Indian Ocean Tuna Commission (2003) IOTC-SC-03-Inf.12. <http://www.iotc.org/files/proceedings/2003/sc/IOTC-2003-SC06-INF12.pdf>

¹⁰⁴ - Source: KODEFA - http://www.kodefa.or.kr/english/e_fish/e_fish1.asp

¹⁰⁵ - Korea, National Fishery Report, Western Central Pacific Commission, www.wcpfc.org/sc2/pdf/SC2_CR_Korea.pdf

17.16 | Relationship between imports/tariff policies and access agreements policy

There is no in-depth analysis available in English or French. Korea has fully investigated fisheries trade issues as part of its active participation in WTO processes.

17.17 | Relationship between access agreements policy and development assistance policy

Korea does not have an extensive or active development assistance policy.

17.18 | Flag of convenience and IUU issues

There is little detailed information on the role of Korean vessels in IUU issues or the extent of Korean use of FOCs. A recent Greenpeace report placed Korea as having 52 vessels under FOC in 1999.¹⁰⁶

17.19 | Fisheries decommissioning programmes

Korea has implemented a number of decommissioning programmes since 1994. The most important for our purposes was the 199-2001 “Buyback Program for International Agreements.” The Korean government scrapped 551 vessels under a Special Act for Supporting Fishermen Affected by the International Fishery Agreements of 1999 .

Figure 17-8 Korean tuna longliner
Source: KODEFA - http://www.kodefa.or.kr/english/e_fish/e_fish1.asp



¹⁰⁶ - Greenpeace International, “Pirate Fishing Plundering the Oceans” February, 2001 at http://www.greenpeace.org/_oceans/reports/pirateen.pdf.

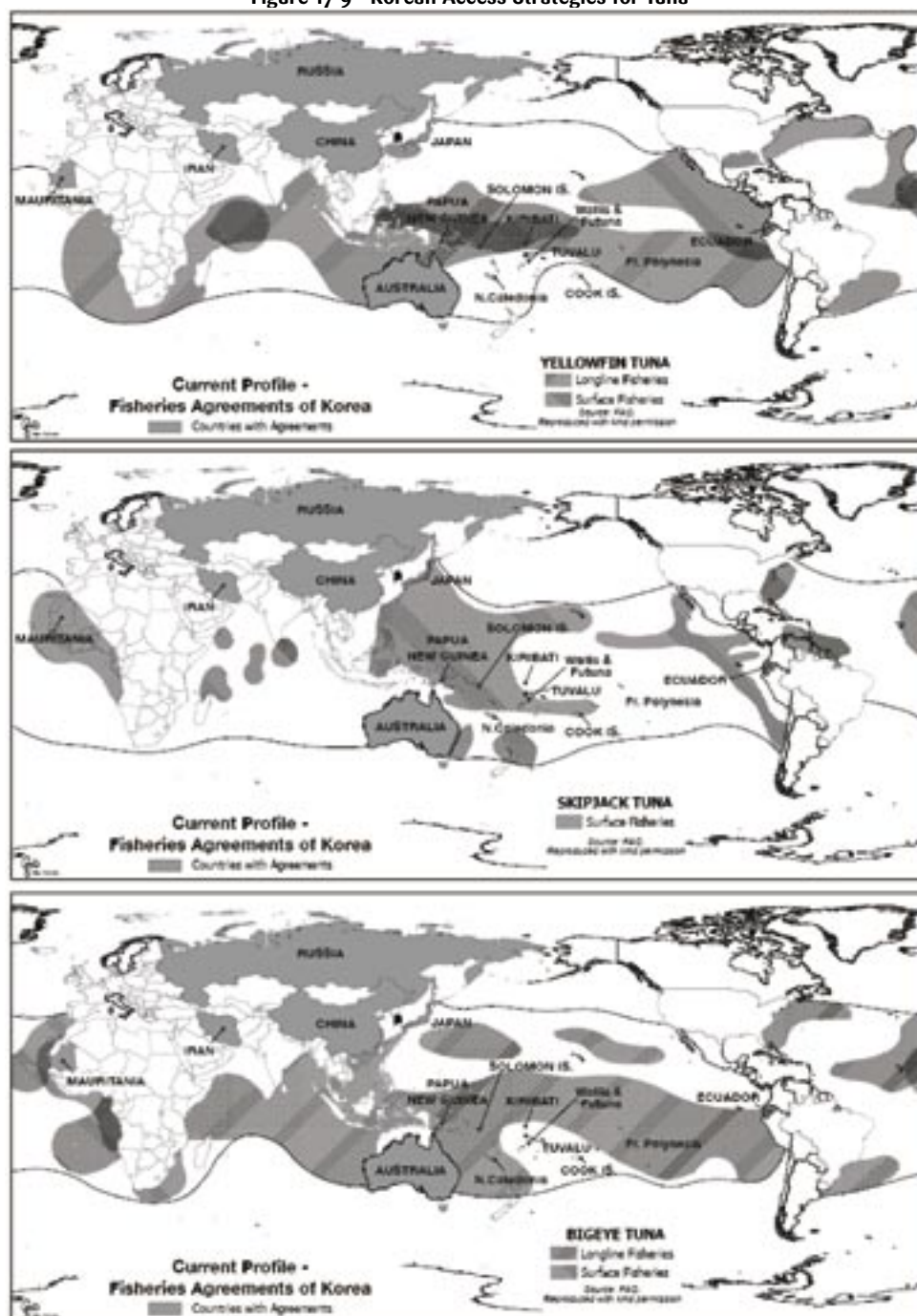
Table 17-1 - Global Operations of Korean Firms¹⁰⁷

Firm	Area of Fishing
Insung Corporation	Tuna Trawl Squid
Insung Foods Co., Ltd.	Tuna longliner fishery,
Inter-Burgo Co., Ltd.	Tuna longliner fishery Atlantic trawl fishery
Jeyang International Co., Ltd.	Tuna longliner fishery
Ji Sung Shipping Co., Ltd.	Tuna longliner Fishery
Keukdong Fisheries Co., Ltd.	North Pacific trawl fishery
Kumwoong Fisheries Co., Ltd.	Atlantic trawl fishery
Kosac Trading Co., Ltd.	Pacific trawl fishery Atlantic trawl fishery
Rasa Trading Co., Ltd.	Indian Ocean Trawl Fishery
Sajo CS Co., Ltd.	Tuna longliner fishery Tuna purse seiner fishery
Sajo Industrial Co., Ltd.	Tuna & Trawl & Squid fishery
Samyoung Fisheries Co., Ltd.	Squid-jigging fishery
Sang Il Trading Co., Ltd.	North Pacific Trawl Joint-Venture Bussiness
Sangji Fisheries Co., Ltd.	Squid-jigging fishery
Sejin fishery Co., Ltd.	Squid-jigging fishery
Seo Rim Fisheries Co., Ltd.	Stick-held dip-net fishery
Seokyung Corporation	Atlantic trawl fishery
Seongkyung Fisheries Co., Ltd.	Tuna fisheries, Trawl fisheries, Squid-jigging fishery
Dongwon Fisheries Co., Ltd.	Tuna fishery, Trawl fishery
Dongwon Industries Co., Ltd.	Tuna, Trawl, Saury fishery
Dongyang Fisheries Co., Ltd.	Tuna & Trawl & The others fishery
Dukwoo Fisheries Co., Ltd.	Atlantic trawl fishery
Goldenlake Co., Ltd.	Atlantic Trawl fishery
Hae Sung Fisheries Co.	Tuna Longliner Fishery
Haena International co., Ltd.	Atlantic trawl fishery
Hana Fisheries Co.	Tuna longliner fishery
Hansung Enterprise Co., Ltd.	Tunai «Trawli» Squid fishery
Agnes Fisheries Co., Ltd.	Tuna Longliner Fishery, Trawl(Atlantic Fishery) Fishery, Squid-jigging Fishery
Booyang Fisheries Co., Ltd.	Squid-jigging fishery
Bosung Cold Storage Co., Ltd.	The others
Boyang Ltd.	Squid-jigging fishery
Changjin Tradig Co., Ltd.	Squid-jigging fishery
Chungeun Fisheries Co., Ltd.	Pacific trawl fishery
Coam Trading co., Ltd.	Tuna longliner fishery
Dae Yang Fishery Co., Ltd.	Squid-jigging fishery
Daehae Fisheries Co., Ltd.	Tuna longliner fishery
Daehyun Agriculture & Fisheries Co., Ltd.	Tuna longliner fishery, Pacific trawl fishery
Daehyun Fisheries Co., Ltd.	Indian trawl fishery Pacific trawl fishery
Daejeong Trading Co., Ltd.	Tuna longliner fishery
Daerim Corporation	Tuna Trawl squid and other fishery
Daeryung Fisheries Co., Ltd.	Pacific trawl fishery

¹⁰⁷ - Source: KODEFA - http://www.kodefa.or.kr/english/e_fish/e_fish1.asp

Daewoong Fisheries Co., Ltd.	Squid-jigging fishery
Dongbaeg Fisheries Co., Ltd.	Squid-jigging fishery
Dongbang Fisheries Co., Ltd.	Squid-jigging fishery
Dongbu Fisheries Co., Ltd.	Tuna longlier fishery
Donghee Industrial Co.	Atlantic trawl fishery
Dongnam Co., Ltd.	Squid-jigging fishery, Pacific trawl fishery

Figure 17-9 - Korean Access Strategies for Tuna



Chapter 18

Access demandeur profile - Taiwan

18.1 | Overall importance of access agreements and current global profile

Fisheries in Taiwan can be described as falling into four categories; distant water fisheries, offshore fisheries, coastal fisheries and aquaculture. Distant-water fisheries are the most important sector in terms of value and volume of catch since coastal and offshore waters are over-fished. In 2003, Taiwan had various types of access agreements with 28 countries as shown below. They were: Republic of Argentina; Marshall Islands; Brazil; Mauritius; Ascension [UK]; Mozambique; British Indian Ocean Territory; Nauru; Myanmar; Oman; Falkland Islands; Palau; Federated States of Micronesia; Papua New Guinea; Fiji; Russia; India; Seychelles; Indonesia; Solomon Islands; Kenya; Somalia; Kiribati; Tanzania; Madagascar; Vanuatu; Maldives; Peru.

Box 18-1 Chapter 18 Highlights

Key themes of this Chapter are:

- The importance of fisheries access agreements to Taiwan;
- Historical background of Taiwanese distant water fisheries;
- Current overseas fisheries support bases and their competitive intelligence aspects;
- Regulatory frameworks governing distant water fishing;
- Institutional arrangements, private sector organizations and civil society influence;
- Final market destinations for catch, and relations between processing & catching sectors;
- Relationships between access agreements policy and development assistance policy;
- Labour issues, global regulatory patrols, flags of convenience and IUU issues;
- Globally active firms from Taiwan.

Figure 18-1 Current Global Operations

Source: Taiwan OFDC



18.2 | Relationship with high level national policy objectives¹⁰⁸

Taiwan's access agreements are an important part of the foreign policy of Taiwan. They provide a way of demonstrating Taiwan's international profile in competition with China. Taiwan is also a middleman in the international fisheries system, harvesting fish and supplying it to other markets (principally Japan). Apart from tuna where the principal market is Japan, a significant proportion of other fish caught is returned to Taiwan, re-processed and then exported principally to other parts of Asia, especially where there are large Chinese populations. China itself is a large and increasing market for Taiwanese products despite the political tensions. Distant-water fisheries are also a way of taking pressure off overexploited adjacent resources.

¹⁰⁸ - See generally, Alfred Hu, Nien-Tsu (ed) "The Concept of Fishing Entities in International Law: A Decade of Practice" 37 Ocean Development and International Law (2006) - Special Edition.

The four types are:

- Government to government agreements are very few due to the fact that Taiwan is not recognised by many governments. Taiwan currently participates in international fisheries relations with its own status – that of a fishing entity.¹⁰⁹

Taiwanese distant-water fisheries has always been closely linked to Japanese interests. Fishing beyond adjacent seas started in the 1960s with three clear branches – deep-water trawling deep-water squid fisheries and tuna longlining to supply the Japanese market.¹¹⁰ The introduction of ultra-low freezing technology in the 1980s led to Taiwanese fishing becoming truly global.¹¹¹ Taiwan is also a key supplier of tuna to canneries in Thailand and Western Samoa.

Overseas support bases are fundamental to the Taiwanese distant-water system. In 2003 as shown by Figures 18-2 and 18-3, 71 ports were used by Taiwanese fleets as overseas fishing bases.

The profile for each ocean was as follows:

- Pacific Ocean: 12 ports including Tahiti and Guam;
- Indian Ocean: 26 ports including Singapore and Port Louis;
- Atlantic Ocean: 33 ports including Cape Town and Las Palmas.

Use of these bases is governed by» The Management Regulations for Fishing Boats and Fishermen to Operate in Overseas Fishing Bases». It is unclear the extent to which the Taiwanese authorities sign agreements with the countries concerned or enter into arrangements at local level as the extent of activity to establish overseas bases is not highly publicised due to the political problem with China. Overseas bases are used for transshipment, re-provisioning, crew exchange, rest and recreation for crew and boat maintenance. As Figure 18-4 vividly demonstrates, this network of bases has been critical to Taiwanese success in the global fisheries system.

Figure 18-2 Overseas Bases - Indian and Pacific

111 - Haward, Taiwan's distant water fisheries at 33-37

Approved overseas fishery bases	
3. The Indian Ocean (26 ports)	
Country	Name of port
(Portuguese) Timor	Dili
Malaysia	Penang
Singapore	Singapore
Mauritius	Port Louis
(British) Seychelles Islands	Victoria
(French) Reunion	Reunion
Madagascar	Diago Suarez
	Tamatave
Kenya	Mombasa
(Portuguese) Mozambique	Lourenco Marques
The Republic of South Africa	Gauton
	E. London
	Port Elizabeth
Thailand	Kantang
	Bangkok
	Phuket
	Songkhro
	Mahachuli
Indonesia	Bilung
	Sutung
	Andon
	Jakarta
	Boti
Sri Lanka	Colombo
The Philippines	Davao
	Manila
Approved overseas fishery bases	
2. The Pacific Ocean (12 ports)	
Country	Name of port
(French) Tahiti	Tahiti
(America) Samoa	E. Samoa
The Republic of Fiji	Suva
The Republic of Vanuatu	Port Vila
(America) Guam	Guam
Papea (Trusteeship of America)	Koror
Peru	Callao
Micronesia	Tiao
	Chuuk
	Pohnpei
	Norone
The Republic of Ecuador	Guayaquil

Figure 18-3 Overseas Bases - Atlantic

18.4.1 Competitive intelligence aspects of overseas bases

It is also Taiwanese government policy to appoint Taiwanese companies or individuals to act as agents for the government in these overseas base ports. Such companies and individuals provide competitive intelligence on operating conditions in the country and adjacent region. There are also technical fisheries sector specialists in all overseas bases or ports. Figure 18- 4 shows that Taiwan has a robust global framework for gathering competitive, commercial and negotiations intelligence despite the absence of formal diplomatic or political relations with the rest of the world.



Figure 18- 4 - Taiwan's Overseas Base System

18.5 | Regulatory framework governing distant water fishing

Taiwan has an extensive set of rules regulating the grant of licenses to engage in distant-water fishing. Distant-water fishing is called directed fishing. It is controlled under Articles 36-40 of the Taiwanese Fisheries Act 2002 and also by three other regulations. Permission is required before an entity can engage in distant-water fishing. The key regulations are:

- Regulations for External Fisheries Cooperation;
- Regulations on the Management of Fishing Vessels and Crew in Foreign Fishing Bases;
- Regulations for Fishing and Vessel Building Permit and Fishery License Issue.

18.5.1 Institutional arrangements

The top of the structure is occupied by the Council of Agriculture, Executive Yuan, Government of the Republic of China. There is also a new Taiwan Fisheries Agency replacing the Taiwan Fisheries Bureau. The principal framework for co-ordinating foreign fisheries issues including access issues is the Overseas Fisheries Development Council of the Republic of China (OFDC). The OFDC was founded on November 30, 1989 as a private, non-profit organization endowed with funds donated by both the government and private sector. It is governed by a Board of Director which comprises 17-19 members including government officials, industry leaders and academics. The Board of Supervisors comprising 3-5 members is a watchdog body. OFDC has three divisions: Operations, Information and Administration. OFDC has three main committees:

- Fisheries Cooperation Committee;
- Dispute Solving and Legal Affairs Committee;
- Fisheries Information and International Organization Committee;

OFDC engages in the following activities:

- research, planning, evaluation and facilitation of overseas fisheries cooperation;
- consulting services on reaching overseas fisheries cooperation and access to new fishing grounds;
- financial support to the industry;
- legal and financial assistance to fishermen and fishing vessels in the cases of detention, fisheries disputes and marine distress;
- collection and categorization of fisheries statistics;
- provision of domestic and international information on general fisheries statistics, laws and regulations;
- assisting domestic aquaculture operators in reaching suitable aquaculture investments in the overseas market;
- promoting the exchange of experience and information in fisheries with foreign fisheries authorities and domestic fisheries organizations;
- fisheries related assignments as commissioned by the government.

18.5.2 Private sector organisations

Companies engaged in distant-water fishing are organised through four trade associations

- Kaohsiung Fishing Boats Commercial Guild (KFBCG);
- Keelung Fishing Boats Commercial Guild (KEFBCG);
- Taiwan Deep Sea Squid Boat-owners & Exporters Association;
- Taiwan Deep Sea Tuna Boat-owners & Exporters Association.

The KFCBG is the oldest organisation. Taiwan Deep Sea Tuna Boat Owners and Exporters Association is of most concern to Coastal States. Its membership is confined to companies registered in Chinese Taipei, which catch tunas, billfish and sharks in distant waters to export – currently 569 members with 629 vessels including purse seiners.

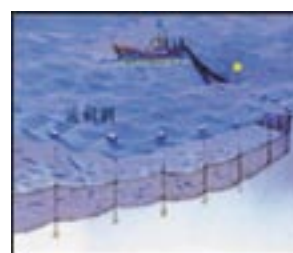


Figure 18-2 Drifting gill net operation - Anon

18.5.3 Civil Society and NGOs

There are no effective NGOs in the fisheries or environment sector.

18.6 | Final market destination for catch

The domestic market consumes squid, mackerel and shark with tuna consumption rapidly increasing. However the most lucrative sector is supply of sashimi tuna to the only significant global market for sashimi tuna - Japan. Taiwan supplies at least 30% of the Japanese sashimi tuna market, with Japan taking close to 99% of all high quality Taiwanese tuna catch. Supply is delivered through ultra-low temperature (ULT) vessels, Taiwanese fleets being the principal suppliers of deep frozen tuna (principally yellow-fin and big-eye) followed by Korea. As Figure 18-4 shows, the Taiwanese offshore bases system further facilitates daily shipments from around the world, including from the African Atlantic. Currently Japan is the largest customer in terms of value (62%) for all Taiwanese catch, followed by US, Thailand, Hong Kong and Singapore. Lower quality or non-sashimi catch is sent to canneries in Thailand, American Samoa and elsewhere.

More negatively, Taiwan is clearly highly dependent on the Japanese market with a quota system in place to manage the quantity of Taiwanese product entering the market. A structural reason for this dependence is the fact that there is (1) no significant tuna canning capacity in Taiwan; (2) no significant independent storage capacity. With no strong alternative outlets, Taiwanese tuna fleets are highly dependent on price movements in the Japanese market an issue which may underpin the high degree of IUU fishing by Taiwanese fleets. Taiwanese ULT sashimi tuna longliners are also increasingly active in the higher value Bluefin Tuna supply chain to Japan, targeting Northern Bluefin tuna (NBT) in waters between Taiwan and the Philippines, in the Atlantic and in the Mediterranean. The much more highly prized Southern bluefin tuna (SBT) is also increasingly targeted by longliners in the Indian Ocean, these vessels moving south after completing their fishing for albacore.¹¹²

¹¹² - Haward and Bergin, Taiwan's distant water fisheries, 36.

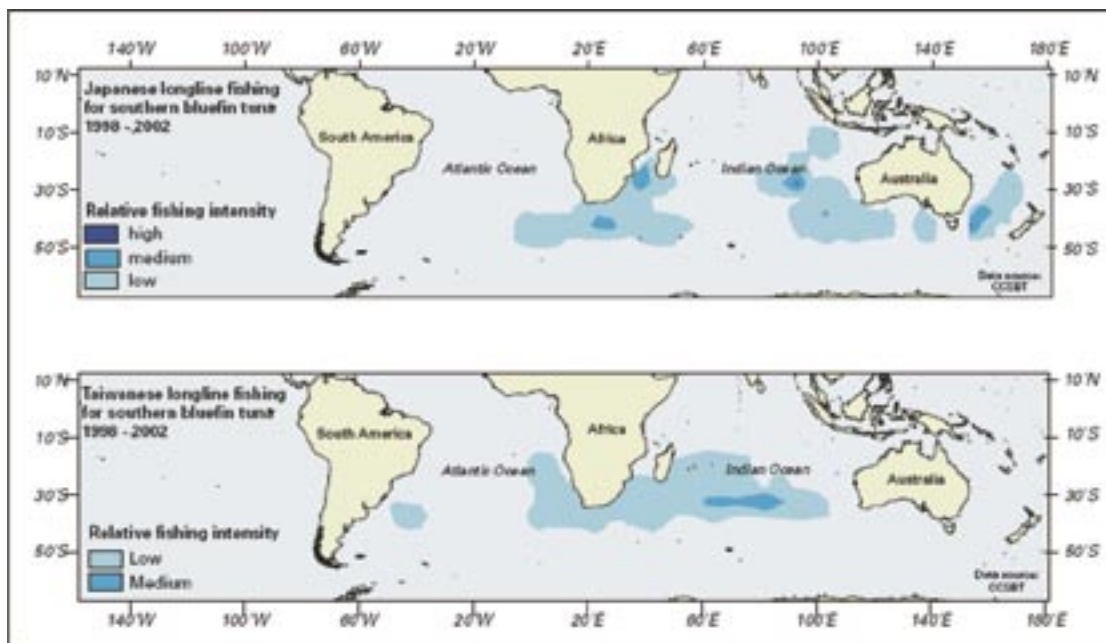


Figure 18-3 Taiwanese and Japanese fishing activity – Southern Bluefin Tuna

18.7 | Relations between processing and catching sectors

There is little information available in languages other than Chinese. Relations are managed through the various associations.

18.8 | Relationship between imports/tariff policies and access agreements

There is little information available in languages other than Chinese.

18.9 | Relationship between Access Agreements policy and development assistance policy¹¹³

There is an emerging link between the two although it is not as well developed as in Japan. Established in 1996-97, the International Cooperation and Development Fund (ICDF) is the body in charge of development assistance. It falls under the Taiwanese Ministry of Foreign Affairs. The ICDF provides:

- direct or indirect loans;
- direct or indirect investments;
- guarantees for investments or loans;
- grants in money or in kind;
- bilateral or multilateral technical cooperation.

¹¹³ - http://www.icdf.org.tw/english/e_about_bg.asp

The ICDF has a strong fisheries focus due to its history. It grew out of the amalgamation of a number of earlier organisations, all of which had focused on agricultural and fisheries missions in developing nations. The Taiwan ICDF's purpose is to strengthen international cooperation and enhance foreign relations by promoting economic development, social progress and the welfare of the people in partner nations around the world. The Taiwan ICDF primarily assists close political allies of Taiwan in Central and South America, the East Caribbean, Africa and the Asia Pacific region. Taiwan uses fisheries development assistance to reward those countries which are prepared to extend recognition. However Chinese development assistance now probably out-competes ICDF assistance.¹¹⁴

18.10 | Labour issues in the fisheries sector

Taiwanese companies use a very high level of foreign crews. A large number of them come from China through the Fishery Labour Co-operation Co-ordination Committee for the Two Sides of the Straits. Others come from all over Asia, including Indonesia, Bangladesh and the Philippines. The ability to source low-cost labour from China is the principal competitive advantage of Taiwanese fleets and the main source of their profitability compared to Japanese and Korean fleets.

18.11 | Global regulatory patrols

The first pilot scientific observers program on distant water tuna fisheries was launched in 2001. In 2004, 9 observers were recruited, 4 of them were assigned to missions in Atlantic Ocean, 3 in the Indian Ocean and 2 in the Pacific Ocean, providing over 1,600 observed days.

18.12 | Flag of convenience and IUU issues

An extensive report released by Greenpeace International in 2001¹¹⁵ refers to data obtained from Lloyd's Maritime Information Services (1999) regarding countries of vessel beneficial ownership. The Lloyd's data list the top 10 countries for beneficial ownership of FOC flagged vessels as:

1. Taiwan with 169 vessels.
2. European Union with 168 vessels (that is Spain/Canary Islands (116), Portugal (12), Greece (11), UK (10), Denmark (4), France (4), Ireland (4), Netherlands (3), Italy (2) and Sweden (1).
3. Belize with 145 vessels.
4. Panama with 121 vessels.
5. Honduras with 109 vessels.
6. Singapore with 62 vessels.
7. South Korea with 52 vessels.
8. Japan with 41 vessels.
9. China with 37 vessels and
10. Equatorial Guinea with 36 vessels.

A recent authoritative 2005 report¹¹⁶ confirms both the use of FOC vessels and also a high degree of contribution to IUU fishing by Taiwanese fleets.

In the medium-term Taiwanese fleets and countries which have access agreements with Taiwan can expect to come under increasing pressure in the EU and the US on the IUU issue and the conditions of work of crew on Taiwanese vessels. Taiwanese exports to Japan may also come under restriction for a mixture of IUU and marketsaturation issues.

¹¹⁴ - On the sharp increase in Chinese development assistance and investment, see Harry Broadman, *Africa's Silk Road: China and India's New Economic Frontier* (World Bank 2006)

¹¹⁵ - Greenpeace International, "Pirate Fishing Plundering the Oceans" February, 2001 at http://www.greenpeace.org/_oceans/reports/pirateen.pdf.

¹¹⁶ - See Gianni, M. and Simpson, W. (2005). *The Changing Nature of High Seas Fishing: how flags of convenience provide cover for illegal, unreported and unregulated fishing*. Australian Department of Agriculture, Fisheries and Forestry, the International Transport Workers' Federation, and WWF International.

18.13 | Traceability

Taiwan has no traceability laws. Country of origin labelling applies to Taiwanese catch in the EU, Japan and the US. Vessels from Taiwan would be significantly affected by country of origin labelling as would catch caught by Taiwanese vessels under access agreements.

Table 18-1 Listing of Globally Active Firms

Name			
Delta Navigation	Hong Rong Fishery	Ching Yow Fishery	Yung Hau Fishery
Inter Burgo	Trans Ocean Maritime	Esco Fisheries	Yong Man Fishery
Trans Ocean Maritime	Hai Hao Fishery	Intermiso	Hain Cheng
Chien Yu Fishery	Sunfish Maritime	Young Bok Fishery	Chun Ti
Chang Wu Fishery	Oriental Pesca	Hae Woo	Panama Fresh Fishery
Ching Cheng Wen Fishery	Bowling Maritime	Han Nam Fishery	Haein Au Fishery
Wong He	Belle Solaar	Taerin	Tai Far Fishery
Yoido Trading	Her Man Fishery	Liberiana	Luxuriant Fishery
Chyi Yun	Penaranda Fishery	Hai Fa Fishery	Sung Hui
Chin You Wen	Fu Lien Fishery	Jef Fa Fishery	Fa Chun Ocean
Sheng Cs	Forsban Trading	Yung Han Fishery	Space Energy Fishery
Yung Shun Hsiang	Chin Yu Fishery	Tai Fu Fishery	Chun Ti
Der Wei Fishery	Ming Chieh Fishery	Tai Fan Fishery	Si Tao Fishery
Ming Yy Fishery	Kando Maritime	Chao K	Chen Chieh Fishery
Kwo Jeng Fishery	Jeng Ner	Tai Shyun Fishery	Cheng Chin Cheng
Komako	Kuang Hui Fishery	Lin Fa Fishery	Fishery
Liaoning Fishery	Min Yu Fishery	Tung Zhan Fishery	Cheng Yuang Fishery
Hae Woo	Grace Marine Fishery	Hwa Shin Shang Marine	Song Man Fishery
Marven Fishery	Grande Fishery	Pai Haing Fishery	Chaio Chun Fishery
Comercial	Ocean Fresh Fishery	Lubmain International	Chieh Wei Fishery
Magnucase Agencia	Chen Chia Fishery	Yu Pao Fishery	Chiehyong Fishery
	Pi Chung Fishery	Yong Chun Fishery	Chin Hang Fishery

Figure 18-3
Current key agreements between Taiwan and Coastal States 2003

Cooperating State	Type of Boat	Cooperation Modality	Nb of Vessels
Argentina	squid jigger	Charter Agreement	1
Brazil	fresh tuna vessel	Charter Agreement	2
Ascension Island	frozen sashimi tuna vessel	Access Agreement	10
British Indian Ocean Territory	frozen sashimi tuna vessel	Access Agreement	31
Myanmar	fresh tuna vessel	Access Agreement	10
Falkland Islands	squid jigger	Access Agreement	38
Federated States of Micronesia	purse seiner	Access Agreement	36
	fresh tuna vessel	Charter Agreement	80
Fiji	fresh tuna vessel	Charter Agreement	9
		Joint Venture	13
India	frozen sashimi tuna vessel	Joint Venture	13
Indonesia	trawler	Joint Venture	80
	fresh tuna vessel	Joint Venture	120
Kenya	frozen sashimi tuna vessel	Access Agreement	12

Kiribati	purse seiner	Access Agreement	36
	frozen sashimi tuna vessel and fresh tuna vessel	Access Agreement	17
Madagascar	frozen sashimi tuna vessel	Access Agreement	1
Maldives	frozen sashimi tuna vessel	Access Agreement	12
Marshall Islands	purse seiner	Access Agreement	36
Mauritius	albacore vessel and frozen sashimi tuna vessel	Access Agreement	30
Mozambique	albacore vessel and frozen sashimi tuna vessel	Access Agreement	4
Nauru	purse seiner	Access Agreement	36
Oman	frozen sashimi tuna vessel	Access Agreement	25
Palau	fresh tuna vessel	Charter Agreement	58
Papua New Guinea	purse seiner	Access Agreement	36
	fresh tuna vessel	Joint Venture	12
Russia	squid jigger	Charter Agreement	5
		Joint Venture	1
Seychelles	frozen sashimi tuna vessel	Access Agreement	117
Solomon Islands	purse seiner	Access Agreement	36
	albacore vessel	Access Agreement	3
Somalia	frozen sashimi tuna vessel	Access Agreement	62
Tanzania	frozen sashimi tuna vessel	Access Agreement	60
Vanuatu	albacore and fresh tuna vessel	Access Agreement	28

Chapter 19

Access demandeur profile - China

19.1 | Historical Background and Global Presence

Over the past three decades, China's distant water fisheries industry has become an important part of its fisheries. China encourages its fishing companies to undertake joint ventures and has arrangements and agreements with 38 states. In 2002, China had more than 1700 distant water fishing vessels fishing in the Pacific, Indian and Atlantic Oceans. Taking both workers at sea and at home into account in the 2000- 2005 period, China had 27,000 fishery workers catching and processing fish valued at US\$5 billion.

Distant water fishing only started in March 1985, when China through the China National Fisheries (Group) Corporation (CNFC) sent its first Distant Water Fleet (DWF) to West Africa targeting Gabon, Gambia, Guinée, Guinea-Bissau, Mauritania, Morocco, Senegal and Sierra Leone. Operations are now global:

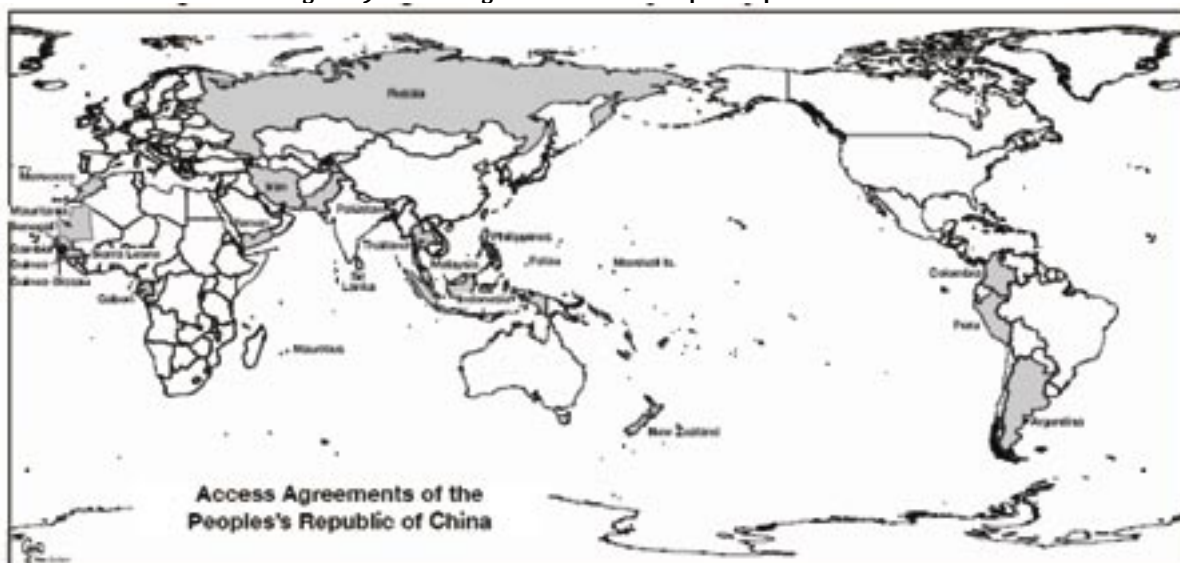
- Argentina (squid);
- Malaysia, Indonesia, the Philippines, Marshall Islands, Palau and Mauritius (tuna)'
- New Zealand (squid);
- Pakistan (demersal fishes);
- Iran, Sri Lanka, Columbia (tuna);
- Peru, (tuna);
- Russia (demersals, incl. pollock);
- Thailand and Yemen (squid).

Moreover, a high sea fishing fleet operates in the North Pacific (squid), the Indian Ocean and Central Western Atlantic. Overall, by 1998, China had over 1,200 distantwater fishing vessels.

Box 19-1 Chapter 19 Highlights

- Historical background of Chinese distant water fisheries;
- The importance of fisheries access agreements to China, and strategic imperatives driving access agreements policy;
- Regulatory framework governing distant water fishing- institutional arrangements;
- Private sector companies and orientation/catch focus of Chinese fleets.

Figure 19-1 Access agreements of the People's Republic of China



19.2 | Role of access agreements in high level foreign policy and diplomacy

Access agreements policy is one area where from time to time the political conflict between China and Taiwan emerges. China will not sign an access agreement with a country which has fisheries relations with Taiwan at State to State level. Access agreements are clearly seen as part of China's global maritime power status.

19.2.1 Strategic imperatives driving access agreements policy¹¹⁷

For more than a decade, developmental attention has been focused more on distantwater fishing than on coastal and inshore fisheries. This is because distant water fishing is a key way of reducing pressure on offshore and adjacent seas which have been fished for centuries. The other option is aquaculture but this produces a limited variety of species. Adjacent offshore areas have also become joint fishing zones under bilateral agreements between China and its maritime neighbours.

19.3 | Regulatory framework

The main government organisation is the Ministry of Agriculture. The operational agency is the Fisheries Management Bureau (FMB) There is a detailed set of rules governing distant-water fishing. These include:

- Circular on Enhancement of Offshore Fishing Vessels issued by the MOA in November 1994;
- Circular on the Issuance of Nationality Certificate to Distant Water Fishing Vessels (adopted by MOA in 1993 and amended in 1997);
- Regulations of the PRC on the Registration of Fishing Vessels (adopted by MOA in 1996, amended in 1997);
- Circular on Further Enhancement and Control over Distant Water Fishing Vessels (circulated by FMB in 1998);
- Regulations on the Inspection and Management of Distant Water Fishing Vessels (adopted by MOA in 1999);
- Urgent Circular on Firm Control and Management of Distant Water Fishing Vessels (circulated by FMB in 1999);
- Regulations of the PRC on the Inspection of Fishing Vessels (adopted by the State Council in 2003);
- Regulations on Distant Water Fisheries (adopted by MOA in 2003).

19.4 | Private sector

There is strictly speaking no real private sector in China's fisheries. The China Fisheries Association (Distant Water Fisheries Branch) is the organising body for distant-water fleets. It includes large State-owned enterprises, enterprises associated with the regions and municipalities and other entities. Its objective is to strengthen the self-regulation of the distant water fisheries industry and thereby contribute to promote sustainable development of the distant water fishing industry of China. Companies operating deep sea tuna longline fishing are the main members - 118 companies.

The large Chinese companies are extremely large. An example is the China National Fisheries (Group) Corporation (CNFC). CNFC has 14 wholly-owned enterprises:

- 4 companies specialized in marine fishing;
- 6 specialized in fishing industry (fishing vessel building, fishing machine and equipment manufacturing);
- 4 specialized in fisheries trades and one specialized in harbor engineering.

CNFC has more than 50 subsidiaries or representative offices overseas, including: Las Palmas; Madrid; Agadir; Dakar-Senegal;

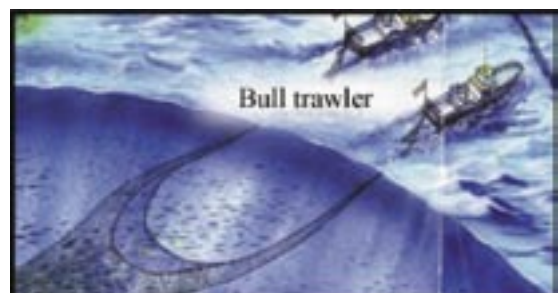


Figure 19-2 Bull Trawlers

117 - See generally, Pauly - <http://www.seaaroundus.org/report/china/fullchina.pdf#search=%22Map%20Distribution%20Republic%20of%20China%20Distant%20Water%20Fisheries%20%22> at 5

Guinea Bissau; Guinea; Sierra Leone; Ghana; Gabon; Nigeria; India; Yemen; Saudi Arabia; Hong Kong; Australia CNFC has total assets of RMB 7.7 billion. CNFC has over 500 vessels (trawlers, long-liners, reefers and bunker service vessels) operating in the Atlantic, Indian Ocean, Arabian Sea, Pacific Ocean and the Mediterranean Sea with have an annual fish harvest of about 400 000 metric tons. CNFC is the group owner of CNFC Overseas Fishery Corporation (Yantai), CNFC International Fisheries Corporation Ltd, China International Fisheries Hong Kong, China Resources Enterprise, China International Fisheries Corporation (CIFIC). CNFC has factoris in Dakar and Nouahdibou with approval to export to the EU. Other leading companies include:

- Guandong General Deep-Sea Fisheries Company;
- Guandong Nanyang Fishery Company;
- Shandong Group Fishery Company;
- Zhangjiang Deep Sea Fisheries Development Company;
- Ningbo Deep Sea Fishery Company;
- Guangxi Beihai Deep Sea Fisheries Company;
- Zhoushan Marine Fisheries Company;
- Fujian Deep Sea Group Fisheries Company;

In 2002-2003, China had 75 officially approved distant water fishing enterprises.¹¹⁸

19.5 | Civil society and NGOs

There are no effective NGOs in the sector.

19.6 | Orientation and catch focus of Chinese fleets¹¹⁹

In 1999, China's total catch from distant water fisheries was 899,000 tonnes with the following composition:

- tuna - 190,000 tonnes - 2.1%;
- squid 179,000 tonnes -19.9%;
- bottom trawling - 78%.

In terms of value, returns were US\$5.2 billion of which tuna was only US\$0.08 billion and squid US\$0.15 billion. The rest was taken up by bottom-trawling. China's tuna catch of only 2% of overall totals compares unfavourably with the statistics for Japan (tuna is 40% of total distant-water catch) and Korea (tuna is 30% of total distant-water catch). The Chinese fleet is also dominated (95%) by small vessels capable of operating only in waters above the continental shelf rather than on the high seas proper. As a consequence, China's bottom trawl fisheries are often in direct competition with Coastal State domestic fleets as both fleets generally deploy close to the coastline. Additionally, 90% of the larger boats designed for high sea fishing are second-hand vessels over 18 years old, and are thus prone to malfunction and require frequent repairs. As an expert on Chinese fisheries recently put it:



Figure 20-3 Otter Trawlers

Chinese shipyards have not yet presently mastered the construction of modern long liners and seiners with speed, deck machinery and freezing capacities suitable for internationally competitive tuna fishing operations.¹²⁰

There has not yet been a massive capital-intensive effort to retool Chinese fleets. It is however a possibility.

¹¹⁸ - see MOA, The List of Qualified Distant Water Fisheries Enterprises in 2003, available from <http://www.cnfm.gov.cn/info/display.asp?id¼376> (in Chinese)

¹¹⁹ - See generally, Guifang (Julia) Xue, China's Distant Water Fisheries and Its Response to Flag State Responsibilities 30 Marine Policy 651-658 (2006) 652-655 for this description.

¹²⁰ - Guifang (Julia) Xue, China's Distant Water Fisheries and Its Response to Flag State Responsibilities 30 Marine Policy 651-658 (2006) 652-655.

19.7 | Final market destination for catches

Catch from Chinese fleets is very highly traded. A significant portion is also returned to China. The EU and US markets are targets of interest. Supply to African countries is also practiced for lower quality and value species. Singapore, Hong Kong and other places with large Chinese populations are also serviced.

19.8 | Relations between processing and catching sectors

There is no material available in English or French.

19.9 | Relationship between imports/tariff policies and access agreements policy

There is no material available in English or French.

19.10 | Relationship between access agreements policy and development assistance policy

There is no material available in English or French.

19.11 | Flag of Convenience and IUU Issues

There is very little information on this issue.

19.12 | References and Further Information

There is little information available in languages other than Chinese. The most important and useful recent work is: Guifang (Julia) Xue, "China's Distant Water Fisheries and Its Response to Flag State Responsibilities" *30 Marine Policy* 651-658 (2006).

There is however a large amount of information available in Chinese

Information Net of Ministry of Agriculture of China	http://www.argi.gov.cn
Chinese Agricultural Technical Information Service System	http://www.caas.net.cn
National Fisheries Net	http://www.sino-fishery.com
Chinese Fisheries Technical Information Net (Chinese Academy of Fisheries Science)	http://www.cafs.ac.cn
Chinese Fisheries Society	http://www.fisheries.moa.gov.cn
Chinese Fisheries Net (Shanghai Fisheries University)	http://www.china-fishery.net http://www.fisheries.com.cn
Chinese Fisheries Information Net (Chinese Fishery)	http://www.ifishery.com.cn E-mail: magazine@ifishery.com
Chinese Fishery Net	http://www.china-fish.com
Chinese Fisheries News Net	http://www.fishery.online.sh.cn http://www.china-fisheries.org
Freshwater Fisheries Research Centre of Chinese Academy of Fisheries Science	http://www.ffrc.wx.net.cn
Chinese Fisheries Information Net (Scientific Fish Culture)	http://www.fish.net.cn
Fishery Machinery and Instruction Research Institute of Chinese Academy of Fisheries Science	http://www.fmiri.com
South China Sea Fisheries Research Institute of Chinese Academy of Fisheries Science	http://www.scsio.ac.cn
Animal Research Institute of Chinese Science Academy	http://www.ioz.ac.cn
Oceanic Research Institute of Chinese Science Academy	http://www.qdio.ac.cn
Aquatic Living Research Institute of Chinese Science Academy	http://www.ihb.ac.cn
Chinese Marine Information Net	http://http://www.nmdis.gov.cn
Shanghai Fisheries University	http://www.shfu.edu.cn
Daliang Fisheries College	http://www.dmp.com.cn
Qingdao Ocean University	http://www.ouqd.edu.cn
Zhanjiang Ocean University	http://www.zjou.edu.cn
Chinese Agriculture University	http://www.cau.edu.cn
South-West China Agriculture University	http://www.swau.edu.cn
Middle China Agriculture University	http://www.hzau.edu.cn
Shandong Agriculture University	http://www.sdau.edu.cn
Nanjing Agriculture University	http://www.njau.edu.cn
Hebei Agriculture University	http://www.hebau.edu.cn
Fujian Agriculture University	http://www.fjau.cn
Hubei Agriculture College	http://www.hbnxy.org.cn
Xiamen University	http://www.xmu.edu.cn
Zhongshan University	http://www.zsu.edu.cn

Jimei University	http://www.jmu.edu.cn
South China Teachers University	http://www.scnu.edu.cn
Fujian Fisheries Research Institute	http://www.fjscs.ac.cn
Weihai Fisheries Research Institute	http://www.yuwangaquatic.com
National Aquatic Product Quality Superintendence and Inspection Centre	http://www.china-fish.net.cn
Chinese Fishing Vessel Inspection and Fishing Engine Information Net	http://www.chinaaycj.org
Chinese Fisheries Market Information Net	http://www.argi.gov.cn-fish
Dalian Marine Fishing Company	http://www.lfg.com.cn

Chapter 20

Access Demandeur Profile

The European Union

20.1 | Introduction

The profile of the EU offered in this Chapter is a short one as there is now an abundance of material on the EU's access agreements. In particular, the IUCN-SRFC access agreements website accompanying this Manual contains a large number of pertinent documents which every Coastal State negotiator should become familiar with.

Accordingly, only a brief description of the EU's system is provided. Coastal State negotiators and policy makers are invited to make intensive use of the resources that are now widely available through the website. Boxes 20-2 to 20-4 and Section 20.7 below provide further guidance.

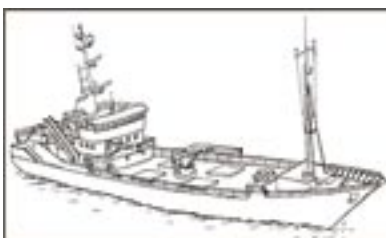


Figure 20-1 European seiner - FIGIS/FAO

Box 20-1 Chapter 20 Highlights

Key themes of this Chapter are:

- The current framework for EU Fisheries Partnership Agreements
- The interaction of access agreements with the EU's Common Fisheries Policy objectives;
- Historical background of EU access agreements
- An introductory overview of the EU agreements system;
- Extensive references for further research on the EU system using the IUCN/SRFC Website

20.2 | Current EU approach to access agreements

The EU is currently negotiating fisheries Partnership Agreements (FPAs) with interested States. The framework for negotiating FPAs as well as the preparatory procedures are set out in full at Annexes II and III to this Manual. Before changing to the FPA approach, the EU maintained a system of Compensation for Access Agreements (CFA) for resources in tropical waters and a system of reciprocal access for resources in temperate waters. Under the agreements with Greenland and Iceland however, monetary compensation and trade issues were also involved.

Another type of agreement based on joint ventures was also attempted with Argentina. The focus however is now on the FPA as a new approach to agreements.

Box 20-2 Information On ACPEU

Fisheries Agreements - Web sites

- European Commission - English
http://ec.europa.eu/fisheries/cfp/external_relations/bilateral_agreements_en.htm
- European Commission - French
http://ec.europa.eu/fisheries/cfp/external_relations/bilateral_agreements_fr.htm
- Agritrade web portal: ACP-EU fisheries relations
<http://agritrade.cta.int/fisheries/agreements/index.htm>
- Coalition for Fair Fisheries Arrangements
<http://www.cape-cffa.org/>

20.3 | EU Rationale for access agreements

The EU pursues access agreements to

- provide resources for the EU market (consumers and processors);
- to maintain employment in areas dependent on fishing.

Until 2004, access agreements were also officially used to transfer surplus capacity from the EU's waters to the waters of third countries. Currently it appears this is now no longer EU policy.

Box 20 – 3 Key Policy Document on FPAs

Council Conclusions on an Integrated Framework for Fisheries Partnership Agreements with Third Countries. Brussels, 19.07.04, final Text at Annexe III – this Manual

20.4 | Contribution of access agreements to total EU market needs for key species

Figure 20-2 Access agreements contribution to overall EU market supply 1993-1997
IFREMER Evaluation 1999

Contribution in volume		Contribution in value		% supply of market		Demographic weighting* EU	
Species	% of total	Species	% of total	Species	% of total	Species	% of total
Sardine	35,5 %	Southern shrimp	21%	Sardine	10-20%	Cod	73%
Sardinella	16,5%	Hake	20,4%	Octopus	>12%	Redfish	56%
Cod	9,7%	Octopus	17,5%	Redfish	9%	Haddock	53%
Octopus	7,4%	Cod	9,6%	Demersal	7%	Saithe	53%
Hake	6,8%	Sardine	8,6	Southern shrimp	5,5%	Halibut	48%
Mackerel	6,2%	Redfish	4,8%	Mackerel	5%	Demersal	31%
Redfish	4,4%	Demersal	4,5%	Cuttlefish	< 5%	Cuttlefish	31%
Southern shrimp	3,8%	Cuttlefish	2,9%	Halibut	< 5%	Southern shrimp	28%
Demersal	2,7%	Northern shrimp	2,5%	Hake	4%	Octopus	26%
Cuttlefish	1,7%	Halibut	1,5%	Cod	3%	Squid	26%
Saithe	1,4%	Mackerel	1,3%	Saithe	2%	Salmon	26%
Haddock	1%	Salmon	1%	Haddock	2%	Crab	13%
Squid	0,9%	Squid	0,8%	Crab	1%	Hake	13%
Halibut	0,8%	Saithe	0,7%	Northern shrimp	0%	Sardine	10%
Northern shrimp	0,4%	Haddock	0,7%	Herring	0%	Mackerel	8%
Herring	0,4%	Crab	0,2%	Salmon	0%	Northern shrimp	4%
Crab	0,2%	Herring	0,1%	Squid	0%	Herring	4%

* Demographic weighting: the index of the number of European consumers buying the species

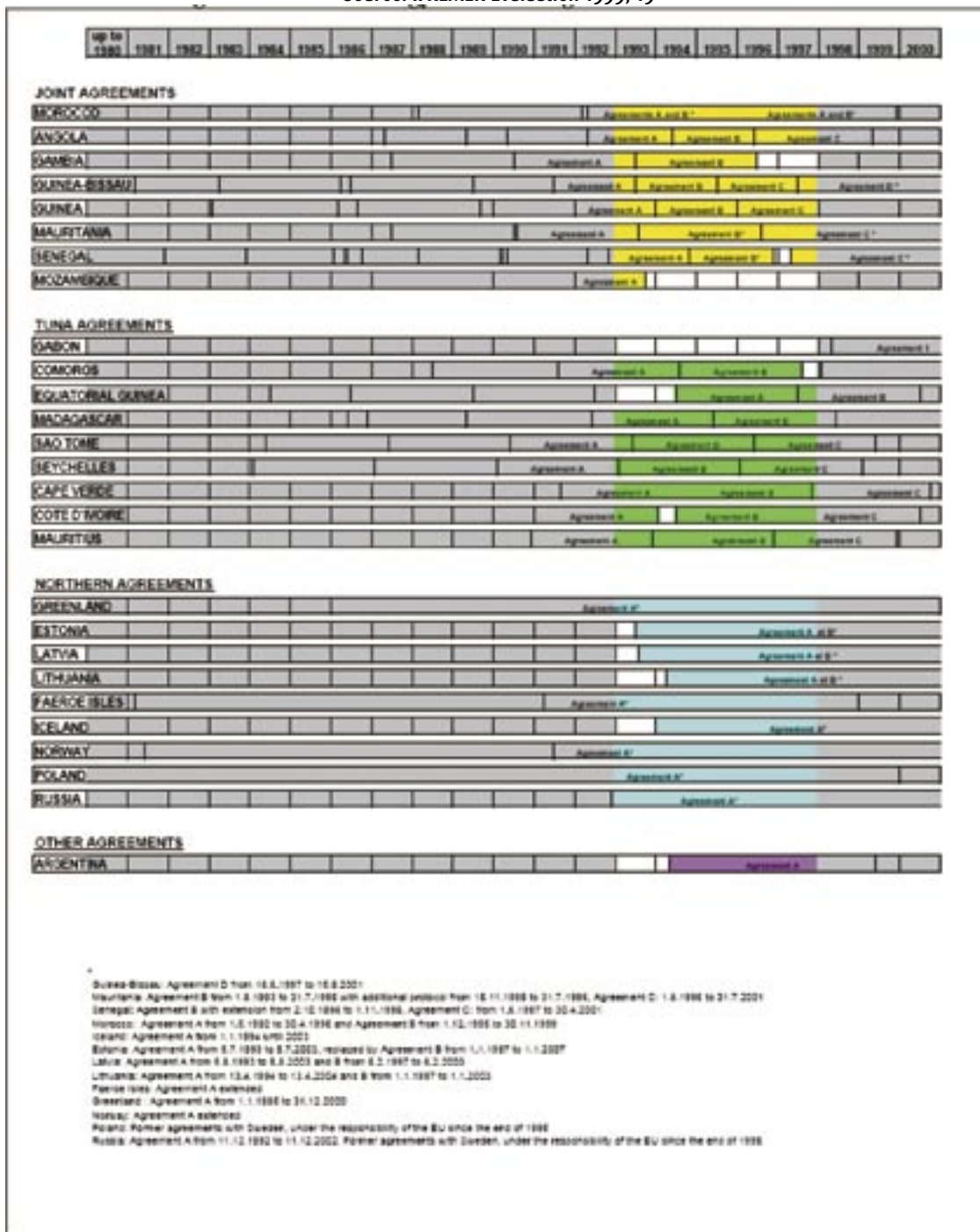
The table above shows the contribution of catch under access agreements to the EU market.

20.5 | The EU System in Overview

The history of the CFA approach is well known. It is summarised for each country involved by Figure 20-3.

Figure 20-3 Chronology of Access Agreements 1980-2000

Source: IFREMER Evaluation 1999, 19



Box 20-4 lists historical documents which provide a full picture of the CFA system Figure 20-4 also provides a useful map of how the EU fleet spread globally over the period from the 1970s to 1992. The current extent of agreements is illustrated by Figures 20-6 and 20-7. An overview of current EU commitments is provided by Figure 20-8. The next section briefly describes the Common Fisheries Policy (CFP)

20.6 | Access Agreements and the CFP

The Common Fisheries Policy (CFP) is an area where the EU has full powers and therefore acts for all the Member States in most matters. The CFP is based on Articles 32-38 of the EC Treaty and initially had the following objectives:

- to increase productivity,
- stabilise markets;
- ensure security of supply of fish resources;
- ensure reasonable fish prices to the consumer.

Over the years the following extra objectives have been added to the initial goals of the CFP:

- sustainable exploitation of resources;
- protection of fish stocks and the marine environment;
- food security and social cohesion;

The CFP operates at various levels (Figure 20-6 shows the relationship between the CFP and access agreements)

- conservation and sustainable management of fish stocks to protect fishery resources – this is linked to access agreements because some States like Spain are restricted in what they can fish in the EU zone – access agreements are necessary to compensate them for giving up rights to fish in Europe;
- market organisation to match supply and demand – imports are often needed to supplement fish caught under access agreements;
- structural policy to help the fishing and fish farming industries adapt to changing conditions resources – structural policy operates through subsidies and monetary assistance, including monetary assistance to enter into joint ventures and exploratory voyages under access agreements;
- relations with non-Community countries and international organisations, through negotiation of access agreements and conservation measures for deepsea fishing – Figure 20-9 shows the internal EU system for negotiating agreements;
- enforcement of EU and Law of the Sea rules.

Box 20-4 - History of the EU CFA and FPA system

- Court of Auditors 2001/C 210/01 Special Report No 3/2001 concerning the Commission's management of the international fisheries agreements,
- together with the Commission's replies (2001)
- Cour des comptes 2001/C 210/01 Rapport spécial no 3/2001 relatif à la gestion par la Commission des accords internationaux de pêche, accompagné des réponses de la Commission (2001)
- IFREMER, (1999) Evaluation of the fisheries Agreements concluded by the European Community – English summary and full English text
- IFREMER, Etude Evaluation des Accords de Pêche Conclues Par La Communauté Européenne Rapport de Synthèse (1999) – French summary only

Figure 20 - 4 - E U global expansion

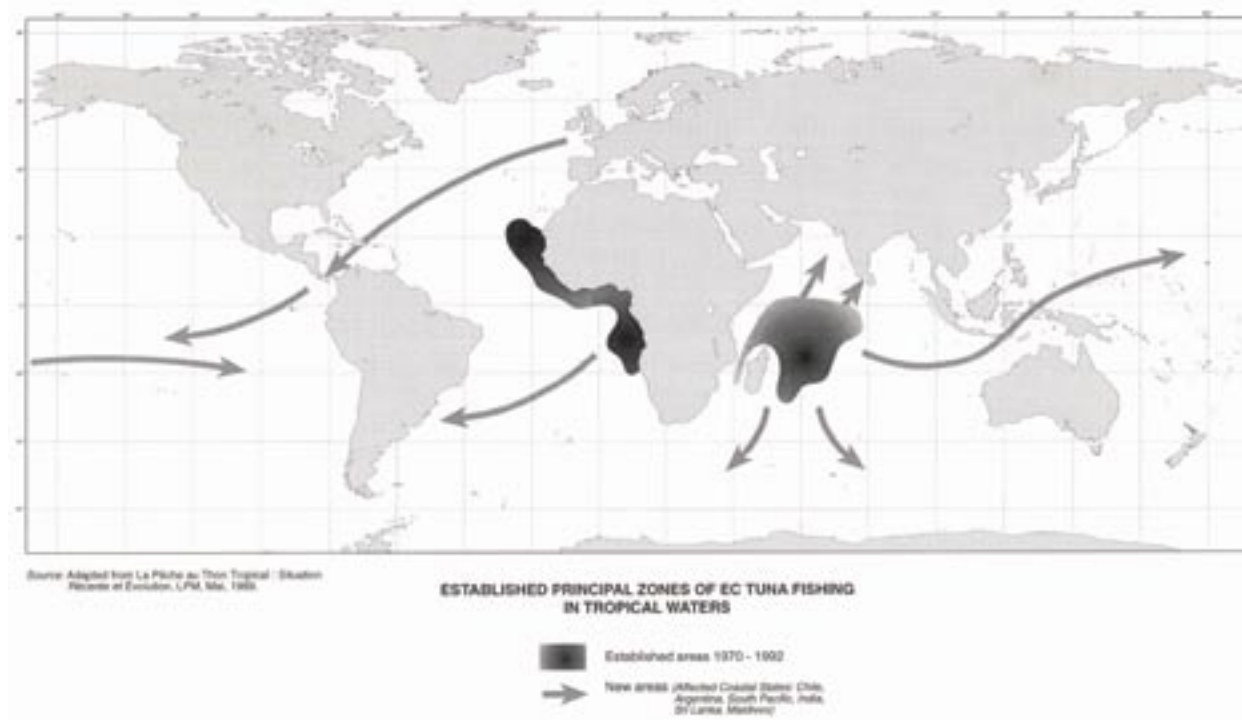


Figure 20-5 Interaction between CFP Sub-components and Access Agreements Regime

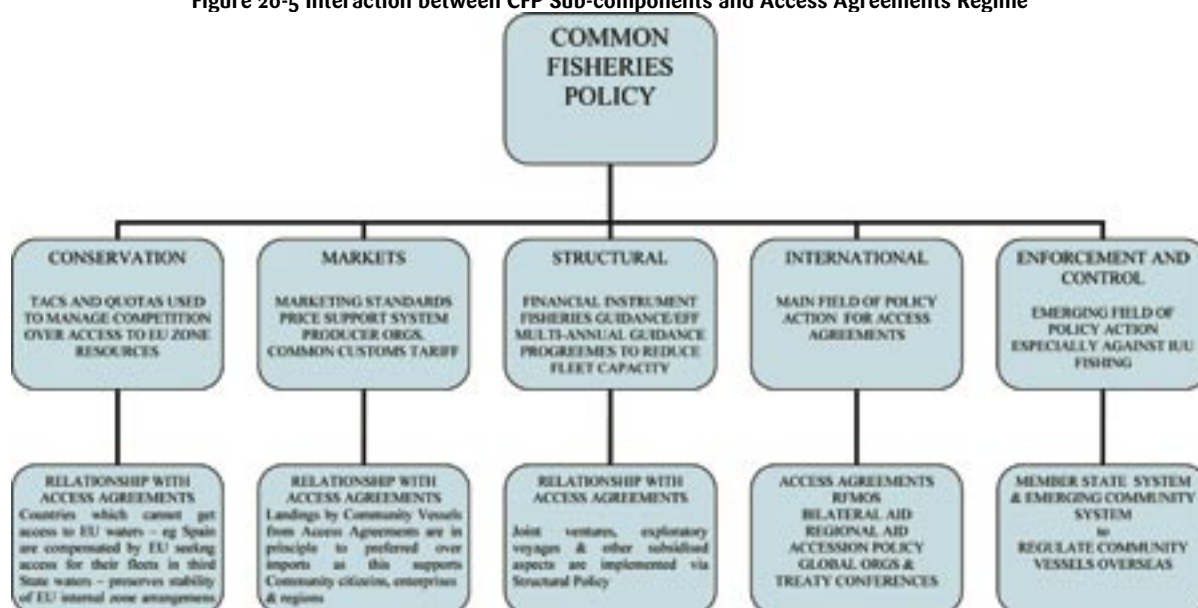


Figure 20-6 Pre -2005 Profile of EU Fisheries Access Agreements Policy Including Negotiating Mandates & Exploratory Talks

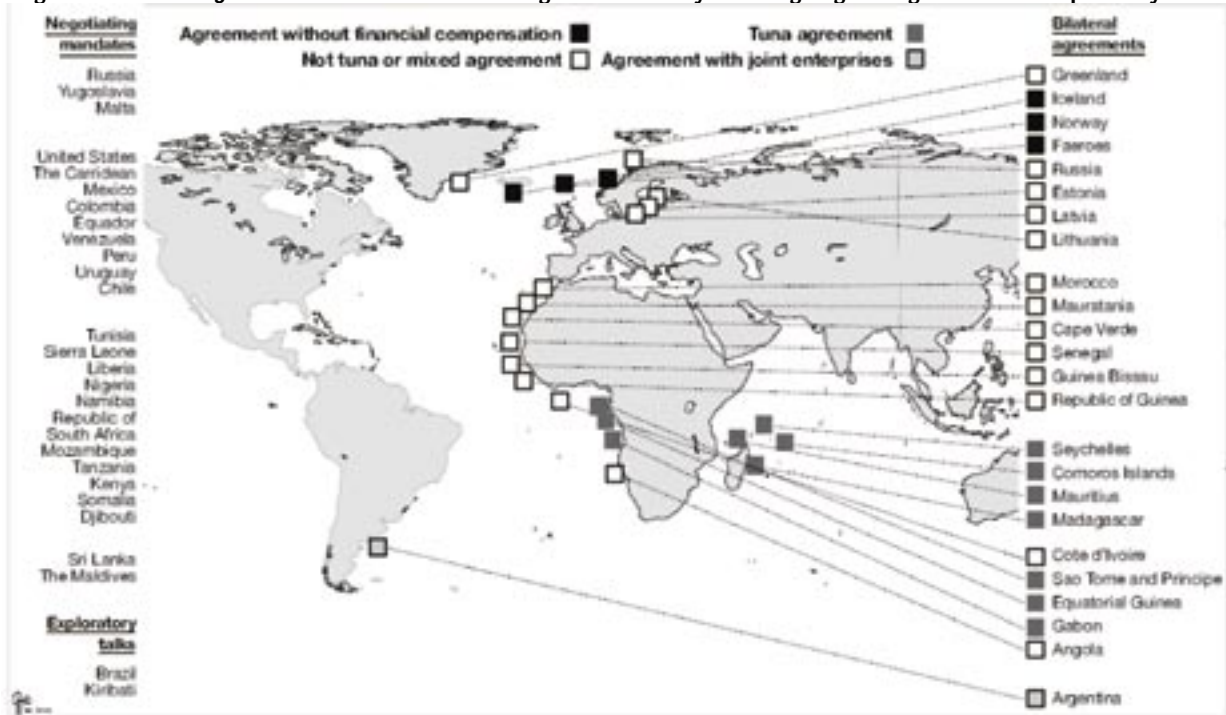


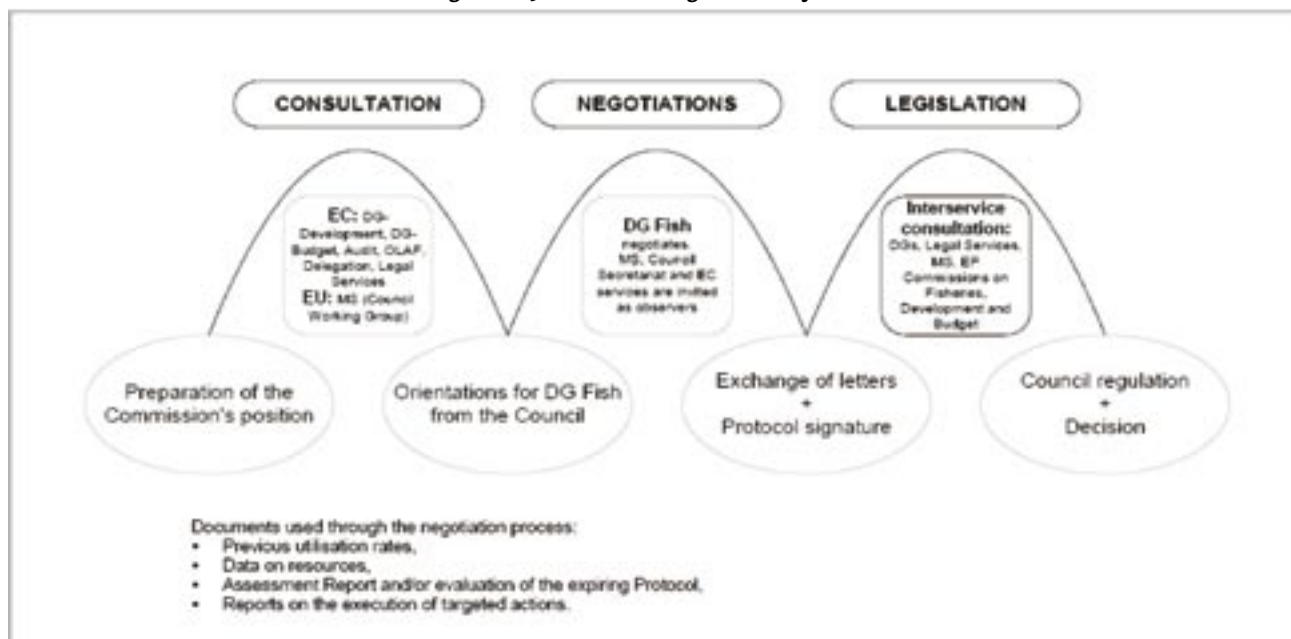
Figure 20-7 Profile of Fisheries Partnership Agreements - end 2005



Table 20 -8 Profile of Fisheries Partnership Agreements end 2005

Country	Period ¹	Fishing opportunities	Total Community Financial Contribution ² (€)	Percentage of fee devoted to conservation and related mesures (targeted actions)
Angola	No protocol in force			
Cape-Verde	01/07/2004 30/06/2005	630 gross registered tonnes for bottom longliners and 37 seiners, 62 surface longliners and 18 pole-and-line tuna vessels	680 000/year	41%
Comoros	01/01/2005 31/12/2010	40 seiners 17 surface longliners	390 000	60%
Côte d'Ivoire	01/07/2004 30/06/2007	1,300 gross registered tonnes for demersal species and 34 seiners, 11 surface longliners and 3 pole-and-line vessels for tuna fishing	€ 3 195 000 (€ 1 065 000/year)	100%
Gabon	03/12/2001 02/12/2005	Trawlers: 1 200 grt/month, averaged yearly 38 tuna seiners 26 surface longliners	€5 050 000 (€1 262 500/year)	70%
Gambia	No protocol in force			
Greenland	01/01/2001 31/12/2006	Redfish: 25 500 t Shrimp: 9 675 t Capelin: 7.7 % of the capelin TAC for the season Greenland halibut: 10 500 t Roundnose grenadier: 3 350 t Atlantic Halibut: 1 200 t Snowcrab: 1 000 t By-catches: 2 000 t (refers to the combined by-catch of cod, catfish, skate, ling and tusk)	€256 920 000 (€42 820 000/year)	26%
Guinea	01/01/2004 31/12/2008	2 500 grt/month for fish and cephalopods 1 500 grt/month for shrimps Tuna 34 seiners 14 pole-and-line vessels 9 surface longliners	€17 000 000 (€3 400 000/year) This amount may gradually be increased to €19 975 000 (€3 995 000/year) depending on increases in fishing possibilities.	41% in the first year with the possibility of a gradual increase to 44% in the last year.
Guinea-Bissau	16/06/2001 15/06/2004	Shrimps: 9 600 grt Fish/Cephal: 2 800 grt Tuna Seinners: 40 Pole-and-line/Longliners: 36	€51 000 000 (€10 000 000/year the first three years and €10 500 000 the last two years)	6,7%
	protocol changed for the period 16/06/04 15/06/06	Shrimps: 4 400 grt Fish/Cephal: 4 400 grt Tuna Seinners: 40 Pole-and-line/Longliners: 30	€44 520 000 (€10 000 000/year the first three years and €7 260 000 the last two years)	
Eq. Guinea	No protocol in force			
Kiribati	16/09/2003 15/09/2006	1st year Seiners: 6 Surface longliners: 12 Following years Seiners: 4 Surface longliners: 12	€ 1 378 000 (€ 546 000 for the first year and € 416 000 a year for the following years)	18% for the first year and 24% for the following years
Madagascar	01/01/2004 31/12/2006	40 seiners 40 surface longliners	€ 2 475 000 (€ 825 000/year)	61%
Mauritius	03/12/2003 02/12/2007	41 seiners and 49 surface longliners. Line fishing is set at 25 grt/month, averaged yearly	€ 1 950 000 (€ 487 500/year)	40%

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Figure 20-9 EU Internal Negotiations System¹²¹


20.7 | Further information available on the IUCN/SRFC Website

CSNTs are invited to consult the following documents:

- EU procedures for evaluations - Commission of the European Communities (CEC), Framework contract for performing evaluations, impact analyses and monitoring services in the context of fisheries partnership agreements (FPAs) concluded between the Community and non-member coastal states (2003) - English - Text Available On IUCN Fisheries Agreements Website
- EU procedures for evaluations - Commission of the European Communities (CEC) Evaluations, analyses d'impacts et de services de suivi dans le cadre d'APP ANNEXE 1 Description des aspects à couvrir dans les évaluations et les analyses d'impact (2003) - French - Text Available On IUCN Fisheries Agreements Website
- Studies and reports currently available on the IUCN fisheries agreements website
 - IFREMER, (1999) Evaluation of the fisheries Agreements concluded by the European Community - English summary and full English text
 - IFREMER, Etude Evaluation des Accords de Pêche Conclues Par La Communauté Européenne Rapport de Synthèse (1999) - French summary only
 - OCEANIC DEVELOPPEMENT, POSEIDON AQUATIC RESOURCE MANAGEMENT, LTD. & MEGAPESCA. The European Tuna Sector, Economic Situation, Prospects and Analysis of the impact of the liberalisation of trade. Final Report November 2005. (Summary and full text)
 - OCEANIC DEVELOPPEMENT, POSEIDON AQUATIC RESOURCE MANAGEMENT, LTD. & MEGAPESCA. La filière thonière européenne, bilan économique perspectives et analyse des impacts de la libéralisation des échanges (2005) (summary and full text)
 - Joseph Catanzano, Fisheries agreements and access rights with reference to the various situations in West Africa - conference paper - EU/ACP Fisheries Agreements towards a greater sustainability ACP Secretariat, Brussels, Belgium 7-9th April 2003

¹²¹ - Source: ADE, (2002) Evaluation of the Relationship between Country Programmes and Fisheries Agreements. Final Report. Brussels: European Commission, 42

- Ross Denton, Rules of origin in the fisheries sector – the ACP perspective - conference paper - EU/ACP Fisheries Agreements towards a greater sustainability ACP Secretariat, Brussels, Belgium 7-9th April 2003
- Béatrice Gorez and Brian O’Riordan, An Examination of Fisheries Relations between the European Union and ACP Countries - conference paper - EU/ACP Fisheries Agreements towards a greater sustainability ACP Secretariat, Brussels, Belgium 7-9th April 2003
- Roman Grynberg, Elements of an ACP-EU Framework Agreement on Fisheries Partnerships - conference paper - EU/ACP Fisheries Agreements towards a greater sustainability ACP Secretariat, Brussels, Belgium 7-9th April 2003
- Olivier Ledoux, Strengthening fishery products health conditions in ACP/OCT countries - conference paper - EU/ACP Fisheries Agreements towards a greater sustainability ACP Secretariat, Brussels, Belgium 7-9th April 2003
- ADE, (2002) Evaluation of the Relationship between Country Programmes and Fisheries Agreements. Final Report. Brussels: European Commission
- Commission of the European Community (CEC) (2002) Final Communication from the Commission on an Integrated Framework for Fisheries Partnership Agreements with third Countries.COM (2002) 637.



Part VI - Emerging Policy Issues

Chapter 21

Access agreements & IUU fishing

21.1 | Introduction

IUU fishing is regarded as one of the most difficult problems in current international fisheries law and policy. IUU fishing affects fishing under access agreements in a number of ways. Firstly, IUU fishing can be undertaken by vessels authorised to fish under an access agreement. This type of violation completely disturbs the basis on which the agreement was signed and endangers the entire relationship between the parties. It is to avoid this kind of situation that all access agreements utilise the principle of flag state responsibility.

IUU fishing can also be undertaken by parties who are not regulated by an access agreement. In this case the basis on which vessels fish legally is also disturbed.

Here it is the responsibility of the Coastal State to ensure that it has the ability to regulate its zone, enforce its rules and catch offenders. A Coastal State which allows breaches of its regulations is failing to implement its access agreements in good faith, since other fleets are effectively catching the fish promised to co-contractors under these agreements. IUU fishing often leads to significant violations of rules protecting rare and endangered species, and may lead to destruction of the ecosystem as well. Accordingly a number of studies have been undertaken to more closely understand the economic and other drivers of IUU fishing.

The recent studies by MRAG (Marine Resources Advisory Group – UK) show that IUU fishing occurs in many forms. The types include:

1. poaching or outright theft of EEZ resources;
2. illegal fishing by licensed vessels under an agreement;
3. misreporting by licensed vessels;
4. unregulated fishing.

Box 21-1 Chapter 21 Highlights

This Chapter relates the different facets of IUU fishing to access agreements and provides a summary account of the latest findings on IUU fishing. It follows the structural and economically focused analysis of IUU fishing recently produced by the Marine Resources Advisory Group (MRAG) for various international organisations.

Box 21-1 Recent authoritative Studies on IUU Fishing

MRAG, IUU Fishing on the High Seas: Impacts on Ecosystems and Future Science Needs. August 2005.

MRAG, Review of Impacts of Illegal, Unreported and Unregulated Fishing on Developing Countries. June 2005 -

http://www.high-seas.org/docs/Synthesis_report_Final_MRAG_2005.pdf

MRAG, Review of Impacts of Illegal, Unreported and Unregulated Fishing on Developing Countries. June 2005.

http://www.high-seas.org/docs/IUU_DFID_Final_report_MRAG_2005.pdf

21.2 | Poaching

Poaching takes place in many different ways and includes:

- national vessels fishing without a licence in an EEZ;
- vessels licensed to fish in an adjacent area crossing a boundary to fish in an area where they are not licensed;
- vessels fishing on the high seas crossing into the EEZ when unlicensed. Poaching has many effects. Not all of these effects are visible immediately. However if they are ignored they may eventually accumulate and cause significant problems. Effects include:
- increased and unplanned fish mortality leading to damage to target stocks and reduction in accuracy of stock assessments and other evaluations;
- conflict between legal artisanal fishers and IUU fishers, leading in some cases to armed incidents and acts of violence at sea;
- loss to the Coastal State of revenues from fish taken by poachers;
- reduction in fishing opportunities for non-IUU fishing fleets, including those licensed under access agreements;
- increased conflict between legal domestic fleets and legal foreign fleets due to IUU fleets reducing total fish available to legal fleets.

Box 1. Definition of Illegal, Unreported and Unregulated (IUU) Fishing⁷

Illegal fishing refers to activities:

conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations;

conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or

in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.

Unreported fishing refers to fishing activities:

which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or

undertaken in the area of competence of a relevant regional fisheries management organization which have not been reported or have been misreported, in contravention of the reporting procedures of that organization.

Unregulated fishing refers to fishing activities:

in the area of application of a relevant regional fisheries management organization that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization; or

in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.

(Definition from the UN FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated fishing, Articles 3.1 – 3.3, FAO, Rome 2001)

Figure 21-1 IUU fishing

Regardless of which flag state is responsible for the flags engaged in poaching, it is ultimately the responsibility of the Coastal State to enforce the law within its EEZ. Poaching is however also the hardest of IUU types to detect, precisely because the vessels are unlicensed. Fisheries negotiators are well advised to seek substantial resources from DWFS to help prevent poaching, as it clearly affects the interests of all parties. It should also be expected that DWFS in return may demand accountability from the Coastal State on how resources it gave toward controlling IUU fishing were utilised. The EU is currently moving towards requiring greater accountability from its partners on how resources granted to police EEZs are being used.

Figure 21-2 Types of IUU Fishing
Source: MRAG Review of IUU fishing and developing countries (2005) 11

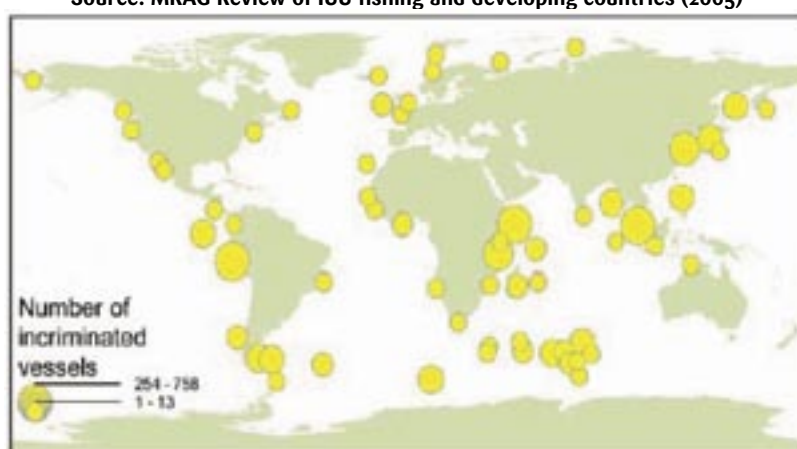


21.3 | Illegal fishing by legally licensed vessels.¹²²

Licensed vessels may still fish illegally by contravening the terms and conditions of their licence, for example by using illegal gear, exceeding the allocated quota, fishing in closed areas and/or seasons, exceeding bycatch limits, non- or partial reporting of data, or submission of erroneous data.

Enforcement of the terms and conditions of licensing is the responsibility of both the Flag State as well as the Coastal State. Illegal activities in this category are usually seen as being different from the unlicensed poaching. These activities arise as a failure of the control component of MCS, rather than a failure of surveillance. Licensed vessels are not generally regarded as pirates or poachers in the way that unlicensed operators are. Nevertheless, activities such as fishing in prohibited areas and seasons, with illegal gear, or falsely reporting catches can be just as damaging for fish stocks and the environment as fishing without a licence.

Figure 21-3 Global hotspots for IUU fishing¹²³
Source: MRAG Review of IUU fishing and developing countries (2005)



Misreporting by licensed vessels¹²⁴

Mis-reporting, or failing to report, catch and other data may constitute both illegal and unreported fishing. The FAO definition suggests that unreported fishing may not necessarily be illegal, although it is evident that it should also be considered illegal where reporting obligations form part of national laws and regulations or licence conditions. From the perspective of effects, the distinction is of little importance, because unreported fishing can be just as damaging to fish stocks and the environment whether or not it is illegal. An interesting issue is whether a Coastal State can require in its access agreements that vessels fishing in its zone accurately report data both to the Coastal State and the relevant regional organisation.

Unregulated fishing¹²⁵

Unregulated fishing is well described by the FAO definition. It includes fishing on the high seas by 'free riders', i.e. those who fail to sign up to regional management arrangements, and refuse to comply with the conservation and management measures established by those arrangements. It also includes fishing on the high seas where there are no regional management arrangements in place. However, even in this case, States are under basic obligations both in customary international law and under the LOSC to utilize fish stocks in a sustainable manner.

¹²² - Source: MRAG Review of IUU fishing and developing countries (2005) 10-12.

¹²³ - MRAG, 13.

¹²⁴ - Source: MRAG Review of IUU fishing and developing countries (2005) 10-12.

¹²⁵ - Source: MRAG Review of IUU fishing and developing countries (2005) 10-12.

21.4 | Relevance of information on IUU fishing to negotiation of access agreements

SRFC negotiators need to appreciate that IUU matters are now being subjected to sophisticated political and economic analysis. The extent to which a country permits IUU fishing or is unable to control it will likely encourage the DWFS to demand a much lower access fee, given the Coastal State concerned cannot guarantee that there will be opportunities for licensed vessels to catch the promised fish. Coastal State negotiators should expect that detailed information on the extent of IUU fishing in their zones can be used to attack their arguments for higher fees during negotiations. Negotiators can also use the information on IUU fishing to demand higher levels of contribution by the DWFS to their enforcement and control efforts. They should expect however that their actual IUU prevention efforts will be subjected to scrutiny and evaluation by the DWFS during the next round of negotiations. As Box 21-1 above shows, a lot of analytical work is now being undertaken to determine the real drivers and impacts of IUU fishing. Such information is likely to be used in negotiations. The EU is also in its preparation dossiers gathering information on the extent of IUU fishing in the zones of countries of interest to the EU.

Chapter 22

Access fees - established emerging approaches

22.1 | Monetary forms of compensation

Monetary forms of payment to the Coastal State take a variety of forms:

- lump sum payments at the start or end of the fishing agreement;
- periodic payments during the fishing year and during the course of the agreement;
- a mixture of lump sum and periodic payments under the same agreement for different types of resources;
- monetary payments mixed up with other forms of payment.

All these forms of payment have a variety of implications for the administration and implementation of the agreement, and have a relationship as well to the fishing behaviour of the fleet. They are also related to the revenue expectations and needs of the Coastal State, and may influence the ability of the State to implement measures related to ecologically responsible fishing, including sanctions and penalties.

Box 22-1 Chapter 22 Highlights

The Chapter discusses current aspects of access fee policy and identifies trends for the future. It covers:

- Monetary forms of compensation;
- Non-monetary forms of compensation;
- Compensation for access - the legal foundation;
- Compensation for access - current policy rationales;
- Cost recovery for management costs;
- Royalty for ownership of the resources;
- Calculating fees - current state practice;
 - Reflecting the full ecological cost of fishing through access fees

22.2 | Non-monetary forms of compensation

Typical non-monetary forms of payment take diverse forms, including technical assistance and training, the provision of fishing vessels and patrol boats, aid to the artisan sector or industrial fishing sector, access to markets and concessions in other sectors of commercial relations. To date these forms of payment are not often closely evaluated in terms of monetary options foregone, as well as the extent to which ongoing costs of maintenance of industrial equipment and production plants consumes the resources of the Coastal State. Appropriateness and quality of physical equipment and production plants is also not always evaluated carefully. As explained in more detail further below non-monetary forms of payment, especially in the form of development assistance projects, have the potential to assist Coastal States with addressing the more complex and costly requirements of responsible fishing, namely: environmental impact assessments for proposed fisheries management plans, threatened species assessments and marine bio-diversity assessments. It remains to be seen how this potential will evolve.

22.2.1 Compensation for access - the legal foundation

In practice, market conditions and negotiating ability determine the monetary price that the Coastal State can charge for access to its resources. As a matter of law however, Coastal States have recognised rights to charge access fees under Article 62(4) of LOSC on the basis that the resources of the EEZ are the exclusive economic resources of the Coastal State, and that receiving compensation for use of these resources is an attribute of the Sovereign rights of the Coastal State. Fees may also legitimately be demanded for harvesting and associated activities such as transshipment and the use of local ports and airports.

22.2.2 Compensation for access - current policy rationales

Fees can theoretically be demanded in order to address the monetary costs of the following aspects of fishing in the EEZ of the Coastal State. In practice, the fees received may not be actually used to address these purposes.

22.2.3 Cost recovery for management costs

The Code of Conduct suggests that “where appropriate and where possible”, Coastal States should seek to recover the incremental costs related to monitoring, control and surveillance, scientific research and fisheries data collection and exchange. The use of the ambivalent terms “where appropriate and where possible” demonstrates that the FAO deliberations featured a realisation of the practical difficulties of getting fishing states to pay more compensation, and of the tendency for access fees to trend downwards rather than upwards where purely short-term market considerations drive the fee-setting process. Most fishing states, however, would appear to recognise that some payment must be made to cover the management costs associated with the resources.

22.2.4 Royalty for ownership of the resources

Another rationale for fee payments is as a payment in recognition of the ownership of the resource by the Coastal State. In the mining and petroleum sectors, royalty payments are explicitly identified in legislation and agreements. To date, no known fisheries agreements conceptualise access fees as royalty payments.

22.3 | Monetary compensation- current state practice on fee levels

Currently, the quantum of fees paid depends on a combination of specific factors:

- coastal state economic, political and other circumstances;
- regional conditions;
- the international market place for the relevant species or stocks;
- whether or not the country is in urgent need of convertible currency or is saddled with debt;
- the financial situation of the fleets seeking access.

Negotiating ability is also a key factor. As a recent expert report¹²⁶ points out there are a wide range of considerations which influence the final rate set:

The rate achievable depends on a number of interacting factors. In general it is considered that between 10 and 15% should be achievable, and in some cases where demand for access to the fishery is particularly high, an expectation nearer to 20% is not unrealistic. This approach implicitly assumes that the target species is only available on the defined fishing grounds within the EEZ and there is no alternative viable alternative in the region outside the EEZ. Many species, however, occur in a number of neighbouring EEZs and/or adjacent high seas areas. In these cases, the level of fee (and hence the percentage of the value of the catch) that can be charged is influenced by the potential profitability of fishing opportunities outside the EEZ. The value of a licence is more accurately defined, therefore, by the advantage gained by a vessel with a licence, which can fish illegally inside the EEZ, over a vessel without a licence, which cannot. In simple terms, if the catch rates inside are similar to, or lower than catch rates outside then there is probably little or no advantage to be gained by buying a licence to fish inside the EEZ. In these circumstances licence fee/catch value ratios have to be low (probably in the region of 5% or less). If however the catch rates inside are significantly higher than outside then there is a profit advantage and licence fee/catch value ratios would be influenced by economic operational considerations within the EEZ. Fees in this situation can be quantified in terms of the differential between the catch rates, which effectively sets an upper limit on the value of the licence. In cases where there are relatively few or no fishing opportunities in the region outside the EEZ, the marginal value calculations do not apply, and the simple percentage of the value of the catch is a reasonable rule of thumb. In practice there may be additional advantages to having a licence for access to an EEZ other than the simple opportunity to catch fish. For example if the Coastal State provides port facilities for transshipment and onward transport of

¹²⁶ - G Parkes, Report of a Regional Workshop on Fisheries Monitoring Control and Surveillance: Kuala Lumpur, Malaysia 29 June-3 July 1998 - GCP/Int/648/NOR Field Report 98 FAO Fisheries Department.

catch to world markets, or provides a substantial market in its own right, then vessels may be inclined to purchase licences, even when catch rates inside the EEZ are not significantly different to those achievable outside. The licence affords the vessel the opportunity to fish en route to and from the port, which may represent a substantial steaming time through the EEZ of the Coastal State.

22.4 | Calculating fees – current state practice¹²⁷

22.4.1 The lump-sum method

The essence of this method is that an annual fee is agreed between the Coastal State and the Fishing State or association. This fee may have both cash and non-cash components. The cash fee is forwarded as a one-off payment or in two or three tranches. In return, the Coastal State grants the right for a set maximum number of vessels to fish during the year. Licensing may be a one-off event or may be spread throughout the year. Lump sums may be based on formulae (for example, declared percentage of a prescribed value of a the expected catch) or may be based on other criteria. In most cases, the criteria for deciding the lump sum is not set out in the agreement text and is usually agreed during negotiations. With the lump-sum the Coastal State shifts responsibility for managing transaction costs within the fleet to the Fishing State or the association since they have responsibility for collecting contributions from individual members of the fleet.

Table 22-1 Evaluation of costs and benefits of the lump-sum method of calculating fees

Party	Advantages	Disadvantages
Coastal State	Provides a high degree of financial certainty	• does not provide an incentive for Coastal State to build up information on its fishery unless independent investment is made in a high level of monitoring and enforcement; • fishing fleet is essentially uncontrolled; • compliance shifts to association or Fishing State with no guarantees that will be undertaken properly.
Fishing State	Can negotiate a stable but low sum	• generally advantageous; • fishing fleet may pay high sum when catch may turn out to be poor as with El Nino and similar events;
Foreign Fishing Fleet	Can negotiate a stable but low sum	• generally advantageous; • fishing fleet may pay high sum when catch may turn out to be poor as with El Nino and similar events.

22.4.2 The catch-basis method

The essence of this method is that the foreign fleet aims to pay a fee based on the weight of the fish actually caught during the licensed period. A number of variants are possible to this method to reflect particular features of the fishery or the markets supplied by the fishery. Sometimes the agreement may specify a relationship between the catch and the Gross Registered Tonnage(GRT) of vessels allowed in the zone. A formula may then be used to calculate the final fee.

¹²⁷ - Although over twenty years old, the paper by Les Clark, L Clark, A Study on Fees and other economic Benefits from Foreign Fishing Access to the Fishery or Exclusive Economic Zones of the States Participating in the South Pacific (1983) Report 1983/2 is one of the few studies that are publicly available.

Table 22-2 Evaluation of costs and benefits of catch-basis method for calculating fees

Party	Advantages	Disadvantages
Coastal State	Provides a degree of certainty	• imposes substantial monitoring burden (catch reporting and observers may be crucial here); • creates an incentive for fishers to under-report catch; • where catches are highly variable from year to year (e.g. tuna) may provide an irregular income stream for the Coastal State; • makes funding institutions and measures for ecologically responsible fishing more difficult; • may need to require compulsory VMS with its costs.
Fishing State	Protects fishing fleet from paying high fees when catch is poor	Generally advantageous
Foreign Fishing Fleet	Protects fishing fleet from paying high fees when catch is poor	• Generally advantageous • VMS may be required

22.4.3 The effort-based method

With this method, the Coastal State charges a fee for a period of access to the EEZ – i.e. based on actual level of effort. Once the vessel is licensed, there is no limit on the amount of fish that can be caught. The incentive to mis-report the actual catch is therefore removed. However, the Coastal State must be in a position to make a reasonable estimate of the catch rates anticipated for each vessel and must be able to factor this anticipated level of effort into its revenue calculations, as well as into conservation impacts as per its management plan. Estimation can be achieved through one or more methods:

- review of comparative or historical catch data;
- experimental fishing;
- modeling.

The administrative burden on a Coastal State can be quite high unless the fishing fleet has fairly uniform characteristics. The full range of reporting instruments (see section entitled Reporting Requirements) may also have to be used, including firm insistence on adherence to a fishing plan.

Table 22-3 Evaluation of costs and benefits of effort-based method for calculating fees

Party	Advantages	Disadvantages
Coastal State	• removes incentive to mis-report catch; • revenues available in good years as well as bad; • clear amount of money for ecologically responsible management.	• regulatory burden quite high as must fix most elements of operations by fleets or at least model them; • information and analysis needed of fishing patterns, market information, catch and effort data; • well-resourced and informed licensing authority; • may need to require compulsory VMS with its costs;
Fishing State	amount of fee payable known well in advance and can be planned for where to be recovered from fishing industry	• no guarantee of catch; • may have to subsidise fishing fleet in years without good catch.

Foreign Fishing Fleet	• fee known in advance and can be planned for; • possible to negotiate terms which include lower payments when bad year can be anticipated or has occurred.	no guarantee of catch for purchase of a licence
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22.4.4 The access fee -reflecting the full ecological cost of fishing

A more radical approach would argue that the basis for payment of the fee or other forms of compensation is that the resource user is paying the resource owner a sum of money to compensate for:

- the negative ecological impacts (or externalities) associated with resource production and use;
- the costs of regeneration of the resources and/or the depletion consequences caused by excessive long-term consumption.

Fish resources in the EEZ would thus be seen as a form of natural capital, with fee payments intended to replenish the natural capital being depleted.

This rationale for payments for fisheries access is logical and justifiable and fits within the discourse of sustainable development and the need to replace natural capital. Practically however this approach could raise the costs of fisheries access dramatically - and has not yet been accepted as a basis for the payment of access fees.

In terms of progressive development of international law, however, it should be noted that adopting of this rationale would accord with those developments which seek to emphasise a fuller eco-system and critical habitat approach to fisheries management. There is a degree of focus within Agenda 21, UNFSA 1995 and the Code of Conduct on payments to account for depletion of resources, although this is not fully developed. Such an approach would also support the concept of obligations to future generations (intergenerational equity) - a key aspect of the principle of sustainable development. Development assistance projects which support a whole of ecosystem approach to fisheries management would thus be a form of compensation falling under this heading.

Chapter 23

Interaction between fisheries subsidies and access agreements

23.1 | Introduction

It has recently been persuasively argued by a number of governments,¹²⁸ academic commentators¹²⁹ and internationally influential NGOs such as WWF¹³⁰ that fisheries subsidies are a major contributor to the global marine fisheries crisis. The fisheries subsidies issue has therefore

now become a core item on the international fisheries, international environmental and international trade policy agenda. There are many documents, studies and meetings on this issue sponsored by a range of organizations including the World Bank;¹³¹ the OECD;¹³² APEC;¹³³ and UNEP.¹³⁴ Significantly, the

WTO system has also now incorporated the fisheries subsidies issue within its programme of work.¹³⁵ Within the WTO framework, the argument that subsidies to marine fisheries need to be removed (and as a subset, that access fees should be abolished or cut back) has been led by a so-called Friends of Fish group.¹³⁶ This group has been responsible for a significant number of proposals within (1) the WTO's Trade and Environment Committee; and (2) the quasi-negotiating phase recently undertaken as the Doha Round.



Figure 23-1 Operationalising the fisheries subsidies concept
Source: FAO

Box 23-1 Chapter 23 Highlights

The Chapter identifies activities which are potentially WTO-relevant subsidies in the Coastal State context and discusses their interaction with access agreements. They are:

- Subsidies to fisheries infrastructure;
- Subsidies for access to foreign EEZs;
- Subsidies to support decommissioning of vessels and retirement of licences;
- Subsidised lending and access to credit;
- Subsidies to capital costs;
- Subsidies to variable costs;
- Income support subsidies;
- Price and market support;
- Subsidies to management services and research.

128 - See Australia, Chile, Ecuador, Iceland, New Zealand, Peru, Philippines and the United States (Friends of Fish) The Doha Mandate to Address Fisheries Subsidies: Issues Submission, Negotiating Group On Rules, Tn/RI/W/3 24 April 2006 (Original: English); Submission by the United States on Fisheries Subsidies, WTO Doc WT/CTE/W/51 (1997). Figure 23-2

129 - See generally, Ronald Steenblik and Paul Wallis, 'Subsidies to Marine Capture Fisheries: the International Information Gap' in Fishing in the Dark: A Symposium on Access to Environmental Information and Government Accountability in Fishing Subsidy Programmes, Brussels, 28-29 November 2000 (2001) WWF, Endangered Seas Campaign, Washington D.C. 17-39. Aaronson, R., 'Ocean Fisheries Management: Recent International Developments' (1993) September Marine Policy; Aaronson, R., 'Fisheries Subsidies, Overcapitalization and Economic Losses' in Hatcher A. and Robinson, C. (eds.), Overcapacity, Overcapitalisation, and Subsidies in European Fisheries, Proceedings of the First Workshop of the EU Concerted Action and the Common Fisheries Policy (1998); Christopher Stone, 'Too Many Fishing Boats, Too Few Fish: Can Trade Laws Trim Subsidies and Restore the Balance in Global Fisheries' (1997) 24 Ecology Law Quarterly 505- 543.

130 - See generally, Fishing in the Dark: A Symposium on Access to Environmental Information and Government Accountability in Fishing Subsidy Programmes, Brussels, 28-29 November 2000, WWF, Endangered Seas Campaign; Gareth Porter, Fisheries Subsidies and Overfishing: Towards a Structured Discussion (2006), UN Environment Programme, Geneva; WWF, Hard Facts, Hidden Problems: A Review of Current Data on Fishing Subsidies (2001) WWF Technical Paper, Washington; Gareth Porter, 'Euro-African Fishing Agreements: Subsidizing Overfishing in African Waters' in Subsidies and Depletion of World Fisheries (1997) WWF, Washington D.C.

131 - Matteo Milazzo, Subsidies in World Fisheries: A Re-examination (1998) World Bank Technical Paper No. 406, Washington;

132 - Flaaten, O. and Wallis, P., Government Financial Transfers to Fishing Industries in OECD Countries (2000) OECD, available at <<http://oecd.org/agr/fish/publication.htm>>; OECD, Transition to Responsible Fisheries: Economic and Policy Implications (2000) Paris.

133 - APEC (Asia-Pacific Economic Cooperation), Study Into the Nature and Extent of Subsidies in the Fisheries Sector of APEC Members Economies (2000) APEC Secretariat, Singapore, available at <www.apecsec.org.sg>.

134 - See for example, UNEP Subsidies in Argentine Fisheries, February, Geneva (2001).

135 - See generally, GATT/WTO Rules on Subsidies and Aids Granted in the Fishing Industry, WTO Doc WT/CTE/W/80 (1998); GATT/WTO Rules on Subsidies and Aids Granted in the Fishing Industry, WTO Doc WT/CTE/W/80/Add.1 (1999); Report of the Committee on Subsidies and Countervailing Measures, WTO Doc G/L/496 (2001); GATT/WTO Rules on Subsidies and Aids Granted in the Fishing Industry, WTO Doc WT/CTE/W/80/Add.2 (2001); Ministerial Declaration, WTO Doc WT/MIN(01)/DEC/W/1 (2001) (Paper presented at Doha Ministerial Conference, Qatar, 9-14 November 2001).

136 - The so-called Friends of Fish comprising Argentina, Australia, Bangladesh, Chile, Colombia, Ecuador, Iceland, Indonesia, India, Malaysia, Morocco, Mexico, New Zealand, Peru, Philippines, Norway, Singapore, Thailand, USA, and Venezuela.

23.2.1 Subsidies to fisheries infrastructure¹⁴⁰

The main type of subsidy in this respect is the building of fishing ports (large and small). This type of infrastructure may bring benefits to the general public, but it also provides a financial benefit to the fisheries sector since the sector does not pay for the costs of building and maintenance. Subsidy experts argue that infrastructure subsidies are generally likely to be harmful to fisheries resources. They are however not considered likely to be harmful where the management system controls incentives to engage in a “race for fish”, or where a fishery is under-exploited.

Is this type of subsidy typically present in access agreements?

Yes. This type of subsidy used to be particularly common in access agreements in the 20th century. It is much less common now. Japan, China and the EU have for instance provided support of this type to a large number of countries around the world.

23.2.2 Subsidies for access to foreign countries' waters¹⁴¹

This type of subsidy involves government to government payments. They may amount to a significant part of the effective costs of a distant water fleet's access to a foreign fishery. (The proportion of access costs subsidized through such agreements can be calculated by comparing actual payments by the subsidized DWFS fleet per vessel with the payments made by unsubsidized fleets for access to the same waters.) Academics that specialise in subsidy theory argue that such payments have negative impacts on fisheries resources if the fishery in question is fully exploited.

Is this type of subsidy typically present in access agreements?

Yes. This type of subsidy is central to agreements with governments like the EU paying fees on behalf of their fleets.

23.2.3 Subsidies to support decommissioning of vessels and retirement of licences¹⁴²

This type of subsidy involves payments to vessel and fleet owners to ensure permanent removal of fishing vessels or fishing licenses from the fishery. These types of subsidies are only provided in fisheries that are already overcapitalized. Decommissioning of fishing vessels can be expected to be harmful to fisheries resources where no catch and effort controls apply. Where property rights are allocated in the fishery, or other means are adopted to eliminate economic incentives to overfish they are not considered to be harmful.

Is this type of subsidy typically present in access agreements?

Yes - this type of subsidy benefits fleets fishing overseas. This is because many States (eg EU states) pay their fleets to leave the EU's fishing grounds and transfer their vessels to the waters of other States using joint-venture and exploratory fishing agreements. Coastal States view this type of transfer as a way of building their domestic fishing capacity, provided that the vessels are not too old or are suited to undertaking fishing in the waters concerned. However, the transfer of such vessels without controls over capacity leads to a subsidised transfer of overcapacity from DWFS waters to developing Coastal State waters. Coastal States tend to view such agreements favourably when catch caught by transferred vessels is guaranteed access DWFS markets.

23.2.4 Subsidised lending and access to credit

This type of subsidy includes all government-funded loans, loan guarantees, and loan restructuring at below commercial lending rates to the fisheries sector. Examples are:

- loan guarantees – including loans provided by private lenders and guaranteed by the government;
- subsidized loans – loans at below market rates (calculated as the difference between market interest rates and low interest rates, applied to the total value of the outstanding loans);
- loan restructuring;
- other lending support programs.

¹⁴⁰ - Gareth Porter, Analysing the resource impact of fisheries subsidies: a matrix approach – a report commissioned by UNEP (2004) at xi.

¹⁴¹ - Gareth Porter, Analysing the resource impact of fisheries subsidies: a matrix approach – a report commissioned by UNEP (2004) at xi.

¹⁴² - Gareth Porter, Analysing the resource impact of fisheries subsidies: a matrix approach – a report commissioned by UNEP (2004) at xi.

Is this type of subsidy typically present in access agreements?

Yes. This type of subsidy benefits fleets fishing overseas. Historically all DWFS have provided subsidies of this type to their fleets.

23.2.5 Subsidies to capital costs¹⁴³

This type of subsidy is very broad and includes all tax preferences and government-funded insurance programs that benefit the fisheries sector:

- fuel tax exemption – for fishing vessels;
- income tax deferral – for fishers;
- accelerated depreciation – for taxation of fishing vessels and gear;
- favorable tax rates on specific inputs or outputs;
- vessel insurance/reinsurance programs;
- other tax preferences and insurance support programs.

Proponents of subsidies argue that tax preferences, which reduce the costs of the purchase of capital goods, and risk reduction mechanisms such as loan guarantees are expected to be harmful under all circumstances unless the fisheries management system provides for property rights, community-based management, or other means for eliminating economic incentives to overfish.

Is this type of subsidy typically present in access agreements?

Yes. This type of subsidy benefits fleets fishing overseas. Historically all DWFS have provided subsidies of this type to their fleets.

23.2.6 Subsidies to variable costs¹⁴⁴

This type of subsidy is very broad and includes:

- policies that reduce fishery operating costs, including tax concessions - e.g. tax rebates on purchases of fuel;
- vessel insurance programs provided by governments;
- payment for damages;
- bait and extension services;
- training;
- transport subsidies, especially subsidies to fuel.

Subsidies to variable costs are expected to be harmful to fish stocks if appropriate incentives are not present, or unless the fishery is less than fully exploited.

Is this type of subsidy typically present in access agreements?

Yes. This type of subsidy has historically been offered to many foreign fleets by their home governments.

23.2.7 Income support subsidies¹⁴⁵

This type of subsidy commonly includes:

- unemployment insurance beyond the normal unemployment insurance for other economic sectors;
- payments to vessel owners for temporary stoppages of fishing, or «laying up» of vessels – such stoppages may be caused by failures in access agreements negotiations.

Subsidies to income are viewed as harmful or possibly harmful if the fishery is overcapitalized and lacks economic incentives to eliminate the “race for fish”, and when a fishery is underutilized but open access prevails.

Is this type of subsidy typically present in access agreements?

This type of subsidy supports overseas fishing. Many DWFS now provide subsidies of this type to their fleets. The EU has a complex framework to provide this kind of assistance and so does Japan. For example, whenever

¹⁴³ - Gareth Porter, Analysing the resource impact of fisheries subsidies: a matrix approach – a report commissioned by UNEP (2004) at xi.

¹⁴⁴ - Gareth Porter, Analysing the resource impact of fisheries subsidies: a matrix approach – a report commissioned by UNEP (2004) at xi.

¹⁴⁵ - Gareth Porter, Analysing the resource impact of fisheries subsidies: a matrix approach – a report commissioned by UNEP (2004) at xi.

fisheries agreements are not concluded in time for EU fleets to fish in North-West African, Indian Ocean or Moroccan waters, fleet owners and fish workers are provided with some income assistance to keep them going until the agreements can be renewed.

23.2.8 Price and markets support¹⁴⁶

This category includes all government-funded marketing and price support programs that are designed to reduce capacity and/or enhance the fisheries resource base.

- export marketing programs – to enhance seafood exports;
- fish product promotion programs – including seafood product promotion, labeling, quality enhancement for either domestic or external markets;
- market price support – government support to ensure minimum prices or to keep domestic prices above world prices; quantifiable by the gap between domestic price and border price;
- other marketing support programs.

The EU in particular has an elaborate system in which a subsidy is provided to the fisheries sector to ensure a minimum price level. It includes payments of money to fishery sector organisations (producer organisations) to support the price for fish and fish products, export subsidies as well as border measures (tariffs and quotas). The effect is to maintain the prices of domestic fish above world levels. Price support subsidies are viewed as harmful in all circumstances unless the fishery has appropriate economic incentives to eliminate the race for fish.

Is this type of subsidy typically present in access agreements?

EU tuna fleets benefit from this type of subsidy. Much more analysis will need to be done to more precisely understand the impacts of such subsidies on fishing in overseas waters, however a priori it would appear that both Coastal State governments and populations as well as DWFS fleets benefit from these subsidies.

23.2.9 Subsidies to management services and research¹⁴⁷

This type of subsidy includes;

- monitoring and surveillance;
- stock assessments; and
- research on selective fishing gear.

Management services subsidies generally benefit both the industry and the general public, but can be considered a subsidy in economic terms to the extent that a reasonable proportion of the costs of those services are not recovered from the industry. These types of subsidies are not considered harmful to fishery resources per se, except for subsidies to research which clearly benefits the fishing industry only, and is not in the interest of the general public, although certain types of research which clearly benefit the fishing industry are still likely to be marginal in their impact.

Is this type of subsidy typically present in access agreements?

This type of subsidy is present within access agreements. This type of subsidy is a good subsidy since it improves the ability of Coastal States to manage their waters. Currently only the EU provides such payments in its access agreements. Japan, Korea, Taiwan and China are yet to introduce this type of payment into their access agreements.

¹⁴⁶ - Gareth Porter, Analysing the resource impact of fisheries subsidies: a matrix approach – a report commissioned by UNEP (2004) at xi.

¹⁴⁷ - Gareth Porter, Analysing the resource impact of fisheries subsidies: a matrix approach – a report commissioned by UNEP (2004) at xi.

Chapter 24

Access agreements & ecolabelling¹⁴⁸

24.1 | Introduction

Eco-labels are seals of approval given to products that are deemed to have fewer impacts on the environment than functionally or competitively similar products. The rationale for basic labelling information at the point of sale is that it links fisheries products to their production process. The goal of eco-labelling initiatives is to promote sustainably managed fisheries and highlight their products to consumers. Product claims associated with eco-labelling are that they aim to tap the growing public demand for environmentally preferable products. Eco-labels generally rely on life-cycle assessment to determine the environmental impact of a product 'from cradle to grave'. Usually claims appearing on a product must be preceded by a chain of custody exercise documenting where the product was derived from: for example, a fishery certified as being 'sustainably managed'. Prior to certification, a set of 'sustainability' standards or criteria against which a fishery is to be evaluated must be developed. Achieving and identifying 'sustainability' in fisheries is a complex process. The acceptance and credibility of standards depends heavily on the manner in which the standards were developed, the content of the standards themselves, and the accrediting or certifying process by which organisations are evaluated against the standard.

Box 24-1 Chapter 24 Highlights

This Chapter explains

- The different types of eco-labels;
- The policy rationale for eco-labels;
- The diversity of eco-labelling organisations;
- The implications of eco-labelling for access agreements.

Seafood Watch Seafood Report:

Tunas Volume VII



Illustration Courtesy: Ray Aquarum

Yellowfin Tuna *Thunnus albacares*

Alice Casaroli
Fishery Research Biologist
Monterey Bay Aquarium

Update
22 October 2003
www.fishbase.org

Seafood Watch seafood reports are "living" documents that synthesize the best available and most up-to-date scientific information on the current status of seafood items found in the United States. As the information on each species changes, so too will each report, in order to reflect those changes.

In developing these reports, Seafood Watch uses the best available scientific information. Research published in academic peer-reviewed journals is used whenever possible. Other sources include government data, fishery management council data, personal communications with fisheries scientists and aquaculture experts, industry data, and personal communications with fishers and fish farmers.

These reports provide a source of unbiased scientific information on the status of commercial species of fish, crustaceans and shellfish. Individuals or agencies interested in fishery/aquaculture issues and the status of marine stocks are welcome to use this information in any way they find useful.

For more information regarding Seafood Watch seafood reports, please contact the Seafood Watch program at the Monterey Bay Aquarium by calling 831-647-6673 or emailing seafoodwatch@monterey.org.

Box 24-2 - Recent studies on ecolabelling

Report: Expert Consultation on the Development of International Guidelines for Ecolabelling of fish and Fishery Products from Marine Capture Fisheries. Rome, Italy, 14 - 17 October 2003

Deere, Carolyn. 1999. Eco-labelling and Sustainable Fisheries. FAO and IUCN: Rome and Washington, D.C. <ftp://ftp.fao.org/FI/document/eco-lab/booklet-e.pdf>;

Wessells, C.R.; Cochrane, K.; Deere, C.; Wallis, P.; Willmann, R. 2001. Product certification and ecolabelling for fisheries sustainability. FAO Fisheries Technical Paper. No. 422. Rome, FAO. 2001.

Technical Consultation on the feasibility of Developing non Discriminatory Technical Guidelines for Eco Labelling of Products from Marine Capture Fisheries, Rome 21-23 Oct./98)

Nordic Technical Working Group on Fisheries Ecolabelling Criteria. 2000. An Arrangement for the Voluntary Certification of Products of Sustainable Fishing. Final Report. Copenhagen, June 21, 2000. International Coalition of Fisheries Associations (ICFA). 2001 Resolution on Ecolabeling.

¹⁴⁸ - These notes are taken from Carolyn Deere ECO-LABELLING AND SUSTAINABLE FISHERIES The full document is available at http://www.norden.org/fisk/publikationer/RAP_ecolabelling_and_sustaina.htm

24.2 | Types of Eco-labelling Programme

Eco-labelling programmes usually fall into one of the following categories:

- first party labelling schemes: These are established by individual companies based on their own product standards. The standards might be based on criteria related to specific environmental issues known to informed consumers through the media or advertising. This form of eco-labelling can also be referred to as 'self-declaration';
- second party labelling schemes: These are established by industry associations for their members' products. The members formulate certification criteria, sometimes by drawing upon external expertise from academia and environmental organisations. Verification of compliance is achieved through internal certification procedures within the industry, or employment of external certifying companies;
- third party labelling schemes: These are usually established by a private initiator independent from the producers, distributors and sellers of the labelled products. Products supplied by organisations or resources that are certified are then labelled with information to the consumers that the product was produced in an 'environmentally friendly' fashion. The label (seal) is typically licensed to a producer and may appear on or accompany a product derived from a certified fishery or producer. Producers are usually expected to track the 'chain of custody' of their products in order to ensure that the products derived from the certified fishery are in fact those that are so labelled.

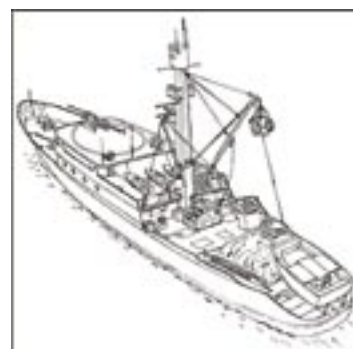


Figure 24-1 American Tuna purse seiner - FIGIS/FAO

In some instances the private initiator accredits other organisations to be the certifier. An accrediting body provides some degree of assurance that the certifier has been trained by an accredited training programme and is qualified to perform an evaluation against a specific set of criteria in a given field. While the criteria may be established through a negotiation process among the various interested parties, they are often motivated by the environmental objectives of the private initiators of such schemes. Environmental organisations and consumers generally prefer eco-labelling schemes of this type because of the heightened confidence that private commercial interests will not compromise the criteria applied to the schemes and strict compliance with them based on verifiable and impartial certification procedures.



Figure 24-2 Leatherback turtle caught incidentally in the Atlantic

Eco-labelling systems can be either mandatory or voluntary. Mandatory eco-labels are government-backed and could act as a trade restriction for foreign producers (i.e., imports may be rejected if they do not comply). Imports of products that do not comply with voluntary eco-labels are not restricted. In the case of voluntary labels, it is up to the manufacturer to decide whether or not to apply for certification of the product, and the consumers choice whether to buy (or import) an eco-labelled product. Voluntary eco-labelling programmes may be funded and supervised by the private sector. Some, however, are government sponsored and funded.

24.3 | The rationale for eco-labelling in the fisheries sector

In the fisheries sector, there are hopes that eco-labelling schemes will:

- provide information about the environmental impact of products and enable more informed purchasing behaviour by consumers and intermediaries;
- provide consumers with the opportunity to express their environmental/ecological concerns through their purchasing behaviour and the market mechanism (e.g., dedicating their buying power to 'green catches');
- encourage retailers and consumers to buy only fishery products that come from sustainably managed resources;
- raise environmental standards in the production of the commodity;
- generate price differentials between eco-labelled products and those that either do not qualify for eco-labelling, or those whose producers do not seek to obtain such labelling;
- enhance incentives for producers to supply products that meet the eco-labelling criteria in order to receive greater returns (a 'green premium') or gain market share for their products;
- provide competitive advantages, market access or greater market share for fisheries products derived from sustainably managed fisheries; and
- generate greater support by industry and other interested parties for improved fisheries management.

Current eco-labelling initiatives relevant to the fisheries sector includes first, second and third party eco-labelling schemes.

Box 24-2 Promoting Ecologically Responsible Consumption of Tuna in the US Case Study 2 - Yellowfin Tuna

The report highlighted in this case study is produced periodically by the Monterey Bay Aquarium to inform consumers of seafood in the United States of the ecological status of key species. Yellowfin tuna is one of the key species caught under access agreements. Coastal State negotiators need to note that the reports have a high degree of scientific credibility and are based on the latest peer-reviewed scientific information.

Table 24-1 The variety of Eco-labelling programs

Type/Category	Details
Mark of Origin	In many instances, producers have sought to gain competitive advantage by drawing attention to the origin of fish through labels. Moreover, the labelling of fish by origin and species is promoted by governments in some instances as a way to enable more effective tracking and identification of fisheries products to aid fisheries management (see Box II).
'Dolphin Safe' Labels	A variety of producers in the United States have made self-declarations that their tuna is 'dolphin safe'. The Dolphin Protection Consumer Information Act (DPCIA) of 1991 established criteria for the manner in which tuna must be caught. (On a voluntary basis, companies can then label their tuna to be 'dolphin safe', if they conform with the criteria).
Organic Seafood Labels	There are also efforts underway by fishing companies in some parts of the world to label fish as farmed or wild, and more recently to win marketing niche with so-called 'organic seafood'. Organic labelling usually signifies that food has been produced without artificial inputs—especially synthetic fertilisers and pesticides—and has been grown using environmentally sound farm management techniques. There are currently two pilot projects monitoring Alaska seafood to help set standards to certify wild salmon as organic with the hope of breaking into the organic foods market.
Marine Stewardship Council	The MSC is an independent, not for profit, international body headquartered in London, UK. It was initiated by the World Wide Fund for Nature (WWF) and Unilever, a large fish retailer, to promote sustainable and responsible fisheries and fishing practices worldwide.

The Responsible Fisheries Society of the United States (RFS) and the Global Aquaculture Alliance (GAA)	RFS and GAA, headquartered in the U.S.A., have announced a joint eco-labelling scheme to recognize industry commitment and participation in responsible fisheries and aquaculture. The merger brings over 200 companies and individuals from 19 countries together in an effort to promote sustainable seafood harvest and production worldwide. The new eco-label will be offered to industry members who endorse the Principles for Responsible Fisheries of RFS or GAA's Principles for Responsible Aquaculture, and incorporate these Principles into their business. The RFS and GAA programmes are open to all segments of the industry (e.g., producer, importer, distributor, retailer or restaurant operator) and require the preparation of reports or plans that document implementation of the RFS/GAA principles. The RFS programme targets all types of domestic US seafood products while GAA focuses initially on farmraised shrimp on a world-wide basis. GAA will conduct evaluations of shrimp farms based on a system of self-assessment questionnaires. The RFS is considering developing a third-party certification system.
The Marine Aquarium Council (MAC)	MAC, a non-profit international organisation based in Hawaii (U.S.A.), brings together representatives of the aquarium industry, hobbyists, conservation organisations, government agencies and public aquariums. MAC aims at conserving coral reefs by creating standards and educating and certifying those engaged in the collection and care of ornamental marine life from reef to aquarium. It is working to establish standards for 'best practices' in the supply of marine aquarium organisms; an independent system to certify compliance with these standards; and consumer demand and confidence for certified organisms, practices and industry participants.
Food and Agriculture Organisation (FAO)	The FAO, principal international organisation for marine capture fisheries, recently announced a set of voluntary guidelines for the ecolabelling of fish products to provide guidance in what is becoming a highly crowded arena. Announced in March 2005 - http://www.fao.org/newsroom/en/news/2005/100302/

24.4 Eco-labelling and access agreements

Eco-labelling schemes have the potential to reward fish sourced from some countries whilst penalising others. Access agreements can be affected in diverse and not easily predictable ways.

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ANNEXES

I - PREPARING FOR NEGOTIATIONS - SAMPLE COASTAL STATE APPROACH

II - FISHERIES PARTNERSHIP AGREE- MENTS - THE CURRENT EUROPEAN COMMISSION APPROACH TO PREPA- RATION

ANNEX 1

PREPARING FOR NEGOTIATIONS

SAMPLE COASTAL STATE APPROACH

PART I - ESTIMATING INTERACTION BETWEEN
FOREIGN FLEETS AND NATIONAL/REGIONAL FLEETS

PART II - ESTIMATING SOCIO-ECONOMIC IMPACTS/
EFFECTS OF AGREEMENTS

PART III - BASIC SOCIO-ECONOMIC DATA FOR
NATIONAL FISHERIES SECTOR

PART IV - IMPACTS OF FISHERIES AGREEMENTS ON
EEZ FISHERIES ECOSYSTEMS

PART V - BASIC STRATEGIC CAPACITY AUDIT OR
REVIEW

PART I - ESTIMATING INTERACTION BETWEEN FOREIGN FLEETS AND NATIONAL/REGIONAL FLEETS

TEMPLATE 1: PROFILE OF CURRENT AGREEMENTS IN NATIONAL AND REGIONAL CONTEXT

Use one table for each Agreement (even if only 1 private vessel)

Rationale: This aspect of the preparation process analyses the importance of foreign fleets as against national fleets; also conducting this analysis in a regional context. The objective is to provide the Coastal State with detailed and relevant information on:

- 1- the degree of access negotiated per fishery within the country's EEZ;
- 2- the relationship of access granted, relative to shared fisheries in the sub-region;
- 3- the total value of access for each type of Agreement;
- 4- the proportion of foreign over national use;
- 5- the sustainability of current resource use.

Establishing basic information on access agreements

Prepare a comprehensive dossier overviewing domestic arrangements with foreign fleets (including current use patterns and information) covering:

1. all framework agreements and protocols, EU, bilateral, joint ventures, all private and temporary licences, etc in place that give access to a fishery or allocate some of its resources;
2. details of partner countries or companies, vessel types, sizes and numbers;
3. the amount and duration of access (effort, quotas or fish tonnage) granted per fishery, relevant conditions, allowed species and the fishing areas in question; and
4. the relationship of 1-3 above with fisheries exploited by national fleet(s) (numbers and types of vessels, licence fee etc. for national fleets to be specified as well).

If possible also, prepare a list from a regional point of view. This review should include (see Table 1 this Template):

- all framework agreements and protocols, EU, bilateral, joint ventures, all private and temporary licences, etc that give access to a fishery or allocate some of its resources;
- details of partner country or company, vessel types, sizes and numbers;
- the amount and duration of access (effort, quotas or fish tonnage) granted per fishery, relevant conditions, allowed species and the fishing areas in question.

Access Agreement Name	Information on foreign fleet in this column	Implications for national fleets in this column
Duration / dates		
Country (or countries for EU) or Anonymous		
Company code		
Fishery or Species		
Vessel type		
Average Vessel size (GRT or other, specify)		
Maximum number of vessels in Agreement		
*Financial compensation		
**Vessel access fee (per GRT, Vessel, tonne,...)		
Total Vessel fees received in year		
% use of access in Agreement		
Other compensation		
Other specifications		
Reference of legal text basis for Agreement		
Additional remarks		

* Indicate year of data if not current; Indicate currency used and provide relevant Central Bank exchange rates per year since (choose reference date eg. 2000) If financial compensation for several fisheries together, then give total compensation and indicate in a table footnote

** indicate fee/tonne or fee/GRT, etc.

Footnotes Table 1 Insert necessary footnotes to provide further explanation

PART II- ESTIMATING SOCIO-ECONOMIC IMPACTS/ EFFECTS OF AGREEMENTS

TEMPLATE 2 SOCIO-ECONOMIC IMPACTS/EFFECTS OF AGREEMENTS -

Use one table for each Agreement (even if only 1 private vessel)

This aspect of preparation is intended to precisely identify:

1. economic impacts - how does the agreement (negotiated financial compensation; other aspects) contribute to fisheries development infrastructure and capital projects?
2. social impacts- how does the agreement (negotiated financial compensation; other aspects) contribute to social development ?
3. fishery management impacts- how does the agreement (negotiated financial compensation; other aspects) contribute to the fisheries management framework?

Access Agreement Name	Information on foreign fleet in this column	Implications for national fleets and national interests this column
*Economics aspects		
Direct financial compensation		
Capital projects incl. infrastructure, vessels etc (specify)		
Other support for local fisheries (if social capital indicate below)		
MCS projects		
Preferential tariffs / trade measures		
Marketing projects		
Health certification projects		
Aquaculture projects		
Non-fishery related support		
Other (specify)		
Social aspects		
Support for local markets and food security		
Support for local fisheries (non capital projects)		
National crew (indicate if paid by vessel-owner or Agreement)		
Observers (indicate if paid by vessel-owner or Agreement)		
Safety at sea projects		
Support for other social aspects		
Fisheries management aspects		
Support towards Fisheries Management Plan		
Research & technology programmes		
Study / training projects		
Participation in International Organisations		
Contribution to regional management		
Support for other fisheries management aspects (specify)		
**Total financial compensation		
Other remarks or references		

- * Indicate year of data if not current; Indicate currency used and provide relevant Central Bank exchange rates per year over Agreement duration;
- ** If detailed, give figures with details in footnotes; if global sum only, give % per category; one column per fishery or per vessel type

Footnotes

Insert necessary footnotes to provide further explanation

PART III- BASIC SOCIO-ECONOMIC DATA FOR NATIONAL FISHERIES SECTOR

BASIC SOCIO-ECONOMIC DATA FOR NATIONAL SECTOR (BY FISHERY OR SPECIES FLEET)

one column per fleet or fishery (species-fleet)

Objective: To establish the broader socio-economic importance of national fisheries sector - or the benefits fisheries brings to a nation aside from the monies paid through access agreements (hereafter benefits “outside Agreements”). For each fishery, and each target species exploited by national vessels, a summary of broader economic and social value should be made, by compiling information on the following factors:

BASIC SOCIO-ECONOMIC DATA FOR NATIONAL SECTOR (BY FISHERY OR SPECIES FLEET)	
*Economics aspects	
Vessel type or category	
Number of vessels	
Size of average vessel (GRT, length or other)	
Age of average vessel in fleet/fishery (in years)	
Market value of new vessel (specify currency)	
% capital value of vessel imported	
Gear type (specify mesh size and length of nets, number of pots etc)	
Market value of gear per average vessel (specify currency)	
% capital value of gear-inputs imported	
MCS arrangements in fishery	
MCS support outside Agreements	
Average fuel consumption per vessel per year	
Capital projects incl. infrastructure, vessels etc (specify) outside Agreements	
Other support for local fisheries outside Agreements (specify)	
Overall catch potential for fishery (incl. all access)	
Total tonnage and value of catch for fleet or fishery	

Average catch (tonnage and value) landed per year per vessel

% catch tonnage and value for local market provision

% catch tonnage and value for national (non-local) market

% catch tonnage and value for international market (specify, one line per market)

BASIC SOCIO-ECONOMIC DATA FOR NATIONAL SECTOR (BY FISHERY OR SPECIES FLEET)

*Economics aspects

Marketing infrastructures (capital value)

Marketing support outside Agreements (specify)

Health certification support outside Agreements

Aquaculture support outside Agreements

Other (specify)

*Social aspects

Total number of fishermen in fleet or fishery

Number of fishermen per average vessel

Numbers in boat building and repair

Numbers in fish selling - marketing activities

Support for local markets and food security (outside Agreements)

Support for local fisheries (non capital projects outside Agreements)

Other social aspects

* Indicate year of data if not current; Indicate currency used and provide relevant Central Bank exchange rates per year over development project duration;

** If detailed, give figures with details in footnotes; if global sum only, give % per category; one column per fishery or per vessel type

Footnotes

Insert necessary footnotes to provide further explanation

IDENTIFICATION OF IMPACTS OF FISHERIES AGREEMENTS ON EEZ FISHERIES ECOSYSTEMS

- For all fisheries or target species in EEZ where access has been granted through an Agreement indicate the following:

- Table must cover all fisheries and fish species that feature in Agreements - one column per fishery or fish species

Fishery or main target species	
Fishery / species management plan (Yes/No)	
Formal fishery assessment (Yes/No)	
Annual total allowable estimated potential (indicate catch or effort units and year)	
Number of access agreements/vessels impacting on fishery or main target species	
% potential granted through Agreements	
% potential for national (domestic) access (remarks in footnotes)	
**Area / ecosystem where fishery takes place	
Area-based management in place (specify: area closure, gear exclusion, seasonal closure etc)	
Other important points on fishery conservation aspects	
***Fishery overlap with area protection for species or habitats conservation (Yes / No)	
Other extractive uses of fishery ecosystem (oil exploration, navigation etc)	
Existence of Integrated Coastal Management Plan (Yes / No, references in footnote)	
Other important points on coastal and marine environment protection aspects	

- * review ALL main species-fisheries that are accessed through Agreements, give reference to supporting documents
- ** Attach a map per main species-fishery to accompany each column if possible, one column per fishery (industrial, artisanal, lines, nets etc unless there is total overlap)
- ***Indicate which conservation of species (turtles, seals, dolphins, juvenile fish etc) or habitats (mangroves, corals, etc)

Insert necessary footnotes to provide further explanation

PART V - BASIC STRATEGIC CAPACITY AUDIT OR REVIEW

This aspect of preparations addresses the human resource requirements necessary to maintain strategic capacity. Preparation here seeks to identify historical issues and future needs associated with strategic capacity. Information required is:

1. an overview per country of past negotiations, with details of people involved and the background documentation used for negotiation (Table 4.1);
2. for each agreement provide a summary of key resources (scientific or technical information, time, etc) and key skills used and needed.

This information is necessary to determine:

- 1- the negotiation load for the country;
- 2- the current demand for fishing access;
- 3- the most important skills and resources needed;
- 4- potential means of strengthening capacity in light of identified shortages- needs may be met, for example, by hiring private contractors or seeking assistance from international organisations and NGOs.

NEGOTIATION HISTORY OF AGREEMENTS

Use separate table for each agreement, in order to provide comprehensive history going back over 10 years

Agreement	EU	Japan	Taiwan	Korea	PRC	Other
Duration and dates of negotiations						
Total number of nationals involved in negotiation						
Ministries involved in negotiation						
Person months involved per ministry						
Technical services involved						
Person months involved per service						
Other national representatives involved (fishing industry, NGOs etc, with person months indicated)						
List of background documents produced by national delegation for negotiation (brief summary)						
Size of foreign delegation (describe seniority, skills)						

List of background documents produced by
foreign delegation for negotiation (brief summary)

Footnotes

Insert necessary footnotes to provide further explanation

ESTIMATED REQUIREMENTS TO ACHIEVE EFFECTIVE NEGOTIATIONS PER AGREEMENT TYPE

Use one column per Agreement or Agreement type (EU, bilateral, private, etc), or one overall summary as appropriate (add columns or rows where appropriate)

Agreement	EU	Japan	Taiwan	Korea	PRC	Other
Civil service grade (broad category - ie senior, middle, junior)						
Role in the negotiation process (negotiator, advisor, observer, etc)						
*Resources used or produced for negotiation						
* Other resources needed						
** Key skills used in negotiation						
** Other skills needed						
Other remarks (give details in footnotes)						

- * Resources: Fisheries Management Plan, fisheries potential per species, real time fishing effort, review of other Agreements in the region, resource product prices on foreign markets, foreign exchange rates, overall size of foreign fleet seeking fishing opportunities per fishery, black list of vessels in region or in other distant fisheries etc
- ** Skills: Negotiation experience (e.g. have been involved in negotiating other types of commercial agreements/ development aid programmes), financial, numeracy, language skills, etc

Footnotes - Insert necessary footnotes to provide further explanation

ANNEX II

FISHERIES PARTNERSHIP AGREEMENTS - CURRENT EU APPROACH TO PREPARATION

Overview of aspects covered by European evaluations and impact analyses

Content

1. CURRENT SITUATION IN THE COASTAL STATE
 - 1.1. Analysis and presentation of the general situation
 - 1.2. Analysis of the fishing sector and industry
 - 1.2.1. Fisheries policy (objectives, organisation, legislative framework, strategies, resources)
 - 1.2.2. Spending on fisheries
 - 1.2.3. The international dimension of fisheries policy
 - 1.2.4. Analyse any consistency between the coastal state's national fisheries policy and its international obligations. Inspection and monitoring of fishing activities
 - 1.2.5. Environmental dimension
 - 1.2.6. Stakeholders
 - 1.2.7. Private sector environment in the fisheries sector
 - 1.3. Analysis of potential and limits in the fisheries sector in the coastal state concerned
2. SPECIFIC ASPECTS OF EVALUATION AND IMPACT ANALYSIS OF A FISHERIES PARTNERSHIP AGREEMENT
 - 2.1. Economic and financial analysis
 - 2.1.1. Identifying the stakeholders
 - 2.1.2. Cost-benefit and cost-effectiveness analysis
 - 2.1.3. Financial analysis and study of the economic effects of the fisheries partnership agreement
 - 2.2. Social impact analysis
 - 2.3. Environmental impact analysis
 - 2.4. Conclusion
3. RECOMMENDATIONS

1. CURRENT SITUATION IN THE COASTAL STATE

1.1. Analysis and presentation of the general situation

In each of the cases referred to below, a European State considering entering into a Fisheries Partnership Agreement (hereafter a "contractor") must provide the European Union with information on - and a pertinent analysis of - the institutional, political, economic, financial, social and environmental aspects of the coastal state concerned (i.e. the other party to the proposed agreement). This entails examining the political, institutional, administrative and legal framework of the coastal country involved - its political situation, its institutional, administrative and financial organisation, and its operating methods. The contractor must also investigate the country's macro-economic and financial framework, and locate information breaking down its budget revenue and expenditure.

The contractor must provide:

- an analysis of the nation's development strategy, including their fiscal strategy and their development strategy for sectoral policies. The contractor must particularly analyse the coastal state's main macroeconomic policy documents (e.g. a poverty reduction strategy paper, economic policy framework paper, budget documents, relevant papers on financial law, Court of Auditors' audits, etc.) and relevant papers of bilateral and multilateral fund donors who support the government's policy (EC strategy papers, IMF documents for Article 4 negotiations, World Bank memoranda, HIPC documents, country financial accountability assessments, etc). The contractor may also refer to other documents and information sources;
- an assessment of the macro-economic situation, and of the potential for increased public support for the sector and private investments. In this context, the contractor should focus on the following aspects: financial and budgetary procedures in the country concerned (programming and budget implementation), the quality of public finance management, relations with bilateral donors and multilateral institutions, growth perspectives, and an overall assessment of the situation of public finances;
- detailed analysis of the budget and public finances, assessing:
 - how the annual budget is drawn up, the budget breakdown, budget trends, the transparency and credibility of public finances;
 - the connection between policy objectives and expenditure;
 - programming and the implementation of multi-annual expenditure;
 - the process of making budget transfers from the government's general account to those of the sectoral ministries (delays, proportion compared to the amount provided for in the budget, tranches, etc.);
 - how much of the forecast expenditure is actually incurred;
- the social dimension, and in particular the coastal state's social policy, the general socioeconomic situation, and how rights and responsibilities are shared out between institutions and social stakeholders (social dialogue);
- the conditions for private sector development and the development of investment. The contractor will have to study the investment environment for both national and foreign operators, and also public investment policy and any synergy with private investment policy. It should also consider whether there is a private sector promotion policy, a commercial code, an investment code, a company law and competition law, a public-private partnership policy, a privatisation policy, a commercial policy a regional integration policy, etc. and whether or not these actually operate and are enforced in reality;
- the environmental dimension, identifying the government's environmental policy, key environmental indicators, the objectives, targets, and legal, institutional and administrative frameworks.

The contractor must describe the current state of the environment, the trends and main constraints and pressures affecting it, and note the presence and role of any other relevant parties (NGOs, international organisations, etc.). Additionally, relations with the main external partners in the field of development cooperation should be noted, alongside descriptions of relevant political, economic and/or trade agreements. Ideally the information includes an account of main donors of funds supporting the country, the areas in which they are active, the contribution to the national budget, and the main agreements concluded by the country. The contractor must provide an information matrix overviewing assistance from the various donors and international financial institutions.

1.2. Analysis of the fishing sector and industry

The contractor must provide facts and a pertinent analysis of all the points referred to below. The aim of this information is to improve understanding of the coastal state's fisheries policy and its institutional capacity to develop a fisheries policy, implement that policy through functioning institutions, manage its resources sustainably and monitor compliance of national and international operators within a legislative framework. This analysis should be carried out over an appropriate period so as to identify current trends and enable reliable forecasts.

1.2.1. Fisheries policy (objectives, organisation, legislative framework, strategies, resources)

The contractor will have to:

- describe the fisheries policy in the coastal state and how far it is integrated into the national strategic framework. The position of fisheries policy should be identified and its degree of integration into the country's general political structure, particularly regarding initiatives for a sustainable development of resources and poverty reduction, should be noted. This information should aim to identify the objectives of

- the government and the methods by which it plans to achieve them;
- detail the means available for defining and implementing sectoral fisheries policy and monitoring it (performance control, indicators, etc.);
- describe the scientific research policy in the sector, the resources allocated to implementing this policy, and the actual situation;
- describe and analyse how the fisheries sector is organised in institutional terms (central and/or decentralised administration), relations with other Ministries which have a bearing on fisheries, civil society and private operators;
- describe the coastal state's programs and strategies for separating the different roles of the public authorities (regulatory/legislative role, provision of services, etc.) and nongovernmental agents in the sector (privatisation policy, nationalisation policy, etc.);
- present and analyse the investment promotion policy in the fisheries sector, and the policies for promoting job creation and export of quality products.

The contractor must also demonstrate the authorities' capacity to ensure consistency and transparency in the definition of priorities when allocating the resources available to the coastal state.

1.2.2. Spending on fisheries

Here the contractor will be required to analyse the available resources and how they are used in the framework of the sectoral strategy. It should concentrate on the coastal state's budgetary allocation to the various institutions responsible for managing and monitoring fisheries policy, the spending programme for the sector, and importantly the budgetary allocation for management, development, monitoring and control of fisheries policy.

If there is already an agreement between the coastal state and the Community, the contractor should study:

- how transfers of the financial contribution paid by the EC are registered on the Treasury account and whether, in the case of targeted measures, these are passed on to the sectoral Ministry/Ministries;
- whether or not the Community funds are additional to the initial budget provided for by the government in the fisheries sector;
- whether in reality the funds are actually used for the planned targeted measures;
- whether the financial contribution is actually recorded in the initial budget or in the revised finance act at the end of the budget year.

The contractor must also study in detail the capacity of the national fisheries authorities to develop a sectoral approach to fishing, its capacity to develop a fisheries management plan; and the extent to which budget forecasts can actually be made in the fisheries sector.

If there is a medium-term spending framework, the contractor should examine:

- how spending is planned in the fisheries sector;
- targets (objectives, results, activities, etc.);
- any duplication or inconsistencies;
- management of public finances in the sector.

1.2.3. The international dimension of fisheries policy

Here the contractor should analyse whether the coastal state's national policy is in line with its international commitments (e.g. the FAO code of conduct for responsible fisheries, regional cooperation agreements, etc.), taking particular care to:

- specify the type of participation by the coastal state in question in the FAO's multilateral work/projects on fisheries and in regional fisheries organisations (administrative resources, participation in work, scientific contribution, financial contribution, compliance with/transcription of recommendations, etc.);
- identify in particular any measures and programmes implemented by the coastal state to reduce the impact of fishing on the environment (FAO code of practice, etc.).

1.2.4. Analyse any consistency between the coastal state's national fisheries policy and its international obligations.

The contractor should study the capacity, measures and means of control and monitoring used in the area under the sovereignty/jurisdiction of the coastal state concerned, on the high seas, in its ports, and vis-à-vis its nationals.

1.2.5. Environmental dimension

Above all else, the contractor must concentrate on the condition of the coastal habitat and its vulnerability, detailing:

- nature and state of the marine (benthos) and coastal habitat;
- nature and state of the existing non-commercial fish and aquatic resources;
- nature and state of the existing vegetation and ecosystems;
- any direct and indirect impact on non-commercial species and habitats;
- potential impacts on the proposed fisheries (depending on the species targeted, the type of fishing gear used, etc);
- the impact of and reasons for any delimitations in the zone or zones concerned.

1.2.6. Stakeholders

The most pertinent elements of the fisheries sector should be profiled, focusing particularly on the direct and indirect jobs within the sector (type, breakdown, distribution, structures, employment, training, income and levies, social protection, etc.).

1.2.7. Private sector environment in the fisheries sector

The contractor will have to analyse the business environment in the fisheries sector and in particular:

- the regulatory environment for private sector operators: private sector promotion policy, existence and application of an investment code, a commercial code, company law and competition law, a public-private partnerships policy, a privatisation policy, trade and regional integration policy, etc.;
- the macro-economic environment: growth situation, infrastructure, opportunities offered by the local and international market, loans, insurance, etc;
- the main administrative, legal, institutional and macroeconomic constraints;
- the opportunities for (and constraints on) setting up joint enterprises.

1.3. Analysis of potential and limits in the fisheries sector in the coastal state concerned

Here the contractor will have to identify and analyse the potential offered by the fisheries sector within the coastal state concerned and its limits, with a view to establishing responsible fishing in the waters of the coastal state in question.

This analysis will cover the following strands:

- The different fisheries: here, the contractor must describe the situation of fisheries resources and their probable evolution (stocks status, recommended and actual levels of exploitation, etc.), for all stocks of commercial interest, giving detailed and accurate information on the share contemporarily fished by national and foreign fleets. This evaluation should be based on the available data. Any flaws in the evaluation of resources should be clearly emphasised.
- Fishing fleets and fishing effort: here, for each fishing ground, the contractor must analyse the conditions of access to the waters and resources, the conditions under which fishing is carried out and any associated obligations. Specifications of the level of fishing effort presently deployed should be included – featuring information on measurable and recognised parameters, their impact on stocks of commercial interest and on the environment, and existing operational inputs (census/analysis of the different fleets, etc.). The contractor will have to analyse the activity of distant-water fishing fleets, including the European fleet, indicating, in particular, the conditions under which non-national vessels operate and specifying the type(s) of agreement or arrangement existing and the financial contributions/compensation agreed, including in the form of foreign investments made in that coastal state.

- The fisheries sector: for the main activities associated with fishing (upstream and downstream activities, port infrastructures, marketing, processing, etc.), the contractor must draw up the most detailed possible description for each activity, analyse and evaluate the opportunities offered by processing and selling fisheries resources and the market in fishery products, and consider those offered by associated activities (transport, energy, etc.) - highlighting, in particular, the volume of private investment in the sector.

For each of these strands, the contractor must detail the current breakdown between national and nonnational activity, specifying, as needed, any differences in treatment. In the case of the activities of foreign fleets or investors, the contractor should make a distinction between Community interests and others. When examining the conditions of access to the waters and resources for foreign fleets, the contractor should break down the revenue generated by the different agreements/arrangements and specify their destination and budget allocation. The contractor should detail the contribution from the individual fisheries agreements as a percentage of the balance of payments and the budget. Where European distant-water fishing vessels operate under a Community fishing agreement, an analysis of their presence in the light of that agreement will also be required. Whenever possible, the contractor should seek to collect this information for the previous three to five years and specify, where possible, if there are any medium and/or long-term projections or perspectives.

2. SPECIFIC ASPECTS OF EVALUATION AND IMPACT ANALYSIS OF A FISHERIES PARTNERSHIP AGREEMENT

2.1 Economic and financial analysis

The purpose of this section of the analysis is to determine the advantages and expected benefits to both parties in the light of the anticipated costs. The contractor will therefore be required to evaluate the country concerned's financial, economic, institutional, political, social and environmental interests in a fisheries partnership agreement. It should also describe and quantify the situation with and without an agreement, and any additional factors, and explain the likely main variants to be considered. This section of the analysis should inform the decisions to be taken during the negotiation and implementation of the fisheries partnership agreement.

Identifying the stakeholders

The contractor will be required to identify the main parties directly and indirectly concerned by the fisheries partnership agreement, and assess its potential impact on them. It must estimate the contribution the fisheries partnership agreement might make to the problems generally associated with development in the coastal state concerned, above and beyond those specific to the fisheries sector. In addition to identifying the stakeholders in the coastal state concerned, the contractor must also analyse the likely impact of the fisheries partnership agreement on the fisheries sector in Europe. As far as possible, the contractor will have to quantify and evaluate the specific objective of the agreement in monetary terms - in other words the value which European operators should obtain from the agreement, by type of catch and by year. The contractor will also have to analyse the sustainability of the activities which might be generated or supported by a fisheries partnership agreement (such as financing local research, direct or indirect financing of local small-scale fishing or supplying the local fish processing industry from compulsory landings) The tender will have to include a proposal for the methodology which the contractor will use to identify (methodology, target population, etc.) and analyse stakeholders.

Cost-benefit and cost-effectiveness analysis

Once the stakeholders have been identified, the contractor should carry out a cost-effectiveness analysis of the Community's financial contribution and, where possible, a cost-benefit analysis judging the appeal of a fisheries partnership agreement for all the groups concerned. This analysis should be made for each party involved in a proposed agreement or one which has already been concluded.

Financial analysis and study of the economic effects of the fisheries partnership agreement

A financial analysis must be carried out to quantify the interests of the main stakeholders and verify the long-term viability of the effects of a fisheries partnership agreement. The contractor should also analyse the economic effects, in particular the financial impact of the agreements on the profitability of fleets (split into homogenous segments). This fleet segmentation should be based on the technical character of the fleets concerned - taking account, in particular, of the value of catches, turnover, and profit-and-loss accounts per fleet segment. This analysis of the economic effects of the fisheries partnership agreement should provide information on its real contribution to the coastal state concerned in terms of:

- added value and jobs created (direct and indirect);
- economic growth;
- altering and restructuring the economy and the budget;
- investments (foreign and local);
- inflation and prices;
- fiscal and para-fiscal policy;
- the level, composition and conditions of employment;
- influence on supply and demand;
- impact on competition;
- distribution of economic activity and income;
- regional integration (essentially identification of any links sought and the prospects offered by local cooperation (in particular with nearby outermost regions and/or OCTs and/or ACP countries));
- impact on the unofficial economy; on technological innovation and know-how.

Where public and/or private agreements and arrangements exist between the country concerned and foreign fleets, the contractor should carry out a comparative financial and economic analysis.

2.2. Social impact analysis

The contractor will be required to distinguish the social effects from the economic, as far as possible by assessing the likely impact on:

- poverty and social exclusion;
- income distribution;
- employment and employment conditions;
- geographical, regional, urban/rural balances and migration flows;
- public education and health;
- access to public services and social security;
- gender relations;
- consumer rights;
- other social aspects, such as child labour, etc.

2.3. Environmental impact analysis

This analysis must list and evaluate the environmental repercussions of a fisheries partnership agreement. The contractor should study in particular the impact of the agreement on the elements analysed under point 1.2.5 (above).

The analysis should conclude whether or not the overall impact of the agreement (temporary or permanent, short or long term, national or cross-border) on the environment is positive or negative, and the negative impacts.

2.4. Conclusion

To be able to justify whether it is necessary and advisable for both the Community and the nonmember coastal state to negotiate and implement a fisheries partnership agreement (opportunity cost), the contractor must formulate conclusions:

- demonstrating the different impacts (both short and long term) of a fisheries partnership agreement, analysing the interplay between the various policies and instruments;
- containing recommendations justified on financial, economic, institutional, political, social and environmental grounds.

If an evaluation/impact analysis has been carried out with a view to an ex ante appraisal of a fisheries partnership agreement or a specific protocol to one to be negotiated and/or concluded, these conclusions must either address the points listed in Article 21 of the detailed rules for implementing the Financial Regulation (Commission Regulation (EC) No 2342/2002 of 23 December 2002), or enable the Commission departments to satisfactorily flesh out the information required on these points.

By way of reminder, the points to be covered are:

- the need to be met in the short or long term;
- the objectives to be achieved;
- the results expected and the indicators needed to measure them;
- the added value of Community involvement;
- the risks, including fraud, linked with the proposals and the alternative options available;
- the lessons learned from similar experiences in the past;
- the volume of appropriations, human resources and other administrative expenditure to be allocated with due regard for the cost-effectiveness principle;
- the monitoring system to be set up.

3. RECOMMENDATIONS

For each task and country the contractor will be required to propose recommendations, indicators and initiatives to be undertaken to respond to the different issues raised in the overall analysis and the impact analysis. These technical recommendations should essentially relate to the measures and instruments which will help achieve the objectives of sustainable fishing in the most appropriate, effective and efficient way, in the interests of both parties.

Fisheries partnership agreements with third countries - Council conclusions

The Council adopted the following conclusions:

1. "Following the exchanges of views and taking note of the Communication from the Commission¹, and recalling its Resolution of 3 November 1976, its Resolution of 10 November 2001² and its Conclusions of 30 October 1997³ as well as all of the Community's international undertakings and especially at the World Summit on Sustainable Development (Johannesburg 2002), the Council held a discussion on the future of the bilateral fisheries relations between the Community and certain third coastal States which involve financial compensation from the Community.

2. Recalling the political, economic, ecological and social importance of this part of the Common Fisheries Policy (CFP) at both Community and international level, **THE COUNCIL REAFFIRMS ITS WILLINGNESS :**

- to maintain fisheries agreements as a means of protecting this activity and the employment linked to the fleets operating within these agreements because of their special nature and their connection to regions which are highly dependant on fisheries;
- to guarantee and step up its action to establish sustainable fisheries outside Community waters, in accordance with the general principles as defined for the conservation and sustainable management of fisheries resources under the CFP⁴;

AGAINST THIS BACKGROUND and in the present situation, **THE COUNCIL CONSIDERS** that public agreements encompassing all fishing activities by Community fishermen operating in waters under the sovereignty and/or jurisdiction of third coastal States provide the best means of ensuring the sustainable exploitation of surpluses and a greater coherence between the political initiatives of the Community, notably with the cooperation and development policy.

3. Considering that the policy to promote European distant-water fishing in waters under the sovereignty and/or jurisdiction of third coastal States must respect the various commitments entered into by the European Community under its external policy and the principles which must govern its common fisheries policy, notably the precautionary principle, such as those laid down in Council Regulation no. (EC) No 2371/2002, the Council recalls that the Community must:
 - contribute towards rational and sustainable exploitation of the surplus of coastal States' marine resources, in particular by preventing the overfishing of stocks which are of interest for local people; in this context due account will be taken of the coastal State's priorities in favour of its private national sector;
 - improve scientific and technical knowledge of the fisheries in question, taking into account the existing and necessary work in the field carried out at the appropriate regional level and taking into consideration the likely impact of fishing on the environment;

- contribute towards combating illegal, unregulated and unreported fishing, in particular by stepping up in a non-discriminatory fashion the management, control and follow-up measures for fishing operations;
- contribute towards strategies for the sustainable management of fisheries as defined by the coastal State, in particular by taking account of the development programmes elaborated at national and/or regional level with Community assistance in accordance with cooperation or association agreements;
- facilitate the integration of developing coastal States into the global economy, inter alia by promoting fair conditions of employment between the employees of the sector and by encouraging the creation of an environment that is favourable to private investment and to the development of a dynamic, viable and competitive private sector, notably by a framework supporting European investments and the transfer of technology and vessels;
- foster better global governance of fisheries at financial and political level, in particular by strengthening the capacity building of coastal States and by the fight against corruption.

Furthermore, in order to strengthen the consistency of Community action and to ensure that Community action complements action by its Member States, the Council recalls the need to take account of the various Community instruments and policies and Member States' initiatives, in particular in the context of development cooperation and scientific and technical cooperation, which are likely to contribute to the sustainable development of the fisheries policies of the coastal States concerned.

Convinced that the Community should contribute to responsible fishing on a rational, fair, balanced and sustainable basis, the Council sees a need for progressive development of a policy dialogue at national and/or regional level with coastal States, offering Community vessels access to the surplus fishing stocks in the waters under their sovereignty and/or their jurisdiction.

Considering that this dialogue should apply to all agreements involving Community financial compensation **THE COUNCIL CONSIDERS** accordingly that this dialogue must be consolidated by a binding instrument which lays down the rights and obligations of the Parties and of stakeholders on both sides in the form of a Fisheries Partnership Agreement hereinafter referred to as « FPA » notably by defining:

- Anxious to ensure that the Community financial contribution under the CFP effectively and adequately supports the establishment of responsible and sustainable fishing in the interests of the Parties, the Council considers that it should be determined by:

- all fishing opportunities accessible to Community fishing vessels in the light of the best scientific opinion available and better knowledge of the state of the fisheries and of the fishing effort deployed by both national and foreign fleets;
- pinpointing action to promote the sustainable development of fisheries, in particular action to improve the scientific and technical evaluation of the fisheries concerned,
- monitoring and supervision of fishing activities, hygiene requirements and the business environment of the sector;

- the impact of the partnership agreement as well as the participation of European interests on the partner coastal State's fisheries sector as a whole, with regard to its aspirations towards development under rational and sustainable economic and social conditions and to its commitment to implementing a sustainable fisheries policy in the interest of both Parties.

This single financial contribution will be deployed according to the budgetary procedures of the partner State and according to the results of the negotiations.

6. In order to establish the regulatory and financial framework which will govern fisheries relations between the Community and one or more coastal States and to ensure that it is properly implemented, the Council asks the Commission, for each agreement, to:
 - carry out ex-ante and ex-post evaluation so that an assessment can take place not only of the environmental, economic and social impact of a partnership agreement, but also the opportunities which sustainable development of the fisheries sector provides and of the requirements of establishing responsible fishing for the concerned coastal state, for the concerned European distant-water fishing fleets and for Community employment;
 - propose to its partners the setting up of a bilateral scientific committee to advise on sustainable fishing possibilities prior to the conclusion or renewal of partnership agreements;
 - implement initiatives that will promote responsible fishing, in particular in order to improve the scientific and technical evaluation of fishing⁸, to step up action to combat illegal, unregulated and unreported fishing and to carry out exploratory fishing voyages;
 - ensure that the FPA is permanently monitored and report periodically on its implementation in the light of predefined performance indicators;
 - to commit, in cooperation with Member States, to promoting the optimal use of fishing possibilities in the context of Article 274 of the Treaty.
7. In line with the foregoing, the Council feels that this approach should be promoted and progressively implemented and asks the Commission to ensure that, as of 2004, impact assessments, the essentials of which shall be made available to the Member States in good time, are carried out in preparation for the negotiation of fisheries partnership agreements, both in respect of the fisheries agreements and protocols in force and for the coastal States with which opportunities are identified."

⁸ The Communication on the reform of the Common Fisheries Policy ("Roadmap", 9371/02 COM(2002) 181 final of 28 May 2002) stated that the Commission will at a later stage present an Action Plan to improve stock evaluation in non-Community waters.

