On the final morning, the MoS returned to a discussion of its own rules of procedure, but without reaching an agreement.[3] Although this discussion carried on into the afternoon, the stalemate continued. Ultimately, however, the Signatories did agree to adopt a bracketed version of the rules, with a chapeau text, stating that the rules were adopted, with the exception of the bracketed text in Rule 11 (quorum) and Rule 14 (decision making).[4]

MoS-2 nominated the Co-Chairs of the Intersessional Working Group, which will focus on the communication strategy for the MoU. Closing speeches were heard and MoS-2 closed at 6:05 pm.

Notes

1 MoS-2 discussed seven of the MoU's nine cooperating partners: the International Fund for Animal Welfare, the Manta Trust, Mar Alliance, Project Aware, Shark Advocates International, the Shark Trust and the Wildlife Conservation Society. Six of these (all except Mar Alliance, which left early) signed the MoU at a ceremony at MoS-2.

2 CMS/Sharks/Outcome 2.1.

3 Like many multilateral environmental agreements (MEAs), the Sharks MoU's Signatories have been unable to reach final agreement on Rules of Procedure. In order for the meeting to go forward, it adopted provisional rules of procedure at the beginning of its session, lasting only until the end of that session or the adoption of final Rules of Procedure.

4 This compromise mirrors the actions of other MEAs, including the Convention on Biological Diversity.

WTO

Two Decades of the Tuna-Dolphin Dispute – A New Wrinkle –

by Armin Rosencranz* and Aditya Vora**

Tuna, and how to fish it in the eastern Pacific, has long been a matter of dispute for law makers and consumers in the United States, Europe and Latin America. On one side, we have those who believe that sound methods of fishing for tuna do exist, whereas on the other are radicals, in whose minds the idea that all tuna fishing will lead to the death of dolphins is paramount. In reality, a mechanism that would render all tuna completely "dolphin-safe" is yet to be found after more than two decades of debate. If found, it could resolve the long controversy and guarantee the future of the fishing industry in the eastern Pacific. This article considers the latest decision in this case but first, it will briefly recap the long process of addressing the international legal and practical aspects of regulating commercial tuna fishing for purposes of protecting dolphins.

Background

In the Eastern Tropical Pacific region (ETP), primarily fished by Mexico, Colombia, Ecuador and many Central American countries, yellow-fin tuna are often found swimming with schools of dolphins. Fishing vessels chase the dolphins, which swim on the surface, in order to cast their nets around them and catch the tuna swimming underneath. To catch the tuna underneath them, the fishermen encircle the dolphins with "purse-seine" nets, a practice that causes some dolphins to be hauled in as by-catch. These fishing methods, used throughout the ETP region, have been the exclusive method used by the Mexican tuna-fishing industry. The two-decade-long tuna-dolphin dispute revolves around this method of catching yellow-fin tuna.

In 1988, the US Congress passed the Marine Mammal Protection Act (MMPA),[1] which mandated that the dolphin mortality rates of the importing country should not exceed 1.25 times that of the US fisheries fleet.[2] This action was specifically taken in response to growing awareness of the above described fishing methods.

The Earth Island Institute (EII), an animal-rights group, then launched a campaign to stop the slaughter of dolphins. This led to a dispute in the American courts, which began even before the Tuna-Dolphin I case. EII sued the US Commerce and Treasury Departments for their failure to enforce the MMPA requirements. In 2000, following appeal from an administrative decision, the US District Court in San Francisco found that under the MMPA, the agencies were required to impose an embargo on yellow-fin tuna imported from Mexico, as Mexico exceeded the dolphin kill rate of 1.25 times the US rate.[3] In 2007, the Ninth Circuit Court of Appeals upheld a subsequent ruling and an embargo was finally deployed.[4]

Meanwhile, in the 1990s, challenging an interim embargo that was in place while the relevant agency tried to implement the MMPA, Mexico filed a request for a World Trade Organization (WTO) dispute settlement, pursuant to the General Agreement on Tariffs and Trade (GATT) – which led to the first Tuna-Dolphin decision and report. That report was obscured by the on-going North American Free Trade Agreement negotiations. In 2009, Mexico filed a second WTO dispute resolution request. There is normally little need or effort to distinguish the Tuna-Dolphin I case from Tuna-Dolphin II.

The GATT panel found that the embargo provisions Mexico was concerned about were not "internal regulations" under GATT Article III. It also held that Article III applies only to measures that affect "products". The WTO Dispute Settlement Panel (2011) and Appellate Body (2012), having both concluded that the import prohibition was not an internal regulation as it affected imported products, went on to find that, even if the

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