ARTICLES

THE DEVELOPMENT OF MEXICAN FISHERIES AND ITS EFFECT ON UNITED STATES-MEXICAN RELATIONS

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INTRODUCTION

United States-Mexican fisheries relations have for years been characterized by jurisdictional conflict.[1] Mexico, along with certain other nations, has claimed the right to exercise unfettered jurisdiction over fisheries up to 200 miles from its shores;[2] the United States has denied that right.[3]

Because the issues concern territorial jurisdiction, governments are involved on both sides. The real competition here, however, is between the fishing industry of the United States, on the one hand, and of Mexico on the other. From the private sector viewpoint,

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1. *See* T. WOLFF, IN PURSUIT OF TUNA: THE EXPANSION OF A FISHING INDUSTRY AND ITS INTERNATIONAL RAMIFICATIONS—THE END OF AN ERA, The Center for Latin American Studies, Arizona State University 126-128 (1980) (Hereinafter cited as "WOLFF").

2. *See* Schmitt, *The Problem of Maritime Boundaries in U.S.-Mexican Relations*, 22 N.R.J. 139, 144 n.21 (1982) (Hereinafter cited as "Schmitt"); Moore, *National Legislation for the Management of Fisheries Under Extended Coastal State Jurisdiction*, 11 J. MAR. L. & COMM. 153, 178 (1980); Erde, *Mexico and "The Law of the Sea,"* MEXICAN-AMERICAN REVIEW May, 1979, at 4 (Hereinafter cited as "Erde").

3. *See* L.A. Times, July 11, 1980, § I, at 18, col. 1; Comment, *The Tuna War: Fishery Jurisdiction in International Law*, 1981 U. ILL. L.R. 755 (1981) (Hereinafter cited as "*The Tuna War*").

issues like the effect of the development of Mexican fisheries on United States-Mexican relations are rarely a focal point. The primary concerns of the tuna industry on both sides are earning a livelihood and competing for a share of the market for tuna. The really interesting issue, then, in the context of Mexican-American fisheries relations, and the one on which this article ultimately focuses, is an issue of economic competition and survival.

It should be noted that the author's particular experience has been focused in the tuna industry as opposed to the shrimp or fresh fish industries, for example, and that the opinions expressed herein will be colored heavily by the author's experience in that industry. This focus should be particularly useful. Both in terms of dollar volume of investment and dollar volume of production and sale, tuna is clearly the most significant United States fishing industry.[4] It is also the industry in which most of the really interesting issues arise, at least with respect to Mexican and United States fisheries relations.

This article will focus on the following questions:

What are the historical events and policies which form the backdrop for current Mexican-American relations in the fisheries context?

What are the principal policy considerations from the United States' side?

What are the principal policy considerations from the Mexican side?

What have been the significant recent events in the United States-Mexican fisheries relationship?

What are the implications of these events for United States-Mexican relations?

What is the outlook for the future?

What is the potential for United States and Mexico cooperation?

4. Because the majority of tuna landed eventually reaches the consumer in canned form, while other seafood products are predominantly sold in fresh or frozen form, comparisons are somewhat difficult. For 1984, the following figures are available:

	value* of fish landed	value* of fish canned	total
Tuna	270.5	872.2	1142.7
Salmon	391.5	334.7	726.2
Shrimp	488.4	33.2	521.6

* in millions of dollars.

NAT'L MARINE FISHERIES SERVICE, U.S. DEP'T COM., NAT'L OCEANIC AND ATMOSPHERIC AD., FISHERIES OF THE UNITED STATES, 1984, vii-xi, xiii (April, 1985) (Hereinafter cited as "FISHERIES OF THE U.S., 198-").

HISTORICAL EVENTS AND POLICIES

The concept of a unilateral expansion of jurisdictional claims over fisheries originated with the United States itself. Shortly after the end of World War II, President Truman claimed the right to exclude foreign fishing from certain "conservation areas" in waters fished primarily by the American fleets.[5] The rationale for the so-called Truman Declaration was the urgent post-war need to preserve United States marine resources.[6]

Following the United States' lead, other nations including Mexico soon claimed their own exclusive fishing zones.[7] Although the United States quickly abandoned its own claims,[8] the other nations including Mexico did not.[9] The Truman Declaration also called for international cooperation in fisheries management and the United States policy moved in that direction.[10] By 1950, the United States and Costa Rica had formed the Inter-American Tropical Tuna Commission, commonly known as the "IATTC."[11] Eventually seven other countries including Mexico also joined the IATTC and for a little over ten years, starting from 1966, the IATTC operated with varying degrees of effectiveness to regulate the fishing for Yellowfin tuna in the Eastern Tropical Pacific,[12] an area extending west from the coast of the United States and south all the way to Chile.[13]

The IATTC was never a harmonious group. The Latin American members including Mexico were particularly unhappy with the "first-come, first-served" basis on which the catch within the regulated area of the Eastern Tropical Pacific was allocated.[14] Because the United States had the largest fishing fleets, it consistently took the largest yearly catch.[15] Eventually, the dissatisfaction reached the point where most of the Latin American members including Mexico withdrew from the IATTC[16] leaving it in a weakened condition from which it has never quite recovered.

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5. Proc. No. 2668, Policy of the United States With Respect to Coastal Fisheries in Certain Areas of the High Seas, 59 STAT. 885 (1945).

6. *Id.*; *See The Tuna War*, at 758.

7. *See The Tuna War*, at 764; Erde, at 7.

8. H.R. REP. NO. 445, 94th Cong., 1st Sess., 25 (1975).

9. *See supra* n.2.

10. Proc. No. 2668, Policy of the United States with Respect to Coastal Fisheries in Certain Areas of the High Seas, 59 STAT. 885 (1945); *The Tuna War*, at 758 n.19.

11. Convention for Establishment of Tuna Commission, May 31, 1949, United States-Costa Rica, 1 U.S.T. 230, T.I.A.S. No. 2044; WOLFF, at 99-103.

12. *See* WOLFF, at 107-109; 16 U.S.C. § 1801(a)(4).

13. M. ORBACH, HUNTERS, SEAMEN, AND ENTREPRENEURS THE TUNA SEINERMEN OF SAN DIEGO, University of California Press, 132, 137 (1977) (Hereinafter cited as "ORBACH").

14. *See* WOLFF, at 123; N.Y. Times, December 29, 1980, at D 1.

15. *See* WOLFF, at 108, 122.

16. *See* N.Y. Times, December 29, 1980, at D 13.

As early as 1951, certain Latin American countries, commencing with Ecuador, began enforcing their claims to 200 mile fisheries zones by seizing United States tuna boats found fishing within their zones.[17] The United States response, first in 1954 and later in an expanded version in 1967, was the Fishermen's Protective Act.[18] This Act encouraged the United States tuna fleet to continue fishing in the 200 miles economic zones claimed by Latin American countries in the Eastern Tropical Pacific by providing insurance coverage reimbursing vessel owners for the value of a lost vessel and equipment as well as the cost of fines paid to the foreign government.[19] In this way, each United States tuna boat became in effect an agent of the United States government declaring by its actions the United States' refusal to accept the expansion of jurisdictional claims over fisheries.[20]

PRINCIPAL UNITED STATES POLICY CONSIDERATIONS

The principal policy considerations behind the United States' position against an expanded fisheries jurisdiction are basically twofold: security interests and economic interests.[21]

From a security standpoint, the United States Departments of State and Defense have consistently pointed out the importance of freedom of the seas.[22] For example, freedom of navigation of the seas was a very important issue for the United States in the recent Law of the Sea treaty negotiations.[23]

How does freedom to fish affect freedom of navigation? As indicated earlier, tuna vessels in particular, because they ply the seas worldwide, have been useful purveyors of the American view of freedom of the seas.[24] Any retreat from this position poses the threat of setting a precedent which might later result in more limited movement on the seas for security purposes.[25]

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17. *See The Tuna War*, at 755, n.1.

18. PUB. L. NO. 83-680, 68 STAT. 883 (1954), 22 U.S.C. §§ 1971-1980 (1976); *amended*, PUB. L. NO. 90-482, 82 STAT. 729 (1968). The Act as amended is cited as the "Fisherman's Protective Act of 1967."

19. 22 U.S.C. § 1973 (1976), PUB. L. NO. 83-680, § 3, 68 STAT. 883 (1954), (reimbursement for fines); 22 U.S.C. § 1977 (1976), PUB. L. NO. 90-482, 82 STAT. 729 (1968), (reimbursement for loss of vessel and equipment).

20. *See* H.R. REP. NO. 319, 95th Cong., 1st Sess., 9-10 (1977).

21. *Department Opposes Unilateral Establishment of 200 Mile U.S. Fisheries Zone*, 73 DEP'T STATE BULL., October 27, 1975, at 623-627.

22. *See, e.g.*, H.R. REP. NO. 445, 94th Cong., 1st Sess., 27 (1975).

23. *Oceans: Law of the Sea Conference*, 78 DEP'T STATE BULL., June, 1978, at 47-48; *See also United States Ocean Policy, Statement by the President, March 10, 1983*, 22 Int'l Legal Materials 464, 465 (1983); Burke, *Exclusive Fisheries Zones and Freedom of Navigation*, 20 SAN DIEGO L. REV. 595, 603 (1983). (Hereinafter cited as "Burke, *Fisheries Zones*").

24. *See supra* n.20; *The Tuna War*, at 762-764.

25. S. REP. NO. 459, 94th Cong., 1st Sess., 3 (1975).

From an economic standpoint, the United States, until recently, saw little to gain by restricting access of foreign fishermen to United States waters, and saw much to lose by tolerating restricted access of United States fishermen in foreign waters. By and large, until the 1970's at least, United States fishermen suffered relatively little from foreign competition in United States waters.[26] On the other side of the coin, the United States tuna fleet, and, until relatively recent times, a substantial portion of the shrimp fleet, took the vast majority of its catch from waters off foreign shores.[27]

In the case of tuna, the principal argument which the United States has consistently employed against efforts to impose jurisdictional claims focuses on the highly migratory character of the species.[28] Because tuna are constantly migrating from the waters off the coast of one nation to the waters off the coast of another, sometimes for thousands of miles, they arguably belong to no one.[29]

However, as noted below, the United States perception of economic interests has in recent years undergone substantial change.[30]

PRINCIPAL MEXICAN POLICY CONSIDERATIONS

Stated simply, Mexico's principal policy consideration has been its interest in controlling and reaping the benefits from a substantial natural resource.[31] The justifications and arguments for this interest are manifold. The resource is physically adjacent to Mexico and, following the arguments of numerous other countries for the 200 miles exclusive economic zone,[32] ought to be controlled by Mexico. Mexico is a developing country and needs access to such resources. Mexico has a growing population to feed, and protein from the seas is one answer to the problem.[33]

With particular reference to tuna, Mexico's objectives have in recent years become more focused. Having watched for years the growth and success of the American tuna industry, the thought must have occurred to many Mexican fishermen, businessmen, and government officials: "Why them?" "Why not us?"

This thought must have gathered considerable force following

26. *See* WOLFF, at 138.
27. *See Id.*, at 4-16.
28. *See* Hoover, *A Case Against International Management of Highly Migratory Marine Fishery Resources: The Atlantic Bluefin Tuna*, 11 B.C. ENVT'L AFF. L. REV. 11, 21-22 (1983); *see also* H.R. REP. NO. 445, 94th Cong., 1st Sess., 27 (1975).
29. *See* Comment, *Fisheries Management in the Gulf of Mexico: Impact of the Tuna Exception to the Fishery Conservation and Management Act of 1976*, 42 LA. L. REV. 705, 707 (1982); WOLFF, at 106; ORBACH, at 69.
30. *See infra*, text at 7, nn.44-47.
31. *See* Burke, *Fisheries Zones*, at 598-599.
32. *See* Erde, at 8.
33. *Id.*

the 1974 recession, which was particularly acute in the tuna industry, and which was attributable in substantial part to the rising cost of fuel for tuna vessels. Mexico's significant natural advantages in this respect became apparent to interested observers who appreciated the critical role of fuel in cost efficient tuna operations.

First, it had a blossoming oil industry,[34] which would permit it to provide, if it so chose, fuel for Mexican source vessels at a fraction of the cost of its northern neighbor. Second, whereas United States vessels had to sail for days in order to reach their fishing grounds, the most productive fishing ground in the world at that time, the Eastern Tropical Pacific, lay off the coasts of Mexico.[35] Third, Mexico needed a productive outlet for its burgeoning oil revenues.[36] What better choice than an industry in which it already enjoyed so many natural advantages and which could be counted on to address one of Mexico's most pressing problems—a fast growing population and a slower growing source of protein.[37] The United States tuna industry also suffered from high labor costs. Labor in Mexico was relatively inexpensive.

The principal location of the American tuna industry in California and, in particular, the base of the San Diego fishing fleet in San Diego,[38] must have played some role in the decision to become more involved. After all, San Diego is only a short drive north of the Mexican fishing port of Ensenada. Why could not Ensenada, with all of its natural advantages, or Mazatlan, a thousand miles to the south, or both, develop major tuna industries of their own? Indeed, tuna vessels are moveable items. If Mexico were in fact a better place to operate a tuna vessel, perhaps the San Diego fleet or at least a portion of it might be persuaded to relocate.

SIGNIFICANT RECENT EVENTS IN THE UNITED STATES-MEXICAN FISHERIES RELATIONSHIP

A few of the more significant historical events in the evolution of the Mexican-American fisheries relationship were outlined earlier.[39] The focus now is on more recent events.[40]

Perhaps based upon some of the considerations just outlined, the Mexican government concluded in late 1975 that, notwithstanding United States disapproval, it would establish a maritime eco-

34. *See* TIME, November 11, 1974, at 62; BUSINESS WEEK, October 26, 1974, at 40-41.

35. ORBACH, at 132.

36. *See, e.g.*, NEWSWEEK, August 14, 1978, at 50-51.

37. Erde, at 8.

38. *See* N.Y. Times, May 2, 1982, at 35, col. 1, 2.

39. *See supra*, text at 4-5, nn.5-20.

40. *See also*, Annex A.

nomic zone of 200 miles in which it would control all resources.[41] By 1976, the appropriate Constitutional amendment and legislation had been passed and signed by the President.[42] The Mexican government indicated that it would allow foreign fishing vessels to purchase licenses to fish only for those species which Mexico could not itself harvest.[43]

At almost the same time, traditional views in the United States concerning freedom of the seas were undergoing a major change. Over-fishing of traditional United States fishing grounds, particularly by Soviet and Japanese "floating factories," created major political pressure on the United States Congress for restriction of United States fishing grounds to United States fishermen.[44] Notwithstanding strong opposition from the United States tuna and shrimp industries, who were concerned with the implications worldwide of United States establishment of its own fisheries economic zone,[45] and notwithstanding opposition from the Departments of State and Defense on national security grounds,[46] the Congress passed the Fishery Conservation and Management Act of 1976.[47] In this Act, the United States established an exclusive management authority over an area 200 nautical miles from the United States' coast.[48] Within this zone, the United States was to exercise fishery management authority over all fish.[49]

In order to accommodate the tuna industry, however, an important exception was made in the Act for "highly migratory species," which are defined in the Act as highly migratory species of tuna.[50] Moreover, in addition to exempting tuna from regulation under the Act, and thereby preserving the United States' argument in opposition to regulation of tuna by other countries, the Act bolstered the worldwide bargaining position of the U.S. tuna industry

41. *See* WOLFF, at 127.

42. MEXICAN CONSTITUTION, Art. 27, *reprinted in* A. SZEKELEY, MEXICO Y EL DERECHO INTERNACIONAL DEL MAR 249-259 (1979) *and in* DIARIO OFFICIAL, February 6, 1976 *and in* LEY REGLAMENTARIA, February 13, 1976 *see also* Schmitt, at 144, n.22.

43. *See* Schmitt, at 144.

44. *Id.*; Report to the Congress on Ocean Pollution, Overfishing, and Offshore Development, U.S. DEP'T COMMERCE, 33-39 (1976); 122 CONG. REC. 8384 (1976); 122 CONG. REC. 8555 (1976).

45. *See* WOLFF, at 128-129; Schmitt, at 145.

46. *See* Schmitt, at 145; U.S. NEWS & WORLD REPORT, June 10, 1974, at 59.

47. PUB. L. NO. 94-265, § 101, 90 STAT. 336 (1976); *see* 76 DEP'T STATE BULL., Feb. 28, 1977, 175-178.

48. 16 U.S.C. § 1811 (1976), PUB. L. NO. 94-265, Title I, § 101, 90 STAT. 336 (1976).

49. 16 U.S.C. § 1812 (1976), PUB. L. NO. 94-265, Title I, § 102, 90 STAT. 336 (1976).

50. 16 U.S.C. § 1813 (1976), PUB. L. NO. 94-265, Title I, § 103, 90 STAT. 336 (1976).

in a significant way. Recognizing the importance of the United States as the world's principal consumer market for processed tuna, the Act provided that if an American tuna vessel were seized by a foreign country on a claim of jurisdiction not recognized by the United States, the Secretary of the Treasury *must* impose an embargo upon the importation of all tuna products from that country.[51]

Although on its face the Fishery Management and Conservation Act seems to very much favor the tuna industry, the Act was strongly opposed by the industry for very good reason. By asserting jurisdiction over a 200 nautical mile economic zone, the United States implicitly recognizes the right of other nations to do likewise.[52]

Apart from the difficulty of attempting to carve out any kind of an exception to such a sweeping assertion of jurisdiction, the credibility of the tuna industry exemption suffers from at least two other weaknesses: First, the United States has not been consistent in its argument that "highly migratory species" are not subject to the management control of any nation. As a result of strong pressure from the sport fishing industry, swordfish and marlin, for example, which are clearly classified as "highly migratory species," are included in the fish subject to management under the Act.[53] Second, exempting tuna from the jurisdiction of our 200 mile zone is not especially meaningful since there are relatively little tuna within our 200 mile zone.[54]

The awkwardness of the United States' position under the Act was clear to everyone, including the United States tuna industry. It is precisely for this reason that the tuna industry so strongly op-

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51. 16 U.S.C. § 1825 (1976), PUB. L. NO. 94-265, Title II, § 205, 90 STAT. 345 (1976).

52. *See* H.R. REP. NO. 445, 94th Cong., 1st Sess., 86-87 (1975).

53. 16 U.S.C. § 1821(j) (1983), PUB. L. NO. 97-453, § 2(a)(6), 96 STAT. 2481 (1983).

54. To quote the views of several Congressional opponents of the tuna exemption from the Act,

> the proponents . . . are urging that we have the right to regulate all fisheries within our 200-mile zone, except for species that do not exist there. For those species, they ask that we enact a special law to demand that the 200-mile zone be inapplicable when claimed by other nations if they include migratory species such as tuna.

H.R. REP. NO. 319, 95th Cong., 1st Sess., 9 (1977); *see generally* Calkins, *Geographical Distribution of Yellowfin and Skipjack Tuna Catches in the Eastern Pacific Ocean, and Fleet and Total Catch Statistics, 1971-1974*, 17 INTER-AMERICAN TROPICAL TUNA COMMISSION BULLETIN 3, 13-66 (1975); Orange and Calkins, *Geographical Distribution of Yellowfin and Skipjack Tuna Catches in the Eastern Pacific Ocean, and Fleet and Total Catch Statistics, 1975-1978*, 18 INTER-AMERICAN TROPICAL TUNA COMMISSION BULLETIN 3, 14-66 (1975); Calkins, *Observations on the Purse-Seine Fishery for Northern Bluefin Tuna (Thunnus Thynnus) in the Eastern Pacific Ocean*, 18 INTER-AMERICAN TROPICAL TUNA COMMISSION BULLETIN 123-149 (1982).

posed the Act and why some view the Act as a sellout of the tuna industry in favor of the more politically powerful fresh fish industry.[55] Once it became clear that the Act would become law, however, and that the United States would declare its own 200 mile economic zone, the exception for tuna and the accompanying embargo provisions, however logically indefensible, became critical to preventing the tuna industry from being totally overrun by the expanding jurisdictions of maritime nations.[56]

Having each established 200 mile exclusive economic zones, both Mexico and the United States saw a need to negotiate new agreements concerning fisheries as well as new maritime boundary agreements recognizing each country's extension of jurisdiction.[57] In 1976 and then again in 1977, Mexico and the United States entered into an agreement governing fisheries.[58]

Under these agreements, Mexico was to allocate to United States fishing vessels a quota of the allowable catch, if any, for those fisheries where there was a *surplus* above the harvesting capacity of Mexican vessels.[59] Similarly, the United States was to allocate to Mexican fishing vessels a quota of the surplus, if any, beyond the harvesting ability of American vessels.[60] United States shrimp fishing in the Mexican economic zone was to be limited and was to terminate in 1979.[61] Licenses on bait boats which had traditionally fished within the 12 mile territorial zone of Mexico were frozen so that no new licenses could be issued and existing licenses would expire as each licensed vessel went out of service or changed ownership.[62]

Apart from the freeze on licensing of bait boats, which were primarily tuna vessels operating within the 12 mile territorial zone in order to obtain bait for their fishing operations, the United States-Mexican treaties did not resolve the issue of regulation of

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55. *See* WOLFF, at 1130.

56. Burke, *U.S. Fishery Management and the New Law of the Sea*, 76 AM. J. INT'L L. 2d, 43 (1982).

57. *See* Comment, *International Agreements: Termination of United States-Mexico Fisheries Agreements*, 23 HARV. INT'L L.J. 143, 144, n.4 (1982) (Hereinafter cited as "*International Agreements*").

58. Fisheries Agreement, November 24, 1976, United States-Mexico, 29 U.S.T. 823, T.I.A.S. No. 8853. Amendments signed in Mexico on July 26 and Sept. 27, 1977; entered into force Sept. 27, 1977 (Hereinafter cited as "1976 Agreement"). Agreement Between the Government of the United States of America and the Government of Mexico Concerning Fisheries off the Coasts of the United States, Aug. 26, 1977, United States-Mexico, 29 U.S.T. 781, T.I.A.S. No. 8852 (Hereinafter cited as "1977 Agreement").

59. 1976 Agreement, art. III, para. 1.

60. 1977 Agreement, art. III, para. 1-2.

61. 1976 Agreement, Annex, Part III, para. 9.

62. 1976 Agreement, Annex, Part II.

tuna.[63] In the 1976 treaty, the United States simply agreed to provide to Mexico the names of United States flag vessels intending to fish for tuna and to transmit on behalf of such vessels the payment of a fee in connection with the issuance of a certificate for each vessel.[64] Nowhere in the treaties did Mexico provide any assurances that such vessels would be allowed to fish in its declared 200 mile economic zone.[65]

At about the same time these treaties were signed or some time thereafter, both Mexico and the United States took steps to bolster the ability of the fishing industries to harvest increasing shares of fish. For its part, the Mexican government invested millions of dollars in fishing vessels, processing and port facilities, and even shipyards.[66] Much of their funding was obtained from external sources both private and public, including an $80 million fisheries development loan from the Inter-American Development Bank.[67]

For its part, the United States, in the American Fisheries Promotion Act of 1980, tightened the restrictions on foreign vessels fishing in its waters.[68]

The Mexican focus was on tuna, and it was the failure of the Mexican-American treaties to resolve this issue which eventually led to their demise.[69] In 1977, unable to obtain the quota allocations which it had sought from the Inter-American Tropical Tuna Commission, Mexico withdrew from that organization.[70] During the next three years, Mexico and the United States met fifteen times to attempt to negotiate a solution to the tuna problem.[71] These negotiations were to no avail, however, and eventually broke down.[72]

Mexico reacted quickly to this breakdown in negotiations by arresting, fining, and confiscating equipment from United States tuna seiners fishing in Mexico's declared economic zone.[73] The United States responded equally quickly by imposing the mandatory embargo on tuna products from Mexico required under the Fishery Conservation and Management Act of 1976.[74] In addition, notwithstanding the significant investment which Mexico had

63. *See International Agreements*, at 146; Schmitt, at 146.
64. 1976 Agreement, art. XVIII.
65. *See The Tuna War*, at 767 n.68.
66. N.Y. Times, Nov. 25, 1980, at D1, col. 3.
67. *Id.*
68. Pub. L. No. 96-561, Title II, §§ 230, 231, 94 Stat. 3287, 3296-3298 (1980).
69. *See supra*, nn.63-65.
70. N.Y. Times, Dec. 29, 1980, at D13, col. 2.
71. *Id.*
72. *Id.*
73. N.Y. Times, Dec. 29, 1980, at D13, col. 1; L.A. Times, July 11, 1980, § 1, at 1, col. 2; L.A. Times, July 16, 1980, § 1, at 7, col. 3.
74. N.Y. Times, Dec. 29, 1980, at A1, col. 3.

made in squid fishing vessels,[75] the United States refused to allocate to Mexico a quota for squid fishing off the New England coast.[76] Mexico responded in December of 1980 by terminating its fishery treaties with the United States.[77]

Why did Mexico finally decide to play hardball with the United States? Mexico itself might answer that, as things were going, it was not getting anywhere in bringing the United States to a reasonable position. The answer, of course, is not so simple. Why did Mexico feel that it was in a position to begin seizing United States vessels, knowing that the consequences would be an immediate United States embargo? Ordinarily, it would take a great deal of confidence and determination to make such a move.

One answer is that at this particular period, Mexico had a great deal of confidence and determination. It had a number of natural advantages over the United States in terms of low-cost tuna production.[78] It had growing oil reserves and accompanying financial flexibility. Most importantly, Mexico had made the commitment to the development of a Mexican fisheries industry. There was no turning back.

From about 1976, or the same year in which Mexico declared its 200 mile economic zone, Mexico began looking seriously at ways to develop its fishing industry.[79] One way was to encourage development by the private sector. Accordingly, Mexican government officials approached the VISA and ALFA groups in Monterrey, the two preeminent Mexican corporate conglomerates, as well as Protexa, a third Monterrey-based corporation, and politely suggested that they consider the fishing industry as an area of investment. Another road to fisheries development was encouragement of investment by foreign tuna processors or vessel operators, who could provide not only financing but expertise. A third approach was simply direct investment or financing by the Mexican government.[80]

Through a combination of these various approaches, investment in the Mexican fisheries industry grew substantially. The first major Mexican tuna joint venture was Productos Alimenticios del Mar, S.A. ("Palmar"), based initially in Mazatlan, Mexico. Palmar was initially formed by Societa Partecipazioni Alimentari S.P.A., SOPAL ("SOPAL"), a large Italian foodstuffs company, whose wholly-owned subsidiary, Alco S.A., is one of Italy's largest tuna

75. *See International Agreements*, at 147 n.24.

76. Schmitt, at 147; N.Y. Times, Dec. 29, 1980, at A1, col. 3.

77. *U.S.-Mexico Terminate Fishing Agreements*, 81 DEP'T STATE BULL., March 1981, at 31, 32; N.Y. Times, Dec. 30, 1980, at A4, col. 1.

78. *See supra*, text at 6, nn.34-37.

79. *See* Erde, at 8.

80. N.Y. Times, Nov. 25, 1980, at D13, col. 3.

processors, and whose parent corporation, Efim, is one of Italy's three largest government-owned conglomerates. SOPAL was later joined in the Palmar joint venture by Valores Industriales S.A. ("VISA") from Monterrey, and by Star-Kist Foods, Inc., a wholly-owned subsidiary of the H.J. Heinz Company. Another joint venture, Pescatun, resulted from an arrangement worked out by the Mexican government with Van Camp Sea Foods, San Diego, and Ed Gann, a San Diego Tuna vessel operator.[81] A third joint venture involved Protexa, another Monterrey based corporation, and Zapata Corporation of Houston.

As expected, a number of U.S. flag vessels relocated to Mexico and at one point Pescatun owned and operated ten purse seine tuna vessels.[82] Expectations were that further relocations to Mexico would follow. The Chairman of the Mexican National Fishing Association, Felipe Charat, commented at the time that San Diego boat owners should move to Mexico soon, because Mexico might stop accepting additional flag changes.[83]

All in all, confidence and hopes were high.

What happened?

What follows sounds very much like a hard luck story. Within one or two years after Mexico terminated its treaty with the United States, the prospects for the Mexican industry began to take a marked turn for the worse. A number of factors combined to bring this about. Because of the United States embargo, Mexico had to look elsewhere, primarily to Western Europe, Japan, and Canada, to market its growing tuna production.[84] Unfortunately, these alternative markets were not sufficient to enable Mexico to sell its production at prices which could turn a profit.[85]

Efforts to develop the domestic market met strong consumer resistance in the traditional Mexican distaste for fish.[86] 1982 saw a worldwide recession which hit the tuna industry particularly hard. The prices for both raw and processed tuna began to drop.[87] Oil

81. N.Y. Times, Nov. 25, 1980 at D13, col. 5, 6.

82. *Id.*

83. *Id.* at D13, col. 4.

84. *See* NATIONAL MARINE FISHERIES SERVICE, FOREIGN FISHERIES ANALYSIS, MEXICO RESTRUCTURES TUNA DEBT, (Feb. 29, 1984).

85. *Id.*

86. *See* Erde, at 9; N.Y. Times, Nov. 25, 1980 at D1.

87. The following figures reflect indexes of exvessel prices (1967 = 100) for two species of tuna for various months in 1982 and 1983, by way of an example.

	Jan. 82	Apr. 82	Jul. 82	Oct. 82	Jan. 83
Albacore	475.8	475.8	376.4	323.5	315.1
Yellowfin	425.8	415.1	372.6	372.6	367.6

	Apr. 83	Jul. 83	Oct. 83
Albacore	315.1	293.9	293.9
Yellowfin	367.6	301.6	283.9

revenues, Mexico's growing strength, began to flatten,[88] and inflation began to run rampant reaching upwards of 100%.[89]

Because of a worldwide overbuilding in new tuna vessels, in many cases for tax and other reasons wholly unrelated to production prospects, the average production per vessel dropped substantially.[90] Adding insult to injury, the weather changed and a current known as "El Niño" created conditions which decreased the available catch in the Eastern Tropical Pacific while increasing the available catch in regions of the Western Pacific far from the coasts of Mexico.[91]

Like many other segments of the Mexican economy, decreases in productivity in the fishing industry and rising interest rates on

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FISHERIES OF THE U.S., 1982, 68-69; FISHERIES OF THE U.S., 1983, 75-76.

The following figures reflect wholesale prices per case for chunk light tuna (6½ oz. cans) at 48 cans per case in 1982 and 1983.

Jan. 82	Apr. 82	Jul. 82	Oct. 82	Jan. 83	Apr. 83	Jul. 83	Oct. 83
44.50	43.14	40.92	38.69	38.58	37.55	36.08	34.92

FISHERIES OF THE U.S., 1982, 70-71; FISHERIES OF THE U.S., 1983, 77.

The following figures reflect average retail prices per can for 7 oz. cans of solid white water packed tuna and 6½ oz. cans of chunk light oil packed tuna.

	Jan. 82	Apr. 82	Jul. 82	Oct. 82
solid white	3.48	3.53	3.54	3.56
chunk light	2.36	2.37	2.42	2.33
	Jan. 83	Apr. 83	Jul. 83	Oct. 83
solid white	3.51	3.41	3.39	3.43
chunk light	2.36	2.19	2.15	2.19

FISHERIES OF THE U.S., 1982, 73; FISHERIES OF THE U.S., 1983, 79.

88. *See* Zamora, *Peso-Dollar Economics and the Imposition of Foreign Exchange Controls in Mexico*, 32 AM. J. COMP. L. 99, 103 (1984), (Hereinafter cited as "Zamora"); NEWSWEEK, July 12, 1982, at 51-52.

89. *See* Zamora, at 101-102, n.13; NEWSWEEK, July 12, 1982, at 51-52.

90. *See* ANNUAL REPORT OF THE INTER-AMERICAN TROPICAL TUNA COMMISSION, 1983, 22, 23, 203 Fig. 4, 240 Fig. 55, 255 Tab. 4 (1984). Both catch per standard day fishing (CPSDF) and catch per ton of carrying capacity (CPTCC) declined in 1982 from 1981 levels. For example, CPTCC for all vessel classes and all species of tuna declined from 2.12 in 1981 to 1.65 in 1982.

91. U.S. INT'L TRADE COMMISSION, CERTAIN CANNED TUNA FISH, REPORT TO THE PRESIDENT ON INVESTIGATION NO. TA-201-53, 16 (1984) (Hereinafter cited as "CERTAIN CANNED TUNA FISH").

Representatives of the IATTC caution that a simple causal relationship has not been scientifically established. The 1982-1983 El Niño condition certainly coincided with a significant reduction of fishing success in the Eastern Tropical Pacific, and with improved catches in the western Pacific. There are to date, however, no clearly defined patterns in the deviations from the mean for annual catches of tuna which can be directly linked with environmental parameters characteristic of an El Niño episode. The continuing research by the IATTC suggests that there is an environmentally related reduction in the availability and distribution of tunas in the ETP during prolonged El Niño episodes, probably due to reduced availability of forage for tunas. ANNUAL REPORT OF THE INTER-AMERICAN TROPICAL TUNA COMMISSION, 1984, 66-69 (in press); ANNUAL REPORT OF THE INTER-AMERICAN TROPICAL TUNA COMMISSION, 1983, 66-70 (1984).

foreign debt, particularly the foreign debt on tuna vessels financed at floating rates, combined to create a debt crisis in the tuna industry paralleling the debt crisis of the nation as a whole.[92]

In 1982, Pescatun, the largest single tuna vessel operator in Mexico, was dissolved and all ten vessels were returned to the United States. In 1984, as a requirement of its restructuring of debt with its foreign creditors, VISA sold its fishing operations and withdrew from the industry. ALFA, which had not yet become fully involved in the fishing industry, was prevented from doing so.

The Mexican fishing industry, it seems, had fallen victim to a combination of poor judgment—overplaying its hand with the United States—and plain bad luck.

IMPLICATIONS FOR UNITED STATES-MEXICAN RELATIONS

The principal implication of the foregoing events for U.S.-Mexican relations, and the principal lesson to be learned from them, is a positive one. As indicated at the outset, the U.S.-Mexican tuna controversy, more often referred to as a "tuna war," as heated as it has been at times, has not had any major detrimental impact on U.S.-Mexican relations in other contexts. Although there was a good deal of ill will at times as a result of the conflict, it does not appear that Mexico holds the United States responsible for the previously described decline in the tuna industry. Although the tuna embargo did play some role, the other factors discussed above played a much more important role.[93]

More importantly, the Mexican-United States experience is an encouraging example of the ability of two neighboring countries with close common interests to confine even severe disputes within controllable barriers so as not to allow them to spill over into more serious areas of international relations.

In this respect, the parallel experience which the United States had with Canada in exactly the same area is illustrative. This article might almost equally well have been entitled "The Development of Canadian Fisheries and Its Effect on U.S. Relations." Like Mexico, Canada also showed its determination in this dispute by seizing U.S. vessels fishing in its waters[94] and, like Mexico, was subjected to an embargo on tuna products.[95] The U.S.-Canada dispute, as distinct from the Mexican situation, was resolved through negotiation. The embargo, imposed in August, 1979, was lifted in September,

92. *See* Zamora at 134, n.159.
93. *See supra*, text at 12-14, nn.84-92.
94. *See The Tuna War*, at 764-765, n.48.
95. This information was provided by Mr. Svein Fougner and Mr. William Craig of the National Marine Fisheries Service.

1980,[96] and the parties entered into a treaty granting reciprocal fishing rights and port privileges.[97] Despite the conflict, Canadian-American relations proceed as they always have and, as in the case of Mexico, disputes such as this one are more properly cast as domestic skirmishes over legitimate differences of opinion and interests than as relationship-threatening international incidents.

OUTLOOK FOR THE FUTURE

What is the outlook for the future? As many have noted, the best clue to the future is the past. Given the story just told, does this then mean there is no future for Mexican fisheries?

If the story had ended more than one year ago, the answer would have been "yes," and at this point a few ceremonial words would have been appropriate expressing admiration for Mexican gutsiness coupled with an admonition about taking care when you are playing with the big guys.

But the story did not end and, indeed, a number of developments have occurred within the last year or so which throw a significantly different light on prospects for Mexican fisheries.

With the establishment of the FICORCA trust, Mexican debt has been restructured and the debt crisis considerably eased.[98] At the same time, inflation has subsided somewhat from earlier levels.[99] Banpesca, the Mexican government bank formed for purposes of financing the fishing industry, has decided to finance or assist in refinancing virtually the entire Mexico fleet.[100] However, there remains a shortage of operating capital for all phases of the industry.

More importantly, the "El Niño" condition has passed and large amounts of tuna are once again available in the Eastern Tropical Pacific.[101] Production of the Mexican fleet in 1984 was up 180% over 1983, and from January through April 1985, production was up 61% over the same period last year.[102] If trends continue it is entirely possible that Mexico will overtake the United States in tuna production this year.

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96. *Id.*

97. Treaty Between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges, May 26, 1981, T.I.A.S. No. 10057, entered into force, July 29, 1981 (Hereinafter cited as "United States-Canada Treaty").

98. *See* Zamora, at 137-140; The Wall Street Journal, Oct. 10, 1984, at 1.

99. THE CONFERENCE BOARD, ECONOMIC OVERVIEW 1985, MEDIUM TERM CORPORATE FORECASTS, 4 (Dec., 1984).

100. NATIONAL MARINE FISHERIES SERVICE, FOREIGN FISHERIES ANALYSIS, MEXICO RESTRUCTURES TUNA DEBT, 2 (Feb. 29, 1984).

101. ANNUAL REPORT OF THE INTER-AMERICAN TROPICAL TUNA COMMISSION, 1984, 65-66 (in press).

102. MEXICAN TUNA BOAT REPORT 1985 (WEEK NINETEEN) (April 29, 1985).

Additionally, the domestic consumption of tuna in Mexico has increased dramatically, diminishing the initial impact of the U.S. embargo.[103] Indeed, at one point the Mexican government ceased to grant any permits to export tuna products.[104] In short, the outlook for the Mexican fishing industry is brighter today than it was going into 1984.

Despite these gains, significant difficulties remain for the Mexican tuna industry. In particular, the dramatic increases in production of raw tuna are far outstripping increases in domestic consumption. Indeed, the domestic market appears to be approaching saturation with raw tuna piling up at the processing centers and being placed in storage.[105] So long as the United States embargo continues to prohibit access of Mexican tuna products to the huge United States market, Mexico will continue to face serious problems in finding markets for its growing production. Even if the U.S. embargo were lifted, Mexican exporters of processed products into the United States would have to overcome the burden of United States duties imposed upon such products.[106]

From the United States perspective, domestic operations continue to face tremendous obstacles. The problems and cost pressures on both processing and raw tuna production industries are manifold and intractable.[107] The continuing trend, in both production and procurement operations, is to relocate offshore. Van Camp is selling raw fish in Thailand and buying back the canned product. Star-Kist closed its Terminal Island facility in October 1984,[108] and is also looking at Thailand, which, because of the significant advantages it enjoys in both availability of low-priced raw material and low-cost labor, is rapidly developing into a major processing center.[109] In fact, Thailand's costs are well below those of Mexico.

Similarly, United States tuna vessels are operating at extreme competitive disadvantage. Fuel, debt service, repair and maintenance costs, crew costs and insurance are all much higher here than

103. This information was provided by Renato Curto, Managing Director of Tri-Marine Associates (Pte.) Ltd. and Tri-Marine International (Pte.) Ltd., Singapore, during a series of discussions in early 1985 (Hereinafter cited as "Curto").

104. Curto.

105. Curto; *see* San Diego Union, Sept. 6, 1985, at A22, col. 1-4.

106. *See infra*, n.113.

107. *See* L.A. Times, June 6, 1984, § II, at 1, col. 4; L.A. Times, July 26, 1984, § II, at 1, col. 1.

108. L.A. Times, Oct. 19, 1984, § II, at 1.

109. *See* PACIFIC FISHING, March, 1985, at 35; Thailand is the leading importer of canned tuna packed in water to the United States. For example, Thailand exported $89.2 million worth of tuna to the United States in 1984, up from $43.3 million in 1983. The figures for the next leading nation, Japan, were $29.2 million in 1984 and $24.6 in 1983. FISHERIES OF THE U.S., 1984, at 52.

in many other parts of the world.[110] The pressures to move vessel operations offshore are substantial.

In short, if trends continue, the United States tuna industry will look much different than it has in the past with a much greater component operating beyond the shores of the United States.

UNITED STATES-MEXICAN COOPERATION

Notwithstanding the history of conflict between the two countries, and the current difficulties experienced by both, there appear to be significant opportunities for the two nations to explore prospects for mutual cooperation in the tuna fishery. Assuming, for example, that the United States were willing to lift its embargo on imports of Mexican fish products,[111] Mexican tuna products could move freely into the United States. Assuming further that Mexico were willing to permit United States flag tuna fishing vessels to fish in its 200 mile economic zone, the historical conflict which precipitated the United States embargo would be resolved. Assuming, finally, that Mexico would permit United States flag tuna fishing vessels to deliver raw tuna to Mexican ports,[112] notably Ensenada and Mazatlan, an interesting scheme would emerge for United States-Mexican cooperation in the tuna industry. Under this scheme, raw tuna would be delivered to Mexican ports from United States flag vessels for loining in Mexico, would then be trucked fresh across the border to San Diego, and processed and canned in San Diego for sale to the United States market.

Under such an arrangement, the labor-intensive advantages of Mexico might be combined with the capital intensive and marketing advantages of the United States. Thus, the labor intensive process would occur in Mexico where labor resources are relatively cheaper than in the United States, and the capital intensive canning process would occur in the United States where the capital resources are

110. *See* PACIFIC FISHING, March, 1985, at 35; CERTAIN CANNED TUNA FISH, at A-19.

111. A State Department source has indicated that the lifting of the embargo may become an eventuality in the relatively near future. Among the factors taken into consideration in determining whether or not to lift an embargo such as the one involved here are whether some agreement has been reached regarding access to the fishing grounds, as in the situation with Canada, and whether at least two years have passed since the last seizure of a United States fishing vessel. The last seizure of a United States fishing vessel by Mexico occurred in July, 1983. *See also* San Diego Union, Sept. 6, 1985, at A1, col. 1, regarding expectations of an imminent lifting of the embargo.

112. This arrangement, incidentally, is not without precedent. The initial arrangement which Palmar had with the Mexican government contemplated delivery to Palmar's facilities in Mazatlan of raw tuna from foreign flag vessels for purposes of processing in Mexico. Further, such an arrangement would roughly parallel that reached between the United States and Canada following resolution of United States-Canadian fisheries dispute. United States-Canada Treaty, art. II, III.

more readily available. Additionally, tuna entering the United States in the form of loins would incur no duty, as opposed to a 35% tariff on oil-packed canned tuna and a 6-12.5% tariff on water-packed canned tuna.[113]

The benefits of this arrangement to the United States industry are obvious. United States flag vessels would obtain access to the tuna rich Mexican waters free from the spectre of vessel seizures. Further, the ability to deliver raw tuna to Mexican ports, which are physically adjacent to the fishing grounds, would mean substantial reduction in transportation costs and other operating expenses in comparison with current off-loading in such places as Panama or Guam for trans-shipment to Puerto Rico or American Samoa. It might be possible for foreign flag vessels to receive the same fuel subsidy currently provided by the Mexican government to Mexican tuna vessels.[114]

Finally, such an arrangement would contribute to the rejuvenation of the San Diego tuna processing industry while at the same time providing the industry with the price advantage of lower cost loining.

Although less apparent, the benefits to Mexico of such an arrangement are equally significant. First, the arrangement would allow for easier penetration of the United States market which currently is characterized by intense competition.[115] To the extent that a United States canning base might provide at least marginally greater product credibility over products packed locally in Mexico, the Mexican product might gain greater market acceptance in the United States. More importantly, consumer acceptance of the Mexican product could be maximized by marketing the product under a recognized United States label and through an established distribution network.

Second, combining raw tuna supplied by non-Mexican flag vessels with the already rapidly growing production of Mexican flag vessels, coupled with an outlet to the world's largest consumer market for canned tuna, would enable Mexico to accomplish its stated objective of replacing the United States as the world's largest supplier of raw tuna for processing. With United States flag vessels delivering their catches to Mexican ports for processing, Mexican dominance of the procurement and loining phases of the industry would be established. In addition, Mexican interests might acquire

113. 19 U.S.C. § 1202, Schedule 1, Part 3, TSUS Item Nos. 110.10, 112.30, 112.34, 112.90.

114. Curto.

115. The vast majority of imported canned tuna is purchased by institutional users. As a rule, imported canned tuna has not developed "brand loyalty" among American consumers. CERTAIN CANNED TUNA FISH, at A-17, A-18; L.A. Times, Feb. 27, 1985, § IV, at 16, col. 4.

ownership of a substantial portion of United States canning facilities, the establishment of which might be funded in part by industrial revenue bonds or other public source financing.[116]

There are, of course, other factors that bear upon the success of such a venture. The purchase price for raw tuna delivered to Mexican ports must be near the world market price in order to induce foreign flag vessels to deliver their product there. Further, the difference between the official and unofficial Mexican peso-U.S. dollar exchange rates would require careful consideration and handling in order to avoid disadvantaging either the buyers or sellers of raw and loined tuna.

In the final analysis, a cooperative venture may be to the advantage of and best ensure the long term survival of both the Mexican and the United States industries.

116. This assumes, of course, that President Reagan's proposal for elimination of tax exempt financing for private purposes is not enacted. *See* The President's Tax Proposals to the Congress for Fairness, Growth, and Simplicity, May, 1985, *reprinted in* TAX IDEAS, Bull. 11, § 2, at 160-163 (June 5, 1985).

ANNEX A

MILESTONES IN MEXICAN-AMERICAN FISHERIES RELATIONS

Date	Event
1945	Truman Declaration Mexico and other nations follow suit
1948	Chile and Peru propose 200 mile exclusive economic zones
1950	Organization of Inter-American Tropical Tuna Commission (IATTC)
1951	Ecuadorian vessel seizures
1954	Fishermen's Protective Act
1964	Mexico joins IATTC
1967	Fishermen's Protective Act of 1967
1976	Mexico declares 200 mile economic zone U.S. declares 200 mile economic zone-FMCA Mexico Embarks on Fisheries Development - Palmar Example
1977	U.S./Mexico Treaty - Freeze on fishing within 12 miles - U.S. shrimp fishing to terminate in 1979 - Mexico to allocate quota to U.S. vessels in Mexican economic zone - Tuna issue not affected - U.S. to provide names of vessels intending to fish for tuna Mexico Withdraws from IATTC U.S./Mexico Treaty - U.S. to allocate quota to Mexican vessels in U.S. economic zone Marine Mammal Protection Act of 1977
1977-1980	U.S./Mexico negotiate regarding tuna problem
1980	Mexico makes large investment in fishing - Pescatun - Palmar - Expansion of squid fleet
June	U.S./Mexico tuna negotiations breakdown
July	Mexico seizes U.S. vessels in economic zone
July	U.S. imposes embargo on Mexican tuna U.S. fails to allocate squid quota to Mexican vessels
December	Mexico terminates fishing treaties with the U.S.
1980-82	Mexican and U.S. tuna fleet expansions
1982	Tuna industry recession Pescatun liquidates fleet Oil prices flatten Mexican inflation
December	U.N. Law of the Sea Treaty
1983	Mexican debt crisis San Jose Convention establishes regional licensing program
1984	Mexican debt restructure (FICORCA) Palmar liquidates fleet Banpesca refinances Mexican fleet Mexico claims No. 1 position in tuna production