



Fall 1986

## Conflictual Interdependence: United States-Mexican Relations on Fishery Resources

Biliana Cicin-Sain

Michael K. Orbach

Stephen J. Sellers

Enrique Manzanilla

### Recommended Citation

Biliana Cicin-Sain, Michael K. Orbach, Stephen J. Sellers & Enrique Manzanilla, *Conflictual Interdependence: United States-Mexican Relations on Fishery Resources*, 26 NAT. RES. J. 769 (1986).  
Available at: <https://digitalrepository.unm.edu/nrj/vol26/iss4/9>

This Article is brought to you for free and open access by the Law Journals at UNM Digital Repository. It has been accepted for inclusion in Natural Resources Journal by an authorized editor of UNM Digital Repository. For more information, please contact [disc@unm.edu](mailto:disc@unm.edu).

BILIANA CICIN-SAIN,\* MICHAEL K. ORBACH,\*\*  
STEPHEN J. SELLERS,\*\*\* and  
ENRIQUE MANZANILLA\*\*\*\*

# Conflictual Interdependence: United States-Mexican Relations on Fishery Resources<sup>†</sup>

## INTRODUCTION

The tensions in the relationship between the United States and Mexico were eloquently encapsulated in a speech by former President of Mexico, Jose López Portillo:

Few countries in the world have as many issues to deal with as Mexico and the United States. We are not only neighbors, but also representatives of two worlds in the literal geographical sense: we are the north and the south along 3,000 kilometers of border. As a result, we are faced with structural issues formed by our history and by our geography. We also represent the relationship between the developing world and the world that is already developed and we are involved in a regional context which also molds our relations.<sup>1</sup>

U.S.-Mexican relations on marine resources typify all of the tensions referred to by President López Portillo. Because of geographical proximity, the transboundary nature of many marine resources, and the interconnectedness of the two economies, the United States and Mexico are both interdependent and competitive in the exploitation of these resources. The conflictual nature of the marine policy relations between the two countries in recent years reflects significant domestic differences. Each country perceives its fishery resources differently from the other

---

\*Associate Professor of Political Science, University of California, Santa Barbara.

\*\*Associate Professor, Department of Sociology, Anthropology & Economics, East Carolina University.

\*\*\*Doctoral candidate and Sea Grant Trainee, Department of Political Science, University of California, Santa Barbara.

\*\*\*\*Environmental Protection Agency, Washington, D.C.

†An earlier version of this article was presented as a paper at a binational conference on U.S. Mexican Relations on Marine Resources, Sept. 15-17, 1983, at San Diego, California. The article grows out of research funded, in part, by the National Oceanic & Atmospheric Administration, National Sea Grant College Program, Department of Commerce, under grant NA80AA-D-00120 through the California Sea Grant College Program, and in part by the California State Resources Agency, Project R-MA-18. The views expressed reflect the opinions of the authors, and not of the funding sponsors.

1. Address by President Jose Lopez Portillo in Washington, D.C. (June 8, 1981), *reprinted in Mexican President in Washington*, 27 COMMERCE EXTERIOR DE MEXICO 216 (1981).

and is organized to manage them in distinctly different ways. Representing divergent North and South perspectives, the different ways in which Mexico and the United States view the United Nations Law of the Sea (LOS) Convention<sup>2</sup> also influence their marine resource interactions. As a leader of the third world, Mexico is proud of its contributions to the formulation of a new international ocean regime, and its domestic actions closely parallel the LOS model. In contrast, in the United States opinions are quite divided over the new convention, and adherence to international models is not as important a factor in the formulation of domestic marine policy.

These domestic factors related to different structures, histories, perceptions of the world role of each nation, and to each nation's view of the other nation, are seldom discussed specifically in analyses of the bilateral relations on marine resources. The popular press in both countries has consistently emphasized the manifestations of conflict—of boat seizures, of the tuna embargo and its consequences—for these are the types of international actions that make good headlines. The scholarly literature, on the other hand, has tended to focus only on selected aspects of the overall situation. The few studies that have been written on U.S.-Mexican relations on marine resources have focused primarily on comparisons of the legal frameworks governing marine resources management, principally fisheries;<sup>3</sup> on the conflictual history of the formal governmental relations between the two nations in this area;<sup>4</sup> and on divergent positions of the two countries in the international arena *vis-a-vis* the Law of the Sea negotiations.<sup>5</sup> While each of these analyses is useful and interesting in its own right, each is concerned primarily with the formal legal and institutional aspects of the marine resource interactions between the two countries.

Using relations on fishery resources as the major focus of analysis,<sup>6</sup> this article explores the underlying domestic factors which greatly influence, and in fact shape, the character of the bilateral marine policy

---

2. Convention on the Law of the Sea, Dec. 10, 1982, reprinted in 21 I.L.M. 1261, U.N. Doc. A/CONF.62/122 (1982).

3. See, e.g., J. VARGAS, *LA ZONA ECONOMICA EXCLUSIVA DE MEXICO* (1980). See generally ALBERTO SZÉKELY, *MEXICO Y EL DERECHO INTERNACIONAL DEL MAR* (1979).

4. See, e.g., Heffernan, *Conflict Over Marine Resources*, in *MEXICO-UNITED STATES RELATIONS* 168 (S. Purcell ed. 1981).

5. See, e.g., Bath, *Mexico, the United States and Selected Law of the Sea Issues*, 35 *INTER-AM. ECON. AFF.* 1, 3 (1981).

6. The authors focus on fishery interactions because they represent, by far, the most important aspect of the bilateral marine relationship. Other bilateral relations in the marine area concern the protection of marine mammals, the conduct of marine scientific research, and, to some extent, issues involving offshore oil development and marine pollution. These latter activities are minor in comparison to the fishery interactions.

Discussion in this article is confined solely to a description of the overt activities which take place between the two countries. Although covert activities, such as illegal fishing, appear to be extensive as suggested in several media accounts and in informal remarks by informants, the authors lack any systematic data on their extent and nature.

relationship. Better understanding of these factors by policy makers on both sides of the border can contribute significantly to the improvement of bilateral relations on marine resources.

The observations presented in this article are based on data gathered during a two-year study on comparative U.S.-Mexican fishery policy.<sup>7</sup> Data collected on the Mexican side include a review of relevant governmental documents, memos, and reports; review of the Mexican periodical literature; approximately thirty-five personal interviews with public and private sector officials involved with fishery matters in Mexico City, Baja California Norte, and Baja California Sur;<sup>8</sup> and participant observation in the summer of 1983 of the work of the Baja California regional office of the Secretaria de Pesca, the Delegacion de Pesca in Ensenada, Baja California Norte.<sup>9</sup> Information on fishery policy on the United States side is based on a review of the available governmental records and documents and extensive informal interviews with public and private sector officials involved with fishery affairs in Washington, D.C. and in southern California.<sup>10</sup> The U.S.-based information reported here also relies on personal interviews and other data collected in a previous study conducted by Cicin-Sain and Orbach on decisionmaking in the anchovy fishery, a trans-boundary resource of importance to both the United States and Mexico,<sup>11</sup> and on observation of fishery management decision-making processes in Washington, D.C.<sup>12</sup>

---

7. The full study is reported in B. Cicin-Sain & M. K. Orbach, U.S.-Mexican Relations on Marine Resources: Competition and Interdependence (unpublished manuscript, in preparation 1986).

8. Interviews were conducted with individuals in the following entities: offices in the Secretaria de Pesca (Oficina de Asuntos Juridicos; Asuntos Pesqueros Internacionales; Infraestructura Planeacion, Organizacion, y Evaluacion; Delegaciones Federales, Mexico, D.F.; Delegacion de Pesca, Ensenada); BANPESCA, Mexico, D.F.; Centro de Investigacion Cientifica y de Educacion Superior de Ensenada; Centro de Estudios Economicos y Sociales del Tercer Mundo; Camara Nacional de la Industria Pesquera, Mexico, D.F. and Baja California; Comision Nacional Consultiva de Pesca; Federacion de Sociedades Cooperativas de Alta Mar, Mares del Pacifico; Industrias Pesqueras Parastatales del Noroeste; Productos Alimenticios del Mar (PALMAR), Ensenada; Pesquera del Pacifico, S.A.; Pesquera Zapata, Ensenada; Productos Pesqueros Mexicanos, Ensenada; Seccion Pesquera de la Confederacion Cooperativa Nacional, Mexico, D.F.; Secretaria de Programacion y Presupuesto, Planeacion Regional; and Secretaria de Relaciones Exteriores.

9. Enrique Manzanilla spent the summer of 1983 as an intern in the Delegacion de Pesca in Ensenada.

10. Twenty-five personal interviews were conducted with individuals in such entities as: American Tunaboat Association, San Diego, CA; California Department of Fish and Game, Long Beach, CA; Campbell Industries, San Diego, CA; Department of State (Assistant Secretary for Oceans, Environment and Science; Attache, U.S. Embassy, Mexico City, Mexico); Inter-American Tropical Tuna Commission; Living Marine Resources, San Diego, CA; National Oceanic and Atmospheric Administration; National Marine Fisheries Service, Office of International Fishery Affairs; Nutall-Styris, San Diego, CA; San Diego Union; and Scripps Institution of Oceanography, La Jolla, CA.

11. Cicin-Sain & Orbach, *Mutual Mysteries: Washington/Regional Interactions in the Implementation of Fisheries Management Policy*, POL'Y STUD. J. (forthcoming 1986).

12. Authors Cicin-Sain and Orbach worked on fishery affairs in the National Oceanic and Atmospheric Administration in Washington, D.C., respectively in the Office of the Administrator (1978-79), and in the Office of Resource Conservation and Management, National Marine Fisheries Service (1976-79).

The article begins with a definition of the term "bilateral relations on marine resources," and briefly reviews the recent history of formal governmental interactions on these issues, interactions which have grown increasingly conflictual over the last decade. Next, it suggests the range of variables that should be explored to better understand these governmental interactions. And finally, it comments on the implications of interactions among these variables for marine bilateral relations between the United States and Mexico.

BILATERAL RELATIONS ON MARINE RESOURCES:  
A HISTORY OF GROWING POLICY CONFLICT BETWEEN  
THE UNITED STATES AND MEXICO

"Bilateral relations" may be defined as the set of interactions which occur between individuals and entities from both the public and private sectors involved in marine activities in the two countries. The patterns which such interactions have exhibited over time constitute the bilateral relations between the two countries in the marine area.

Although the interactions between commerce and industry in both countries are extensive, the formal governmental relations between the two nations on issues related to fish harvesting and marketing have grown increasingly conflictual and, since 1980, have become stalemated. To begin to understand the factors underlying this situation, a brief historical account of bilateral fishery relations is useful. First the pattern of fishery-related industry interactions which existed prior to 1976 is reviewed. Next, the two rather different fishery management regimes which each nation crafted in 1976—the Mexican Exclusive Economic Zone<sup>13</sup> and the U.S. Magnuson Fishery Conservation and Management Act<sup>14</sup> are contrasted, followed by a review of major events in the formal bilateral negotiations which have taken place since the mid-1970s.

*Patterns of Fishery-Related Industry Interaction Prior to 1976*

Prior to 1976 there had been no substantial Mexican fishing in U.S. waters, largely because of a lack of Mexican fishing capacity. Fishermen from the United States, on the other hand, had traditionally been involved in four fisheries in Mexican waters: the shrimp fishery in the Gulf of Mexico on Mexico's east coast; the high-seas tuna fishery off the west coast; the small-boat fishery complex along the west coast of Baja California; and the recreational fishery, primarily for tuna and billfish, which takes place largely on the west coast of Mexico.

Mexican waters from the Brownsville, Texas area to the Campeche

---

13. Mexican Constitution, amended Feb. 6, 1976, para. 9, no. 27.

14. Fishery Conservation and Management Act of 1976, 16 U.S.C. § 1801 (1976).

Banks have been a traditional shrimping area for U.S.-based shrimp boats. In the early 1970s, U.S. fishermen took each year in Mexico's Gulf zone an average of 10 million pounds of shrimp with a value of approximately \$16 million.<sup>15</sup> The U.S. high-seas tuna fishery had traditionally caught a majority of its harvest in the Eastern Tropical Pacific, which includes the waters off the coast of Mexico. In 1974, for example, it was estimated that the U.S. tuna catch off the coast of Mexico was worth \$47.7 million.<sup>16</sup> In addition to these major fisheries, there was a large fleet of generally smaller U.S. boats and vessels, based primarily in southern California, which took a major part of its catch off Baja California. It is estimated that from 1970 to 1975 about 95 percent of the "market species" (bonito, yellowtail, white seabass, and barracuda) taken by these U.S. California-based boats was taken in Mexican waters, and was worth an average of \$1.4 million each year in ex-vessel value alone.<sup>17</sup>

Moreover, a large component of the U.S. recreational fishing community fished in Mexican waters, either on longer trips from U.S. ports or from Mexican ports. Of the 288,612 sport fishing permits issued by the Mexican government in 1976, 164,900 or 57 percent were issued in San Diego and San Pedro, California, primarily to U.S. recreational fishermen. From 1961 to 1974, 56 percent of all partyboat trips from San Diego and 14 percent of all southern California partyboat trips were to waters off Baja California.<sup>18</sup>

It is not only in the harvesting of fish in one another's waters that the two countries have been intertwined. Because of the lack of facilities in Mexico throughout most of the early development of its fishing industry, many Mexican fishing boats were built and serviced in U.S. shipyards. The largest ship chandlery in San Diego, California, has traditionally done approximately half of its business in Mexico, and U.S. vessels often picked up nets and other equipment in Mexican ports. United States' capital for fishery-related industries found its way into Mexico, largely through joint ventures with Mexican interests. The United States has also served as a source of fishery-related employment for Mexican nationals. In 1974 the manager of the largest fishery-related union in San Diego estimated that 50 percent of the members of his union were Mexican nationals working in San Diego or on U.S. tunaboats.<sup>19</sup> A similar situation occurred in the shrimp industry in the Gulf of Mexico, particularly in

---

15. Saft, *Tuna-Shrimp Affected by Mexican Zone*, 56 NAT'L FISHERMAN 3, 24-A (1976).

16. Miller, *200-mile Access of Great Worth to U.S. Tunamen*, 59 NAT'L FISHERMAN 12, 25 (1979).

17. See generally R. Corwin & M. Brown, *Marine Resources of California and Baja California: Social, Economic, and Ecological Perspectives* (Dec. 1979) (Report prepared for Environmental Committee, Commission of the Californias, Marine Resources Training Project).

18. *Id.*

19. For information on these interactions, see generally M. ORBACH, HUNTERS, SEAMEN, AND ENTREPRENEURS, *THE TUNA SEINERMEN OF SAN DIEGO* (1977).

Texas.<sup>20</sup> U.S. fishermen and other fishery-related professionals would also work in Mexico, but their numbers were only a fraction of the numbers involved in the Mexico to United States labor migration.

### *The 1976 200-Mile Zones*

Change came to this traditional pattern of interaction in 1976 when both nations established 200-mile extended jurisdiction zones, and when Mexico embarked on a significant governmental effort to dramatically increase its fishing potential. The zones created by each nation differed substantially. In the United States, on April 13, 1976, after many years of debate, the Congress enacted the Magnuson Fishery Conservation and Management Act (MFCMA).<sup>21</sup> This act created a new Fishery Conservation Zone (FCZ) which extended out to 200 miles offshore and established U.S. "exclusive management authority" in this zone over one marine resource only—fisheries. The MFCMA clearly exempted from U.S. jurisdiction highly migratory species, specifically defined as "species of tuna which, in the course of their life cycle, spawn and migrate over great distances in waters of the ocean."<sup>22</sup> The act had two major purposes: (1) to reduce fishing by foreign nations off the coasts of the United States, and (2) to establish a new system for managing and conserving fishery resources, primarily through regulation of U.S. fishermen. Tunas were exempted from U.S. jurisdiction following the traditional U.S. position that tunas, which migrate all over the world, should be managed throughout their entire range by international authorities rather than by individual countries. In the case of the Eastern Tropical Pacific, the international authority responsible for managing tuna resources had been, since 1949, the Inter-American Tropical Tuna Commission (IATTC) to which both Mexico and the United States belonged.<sup>23</sup> In addition to these conservation concerns, the U.S. position was guided by economic consideration as well—that is, the fact that the highly capitalized, efficient, and economically important U.S. high-seas tuna fleet, centered in San Diego, California, had traditionally taken much of its catch off the coasts of Latin American nations.<sup>24</sup>

In essence, then, in 1976 the United States created a fishery conservation zone which was responsive to its domestic concerns. Although the LOS conference had by that time developed clear models for the extension

---

20. See generally R. MARIL, *TEXAS SHRIMPERS* (1983).

21. Fishery Conservation and Management Act of 1976, *supra* note 14.

22. *Id.* at § 1822(e).

23. For a discussion of this position, see generally J. JOSEPH & J. GREENOUGH, *INTERNATIONAL MANAGEMENT OF TUNA, PORPOISE, AND BILLFISH* (1981).

24. It is estimated that 70 percent of the tuna catch in the Eastern Tropical Pacific had traditionally been caught within the 200-mile zones of Latin American nations. Miller, *supra* note 16, at 25.

of national jurisdiction over marine resources, for the United States the LOS conference was important only in the timing of the decision to enact the Magnuson Act, and not in deciding the detailed substance of the fishery management system that was created.<sup>25</sup>

In contrast to the limited U.S. FCZ which established "exclusive management authority" over only one marine resource, fisheries, the Exclusive Economic Zone (EEZ) declared by Mexico on February 6, 1976, through a constitutional amendment<sup>26</sup> established Mexican jurisdiction over virtually all marine resources found within 200 miles offshore, including tuna.<sup>27</sup> The Mexican declaration closely paralleled the model provisions of the exclusive economic zone concept delineated by the LOS conference. Mexico's action was a reflection both of international factors, i.e., Mexico's role as a leader in advancing coastal state jurisdictional concepts in the LOS negotiations, and domestic factors, such as the fact that the Mexican government was embarking, by the mid-1970s, on a highly ambitious program for full-scale expansion of its fishing capabilities.

Mexico has always been a leader among Latin American nations espousing the concept of coastal state control over marine resources, beginning with the 1945 Presidential Proclamation of sovereignty over outer continental shelf resources, through its active support of the position of other Latin American nations in various regional and international meetings from the 1940s to the 1970s, to its active participation in the Law of the Sea negotiations in the 1970s.<sup>28</sup> Mexico has thus been proud of its contributions to the forging of a new international ocean regime, and adherence to the marine resource management procedures stipulated in the LOS model has typically influenced domestic policy making in the marine area.

Domestically, by the mid-1970s Mexico had launched a far-reaching fishery development effort. As discussed in more detail later, up until the 1950s fishing in Mexico had largely been a marginal economic activity. From the mid-1950s to the 1970s the Mexican shrimp fishery, oriented toward the U.S. export market, experienced great growth. By the early 1970s Mexico had primarily two types of fisheries, the sophisticated shrimp fishery oriented to the export market, and artisanal fisheries ba-

---

25. Interviews with congressional staff involved in the passage of the Magnuson Act, (July 1977) conducted by Lauren Holland, who was then a Sea Grant Trainee, Project on the Implementation of the Fishery Conservation and Management Act, University of California, Santa Barbara. See also Knecht & Bowen, *Implications of the Law of the Sea Convention for U.S. Policy in the 1980s*, 16 MARINE TECH. SOC. J. 4, 31-40 (1982).

26. Mexican Constitution, *supra* note 13.

27. A description may be found in J. VARGAS, *supra* note 3, at 11-24.

28. See generally J. VARGAS, *CONTRIBUCIONES DE LA AMERICA LATINA AL DERECHO DEL MAR* (1981).



sically oriented toward local consumption.<sup>29</sup> Following the Ley de Pesca of 1972 and the EEZ declaration of 1976, in 1977 a dramatic expansion was launched to diversify and develop Mexican fisheries and to catapult Mexico to a position as a great world fishing power. Key features of this expansion included the launching of a \$1.3 billion fishery development program aimed at quadrupling fish production in five years;<sup>30</sup> expansion of the tuna fleet from twenty-seven vessels in 1976 to a projected number of 113 in 1983;<sup>31</sup> and the creation of a Departamento de Pesca in 1976 and its elevation to Cabinet status in 1982.<sup>32</sup>

The differences in the actions taken by the two nations in 1976—the passage of the Magnuson Act in the United States and the creation of the exclusive economic zone in Mexico—as well as Mexico's extensive fishery development efforts were, ultimately, to significantly alter the pattern of fishery interactions between the two countries which had prevailed up to that time. As both nations began to grapple with ways of reconciling the differences between the two fishery regimes, Mexico's emphasis on "sovereignty" over all of the marine resources found in its 200-mile zone and the U.S. insensitivity to the important symbolism involved in this issue for Mexico, combined with the more limited U.S. vision of its own fishery zone, were to cause significant problems in the bilateral relationship.

Although the 1976-80 history of the marine relationship between the two countries is complex, the section below summarizes the key events which transpired during this period. In broad terms, this period saw initial efforts at accommodation, then conflictual action and reaction by each nation ultimately leading to stalemate.

### *Bilateral Negotiations Since the Mid-1970s*

On November 24, 1976, the United States and Mexico signed the U.S.-Mexico Bilateral Fisheries Agreement,<sup>33</sup> which established a framework within which discussions and interactions concerning fishery resources could continue to take place as domestic fishery management regimes were undergoing change in each country. This agreement explicitly al-

---

29. SECRETARIA DE PESCA, *Diagnostico del Sector Pesca*, in FORO DE CONSULTIVA POPULAR PARA LA PLANEACION DEMOCRATICA DE PESCA 1-2 (Feb. 1983).

30. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, NATIONAL MARINE FISHERIES SERVICE, FOREIGN FISHERIES ANALYSIS DIVISION, U.S. DEPARTMENT OF COMMERCE, IFR-81/70 at 4 (1981) [hereinafter cited as IFR-81/70].

31. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, NATIONAL MARINE FISHERIES SERVICE, FOREIGN FISHERIES ANALYSIS DIVISION, U.S. DEPARTMENT OF COMMERCE, IFR-82/57, at 1 (1982).

32. Gobierno de Mexico, *Decreto que reforma la Ley Organica de la Administracion Publica Federal*, DIARIO OFICIAL (Jan. 4, 1982).

33. Fisheries Agreement, Nov. 24, 1976, United States-Mexico, 29 U.S.T. 823, T.I.A.S. No. 8853.

lowed two small groups of U.S. fishing units, one on the west coast and a smaller one in the east, to continue their traditional fishing practices off the coasts of Mexico under "the issuance of permits and exceptional fishing rights." The issues involving the larger fisheries and fleets, specifically high seas tuna, and more specifically the management of the high seas tuna fleet under the IATTC regime, were not explicitly addressed in this document.

Less than one year later, on August 26, 1977, the United States and Mexico signed a Governing International Fisheries Agreement (GIFA),<sup>34</sup> as required under the newly implemented Magnuson Act, which allowed Mexico to apply for her vessels to fish in the new U.S. fishery conservation zone. This enabled Mexico to begin developing her own foreign fishery off the coasts of the United States, and Mexican vessels entered into fisheries for squid off the Atlantic coast and pollock, hake, and cod in the North Pacific. This effort quickly grew into a substantial enterprise, with the directed fishery worth approximately \$27 million each year, and a by-catch of mackerel, perch, sole, and other flatfish worth an additional \$12 million.<sup>35</sup> The issue of the high seas tuna fishery and of Mexico's quota under the IATTC regulations remained, however, as significant points of disagreement between the two countries. Besides being basically at odds with the United States over the question of management of tunas in general, Mexico had long been unhappy over what it considered to be an unfairly low allocation under the IATTC, an allocation which it felt did not adequately consider Mexico's needs as a developing nation or her desire to significantly expand her tuna fleet capabilities as a keystone of her general marine industrial development policy.

In 1978, largely as a result of these feelings of inadequate consideration and unfair treatment, Mexico withdrew from the IATTC. Shortly thereafter Costa Rica also withdrew, and these two actions significantly hampered the ability of the IATTC to support an effective conservation or allocation regime. Also in 1978, on the initiative of Mexico and pursuant to the 1976 agreement, discussions intensified concerning the reduction and eventual phase-out of U.S. shrimping in the Mexican 200-mile zone, primarily in the Gulf of Mexico. The stated justification for the phase-out was to allow the Mexican domestic fishery to expand into the harvesting niche which would be left by the departing U.S. fleet.<sup>36</sup>

As a further sign of the deteriorating relations between the two countries in the marine area, in December of 1979 Mexico notified the United

34. Agreement 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.

35. J. Vargas, *Mexico y La Zona de Pesca de Estados Unidos* 88-89 (Universidad Nacional Autonoma de Mexico, Mexico, D.F. 1979).

36. Personal communication from Barbara K. Rothschild, Office of International Fishery Affairs, Marine Fisheries Services, Washington, D.C., June 30, 1981.

States that the "exceptional fishing rights" which Mexico had extended to certain U.S. vessels to fish for tuna off its west coast under the 1976 agreement would not extend past the end of 1980. By itself this move could have been interpreted simply as Mexico's effort to bring actual regulatory practice into line with its normative stance, giving priority to Mexico's own domestic industry. But coming one year after Mexico's withdrawal from the IATTC, this move was interpreted by the United States as evidence of a hardened stance by Mexico in its effort to maintain control over, and reap benefits from, the fishery resources found within 200 miles of its coast, specifically by excluding U.S. fishermen.

Subsequently, on January 14, 1980, the Mexican government unilaterally imposed a license fee for all foreign vessels fishing for tuna within her 200-mile limit, aimed principally at the U.S. high seas tuna fleet. In June of 1980, in an attempt to enforce this fee, Mexico seized, fined, and confiscated the catches of several U.S. tuna seiners. In the same month, the United States placed an embargo on all tuna and tuna products from Mexico under the provisions of the Magnuson Act, effectively halting what had been a \$20 million per year set of exports from Mexico to the United States.<sup>37</sup> As an additional reaction to the seizures and the general trend toward exclusion of U.S. fishermen from the Mexican EEZ, the United States cancelled the Mexican allocation of squid which the Mexican vessels had been taking in the mid-Atlantic region off the east coast of the United States.

At this point, the bilateral relationship could best be characterized as one of "action-reaction," with each country reacting to negatively perceived actions of the other and responding with retaliation rather than reconciliation or compromise.<sup>38</sup> The result of this "action-reaction" was accelerating conflict, decreased substantive communication, and consequent loss of understanding by each nation of the motives and domestic situation of the other nation. To complete the downward spiral in the bilateral relationship, in December of 1980 the Mexican government formally notified the United States of its intention to terminate the two fishing agreements then in force between the two countries. Consequently, the U.S.-Mexico Bilateral Fisheries Agreement, signed on November 24, 1976, expired on December 29, 1981, and the U.S.-Mexico Governing International Fisheries Agreement, signed on August 26, 1977, terminated

---

37. Of the 48 Mexican tuna vessels listed on the IATTC roster, 28 had their primary product sales relationship with U.S.-based food companies. *Marine Service Enterprise*, U.S. TUNA MARKET REV. (Mar. 1981). On August 12, 1986, the United States announced that it was lifting the embargo on Mexican tuna products. Although this action is difficult to evaluate given that few details regarding the lifting of the embargo have been released, this could well mean the beginning of a new phase in the fishery relations between the two countries.

38. P. WEHR, CONFLICT REGULATION 62-63 (1979).

on June 29, 1981. Since 1980, there have been no formal bilateral talks or negotiations between the two countries on fishery issues.<sup>39</sup>

The breakdown in formal relations between the two countries has been damaging to both sides. On the part of the United States, the inability to fish in Mexican waters has meant that the San Diego based high seas tuna fleet and, for a time, the smaller San Pedro based nearshore fishing fleet were cut off from a sizable portion of their traditional fishing grounds and, therefore, a sizable portion of their catch.<sup>40</sup> It is often noted that the actions taken to control fisheries within the EEZs of Mexico and the other nations in the region have been particularly responsible for the move of most of the U.S. high seas tuna fleet from the area to the Western Pacific.<sup>41</sup> Moreover, the fact that the U.S. tuna fleet had to go farther in pursuit of tuna meant increased time and fuel costs. These costs were reflected in a requested increase in price for the catch which was to prove untenable to domestic canneries struggling against foreign competition and a sagging domestic demand.<sup>42</sup> The result of these factors has been the virtual halt of the domestic canning of tuna in the continental United States. A recent analysis estimates that 12,500 tuna-related jobs were lost in southern California between 1980 and 1984.<sup>43</sup>

On the Mexican side, damage has been evident as well. The U.S. embargo on Mexican tuna has closed off the largest tuna market in the world to Mexican exporters.<sup>44</sup> Given that over half of the Mexican tuna catch had traditionally been shipped to the United States prior to the embargo, the losses in export earnings were significant.<sup>45</sup> The director of the Mexican state fishery bank, BANPESCA, put the export earnings from tuna products at \$15 million annually,<sup>46</sup> a figure which has now gone to zero. Mexico subsequently sought to find alternative markets for its tuna, at first with little success.<sup>47</sup> In 1980 some 1.5 million cases of

---

39. Personal communication from Larry Snead, Office of Fishery Affairs, U.S. Department of State, Washington, D.C., July 9, 1986.

40. Miller, *Costa Rica Seizes Two U.S. Tunaboats: Embargo Ordered*, 59 NAT'L FISHERMAN 12, 19 (1979).

41. Chandler, *1982 Landings Were a Mixed Bag of Highs and Lows*, 63 NAT'L FISHERMAN Y.B. 1983 at 13, 134 (1984).

42. *Id.*

43. Stockton, *U.S. and Mexico Seek End to Tuna War*, N.Y. Times, May 12, 1986, at 24, col. 1.

44. Miller, *U.S. Tuna Skippers Find Western Pacific More Hospitable*, 62 NAT'L FISHERMAN 2, 63 (1982).

45. See IFR-81/70, *supra* note 30, at 3, and Miller, *Mexican Seizure of U.S. Seiners Nets Prohibition on Tuna Imports*, 60 NAT'L FISHERMAN 11 (1980).

46. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, NATIONAL MARINE FISHERIES SERVICE, FOREIGN FISHERIES ANALYSIS DIVISION, U.S. DEPARTMENT OF COMMERCE IFR-82/119, at 2-3 (1982).

47. *Id.*

canned tuna reportedly were held as surplus in Mexican warehouses.<sup>48</sup> Since then Mexico has been forced to market its tuna domestically at subsidized prices. More recently, however, there are some signs that Mexico's foreign marketing effort is beginning to pay off. In July 1985, Mexico signed an agreement under which Canada will begin buying Mexican tuna, and a new joint venture with France to build tuna packing plants for Mexico's Pacific coast has also been concluded.<sup>49</sup>

In order to more fully understand the deterioration in the fishery relations between the United States and Mexico, and to point the way toward how these relations may be improved, one must go beyond simply an analysis of differences in economic interests and of manifestations of conflict in the formal governmental relations. One must explore other variables as well: the contextual framework of each nation's perceptions of itself and of the other nation, the decisionmaking structures and processes for managing marine fisheries present in each country, and the diverse styles of international negotiating behavior which prevail in each nation.

#### DIFFERENCES IN THE U.S. AND MEXICAN CONTEXTS

The phrase "differences in U.S.-Mexican contexts" refers to the character and context of each nation's culture, history, and world position, as well as to the relative position of one nation *vis-a-vis* the other in the bilateral relationship. The fact that one of these neighboring states is a fully developed nation, while the other is a developing state now achieving "middle power" status,<sup>50</sup> significantly influences how the two are intertwined and how they perceive one another.

As Professor Bagley points out, there are important structural and perceptual variables which mold U.S.-Mexican relations.<sup>51</sup> By structural variables, he means the macroeconomic complementarities and tensions which exist between the U.S. and Mexican economies. In general terms Mexico, as a developing country, needs capital, technology, and expanded export markets, all of which the United States can provide. The United States, in turn, has a number of needs which Mexico can fulfill, such as secure energy supplies, raw materials, light and intermediate manufacturing, immigrant labor, and new opportunities for profitable investment. While both nations can profitably take advantage of their mutual needs,

48. U.S. Department of Commerce, International Trade Administration, American Embassy Mexico Airgram, ITA-82-03-034, at 6 (Oct. 1, 1981).

49. See Stockton, *supra* note 43, at 24.

50. See generally Gonzalez, *Incertidumbres de una Potencia Media: Las Nuevas Dimensiones de la Política Exterior Mexicana*, in *LA POLÍTICA EXTERIOR MEXICANA, DESAFÍOS EN LOS OCHENTA* 15 (O. Pellicer ed. 1983).

51. Bagley, *A United States Perspective*, in *MEXICO-UNITED STATES RELATIONS* 13, 15-16 (S. Purcell ed. 1981).

tensions in this interdependent relationship inevitably arise. For example, foreign investment in Mexico, although encouraged by the Mexican government, has fostered a pattern of capital-intensive rather than labor-intensive industrialization which exacerbates Mexico's already severe problems of under and unemployment.<sup>52</sup>

Differences in perceptual variables, that is, the images and cultural perceptions that each nation has of itself and of the other, can also aggravate underlying structural tensions. On the Mexican side, there is a clear, highly developed sense of nationalism combined with a sizable dose of wariness about U.S. intentions. In this regard, while U.S. observers generally stress the "interdependent" nature of the bilateral relationship, most Mexican policy makers and intellectuals characterize the relationship as one of "dependence," or at most of asymmetrical interdependence.<sup>53</sup> In the United States, stereotypical views and biases against Latin groups still significantly influence how this nation deals with Mexico. Images of inefficiency and widespread corruption still prevail, notwithstanding the obvious strides made by Mexico in economic development in recent years.<sup>54</sup>

In addition, each nation views the relative roles of the public and private sectors in quite a different way. In Mexico, there is a strong belief in the government's ability to manipulate the economy and a willingness to designate the State as the major actor in development. This is in contrast to the situation in the United States where policy makers prefer to rely, or at least to think that they are relying, on market forces, the free enterprise system, and the development of minimal, non-burdensome legal and regulatory frameworks rather than to directly guide development efforts.<sup>55</sup> These differences in character and context significantly influence the nature and place of fisheries in each nation's economic, social, and political systems. The fishing industries in the two countries have quite different profiles. In the United States, the fishing sector is virtually 100 percent private. The government plays a very minor role in the economic activities of the industry by way of minimal loan guarantees,<sup>56</sup> tax credits,<sup>57</sup>

---

52. *Id.* at 16.

53. See, e.g., Rico, *The Future of Mexican-U.S. Relations and the Limits of the Rhetoric of "Interdependence,"* in MEXICAN-U.S. RELATIONS: CONFLICT AND CONVERGENCE 127, 129-34 (C. Vasquez & M. Garcia y Griego eds. 1983).

54. For a very lucid account of the historical roots of the different world views of the United States and Mexico, see generally Paz, *Reflections: Mexico and the U.S.*, THE NEW YORKER 136 (Sept. 17, 1979).

55. See generally Knecht & Cicin-Sain, *U.S. Ocean Policy Making in a Changing World*, OCEANS '83 (1983) (Proceedings of the Annual Conference of the Marine Tech. Soc'y, Sept. 1983).

56. The Vessel Obligation Guarantee Program, authorized under the Merchant Marine Act, Title 11 (originally enacted in 1936 et seq. as amended, 46 U.S.C. §§ 1271-1280) provides federal loan guarantees for the loaning of money to purchase or construct fishing vessels.

57. The Capital Construction Fund, authorized under the Merchant Marine Act, Title 6 (originally enacted in 1936 et seq., as amended, 46 U.S.C. §§ 1171-82) provides tax credits for the construction of fishing vessels.

and limited fishery development assistance.<sup>58</sup> With a few exceptions, such as the highly modernized tuna industry based in San Diego, fishery activities in the United States remain relatively low-scale, continue to use traditional methods, and make a very small contribution to the nation's total economy.

In Mexico, on the other hand, the fishing industry is divided into three sectors: (1) "social," which consists of government-licensed cooperatives; (2) "public," which is owned and operated indirectly by the government; and (3) "private." The private sector accounts for approximately 66 percent of the total catch by volume and 45 percent by value. The cooperative, or social, accounts for 25 percent of the volume and 51 percent of the value, and the parastate, or public, sector accounts for 8 percent of the volume and 3 percent of the value.<sup>59</sup> The government, moreover, has been the major agent in fisheries development. Beginning with the first national fishery laws in the 1920s under President Calles and continuing through additions to these laws encouraging fishery development and the involvement of cooperatives under Presidents Ortiz Rubio, Lazaro Cardenas, and Miguel Aleman, the creation of Productos Pesqueros Mexicanos (the largest fishing company in Latin America) in 1971 by Presidential decree, and the passage of the federal Law on Fisheries Development in 1972 under President Echeverria, the fisheries sector has remained high on the list of public priorities in Mexico.<sup>60</sup>

This government involvement intensified further following the 1976 EEZ declaration and the adoption of the 1977-82 plan for fishery development. It is reported that the government spent more than \$1.3 billion in the last decade in a fishery development, modernization, and diversification effort, in such activities as the acquisition of new vessels, development of infrastructure, and training of fishermen. These development measures have been highly successful in several areas. Total fish catch in Mexico has increased dramatically, from 254,000 metric tons in 1970 to 1,532,224 metric tons in 1981.<sup>61</sup> Certain fisheries such as shrimp in the Gulf of California and anchovy in Baja California have been economically productive, although the long-run viability and distributive impact of these enterprises has been questioned.<sup>62</sup>

Not only has the Mexican government directly invested more tangible resources into fisheries than the U.S. government, but it has also attached

---

58. The Saltonstall/Kennedy Act (originally enacted in 1939 et seq., as amended, 15 U.S.C. § 1713 c-3) provides funds for fishery development projects.

59. *Camara Nacional De La Industria Pesquera*, SIMPOSIO SOBRE LA PROBLEMÁTICA PESQUERA at 8 (Sept. 1982).

60. See generally J. Petterson, *The Political Significance of Fishing Cooperatives: A Mexican Case Study* (Ph.D. dissertation, Dept. of Anthropology, Univ. of California, San Diego 1979).

61. Secretaria de Pesca, *supra* note 29, at 11-12.

62. See generally McGoodwin, *The Human Costs of Development*, 22 ENVIRONMENT 25 (1980).

a great deal of symbolic importance to the potential of the oceans for national development. The following statement by former president Lopez Portillo exemplifies this point:

The future of Mexico lies in the sea. We see in the generous extension of our coastlines a source of inexhaustible riches, which we can use to meet the nutritional needs of our people. That is why our government has focused its attention on the development of the sea. Internally, we have been successful in making the fishery activity "take off"; the future is now wide open and promising. Internationally, today, as last year, we reiterate our position: our sovereignty over Mexico's fishery resources is not negotiable. These resources belong to the Mexican people and are for the Mexican people, whatever the obstacles may be.<sup>63</sup>

In the United States, in contrast, notwithstanding a great deal of congressional interest in the oceans in the past decade which resulted in the passage of a significant number of new ocean-related laws, the potential of the oceans has yet to capture the attention of the presidency as a major area of concern.<sup>64</sup> The popular interest in the oceans in the United States centers around natural history, conservation, science, and recreation, rather than commercial exploitation. To the extent that there is nationalistic feeling in the United States with respect to the ocean, it is as a champion of conservation, almost preservation, rather than commercial use.<sup>65</sup>

The place of fisheries in each nation's economy and social system also differs in terms of the goals that are pursued for the sector. In Mexico, there appears to be a definite hierarchy of goals for fishery development: (1) food production; (2) creation of jobs; (3) contribution to the enhancement of the standard of living of the population; and (4) improvement of the balance of trade and capture of foreign exchange.<sup>66</sup> In the United States' fishery management system, in contrast, a variety of different management and development goals are present and no goal hierarchy exists. In "optimum yield"<sup>67</sup> and other fishery management concepts and

63. Presidential Prologue to Secretaria de Pesca, *Una Nueva Dimension 1977-81*, at xi (1982) (trans. B. Cicin-Sain 1986).

64. See generally, Cicin-Sain, *Managing the Ocean Common: U.S. Marine Programs in the Seventies and Eighties*, 16 MARINE TECH. SOC'Y J. 6 (1982).

65. See generally Orbach, *U.S. Ocean Policy and the Ocean Ethos*, 16 MARINE TECH. SOC'Y J. 41 (1982).

66. Secretaria de Pesca, *supra* note 29, at 4-5.

67. Optimum yield, a central concept of the MFCMA, is defined as: the amount of fish—(A) which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities; and (B) which is prescribed as such on the basis of the maximum sustainable yield from such fishing, as modified by any relevant economic, social, or ecological factor.

16 U.S.C. §§ 1801 et. seq., as amended, § 3(18)(A)(B).



legislation for example, we find many different implicit goals—protecting the resources, promoting economic efficiency, improving the balance of trade, and enhancing recreational opportunities. There is no explicitly stated hierarchy in these goals as there is in Mexico; which goal prevails in a particular fishery situation is highly dependent on the specific configuration of interests present.

### CONTRASTING POLICY-MAKING SYSTEMS

The governmental systems responsible for, and involved in, fishery policy in the United States and in Mexico also differ substantially. This section provides a brief, synoptic view of the two systems.

#### *The United States*

The fishery management and policy system in the United States can be characterized as a highly complex, decentralized system with multiple points of access. It is a system designed to be open to a variety of government and non-government interest group pressures, from a large number of variegated interests. Throughout most of its history, the bureaucratic system has been dominated by experts with a strong biological science background who have tended to move up the ranks of state and federal agencies with little movement to and from other scientific or policy areas.

Most of the history of fisheries management itself in the United States has not been a history of federal, but rather of state, management. Until the passage of the MFCMA in 1976, management of marine fisheries was largely under the control of the states through their formal authority over the territorial sea (from zero to three miles offshore, in most cases), and through a series of court decisions which established the precedent for state regulation of the activities of its citizens even outside the territorial sea. The marine fisheries science establishment had been national and federal in scope for almost a century, first through the Bureau of Commercial Fisheries and later through the National Marine Fisheries Service, but it was not until 1976 that general management authority over fishery resources became a federal mandate.

The U.S. Congress has been heavily involved in the development of national fishery policy through the creation of the Magnuson Act, and many congressional members and offices continue to be involved through contact with agency personnel, attendance at regional council and management agency functions, representation on international negotiating teams, and so on. Interest groups are also heavily involved, and it is possible for industry, recreation, or other interest groups, of which there are a large number and wide variety at the local, regional, and national

levels, to lobby so effectively as to essentially determine aspects of formal federal policy. The influence of the U.S. high seas tuna fleet in determining the U.S. position on highly migratory species is a case in point.

When the involvement of the federal government in fisheries management became formalized through the enactment of the Magnuson Act, the system created was still very decentralized. Responsibility for the development of fishery management plans for fisheries in the FCZ was placed in the hands of eight regional fishery management councils, each of which is composed of representatives from state and federal agencies, the fishing and other marine-related industries, consumers, and other interest groups. The Secretary of the Department of Commerce, a presidential cabinet level position, is formally the final legislatively-mandated authority under the MFCMA, but in fact authority for most fishery related decisions is delegated to the Assistant Administrator for Fisheries in the National Oceanic and Atmospheric Administration (NOAA), several bureaucratic levels below the Secretary. The Secretary, in effect, rarely becomes involved in fishery-related questions.

Through its sub-agencies, the NOAA and, within that organization, the National Marine Fisheries Service (NMFS), the Commerce Department handles most of the fishery policy interactions, out of the NMFS Washington, D.C. office supported by the four NMFS regional offices in Massachusetts, Florida, California, and the State of Washington. NMFS is the center of the federal administrative effort for management, development, regulation, enforcement, and research in fisheries. The resources put into fishery development by the U.S. government have not been large, and certainly do not approach the level of such resources expended in Mexico. The individual states still take the burden for much of the fishery work in all areas, a situation which has historical and, with the Reagan administration's emphasis on decentralization, political and economic roots as well. NMFS is a relatively small agency, with approximately 1,750 employees nationwide, and an annual budget in 1981 of around \$125 million.

The primary agency with which NMFS interacts on international fishery affairs is the Department of State (DOS). The Deputy Assistant Secretary for Oceans and Fisheries Affairs at DOS is the head of delegation for all formal international talks on fisheries concerning Latin America. In the formal organizational charts, this position is found at a higher bureaucratic level in the DOS than the bureaucratic level of NMFS personnel with whom the Deputy Assistant Secretary works. In general, NMFS and DOS are the two major federal agencies involved in fishery policy development unless specific questions relating to particular endangered species or marine mammals are raised, in which case the Department of the Interior becomes actively involved.

### *Mexico*

Even though the Mexican government has regulated its marine resources since 1871 and a fishing-oriented government bureaucracy has existed since 1891, it has only been in the last twenty-five to thirty years that the fishing sector has been the subject of focused and large-scale attention by that government. Until the 1950s, fishing in Mexico was largely a marginal economic activity. From the mid-1950s until the early 1970s, the shrimp fishery, which was oriented toward the export market to the United States, experienced great growth. At the beginning of the 1980s, most fisheries in Mexico were of two quite different types—a highly modernized shrimp fishery aimed at the export market, and largely artisanal coastal fisheries aimed at local consumption. After 1970 there was a concerted government effort to double fish production, from 254,000 metric tons in 1970 to 525,000 metric tons in 1976,<sup>68</sup> and to diversify into new fisheries, most prominently tuna, sardine, and anchovy. After 1976, the Lopez Portillo administration invested significant effort in fisheries in an attempt to catapult Mexico into a role as a first-class world fishing power. The major actor in fisheries development and administration in Mexico is the federal Secretaria de Pesca (SEPES). This federal agency has undergone various organizational transformations in the 20th century, until recently as part of other federal departments and entities, and its status within the Mexican federal bureaucracy has grown steadily over time. The agency achieved departmental status in 1976, becoming the Departamento de Pesca, and in 1982 it was elevated to cabinet level status as SEPES. SEPES is responsible for evaluation, management, and development of the nation's fishery resources through its national level divisions of fishery development, infrastructure, and aquaculture, the Instituto Nacional de Pesca, and through thirty-one federal Delegaciones representing all of the Mexican states. In addition SEPES coordinates the activities of the parastate fishing entities, most prominently Productos Pesqueros Mexicanos (PPM), created in 1971, and Industrias Pesqueras Paraestatales del Noroeste (IPPN), created as a separate entity in 1977. SEPES is supported in its investment decisions by the Banco Pesquero y Portuario (BANPESCA), a decentralized governmental entity created in 1979 to finance fishing and port development projects.

In 1981, SEPES had 18,385 permanent employees (almost ten times the number of NMFS employees), 6,341 within the Secretaria itself, and 12,044 in the parastate organizations. Seventy-five percent of these employees work in the federated entities, not in Mexico City. SEPES also coordinates the Comision Nacional Consultiva de Pesca, created in 1961 as an interagency advisory body to SEPES, and composed of represen-

---

68. Secretaria de Pesca, *supra* note 29, at 12.

tatives from other related cabinet level departments and from the fishing industry. Other federal agencies that play a prominent role in the formulation of Mexican fisheries policy are the Secretaria de Programacion y Presupuesto (SPP), which plays a role similar to the U.S. Office of Management and Budget and is responsible for formulating national development plans to which plans for the fisheries sector must conform, and the Secretaria de Relaciones Exteriores, which is responsible for the formulation of Mexican foreign policy. Relations between SEPES and Relaciones Exteriores are not always smooth, with some competition evident concerning which agency is to take the lead in international fishery negotiations.

With respect to relations between SEPES and SPP and the status of SEPES in the federal bureaucracy, although SEPES has grown in stature it is still one of the less powerful Secretarias in the Mexican federal government. However, in terms of resources at the federal level, the fisheries sector has fared quite well. In 1981, the total federal budget for fisheries was close to 34 billion pesos (U.S. \$1.26 billion), 6 billion (U.S. \$222 million) for SEPES and 28 billion (U.S. \$1.04 billion) for the parastate industries.<sup>69</sup>

In contrast to the plethora of interest groups active in the management of fisheries in the United States, there are significantly fewer major interest groups at the national level in the fisheries sector in Mexico. The major two are the Camara Nacional de la Industria Pesquera and the Seccion de Cooperativas Pesqueras de la Conferacion Nacional Cooperativa de la Republica Mexicana. The Camara, which represents the private sector, was created in 1949 in response to the surge of interest in fishing following World War II and is the major conduit of communication between the private industry and the government. The Seccion de Cooperativas Pesqueras represents fishery cooperatives at the national level. In Mexico several fish species, including shrimp, abalone, lobster, and oysters, are reserved by law for harvest by government-licensed cooperatives. In order to participate in federal programs, fishing cooperatives must be organized into regional federations, which in turn are represented by the Confederacion at the national level. Both of these interest groups, the Camara and the Confederacion, have traditionally functioned in a hierarchical manner, with most decisions flowing from the national level downward, and not emanating from the local level.

In Mexico, then, the fishery policy systems appear to be highly centralized, with major direction emanating from the president and the presidential cabinet in Mexico City. As pointed out above, Mexican presidents have been generally interested and involved in fishery matters since at

---

69. *Id.*

least the 1920s. The Secretary of the Departamento de Pesca is a presidential cabinet level position, although the Department itself is a fairly new agency. Executive authority in Mexico extends much further than in the United States, bolstered by a strong, centralized bureaucracy and relatively unaffected by legislative and interest group articulation. The Mexican system, moreover, is marked by strong bonds of personal relationship and political patronage. The political/bureaucratic leaders are not, in general, technical experts, but generalists whose career paths take them from one policy arena and one agency to another.

Although the Mexican states and parastate industries have had a role in management and development in fisheries, that role has traditionally been defined by the Mexican federal government. It is only in the last decade that regional and industry groups have effectively challenged the directives of the federal government, and those challenges, largely from the shrimp and tuna cooperatives, have been made within the organizational framework of the centralized hierarchy; that is, even challenges have gone through channels.<sup>70</sup>

#### DIFFERENCES IN FORMAL NEGOTIATING BEHAVIOR

Other differences between the two countries are evident in each nation's approach to international fishing negotiations. In the United States, formal status talks are distinguished by the fact that they are attended by the formal "head of delegation," the Deputy Assistant Secretary for Oceans and Fisheries Affairs from the Department of State. Although such talks have not taken place since 1980, when they did occur the U.S. delegation usually consisted of the Deputy Assistant Secretary, the principal staff from NMFS and DOS, occasional congressional representatives, industry representatives, and environmental groups involved with the fishery or fisheries under discussion at the talks. Thus, for example, talks concerning tuna might involve representatives of the American Tunaboat Association, the United States Tuna Foundation, a number of canneries and food processing corporations, and several private tunaboat captains or owners. Typically, these representatives of private groups have wielded significant power with respect to the U.S. positions at such talks.

On the Mexican side, the situation is considerably different. The role of agency staff as opposed to political appointees was considerably smaller. Although representatives from private industry may have attended such meetings, they rarely controlled the formulation of the Mexican positions. Because the interest groups in Mexico with respect to fisheries are much less prolific and their points of access more restricted, the interest group voice is muted on the Mexican side. The informal leadership of the

---

70. J. Petterson, *supra* note 60.

negotiating team on the Mexican side has not been consistent over time, going back and forth from Pesca to Relaciones Exteriores, according to the political circumstances of the agencies and their personnel. It is rare for legislative personnel to attend such meetings or talks, and in general Mexico's position adheres to that expressed by the president and his cabinet directly.

Thus, the fishery policy making and negotiating system in the United States is decentralized, heavily influenced by interest group pressure, staffed largely by scientifically trained personnel who have tended to remain in the same positions over time, and guided by congressional mandate and even direct participation by congressional representatives rather than by intimate executive branch direction. In Mexico, the system is centralized, generally not subject to interest group pressure, and intimately directed by the executive or his close representatives. The differences in the styles of the formal negotiation teams reflect many of the differences in the policy making systems of the two countries in general with respect to fishery issues.

#### IMPLICATIONS FOR THE BILATERAL MARINE POLICY RELATIONSHIP

This review of the significant differences in the policy making systems of each nation, the different stages in which they find themselves, their differing outlooks toward the marine resources at stake and toward the international legal regime, and the mutual stereotypical views they hold of one another, helps to explain the continued impasse in formal relations between the two nations.

First, the differences in the political economy and administrative processes in each country produce outcomes that are difficult for the other to understand. For example, it is difficult for Mexico to comprehend a political system where one interest group such as the high seas tuna fleet can appear to dominate government policy so completely, when interest group pressure is so much more muted and organizationally constrained in Mexico.

Related to this is the significant difference in the size and character of the governmental fishery establishments in the two countries. In Mexico, a large, complex, cabinet level bureaucracy guides most of the nation's fishery affairs in a centralized manner. In the United States, a small sub-agency of government presides over a variegated set of interests in a decentralized, flexible system of policy making and management. Thus, the governmental actors who meet in cross-border negotiations concerning fisheries often come from very different bureaucratic levels and professional backgrounds, and have very differing resources, concerns, and

agendas. Such differences exacerbate already existing difficulties at the negotiating table.

Second, the differences in social history and cultural style lead to a framing of issues in very different ways in the two countries. On the one hand, Mexico frames most resource management issues in terms of the economic, social, and moral needs of developing countries, one of which it clearly and forcefully considers itself. The United States, on the other hand, frames the same issues in terms of historical precedent and responsiveness to the vagaries of the demands of many and diverse interest groups. These differences are quite evident in the approaches of representatives of the two nations at the negotiating table. Central to the Mexican style is the use and manipulation of cultural symbols, and a heavy emphasis on form as well as content or result. The ocean is an important symbolic resource in Mexico, and symbolic actions such as the firm emphasis on sovereignty via the EEZ concept and the rapid deployment of many large purse seiners (too many and too large many believe, for the efficient and effective exploitation of Mexico's fishery resources) are central to the Mexicans' style of viewing themselves and of demanding respect from others. In the United States, on the other hand, a much more instrumental mode of bargaining and compromise prevails with a lesser emphasis on the manipulation of symbols. It is probably fair to say that, in general, the United States has been negligent in either ignoring or dismissing the importance of these symbolic concerns to Mexico, while Mexico has sometimes focused on symbolic goals to the detriment of instrumental ones.

Third, the differences in world position and self-image of the two countries come into sharp focus in such arenas as the Law of the Sea negotiations. Mexico is a champion of the Third World, in particular in the area of marine resources, and clearly views itself as a member, albeit a sophisticated, powerful member, of that group. But the United States has been guided since 1980 by a federal administration which is less sympathetic to the internationalist perspectives of the 1960s and 1970s that spawned the LOS treaty and other instruments of international policy delineating new rights and obligations for both developed and developing nations *vis-a-vis* marine resources. The divergent positions of the two nations in world affairs are nowhere more evident than in their approaches to marine policy. Thus, for example, when U.S. spokesmen suggest crafting specific bilateral approaches to achieve agreement on the conduct of marine scientific research in Mexican waters, Mexican representatives reply that after spending so many years fighting for the adoption of the LOS international model, they do not want to support specially tailored bilateral arrangements.<sup>71</sup>

---

71. Cicin-Sain, Orbach & Vargas, *U.S.-Mexican Parley Debates Relations on Marine Resources*, 26 OCEANUS 68 (Dec. 1983).

As an undercurrent to all of these aspects of the bilateral relations between the two nations run the commercial and industrial processes in the fishing industries in each country which cross the border. Labor, parts and supplies, capital, vessels, and fishery products themselves continue to flow between the fishery-related industries of the two countries although in some cases, because of changing economic conditions, in smaller numbers and in different patterns than before.<sup>72</sup> In the direct cross-border harvesting of tuna and shrimp, for example, fishery proposals have been made and are currently being negotiated outside of the arena of formal bilateral relations. In the case of the shrimp fishery, proposals for joint U.S.-Mexico ventures on shrimp in the Gulf of Mexico are currently being developed. With respect to tuna harvesting on the Pacific coast, in August 1983 the San Pedro-based Fishermen's Cooperative Association (representing the nearshore tuna fleet, composed mainly of older, small vessels) independently concluded an agreement with the Secretaria de Pesca officials in Mexico City for the resumption of tuna harvesting by these U.S. tuna boats in Mexican waters.<sup>73</sup> This agreement was accomplished through very informal channels. A Los Angeles city councilman acted as the liaison between the Mexican officials and the tuna cooperative, with no involvement on the part of U.S. officials.<sup>74</sup> In a sense, the direction taken in the formal intergovernmental arena has become separated from the commercial/industrial direction; the normative statements of the governments are at some variance with the pragmatic actions of the industries.

How can the prospects for accommodation between the two nations on fishery relations be improved? What is required is an improved ability to "read" the modus operandi and constraints faced by each policy making system on the part of the other. It seems that all too often reconciliation efforts are aimed at the wrong parties. On the part of the United States, for example, because much of the administrative, scientific, and political activity in fisheries occurs at the regional level, initiatives for accommodation have tended to come from southern California—mainly from sports groups concerned with the depletion of the anchovy resource or from scientific personnel who have reached for, but not found, their counterparts at the regional level in Mexico (Baja California) or their

---

72. Cross-border industry interactions are complex and are described in some detail in the larger work on which this article is based. See generally B. Cicin-Sain & M. Orbach, *supra* note 7. In a nutshell, notwithstanding the impasse in formal governmental relations between the two nations, business interchanges have continued, with the major change being the fact that in some cases, such as vessel construction and repair, more of the business activity is now taking place in Mexico rather than in the United States.

73. See generally Fishermen's Cooperative Association of San Pedro, Special Report on Permits for Fishing Tuna in the Territorial Waters of Mexico (Sept. 6, 1983).

74. Krikorian, *Snyder Will Ask Mexico to Boost Tuna Quota for S.P. Fleet*, San Pedro Pilot, Sept. 15, 1983 at A1, col. 1



scientific counterparts in the research sectors of the national bureaucracy or in the national academic sector. These efforts had generally not been very successful because the decisionmaking authority over fisheries in Mexico in both the scientific and commercial sectors is firmly lodged at the national level, gravitating between the highest levels of PESCA and Relaciones Exteriores, always overshadowed, of course, by the office of the presidency.

More opportunities, too, for informal discussions between fishery officials in both countries are needed. Since the breakdown of formal negotiations in 1980 there have been few, if any, opportunities for informal exchange and consensus building among governmental representatives. Such opportunities are necessary to begin identifying possible methods of reconciling differences between the two countries. Participants from each country in these discussions must be aware of, and prepared to accommodate in some fashion, the historical perspectives and cultural, economic, and political situations and constraints of the other nation.