

RETHINKING SOVEREIGNTY IN THE WESTERN AND CENTRAL PACIFIC FISHERIES
COMMISSION

A THESIS SUBMITTED TO THE GRADUATE DIVISION OF THE UNIVERSITY OF
HAWAII AT MĀNOA IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE
DEGREE OF

MASTER OF SCIENCE

IN

NATURAL RESOURCES AND ENVIRONMENTAL MANAGEMENT

MAY 2012

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Keywords: Western and Central Pacific Fisheries Commission, sovereignty, fisheries,
international fishery management

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DEDICATION

This Thesis is dedicated to all the people across Oceania that inspired me beyond words and helped shape who I am as an individual today; specifically, my Fijian mama Makareta, the late Chief Kuku Tui, and all of the community members of Tanjung Parigi Village on Bunaken Island. You will always be my family and are in my heart wherever I go.

ACKNOWLEDGMENTS

I am incredibly thankful to have been employed with the National Marine Fisheries Service, Pacific Island Regional Office, International Fisheries Division (IFD) for the duration of completing this Masters Thesis. Specifically I am extremely grateful for the ceaseless support, knowledge and guidance of my supervisors, Rini Ghosh and Ray Clarke, through all facets of this project, as well as the support of my boss Dr. Charles Karnella. I'm extremely grateful for other members of the IFD family, Tom Graham and Emily Crigler, who both were sources of strength and solace throughout this process, and I give special thanks to Toby Wood for all the help and support. I'd also like to express my gratitude to my inspiring and encouraging advisor Dr. PingSun Leung, as well as to my other Committee members Dr. Kalei Kanuha and Dr. Steven Gray, whose support was invaluable during this journey. I am so thankful for every individual who provided me with the interest, willingness and openness to participate in my study; this paper is inspired by them and could not have been completed without their support. I'd also like to thank my affiliated departments of Natural Resources and Environmental Management as well as the Center for Pacific Island Studies and Geography, specifically Dr. Terence Wesley-Smith and Professor Alison Rieser for their guidance, encouragement and support. I'm so thankful for all of my colleagues and friends from the University of Hawai'i at Manoa, particularly Cynthia Lai and Erin Guth, who supported and motivated me tirelessly for the last two years. And finally, I would like to thank my incredible parents, especially my amazing Mother, role-model and best friend, whose unconditional love, endless support, patience and encouragement has been one of the most vital elements to my success throughout this endeavor.

ABSTRACT

International Fishery management bodies and policy regimes are highly complex, subjective and contextual, with the negotiation dynamic between member nations at the heart of progress for goals and objectives. The Western and Central Pacific Fisheries Commission (WCPFC) manages a specific area of the Western and Central Pacific Ocean (WCPO) which contains the largest and most valuable tuna fisheries in the world, providing over half of the global supply of tuna. Although 90% of tuna catches come from the waters of certain Pacific Island countries, little work has been conducted on examining tuna fishery management and development issues and sovereignty from the perspective of Pacific Islanders. This study attempts to categorize perceptions of sovereignty as reported by fishery managers, country delegates and legal advisors from either an industrialized nation or a Pacific Island; and to compare the identified perceptions by affiliated groups. Through the use of extensive interview data collected from informed experts and decision makers within the WCPFC and international law triangulation, incompatible perceptions were clearly defined across groups and were often inconsistent with international law regarding sovereignty. This study highlights the incongruity of perceptions within the management framework and encourages the highly influential topics of sovereignty, having deep historical, socio-cultural and political considerations, to be more directly addressed in conversations and deliberations about tuna fishery management in the WCPO.

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LIST OF ABBREVIATIONS AND ACRONYMS

CCM	Commission Members, Cooperating Non-Members, and Participating Territories
CMM	Conservation and Management Measures
Convention	Convention on the conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean
Convention Area	Area of Application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean
DWFNs	Distant Water Fishing Nations
EEZ	Exclusive Economic Zone
EU	European Union
FFA	Forum Fisheries Agency
FFC	Forum Fisheries Committee
FSM	Federated States of Micronesia
FSM Arrangement	1994 Federated States of Micronesia Arrangement for Regional Fisheries Access
GT	Grounded Theory Methodology
HMS	Highly Migratory Species
Magnuson Act	Magnuson-Stevens Fishery Conservation and Management Act
MCS	Monitoring, Control and Surveillance
MHLC	Multi-Lateral High Level Conferences
MSY	Maximum Sustainable Yield
Nauru Agreement	Nauru Agreement Concerning Cooperation in the Management of Fisheries of Common Interest
Palau Arrangement	1992 Palau Arrangement for the Management of the Western Pacific Purse Seine Fishery
PI	Pacific Island

PICs	Pacific Island Countries
PNA	Parties of the Nauru Agreement
PNG	Papua New Guinea
RFMOs	Regional Fishery Management Organizations
SIDS	Small Island Developing States
SPC	Secretariat of the Pacific Community
SPTT	The South Pacific Tuna Treaty (formally, the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America)
The Treaty	The South Pacific Tuna Treaty (formally, the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America)
TVM	Te Vaka Moana Arrangement
UNCLOS	United Nations Convention on the Law of the Sea
UNFSA	The 1995 United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks (Agreement)
VDS	Vessel Day Scheme
WCPO	Western and Central Pacific Ocean
WCPFC or Commission	Western and Central Pacific Fisheries Commission

Chapter 1

Introduction and Methodology: Addressing a Need for Investigating Perceptions of Sovereignty within the WCPFC

“Well, I think in the context of the WCPFC, sovereignty is probably the single most distorting factor to sustainable management of the resource.”

--Fishery Manager, representing a Pacific Island perspective

1.1 Introduction

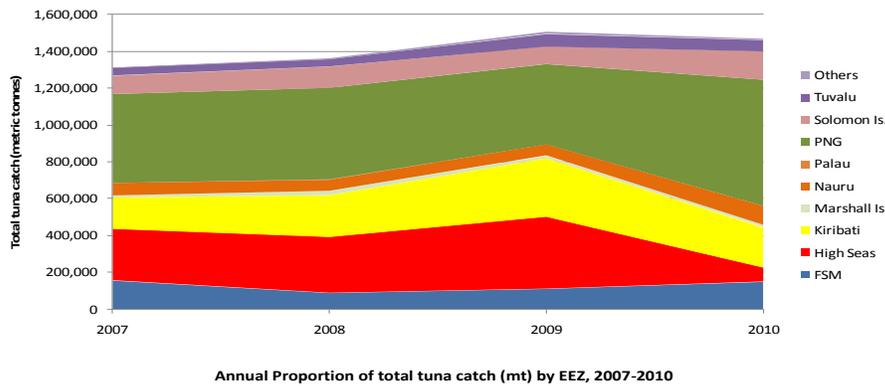
The Western and Central Pacific Ocean (WCPO) accounted for 60% of the world's tuna catch in 2010 making tuna a key economic resource of the region (SPC 2011). Furthermore, nearly 90% of tropical tuna catches are caught within the Exclusive Economic Zones (EEZs) of certain Pacific Island Countries (PICs)¹ (figure 1). An EEZ is a zone under national jurisdiction (up to 200-nautical miles wide) declared in line with the provisions of 1982 United Nations Convention on the Law of the Sea, within which a coastal state has sovereign rights over all the economic resources of the sea, seabed and subsoil². Due to the trend that the majority of valuable tuna catches come from Pacific Island EEZs (figure 2), desire has been expressed to maximize utilization of their fisheries for economic development and more involvement in the market for tuna by increasing direct domestic benefit from the fisheries (FFA 2011, Aqorau 2001, 2006,

¹ PICs and Pacific Island (PI) States will be used interchangeably throughout this document.

² The rights and duties of states within the EEZ are set out in articles 55-75 of UNCLOS. Within the UNCLOS, sovereign rights differ from sovereignty in that only partial control may be exercised and certain allowances are permissible for other countries behavior in the EEZ.

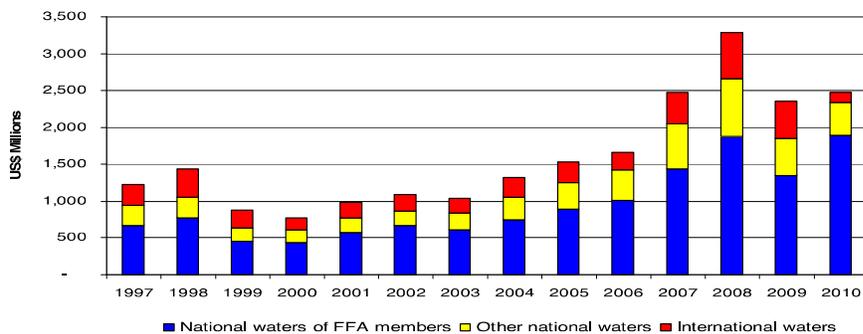
Hanich 2010, Havice and Campling 2009, 2010, Parris 2012). On the other hand there has been difficulty for PICs in managing fisheries within the EEZ framework due to the highly migratory nature of the fish and the legal and policy regimes for conserving and managing fishery resources internationally. Furthermore in order for highly migratory species to be managed effectively, they need to be managed across their entire range, which includes management in areas of the high seas³ as well.

Figure 1: Catches of Fish in EEZs of Certain Pacific Island States and High Seas



Source: SPC

Figure 2: Value of Catch by Area



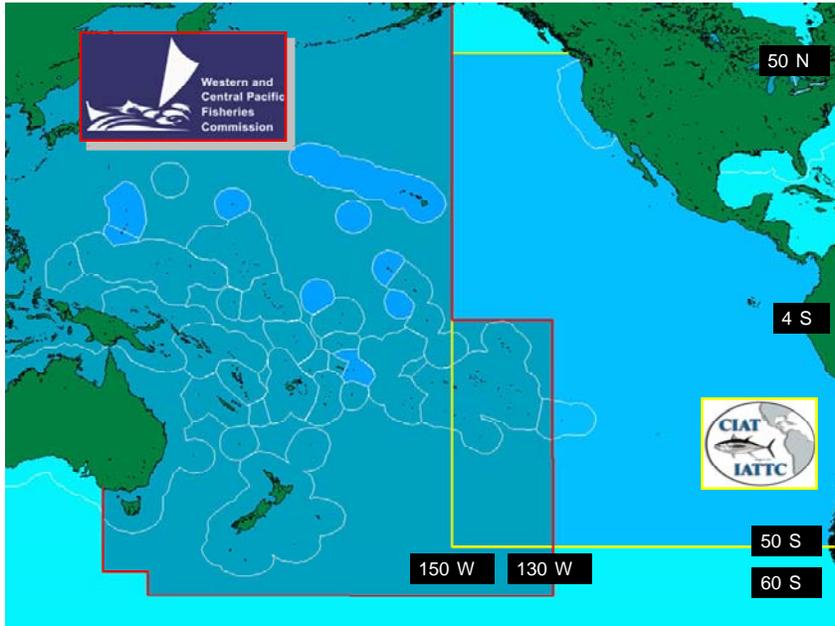
Source: SPC

³ High seas are areas of the ocean outside of areas under national jurisdiction.

The Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission) was established by the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention) which entered into force on 19 June 2004. The Commission is one of many regional fishery management organizations (RFMOs) that manages a specific area of the WCPO, referred to hereafter as the “Convention Area⁴ (figure 3). The main objective of the Commission is “to ensure, through effective management, the long term conservation and sustainable use of highly migratory fish stocks in the western and Central Pacific Ocean in accordance with the 1982 Convention and the Agreement” (WCPFC article 2). The Commission supports three subsidiary bodies that each meet once during the year; the Scientific Committee, Technical and Compliance Committee, and the Northern Committee. The meetings of the subsidiary bodies are followed by a full session of the Commission. Article 20 of the Convention text discusses the decision-making process of the WCPFC, which states “as a general rule, decision-making in the Commission shall be by consensus.” Although governed by consensus and based on scientific information, the decision making process in the WCPFC is often highly political and influenced by issues of sovereignty and political-economic pressures and incentives.

⁴ See Article 3 of the Convention text for a description of the area of application.

Figure 3: Map of the WCPFC Convention Area



Source: WCPFC

***Note: WCPFC Convention area outlined in red**

The Commission develops Conservation and Management Measures (CMMs) for Commission members⁵, Cooperating Non-Members, and Participating Territories (CCMs)⁶ of the WCPFC to implement through their respective national laws and procedures. As a member of the Commission, the U.S. is directly engaged in the development of management arrangements for the fisheries for which the Commission is responsible.

⁵ The current Commission members include Australia, China, Canada, Cook Islands, European Community, Federated States of Micronesia, Fiji, France, Japan, Kiribati, Korea, Republic of Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Philippines, Samoa, Solomon Islands, Chinese Taipei, Tonga, Tuvalu, United States of America and Vanuatu.

⁶ Participating Territories include American Samoa, Commonwealth of the Northern Mariana Islands, French Polynesia, Guam, New Caledonia, Tokelau, and Wallis and Futuna. Cooperating Non-members include Belize, Ecuador, El Salvador, Indonesia, Mexico, Senegal, Vietnam, Panama, and Thailand.

1.2 Background and Motivation

As will be discussed later in more detail, in the 1970s and 1980s the legal regime for the ocean and fisheries was undergoing dramatic change. Regimes of policy and conservation and management organizations were shifting and PICs could no longer act as the sole decision makers for management of the region's fish stocks and resources. The Pacific Islands Forum Fisheries Agency (FFA) was established in the 1970s to help countries sustainably manage their fishery resources that fall within their 200 mile EEZs; FFA has been operating in the region to manage the fisheries for over thirty years, even before the active involvement of the WCPFC. FFA is an advisory body providing expertise, technical assistance and other support to its 17 members⁷ who make sovereign decisions about their tuna resources and participate in regional decision making on tuna management through agencies such as the WCPFC (FFA, 2012). Out of a total of 32 participating territories and members of WCPFC, over half (17) are FFA members, forming a significant and important voting bloc amongst Commission members.

A subset of the FFA, the Parties to the Nauru Agreement (PNA) are Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Palau, Papua New Guinea, Solomon Islands and Tuvalu. PNA waters supply around 25% of the world's supply of tuna, thus FFA provides assistance, such as the legal and technical assistance, to enable PNA countries to meet and make high level decisions and to implement these measures at a national level.

However the regime of management for the WCPO is complex in nature, and the FFA and PNA are required to cooperate with other members of the Commission on conservation and management of species that fall within the jurisdiction of the Commission. The WCPFC aims to

⁷ FFA's 17 Pacific Island members are Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu.

collectively manage a common good that is highly valued by participants in the fisheries as well as the global community; this means there is a high stake and level of risk involved in the managing the tuna resource. Many issues are created with commonly held goods, especially those that are transboundary in nature, meaning the tuna resource is not bound in space. In practice the WCPFC tries to employ a form of “risk management” to the resource because stakes are high, and tuna of extremely high value and importance could potentially be lost if not managed responsibly and exploited sustainably. Keeping in mind the Commission is comprised of member nations from all over the world, all with very unique cultures, values and histories, and all who speak different languages and exercise different perceptions of rights-based management procedures within the WCPFC.

At the multilateral level, the WCPFC has begun to address problems in managing tuna and related stocks of the WCPO throughout their range and particularly on the high seas by adopting numerous, sometimes complex, CMMs. This has not been a smooth process, with strong disagreements between FFA members and DWFNs regarding the jurisdiction of the WCPFC over EEZs and archipelagic waters⁸. Relative to other RFMOs, coastal states can drive the WCPO process to a greater extent because they control a greater proportion of resources in this region, and there is generally more solidarity among PICs than among coastal States in other regions. WCPFC’s effectiveness, in terms of conserving and managing fish stocks and providing effective and equitable outcomes for PICs with regard to securing what they perceive as appropriate control of the resource, has been increasingly questioned by FFA member countries.

⁸ Archipelagic waters are considered separately from EEZs, and here a country has the right to control and enforce full sovereignty over access to their resources.

Article 30 of the Convention text recognizes and discusses the special requirements of developing Pacific Island (PI) States, in particular “Small Island Developing States” (SIDS) in relation to management of highly migratory fish stocks in the Convention Area and development of fisheries for such stocks. Article 30 also outlines the duty of the Commission as a management body to recognize and account for these special requirements when developing CMMs and other management arrangements for the fisheries for which the Commission is responsible. Adopted at the fifth regular session of the Commission in December 2008 with the objective of securing greater economic benefit for member nation PICs, Resolution 2008-01 elaborates on the special requirements of SIDS, the duties of the Commission, and the obligation on States to recognize and take these into account.

Yet several publications identify one of the key impediments to progress in other RFMOs as having been a failure to recognize or account for the aspirations of developing countries, especially coastal States or SIDS (Parris and Lee 2008, Willock and Cartwright 2006, Sissenwine and Mace 2001, Havice and Campling 2009 and 2010). Furthermore, there has been specific articulation under international fisheries law of the special requirements and aspirations of developing States and the obligation on States to recognize and take these into account (UNCLOS article 64, 1995 UN Fish Stocks Agreement article 7, Resolution 2008-01, WCPFC).

Management making processes for fishery resources are based on the best available science for the resource as well as sovereignty, or what rights are given to all the people involved. Decision makers aim to integrate both science and sovereignty for effective management of the future of the stock; however, in the political arena, it comes down to how these nations define their rights and their aspirations. Furthermore any decision and subsequent CMM need to be in line with the international legal framework for fisheries. The management

system pivots on sovereignty, but the problem is that people define and use it differently. Furthermore sometimes the sovereignty and the science are in conflict, and the desired rights don't always align with the biology of the fish. Sovereignty can be used as a qualifier, but it can also be used as a tool.

Following recent publications, press releases, internal meetings and deliberations, and formal meetings of the WCPFC and certain subsidiary bodies, it is apparent that there is a social phenomenon surrounding the dynamic between member nations of the WCPFC and how sovereignty and the nature of international negotiations is perceived. In more indigenous terms, 'sovereignty' may refer to the right of a nation, group of people or person to independently manage their own resources and assert their authority. This is intrinsically embedded within oceans and fishery management and negotiation, because in most RFMOs, integration amongst all member countries is required at procedural and process levels, such as in the WCPFC, in order to obtain compatible measures to manage stocks responsibly and effectively across their entire range (WCPFC article 8). Furthermore, by signing on to an agreement or Treaty, such as that of the WCPFC, you are subjecting sovereignty to those international duties and obligations. Some claim this process inevitably involves SIDS having to compromise their sovereignty and power in exchange for cooperative agreements (that support development of their fisheries) with distant water fishing nations (DWFNs) like the U.S., E.U., China, and Japan among others. This assumption, however, depends on the meaning of sovereignty in the WCPFC, especially when SIDS are so dependent on DWFNs for development and capacity building in the fishery sector. Furthermore, the understanding and presentation of the term sovereignty is fundamentally rooted in history, culture, ideology and ontology, which is diverse across different people and different spaces.

Because the WCPFC has been in existence for a limited number of years, only select studies have examined the WCPFC as an equitable management body (Aqorau 2001, Parris 2010, Parris and Lee 2009, Hanich 2012, Havice and Campling 2009, 2010, Tarte 2000, WCPFC8-2011/12), and no study has explored the perceived understandings of sovereignty within the WCPFC and how this potentially affects management. Several observers from studies listed above have noted that the implementation of the terms of the Convention is being increasingly slowed over time as members become entangled in competing interpretations of its text, including the extent to which SIDS are actually given special considerations to pursue their aspirations of tuna-led development (Parris 2010). Furthermore, developing an understanding of what PICs want and need from practicing sovereignty over their tuna resources in the WCPO is becoming increasingly important as the region begins to gain more control over access to tuna and political sway within the WCPFC through regional agreements and amendments.

Highlighting issues of sovereignty that fundamentally are rooted in how this word is understood and executed within the WCFPC provides insight into quandaries that come up in Commission deliberations that are connected to ambiguous or conflicting interpretations of terminology. This study strongly encourages underlying and highly influential topics (like sovereignty) that have deep historical, social, cultural and political considerations, to be more directly addressed in conversations and deliberations about tuna fishery management and conservation in the WCPO.

Managing high seas fisheries in the region is extremely complicated requiring massive amounts of scientific and technical support, however the issues can also be approached in terms of assessing the people who participate in the fishery and industry, as well as those who live and rely on the resources of the region for livelihood and/or sustenance. Member nations of the

WCPFC are an active part of the management process and are inherently impacted by the process. This study was designed to understand the strengths and weaknesses within the current fishery management process in the WCPO as it relates to a nations' sovereignty under the WCPFC and to organically gather recommendations to improve the process. The effect of the overall effort is stakeholder and expert-driven advice for changes to improve the current fishery management process.

1.3 Purpose and Objectives

Increasingly industry, government and non-government environmental organizations and the international community are closely monitoring the outcomes from WCPFC annual meetings. In addition to subsidiary body meetings, working groups and collaboration amongst countries, intense press-coverage surrounds annual meetings and commonly discusses the topic of PIC sovereignty within the role of the WCPFC. It is therefore necessary to systematically and comprehensively assess the meaning of sovereignty in the context of the WCPFC, how it is perceived and executed by member nations on the floor, and whether this has direct impact on meeting conservation and management goals. *This study explores the meaning of sovereignty within the WCPFC and whether inconsistency and incompatibility in peoples' perceptions inhibits the ability of the WCPFC to meet conservation and management goals, by conducting interviews with informed experts and stakeholders, uncovering themes within and across interviews and developing a theory about sovereignty within the WCPFC, in order to provide input to the U.S. delegation to the Commission as well as to the Commission as a whole.*

While several studies employ various social theory to analyzing the inherent problems of fishery management (Aqorau 2006, Degnbol et al. 2006, Jentoft 2006, 2006, 2007, Gray et al. 2010), limited studies apply qualitative methodological approaches in the evaluation of fishery

management frameworks (Brewer 2011, Georgakopoulos et al. 2008, Cawthorn 2007, Gray et al. 2010), and no study has employed Grounded Theory in studying any highly migratory species (HMS) fishery such as tuna or utilized this method for an investigation of the WCPFC. Therefore employing a qualitative approach to investigate this topic provides a new perspective to the problem that more directly addresses the social phenomenon present in the WCPFC.

Specifically, the following questions were investigated in this study:

(1) What does sovereignty mean in the WCPFC? (2) How is the meaning and exercise of sovereignty understood by other experts in the field? (3) Is the meaning of sovereignty in the WCPFC consistent with the legal definition from the Law of the Sea? (4) How do varying perceptions of sovereignty affect the WCPFC in its ability to meet conservation and management goals?

I hypothesized that (1) groups would employ different definitions of sovereignty; (2) The way sovereignty is used in the WCPFC would be inconsistent with the legal definition in the Law of the Sea; and (3) The inconsistency in perceptions of sovereignty is inhibiting the progress of the WCPFC to meet its objectives.

1.4 Performance Review of the WCPFC

Suggestions are provided at the end of this document for improvements that would enable the Commission to work more efficiently and effectively in implementing CMMs and make progress on allocation issues. Also to note is a recently published document reviewing the performance of the Commission, a comprehensive document entitled ‘Review of the Performance of the WCPFC’ whereby a review team undertook the role of assessing the performance of the WCPFC in many areas. The criteria upon which this review was based stemmed from the

recommendations adopted by a meeting of Tuna RFMOs in Kobe⁹. The performance review panel included independent, external experts as well as three internal Commission members from the European Union, Nauru, and the Philippines (WCPFC8-2011/12).

A wide range of areas were reviewed such as the WCPFC's consistency with other relevant international fisheries instruments, the division of responsibilities under the Convention for the Commission and for Members, key legal issues, rules of procedure, decision-making and dispute settlement, overall conservation and management, and compliance and enforcement, among others (WCPFC8-2011/12). Although the outcomes of the performance review were extensive and unique for each area of review, overall the outcomes were positive and reflected the WCPFC as being on track and successful in its overall performance.

1.5 Methodology: An Interdisciplinary Approach to Investigate Perceptions of Sovereignty

This study employs a mixed-methods approach to investigating the topics and addressing the hypotheses. It utilizes interviews, a modified grounded theory methodology (Glaser and Strauss 1967, Charmaz 2006) and content analysis (Saldana 2009) triangulated with international law on fishery and maritime sovereignty and resources. Grounded theory is not strict or conventional social theory, but a methodology common in the social sciences, relying mainly on qualitative data sets. While grounded theory is concerned with the discovery of hypotheses from texts (induction), content analysis is concerned with testing hypothesis from the start (deduction) (Saldana 2009). Weber (1990) advocates that the best content –analytic studies use both

⁹ The Kobe Process is the joint tuna regional fisheries management organization process that seeks to harmonize the activities of the five tuna regional fisheries management organizations. There have been three formal Kobe meetings to date, the most recent being July 2011.

qualitative and quantitative operations on texts, with the statistical applications ranging from simple frequency counts to more complex multivariate analyses.

Grounded theory methodology iterates layers of data collection and textual and discourse analysis, often producing a series of sampling frames and a multi-level explanatory framework. This includes first-order analyses with the greatest internal validity, often of more prospective use to field professionals than to theoretical interpretation, and higher-order analyses with greater external validity and conceptual relevance (Brewer 2001). Analysis is premised on constant comparison and the researcher's persistent and rigorous comparison of new data with an emerging conceptual framework, including the production and usage of extensive field notes, observations and memos. Although less transparent than quantitative methods, this qualitative approach can answer research questions for which quantitative methods may be inadequate or impractical. In a perfect world, with unlimited public venues in which to clarify values, exchange information willingly and openly, and compare conflicting viewpoints, individual and collective rationalities would be much easier to fix and quantify (Brewer 2001). However, the reality of marine resource policy, especially international fishery management, is a much more complicated and complex arena with no obvious or uniform solution clearly visible.

Today, disciplinary boundaries narrow the perspectives of fisheries management, creating a kind of selective tunnel vision and standardized technical fixes to complex and diverse management problems (Degnbol et al. 2006). Similar to justification of why innovative, unique approaches are necessary for managing transboundary stocks of fish like tuna, this study promotes a more multi-disciplinary and tiered approach to fisheries management, grounded in empirical and qualitative research. In other words, there is no objective answer as to how to best solve these complex fishery management problems; the concerns, principles and goals of the

management process are matters of preference and choice, and hence intense political struggle (Jentoft 2006). Thus fishery management must be pragmatic and open to perspectives, assumptions, insights, and methodologies of all disciplines as required in a specific case-by-case scenario (Degnbol et al. 2006). Because of the unique and complex natures of the WCPFC and international tuna fishery management in the Pacific, and because peoples' perspectives and institutional processes are examined and uncovered, the focus of this study represents an ideal paradigm in which to employ qualitative research.

1.5.1 Selection of Participants

An intentionally targeted pool of interview participants was selected in order to obtain specific knowledge and experiences from the most appropriate and informed individuals closest to the management processes of the WCPFC. Adopted from McCormick (2006), Moysen and Wagstaffe (1987) considered individuals to be experts if they were able to provide quality information, understand the complexities of issues, and have access to important information. Informed experts and stakeholders are selected for this study based on their professional experience with fishery management in the WCPO, role within pertinent organizations and/or governments, and involvement at regular meeting sessions of the Commission. Most interview participants have worked for a minimum of ten years in international and national policy forums, RFMOs, national governments, industry organizations, academia, and/or research institutes. Furthermore all selected participants have been closely involved with WCPFC negotiations for a minimum of five years. The proportion of interviews with each type of expert (delegate, advisor, scientist) as well as affiliation (DWFN, SIDS or legal/technical perspective) is similar thus to ensure that the information collected during the interviews is not biased towards one discipline or group of people, or one perspective.

Three perspectives were targeted in this study: an industrialized nation (DWFN) perspective, a Pacific Island (SIDS) perspective, and a legal-technical perspective, which represents legal advisers and decision-making facilitators. Within the DWFN and Pacific Island perspectives, the individuals represent fishery managers, fishermen, country delegates, or policy advisors. DWFN perspectives include views from various industrialized nations, including but not limited to the U.S., China, Japan, the European Union (EU), Australia, Chinese Taipei and Korea. Pacific Island perspectives include views from some, but not all, FFA member nations. Legal and technical perspectives represent views of various legal advisers, lawyers, directors and facilitators to countries or the Commission and include representatives to both DWFN and SIDS member nations.

1.5.2 Qualitative Methodology

One of the beauties of qualitative research is that it gives you access to the nitty-gritty reality of everyday life, but viewed through a new analytic lens (Silverman and Marvasti 2008). The initial phase of this effort focused on gathering stakeholder and informed expert input via semi-structured interviews. Stakeholders, as referenced throughout this study, are individuals who are or have been actively part of the WCPFC management process, as well as those impacted by the process, and may or may not represent the view of a specific member nation. Informed experts are individuals who currently work or have worked intimately with the WCPFC within the management framework. Questions were designed to understand the meaning of sovereignty within the WCPFC and encourage discussion of strengths and weaknesses with the current fishery management process in the WCPO under the Commission and to gather recommendations for making improvement to the process. The second phase of this effort

involved a more focused analysis of the interpretation and meaning of sovereignty and any recommendations identified in order to construct a theory about sovereignty and the WCPFC.

Multiple approaches in qualitative methodology were used throughout this study.

Observation was conducted for background material and familiarization of the topics at hand to assist in understanding subcultures or other phenomena present. Specifically, attendance of the 7th and 8th Regular Sessions of the Commission held in Oahu, Hawai'i in December 2010 and in Tumon Bay, Guam in March 2012, respectively, in addition to the February, 2011 meeting of the Parties to the South Pacific Tuna Treaty (SPTT) in Honolulu, and various other meetings of subsidiary bodies to the Commission. These forums provided ample opportunity to observe and examine hours of deliberations and negotiations between member nations during the meetings, which are approximately one week long. *Texts and documents* including Member Nation proposals, scientific assessments, legal opinions, and scientific and technical papers submitted to the WCPFC were extensively reviewed as background material as well as to understand different language and value ambiguities that are commonly used in these topics, specifically if and how the meaning of sovereignty has changed over time and how it is viewed and understood differently across the board today; and furthermore, how this affects the WCPFC as a management body.

1.5.3 Semi-Structured Interviews

The main methodology employed in this study is the use of interviews (n=26) in order to understand the participants' experience and perceptions. The majority of interviews were conducted on the phone and recorded with a digital audio recorder and took around one hour each; seven interviews were given in person and also recorded. The interviews were recorded to later type a transcript—a written record of the interview—and analyze the information from the

interview. Interviews were conducted on a total sample size of 26 informed experts and stakeholders. All interview participant names and affiliations are kept anonymous; this was done in order for participants to feel comfortable answering questions about their views and organization. This assured participants that no information reported would be directly attributable to them.

Qualitative research interviews as outlined by Kvale and Brinkmann (2009) were used for the formal interview process. Data was analyzed as it was collected, from the very beginning phases of project formation to the end, by recording notes, thoughts, questions, biases, etc. in a research journal. Key questions were posed about the data through each step of collecting it. The following types of data were analyzed in detail: (1) interviews, (2) field notes, (3) memos/texts, and (4) transcripts:

(1) Interviews were conducted, recorded, and transcribed. An interview guide¹⁰ (appendix 1) was used to semi-structure questions and for consistency; the interviews were semi-structured in order to allow the process of knowledge to emerge through organic conversation between interviewer and participant and because perceptions were specifically targeted. All of the same questions were not necessarily asked to all participants, but certain questions targeting the specific research questions outlined above were asked to all participants.

(2) Systematized and analyzed field notes—‘raw’ data was focused and simplified down, memos were incorporated into field notes in a coherent manner, data was organized into

¹⁰ An interview guide is a script, which structures the course of the interview more or less tightly (Kvale and Brinkmann 2009). For purposes of this study, the guide will be semi-structured containing an outline of toPICs to be covered, with suggested questions. Questions are designed to understand the meaning of sovereignty within the WCPFC and encourage discussion of strengths and weaknesses with the current fishery management process under the Commission

tables or models and preliminary conclusions were drawn by looking for patterns and explanations to construct theories and meanings. To stay objective and creative, any conclusions were verified by repeatedly asking questions about field note analysis as well as by sharing some initial analysis with participants prior to finalizing results and conclusions.

- (3) Memos and texts were written, read, re-written, re-read, etc. This refers to all personal notes recorded in a separate journal throughout the entire phase of the study. According to Kvale and Brinkmann (2009), this is an important aspect of gathering data, as in studying peoples' behavior and their interaction with or perception of their environment, the observations and informal conversations of field studies will usually give more valid knowledge than merely asking subjects about their behavior. If the research topics concern more implicit meanings and tacit understandings, like the taken-for-granted assumptions of a group or culture, then participant observation and field studies of actual behavior supplemented by informal interviews may likely give more relevant information than formal, strictly structured interviews or surveys (Kvale and Brinkmann 2009).
- (4) Recorded interviews were transcribed in as accurate detail as possible. Two assistants with no remote relation or connection to the WCPFC were hired to assist in the transcription phase of the project, with all names and affiliations removed from the written transcripts for purposes of preserving anonymity. Resulting typed transcripts were then ready for further analysis.

1.5.4 Grounded Theory Methodology

Grounded Theory Methodology (GT) as outlined by Charmaz (2010) was used to analyze interviews, develop themes across responses, and devise a theory about sovereignty in the

WCPFC. GT was used as the last phase of qualitative research methodology employed in this study, to qualitatively analyze the interview texts. GT according to Charmaz (2010) is a method and technique to derive theory out of data by looking at the way certain phenomenon is discussed. The key concept and practice in GT is coding, which is categorizing segments of data with a short word or phrase that summarizes and accounts for each piece of data. This technique acts as a process for analyzing the data. Coding is the pivotal link between collecting data and developing an emergent theory to explain the data (Charmaz 2010).

Coding is used first to consolidate data from interviewees. Initial, open, first and second cycle coding were used. Transcripts were also analyzed by both axial coding and theoretical coding in order to investigate ‘how people make meaning and make *out* meaning, in texts’ on the one hand, and how meanings are ‘socially constructed’ on the other (Widdowson 2007).

Initial coding organizes data into a short word or phrase to summarize that piece of data (Charmaz, 2010). Focused coding takes place during second-cycle coding, which is a process that places similar codes into descriptive categories that can then be collated into themes. Theming the interview data can help identify perspectives and solutions shared by multiple people—thus solutions that will have a higher chance of being successfully implemented¹¹.

Theoretical coding is a type of coding that conceptualizes how the substantive codes may relate to each other as hypotheses to be integrated into a possible theory about the phenomenon studied (Glaser, 1978). Coded interviews were organized by perspective (Pacific Island, industrialized nation and legal-technical) for this stage of analysis. Considerable time was spent reading through the interview data to find trends that weave throughout multiple interviews.

¹¹ For more detail about these processes, please see Charmaz, K. (2007) *Constructing grounded theory: A practical guide through qualitative analysis*.

These trends were then summarized into a concise statement that captured the essence of the trend; this is called an interview category or theme. The categories are directly verified by supporting quotations from interview respondents.

1.5.5 Theoretical Perspective

In grounded theory research, theory is derived from the words of the participants versus another theoretical framework; however, no research is atheoretical (Brown et al. 2010). Researchers always possess certain ideology that shapes their perspective and view of the world.

Charmaz states that any new knowledge created in this process is the researcher's own interpretive view: "We *construct* our grounded theories through our past and present involvements and interactions with people, perspectives, and research practices" (p. 10). Thus, images, metaphors, assumptions, visions, generalizations, etc. have a programmatic effect: reality is not only represented in our mental models, its social construction is also based on them (Jentoft 2006). This was especially important to keep in mind and constantly reflect upon throughout the entirety of analysis, as although this study has international application and significance, it is coming from my perspective and lens.

As a steward of this study's process, my role as a researcher was to listen, analyze for content, and present any themed information back to stakeholders in an unbiased, clear and constructive way. Although this process is not perfect, themes identify common ground that exists among groups of people with often diverging views and organizes compatible perceptions into categories for content review.

1.5.6 Content Analysis and Quantitative Methodology

Content analysis is a methodical approach to data analysis of texts, using a systematic approach that involves sampling, coding and quantification (Silverman and Marvasti 2008). Because quantitative research usually requires that in order for results to be significant, they must be applicable to larger samples or groups, content analysis is a method that establishes a set of categories that can be tallied based on which were identified by each interview participant. This allows results to be quantified and reported objectively, with the literary analysis based on more rigorously reported evidence.

Although initially limited to studies that examined texts for the frequency of the occurrence of identified terms (word counts), by the mid-1950's researchers were already starting to consider the need for more innovative methods of analysis, focusing on concepts rather than simply words, and on semantic relationships rather than just presence (De Sola Pool 1959). Content analysis is a useful method for testing hypothesis; it utilizes determined frequencies based on the number of individual participants who mention a particular theme—a code frequency report can then help identify which themes, ideas or domains were common and which rarely occurred (Charmaz 2006).

Individual transcripts were analyzed using a coding rubric (table 1). The coding rubric outlined four possible definitions for how sovereignty is perceived; the first two definitions were adopted directly from the legal definitions of sovereignty and sovereign rights as defined in the UNCLOS, and the second two definitions represent the dominant categories that emerged from GT of all interview data. The coding rubric allowed for a systematic analysis of the transcript data to determine which definition or definitions of sovereignty each interview participant identified as their perception. Definitions were not mutually exclusive, thus an interview

participant identified sovereignty in anywhere from 1-4 different ways, depending on their perception.

Table 1: Coding Rubric

Sov 1	<i>Understood in accordance with international law (UNCLOS): Extends to the limit of the territorial sea or archipelagic waters; anything within that area is subject to full control and jurisdiction, yet still subject to that country's international obligations.</i>
Sov 2	<i>Understood as sovereign rights': extends to the limit of the EEZ; a more limited jurisdiction than sovereignty, for the purposes of exploring and exploiting, as well as conserving and managing natural resources of the waters.</i>
Sov 3	<i>Asserting control; absolute self-determination, independence, freedom and power to make your own decisions regarding management, action and behavior in your waters; an unfettered authority.</i>
Sov 4	<i>An intentional tool or strategy used to either protect or further one's own interests.</i>

The rubric was then given to two other individuals to test for coherence, reliability, and validity of the frequency report of the data; this is a critical component to minimize researcher bias and check for consistency in interpretation of the data (Clement et al. 2003). The other two individuals thus used the rubric to code the data, upon which their frequency reports could be compared with results from my analysis, to determine inter-coder reliability. Issues of validity

and any inconsistency were discussed to ensure the scores were representative of the claimed amount of evidence for the belief that was measured.

Because there were slightly different numbers of people in each group interviewed, and also because the definitions of sovereignty identified by each participant were equally likely to occur, a Pearson's chi square test was used to determine whether the frequency distribution of perceived definitions of sovereignty observed in a sample was consistent with the particular theoretical distribution of data.

1.5.7 Grounding in International Legal and Normative Frameworks

International Fisheries Law can be conceptualized as dividing into three unique branches: fisheries specific instruments, international environmental instruments and other instruments. RFMOs fall under 'fisheries specific instruments' for management, and international Treaties and Conventions fall under 'international environmental instruments.' Two specific texts were focused on for the legal basis of tuna and maritime sovereignty and sovereign rights, the role of RFMOs, the extent of jurisdiction of the WCPFC and the duties and obligations of members involved in the fishery: the 1982 United Nations Convention on the Law of the Sea (UNCLOS) and the WCPFC Convention text.

Analysis of interview responses and analysis were triangulated, or compared and contrasted, with various articles from the UNCLOS, mainly articles 1 and 2 on territorial seas, archipelagic seas and sovereignty, 63 and 64 on the EEZ, straddling stocks, HMS, and the duty to cooperate, article 56 on the EEZ and sovereign rights, and articles 61-64 on the duty to cooperate. Interview responses were also triangulated with various articles from the WCPFC Convention text, mainly articles 7 and 8 on management of HMS, articles 23 and 24 on obligations of Commission members and Flag State duties, article 30 and resolution 2008-01 on

the special requirements of developing States, and article 10 of the WCPFC which provides a non-exclusive list of factors to be considered by the Commission in developing criteria for allocation of catch or effort. By using both the UNCLOS and specific WCPFC articles and resolutions, inconsistencies between perceptions and the actual law and policy regarding sovereignty were uncovered. Furthermore, grounding interview analysis in the law allowed me to analyze how people understand that text and in what context, and whether this is consistent with international law regarding sovereignty or not. This uncovered interesting disconnections; in fact there are not only pre and present-existing conflicts between those who created the text, but also disconnections and conflicts amongst how it is perceived.

Chapter 2

Background: The Waves of Maritime Sovereignty in the Western and Central Pacific Ocean

“We live in a system of sovereign states jealous of their powers. This is quite basic, even though the system itself is obsolescent.”

-Arvid Pardo, 1993

This chapter provides important and relative historical background to the topic. It first provides a brief overview of sovereignty, including how it is used in the natural resource literature and how it can be contextualized in fisheries and in the Pacific. It then gives an overview of tuna fisheries in the WCPO, a brief history of maritime law and shifting regimes of ocean jurisdiction. It concludes by discussing the formation and influence of RFMOs and regional fishery agreements on Pacific Island sovereignty.

2.1 Literature Search of Sovereignty and Fishery Management

The topic of sovereignty within the context of fishery management is highly complex and controversial, and it is also highly dependent on the political, social, and cultural context in which it is being discussed. Sovereignty in itself is ambiguous and needs to be critically analyzed before drawing direct connections to how it influences fishery management initiatives, processes, goals, and the people involved.

When sovereignty is entered into a literature search coupled with terms like ‘resource or fishery management,’ and ‘perception,’ around 130 articles pop up with less than half of those directly concerning the topics of interest. Amongst the relative articles, sovereignty is conceptualized and discussed in a few different, apparent ways (table 2). Some of the articles

discuss sovereignty in the context of international law in accordance with the United Nations Convention on the Law of the Sea (UNCLOS) definitions of sovereignty and sovereign rights as they apply to maritime spaces of jurisdiction (Hannesson et. al 1991, Morgan et. al 1994, Woodworth et. al 1994, Turnipseed et. al 2009). Other articles discuss sovereignty in a more multi-faceted dimension; in this case, sovereignty not only involves ownership and authority, but concepts such as vigilance, security, trust and anxiety over the behavior of others in resource use (Crickard 1995, Orenstein et. al 2011). And even further, when sovereignty is outlined in terms more consistent with the rights of indigenous peoples and aims for recognition and independence, inextricable connections to ideas such as cultural autonomy, vibrancy and self-identity are discussed, rather than discussing sovereignty solely in terms of political authority (Corntassel & Primeau, 1995).

Table 2: Summary of literature review on sovereignty and fisheries

Reference	Meaning of sovereignty discussed
Aqorau (2010) Stevens, T. (2008) Schurman, R.A. (1998)	"Resource nationalism and autonomy," "domestication" of the industry. Emphasizes a self-reliant "pacific way," "indigenous sovereignty"
Turnipseed et al (2009) Woodworth (1994), Morgan (1994), Hannesson, R. (1991)	UNCLOS definition-- "Over the territorial sea, the federal government has full sovereignty, while over the EEZ, it possesses "sovereign rights and jurisdiction, which impart something less than full sovereignty." Discusses rights coupled with a "duty to manage."
Wight, M (1976) James, A (1986)	Discussed alongside SECURITY. "Protection of its maritime vital interests, implemented through a blend of law, force and diplomacy." "Maritime security and sovereignty; surveillance." The idea of control and frontier development.

Klauss J. Dodds (2010) Jackson, R.H. (1990)	"Ownership AND vigilance." "Monarchical authority," "treaty sovereignty." Emphasis is placed on the "claimant's use of resource discourse and practice," which thus informs a series of behaviors.
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However when discussing the Pacific, sovereignty takes on more specific contexts and meanings, involving ideas such as resource nationalism, domestication¹², or even a “self-reliant Pacific way,” (Schurman, 1998). Transform Aqorau (2006) outlines two schools of thought surrounding PI sovereignty in a commentary titled “Rethinking sovereignty in the Pacific.” The first school of thought seemingly finds support amongst politicians who were historically involved in bringing the PI States to independence. This perspective holds strong to the ideals of absolute sovereign powers of the State; that the State itself is the embodiment of the sovereign nation (Aqorau 2006). This would clearly put the interests of the State first over a broader, international collective. The second and more contemporary school of thought is seen emerging in the viewpoints of certain current politicians and fishery managers who recognize the strength and importance of stronger and closer collective action.

One of the first formal definitions of the term sovereignty was offered in the Island of Palmas Case (Netherlands vs. the United States of America) Permanent Court of Arbitration in 1928. Here, the sole Arbitrator stated that:

“Sovereignty in the relations between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a State... Territorial sovereignty involves the exclusive right to display the activities of a State. This right has as corollary a duty: the obligation to protect within the territory the rights of other States, in particular, their right to integrity and inviolability in peace and in war,

¹² In this case domestication refers to the development of more domestically based tuna fishing industries—i.e. "domestication" of the industry supported by the legal right to access and control of resources.

together with the rights which each may claim for its nationals in foreign territory. Without manifesting its territorial sovereignty in a manner corresponding to circumstances, the State cannot fulfill this duty...”

If this was international law, then PI societies have been sovereign long before contact with the West or formal international recognition. Pacific Islands have unique society, village, and tribal law that they have been independently exercising with respect to the land and territory in which they live for centuries. In this sense PI societies were sovereign, independent states long before colonization, versus PI sovereignty, in the sense many think of it today, being a direct result of colonial subjugation, or decolonization (Aqorau 2006).

Attitudes towards sovereignty and statehood in the Pacific have changed considerably throughout time and have been largely influenced by peoples’ cultural identity (Aqorau 2006). Traditionally, perceptions of sovereignty were limited to tribal, religious, landholding and language groups, so sovereignty as we have come to use the term now was, in a way, superimposed on an unwitting people (Aqorau 2006). Under this definition, PI societies have been exercising sovereign powers from time immemorial (Aqorau 2006) and commercial interests of foreign super-powers more recently have begun to erode PICs control over their own resources (Havice and Campling 2009).

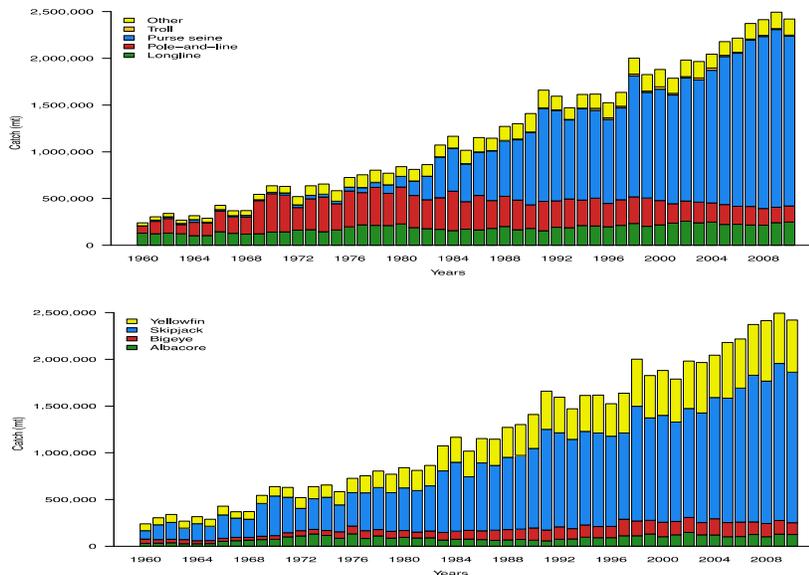
Globalization and the rise of power and wealth of transnational companies either directly or indirectly impacted the relative decline, in economic terms, of sovereign states (Schurman 1998, Aqorau 2006, Havice and Campling 2009, Willock and Lack 2006, Burkes 2006, Gillett 2007). However legally, each sovereign state exercises unlimited territorial jurisdiction in respect of its own territory, subject only to limitations that are established by international customary law, treaties, and the general principles of law recognized by the wider international

community.

2.2 The Formation of Commercial Tuna Fisheries in the WCPO

Tuna fishing has been important in PICs for centuries, but prior to 1900 this activity was restricted to small-scale fishing, mainly using canoes just outside the reef for artisanal purposes (Gillett 2007, 2009, Gillett and Cartwright 2010, Havice and Campling 2009). Various forms of industrial tuna fishing were attempted in the past century, but only three types of fishing lead to commercial success: purse-seining, longlining, and pole-and-line fishing, with target species of skipjack tuna (*Euthynnus pelamis*), bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), and albacore (*Thunnus alalunga*) (figure 4). Purse-seine vessels set a large net around a school of tuna and enclose the fish in the net, catching large quantities of tuna and sometimes non-target species all at once. Longline fishing deploys a single fishing line equipped with many baited hooks that stretches miles long behind the boat. Pole and line fishing consists of fishers catching one fish per baited pole.

Figure 4: Trends in catch by species and gear in the Western and Central Pacific Ocean



Source: SPC

Industrial fishing picked up in the Pacific region in the early 1900s. In August, 1899, the USA fishing vessel *Albatross* departed San Francisco on an 18-month fishery investigation cruise that included areas in what is now French Polynesia, Cook Islands, Niue, Tonga, Fiji, Tuvalu, Kiribati, Marshall Islands, Federated States of Micronesia, and Guam (Alexander 1902). The scramble for colonies was also amplified with heightened “exploration” of Pacific Islands. During this time, some PICs (former colonies) were treated as non-sovereign states intended to serve multiple purposes and agendas, one of which was to serve the colonizing country occupationally for reasons of economic and political strategy or resource exploitation (Doulman 1987).

The Japanese developed more substantial and methodical fishery developments some twenty years or so later. Taking control of Micronesia, Japan had a strong strategic and territorial interest in the islands for use as navy bases in defense lines. Japan was also moving from concern over national survival towards national assertiveness beyond its own shoreline (Peattie 1987). Hence the thrust of the Japanese empire was both regional and continent-driven. For various other reasons, including satisfying economic development obligations under the mandate coupled with colonial interests, Japan directed substantial effort to developing various industries in Micronesia. In the early 1920s an eight-year survey of the marine resources of the area was followed by subsidies from Japan for the purchase of tuna boats, fishing gear, and processing equipment (Gillett 2007). These subsidies can possibly be considered the first form of ‘tied aid’ to the region by the Asian nations; this concept of tied aid will be discussed later in more detail.

The Japanese have a long history of activity in regional PI initiatives, regularly through utilizing establishments of fish processing facilities or other aid development projects in the PI area in exchange for access to fishing grounds. Between the early 1950s and the early 1960s,

tuna longline bases were established in Pago Pago (American Samoa), Santo Island (Vanuatu), Noumea (New Caledonia), Papeete (French Polynesia) and Levuka (Fiji) (Peatie 1988). In most cases these facilities supplied raw product, mainly albacore, to canneries in Hawaii and the U.S. mainland (Doulman 1987). Technological advancements were instrumental factors in the growth of the industrial fish trade.

Significant American tuna initiatives were also under way. During World War II the US government commandeered 49 California-based tuna pole-and-line vessels for service in the Pacific with hundreds of tuna fishermen serving on the vessels, which was instrumental in creating awareness in American tuna fishermen of the potential of the western Pacific region for fishing (Gillett 2007). During the late 1940s and early 1950s, tuna vessels carried out exploratory cruises. This was followed by other major American initiatives such as the establishment of various tuna canneries in Samoa and Micronesia (Doulman 1987, Gillett 2007).

In 1976, federal management of marine fisheries in the U.S. was virtually non-existent. Signed into law on 13 April 1976, the Magnuson-Stevens Fishery Conservation and Management Act, commonly referred to as the Magnuson Act, is now the primary law governing marine fishery management in the U.S. A primary impetus of the Magnuson Act was to extend the U.S. EEZ out to 200 nautical miles and eliminate competition from the foreign fishing fleets off the coast. The law also included an innovative regional public-private management framework, leading to a framework of fishery management council systems. The Magnuson Act was enacted to promote the U.S. fishing industry's optimal exploitation of coastal fisheries by consolidating control over territorial waters and establishing regional councils to manage fish stocks. The Magnuson Act has been amended several times in response to continued overfishing of major stocks, most recently in 2006.

Until the late 1970s, distant water fleets, DWFNs, fished in the WCPO virtually unregulated and free of charge as no property rights were assigned in the sea beyond twelve miles offshore (Clarke 1986). By the late-1970s, however, following the initiative of States around the globe and the 1982 UNCLOS, PICs began to declare sovereignty over their 200 mile EEZs. PICs began to require DWFNs to pay a fee and observe management and reporting practices to fish in their waters, sparking an essential transformation in the business of fishing in the WCPO as it adapted to changing regimes of ocean space, law and policy.

2.3 The Historical Formation of the United Nations Convention on the Law of the Sea

The United Nations Convention on the Law of the Sea (UNCLOS) provides the over-arching framework for marine fisheries and defines the limits of participatory rights of States, both on the high seas and within waters under national jurisdiction. Among other things, this regime attempted to allocate states equal rights and responsibilities towards management and use of the high seas, while at the same time granting coastal States 200 nautical mile EEZs over which they were to have exclusive economic access to the living resources and minerals of the seabed (UNCLOS article 56). It therefore set up a new regime for the coastal State to have absolute priority to fishery access within the EEZ as well as an obligation to manage fisheries within each respective EEZ. Yet although the EEZ regime provided PICs the opportunity to exploit their fisheries resources, it also increased the conservation burden for regulating high seas adjacent to their waters and increased fishing activity in the region also shifted on to coastal States (Cole 2003).

However importantly, the right to the EEZ was coupled with a duty to cooperate to conserve and manage fish stocks on the best scientific evidence available to maintain them at

levels which produce the maximum sustainable yield ¹³ (UNCLOS article 61). Many of the provisions of the UNCLOS were open to multiple interpretations and were slightly ambiguous in meaning and scope, such as this “duty to cooperate.” Article 64 of the UNCLOS prescribes for transboundary, straddling and highly migratory fish stocks the requirement that coastal and fishing States cooperate directly or throughout appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization, both within and beyond the EEZ (UNCLOS article 64).

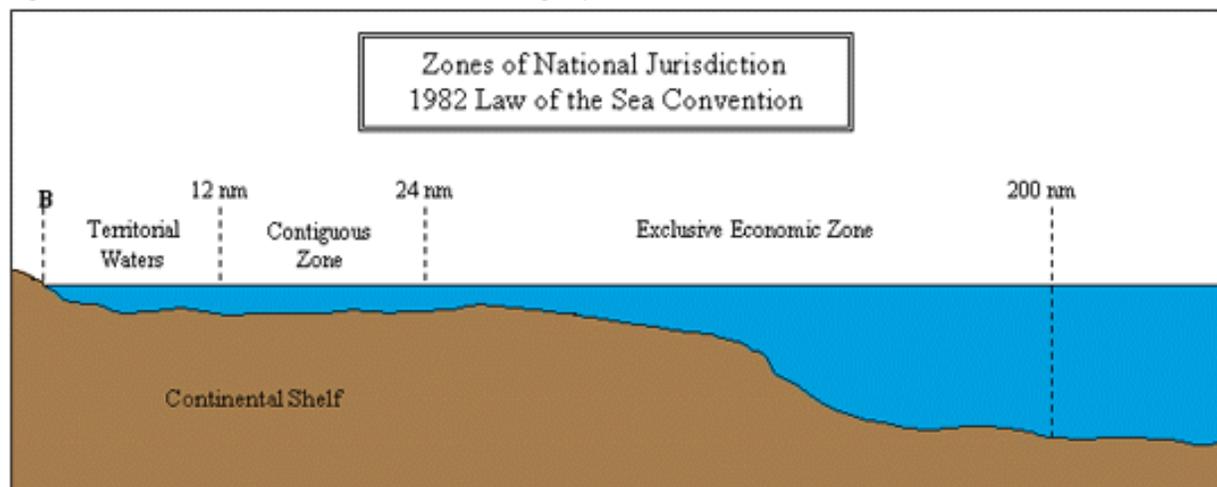
The fourth Convention of the UNCLOS, which dealt with fishing, outlined the rights and obligations of coastal States and foreign fishing States, and began setting up a framework for coastal State sovereignty over their resources. All states would, as a result, have the right to allow the citizens to engage in fishing on the high seas, subject to the interests and rights of coastal States. Coastal States were to invest special interest in the maintenance of the productivity of the living resources in any area of the high seas adjacent to its territorial sea. Foreign fishing states were put under the duty to enter negotiations at the request of the coastal State for measures necessary for conservation and management. And finally, it outlined the ability of the coastal State to adopt unilateral measures if negotiations did not lead to an agreement, in need of urgent application, based on appropriate scientific findings, and not discriminatory against foreign fishermen. This meant that although the aim was for everyone to agree, the position of coastal States took precedence and allowed for them to effectively exercise their sovereignty.

Two approaches to managing tuna fisheries came into conflict early on in the UNCLOS negotiating process. DWFNs argued that HMS were not the property of any one nation; rather,

¹³ Maximum Sustainable Yield is fishing at the maximum point of exploitation without long-term depletion of the fishery occurring.

that by their very nature move from zone to zone, so effective conservation and management requires coastal States and DWFNs to work together in conservation and management. This not only entails the cooperation amongst the two groups in devising appropriate conservation and management approaches, but specifically that any conservation and management measure with applicability to EEZs of coastal States must be compatible with measures that also apply in the high seas for that same species. PICs argued that they had the sovereign right to manage any fish while in their 200 mile EEZ, without coordination with DWFNs (Havice and Campling 2009, Havice 2010, Hanich and Tsamenyi 2009 and Tarte 2009). The outcome of UNCLOS ended up as a compromise between these positions, giving rise to a new concept known as “sovereign rights” (figure 5). Outlining slightly less control than is set forth in full sovereignty, sovereign rights awarded coastal states the freedom to exploit and manage all living resources within their EEZ, exclude distant water fleets in favor of developing their own fleets, and charge distant water fleets rent for access (UNCLOS article 56).

Figure 5: Jurisdictional zones of sovereignty under the UNCLOS



Source: NOAA

Partly in response to these weaknesses of the UNCLOS discussed above and other issues that arose, further shifts in international policy took place, specifically the additional binding

instruments of the United Nations Fish Stocks Agreement (UNFSA or the Agreement) and the WCPFC which provide regional frameworks for the determination of rights and responsibilities regarding tuna fisheries in the WCPO, as will be discussed later on in this chapter.

2.4 A New Regime of Ocean Space and Laws: Boundaries of Ownership and Stewardship

While the first PI State, Samoa, became politically independent in 1962, the vast majority gained political independence in the 1970s. They therefore gained self-governance at the same time the notion of extended maritime jurisdictions became internationally accepted.

The rights, powers, and responsibilities of coastal States over their EEZs to manage, conserve, explore and exploit resources (UNCLOS article 56) are grounded and couched in terms of sovereignty. The broad policy question which has challenged many developing coastal States is how these rights can be translated in tangible and meaningful ways to positively contribute to the social and economic welfare, and enhance the standard of living for PI societies (Aqorau 2006).

UNCLOS also requires coastal states to offer catch that they cannot harvest themselves to distant water fishing nations through fisheries access agreements (UNCLOS article 62), also known as bilateral agreements¹⁴. The idea of a rights-based fisheries management regime was not unknown to PI States. Most nearshore fisheries were (and still are) subject to customary fishing rights in which ownership and access rights to reef areas and the fisheries resources in those areas are exclusive to families and individuals affiliated to the tribes that own those customary rights (Aqorau 2006). These rights, however, were not exercised in a commercial

¹⁴ Bilateral access agreements typically contained two provisions. The first was recognition by the DWFNs of the PI States sovereign rights over the tuna resource in their EEZ, and the second was a commitment by the DWFNs to ensure their vessels allowed to fish in the EEZ would comply with the PI States' fisheries laws and regulations (thus exercise flag State responsibility) (Aqorau 2006).

sense, so access was fairly open and hard to enforce or monitor.

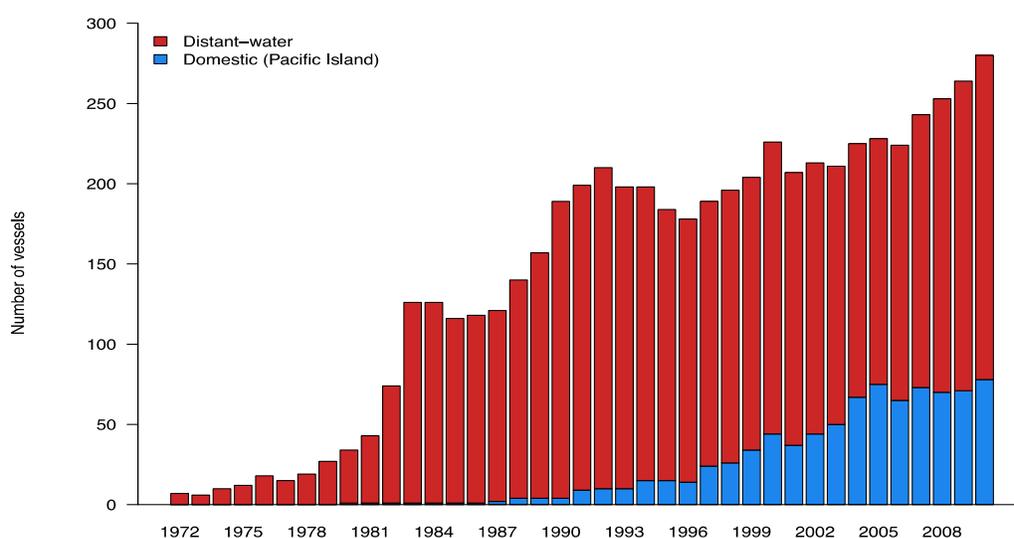
It should also be noted that, in a sense, Pacific Islands and their economies are amongst the smallest and poorest in the world (Aqorau 2006). Thus while the EEZ regime offered hope for enhanced sovereignty over fisheries, the large area of ocean space that came under their control imposed considerable pressure on already meager resources. The skills, expertise, physical assets and thus capacity, to carry out proper monitoring, control and surveillance (MCS) of their EEZs were not readily available.

UNCLOS also required international and regional cooperation to manage transboundary resources like tuna, to guarantee their effective conservation and optimum use (UNCLOS article 64). Transboundary refers to the nature of migration of these fish; they swim in an open space, within, outside of and across any artificial lines of jurisdiction, increasing the complexity of management and requiring cooperative management. Many coastal states turned to distant water fleets for rents as part of bilateral agreements, invoking UNCLOS to impose terms and conditions (e.g. license limits) upon distant water fleets fishing in PI EEZs. Coastal states also made demands on the flag states of the distant water fleets (e.g. the governments of Japan and Taiwan), including: requests for financial assistance, fishing vessels, infrastructure development, training and research programs, and marketing assistance (Sydnes, 2002). These usually took the form of bilateral access agreements. Other states prioritized domestic fisheries-based development over rent generation. It seemed the UNCLOS was designed to provide coastal States with a legal framework to dictate management and production terms of their fishery resources.

However, some argue that this approach only secures DWFNs as the major beneficiaries of sovereign rights over the tuna resources (Aqorau 2006, 2009, Havice and Campling 2009,

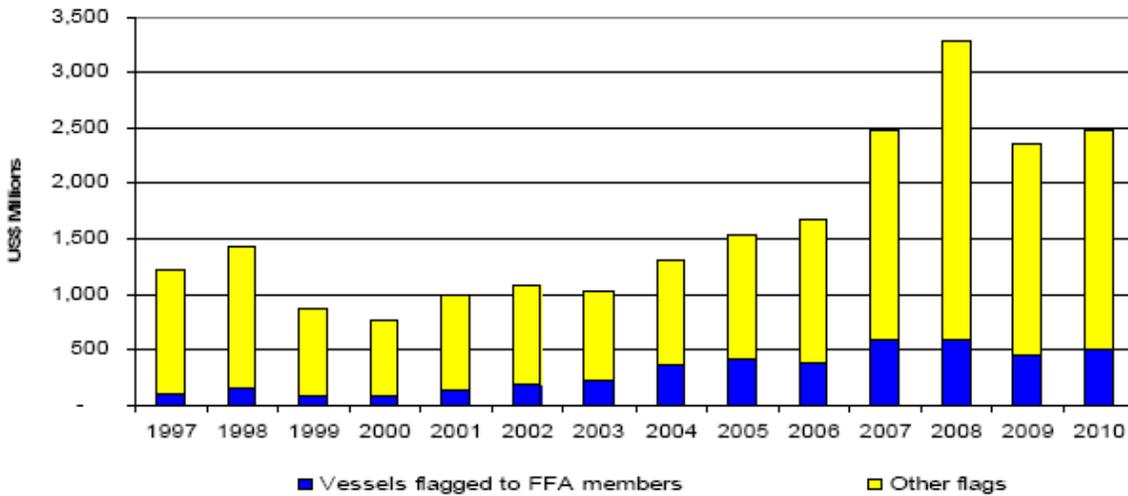
Teaiwa et al 2002), which is reflected by DWFNs presence in the region and enhanced fishing capacity and effort currently taking place in the Convention area (figure 6). Despite the fact that the majority of fish caught come from the waters of FFA member States (figure 1), the bulk of returns from the fishery goes to the DWFNs (figure 7). Aqorau (2006) argues that although the UNCLOS set up a framework for PI States to exercise sovereignty in their EEZs, what eventuated was a system whereby PI States exercised their sovereign rights on behalf of the DWFNs. Since many of the PICs are heavily reliant on the region’s tuna fisheries, development aid forms a significant component of national budgets and can act as leverage to be applied for DWFNs to secure preferential terms of access to fisheries (Hanich et al. 2009). This concept of “tied aid” was regularly utilized by Japan in its bilateral negotiations with PICs. Bilateral negotiations put DWFNs in a stronger position to secure favorable outcomes to fishery access, and as a key distant-water fishing power in the region, Japan was able to maintain greater power through tied-aid effective bilateral negotiations (Tsamenyi and Manarangi-Trott, 2004).

Figure 6: Fishing Effort by Distant-water and Pacific Island Domestic Vessels



Source: SPC

Figure 7: Delivered Value from Fishery by Flag



Source: SPC

Teresia K. Teaiwa (2002) cautiously reminds us that aid of any kind is never free, but a kind of indebtedness. It is a common sentiment among Islanders that many DWFNs have used their aid relationships to undermine the negotiating capacity of the Island states and to basically weaken the power imbalance during negotiations using the aid programs as leverage. It is obviously a case by case basis whether these bilateral agreements and aid programs directly dictated or influenced PICs policies in their fisheries sector. What is critically important, however, is that PICs are not marginalized in decision-making forum and supported by DWFNs to engage in meaningful participation in the decision-making processes of management (Teaiwa et al. 2002).

Empowered by UNCLOS and building on growing experience negotiating access agreements, in the 1970s and 1980s PICs applied regional cooperation to strengthen their control over tuna resources. Rather than charging fees and managing access at the national level, PICs

concluded various regional agreements to limit fishing licenses and encourage fishing-related investments in their domestic economies. Although all four regional agreements¹⁵ will not be discussed in great detail at this time, an overview of each is provided, as well as an overview of the UNFSA, and the rise of RFMOs discussed below.

2.4.1 Regional Fishery Management Organization on the Rise

Following the EEZ regime, the organizational roles and functions of many RFMOs shifted. The prior experiences of developing countries from cooperation through RFMOs or other bilateral arrangements was that they had failed both in managing the fish stocks in a sustainable manner and in sharing the benefits of the fishery equitably (Sydnes 2002). As mentioned earlier, the collective or regionalist approach (via RFMOs) was considered by PI States to be a concept formulated by developed nations to maintain their dominance in international fisheries resources. The EEZ regime had granted coastal States jurisdiction and control over the marine resources, but now DWFNs had an equal voice in management of transboundary tuna stocks through the avenues of customary international law and through RFMOs as governing agencies. Furthermore, PI States simply did not possess adequate resources and capacity to regulate and govern their vast EEZs on their own, making dependency on DWFNs for capacity building and assistance an inevitable requirement (Aqorau 2006).

To address these concerns, a new development (mentioned earlier) arose in the 1970s and was amended in 1979: the Forum Fisheries Agency (FFA). The FFA is a coastal State RFMO, with geographical scope limited to the member-countries EEZs, and it was established explicitly to enhance regionalism in management initiatives, coordinate fisheries policies and promote fisheries development at a regional scale (Sydnes 2002). The PI States established the FFA also

¹⁵ The four regional agreements that arose during this time were the Nauru Agreement, the Palau Arrangement, FSM arrangement, and the Tevaka Moana Arrangement.

to provide technical and policy advice to the PI States on how to manage the tuna in their EEZ and deal with the DWFNs that fished in their EEZs (FFA 2011). FFA excluded DWFNs from participation and membership. The biggest challenge PI States faced was how to balance their newfound sovereignty with the stark need to conserve their already limited resources. Bilateral access agreements were the most obvious avenue to ensure responsible compliance by DWFNs in their EEZs, and although it may be argued in hindsight that this may have not been the best approach, it provided the most stable environment at the time through which the PI States could negotiate with DWFN fishing fleets, and it at least brought some order to the operations of foreign fishing fleets in their EEZs (Aqorau 2006).

2.4.2 Regional Agreements

In the early 1980s, the eight Pacific island countries with the most productive tuna waters, and thus the greatest potential to collectively control access to the region's transboundary tuna fishery, formed a sub-regional alliance called the Parties to the Nauru Agreement (PNA) (Havice and Campling 2009). Given that eighty percent of the WCPO purse seine catch took place in their waters, they began standardizing relations with DWFNs and utilizing collective bargaining power to increase their resource rents (Doulman, 1987). In 1982, they signed the Nauru Agreement Concerning Cooperation in the Management of Fisheries of Common Interest 1982 (Nauru Agreement); it dictated minimum and uniform terms of access for foreign vessels and required the Parties to the Agreement to identify ways to prioritize domestic over foreign vessels (Nauru Agreement article 2). In short, the Parties to the Nauru Agreement, known as the "PNA countries," asserted their property rights to control access, primarily for economic interests rather than conservation objectives. As discussed below, interconnected political and economic factors limited the success of this strategy. Movements initiated by PNA countries lead to two more

arrangements; the 1992 Palau Arrangement for the Management of the Western Pacific Purse Seine Fishery (Palau Arrangement) and the 1994 Federated States of Micronesia (FSM) Arrangement for Regional Fisheries Access (FSM Arrangement).

The Palau Arrangement came in response to a growing concern that WCPO tuna stocks were becoming subject to over-fishing and thus population decline and sought to limit the number of purse seine vessels licensed in PNA waters, restricting foreign licenses in favor of domestic licenses. In 1994, the PNA countries reduced foreign purse seine licenses by ten percent and allocated them to “domestic/locally-based” vessels (Doulman 1987). This shift did not spur local capital into the industry, but encouraged foreign operators to base their vessels locally, use local goods and services and, in some cases, make onshore processing investments (Gillett 2007).

Along with the reallocation of domestic/locally-based licenses through the Palau Arrangement, in 1995, the PNA countries implemented the FSM Arrangement. The Arrangement offered vessels that were based in PNA countries discounted fishing licenses and reciprocal access (i.e. fishing rights to all of the PNA country waters, rather than just the one in which the vessel is licensed) in order to generate more local benefits and economic development.

The most recent regional arrangement was signed in 2010. The Tevaka Moana (TVM) is underpinned by a cooperative arrangement called Te Vaka Moana Arrangement between the fisheries administrations of Cook Islands, New Zealand, Niue, Samoa, Tokelau and Tonga. The individual fisheries administrations that make up TVM desired a more organized cooperation to further their involvement of conserving and utilizing the shared fisheries resources and promote their interests; it also made sense to support one another in utilizing and sharing the resources, as well as enforcing responsible management, as the TVM countries all have large areas of high

seas immediately adjacent to their EEZs. TVM is based on the management and development of shared fisheries resources, and strives to ensure their sustainability, leverage greater economic benefits, and protect the important role that fisheries play as a source of food for TVM communities (tevakamoana.org). A lot of this work takes place through the Pacific Islands Forum Fisheries Committee (FFC), and within the WCPFC.

2.4.3 The 1995 UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks

The UNFSA marked the most comprehensive treaty on highly migratory fisheries to date, and set up a cooperative regime for responsible management of these fish stocks (defined in Annex 1 of the UNFSA). The Agreement was adopted on 4 August 1995 and enacted on 21 December 2001. The Agreement strengthened the obligations of States to cooperate through competent RFMOs or other arrangements in the management of straddling and highly migratory fish stocks (UNFSA article 8). The impetus of this new agreement demonstrated that tuna conservation and management under the EEZ regime had been inadequate to manage living marine resources straddling the EEZs of one or more states and the high seas and those that move across vast expanses of ocean space (Aqorau and Bergin 1997, Balton 1996). This was because, as mentioned earlier, countries could never settle on the nature of what the “duty to cooperate” meant and who was required to cooperate with whom. Furthermore the PICs could no longer be the sole managers of HMS, as ensuring effective conservation and management across the entire range of the stocks was too daunting a task to do on their own. It was therefore realized that stocks that cross international boundaries can be managed and conserved only through international cooperation between the coastal states in whose EEZs these fish stocks migrate and states who fish for those stocks on the high seas and in the relative EEZs (Sydnes 2002).

The UNFSA further represented a regime shift towards regionalism and enhanced

international cooperation in fishery management. The most active developing countries during the UNFSA Conference were those who had vested economic interests and to which the Agreement would have an important impact (Sydnes 2002). A major innovation of the UNFSA was to establish criteria to ensure that regulatory measures in the EEZs and on the high seas were compatible (UNFSA article 7). The Agreement imposed a duty on coastal States (PICs) and flag States (DWFNs) to develop provisional arrangements and to inform each other about their respective relevant national regulations and legislation (Aqorau and Bergin 1997). It also provided guidance on measures to follow if no agreement was reached on compatibility of conservation and management measures amongst parties under Part VIII of the Agreement. Compatibility is a key concept that, in my view, ultimately leads to many of the problems occurring today; the coastal States say that the high seas measures have to be compatible with their fishery management regimes, while the RFMO-centric nations go with the opposite side of the coin, and say the coastal States actually have to manage in a manner in concert with the measures adopted by the RFMO. Article 64 of the UNFSA created a duty for coastal states and DWFNs to cooperate to establish a regional organization to help govern and manage straddling stocks if consensus is not reached and if none exists, although the exact structure and means of this cooperation was never defined.

Tension between DWFNs and PICs was left over from the 70s and 80s regarding the unique nature of HMS. The U.S. and other DWFNs held the view that HMS are unique and are not the sole domain of the coastal States; furthermore, in the U.S. view, this was an argument lost with the agreement of the UNCLOS and the 200 mile limit of the EEZ. This is important to note as it is still controversial today, and also the U.S. never formally signed onto the UNCLOS.

Picking up again in the late 1990s, tensions between Pacific island resource sovereignty

and international management re-emerged and were fueled by a heightened concern over the health of tuna populations (Havice and Campling 2009). On one hand, a new RFMO with membership including both PICs and DWFNs was tasked with setting catch limits and allocation rights in the greater WCPO region, including within PIC's EEZs, although this was never universally recognized or conceded to. On the other hand, the PNA countries used cooperative management through the FFA and PNA to strengthen the resource sovereignty that the new RFMO could potentially weaken, and continued to set arrangements for managing tuna in their EEZs despite frameworks such as that of the UNFSA promoting international cooperation and duties.

2.4.4 The Western and Central Pacific Fisheries Commission

The UNFSA clarified the UNCLOS mandate that coastal states and DWFNs cooperatively manage HMS in EEZs *and* on the high seas and required that regional organizations be set-up to facilitate management cooperation. To comply, in 1997, Pacific island countries (plus Australia and New Zealand) and the DWFNs active in the WCPO (including China, France, Korea, Japan, the Philippines, Taiwan and the United States) began in earnest inter-governmental negotiations known as the Multilateral High-Level Conferences on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific (MHLC) to form the WCPFC to manage HMS in the region. The Majuro Declaration was adopted in June 1997 and set up a three-year timeframe for the negotiations of the WCPFC. Some fundamental differences arose between country participants at the time on a variety of issues, one of which was / is the interpretation of the phrase “areas under national jurisdiction,” which reflected a lack of consensus on key provisions of the UNCLOS and UNFSA, upon which the framework for the

WCPFC was built¹⁶. Noting that this could also be considered somewhat of a revisionist history; the UNFSA was going on and almost completed, whereby the PICs lost the argument that they had sole management discretion on the HMS stocks, and that there had to be cooperative management in an RFMO setting (something the DWFNs had been arguing for years), and suddenly the FFA initiated and fully lead the MHLC talks. That is one version of how it happened, but sometimes the history of these events is spun like it was always a PICs initiative all the time; but in fact, if they had won the argument over full sovereignty to manage their fish as they wanted, there would never have been a WCPO RFMO.

Decision-making within the Commission was identified as a delicate issue requiring adequate protection for all members, as well as ensuring that decisions were taken in an efficient manner (Cordonnery 2002). Article 20 of the Convention text discusses the decision-making process of the WCPFC, which states “as a general rule, decision-making in the Commission shall be by consensus.” Much was at stake for all parties as the Commission could determine total allowable catch or other effort limits for all fishing in the region as well as PIC’s power to allocate fishing rights in their own EEZs as part of the duties to managing stocks across their range (Havice and Campling 2010). The negotiations that ensued articulated interplay among States seeking to represent their national interests, negotiations that in theory are ruled by binding international law and should result in implementation of domestic rules or regulations implementing the agreements adopted by the RFMO.

When the Convention entered into force in 2004, PICs believed that they had successfully

¹⁶ The PICs argue that “areas under national jurisdiction” only applies to the EEZ, while the DWFNs support the notion that the territorial seas and archipelagic waters included as well. In practical terms, this debate has serious implications regarding the scope of application of the CMMs adopted by the Commission, and to this day it is an ongoing debate of the Commission. If the interpretation of the phrase “areas under national jurisdiction” excludes zones under sovereignty, this will mean that CMMs adopted by the Commission would **not** automatically apply to internal waters, territorial seas and archipelagic waters, thereby excluding a large proportion of tuna fishing activities from management under the Commission in the Convention Area.

preserved their control over the rights afforded by UNCLOS and the UNFSA; all agreements were to be undertaken “without prejudice to the sovereign rights of coastal States for the purpose of exploring and exploiting, conserving and managing highly migratory fish stocks within areas under national jurisdiction” (Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean 2004, article 10). Although the text did not prioritize Commission-level over coastal State-level processes, it did set the stage for explicit conflicts between the two (Havice and Campling 2010).

Also up for debate is the extent to which the Commission can and should be the sole authority of resource management decisions throughout the range of the stocks; an issue unresolved by the vague terms of Commission agreements and continually disputed by the coastal States. Coastal States look to the Commission for assistance in strengthening MCS and flag state responsibilities (especially on the high seas) since they have limited domestic capacity to enforce bilateral access agreements (Hanich 2009). On the other hand, however, they seek to limit the control of the Commission over the definition and terms of allocation of total allowable catch to maximize their resource sovereignty or any other measures that have direct impact to conduct in their EEZs.

The WCPFC has fundamentally transformed the policy regime over tropical tuna in the WCPO and the way in which the coastal States conduct the business of tuna management. Unlike the pre-WCPFC period, whereby the PICs believed and implemented a “my way or the high way” policy, for the first time they had to live within limits set by an international organization comprising industrialized fishing nations (Aqorau 2007), when they had previously been attempting to manage these fisheries regionally and independently prior to the WCPFC. As discussed above, the PI States had generally managed their tuna fisheries through a more open

form of access that encompassed regional regimes. The WCPFC has potential to impose limits on the amount of fish that can be taken in various zones of ocean jurisdiction, and has imposed some hard catch and effort limits to date. But any limits need to be imposed through CMMs that are agreed upon by consensus, and are not imposed through the Convention itself. Also, as mentioned above, development aspirations of SIDS are taken into consideration in the imposition of limits. Despite these provisions written into the WCPFC Convention, this ultimately meant decision-making power had shifted from PICs alone to a UN-mandated international organization (Havice and Campling 2009).

Pacific island governments are often blamed for depletion of tuna resources within their EEZs, portrayed as having less power to negotiate within the Commission and portrayed as victims to bullying by more powerful DWFNs (Aqorau, 2001, Parris 2010, Parris and Lee 2009, Hanich 2012, Havice and Campling 2009, 2010, Tarte 200, Willock and Cartwright 2008, Willock and Lack 2006). This is quite a paternalistic statement, and it is of course important to scrutinize this and the people who make these claims. On the latter, the source of these problems has also been placed on the context of the unique geo-political region of the WCPO and the nature of the political economy of DWFN operations within the structure of an increasingly globalized production system for tuna (Havice and Campling 2009). Bearing in mind the historical and political regime shifts that lead to the creation of the WCPFC and influenced sentiments between coastal States and DWFNs, the prospect for cooperation in the management and conservation of the tuna fisheries of the Pacific was viewed and approached by the coastal States with strong reluctance.

However on a more day-to-day level, PICs struggle with the Commission policy making processes, including: the costs associated with attending meetings, engaging in multiple

negotiating issues, the confrontational style of decision-making, an unequal amount of conservation burden placed on them domestically and diplomatic coordination to develop regional positions among a range of island states (Havice and Campling 2009).

2.5 Conclusion

As discussed above, PI sovereignty and thus control, over fisheries resources has changed significantly over time, with the most recent trend described by some as powerful DWFNs gaining political influence over PI sovereignty within regional organizations to manage their resources (Hanich 2009, 2010, Havice and Campling 2009, 2010, Sissenwine and Mace, 2001, Willock and Cartwright 2009, Aqorau 2009). These nations now include countries such as China, the Philippines, Republic of Korea, France, Canada and the United States, in addition to Japan and Taiwan (Gillett 2007).

While the EEZ regime transformed international fisheries and paved the way for a system in which PI States could exercise sovereignty over their waters and resources, the legal uncertainties surrounding the nature of those rights, the unfair terms of the global trading system and the disproportionate amount of conservation burden placed on PI nations has not allowed developing countries to take full advantage of those rights (Aqorau 2006). Furthermore there is no traditional concept of State ownership over the majority of the resources in Pacific Islands. This is the opposite of the situation in developed countries, where most of the resources and land are State owned. Therefore the State as an entity has a far greater impact on peoples' daily lives in developed countries than in the PI region, where many islanders go about their day-to-day lives with no recognition of regional agreements or frameworks in place. Colonial subjugation and even post-colonial governments have failed to exert any real control over the way in which people control their resources (Aqorau 2006) and the process of decolonization has reached a

stage where PI States are questioning the utility and efficacy of constitutional arrangements in which they were given independence. Because of this, there is a general view of ‘power in numbers,’ or increased regionalism amongst Pacific Islanders as positive and beneficial for keeping resource sovereignty in the region strong.

Colonialism, globalization, and PI sovereignty over fishery resources are inextricably linked. Important modifications to traditional PI sovereignty regarding fishery resources have taken place in the areas of international law, the international economy, and international institutions (Cole, 2003). These have all in turn lead to transformations in PI sovereignty, and how this is defined and perceived. Fishery issues are now being dealt with globally; State authority on fisheries matters is re-distributed through new decision-making channels at the regional, national, and international levels.

Current international law and fishery policy supports multi-level decision-making. While PI States retain an important role in decision-making and implementation, there is a degree of cooperation required at the international and regional levels (Cole 2003). Sovereignty is therefore conceded, by accepting a multi-leveled approach to solving problems in the tuna fishery management field. This is the current understanding in the West of how PICs exercise their sovereignty, yet this is still controversial and sometimes actively argued by PICs in international forums, supporting the idea that sovereignty is defined and perceived in different ways around the negotiating table. There is a pressing need for more transparent sharing of knowledge across national, institutional, disciplinary, social and cultural boundaries (Teaiwa et al. 2002), as such in the WCPFC regarding conservation and management.

Chapter 3

Background: A New Wave of Sovereignty for Pacific Islanders over Resources

“To a large extent, the shades of sovereignty which are often exercised by government officials seem to belong to a totally different world to the majority of Pacific Islanders most of whom live lives that are unaffected by what those government officials do or say. This poses considerable challenges for nation building and national identity.”

--Transform Aqorau in ‘*Rethinking Sovereignty*,’ 2006

The discussion and multiple uses of sovereignty are intimately linked to the current situation surrounding the South Pacific Tuna Treaty (SPTT), however an entirely separate Masters Thesis could be written on the SPTT alone, referred to as “the Treaty” hereafter. Therefore a brief history of events that lead up to the Treaty negotiation is important to note as well as the implications this had and is still having on PI sovereignty; although, a total comprehensive discussion of the Treaty is left out of this paper for the purposes of space, time and focus.

3.1 The South Pacific Tuna Treaty

In 1986, the Soviet Union had moved further into the Western Pacific region and made numerous propositions to island nations as means to build and spread influence in the region. The situation at this time between the U.S. and certain island nations was uncertain and slightly tainted due to some prior U.S. refusals to pay for access to exploitation of resources within the islands’ EEZs along their terms, thus providing an opportunity for the Soviets to gain political sway and further access to resource exploitation. When the Soviet Union signed several treaties with certain island nations, there was anticipation of a Soviet military base being created and employed, which

would directly enhance Soviet power in the Pacific. The U.S. needed a mechanism to restore its presence and power in the region, thus President Ronald Reagan began an initiative towards re-establishing a positive relationship between the U.S. and its Pacific trade partners.

The U.S. signed the ‘Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America’ in 1987 with PI members of the FFA. The treaty provided the U.S. exclusive access to their EEZs for 50 U.S.-flagged vessels, and in return provided approximately USD 15 million in aid to the region. Under the Treaty, U.S.-flagged purse seiners utilized unique access to the EEZs of FFA member nations for the next twenty years. In return, these 16 nations received development aid via the U.S. Department of State, as well as fees from the U.S. purse seine vessels to fish in their waters¹⁷. Whether this relationship was perceived in a similar light as the ‘tied aid’ type of agreement discussed earlier between certain Asian and Pacific nations is unknown, but it is possible, considering some later reactions expressed towards the U.S. by Papua New Guinea (PNG) and other PICs. Nonetheless there were clear incentives on both sides for joining the Treaty; the PICs derived more revenues than by solely developing bilateral agreements with other distant water nations, received enforcement assistance from the U.S. Coast Guard and technical assistance via U.S. funding to the FFA. Simultaneously, the U.S. again gained political influence and presence in the region and maintained access to support an active commercial tuna fishing industry.

The Treaty was renewed in 1993 for 10 years and again in 2002. This relationship, however, began to disintegrate due to the development of an alternative business model for small PICs. The eight nations introduced earlier that form the PNA have some of the most important tuna fishing waters in the western Pacific contained within their EEZs. By cooperating with each

¹⁷ Australia and New Zealand did not receive development aid from the US.

other to unify distant water fleet access to their waters, and by voting with the rest of FFA members as a block at the WCPFC, the PNA nations shifted negotiation outcomes towards their national objectives and aspirations. Their combined waters are of great importance to DWFNs, and few distant water fleets could operate profitably without access to them. This puts pressure on distant water fleets to operate within PNA terms in order to remain active and successful in the fishery. In order to improve the terms they receive in granting access to distant water fleets, the PNA developed a system to charge for access, which is more favorable than the terms that these nations obtained under the SPTT. The PNA countries thus gain more economic returns by asserting their right to control access; furthermore to PICs, it creates a more even field for DWFNs to operate under while maintaining the value and importance of the fishery.

3.1.1 The Vessel Day Scheme

The mechanism by which the PNA countries are charging for access to their waters is the Vessel Day Scheme (VDS). The total number of fishing days by all vessels within PNA country EEZs is capped and divided between the Pacific island member countries. Each PIC then sells its vessel days to the highest bidders among the DWFNs. PNA nations can also trade vessel days between themselves if a certain country runs out of vessel days before the end of the fishing season, as was the case in 2011 for the Solomon Islands. PNA nations have an incentive to increase the number of vessels operating in their waters in order to increase the direct profit they receive from the fishery. When demand for access is increased in the fishery, prices also go up as people have to compete for access. PNA aims to find the optimum number of vessel days that generates the greatest revenue for them without allowing overfishing to occur in their waters; their main party line is the effectiveness of the VDS for conservation of the tuna stocks. Furthermore PNA countries have an incentive to support a conservation and management measure to close certain

areas of the high seas to fishing, which would subsequently increase demand for vessel days within their EEZs¹⁸.

The VDS was implemented in December 2007 and presently uses the effort limits from the WCPFC conservation and management measure 2008-01 for Bigeye and Yellowfin Tuna. The VDS includes both distant water and domestic vessels. U.S. vessels are exempted from the VDS until the expiration of the Treaty in 2013. In anticipation of the Treaty expiring, and also as a response to PNG threatening to pull out of the Treaty in mid-2011, negotiations to renew the Treaty have been underway for the last year or so. The objective currently stated by both sides is to agree and settle on an appropriate dollar amount in exchange for the desired number of fishing days; unfortunately, this objective has not been met and little substantial progress has been made to date. The PNA is strongly attached to employing 2010 as the baseline year for number of fishing days allowed, which would increase the number of days for fishing overall thus increase their returns from the fishery. However the lump sum they are asking for from the U.S. is much higher than previously employed, and the U.S. has not conceded to their terms up to this point.

The last negotiation was in March 2012 in Honolulu, where unfortunately little tangible progress was made. Four more negotiation sessions are scheduled for the remainder of the year (June, July, September and November), where hopefully a cooperative agreement will be reached and a mutually beneficial, as well as equitable, partnership between the U.S. and the PNA will be solidified.

3.2 The Legal Tides of Sovereignty: Lacking Terminological Consistency

Indigenous peoples around the world have sought recognition of their identities, autonomy, unique customs and their right to traditional lands, territories and natural resources; yet

¹⁸ This PNA Proposed CMM to close Purse Seine Fishing in Additional High Seas Areas (WCPFC8-2011-DP-01) was not successfully adopted at WCPFC8.

throughout history, their rights have been violated. Indigenous peoples are arguably among the most disadvantaged and vulnerable groups of people in the world today. The international community only recently began recognizing that special legal measures are required to protect the rights of the world's indigenous peoples.

In 1923, Haudenosaunee Chief Deskaheh travelled to Geneva to speak to the League of Nations and defend the right of his people to live under their own laws, on their own land and under their own faith. Even though he was not allowed to speak and returned home in 1925, his vision nourished the generations that followed. A similar journey was made by Maori religious leader T.W. Ratana in the same year. To protest the breaking of the Treaty of Waitangi concluded with the Maori in New Zealand in 1840 that gave Maori ownership of their lands, Ratana first traveled to London with a large delegation to petition King George, but he was denied access. He then sent part of his delegation to Geneva to the League of Nations and arrived there later himself in 1925, but he was also denied access then.

In 1982, the same year as the third meeting of the UNCLOS, the Working Group on Indigenous Populations of the Sub-Commission on the Promotion and Protection of Human Rights (then called Sub-Commission on Prevention of Discrimination and Protection of Minorities) was established by a decision of the United Nations Economic and Social Council (Corntassel & Primeau 1995). Participants at the 1993 World Conference on Human Rights in Vienna discussed the creation of the Permanent Forum. The Vienna Declaration and Program of Action recommended that such a forum should be established within the framework of the first United Nations International Decade of the World's Indigenous Peoples (1995-2004).

The Declaration on the Rights of Indigenous Peoples was adopted by the General Assembly on September 13, 2007. This Declaration is the most comprehensive statement on the

rights of indigenous peoples ever developed, giving prominence to collective rights to a degree unprecedented in international human rights law (UN.org). The adoption of this instrument is the clearest indication yet to date that the international community is committing itself to the protection of the individual and collective rights of indigenous peoples.

Unfortunately many conventions and declarations established under international legal frameworks are poorly upheld and enforced, and some may be inherently incompatible with one another depending on the specific language used and whether the declaration or convention is binding or not. Furthermore, some of the most powerful industrialized countries, like the U.S., have yet to ratify these international agreements, meaning they are not legally bound to follow any amendments put forth. Even to this day, the U.S. is one of the only countries in the world that has yet to ratify the UNCLOS.

The lack of political power and international standing of indigenous groups of people limited their involvement and participation in many forms during negotiation and development processes for various Treaties and international agreements throughout the 20th century. An important concept that comes into this discussion is *pacta sunt servanda*, which is a vessel for the explicit recognition of indigenous sovereignty by imperial powerful countries (Corntassel & Primeau 1995). *Pacta sunt servanda* is the primary concept underlying all treaty law. Under *pacta sunt servanda* all States, when entering international agreements, are obligated to adhere to the terms of the treaty and acknowledge that "a treaty in force is binding upon the parties and must be performed by them in good faith" (Corntassel & Primeau 1995).

In the arena of rights of indigenous peoples, sovereignty and self-determination have been inextricably linked as characteristics of States under international law. The UN Charter specifically grants the right of self-determination to all "peoples." Somewhere within the context

of this debate lies the aboriginals' call for greater self-determination and sovereignty as a reaction to longstanding western colonialism (Corntassel & Primeau 1995). The important questions then become those of terminological ambiguity; what exactly is meant by self-determination and sovereignty, and what are the international implications?

Scholars advocating indigenous sovereignty often contend that sovereignty can be conceptualized in various forms and adopted for specific purposes (Corntassel & Primeau 1995). Yet despite various controversies surrounding the meaning of the term, several indigenous groups have adopted "sovereignty" as part of their argument and vocabulary in an ongoing quest for increased autonomy and cultural preservation. In response to this, Boldt and Long (1985) contend that use of the concept of sovereignty by indigenous groups only further legitimizes Western-European power structures of authority and decision-making.

“Indigenous sovereignty” can take on multiple meanings ranging from cultural integrity to unfettered authority over management of land and resources, as was supported in a literature review of the term outlined in chapter 2. The contention of many indigenous scholars is that sovereignty can mean more than those principles traditionally conceived under international law; indeed, expanded uses of the term sovereignty only heighten misunderstanding in discussions of indigenous sovereignty.

Traditionally treated as a legal concept, sovereignty can be expanded to "consist more of continued cultural integrity than of political powers and to the degree that a nation loses its sense of cultural identity, to that degree it suffers a loss of sovereignty” (Deloria 1970). By Deloria's terms, sovereignty becomes the set of cultural differences and standards resting on the development of a distinct community (Corntassel & Primeau 1995).

However it is important to investigate the repercussions and implications of this expanded use of the term sovereignty. Especially within frameworks of international law, an ambiguous or multi-faceted definition could actually dilute the meaning of sovereignty as it is meant to be employed under international law. What Deloria has labeled sovereignty could in fact be best understood as the right to preserve "cultural integrity" (Corntassel & Primeau 1995). Invocations of self-determination and sovereignty cloud the issue of indigenous rights when it is unclear whether the term reflects the traditional international law interpretation, the notion of cultural integrity or another competing definition (Corntassel & Primeau, 1995). The lack of clarity regarding the term's application can thus have an unintended effect of inhibiting cooperation, prolonging negotiations, or preventing solutions.

Chapter 4

Results and Discussion: The Smoke and Mirror Effect of Sovereignty in the WCPFC

"All political power is primarily an illusion... Mirrors and blue smoke, beautiful blue smoke rolling over the surface of highly polished mirrors... If somebody tells you how to look, there can be seen in the smoke great, magnificent shapes, castles and kingdoms, and maybe they can be yours."

--Jimmy Breslin (1975) in *Notes from Impeachment Summer*, 1975

4.1 Qualitative Categories of Sovereignty in the WCPFC

Fisheries management within the WCPFC involves a complex system of scientists, managers, stakeholders and lawyers contributing in various capacities to develop conservation and management measures for the sustainable harvest of tuna in the WCPO. In a complex system such as that of highly migratory fisheries, which involves multiple dynamic components interacting at various temporal and spatial scales, the identified categories are not exclusive because many categories are linked and influence each other to varying degrees. Furthermore, in order to meet the objectives of this study, the definitions of sovereignty and sovereign rights as defined in the UNCLOS are included in the content analysis of perceptions of sovereignty, in order to analyze whether perceptions are consistent with international law or not. Therefore for the purposes of this study, four main categories are presented to describe the possible ways sovereignty is perceived by individuals who are critical and central to the management regime of WCPFC; the first two categories were taken directly from the UNCLOS, and the last two categories were uncovered through GT on interviews. The categories are: (I) Sovereignty in accordance with the UNCLOS; (II) Sovereign rights as defined in the UNCLOS; (III) Asserting

control; absolute power and unfettered authority; and (IV) an intentional tool or strategy. An explanation of each of these categories follows.

4.1.1 Categories I and II: Interpreting Sovereignty and Sovereign Rights under the UNCLOS

For fisheries purposes, the UNCLOS recognises three broad maritime zones that are pivotal to understand for the purposes of this study, namely:

- (1) Zones under **sovereignty** (encompassing internal waters, archipelagic waters and territorial seas); sovereignty under international law is absolute and is limited only by the expressed international obligations of States, i.e. signing onto and ratification of a Treaty. Sovereignty applies to the entire *territory* of a State. The extent of sovereignty is defined in Article 2(1) of the Law of the Sea Convention: “The sovereignty of a coastal State extends, beyond its land territory and internal waters, and in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of seas described as the territorial sea”;
- (2) Zones under **sovereign rights** (encompassing the EEZ and the continental shelf); for fisheries purposes, the contiguous zone is part of EEZ; sovereign rights implies a more limited regime of rights than sovereignty, specifically defining the right of jurisdiction for particular purposes (exploitation and conservation of natural resources) and applies outside the areas under sovereignty; and
- (3) The high seas, which are all parts of the sea not included in the internal waters, archipelagic waters, territorial sea and EEZ (UNCLOS article 86)

The UNCLOS does not impose any conservation and management obligations on States in respect of the fisheries resources in maritime zones under their sovereignty, *except the duty to cooperate in regard to their international obligations as is recognized by Treaties and Conventions that country has signed onto and ratified.*

The UNCLOS also provides for a number of rights and obligations of States in respect of maritime zones under their **sovereign rights**. The rights include:

- sovereign rights for the purpose of exploring and exploiting, conserving and managing the resources in the EEZ;
- the promotion of the objective of optimum utilization of the living resources in the EEZ;
- determination of the capacity to harvest the living resources in its EEZ;
- the granting of access to the surplus of the living resources in the EEZ and the right to determine conditions under which foreign States and their nationals have access to the resources in the EEZ (LOSC Art 62(4)); and
- taking of enforcement action.

The EEZ obligations include:

- to manage and conserve the living resources in the EEZ (determination of the total allowable catch);
- taking proper conservation and management measures to prevent over-exploitation of the living resources;
- protection of dependent and associated species; and
- cooperation with other States and regional fisheries management organizations to manage straddling and highly migratory fish stocks.

Legally the WCPFC Convention text was drafted in order to comply with and implement article 64 of the UNCLOS, dealing with HMS that stipulates cooperation between the coastal State and other States whose nationals fish in the region, either directly or through appropriate international organizations with a view to ensuring conservation and promoting the objectives of optimum utilization of such species throughout the region both within and beyond the EEZ. The terms sovereignty and sovereign rights were developed for the specific purpose of delineating zones of maritime jurisdiction and sovereignty, each with a unique set of rights and standards for managing, conserving and exploiting the resources that fall within that area. It is important to recognize that sovereignty and sovereign rights are different in terms of the maritime areas they apply to as well as the affiliated rights and responsibilities defined within each relative area.

Over 70% of all interview participants identified sovereignty in line with the legal definition in the law of the sea (see sample quotations below); however, the issue is that most participants *also* defined sovereignty in other ways, that is, they did not speak of sovereignty in one singular or consistent way as will be explained further below.

*“...in particular with respect to fisheries resources and marine resources, this duty to cooperate—which is an obligation that we all have, every country has under international law so, sovereignty I guess suppose now, thinking to it, sovereignty is a recognition of both the **rights** and the **obligations** of a state with respect to exercising its own authority as an independent legal entity... the idea that being part of an international organization, where you seek to cooperate with others, is an exercise in sovereignty”* (Industrialized nation perspective).

“But we do recognize that we do have to cooperate with the distant water fishing fleets, so long as those distant water fishing fleets respect our jurisdiction and our right to the fisheries ourselves...despite the fact that we didn’t have the resources or the fishing vessels ourselves, the capacity, ourselves. So, we are trying to seek some measure of balance” (Pacific Island perspective).

“Part of, in my view, part of the deal when you become a member of a fish commission you agree that in some cases your sovereignty will take second place in order to take care of this transboundary fish stock that you’re trying to conserve and manage properly. Clearly if everybody was allowed to then do whatever they want in waters under their sovereign jurisdiction however they’re going to define that, then it becomes practically impossible to put in effective conservation and management measure in place because you don’t know who is doing what” (Industrialized nation perspective).

“But, for the area within the EEZ, where you have marine resources, tuna resources, it is a bit of a more complex issue. It is not necessarily sovereignty, but we do exercise some limited sovereign rights to it within the scope of some obligations and responsibilities to the world and the international community. There is quite a bit of difference. But, when it comes to issues of allocation, and the rights to those fisheries, it is a bit more fluid (Pacific Island perspective).

Although the broad majority of interview participants did discuss sovereignty in line with the legal definition in UNCLOS, the problem is that it was not consistently discussed this way. Most interview participants discuss sovereignty in multiple, different and inconsistent ways.

4.1.2 Category III: Asserting Control; Absolute Power and Unfettered Authority

This category speaks to a perception of sovereignty involving a total assertion of one's power; that is total and complete self-determination, independence, freedom and power to make your own decisions regarding management, action and behaviour in your waters. It is important to distinguish that this category is conceptualized as an unfettered authority, with no regard to international obligations or agreements, or cooperation with other States or actors as is outlined in the UNCLOS. This is similar to the basic definition of sovereignty as defined in the UNCLOS; however, the recognition given to sovereignty being qualified only in so far as that country has agreed to diminish their sovereignty through duties of international obligations is left out.

This is very important to discriminate, as the legal definition of sovereignty directly includes obligations to international treaty law, whereas this category is more in line with indigenous or pre-UNCLOS perceptions of sovereignty discussed in previous chapters. This is also relatively consistent with the way sovereignty was understood before the term was westernized or incorporated into Treaty law or Conventions. This category is supported by perceptions reflecting the unique geo-political environment of the WCPFC and the importance of the tuna resource to PICs; the Convention area is made up mostly of PI EEZs, giving a strong sense of 'my backyard,' 'my constitution' and 'bread and butter' to many Pacific Island interview participants' view of what sovereignty means to them personally. There is a sense of ownership coupled with sentiments around the 'backyard' mentality that supports a perception of control and authority to exercise over the EEZ area and resources that fall within the area. The sentiment of fish caught within EEZs of PICs is that of ownership, referring to the idea that sovereignty to Pacific Islanders is like 'bread and butter'; it cannot be separated from cultural

autonomy and even cultural identity. That is, cultural identity and Pacific sovereignty at times are understood as one in the same.

“There are quite a lot of challenges for us. I don’t think it is an easy job. Particularly when you have countries that are very, very dependent on the resources. And it is their only resource, too. So, I....the future of our fisheries is in our hands... The future generations will judge us for whether we did it well or not. So, we are very sensitive to issues of sovereignty and sovereign rights” (Pacific Island perspective).

“Hmmm... sovereignty. Well, I guess what it means to me is that there are things that are solely yours in that if you were going to give up something or obtain something that follows from that sphere, that it had to be with your consent and that you would agree to that” (Industrialized nation perspective).

“Growing up it is right there in front of me... my back yard, my playground, just about everything else” (Pacific Island perspective).

“They can simply move to other fishing grounds, whereas we don’t have anywhere else to go” (Pacific Island perspective).

“If anything, for me, I personally believe that small island developing states within their participation in WCPFC has everything at stake. It is more or less, a do or die situation” (Pacific Island perspective).

“Sovereignty? It means a lot to me. When you talk about sovereignty, it refers to my constitution. Courage is my freedom; it is my people’s freedom. It guarantees my freedom. Guarantees my choices. So that is what it gives a country, with 800 different languages and more than a 1000 different tribes, together. So, that means independence. So it is very, very good. Extremely important” (Pacific Island perspective).

There is also a historical trend involving Pacific Islanders seeking recognition from DWFNs of both their historical and present activities, rights and leadership capabilities regarding management of resources in the region:

“I think what is often forgotten in this debate is that it was the Pacific Island countries and the Pacific Island foreign leaders who actually requested the commission come into being. So they started it; they started the whole process of developing the commission. So they had an interest in developing that because they were concerned about the unregulated activities on the high seas when they were trying to do something through the FFA to control the management of the fisheries inside their own EEZs. So I think it is sometimes misunderstood” (Legal/technical perspective).

“We had a pretty much very well integrated management framework of the entire WCPO member countries, so it was harmonized the terms and conditions, and so forth. It was incumbent on us to make sure that the commission doesn’t start dictating to those areas in the national

jurisdiction, on managing those areas. Because we think we are doing far more better or far more advanced than other areas” (Pacific Island perspective).

“And I think that the reasons why Pacific fisheries is important is patently obvious to anyone who thinks about it for a moment. So it is security issues, it is regional security issues. It is economic development forum for individual countries. And the socioeconomic benefits they can derive from fisheries is one of their only assets” (Legal/technical perspective).

As noted earlier in this paper, the history of the WCPFC can be told in different ways, depending on who is holding up the lens under which this history is being written or re-written. It is important to note what is and what is not revisionist history; historically the PICs lost the argument that they had sole management discretion on HMS stocks, hence creation of the UNFSA, RFMOs, and ultimately the WCPFC to promote cooperative management in an RFMO setting, something DWFNs had historically promoted. However although the new legal and policy regimes that arose supported an international framework for fishery management and cooperation, some PICs never changed their minds regarding who was and is to have sole management discretion over these fisheries and why.

4.1.3 Category IV: Employing an Intentional Tool: Sovereignty as Strategy

Within the WCPFC, perceptions of sovereignty as being employed as an intentional tool or strategy are regularly identified and supported. Any mention of sovereignty being used in a strategic way fell into this category. This is a broad category noted and identified by all three groups of respondents in multiple and specific ways. The dynamics of negotiation and decision-making in WCPFC are complex and strategic, like a “three dimensional game of chess”

(industrialized nation perspective). 71% of all interview participants identified sovereignty in line with this category; for example, sovereignty is seen as a strategy to protect or further ones' own interests, to craft a solution, as a hidden agenda and/or to either bloc or promote progress in fishery management frameworks within the WCPFC.

“Sovereignty as strategy” is like a two-sided coin. One side represents furthering one's own individual or national interests, while the other supports ‘getting to yes,’ or reaching a cooperative collective amongst the group. While some interview participants rated the two sides of the coin with equal importance and expressed hope in reaching compatibility among the two, others spoke of these two sides as intrinsic conflict, and repeatedly referred to member nations as only strategizing to further their own interests.

“So I think it is used as this crutch, right. As soon as people say, as soon as they're being pushed you see it all the time in the negotiations that as soon as we're pushing countries to a place where they don't want to go or they're uncomfortable they pull it out. I don't know it's like they think it's their get out of jail free card” (Legal/technical perspective).

“Everything that they don't want to do is a violation of their sovereignty. It's become a real big hurdle in the Pacific” (Industrialized Nation perspective).

“I think the... strength of the sovereignty /sovereign rights argument for ...Pacific Islanders is that it is all of those countries have got. I think they will claim to use sovereignty and sovereign rights as a way of making sure to not get screwed in the process” (Pacific Island perspective).

“We’re back to sovereign rights issue as like a steel protecting barrier around countries waters. And the commission really, in some people’s views, has absolutely no right to have any direct say or influence over what happens within those zones. And it’s really...really dragging it all down” (Industrialized Nation perspective).

Sovereignty is often used as a strategy within the WCPFC, and this uncovers the idea that sovereignty is employed actively and strongly to further press initiative. Drawing on some recent developments in “interactive governance theory” (Jentoft 2006), it is argued that fisheries and governance is basically a relationship between two systems, which could be termed a “governing system” and a “system-to-be-governed.” Although there are similar structural attributes between the two systems, such as diversity, complexity and vulnerability, governing systems in themselves are purely social, comprised of institutional arrangements and steering mechanisms to advise and implement initiatives amongst the group. These are thus highly impacted by economic incentives and political motivations of the group.

Furthermore, some PIC parties frequently use the sovereignty impediment as a reason to exclude the WCPFC from management objectives regarding activity in their EEZs, yet this is out of line with the UNCLOS regarding international obligations and the duty to cooperate.

“People seem to be conveniently ignoring the fact that they’ve actually signed on and ratified a treaty, and that by taking that action, they’ve already modified, or, if you like, agreed to modify their sovereign rights in certain ways” (Industrialized nation perspective).

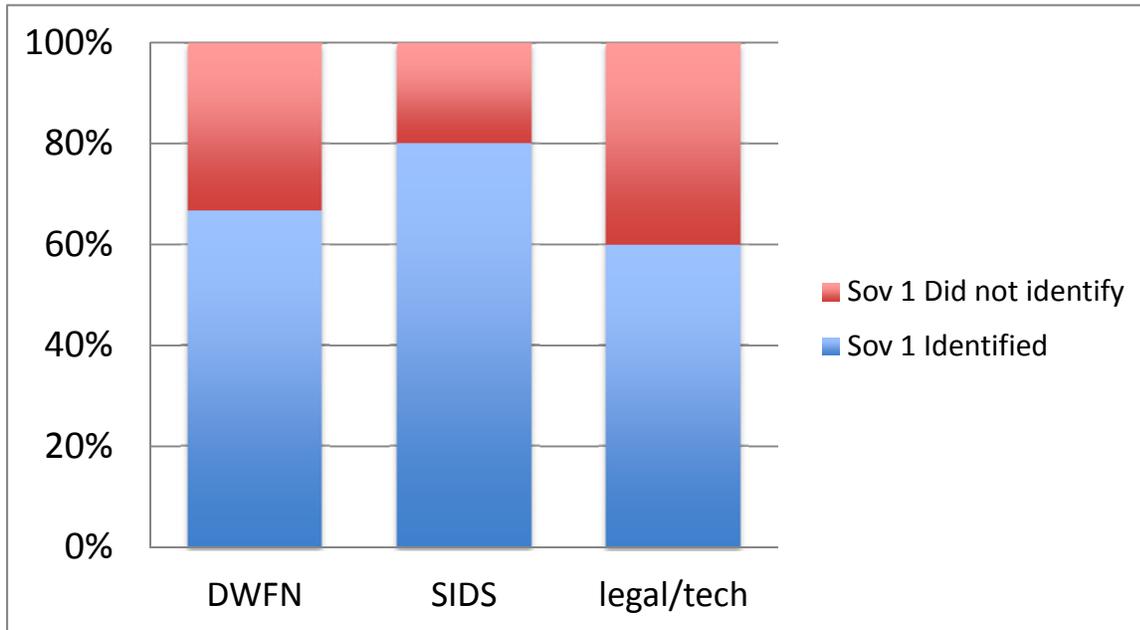
“I think that goes back to the sovereignty matter— some issues we need to say, okay, I wouldn’t normally do this, but I have to do this in order to make a good conservation and management measure” (Industrialized nation perspective).

One perception of the governing systems’ role is to manage the resource system at hand; the tuna in the WCPO. Now this system is partly natural, partly social: it consists of an ecosystem and the resources that it harbors, as well as a system of users and stakeholders who form political coalitions and institutions among themselves (Jentoft 2006). Thus employing sovereignty as a strategy to pursue an initiative is a clear mechanism to amplify power and influence if pursued by a coalition or group of people, such as FFA member nations or a bloc of DWFNs. Some categories that further support and ground this theme are “give and take relationships,” “hidden or veiled agendas,” “balancing stakeholder interests,” and “getting to yes.”

4.2 Content Analysis Results

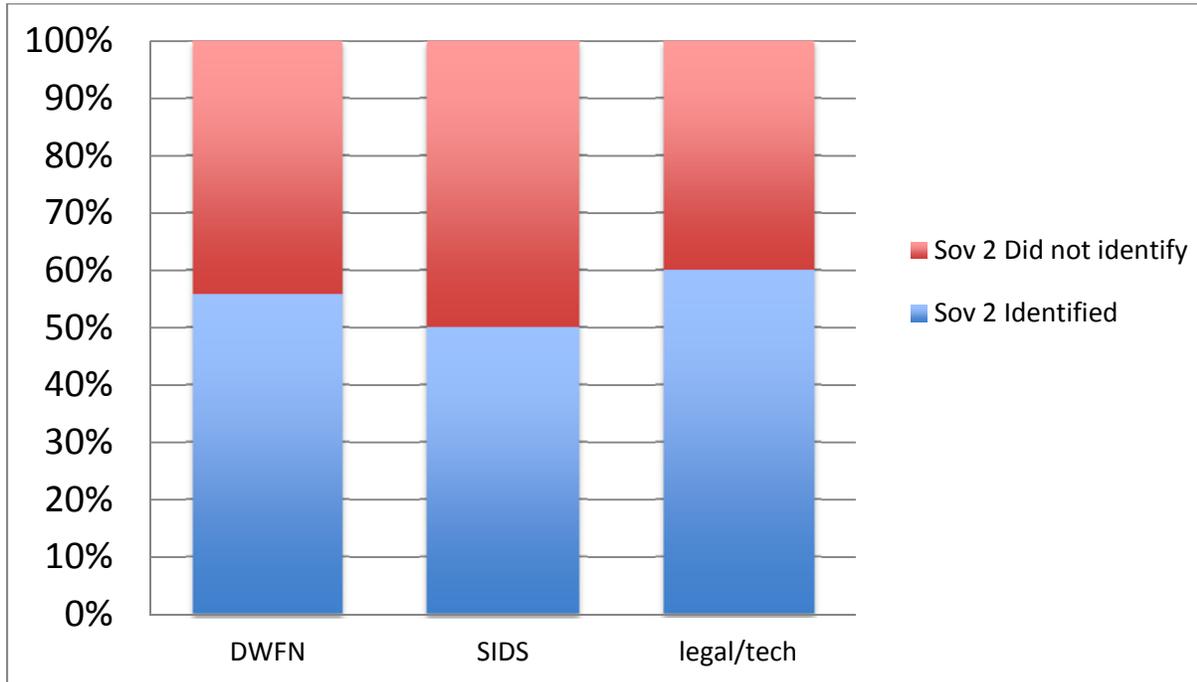
Over half of all participants from each group (Pacific Island, Industrialized nation and legal/technical) sampled defined sovereignty in line with the UNCLOS (figure 8). Specifically, around 68% of DWFNs, 80% of SIDS and 60% of legal/technical perspectives identified sovereignty in accordance with the law of the sea, supporting that most interview participants do perceive and discuss sovereignty in accordance with the UNCLOS. There was no statistically significant relationship across groups for this category.

Figure 8: Distribution of Perceived Definitions of Sovereignty in Accordance with the UNCLOS



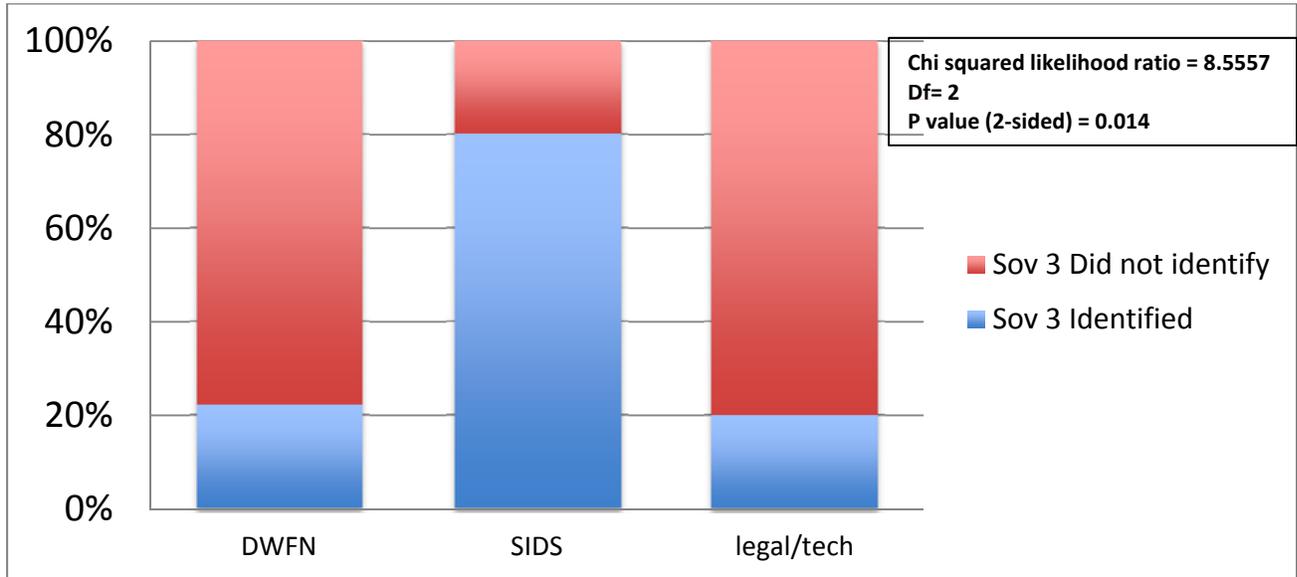
Similarly, around half of all participants from each group also defined sovereignty in accordance with sovereign rights (figure 9); meaning the way sovereignty was discussed by interview participants was sometimes ambiguous and more accurately represented a definition of sovereign rights from the UNCLOS. Or it meant that although respondents identified sovereignty in line with UNCLOS at one point in the interview, at another point, they discussed sovereignty more in line with the definition of sovereign rights from UNCLOS, or discussed sovereignty in terms of the EEZ, which are actually sovereign rights, not sovereignty. Again, there was no statistically significant relationship between groups.

Figure 9: Distribution of Perceived Definitions of Sovereignty in Accordance with Sovereign Rights (instead of sovereignty) as Defined in the UNCLOS



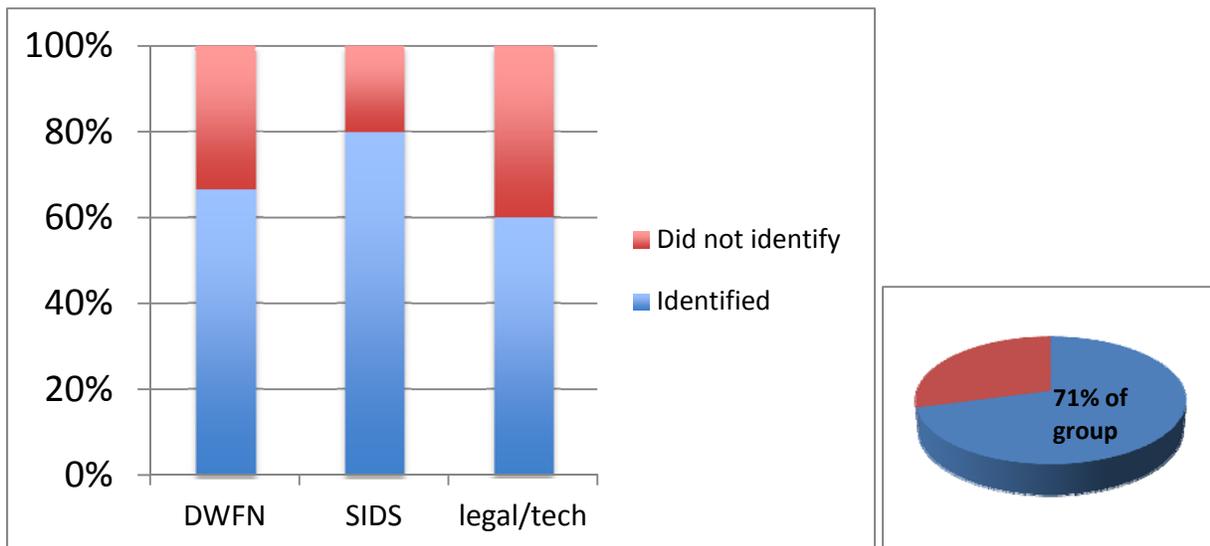
However content analysis on category III, representing absolute power and authority, displayed a distinct relationship and difference between groups sampled (figure 10). Only around 20% of DWFNs and legal/technical perspectives identified and discussed sovereignty in line with this category, while 80% of PICs sampled defined sovereignty in concert with this category. A chi-squared test reveals a p-value of 0.014, supporting that the difference in perceptions across groups for this category is significant.

Figure 10: Distribution of Perceived Definitions of Sovereignty as Absolute Power and Control; Unfettered Authority



Lastly, sovereignty was defined as a tool or strategy by over half of each group of interview participants, and by 71% of participants overall (figure 11). This shows that over 70% of all individuals interviewed perceive and discuss sovereignty in line with being employed as a tool or strategy within the WCPFC.

Figure 11: Distribution of Perceptions of Sovereignty as Tool or Strategy



Chapter 5

Conclusions: A Lasting Legacy and Evolving Paradigm

“I think at times organizations have different cultures and the culture that the WCPFC has at the moment will probably last another couple of years and then something will happen, and then it will settle to a new agreement, and then will cycle through again. I think we should expect that it will cycle through these types of different cultures.”

–Fishery Manager, representing a Pacific Island Perspective

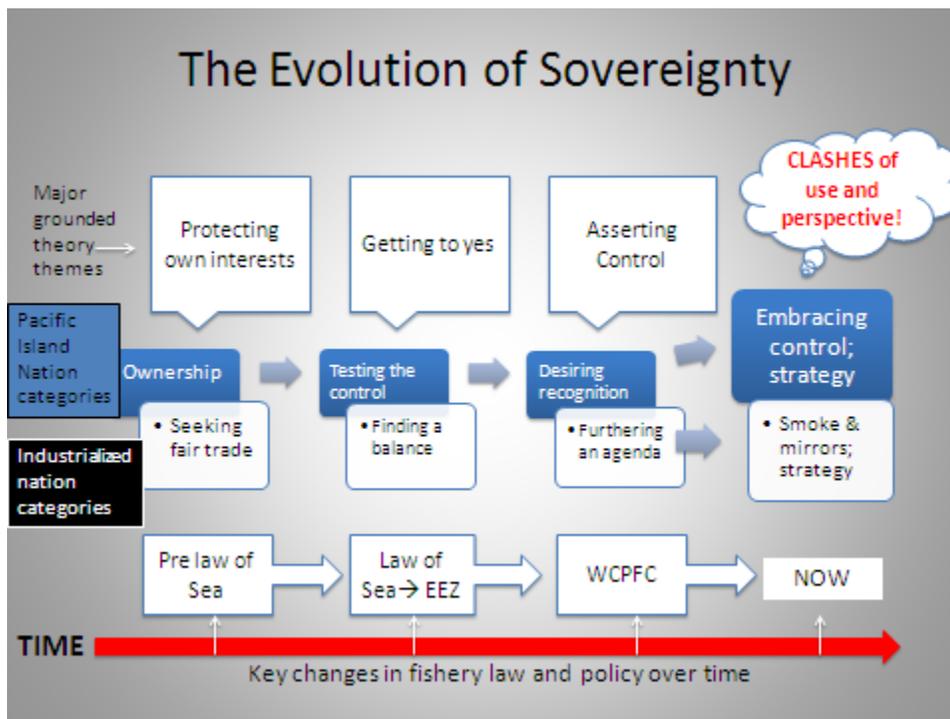
In summary, the findings of this study support the hypotheses that different interpretations of the concept of sovereignty exist, at times out are out of line with the legal definition in the UNCLOS and affect the Commission’s ability to develop and maintain a sustainable fishery. This is evident from fishing pressure and capacity continuing to increase over time alongside unresolved resolutions regarding fundamental differences in opinions and perceptions between PICs and DWFNs. Although sovereignty under the UNCLOS was established to maintain culture and rights to the ocean space and resources, the results indicate that this cultural integrity and ambiguous usage of the term sovereignty around the negotiating table could in fact be coming at a cost to the resource.

5.1 Summary

The implications of the content analysis show that interview participants currently discuss sovereignty in multiple and inconsistent ways, which in turn creates confusion with the usage of sovereignty in accordance with the legal framework. Furthermore 71% of interview participants

identified sovereignty as being employed as a tool or strategy within the WCPFC, so there is an overall consensus that it is being used outside of its formal legal context, potentially affecting management decisions and outcomes. There is also an extremely important historical basis for the reluctance on the part of PICs to forsake some of their perceived sovereignty for the good of the collective to support international arrangements for managing highly migratory tuna. Sovereignty is often used as the basis of arguments for Pacific Islanders rejecting various management measures put forth by the WCPFC if there is a direct effect to their EEZs. In fact, this stems from much earlier debates that were never resolved around the nature of HMS and the subsequent role, involvement and jurisdiction RFMOs like the WCPFC have over management of ocean space and fisheries (figure 12).

Figure 12: Conceptual Diagram



A long history of conflict and distrust between PICs and key DWFNs has left prominent scars and lingering distrustful sentiment on PI parties to the Convention. As mentioned earlier in

Chapter 2, the United States had initially refused to recognize the sovereign rights of coastal States over HMS in their EEZs, which reflected their reading of Article 64 of the UNCLOS as well as political influence of powerful lobbying groups, such as the American Tunaboat Association (Tarte, 2011). Also outlined earlier, a meagre historical relationship existed between many PICs and Japan, who asserted and exploited dominance in the region as both a fishing power and aid donor (tied aid) to negotiate terms most favourable to its own industry. Japan frequently made aid conditional on access and incorporated aid as part of their access fees to operate in the fisheries.

There were clear power disparities present between key DWFNs and the Pacific Islands starting all the way back with the initial negotiations for the UNCLOS. Because of this long history of adversarial relationships in the region, the failure to translate new-found tenure rights into real or substantial economic benefits was seen in part to be a function of the acute political and economic inequalities between the DWFNs and the PICs (Tarte, 2011). But it was also strongly tied to different group's understandings and perceptions of sovereignty within fishery management regimes. The dispute between the nature of HMS, who should have the most right to manage fish within EEZs and thus the role RFMOs should play in the management framework in relation to the coastal State was never resolved and is still having repercussions in negotiations today.

In addition to these trends, there is another critical factor creating incompatible perceptions and aspirations between PICs and DWFNs, and that is in regard to the role of the Commission in terms compatibility of high seas vs. EEZ management and supporting the aspirations of SIDS to maximize economic benefits from their marine resources. Many PI perceptions around the tuna resource support a strong desire to act on economic opportunities

from which to build domestic fishery involvement and thus strengthen involvement in the fishery as well as secure food security for many countries that rely on fish as their sole source of protein. These political and economic issues remain significant today, in that national interests of many PICs are articulated around protection of sovereignty and generating greater returns to economies back at home.

The way in which many of these international agreements are perceived and understood is an inherent source of conflict in the WCPFC and directs various countries' strategic positions on sovereignty, thus exacerbating the conflict surround multiple and ambiguous terminological consistency. Specifically, the way the WCPFC was seen by FFA member nations during the MHLC and preparatory conferences was as a framework capable of providing management on the high seas through creation of compatible measures to those employed in EEZs. Furthermore, there was a prominent understanding amongst PICs that the Commission was to serve a dual role: ensure effective management of the fish stocks as well as support the aspirations of SIDS while not allowing any management decision to infringe on their sovereignty and sovereign rights. On the other hand, the DWFNs see the jurisdiction of the Commission more broadly, specifically in accordance with the stated objective in the Convention text; *“to ensure, through effective management, the long-term conservation and sustainable use of highly migratory fish stocks (HMS).”* Quite often when looking at the understanding of DWFNs, there is no direct recognition given to the role of the Commission as being directly to support aspirations of SIDS; on the contrary, the objective of the Commission is to ensure the resource is managed sustainably, period.

Yet perhaps simply the right economic and political factors have not occurred to influence the way the Commission operates at a large scale. For example, something that came

up in many interviews was a potential crisis in the fishery being means to facilitate change. When there is a resource crisis, or some kind of global economic downturn that pushes everything to the brink, reaching agreement and cooperation becomes not only central but necessary in order to ensure resiliency and survivability of entire fish stocks and nation States. If there was a crisis in the fish stocks, or a crisis in some other shape or form, it could actually serve as means to bring people together and bridge divides in order to facilitate necessary support and cooperation.

The Commission is clearly a work in progress and evolving over time; some form of evolution for members and thus the Commission as a whole is going to take several years, understandably. Currently there is great distrust among different sectors and different groups of people around the table, and this has to be overcome. Parties need to learn to work together and become more dependable, in addition to improving transparency in actions. That way when a country (or group of countries, like the PNA) make claims about what they are doing and assures the Commission of their sustainable management, then others around the table would feel more comfortable and confident in receiving and believing what they say. This is not happening at the moment; perspectives are so different that it contributes to a type of polarization amongst the group. In order for the resource to be managed effectively and sustainably, this needs to be overcome. The DWFNs could try to understand where the PICs come from when they bring up sovereignty around the table, and in fact, sovereignty should be viewed in a positive sense of ownership through proper stewardship in management of the fish.

5.2 Reflections

Many questions arise regarding my presence as an observer in many of these negotiations that have been described above, and what effects, if any, this may have had on the research process,

personal bias and obtained results and conclusions of this paper. Specific roles need to be balanced by both my own perceptions of what I observed in the management forum coupled with my own experiences, worldview and value system, with my role as an unbiased, neutral third party, and conscious witness to what took place within the negotiations. When I first sat in on the WCPFC negotiations in Honolulu in 2010, I frequently noticed sovereignty was brought up in deliberations around the table. It seemed to be used as a way of strengthening and empowering the standpoint of the FFA member nations, and thus I partially presupposed that the Commission was infringing on the rights and sovereignty of PICs. However, to support transparency in my findings and conclusions, I now think this presupposition was, in fact, proven inaccurate in the face of such a deeply complicated political history between the PICs and DWFNs. Sovereignty, as understood in a way that is not always in line with the legal framework, is indeed used strategically to further agendas and protect aspirations; however, that does not directly confirm that the Commission as a management body itself infringes on the rights of PICs. It seems that sometimes Member Nations forget that they themselves make up the Commission as at times the Commission is spoken of as some independent entity. As one interview participant noted, coming to an international forum and taking a seat at the table to make decisions and strive to reach cooperation is, in itself, the most basic practice *of* one's sovereignty. The problem is that sovereignty is held and understood in multiple different ways by different people, has different weights of significance and meaning to different people and is currently being employed strategically during negotiation out of its formal legal context.

5.3 Conclusions

“As a result of these contrasting views, negotiations were not only difficult and at time fractious, but key issues were left unresolved, to become the subject of later negotiations within

the WCPFC once it was established” (Tarte, 2009). Countries around the table are still arguing over the area of application of the Convention, whether management measures agreed upon apply to areas under national jurisdiction, what national jurisdiction even refers to, and how EEZs should be managed cooperatively. The lack of resolution on the allocation issue, on baselines and on capacity limits, coupled with a lack of efficiency and productivity during regular sessions of the Commission, reveal how conflicts over perceived rights and economic interests may impede cooperation and undermine the effective implementation of the WCPFC. It also indicates that consensus over the powers and jurisdictional competence of the WCPFC remains elusive (Tarte, 2009).

As one participant stated, “it is still very murky waters around the whole issue.” In the WCPFC, sovereignty undoubtedly means different things to different people. Sovereignty is perceived as “recognition of both the rights *and* the obligations of a state with respect to exercising its own authority as an independent legal entity,” or it is perceived as “unchallenged control and policy setting, a national prerogative to assert control of a resource.” Only one of these definitions employs the two-sided coin theory that is in line with the legal definition set forth in UNCLOS; sovereignty is both a right and an obligation. But in more classical definitions, sovereignty did not entail any obligation to the international community.

Clearly this is problematic. Some understand sovereignty as a fixed, unchanging right of the individual, cumulatively displayed through national power of the State. Jentoft (2007) notes from the perspective of institutional design, issues of power confront us with a dilemma; while unleashed, power must also be restricted: as it controls, it must also be controlled. However, the problem is that it is often in the power (as capacity) of power (as agent) to delineate its own reach and to control what is to be controlled (Jentoft 2007). In the case of the WCPFC,

sovereignty is employed to ideally signify the right to exercise power over the resources and decisions surrounding management of those resources. Furthermore, the relative success of RFMOs has been said to be largely based on the collective will of those involved in decision-making (Willock and Lack 2006).

In the WCPFC, sovereignty is being actively used in a strategic manner to further national agendas and national prerogatives, whether or not this has positive effect on conserving the resource itself. Perceptions and intentional uses of sovereignty are thus guiding behavior within the political arena steered by identity and ideology. This inconsistency in peoples' perceptions and thus implementations of sovereignty are often times not compatible with one another, not to mention incompatible with the legal definition of sovereignty in the UNCLOS, and this inconsistency is not directly confronted in Commission negotiations. In turn, the ability of the WCPFC to reach management goals and objectives is slowed and impeded. If sovereignty is an issue inherently smoke and mirrors, then undoubtedly the WCPFC will not resolve the associated problems with any ease. However if transparency is achieved, not only in actions and activities but in *perceptions* of complex problems stemming from issues of sovereignty, then there is hope for the WCPFC to remain an equitable, progressive management regime for the fishery resources of the WCPO.

5.4 Future Research

The interests and aspirations of SIDS is a big issue within the Commission. There are numerous articles of the Convention and resolutions that refer to the importance of these aspirations and require DWFNs to take them into account. Therefore, an important question arises: *How do you operationalize the interests and aspirations of SIDS? Specifically, what steps need to be developed to deliver on the requirements to support SIDS?*

Regionalism in the Pacific is fluid and dynamic. Many would argue that enhanced regionalism is invaluable for PICs in securing their effective participation in negotiations with DWFNs. Others may argue that operating as such a large bloc, in fact holds some of the more developed PICs (PNA) back and suppresses their ability for growth and economic development. *So how does regionalism amongst the PI parties influence and affect their ability to negotiate? How does it direct negotiation outcomes?*

Lastly, someone desperately needs to tackle the issue of allocation and develop an effective allocation scheme for the Commission to operate under. Something that was mentioned in several interviews was the possibility and viability of a tiered management arrangement that sets zone based limits. Conservation and management measures should not be based on multiple catch and/or effort values from multiple years for different countries; this basically creates winners and losers in an arbitrary way. It would make more sense to use a reference year or reference years to establish an overall level of effort or catch that then gets divided up amongst the members. There would need to be a system developed to accommodate that, of course. A tiered management arrangement potentially could. *What would this type of allocation scheme and management arrangement look like?*

5.3 Recommendations as Identified by Interview Participants

5.3.1 U.S. specific

- Prioritize goals and initiatives.
- Toughen up; currently tip-toeing around PI stand-point; need to take a stand and be ready to walk away from the table instead of worrying so much about how we are viewed by others.

- Work through people vital to FFA and PNA to reach the broader PNA and FFA members.
- Bottom-up type of approach to suggest new ideas about management to PI states (i.e. coming from directors and administrators of FFA and PNA).
- Work on resolving disparities between industries.
- Make sure measures are enforceable; enforceability should be a presupposition for advocating for a measure to be adopted.

5.3.2 *Commission specific*

- A tiered management that sets zone-based limits; separated into 3 zones (high seas, EEZs and arch waters/internal seas); cut back of limits occurs first in high seas, then EEZs, then internal waters. First 2 tiers could be managed nationally only if there is total and complete transparency of effectiveness. Consultation required with larger WCPFC body for EEZ and high seas.
- Bring together a diverse, interdisciplinary group of international experts who work in other areas of fishery management to explain how some of these concepts (like allocation) are worked out on the floor; there is an opportunity, for some select topics, to use lessons from other disciplines.
- Try and educate a group of decision makers and managers within the WCPFC community, both DWFN and SIDS member nations.
- Measures need to be as enforceable as possible.
- Simplify agenda for annual meetings—narrow down to major priorities for more concrete and productive discussion at annual meetings.

- Consider some drafting or work on measures at TCC so there is less to do at Commission meetings.
- Emphasize legality as critical issue and lens to discuss some of these topics; enhance active role of legal advisors.
- Qualifications/indicators for responsible development of fisheries (for SIDS); what are they?
- Get everybody to agree on definitions, broad definitions as well as specific meanings and implications of CMMs.

APPENDIX

A. Interview Guide

1. How did you get into the field of fishery management? (Start as far back as you like, trying to note any important experiences that lead to where you are today.)
2. Please describe your current role and responsibilities and how it pertains to the WCPFC.
3. What does the word sovereignty mean to you? Has this meaning changed at all over time? If so, how?
4. What is your perspective on the dynamic between Member Nations of the WCPFC (specifically between SIDS and DWFNS)? What are some possible reasons you see for this dynamic?
5. How would you describe the decision-making process of the WCPFC? How do you feel about the effectiveness and efficiency of this process?
6. How would you describe the role of the WCPFC in regards to satisfying Member Nations' needs and requests?
7. How do you view the relationship between SIDS, DWFNs, sovereignty and the WCPFC?
9. Is there anything else you would like to say regarding these topics? I.E. In a world according to you, how would the WCPFC most effectively meet conservation and management aims and goals? What are the biggest draw backs or problems present in the WCPFC? What needs to change?

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