



An important question:

How to condition “permitted” subsidies to help avoiding overcapacity or overfishing?

An important message:

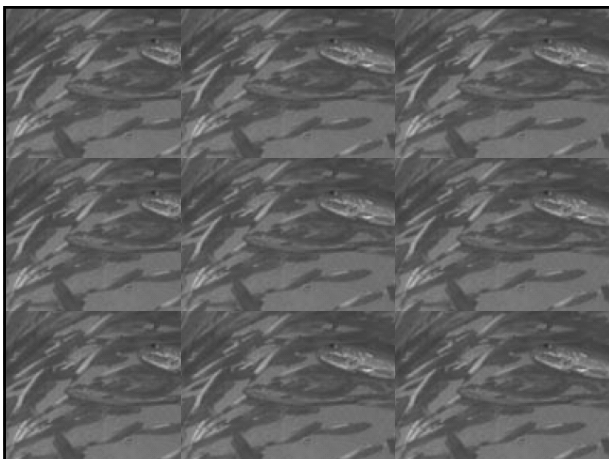
Plausible conditions exist . . .
. . . rooted in international norms
. . . and appropriate to the WTO

→ ***This can be done!***

. . . and it should be done . . .

“no blank cheque” = conditions needed

→ **Negotiate details now, or litigate them later!**



Kinds of Criteria

Meta-Criteria

- **Specific** – concrete, unambiguous
- **Effective** – predictive of outcomes
- **Acceptable** – rooted in international norms
- **Plausible** – in reach for all stakeholders
- **Consistent** – should reinforce each other
- **Appropriate** – in various contexts

Three Levels of Ambition

- “Best Practices”
= *what really should be done*
- “Minimum Recommended Conditions”
= *the least governments should do*
- “Minimum International Requirements”
= *what the WTO should require*

An important caveat . . .

Even “best practices” cannot guarantee “sustainable” fisheries subsidies

Criteria for use in WTO even less so . . .

- **These criteria only reduce risks where other policy goals (such as S&DT) require risks to be taken**

Three Categories of Criteria

- Biological
= *can the stock withstand more fishing?*
- Industrial
= *does the fleet have “room to grow”?*
- Regulatory
= *is the fishery adequately managed?*

	Best Practices	Minimum Recommended Conditions	Minimum International Requirements
Stock Health (biological)			
Fleet Capacity (industrial)			
Fisheries Management (regulatory)			

WTO

The answers for the WTO are relatively simple . . .

. . . getting to them is not

→ *the following is an overview of conclusions only*



The Overall Solution

1. Limit subsidies to fisheries where stocks are underexploited and fleets are undercapacity.
2. Require management consistent with the UN Code of Conduct.
3. Articulate criteria for minimum management.
4. Adjust criteria for “artisanal fisheries”.



Stock Health

1. Adopt FAO vocabulary and require “underexploited”:

“Undeveloped or new fishery, believed to have a significant potential for expansion in total production”
2. Base on MSY + precaution
3. Do not require quantification of “underexploited”

Fleet Capacity Levels

1. Define “full capacity” as capacity required to fish at MSY + precaution
2. Require capacity assessment (see below)
3. Set highly precautionary limit for subsidies, preferably quantitative

(e.g., 50% full capacity)



Explicit reference to Code of Conduct is a good idea ...
 ... perhaps even make this the core obligation ...

... but ...

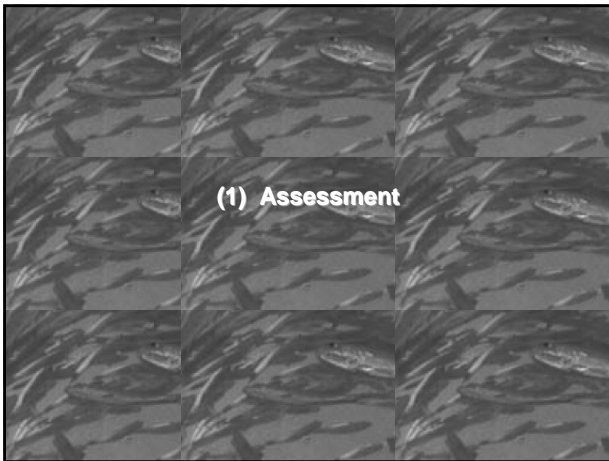
Give strong consideration to articulating basic elements

- for clarity
- to avoid undue litigation
- to limit reach of WTO rules

Elements of Management

1. Assessment of stocks and fleets
2. Regulatory control of fishing and capacity
3. Surveillance and enforcement of limits

First step for WTO = Explicitly require all three
then say what is concretely required ...



Stock Assessment

What kind to require? ... options include:

- scientific survey* → expensive!
- fisheries dependent (e.g., catch data)*
- indirect (e.g., cost trends)* → weak indicators
- informal / anecdotal* → non-quantitative

- required by international norms
- widely used
- data collection is part of surveillance/control

→ Require stock assessments that are:

- “science-based”
- quantitative
- based at least on catch data


+ Require all vessels in subsidized fishery to report catches

Capacity Assessment

What kind to require? ... options include:

- scientific survey* → expensive and complex!
- indirect (e.g., cost trends)*
- crude inventories (e.g., counting boats)*
- informal / anecdotal* → non-quantitative

- can produce rough quantitative estimates
- data often collected or available

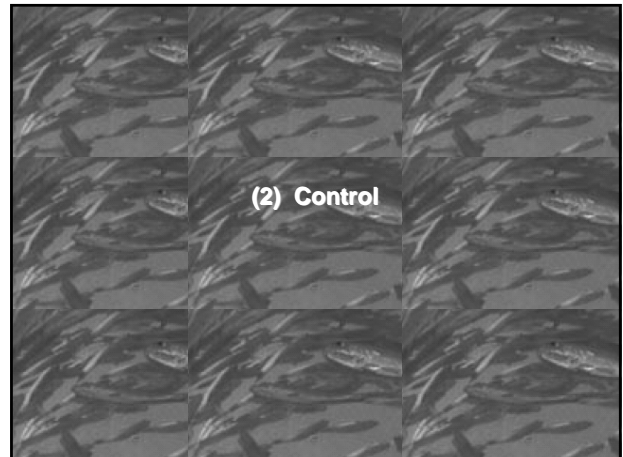


→ Require fleet assessments that are:


- “science-based”
- quantitative “to maximum reasonable extent”
- based on best available data

+ Require all vessels in subsidized fishery to be registered

(note int'l norm + FAO data requirements)




(2) Control



“Control” = planning + setting limits

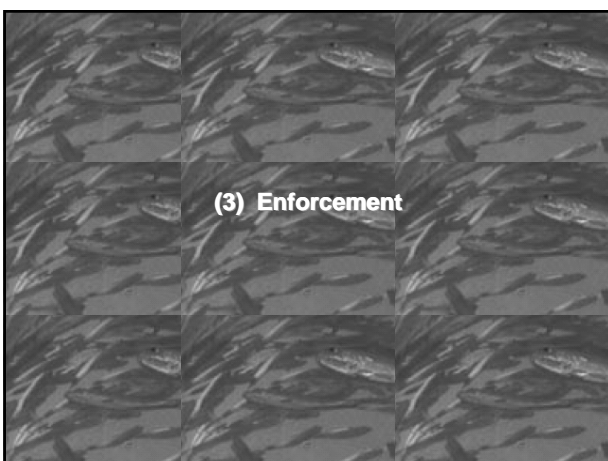
Basic requirements:

- formal management plan
 - ... including capacity plan per IPOA-Capacity
- quantitative “target reference points”
- aimed at MSY + precautionary margin
- legally binding limits, including mandatory fishing licenses



“recommended” and “best” practices would require more, e.g.:

- Preset mandatory responses to hitting target reference points
- Threshold reference points specifically for use of subsidies



(3) Enforcement



Effective enforcement is:

- basic to good management
- explicitly required in some international fisheries instruments

... But, can the WTO require it?

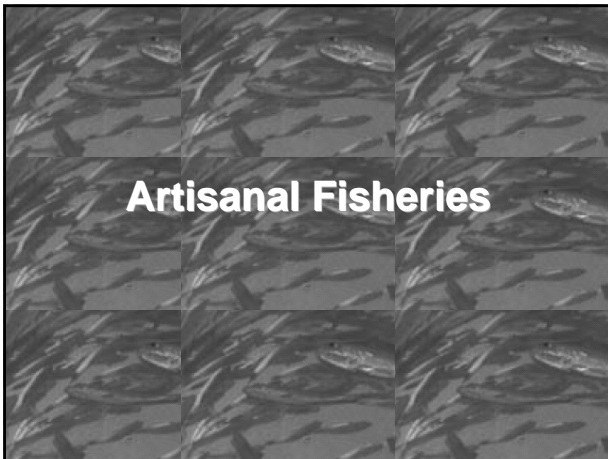
Precedents in WTO and other trade treaties:

- TRIPS (Art. 41.1):
 "Members shall ensure that enforcement procedures . . . are available under their law so as to **permit effective action** against any act of infringement . . ."
- Some regional & bilateral agreements, starting with NAFTA

→ Require "reasonable" enforcement:

- laws + mechanisms → rebuttable presumption
- contrary finding requires "clear and convincing" proof of:
 1. a consistent pattern of illegal activity having biologically [or commercially] significant impacts
 2. an "unreasonable inattention" to enforcement activities

+ withdraw subsidies to enterprises engaged in IUU fishing



Treatment of Artisanal Fisheries

1. Stocks and fleets assessed via informal, non-quantitative methods
2. There is a "reasonable basis to conclude that the target stocks are underexploited and the fleets are at substantially less than full capacity"
3. There is a formal management plan aimed at MSY + precaution
4. There are (in place are being developed) community-based mechanisms to control fishing
5. Subsidized increases in capacity or effort are carefully monitored and recorded
6. Proportional investments in management + "continuous improvements"