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## Picking Up the Slackline: Can the United States and Japan Successfully Regulate Commercial Fishing of Bluefin Tuna Following Failed Intergovernmental Attempts?

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# Picking Up the Slackline: Can the United States and Japan Successfully Regulate Commercial Fishing of Bluefin Tuna Following Failed Intergovernmental Attempts?

SARAH E. BAUER\*

## INTRODUCTION

Bluefin tuna is widely regarded as one of the most highly evolved sea species on the planet.<sup>1</sup> Nicknamed the “Porsche of the Ocean,” Bluefin tuna can be roughly the same size, and match the same speeds, as a sports car.<sup>2</sup> Historically, they have reached a somewhat mythological status for this size and speed—the Romans included depictions of Bluefin on their currency,<sup>3</sup> Carl Linnaeus named it the “tuna of tunas” upon classifying the species for the first time, and Ernest Hemingway once called it “the king of all fish.”<sup>4</sup>

Bluefin tuna<sup>5</sup> were once abundant in the western Atlantic and Mediterranean, but in recent years, Bluefin stocks have been depleted worldwide.<sup>6</sup> This is largely due to the fact that the Bluefin is not only as big and as fast as a Porsche—it is also just as valuable. Since sushi became a worldwide phenomenon and the demand for Bluefin meat skyrocketed, a medium-sized Bluefin tuna can sell for \$10,000 to \$20,000<sup>7</sup> in certain markets, with bigger fish going for as much as \$150,000 each.<sup>8</sup> As a result, it is one of the most aggressively overfished species in the oceans. As of 2009, the number of Bluefin tuna left in the western Atlantic was down 82 percent from its levels in the 1960s,<sup>9</sup> while populations of Pacific Bluefin dropped

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<sup>1</sup> See, e.g., SUSHI: THE GLOBAL CATCH (Sakana Film Productions 2012) (statement of Mike Sutton, head of the Center for the Future of the Oceans).

<sup>2</sup> *Id.*

<sup>3</sup> Juliet Eilperin, *U.S. Backs International Trade Ban on Atlantic Bluefin Tuna*, WASH. POST (Mar. 4, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/03/03/AR2010030301436.html> [<https://perma.cc/R8DF-SG27>].

<sup>4</sup> Kenneth Brower, *Quicksilver*, NAT’L GEOGRAPHIC, Mar. 2014, available at <http://ngm.nationalgeographic.com/2014/03/bluefin-tuna/brower-text> [<https://perma.cc/LYH4-D28U>].

<sup>5</sup> “Bluefin tuna” is used generally to refer to multiple species of the same genus; for the purposes of this Note, “Bluefin” indicates either the Atlantic or Pacific Bluefin.

<sup>6</sup> See, e.g., *id.*; *infra* text accompanying notes 9–12.

<sup>7</sup> See Brower, *supra* note 4 (noting that while extremely high Bluefin prices can sometimes be attributed to traditional Japanese bidding wars on markets’ opening days, the average price for medium-sized fish is relatively stable).

<sup>8</sup> Patrick Reis, *U.S. Backs Proposed Trading Ban on Bluefin Tuna*, N.Y. TIMES (Mar. 3, 2010), <http://www.nytimes.com/gwire/2010/03/03/03greenwire-us-backs-proposed-trading-ban-on-bluefin-tuna-74803.html> [<https://perma.cc/M78L-E7QT>].

<sup>9</sup> Barry Estabrook, *The Last of the Bluefin Tuna?*, ATLANTIC (Nov. 13, 2009), <http://www.theatlantic.com/health/archive/2009/11/the-last-of-the-bluefin-tuna/30112/> [<https://perma.cc/NLJ3-EPMC>] (discussing international failures to protect Bluefin stock).

by approximately 96 percent.<sup>10</sup> Some estimates say there are now only 9000 total Bluefin left in North America's stock.<sup>11</sup> Perhaps more distressingly, 90 percent of the Bluefin on the market last year were juveniles that had not yet reproduced.<sup>12</sup> The Pew Environmental Group has long called for a suspension in the commercial fishing of the species to allow it time to recover, though there is some concern that it is too late for such measures.<sup>13</sup> The Pacific Bluefin was added to the International Union for the Conservation of Nature red list of threatened species in November of 2014.<sup>14</sup>

Since the 1960s, international organizations have attempted to protect Bluefin from overfishing.<sup>15</sup> For various reasons, however, these attempts at intergovernmental regulation have failed spectacularly, leading environmental groups to call on individual nations to take up the mantle.<sup>16</sup> Due to their joint status as the world's largest consumers of Bluefin tuna,<sup>17</sup> the United States and Japan are potentially the two nations most able to save the species from extinction. To determine whether these countries can implement effective regulations to make up for a lack of intergovernmental success, however, multiple elements must be considered. First, the very nature of the respective countries' markets and the regulatory bodies they have in place are factors in determining whether these countries are candidates for successful governmental regulation. Second, their governments' historical stances on commercial fishing regulation, both for the Bluefin and for other species, are perhaps the best marker for whether proper regulation, enforcement, and compliance can be expected from the nations called on to prevent Bluefin overfishing.

Part I of this Note will address the reasons why intergovernmental organizations have failed to adequately regulate the commercial fishing of Bluefin tuna. Part II offers an analysis of the Bluefin markets in the United States and Japan and argues that these countries are ideal candidates for successful Bluefin regulation because of their market structures. Part III explores the likelihood that the two countries would implement such regulations, taking into account the respective governments' histories of species-specific regulation.

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<sup>10</sup> Louise Gray, *Days After Bluefin Tuna Sells for £1m Conservationists Warn Species Is Dying Out*, TELEGRAPH (Jan. 9, 2013), <http://www.telegraph.co.uk/news/earth/earthnews/9790478/Days-after-bluefin-tuna-sells-for-1m-conservationists-warn-species-is-dying-out.html> [https://perma.cc/6NBQ-ZVGT].

<sup>11</sup> Paul Greenberg, *Tuna's End*, N.Y. TIMES MAG. (June 22, 2010) <http://www.nytimes.com/2010/06/27/magazine/27Tuna-t.html> [https://perma.cc/5VF6-8RMR].

<sup>12</sup> Gray, *supra* note 10.

<sup>13</sup> Greenberg, *supra* note 11.

<sup>14</sup> Adam Vaughan & Eric Hilaire, *Red List: The World's Most Threatened Species – Interactive*, GUARDIAN (Nov. 16, 2014), <http://www.theguardian.com/environment/ng-interactive/2014/nov/17/red-list-the-worlds-most-threatened-species-interactive> [https://perma.cc/4JE8-T27T]. Pacific Bluefin had previously been categorized as fish of "least concern." *Id.* The change in status indicates that the species is now threatened with extinction. *Id.*

<sup>15</sup> Estabrook, *supra* note 9.

<sup>16</sup> See *infra* Part I.

<sup>17</sup> Greenberg, *supra* note 11.

## I. THE FAILURE OF INTERGOVERNMENTAL ORGANIZATIONS

Maritime law concerning fishing in the high seas was originally based on principles laid out in Hugo Grotius's 1609 treatise "Mare Liberum," which essentially recommended free use of oceans by all.<sup>18</sup> Such free use has clearly become untenable as various species are overfished to the threat of extinction.<sup>19</sup> Instead, the United Nations Convention on the Law of the Sea (UNCLOS) now defines the rights and responsibilities of various nations with respect to their ability to use the oceans.<sup>20</sup> One regulation prescribed by UNCLOS is the exclusive economic zone (EEZ). EEZs stretch for two hundred nautical miles out from a country's coastline, and while they do confer special rights, they do not confer full sovereignty.<sup>21</sup> Most Bluefin are fished in EEZs, and the clash between the "special rights" of the territorial country and the rights of others to fish in such areas gave rise to various multinational agreements.<sup>22</sup> Even when Bluefin are in one nation's territorial waters, they generally remain under the "foggy international jurisdiction" of certain tuna treaties.<sup>23</sup>

In the last forty years, the high seas have largely been regulated by eighteen regional fisheries-management organizations.<sup>24</sup> These organizations are "consensus-oriented," where politics reign and poor quotas are set in order to finalize any type of deal.<sup>25</sup> Member countries have equal status and voting rights, despite widely varying interests in the regions' fishing trade.<sup>26</sup> Quotas are the most popular form of regulation to come out of these intergovernmental bodies, and they are generally unreliable because of rampant illegal fishing and the unwillingness of consuming nations to track trade accurately.<sup>27</sup>

Recently, the U.N. Convention on International Trade in Endangered Species (CITES), the Convention on Biological Diversity, and the Inter-American Tropical Tuna Commission (IATTC) have convened to discuss the overfishing of Bluefin tuna. The IATTC has been generally ineffective, the Convention on Biological Diversity in Japan amounted to little more than "words . . . not translated into action,"<sup>28</sup> and CITES simply delegated its authority to the International

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<sup>18</sup> *Id.* (discussing the reasons for creating intergovernmental regulatory bodies).

<sup>19</sup> Gaia Vince, *How the World's Oceans Could Be Running Out of Fish*, BBC (Sep. 21, 2012), <http://www.bbc.com/future/story/20120920-are-we-running-out-of-fish> [<https://perma.cc/2MJJ-YQYH>].

<sup>20</sup> *Id.*

<sup>21</sup> Only territorial waters confer full sovereignty; EEZs instead allow "special rights" that are limited to areas below the surface of the sea. Surface waters are still considered international waters. *See generally* Greenberg, *supra* note 11; United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397.

<sup>22</sup> Greenberg, *supra* note 11.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *See infra* text accompanying notes 37–43.

<sup>28</sup> Oliver Knowles, *ICCAT Fails to Protect Bluefin Tuna*, GREENPEACE INT'L (Nov. 27, 2010), <http://www.greenpeace.org/international/en/news/Blogs/makingwaves/iccat-fails-to-protect-bluefin-tuna/blog/29151/> [<https://perma.cc/9WKP-FFEU>]. Mr. Knowles is an oceans campaigner with Greenpeace International and has led Greenpeace's ICCAT delegation. *Id.*

Commission for the Conservation of Atlantic Tuna (ICCAT).<sup>29</sup>

ICCAT is the best known, and most widely criticized, of the Bluefin intergovernmental bodies; it is commonly referred to derogatorily as the “International Conspiracy to Catch All Tuna.”<sup>30</sup> It was formed in 1969 and has forty-eight member countries that agree on international regulations for Atlantic Bluefin.<sup>31</sup> Those countries typically meet once a year to set quotas on the number of Bluefin allowed to be fished worldwide and distribute those quotas among themselves.<sup>32</sup> The quotas, however, are the source of much of ICCAT’s criticism.<sup>33</sup> In 2008, ICCAT’s own scientists recommended a 15,000 metric ton catch limit on Bluefin.<sup>34</sup> Member countries instead voted to set the number at 23,000 metric tons.<sup>35</sup> Despite heavy backlash from environmental groups, this practice has become commonplace; ICCAT again failed to follow the recommendations of its own scientists in 2010, when it agreed to reduce the catch limit by only 600 tons for the following year.<sup>36</sup>

High quotas would not be such a problem for the Atlantic Bluefin if they were implemented properly, but ICCAT has notoriously poor enforcement standards. Dr. Susan Lieberman of the Pew Environmental Group has stated that the amount of Atlantic Bluefin caught yearly is likely twice as high as the agreed amount because ICCAT has failed to ensure that member countries comply.<sup>37</sup> Some ICCAT members simply do not report their catch amounts, and 80 percent of ICCAT’s records are missing the information used to determine which fish are legally or illegally caught.<sup>38</sup> Very few patrol boats or inspectors police the countries, and many member nations are cash-strapped and do not have the means to enforce the regulations they agree to.<sup>39</sup> In the Mediterranean especially, fishermen flout rules forbidding the use of spotter planes to identify tuna shoals,<sup>40</sup> and some boats have been accused of having ties to the Italian mafia.<sup>41</sup> ICCAT rules also state that the larger vessels must have an “independent observer” onboard, but this directive is

<sup>29</sup> *Id.*

<sup>30</sup> This pejorative appears to be widely used among environmental activists, although the origins of the phrase are unclear. *See, e.g.*, GLOBAL CATCH, *supra* note 1 (quoting sustainable sushi restaurateur Casson Trenor); Brower, *supra* note 4; Estabrook, *supra* note 9 (quoting Carl Safina of the Blue Ocean Institute).

<sup>31</sup> SUSHI: THE GLOBAL CATCH, *supra* note 1.

<sup>32</sup> *Id.*

<sup>33</sup> *See, e.g., id.*; Brower, *supra* note 4 (discussing a report from ICCAT’s own scientists that is highly critical of the agreed-on catch quotas).

<sup>34</sup> Estabrook, *supra* note 9.

<sup>35</sup> *Id.*

<sup>36</sup> Timothy Hurst, *Bluefin Tuna Get No Help from International Community*, ECOLOGITOLGY (Nov. 27, 2010), <http://ecopolitology.org/2010/11/27/bluefin-tuna-gets-no-help-from-international-community/> [<https://perma.cc/F7YA-MAKK>].

<sup>37</sup> Dr. Lieberman first asserted that Bluefin catches are likely twice as high as the set quotas while in attendance at the 2009 ICCAT session. Estabrook, *supra* note 9. She has since called for total suspension of Bluefin fishing. *Id.*

<sup>38</sup> SUSHI: THE GLOBAL CATCH, *supra* note 1.

<sup>39</sup> *Id.*

<sup>40</sup> Greenberg, *supra* note 11.

<sup>41</sup> Michael McCarthy, *Is This the End of the Bluefin Tuna?*, THE INDEPENDENT (Nov. 28, 2008), <http://www.independent.co.uk/environment/nature/is-this-the-end-of-the-bluefin-tuna-1040246.html> [<https://perma.cc/2UW7-S4NW>].

largely ignored.<sup>42</sup> The vessels, which have a capacity for much larger catches than their governments have agreed to, often over-catch and under-report.<sup>43</sup>

After the backlash from the high catch limit set in 2008, ICCAT members voted to begin a system of paper-based catch records that would help cut down on Bluefin illegally entering the market by tracing fish to their final destinations.<sup>44</sup> Six years later, the gap between reported and total catches has only widened.<sup>45</sup> An investigation into trade data including European Union nation exports, Japanese customs documents, and U.S. Department of Agriculture Foreign Agricultural Service records revealed that 140 percent more fish are entering the market than are being reported.<sup>46</sup>

Also in 2008, ICCAT commissioned an independent review of its policies. The review called ICCAT's stewardship an "international disgrace" and a "travesty of fisheries management."<sup>47</sup> Following this dismal feedback, ICCAT researchers reported that the Atlantic Bluefin merited inclusion on the U.N. CITES list of international trade bans.<sup>48</sup> Had CITES voted to include the Bluefin, it would have fallen under the jurisdiction of the same body responsible for the protection of critically endangered species like tigers, white rhinos, and giant pandas.<sup>49</sup> Instead, the vote failed at the United Nations, and CITES members delegated their authority on the matter back to ICCAT.<sup>50</sup>

Despite its many failings, ICCAT has recently made more attempts to protect the Bluefin. It has refused to grant amnesty to countries that have fished beyond their allotted amounts; instead, ICCAT enacted a policy to slash offenders' future allotments.<sup>51</sup> In 2011, it began to test a system that could electronically track

<sup>42</sup> Richard Black, *Med Bluefin Tuna Catch 'Unabated,'* BBC (Oct. 18, 2011), <http://www.bbc.co.uk/news/science-environment-15323370> [<https://perma.cc/4K6X-WRAX>]. ICCAT appears to employ a third-party organization that provides Observers for transshipment vessels in the Atlantic and Indian Oceans; the Observers are responsible for monitoring longliners in ICCAT regions and checking vessel monitoring systems. See "ICCAT Regional Observer Programme Manual," INTERNATIONAL COMMISSION FOR THE CONSERVATION OF ATLANTIC TUNA, Nov. 2012, at 23, *available at* [https://www.iccat.int/Documents/ROP/ICCAT\\_Observer\\_Manual.pdf](https://www.iccat.int/Documents/ROP/ICCAT_Observer_Manual.pdf) [<https://perma.cc/M4GP-MJZH>].

<sup>43</sup> Black, *supra* note 42.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> Brower, *supra* note 4.

<sup>48</sup> Estabrook, *supra* note 9.

<sup>49</sup> CITES has been relatively successful at establishing regulations to protect these other critically endangered species. Failure to move Bluefin under its jurisdiction was generally considered a serious blow to conservationists. Greenberg, *supra* note 11.

<sup>50</sup> *Id.* Of the 129 CITES member countries, seventy-two voted against the ban, forty-three voted in favor, and fourteen abstained. David Adam, *Bluefin Fails to Make UN's List of Protected Fish*, GUARDIAN (Mar. 18, 2010), <http://www.theguardian.com/environment/2010/mar/18/bluefin-tuna-un-cites> [<https://perma.cc/XW86-NTAZ>]. Only the United States, Kenya, and Norway supported the ban outright. *Id.* It was reported that the United Kingdom, the Netherlands, and several other European countries voted in favor of the ban, against the European Union's official position. *Id.* Japan led the opposition, stating that it is concerned about recovery, but ICCAT should be responsible for all Bluefin regulation. *Id.*

<sup>51</sup> *Bleak Future for Bluefin as Tuna Commission Only Marginally Trims Catches*, WWF GLOBAL (Nov. 27, 2010), [http://wwf.panda.org/wwf\\_news/?197332/Tuna-Commission-fails-again-to-ensure-bluefin-tuna-recovery#.VzR0QJ6kN0](http://wwf.panda.org/wwf_news/?197332/Tuna-Commission-fails-again-to-ensure-bluefin-tuna-recovery#.VzR0QJ6kN0) [<https://perma.cc/25M4-UZ6M>].

caught fish from ocean to market, and it plans to revise its antiquated stock-assessment protocols in 2015.<sup>52</sup> ICCAT's structure and governance, however, remain unchanged, and in November of 2014, quotas were raised from 1750 tons in 2014 to 2000 tons in 2015 and 2016.<sup>53</sup>

It seems natural, then, to call on individual nations to protect Bluefin stocks. Multinational bodies have shown a tendency to sacrifice quality decisions in favor of simply brokering an agreement among nations with competing interests,<sup>54</sup> and accusations of vote-buying and political pressure among members are common.<sup>55</sup> The organizations themselves have passed the buck back and forth, and even when reasonable regulations are passed, the organizations lack the legal means to enforce them.<sup>56</sup> They are, essentially, at the mercy of member countries that often cannot or will not ensure compliance back home. There is a total lack of individual accountability; except for the most egregious violations, failures are mostly attributed to the governing body as a whole.<sup>57</sup>

The United States and Japan are the obvious candidates for countries that could prove to be more effective at protecting the Bluefin. Eighty percent of the world's Bluefin tuna passes through Japanese markets, and both commercial fishing and demand for the species have increased massively since the beginning of America's sushi boom.<sup>58</sup> Whether these countries can fill in where multinational bodies, especially ICCAT, have failed is a question to be answered in the coming years.

## II. MARKETS AND REGULATORY BODIES

Both the United States and Japan have the mechanisms in place to be able to enforce stricter regulations on commercial Bluefin fishing and trade, especially in the area of importation. The makeup of their relative markets also suggests that properly enforced restrictions could be quite successful.

### A. U.S. Regulations and Ability to Enforce

The U.S. government has made a concerted effort in recent years to regulate

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<sup>52</sup> Brower, *supra* note 4. ICCAT's Working Group on Stock Assessment Methods met from February 15–19, 2016, to discuss progress on Harvest Control Rules and how to increase involvement with the Strategic Initiative on Stock Assessment Methods. See *ICCAT Circular #8526/2015*, INTERNATIONAL COMMISSION FOR THE CONSERVATION OF ATLANTIC TUNAS, Dec. 2015, available at [https://www.iccat.int/Documents/8526-15\\_ENG.PDF](https://www.iccat.int/Documents/8526-15_ENG.PDF) [<https://perma.cc/K26U-GWVW>].

<sup>53</sup> *Bluefin Tuna Catch Limits Increased to 2,000 Tonnes for 2015*, CBC NEWS (Nov. 17, 2014), <http://www.cbc.ca/news/canada/nova-scotia/bluefin-tuna-catch-limits-increased-to-2-000-tonnes-for-2015-1.2837862> [<https://perma.cc/MGE7-HTXP>].

<sup>54</sup> See *supra* notes 24–29 and accompanying text.

<sup>55</sup> Cf. *infra* notes 154–156 (discussing Japan's history of buying votes from Caribbean nations in the International Whaling Commission, a similar widely criticized intergovernmental marine regulatory body).

<sup>56</sup> See generally *supra* notes 37–43, 47–50 and accompanying text.

<sup>57</sup> The fact that ICCAT has been a lightning rod for criticism in the last few years indicates that the larger organization is a convenient scapegoat for members' failings. Despite some nations contributing far more to overfishing than others, equal blame is distributed through the governing body. See Greenberg, *supra* note 11.

<sup>58</sup> *Id.*

commercial fishing of Bluefin tuna. Atlantic Highly Migratory Species fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act and the Atlantic Tunas Convention Act.<sup>59</sup> Under the Magnuson-Stevens Act, the National Marine Fisheries Service (a branch of the National Oceanic and Atmospheric Administration colloquially referred to as “NOAA Fisheries”) must manage fisheries to maintain continually optimum yield while preventing overfishing.<sup>60</sup> The Atlantic Tunas Convention Act was passed specifically to ensure that sufficient means of regulation are in place to satisfy ICCAT agreements by giving the Secretary of Commerce power to “promulgate regulations necessary and appropriate to carry out ICCAT recommendations.”<sup>61</sup> The Secretary of Commerce has since delegated that authority to NOAA’s Assistant Administrator for Fisheries.<sup>62</sup>

NOAA Fisheries has historically been successful at enforcing regulations and achieving its stated goals.<sup>63</sup> In August of 2014, NOAA published new requirements in a large amendment to its Bluefin management plan.<sup>64</sup> These regulations stem from a broader goal of meeting the catch quotas allotted to the United States by ICCAT while restricting the time, place, and manner in which U.S. fisheries can harvest that quota.<sup>65</sup> Commercial fleets in the Gulf of Mexico can no longer target the species, and while they can still harvest other types of fish in the Gulf, their allotted amount of Bluefin bycatch—accidental killings of the fish when it is not being targeted—will be lowered.<sup>66</sup> Dead discards are accounted for in nations’ Bluefin allotments, and NOAA Fisheries has a stated goal of reducing the number of dead Bluefin discards.<sup>67</sup> Furthermore, video cameras must be installed on fishing vessels in the Gulf and parts of the Atlantic coast to record full-time what is being caught in an attempt to crack down on illicit fishing activity.<sup>68</sup> These regulations have been widely applauded and faced relatively little resistance from commercial fishing vessels.<sup>69</sup> Pew Charitable Trust’s ocean conservation unit recently praised NOAA Fisheries for independently increasing Bluefin protections.<sup>70</sup>

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<sup>59</sup> *Final Amendment 7 to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan*, NATIONAL MARINE FISHERIES SERVICE, Aug. 2014, available at [http://www.nmfs.noaa.gov/sfa/hms/documents/fmp/am7/final\\_amendment\\_7\\_to\\_the\\_2006\\_consolidated\\_atlantic\\_highly\\_migratory\\_species\\_fishery\\_management\\_plan\\_8\\_28\\_2014\\_for\\_web.pdf](http://www.nmfs.noaa.gov/sfa/hms/documents/fmp/am7/final_amendment_7_to_the_2006_consolidated_atlantic_highly_migratory_species_fishery_management_plan_8_28_2014_for_web.pdf) [<https://perma.cc/7LZJ-UZ9D>] [hereinafter *Final Amendment 7*].

<sup>60</sup> See *Final Amendment 7*, *supra* note 59, at v.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> See *infra* notes 71–74 and accompanying text.

<sup>64</sup> See generally *Final Amendment 7*, *supra* note 59.

<sup>65</sup> *Id.* at v.

<sup>66</sup> *Id.* at v–vi.

<sup>67</sup> *Id.*

<sup>68</sup> See *id.* at 331. The requirement that commercial vessels in the Atlantic Tuna Longline category have electronic monitoring systems onboard was effective June 1, 2015. See *NOAA Fisheries Announces Dates and Locations for Installation of Electronic Monitoring Systems*, NOAA FISHERIES, Dec. 2014, available at [http://www.fisheries.noaa.gov/sfa/hms/news/news\\_list/2014/12/a7\\_em\\_install\\_schedule\\_122314.html](http://www.fisheries.noaa.gov/sfa/hms/news/news_list/2014/12/a7_em_install_schedule_122314.html) [<https://perma.cc/4M3C-CL72>]. NMFS provided funds to pay for the equipment for certain vessels specified in Amendment 7. *Id.*

<sup>69</sup> See generally *infra* Part III.A.

<sup>70</sup> “NOAA Fisheries deserves great praise for significantly increasing protections for bluefin... This historic action will help western Atlantic bluefin tuna rebuild to healthy levels.” *Banner Day for Bluefin*, PEW CHARITABLE TRUSTS, Aug. 29, 2014, available at



NOAA has its own Office of Law Enforcement, a federal police entity responsible for enforcing domestic laws and international treaty requirements. It is the sole federal agency tasked with enforcing NOAA regulations.<sup>71</sup> While the effects of the recent expansion of Bluefin protections in the Gulf of Mexico have yet to be seen, regulations have been successful at decreasing Pacific Bluefin catches.<sup>72</sup> Recreational fishermen have had “spectacular” Bluefin fishing off the coast of California in the last two years, indicating that those waters were maintained properly after NOAA enforced protections.<sup>73</sup> The Pacific Bluefin fishery in the United States is one of the only fisheries in the world where recreational catch sometimes exceeds commercial take; it seems that U.S. commercial fisheries are in compliance with federal regulations, and NOAA is enforcing its policies properly.<sup>74</sup>

### *B. Suggested Improvements and Potential for Success in the United States*

In some areas, however, the United States certainly could stand to improve its Bluefin protections. Since commercial Bluefin fishing took off in the last twenty years or so, NOAA has failed to keep up with some aspects of overfishing. The response to the 2010 BP oil spill was extremely slow; it took four years from the time of the spill before NOAA passed any regulations on fishing Bluefin in the Gulf, despite the knowledge that the spill heavily damaged Bluefin spawning grounds.<sup>75</sup>

Furthermore, while NOAA has stated that it wishes to reduce Bluefin bycatch, it has failed to place harsh regulations on longline fishing—one of the biggest contributors to bycatch in general.<sup>76</sup> Longlining involves casting a main line on the surface or bottom of the water and placing baited hooks along it at certain intervals. The main lines can be up to thirty miles long and contain thousands of hooks, often resulting in bycatch.<sup>77</sup> Many Bluefin become bycatch while fishing vessels longline for Yellowfin, and by local law they are supposed to be returned to the sea.<sup>78</sup> American fisheries tend to follow the regulation, but the Bluefin are often dead by

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<http://www.pewtrusts.org/en/research-and-analysis/analysis/2014/08/29/banner-day-for-bluefin> [<https://perma.cc/G46E-25WN>] (statement of Lee Crockett, director of U.S. ocean conservation for The Pew Charitable Trusts).

<sup>71</sup> *What We Do*, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, [http://www.nmfs.noaa.gov/ole/about/what\\_we\\_do.html](http://www.nmfs.noaa.gov/ole/about/what_we_do.html) [<https://perma.cc/795Z-BE3P>].

<sup>72</sup> Jim Hendricks, *Feds To Decide on Tighter Limits for Sport-Caught Bluefin Tuna*, SPORT FISHING MAGAZINE, Nov. 11, 2014, available at <http://www.sportfishingmag.com/blogs/pacific-currents/feds-decide-tighter-limits-sport-caught-pacific-bluefin-tuna> [<https://perma.cc/E2NQ-P394>].

<sup>73</sup> *Id.* (discussing the necessity of additional regulation after a season of above-average fishing indicated some amount of recovery for the species).

<sup>74</sup> *Id.* For an example of proper enforcement of Amendment 7, see *NOAA Fisheries Announces the Application of the Individual Bluefin Quota Accounting Rules in the Northeast Distant Area*, NOAA FISHERIES (Nov. 2015), [http://www.fisheries.noaa.gov/sfa/hms/news/news\\_list/2015/11/111215\\_ned\\_ibq-use.htm](http://www.fisheries.noaa.gov/sfa/hms/news/news_list/2015/11/111215_ned_ibq-use.htm) [<https://perma.cc/6FZA-R3WT>] (announcing that 25-metric-ton bycatch quota for Atlantic Bluefin had been met in the Northeast Distant Area and requiring vessels in said area to implement Individual Bluefin Quota program).

<sup>75</sup> Greenberg, *supra* note 11.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

the time they can be discovered and returned.<sup>79</sup>

It should be noted that despite the upswing in commercial fishing of Atlantic Bluefin, Pacific Bluefin—imported from Japanese markets—are actually more commonly served in American restaurants.<sup>80</sup> Even though commercial fishing has increased in the United States, it is still relatively small, and American fisheries do not tend to catch more than their quotas.<sup>81</sup> While America's commercial fishing certainly needs to be regulated, the country contributes far more to the worldwide Bluefin crisis by increasing demand for the meat and importing from other poorly regulated countries. Most American regulations, though, have to do with the act of fishing itself and do not focus on importing only legally fished Bluefin.<sup>82</sup>

The U.S. government, and NOAA specifically, already have the mechanisms in place to fill in the gaps in their policies. Artisanal fishing is one possible answer to the problem of longlining. Methods such as harpooning and fish-and-reel result in little to no bycatch, and NOAA could potentially offer subsidies to encourage such techniques. In addition, regulations limiting longlines to a certain number of hooks for Bluefin fishing vessels could reduce bycatch. The NOAA Office of Law Enforcement almost certainly has the capacity to enforce such a regulation, especially on the heels of the recently passed onboard video requirement.<sup>83</sup>

It is also likely that the United States has the capabilities to solve the importation problem. In the documentary *Jiro Dreams of Sushi*, world-famous sushi chef Jiro Ono suggests allowing only tuna of a certain size to be caught and sold.<sup>84</sup> This suggestion has been echoed by environmental groups, as it would ensure that juveniles who have not had a chance to reproduce can remain in the wild and would likely help stocks recover.<sup>85</sup> As a nation that largely imports, the United States could potentially place a ban on imports of fish under a certain size. With a regulatory body like NOAA already in place to enforce such a ban, it could have an effect worldwide. Such a policy could be costly and would likely be met with uproar from exporting nations, but it is a potential solution that the United States has the capabilities to implement successfully. In general, the makeup of U.S. fishery regulation and enforcement bodies, and its past regulatory successes, indicate that the country could be effective in areas where intergovernmental Bluefin protection groups fail.

### C. The Japanese Market and Regulatory Bodies

The Japanese Bluefin market is markedly different from the U.S. market. Although Japan has also cut down on its own commercial fishing, it consumes Bluefin meat in much greater quantities and is home to the largest fish market in

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<sup>79</sup> *Id.*

<sup>80</sup> Paul Greenberg, *Why Are We Eating Bluefin Tuna to Extinction?*, GRIST.ORG (Nov. 19, 2011), <http://grist.org/food/2011-11-19-why-are-we-eating-bluefin-tuna-to-extinction/> [<https://perma.cc/G2UJ-XRS6>] (discussing America's role in the overfishing of Bluefin as a consumer rather than as a commercial fishing entity).

<sup>81</sup> *Id.*

<sup>82</sup> *See, e.g., supra* notes 65–69 and accompanying text.

<sup>83</sup> *See Final Amendment 7, supra* note 59.

<sup>84</sup> JIRO DREAMS OF SUSHI (Sundial Pictures, 2011).

<sup>85</sup> *Id.*

the world.<sup>86</sup> Nearly every caught Bluefin tuna will, at some point, pass through Japan.<sup>87</sup> This access to the fish puts Japan in a position to be able to regulate the trade, and the country seems to have the mechanisms in place to do so effectively.

Bluefin were not popular in Japan until the 1960s;<sup>88</sup> Yellowfin meat was much preferred before Japan's export boom took place.<sup>89</sup> Once Japan began sending its goods to the West in large quantities, airlines noticed they were losing money by sending back empty planes.<sup>90</sup> One businessman had the idea to ship refrigerated Atlantic Bluefin to Japan from the West, and it quickly became favored by sushi chefs.<sup>91</sup>

Japan's per capita seafood consumption is among the highest in the industrialized world, and while the Japanese do not catch much Atlantic Bluefin anymore, they do eat almost all of it.<sup>92</sup> Much of their Atlantic Bluefin is imported from the Mediterranean, where catching juveniles is frequent.<sup>93</sup> The juvenile fish are taken to ranches, where they undergo the fattening process and never reproduce.<sup>94</sup> These ranched fish are then almost exclusively sent to Japan, where 95 percent of tuna will end up in sushi restaurants.<sup>95</sup>

Nearly all of the fish imported into Japan go to the Tsukiji Fish Market in Tokyo.<sup>96</sup> It is the largest fish market in the world,<sup>97</sup> where city officials oversee auctions and wholesalers scout out fish for their customers. It is unlike any fish market in the United States. Intermediate wholesalers in the Tsukiji Fish Market have three jobs: skillfully evaluating the fish, skillfully breaking down the fish, and maintaining food safety.<sup>98</sup> They have licenses to buy the fish at auction and orders to fill from customers who are mostly restaurant owners.<sup>99</sup> The wholesalers bid based on what the customer requires and what they think the customer will be willing to pay.

Problems in the quality of the auctioned fish arise frequently, and the merchants settle disputes in a "Tuna Court" created by the state.<sup>100</sup> The court is fast and inexpensive and follows the normal rules and procedures of a government

<sup>86</sup> Eric A. Feldman, *The Tuna Court: Law and Norms in the World's Premier Fish Market*, 94 CAL. L. REV. 313 (2006) (detailing the procedures involved in Tsukiji Fish Market's "Tuna Court").

<sup>87</sup> SUSHI: THE GLOBAL CATCH, *supra* note 1.

<sup>88</sup> *Id.*

<sup>89</sup> Yellowfin meat was desired both because it was readily accessible and because the Japanese generally had a taste for it. Greenberg, *supra* note 11. Once Bluefin could be imported in large quantities, both consumers and sushi chefs began to prefer its tenderer belly meat to that of Yellowfin. *Id.*

<sup>90</sup> SUSHI: THE GLOBAL CATCH, *supra* note 1.

<sup>91</sup> *Id.*

<sup>92</sup> Greenberg, *supra* note 11.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> SUSHI: THE GLOBAL CATCH, *supra* note 1.

<sup>97</sup> Determination of Tsukiji as the largest fish market in the world is based on both volume of fish and cash flow. *See, e.g.*, Feldman, *supra* note 86, at 317; SUSHI: THE GLOBAL CATCH, *supra* note 1; THE COVE (Participant Media, 2009).

<sup>98</sup> SUSHI: THE GLOBAL CATCH, *supra* note 1.

<sup>99</sup> Although the bulk of buyers at Tsukiji are wholesalers, chefs and restaurant owners also sometimes buy their meat directly. *Id.*

<sup>100</sup> Feldman, *supra* note 86, at 318.

ordinance.<sup>101</sup> Conflicts that must be taken to court typically arise because a fish is diseased, blemished, or generally worth less than the buyer expected.<sup>102</sup> Instead of using a “caveat emptor” model, merchants take 7000 claims each year to the Tuna Court and demand that their winning bid be reduced.<sup>103</sup>

Such a court is simply not necessary in the United States, where the markets are much smaller and fewer purchases are disputed.<sup>104</sup> In the rare occurrence that there is a conflict about a worse-than-expected fish, there is no formal dispute resolution mechanism.<sup>105</sup> Tuna Courts are entirely unique to Japan.<sup>106</sup>

Immediately after auction, buyers split open the fish to determine if the quality is as expected.<sup>107</sup> If there is a dispute, it must be brought to the Tuna Court on the same day.<sup>108</sup> Problems range from a fish being weighed incorrectly to being stored incorrectly. When there is a defect, buyers assert a right to compensation and go to the Tuna Court. The Court itself is only open in fifteen-minute increments, four times a day.<sup>109</sup> Its jurisdiction comes from a 1972 Tokyo Metropolitan Government (TMG) ordinance; the TMG in turn has authority to pass such an ordinance from Japan’s Ministry of Agriculture, Forestry, and Fisheries.<sup>110</sup>

The Court requires that sellers allow pre-auction inspection.<sup>111</sup> Most of the buyers’ grievances, then, stem from essentially no-fault complaints: the buyer claims that there was a gap between his expectations and the actual quality of the purchase that resulted from defects that were virtually undiscoverable pre-auction.<sup>112</sup> Five judges, with no legal training, inspect the fish brought in for complaint.<sup>113</sup> There is no formal hearing, and buyers do not give a reason for their claims.<sup>114</sup> The judges then independently write down their assessments of the value of the fish and one of them compiles the judgments.<sup>115</sup> This process typically takes anywhere between fifteen seconds and two minutes.<sup>116</sup> A single remedy is offered to the buyers: the winning auction price is adjusted by an amount equal to 50 percent of the damage.<sup>117</sup> By ordinance, the judges’ scores are averaged to come up with this amount; instead of an exact calculation, the number is often ballparked.<sup>118</sup>

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* at 318–19.

<sup>104</sup> *Id.* at 314.

<sup>105</sup> *Id.* at 319.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* at 332.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.* at 334.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* at 337.

<sup>112</sup> *Id.* at 335.

<sup>113</sup> *Id.* at 339.

<sup>114</sup> *Id.* at 340.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.* For example, if a tuna that is sold at auction for \$8000 is perceived by the buyer to have a flaw, the judges will write their assessments of what they believe the true value of the fish is. Suppose the assessments average to a value of \$6000 for the fish. The damages will be the difference between the selling price and the actual value of the fish, \$2000 in this case. The selling price is then reduced by an amount equal to 50 percent of the damages, \$1000 here. The buyer in this instance would thus be required to pay \$7000.

*D. Suggested Improvements and Potential for Success in Japan*

Outside of the Tsukiji Fish Market, Japan has a mediocre track record for enforcing regulations on the Bluefin trade, despite having massive access to the fish. Japanese longliners were blamed for causing the stock of Atlantic Bluefin that congregated near Brazil to collapse, and similar complaints have been lodged against the Japanese for the overfishing of both Atlantic and Pacific Bluefin.<sup>119</sup>

Recently, Japan has shown more of a willingness to pass regulations protecting Bluefin, and it remains to be seen whether those regulations will be enforced successfully.<sup>120</sup> If it were inclined, though, Japan could have a massive impact on rebuilding Bluefin stocks. A size limit could likely be implemented more successfully in Tsukiji than in the United States; nearly all caught Bluefin pass through the market, the origins of the fish are easily traceable, and a court is already in place.<sup>121</sup> A fine for entering small fish into the market could be placed on the importers, with the Tuna Court making the decisions on whether the fish is small and juvenile. Such a system would not require any legal training from the judges, and it is reasonable to think that it could work with the same speed and ease as the quality conflicts.<sup>122</sup> Some of the fish imported from the Mediterranean are fattened in farms and would meet the size limit without having been able to reproduce; however, the large, wild-caught fish are the most valuable. This creates an incentive for fishermen to leave juveniles in the water. Such an incentive could have a large impact on stock recovery, and Japan already has the mechanisms in place to enforce it.

III. GOVERNMENT WILLINGNESS TO IMPLEMENT REGULATION

While both countries could successfully enforce regulations that would help improve Bluefin stock worldwide, a major unanswered question is whether or not they actually would. The United States has a relatively good track record of backing strict Bluefin regulations and successfully implementing species-specific fishing regulations.<sup>123</sup> Japan, however, is notorious for failing to support overfished species regulations;<sup>124</sup> it has spoken out against Bluefin protection in the past and has very publicly avoided international guidelines for whale and dolphin hunting.<sup>125</sup> While it is entirely possible that the United States might be willing to take on some responsibility for protecting Bluefin in areas where multinational organizations have failed, the same seems less likely, though not impossible, for Japan.

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<sup>119</sup> Greenberg, *supra* note 11.

<sup>120</sup> In September 2014, Japan announced plans to halve its catch of Pacific Bluefin within the year. It has also recently lobbied to increase cuts internationally. *See infra* notes 168–169 and accompanying text.

<sup>121</sup> For a discussion on the Japanese Bluefin market and “tuna court,” *see supra* Part II.C.

<sup>122</sup> *See supra* notes 100–118 (discussing the process by which quality disputes are resolved in Tsukiji Fish Market’s “Tuna Court”).

<sup>123</sup> *See infra* Part III.A.

<sup>124</sup> *See infra* Part III.B.

<sup>125</sup> *Id.*

*A. U.S. Attitudes Toward Bluefin and Other Species-Specific Regulation*

Although the United States has a history of overfishing certain species, it also tends to implement proper regulations to protect those species. For example, in the 1980s, Americans overfished striped bass, a species native to North America.<sup>126</sup> Consumer pressure to protect the bass became political, and “draconian limits,” catch moratoria, and size requirements were imposed with little resistance and much success.<sup>127</sup>

While the United States certainly contributes its share to overfishing, it does not tend to mount an opposition when experts say protections are needed.<sup>128</sup> For Bluefin specifically, the United States has encouraged multinational bodies to pass stronger protections for years. In 2010, it backed the inclusion of Bluefin on the CITES list of non-traded species because ICCAT did not mandate a sufficiently low quota, according to assistant Interior Secretary for Fish and Wildlife and Parks Tom Strickland.<sup>129</sup> He has also criticized ICCAT for its inability to ensure compliance from member nations.<sup>130</sup> In September 2013, Asia-Pacific fishing nations agreed to reduce catch amounts for Bluefin tuna aged three and younger by 15 percent of the average catch amounts between 2002 and 2004.<sup>131</sup> At that meeting, the United States had proposed and lobbied for a 25 percent decrease, but was later outvoted by Japan’s voting bloc.<sup>132</sup>

Americans themselves also seem quite willing to comply with regulations on threatened fish; when NOAA Fisheries proposed lowering the recreational catch limit on Pacific Bluefin, it was met with little resistance from American sport fishermen.<sup>133</sup> Even though actual catches were already lower than the catch limits in place and the idea that “the plight of the Pacific Bluefin is not of our making” was a prevailing attitude, fishermen showed a willingness to comply with the lower recreational quotas.<sup>134</sup> Sustainable sushi restaurants are now popping up on the West coast, where sushi enthusiasts have started to demand more information about the fish used in their food.<sup>135</sup>

In general, both the U.S. government and U.S. citizens have shown a historical willingness to implement and comply with species-specific fishing regulations when certain stocks are being overfished.<sup>136</sup> It is reasonable to assume that the same consideration will be given to Bluefin in the future, especially in the wake of the stricter commercial Bluefin fishing requirements passed by NOAA in December of 2014.<sup>137</sup> The United States, then, likely has both the ability and the willingness to act in place of multinational governments in protecting Bluefin stocks.

<sup>126</sup> Greenberg, *Why Are We Eating Bluefin Tuna to Extinction?*, *supra* note 80 (comparing the plight and recovery of striped bass to that of Bluefin).

<sup>127</sup> *Id.*

<sup>128</sup> *See infra* notes 133–135.

<sup>129</sup> Reis, *supra* note 8 (highlighting various U.S.-led attempts to pass stricter Bluefin regulations in various intergovernmental bodies).

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> Hendricks, *supra* note 72.

<sup>134</sup> *Id.*

<sup>135</sup> SUSHI: THE GLOBAL CATCH, *supra* note 1.

<sup>136</sup> *See supra* notes 126–127, 133–135 and accompanying text.

<sup>137</sup> *See supra* notes 63–70 and accompanying text.

*B. Japanese Attitudes Toward Bluefin and Other Species-Specific Regulation*

Japan does not share America's largely uneventful history of implementing species-specific fishing regulations. Instead, it is notorious worldwide for its aggressive fishing of threatened species, especially dolphins and whales.<sup>138</sup>

Japan is a member of the International Whaling Commission (IWC), which was set up in 1946 to protect cetaceans, including dolphins and whales, from overfishing.<sup>139</sup> In 1982, whale stocks were so depleted that the IWC passed an international moratorium on the commercial fishing of all whale species.<sup>140</sup> Despite this ban, activists have clashed with Japanese whalers as recently as 2013.<sup>141</sup> Exploiting a loophole in the IWC moratorium that allows nations to issue "scientific permits," Japan hunts approximately 850 minke whales annually as part of a "research whaling" campaign and has killed nearly 14,000 whales for "research purposes" since the moratorium began.<sup>142</sup> In spite of this, the IWC's scientific community found that Japan's research has yet to achieve any stated objectives.<sup>143</sup>

Originally, it appeared that Japan's incentive was to restart commercial whaling, an industry that used to be quite lucrative.<sup>144</sup> A recent report that attempted to disprove the claim that whaling is a cultural and nutritional necessity for Japan, however, found that whale meat popularity was a postwar anomaly that Japan is simply trying to make profitable again.<sup>145</sup> Demand for whale meat in Japan has been decreasing in recent years, especially among young people; 89 percent of Japanese citizens have not bought whale meat in the last year.<sup>146</sup> Consumption of whale meat is at one percent of its peak in the 1960s.<sup>147</sup> The government, however, still subsidizes its whaling fleet and its Institute of Cetacean Research and has diverted 2.28 billion yen<sup>148</sup> from funds helping communities after the 2011 Miyagi Earthquake to support "research whaling, stabilization promotion and countermeasure expenses."<sup>149</sup>

<sup>138</sup> See, e.g., THE COVE, *supra* note 97 (concerning Japan's actions and attitudes toward both whale and dolphin hunting amid international criticism); Julian Ryall, *Japan Struggles to Keep Whaling Alive*, DEUTSCHE WELLE (Feb. 26, 2014), <http://www.dw.de/japan-struggles-to-keep-whaling-alive/a-17457909> [<https://perma.cc/NQ55-PUD6>] (noting Japan's reputation for consistent use of "research" as a pretext for whale hunting) (citing INTERNATIONAL FUND FOR ANIMAL WELFARE, *The Economics of Japanese Whaling* (Feb. 2013) <http://www.ifaw.org/sites/default/files/economics-of-japanese-whaling-japan-ifaw.pdf> [<https://perma.cc/TVZ8-AMKK>] [hereinafter *Japanese Whaling*]).

<sup>139</sup> THE COVE, *supra* note 97.

<sup>140</sup> *Id.*

<sup>141</sup> Ryall, *supra* note 138.

<sup>142</sup> *Japanese Whaling*, *supra* note 138, at 3.

<sup>143</sup> *Id.* at 16.

<sup>144</sup> See Ryall, *supra* note 138; *Japanese Whaling*, *supra* note 138, at 7 (asserting that demand for whale meat in Japan peaked due to war-inflicted grain shortages and a post-war taste for the meat, creating a lucrative, short-lived market).

<sup>145</sup> *Japanese Whaling*, *supra* note 138, at 7.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Japanese Whaling*, *supra* note 138, at 2. Using a conversion rate of \$1.00 = ¥ 80, this amounts to approximately \$28.5 million.

<sup>149</sup> *Id.*

Between 2011 and 2012, the whaling industry attempted to boost income and reduce stockpiles by holding a series of whale meat auctions.<sup>150</sup> Seventy-five percent of the meat went unsold, and schools are now being used to shift stockpiles of unsold whale meat.<sup>151</sup> Despite this, the Japanese government has made no indication that it will back off anytime soon. It continues to provide the industry with generous loans and has stated that it intends to maintain its whaling fleet for the next decade.<sup>152</sup>

The government's attitude toward dolphin hunts is similar, despite international outcry about overfishing and inhumane practices. The IWC should be the body in charge of regulating dolphin hunting, but Japan has repeatedly blocked attempts to restrict its practices, claiming that the IWC doesn't have the competency to deal with small cetaceans.<sup>153</sup> Japan has been accused of paying bankrupt Caribbean nations to join the IWC and vote for the Japanese agenda.<sup>154</sup> Moreover, the Japanese government has built multi-million dollar fishery complexes on every island in the Eastern Caribbean.<sup>155</sup> Some Caribbean environmentalists have stated that the area is becoming a "neon-lit whorehouse" for the Japanese dolphin-hunting agenda.<sup>156</sup>

Of particular concern is the annual dolphin hunt in Taiji, Japan, where thousands of dolphins are killed each year for their meat.<sup>157</sup> Environmental groups that offered money to the local fishermen in Taiji to end their dolphin hunt were turned down because the fishermen conduct the hunt for "pest control."<sup>158</sup> The Japanese government posits that dolphins need to be killed because they are eating too many other fish, a statement that the British IWC delegation said was "hard to take seriously" and the Brazilian IWC delegation said amounts to "biological nonsense."<sup>159</sup>

Another reason offered by the government is that killing and eating dolphins is part of Japanese culture.<sup>160</sup> In larger cities, however, consuming dolphin meat is unheard of because of its high mercury content.<sup>161</sup> The meat is so undesirable that it

<sup>150</sup> *Id.*

<sup>151</sup> *Id.* Although it is unclear why the government has chosen to send unsold whale meat to schools, it is possible that the intention is to develop a taste for whale meat in children and artificially create a larger market for the product. *THE COVE*, *supra* note 97 (asserting that unsold dolphin meat is sent to local schools in Japan to encourage a preference for the meat from a young age).

<sup>152</sup> *Japanese Whaling*, *supra* note 138, at 2.

<sup>153</sup> *THE COVE*, *supra* note 97.

<sup>154</sup> *Id.*

<sup>155</sup> For example, on the island of Dominica, the Japanese government has built a \$22 million fisheries complex with a plaque declaring it a gift from Japan. *Id.* Dominica's motivation for accepting this gift in return for a vote is unclear, as the complex is currently being used to house chickens. *Id.*

<sup>156</sup> *Id.* (statement by former Dominican IWC delegate Atherton Martin).

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *THE COVE*, *supra* note 97.

<sup>161</sup> Testing done on locally caught dolphin meat revealed dangerously high amounts of mercury. *Id.* Historically, some areas of Japan tend to avoid the product because mercury poisoning used to be common in towns that traded in dolphin meat. *Id.*



is often mislabeled as whale meat to be sold in Japanese markets.<sup>162</sup>

Japan's practices in whale and dolphin hunting seem to raise a single question: Why? Neither industry is particularly profitable, the meat itself is not in high demand, and the practices are a "persistent irritant"<sup>163</sup> for Japan's relations in international forums. The government does not even seem interested in putting forth believable explanations for its actions. Some scientists speculate that Japan is attempting to keep the whale and dolphin markets alive because it is concerned about running out of other fish.<sup>164</sup> Atherton Martin, a former Dominican representative of the IWC, posited the theory that Japan's actions are based on "misplaced national pride" that has to do with "remnants of a traditional notion of empire."<sup>165</sup> Essentially, he says that Japan's whale and dolphin hunts are a reaction to being tired of the West demanding that Japan conform to certain standards. This is supported by the executive director of Greenpeace Japan's belief that Japanese propaganda characterizes whaling as a "cultural conflict pitting Japan against outsiders."<sup>166</sup>

Regardless of the reasons why, it is almost undeniable that the Japanese government has shown a reluctance to pass its own species-specific fishing regulations. If the "traditional notion of empire" theory is correct, however, then Bluefin may still have a chance in Japan because of the relatively newfound popularity and high economic value of Bluefin. Tuna sushi did not exist in Japan until 1800; fish with red flesh were originally looked down upon because of how quickly they spoil, according to sushi historian Masuo Yoshino.<sup>167</sup> The Japanese government does not seem to have made statements about Bluefin fishing and consumption being part of Japanese culture, and the fish may be sufficiently unlike dolphins and whales to solicit a different government reaction. Furthermore, Bluefin are far more profitable in Japan than the dolphin and whaling industries, giving both the government and the people a major incentive to ensure its survival.

In September of 2014, Japan announced that it planned to halve its catch of Pacific Bluefin in 2015, with the intention of reducing catches of juveniles.<sup>168</sup> Some newspapers also reported that Japan thought previous cuts agreed to internationally were insufficient, and the government was encouraging other nations to adopt their own cuts.<sup>169</sup> Although Japan's history of species-specific regulation indicates that the country might be unwilling to make up for failures in intergovernmental Bluefin protection, it is also entirely possible that Bluefin have a unique market that the government would be willing to protect.

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<sup>162</sup> The practice of mislabeling dolphin meat in an attempt to make it profitable is rather confusing, as whale meat is only slightly more popular and still has very little demand. *Id.*

<sup>163</sup> Ryall, *supra* note 138.

<sup>164</sup> THE COVE, *supra* note 97.

<sup>165</sup> *Id.*

<sup>166</sup> Ryall, *supra* note 138.

<sup>167</sup> Greenberg, *supra* note 11.

<sup>168</sup> Ian Johnson, *Japan to Halve Bluefin Tuna Catch*, DEUTSCHE WELLE (Mar. 9, 2013), <http://www.dw.de/japan-to-halve-bluefin-tuna-catch/a-17483894> [https://perma.cc/ZS22-SBKR].

<sup>169</sup> *Id.*

## CONCLUSION

Despite totally different makeups, both the American and Japanese Bluefin markets have the mechanisms in place to allow the countries to successfully implement regulations on size and fishing methods. While the governments have taken completely opposite approaches to species-specific regulation in the past, it is still feasible that both will be willing to pass and enforce these regulations, as both have very recently changed their policies independent of any encouragement from multinational entities. Based on the size of the two countries' markets, this bodes well for the future of Bluefin tuna.

The governments themselves, however, cannot be relied on to fix this worldwide problem. The populations of the two countries will likely be called on in the future to contribute to the solution, as they have one thing in common: a seemingly insatiable appetite for Bluefin tuna. It is hardly a question that the populations of each country will be encouraged to eat more responsibly in the future. Whether the consumers, like their governments, will be able and willing to do so has yet to be determined.