

TED Case Studies # 3 [<http://gurukul.ucc.american.edu/ted/TUNA.HTM>]

Tuna Dolphin GATT Case

CASE MNEMONIC: TUNA

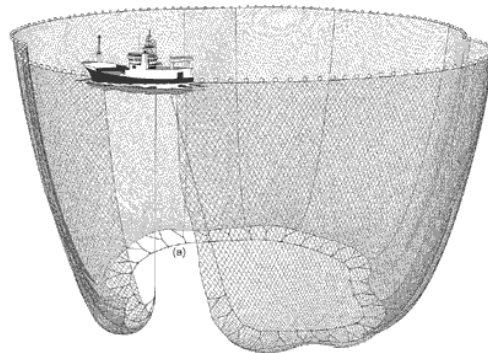
CASE NAME: Tuna Dolphin Case

1. The Issue

The United States *banned imports of Mexican tuna because Mexico had not taken steps to reduce the number of Eastern Pacific Tropical dolphins killed each year due to tuna fishing*. Mexico appealed the case to the General Agreement on Tariffs and Trade (GATT / WTO), where the panel ruled in favour of Mexico. The panel found that the U.S. labelling of "Dolphin Free" tuna did not conform to GATT standards. The case was ultimately solved bilaterally between the U.S. and Mexico.

2. Description

There has been a long history of dolphins being killed in the Eastern Tropical Pacific (ETP). It became significant in the 1950s when tuna fishermen began to exploit the unique relationship that existed between the tuna and the dolphin. In ETP zone, the tuna schools swam below the surface swimming dolphin. The fishermen took advantage of this by developing the *purse-seine net fishing method*. They also used the dolphins to track, chase, and encircle the tuna. Fishermen sealed off any escape routes, catching both the dolphins and the tuna in their nets and many dolphins were killed or injured in this process. While some suffocated due to beak and fin entanglement, others were crushed by the weight of the tuna or by passing through the power blocks during net retrieval.



The kill rate was initially low because fishermen could only encircle a small percentage of the dolphin school. However, with the development of the Puretic hydraulic power blocks and lighter stronger nets, fishermen began to use larger nets. These nets were up to 3/4 of a mile long and over 300 feet deep. This allowed the fishermen to increase their efficiency by encircling a larger percentage of both the tuna and the dolphin herd. With this expansion, fishing in the ETP changed dramatically. The previously used bait boats switched to the purse-seine method, increasing the number of dolphin sets (to focus on the dolphin to find the tuna) and the amount of tuna caught. In 1959, it was estimated that 590 sets were made on dolphins. The following year, this number rose to 5,400 sets and was the highest yellowfin tuna catch per standard day ever recorded.

There were a number of other mechanical changes that also increased the efficiency of the purse-seine fishing technique. First, speed boats were introduced, decreasing the time of the chase. Then, helicopters and fixed wing planes were used to reduce the time used to spot dolphin. These innovations increased the fleets capacity nearly five times in fifteen years. In 1965, the fleet caught 48,673 tons of tuna which increased to 189,426 tons by 1980.

With the increased efficiency, the mortality rates of dolphins escalated. U.S. tuna fishermen realized that their fishing technique could not be used without large numbers of dolphin. The U.S. began to develop methods to reduce the dolphin kills and the injury rates. First, they used the "*backdown method*" in which the vessel would reverse when one-half to two-thirds of the net was retrieved. This allowed the net to sink and the dolphins to escape. Eventually, fisherman also incorporated manned rafts into this procedure to assist them in their escape. Second, finer mesh nets were developed to reduce the chance for dolphin entanglement. Even with fisherman using these techniques the dolphin kill rate remained high. It was estimated that 300,000 dolphin were killed per year.

The public became concerned with these rates, and the U.S. government responded by passing the *Marine Mammal Protection Act (MMPA)* in 1972. This law was intended to reduce the dolphin kills "*to levels approaching zero*" by legally requiring U.S. tuna fishermen to incorporate the techniques described above. Furthermore, the law established a permit system, setting a fixed ceiling for dolphin kills and limiting the taking rate for species that were endangered. To ensure that these regulations were abided by, the *MMPA* also required U.S. vessels to carry official observers to ensure compliance.

The *MMPA* greatly reduced the number of dolphins killed by U.S. vessels. However, the composition of ships also changed, and the total number of dolphin kills did not decline. In the 1960s, U.S. vessels comprised 99 percent of the *ETP* fleet, but by 1986, only 34 of the 103 purse-seiner ships using dolphin sets were registered in the U.S. The remaining 69 consisted of foreign vessels: with 43 from Mexico, 15 from Venezuela, 4 from Vanatu, 2 from Spain and one from the Cayman Islands, Costa Rica, El Salvador, and Panama. The U.S. estimated the kill rates for these ships were two to four times higher (100,000 per year) than U.S. kill rates.

The U.S. became concerned with these high foreign kill rates, and in 1984 it inserted the *Direct Embargo Provision* into the *MMPA*. The goal of this provision was to decrease foreign kills by prohibiting the importation of yellowfin tuna from nations that did not have conservation programs and mortality rates comparable to the U.S.

If countries did not meet these standards the *MMPA* required the U.S. to implement a direct tuna embargo. To further ensure compliance with the *MMPA's Direct Embargo Provision*, the U.S. banned countries that exported tuna to the U.S. caught by other nations that did not comply with the *MMPA*.

In addition to the *MMPA*, the *Dolphin Protection Consumer Information Act (DPCIA)* stated that producers, importers, exporters, distributors, or sellers of tuna products could only include a dolphin safe label if the tuna were harvested in a manner that was not harmful to dolphin. Therefore, tuna caught by purse seine vessels in the *ETP* or tuna taken on the high seas by drift net fishing could not be labeled as dolphin safe.

During the period of 1990/1991, the U.S. implemented tuna embargoes on Mexico, Venezuela, Ecuador, Panama, and Vanatu.