

Brazil Opening Statement to Panel 1

Good morning, Mr. Chairman,

Let us start by thanking you, once more, for all your efforts, as chair of Panel 1, to achieve consensus on a much-needed conservation measure to ensure the recovery of the bigeye tuna overexploited stock, which have been much appreciated. As we stated in our letter, in response to your request for the position of CPCs regarding catch limits, however, we have been very concerned by the lack of reference to the ICCAT criteria for the allocation of fishing possibilities, reflected in ICCAT Resolution 15-13 (previously 01-25), in the ongoing negotiations. So, let us take this opportunity to make our position crystal clear, at the very beginning of this meeting of Panel 1, Mr. Chairman: **Brazil will not accept any quota allocation that is not decided in a transparent manner, taking full account of the criteria this Commission has agreed to, almost 20 years ago, in 2001.** We understand, however, that the literal application of the criteria, in a form of a mathematical equation, despite possible, would probably be too complex and not practical to achieve in the short-term. We fully recognize that, and we are, therefore, flexible on the ways we can collectively find to take the criteria duly into account. But, please, be aware, Mr. Chairman, my delegation will not accept, by any means, the criteria we agreed to 20 years ago to be ignored, as it would be the case, for instance, if a disproportionate weight be given to historical catches. It is very sad, indeed, that we still have to emphasize this, as strongly as we have been doing, but it is quite necessary, unfortunately, since the neglect of the ICCAT criteria is not unprecedented in the rather recent history of this Commission. Much the contrary, the lack of transparency and the disrespect for the rules we have agreed, have forced CPCs to resort to the objection clause, a situation, we hope, won't have to happen again with tropical tunas this year.

Having made our position clear, Mr. Chairman, on the need to respect the ICCAT criteria for the allocation of fishing possibilities in this negotiation, we believe it is useful to also repeat here some historical background that needs to be taken into account in this process, as well as the applicable international law.

The history of the trigger

Let us start by reviving our memories on the history of the trigger for developing States that was included in the conservation measures for tropical tunas. The first time catch limits were imposed for bigeye tuna by the Commission was in 2002, during the 13th Special Meeting of the Commission, by Recommendation 02-01 on bigeye tuna conservation measures, a year after the adoption of the ICCAT criteria for the allocation of fishing opportunities. At that time, the position of the Brazilian delegation was that no exercise of allocation of quotas should happen outside the application of the criteria, then recently adopted, for the allocation of fishing opportunities, as clearly expressed in our opening statement at that meeting: *...the Brazilian Delegation comes to Bilbao convinced that two aspects must be taken into account in all upcoming negotiations: (a) no total allowable catch to be agreed upon should be raised above levels recommended by the Standing Committee on Research and Statistics, and (b) no allocation of quotas should be settled without taking into due consideration the allocation criteria already agreed upon by the Commission.* Both commitments remain fully valid until today, Mr. Chairman. If there is one thing we are proud of in the history of our participation in this Commission, it is our coherence and respect to principles. On that occasion, however, as a compromise not to hinder the urgent need to impose catch limits to Contracting Parties that were already fishing most of the bigeye tuna catches in the Atlantic Ocean and were still increasing their catches, upon the argument that the exercise to apply the ICCAT criteria would not be possible at that meeting due to the shortness of time (very convenient and repeated over and over, by the way), we agreed to Recommendation 02-01. But did so with the clear understanding that the right of developing States to develop their fisheries for bigeye tuna and the consequent need to properly apply the ICCAT criteria for the allocation of fishing opportunities were embedded in Paragraph 3:

3- *The provision of paragraph 1 (limiting the catches) will not apply to Contracting Parties, Cooperating non-Contracting Parties, Entities or Fishing Entities whose reported 1999 catch, as provided to the SCRS in 2000, was less than 2,100 t.*

Brazilian catch in 1999 was 2,024 t, so it should be clear where the 2,100 t figure came from. So, Brazil did compromise with its commitment not to agree on the establishment of catch limits or quotas without the proper application of the ICCAT criteria for the allocation of fishing opportunities, in the benefit of consensus, but did not compromise, and never will, with the right of Brazil, as well as of any other developing State, to develop their own fisheries for such stock, as enshrined by international law. The same exclusion clause was kept in an updated Recommendation adopted in 2004 (Rec. 04-01). In 2009 (Rec. 09-01), that exclusion clause was finally turned into a trigger of 3,500 t, requiring the Commission to engage in a proper quota allocation exercise whenever a developing CPC exceeded that limit:

– For developing coastal CPCs not shown in the Table in 4 a) of the Recommendation [04-01], if the catch exceeds 3,500 t in 2010, an appropriate catch limit shall be established for that CPC for the following years.

The message was again very clear: we would not accept a quota allocation, unless it were done taking duly account of the ICCAT Criteria for the allocation of fishing possibilities.

That clause was then updated in 2011 (11-01), and repeated subsequently:

b) if the catch of bigeye tuna of any developing coastal CPC not listed in paragraph 11 above exceeds 3,500 t for any one year, a catch limit shall be established for that developing CPC for the following years. In such a case, the relevant CPC shall adjust its fishing effort so as to be commensurate with their available fishing possibilities.

So, the trigger was **NOT** created **TO LIMIT** the capacity of developing states to develop their own fishery for bigeye tuna, which would not only have been unfair but unlawful according to UNFSA and other instruments of international law, but to avoid a full-fledged exercise of properly allocating the fishing possibilities by duly applying the criteria agreed by the Commission, due to an alleged lack of time and/or commitment by CPCs.

The international law

Mr. Chairman, to properly frame the forthcoming negotiations on the bigeye tuna quotas it is also fundamental to recall the legal background of international law. Starting with the United Nations Convention on the Law of the Sea- UNCLOS, Article 116, on the rights to fish on the high seas, establishes that **all States have the right for their nationals to engage in fishing**, but subject to, inter alia, the rights and duties as well as **the interests of coastal States**. In Article 119, on the conservation of the living resources of the high seas, UNCLOS states that in determining the allowable catch and establishing other conservation measures for the living resources in the high seas, States shall take measures which are designed, on the best scientific evidence available to the States concerned, to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, **including the special requirements of developing States**. The same article also requires the States concerned to ensure that conservation measures and their implementation **do not discriminate in form or in fact against the fishermen of any State**.

In the United Nations Fish Stock Agreement, there is an entire section, Part VII, on the special requirements of Developing States, including Article 24, obliging states to take into account, in particular, the vulnerability of developing States which are dependent on the exploitation of living marine resources, including for meeting the nutritional requirements of their populations; the need to avoid adverse impacts on, and **ensure access to fisheries by, subsistence, small-scale and artisanal fishers** and to ensure that conservation and management measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing States. In Article 25, it requires all States to cooperate, inter alia, to enhance the ability of developing States, to conserve and manage straddling fish stocks and highly migratory fish stocks and to develop their own fisheries for such stocks; **and to enable**

them to participate in high seas fisheries for such stocks, including facilitating access to such fisheries. That article is reiterated in Article 5 of the FAO Code of Conduct for Responsible Fisheries, which, in its Article 7, also calls upon States, when adopting conservation and management measures, to take into account the interests of fishers, including those engaged in subsistence, small-scale and artisanal fisheries. The FAO Conference, in its resolution adopting the Code, also URGED all States, in implementing its provisions, to take into account the special requirements of developing countries.

In 2014, the FAO Committee on Fisheries adopted the Guidelines for Securing Sustainable Small-Scale Fisheries, which, among over a hundred paragraphs recognizing the importance of small-scale fisheries to food security and poverty alleviation, calls upon States **to adopt measures to facilitate equitable access to fishery resources for small-scale fishing communities, including, as appropriate, redistributive reform.**

In the United Nations General Assembly Resolution 66/288, on the Future we Want, United Nations Member States not only urged the identification and mainstreaming of strategies that **further assist developing countries, in developing their national capacity** to conserve, sustainably manage and **realize the benefits of sustainable fisheries,** but also committed themselves to observe the need **to ensure access to fisheries and the importance of access to markets, by subsistence, small-scale and artisanal fisherfolks and their communities, particularly in developing countries.** More recently, member States of the United Nations agreed on the Sustainable Development goals, requiring States, in Goal 14b, explicitly **to provide access for small-scale artisanal fishers to marine resources** and markets, a requirement that was just reiterated by the 33rd FAO Committee on Fisheries, as reflected in Paragraph 66, of the report of the meeting that happened in July, last year.

Finally, in the ICCAT Criteria for the Allocation of Fishing Possibilities, the Commission agreed, when allocating fishing possibilities, to take into account: 7) The distribution and biological characteristics of the stock(s), including the occurrence of the stock(s) in areas under national jurisdiction and on the high seas; 8) the interests of artisanal, subsistence and small-scale coastal fishers; 9) the needs of the coastal fishing communities which are dependent mainly on fishing for the stocks; and 11) the socio-economic contribution of the fisheries for stocks regulated by ICCAT to the developing States.

All the legal background provided above, therefore, Mr. Chairman, make the priority treatment that should be given to small-scale fisheries and developing coastal States very clear, with many solid reasons for that. One of them is the lack of a strong domestic market that makes these nations much more vulnerable to unilateral trade sanctions, like the one Brazil is presently suffering, unjustly and unfairly, due to technical allegations. We are not prohibited to export only seafood from capture fisheries, but all seafood, including from aquaculture activities. But this is not unprecedented. We have faced technical barriers to trade in the past, such as the obligation to have every lot of swordfish tested for histamine by High-Performance Liquid Chromatography. In the case of small-scale fisheries, their vulnerability is also directly linked to their lack of mobility, differently from large industrialized fishing vessels that can easily move from one region to another, even between different oceans, as indeed happens quite often. Fishing communities can't move that way and depend ultimately on the fishery resources they fish for food security. By giving priority to small-scale fisheries we are, therefore, protecting livelihoods, not profits.

The present distribution of quotas

Presently, bigeye tuna quotas are distributed among 7 CPCs, which together (57,762 t) accounts for 89% of the TAC of 65,000t. If we consider the priority treatment that should be given to a) coastal States; b) developing States; and c) artisanal and small-scale fisheries, we would realize that, presently: a) 63% of the quotas are given to distant water fishing nations; b) 83% are given to developed countries; and c) almost 100% is given to industrialized fisheries. This quota distribution is, clearly, not only unfair and unequitable, but definitely not in conformity with international law. That is CLEAR, Mr. Chairman.

CPC	Annual catch limits for the period 2016-2018 (t)
China	5,376
European Union	16,989
Ghana	4,250
Japan	17,696
Philippines	286
Korea	1,486
Chinese Taipei	11,679
Total	57,762

Referring specifically, Mr. Chairman, to the quota expectation you requested from CPCs in your letter, and recognizing that historical catches is one of the criteria adopted by ICCAT (4. Historical catches of qualifying participants), Brazil is prepared to accept the history of catch in the past 5 years as a basis (but by no means 10 years), if and only if, the criteria related to the presence of the stock in the EEZ of the country, if the CPC is coastal or not, the nature of the CPC, if it is developing or not, and the nature of the fishery, if it is artisanal/ small scale or not, to a minimum, also be taken into account. Considering the average catch in the past 5 years, one of the simplest ways to achieve that would be, for instance, to add to that mean catch 10% if the CPC is coastal, plus 10% if it is a developing State and plus 10% if the fishery is artisanal/ small scale. Considering the average catch of Brazil in the past 5 years, equal to 6,550 t, for example, and adding to it 10% for being coastal (7,205.0 t), 10% for being a developing State (7,925.5 t) and 10% for having an artisanal fishery (8,718.0 t), this would bring the figure of our expectation to **8,718t**. Curiously, that level is very close to the average of the 7 countries with the largest mean catches over the past 5 years, which equal 8,756 t, and compared to those 7 countries Brazil ranks 4th, which clearly shows our commitment to a fair quota allocation.

For 60 years Brazil has struggled to develop its tuna fisheries, without much success, except for the coastal fishery for skipjack. Finally, through an unexpected and surprising manner, Brazilian artisanal fishers themselves, with no help from the government or research institutions, found an efficient way to participate in the fishery for tropical tunas. This is a fishery done by artisanal boats, with a wooden hull, most of them from 12 to 16 m total length. All the fishing is done by handline and, therefore, the fish is caught one by one, with almost no bycatch or impact on the marine ecosystem. Most of the boats are owned by the fishers themselves, whose whole asset in life is the boat they own. This fishery is not about making profit, Mr. Chairman, it's about making a living; it is not about an economic enterprise, it's about livelihoods and fishing communities, who are striving to feed their families. It's about food security and nutrition. This is a small-scale fishery of a coastal developing State. We really hope we meant everything we have agreed in international law and instruments along the past half a century, since 1973, when the first United Nations Conference on the Law of the Sea was held, and that, consequently, the rights of Brazilian small-scale fishers be respected and reflected in a meaningful participation in the quotas that will be allocated. We are coming to the Panel 1 meeting, as usual, in a very positive and constructive mood, but we will not accept that our legitimate right to develop our own fishery for tropical tunas, as a developing coastal state with an artisanal fishery, be denied. We are prepared to negotiate quotas, but we will not negotiate principles or rights, already fully recognized by international law. This is our standing regarding the quota allocation, Mr. Chairman.

Regarding the TAC, we stick to the same position Brazil has had since ever in the Commission, clearly spelled out in our opening statement back in 2002, in Bilbao, already referred in this document: *No total allowable catch to be agreed upon should be raised above levels recommended by the Standing Committee on Research and Statistics.*

Despite the unnegotiable defense of our legitimate right as a developing coastal State with an artisanal fishery to develop our fishery for tropical tunas, we fully share the SCRS concerns over the critical situation of the bigeye tuna stock and consequently we have been doing our share of sacrifice to reduce our catches and better manage this fishery. Since November 2017, the Brazilian Government started to take very serious measures to improve our governance of this fishery, having published nothing less than four normative instructions, as listed below, only in the past year. These mandatory rules, among other things **FROZE** Brazilian fishing capacity for **ALL tuna species** (P. 89), **prohibiting the publication of any new fishing licenses, including licenses for building new fishing boats, for any modality of fishing methods targeting tunas or tuna-like species**, while the number of artisanal **boats authorized to fish with handline in associated schools was limited to 250** (a reduction close to 20% of the previous level). More recently, after a public call establishing the conditions for issuing the new fishing licenses to this new modality of fishing, **the number of authorized boats was FURTHER reduced to 152**, which is about **HALF** of the previous number (about 300). Besides, by the Normative Instruction 44, the ports that will be allowed to land tunas in the entire country will be restricted, so that monitoring will be greatly facilitated. Due to the measures adopted by the Brazilian Government since 2017, **our catches of bigeye tuna were reduced from 7.258t, in 2017, to 5.096 t, in 2019, a reduction of 30%**, one of the largest among **ALL CPCs**. Of the 20 CPCs with catches above 100 t in 2018, by the way, only 10 reduced their catches, while the other half increased. Besides, about half a million American dollars (US\$ 500,000.00) were invested in research, with a priority given to tropical tunas. All this has required a tremendous effort from the Brazilian Government and an enormous sacrifice by the Brazilian fisheries sector, showing, without a shadow of a doubt, we hope, Mr. Chairman, the strength of our commitment for the conservation of the Atlantic bigeye tuna. Be assured, Mr. Chairman, this commitment is only paralleled by our commitment to defend our legitimate fishing rights, as a developing coastal State with an artisanal fishery for bigeye tuna.

Thank you.

Recent management measures taken by the Brazilian Government regarding the fishery for tropical tunas

1) 09/11/2018: Portaria interministerial 59A

- ↪ Prohibits the use of FADs to fish for tunas;
- ↪ Prohibits fishing in the vicinity of oceanographic buoys at distances less than 200m;
- ↪ Prohibits tying the fishing boat to oceanographic buoys;
- ↪ Makes the use of VMS mandatory to all boats fishing for tunas larger than 10 m (to be enforced on 09/11/2019);
- ↪ Limits the number of boats authorized to fish with handline in associated schools to 250, with the process of establishing the new license and licensing all the interested boats to be completed within one year (until 09/11/2019);
- ↪ Makes the authorization to fish for tunas with handline in associated schools exclusive, i.e. boats that are authorized to fish with such a permit can't have any other fishing license;
- ↪ Limits the amount of bycatch of boats authorized to fish with handline in associated schools to 20% of the total catch (it prevents using the fishing license to other fishing modalities);
- ↪ Establishes the obligation for all fishing boats authorized to fish for tunas and tuna-like species to land their catches in specifically authorized ports.

2) 09/05/2019: Portaria SAP/MAPA 89:

- ↪ Prohibits the emission of any new fishing licenses, including licenses for building new fishing boats, for any modality of fishing methods targeting tunas or tuna-like species, except BAFHAS (already frozen at 250, by Portaria 59A).

3) 02/10/2019: Instrução Normativa 44, plus Edital

- ↪ Calls for all ports interested to be authorized to land tunas and tuna-like fish to send all required documentation;
- ↪ Calls the owners of fishing boats interested to have a specific license to fish for tunas by handline in associated schools to present their documentation until 18/10/2019 (including proof of delivery of fishing logsheets), for the specific fishing licenses to be published by 02/11/2019.

4) 04/11/2019: Portaria 5.174

- ↪ In response for a call to boat owners to issue a specific license to fish for tunas by handline in associated schools (Normative Instruction 44), the Brazilian Government authorized only 152 fishing boats, a number that is about HALF of the present fleet of 300 boats.

Complementary measures:

1) Jan. 2018:

The Brazilian Government invested about US\$ 500,000.00, in a time of extremely harsh economic situation, for 2018-2019, on the scientific subcommittee of the Standing Committee for the Management of the Tuna Fisheries to undertake several scientific studies on tunas caught by Brazilian vessels, with priority to tropical tunas, and active participation in ICCAT Scientific Projects, including the AOTTP, Sharks, billfishes and Swordfish.

2) June 2019:

The Brazilian Government approved a National Plan for the Management of the Tuna Fisheries.