

The Convention for the Conservation of Southern Bluefin Tuna: Examining State Behavior
under Binding and Nonbinding Accords

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Introduction

In the relatively young realm of international environmental politics, there is a great deal to learn about the most effective and efficient ways in which to mitigate the world's increasing number of environmental problems. Treaties have proven to be a popular mechanism for addressing many of these issues, yet though the number of international environmental treaties has grown significantly in recent years, relatively little work is being done to evaluate whether or not these supposed solutions are in fact effective. In many ways, this analysis is as important as the establishment of treaties themselves, because without it, it is difficult to know if progress has been made. Or, if progress is obvious, it is difficult to know what has caused it. Furthermore, it is important to know not only which agreements are effective, but why. Knowing which elements of an agreement positively influence actors' behavior, and under which circumstances and conditions, not only allows us to adjust techniques to better improve the situation at hand, it allows for other environmental problems to be addressed more effectively. In light of this, this paper will assess the effectiveness of a specific treaty, The Convention for the Conservation of Southern Bluefin Tuna (CCSBT), and how the factors influencing behavior in tuna regulation can contribute to theoretical knowledge of international treaty effectiveness. Specifically, in exploring whether the CCSBT influenced member behavior, I will examine the effectiveness of nonbinding agreements, assessing whether an accord needs to be legally binding in order to effectively influence actors' behavior.

The CCSBT came into effect in 1994 with a goal to “ensure, through appropriate management, the conservation and optimum utilisation of the southern bluefin tuna” (CCSBT 1994, Article 3). Since bluefin harvests peaked in the early 1960s, harvest and population levels

had dropped steadily due to overfishing (See Graph #1). However, bluefin management began not with the CCSBT, but with an informal agreement between Japan and Australia, the major fishing states, and New Zealand, that established voluntary harvest quotas (Cascorbi 2003, 14). When the CCSBT was adopted, the fishing behavior of these states had already changed, with catches remaining relatively close to their 1990 levels, the year when quotas had last been adjusted (See Graph #2). As Graph #2 indicates, the behavior of these states appears to have remained relatively unchanged since 1990, making it difficult to assess whether this behavior can be attributed to the CCSBT or its nonbinding predecessor. While it is clear that the CCSBT did not cause the *change* in states' behavior, it is possible that without it the behavior could not have been *maintained*. However, in assessing the individual non-agreement related and agreement-related factors that may have influenced this behavior, it is evident that the CCSBT itself has done little to affect the fishing behavior of Japan, Australia, and New Zealand. While there is evidence that the CCSBT had more of an influence on members that later joined the treaty, such as Korea and Taiwan, ultimately the CCSBT has done little to influence member behavior.

After beginning with a brief overview of terms used throughout the analysis, I will summarize and examine the scholarly discourse on the effectiveness of nonbinding agreements. From there, I will attempt to apply these ideas to the regulation of bluefin harvests, ultimately setting up the argument that, based on fishing states' behavior in relation to nonbinding and binding regulatory agreements, nonbinding agreements have merit and can significantly influence actors' behavior, although this influence may have some limitations. I will then offer a more in depth look at CCSBT member states' behavior in preparation for an examination of independent variables that may, or may not, explain this behavior. In examining these variables

and the extent to which they influenced behavior, I will illustrate that members' behavior was not, for the most part, significantly influenced by the CCSBT. I will then examine whether the factors that influenced members' behavior are characteristic of a nonbinding agreement, asserting that many of them are. Finally, I will reevaluate and reiterate my findings and conclude with a brief discussion of their significance.

Definitions

Throughout this analysis, the terms “nonbinding” and “informal” will be used to characterize agreements in which a party's failure to comply is not grounds for judicial action (Schacter 1977, 300). Conversely, the terms “binding” or “formal” will be applied to agreements, such as the CCSBT, in which parties have consented to be legally bound to behaving in a given way or to pursuing a given goal. For the purposes of this analysis, the terms nonbinding and binding will be applied based on agreements' intentions and not on their actual capacity to legally enforce compliance or respond to noncompliance (Raustiala 2005). The term “original members” refers to CCSBT founders, Australia, Japan, and New Zealand, while “late members” refers to Korea and Taiwan who have since joined the treaty.

Theoretical Exploration: Assessing the Effectiveness of Nonbinding Agreements

In evaluating the extent to which fishing states' behavior was affected by the CCSBT, I will explore the theoretical question of whether or not an agreement needs to be binding in order to effectively influence actors' behavior. It is generally acknowledged that nonbinding accords are often precursors to binding ones (Abbot et al. 2000, 412) and examining the behavior of

bluefin fishing states will shed light on whether this shift is necessarily substantive or largely semantic. To what extent are states' actions determined by the legal legitimacy of the agreement to which they are party? In terms of bluefin overfishing, did the adoption of a binding agreement (the CCSBT) make a difference in terms of fishing states' behavior? Because the situation involving the over-fishing of bluefin tuna has been characterized by both a nonbinding agreement, in which members voluntarily adhered to catch quotas, and a binding treaty, which includes members that were not party to the informal arrangement, it provides an opportunity to address this issue.

Scholars have done relatively little in depth research specifically on the subject of binding versus nonbinding agreements and few have made generalized theoretical assertions as to whether nonbinding agreements are effective and under what circumstances (Mitchell 2001, 510; Brown Weiss 1997). However, many scholars recognize that nonbinding agreements have the potential to effectively influence member behavior. Kal Raustiala, one of the few who has engaged in this discourse, acknowledges this influence potential in noting that legality "is neither a necessary nor a sufficient cause of change in state behavior" (Raustiala 2005, 589-590) This idea is echoed by Oscar Schacter who suggests that "it is possible and reasonable to conclude that states may regard a nonbinding undertaking as controlling" (Schacter 1977, 300), and Edith Brown Weiss who asserts that experience indicates that "countries under some circumstances may comply with legally nonbinding instruments as well as they do with binding ones" (Brown Weiss 1997, 1).

While scholars generally agree that nonbinding agreements have potential, what constitutes this potential and how it compares to that of binding accords is less clear. Raustiala,

who acknowledges that empirical examples are limited (Raustiala 2005, 613), argues that nonbinding agreements are likely to be more effective than binding ones when the situation at hand is characterized by high uncertainty and governments are “especially cautious” (Raustiala 2005, 612). If this is true, then we would not necessarily expect a nonbinding agreement to have been a *more* effective option than a binding one in the case of the bluefin tuna. The problem of over-fishing is relatively common and does not involve a great deal of uncertainty in the sense that indicators of population decline are fairly obvious to fishing states. However, because overfishing is a Tragedy of the Commons situation, the solution is contingent on the commitment of all relevant fishing states (Mitchell 2007, 906). This may make states wary of entering a binding agreement if they cannot be sure of the reliability of other actors (Raustiala 2005). Also expanding on the idea that nonbinding accords have potential, Peter Haas notes that “if compliance is a matter of choice, then there is little difference between whether the obligation is nominally binding or nonbinding” (Haas 1997, 23). This assertion suggests that if states have the capacity to comply, their actions are less likely to be affected differently by a binding agreement than a nonbinding one. Though they may be reluctant for economic reasons, as industrialized states, each member involved in the overfishing of bluefin tuna seems to have the capacity to comply, suggesting that in this situation an effective agreement could be nonbinding. While some scholars, notably realists, argue that compliance and behavior change occur largely through coercive mechanisms such as sanctions, which are present only in binding agreements (Jacobson and Brown Weiss 1998, 542; Haas 1997, 26), coercive measures are only one way to influence behavior (Raustiala 2001, 4). In light of scholarly perspectives regarding binding and nonbinding treaties, as well as the variables influencing members’ behavior, I argue that the regulation of

bluefin tuna harvests illustrates that nonbinding agreements can be as effective as binding ones.

Examining “bindingness” as a single independent variable that explains states’ behavior is not feasible, particularly since original member behavior remained largely the same following the adoption of the CCSBT. The shift between agreement types alone does not provide enough information to accurately assert that this stagnation was or was not the result of the implementation of a binding agreement. Therefore, I will attempt to examine the effectiveness of nonbinding accords using a piecemeal approach, exploring several of the independent variables that could possibly explain members’ behavior. Assessing the extent to which these variables explain actors’ behavior, and assessing whether they are most characteristic of the informal agreement or of the CCSBT, will shed light on the general effectiveness of nonbinding agreements. This approach allows for the accumulation of empirical evidence as to why nonbinding agreements have the potential to be effective and helps illustrate under what circumstances this potential is most likely to be realized. Among the agreement-related variables that may explain both original and late members’ behavior are the availability of relevant scientific information, harvest quotas, monitoring mechanisms such as self-reporting, and the establishment and proliferation of behavioral norms.

Case Selection

This analysis of CCSBT influence focuses on the behavior of two groups: original members and late members. Original members, which consist of Japan, Australia and New Zealand, founded the CCSBT in 1993 and were party to the preceding informal agreement that began in 1986. Late members consist of Korea, who joined the Commission in 2001, and

Taiwan, who joined the Extended Commission in 2002. Though other entities such as the Philippines, South Africa, and the European Community have become Cooperating Non-Members in recent years, their behavior will not be examined as their harvest levels are quite low in comparison and they are not formally party to the agreement. The majority of the emphasis will be placed on the behavior of original member states as they were party to both the voluntary agreement and the CCSBT itself, as they have been party to the CCSBT for longer and thus more supply more treaty-related, and as they do the vast majority of bluefin harvesting. Late members' behavior, though it is somewhat harder to analyze, will be used both to compliment the examination of original members' behavior and provide insight, where appropriate, into the suggested claims.

Dependent Variable

As the CCSBT seeks to influence the fishing of member states, I am using reported harvest levels of southern bluefin tuna, both before and after the treaty took effect, as the indicator of treaty influence. If the treaty has influenced member behavior, we would expect it to be reflected in the harvest levels of member states after the adoption of the agreement. The behavior that I am attempting to explain is the relative stagnation of original member states' total harvest that began in approximately 1990 and continues through the present (See Graph #2). This recent behavior reflects a marked shift in the historical harvesting practices of these states. As explained above, beginning in 1986, Japan, New Zealand, and Australia began setting voluntary harvest quotas (Cascorbi 2003, 14). When the CCSBT was first implemented in 1994, the harvest quotas and total allowable catch (TAC) set by the Commission were a continuation of the (voluntary)

1990 levels (Cascorbi 2003, 14). The change in original member behavior appears to be caused not by the treaty itself, but by states' adherence to the voluntary and informal agreement that preceded it. It is possible however, that the CCSBT resulted in the continuation of this apparent harvest stagnation, although as mentioned above, I ultimately argue that it did not.

Possible Independent Variables

Tuna Population

In order to proceed with an analysis of whether fishing states' behavior was affected differently by the CCSBT itself than by the informal agreement, it is necessary to ensure that the observed behavior was not the result of factors independent of either of these accords. One possible non-agreement related variable is the bluefin population. The southern bluefin tuna fishery is a "Tragedy of the Commons" situation, which suggests that without an agreement of some kind, state will harvest as much tuna as they are able (Mitchell 2008). If there were no agreement or if the agreement was ineffective, and states were maximizing their harvests, then we could expect catch levels to correlate to population levels. Given this, it is possible that observed harvest levels by fishing states are indicative of the tuna population and that the apparent stagnation of harvest levels is the result of a leveling in tuna population.

The United Nations estimates that approximately ninety percent of the southern bluefin tuna population has been depleted since the 1950s (Donaldson et al. 2007). This decline is reiterated in Graph #5, which depicts the average number of tuna retained compared to the average number of hooks used. While the average amount of effort (number of hooks) has remained fairly stable over the years, the average catch has dropped significantly, suggesting that

the population has as well. As Graph #1 illustrates, this decline in population was mirrored by a decline in annual tuna harvests. Given this obvious historic correlation between harvest levels and population size, if population is the cause of the stagnation in original member harvest levels after 1990, then the amount of tuna during this time must have remained stable. However, given the logic suggested by the Tragedy of the Commons, it is likely that without an agreement inhibiting catch, states would have continued to fish to their full capacity. As a result, population levels would presumably have decreased even further instead of remaining stable. Therefore, it is highly unlikely that the observed behavior of member states is the direct result of tuna populations.

Market Price

A second possible independent variable unrelated to an agreement is the price of fish. We may expect to see shifts in harvesting behavior that correspond with shifts in fish prices. For example, if the price of fish is high, the earning potential is high and it might make sense for harvest levels to increase. Conversely, if the price of tuna decreases, harvest levels might follow. Using this logic and the observed behavior of original member states, we would expect that the market price of tuna would be both relatively stable from the late 1980s to the present and that it would be low in comparison to historical amounts. There are several indicators, however, that price is an unlikely explanation for states' fishing behaviors, including the fact that both demand and prices for southern bluefin tuna have risen significantly in recent years (Harden 2007, A01). It appears more likely that prices have risen as a result of less harvest, than it does that harvests have leveled off because of stagnating prices. Indicative of this is the twenty percent rise in

Japanese wholesale tuna prices between 2006 and 2007, which is just one example of the market's general upward trend (Harden 2007, A01). In fact, instead of offering an alternative explanation, bluefin market prices may support the idea that agreements, whether formal or informal, had some effect on states' behavior. As prices have risen in recent years, we might expect states to avoid joining regulatory agreements that limit the amount of fish they can catch, in hopes of maximizing their profits. However, this has not been the case. States, such as Korea and Taiwan, have recently become party to the CCSBT despite opportunity for greater profit.

Scientific Information

One possible treaty-related independent variable is the scientific research generated by the CCSBT on the southern bluefin fishery. It is possible that the findings of the Scientific Committee (SC), which was established under the CCSBT to analyze bluefin population trends, conduct research on bluefin tuna, and make recommendations to the Commission concerning the optimal management of tuna populations, and the Advisory Panel, which has similar functions as the SC but is comprised of external experts, have impacted the amounts of fish being caught by member nations (CCSBT 1994, Article 9-2). Specifically, as these groups recommend quota levels to the Commission, based on their knowledge of populations, we would expect quotas, and thus behavior, to reflect the scientific information generated as a result of the treaty. However, this does not necessarily seem to be the case. The CCSBT quotas remained at pre-treaty levels for several years, despite suggestions by the Peer Review Panel that quotas be lowered to take non-member catches into account (1998 Peer Review Panel, 1). Similarly, there is much evidence that tuna populations are still being over-fished (Mcghee 2004; Bureau of Rural

Sciences 2006, 101), which suggests that member behavior cannot be attributed to considerable influence from the scientific community, who presumably advises against the over-fishing of tuna.

Even assuming that science has impacted behavior, which seems likely on some level, especially given that management was initially established due to indicators that stocks were being overfished (Bureau of Rural Sciences 2007, 104), it would be difficult to distinguish if this behavior was a unique result of the CCSBT. Prior to the SC, the informal Committee of Trilateral Scientists "had been conducting analyses and coordinating research on southern bluefin tuna from 1982 to 1994" (1998 Peer Review Panel, 7), which suggests that scientific influence did not change, at least dramatically, with the implementation of the CCSBT. Without the adoption of the CCSBT, it appears likely that scientific research of populations would have continued and influenced member behavior in ways similar to the SC. The apparent stagnation in original member harvest levels does not seem to be the result of the CCSBT's emphasis on scientific research.

Quotas

While the apparent stagnation in original member harvest levels since 1990 does not appear to be the result of fish populations and market price, and does not seem to correlate directly with the availability of scientific information, quotas do seem to have had a direct influence on member behavior. As Graph #6 indicates, Japan's reported behavior in recent years correlates directly with its harvest quotas. Furthermore, the stability in harvest levels of original member states in general, which begins in approximately 1990 (See Graph #1), corresponds with the

issuance of quotas, which until the 2007 halving of Japanese catch limits, remained at the 1990 levels. From 1990 to 2006, with the exception of 1998 to 2002, when agreements on quotas could not be reached, the total allowable catch (TAC) was set at 11,710 metric tonnes for original member states. Examining Graph #1, this corresponds roughly with the total catches during these years. The idea that member behavior was affected by quotas is supported in that historically, stagnating harvest levels have not been seen and are not compatible with a Tragedy of the Commons scenario. Therefore, a limiting factor, such as quotas, must have caused this behavior. As further proof, as is evidence in Graphs #3 and #4, Korea and Taiwan were fishing during this period as well. This means that there were other fish to be caught and that original member behavior is the result of regulation.

While quotas can certainly be considered the direct influence of reported original member behavior, quotas existed under both the informal agreement and the CCSBT, making it difficult to tell whether the CCSBT caused behavior that would not have otherwise taken place. Therefore, it is necessary to examine other variables that can explain states' behavior, and more specifically, can explain states' apparent compliance with quotas.

Self-Reporting

An agreement-related factor that may explain the apparent maintenance of stagnate harvest levels is the requirement under the CCSBT that each state report the numbers of tuna they harvest to the Commission. Requiring the reporting of each member's harvest seems as though it would help to ensure that member states do not exceed their quotas, and in turn maintain stable harvest levels. Jacobson and Brown Weiss contend that "sunshine methods," such as self-

reporting, are particularly likely to be effective in situations in which the member states are both inclined and have the capacity to adhere to the treaty (Jacobson and Brown Weiss 1998, 548). The CCSBT is a treaty in which the original members seem to fit this mold. While it is difficult to estimate the extent to which self-reporting can explain this behavior, the role of norms, which is discussed below, suggests that it certainly plays a role. In 2006 Australia consented to an independent review, which found that it has neither under nor over-reported its catch over the years (Bureau of Rural Sciences 2006, 106). While this compliance with regulatory mechanisms is not empirically linked to behavioral change, it does suggest that states can and do take self-reporting seriously. That Japan under-reported its catch for approximately twenty years, however, illustrates that self-reporting requirements are not always effective at influencing member behavior (Bureau of Rural Sciences 2006, 105). Despite this, it seems likely that self-reporting helped to maintain stable harvest levels. However, states self-reported under both the voluntary regulatory agreement and the CCSBT. Additionally, states self-reported in the same ways. For example, Japan under-reported their catch under the informal agreement just as they did under the CCSBT. This illustrates that the self-reporting mechanism was no more or less effective under the CCSBT than it was under the nonbinding agreement. Therefore, while self-reporting may be a factor in the maintenance of stable harvest levels, it cannot be used to suggest that the adoption of the CCSBT can be credited with the maintenance of these harvest levels.

Norms and Perceptions of "Appropriate" Behavior

The final independent variable that I will explore is the role of norms, which appears to be a significant factor influencing the behavior of states. While the establishment of fishery

management, namely quotas, was likely provoked more by science and the obvious decline in populations than obligations on the part of states to “do what is right,” it appears that the regulation of tuna fishing resulted almost immediately in a re-identification of what behavior was considered appropriate (Mitchell 2007, 907). For example, it was discovered in 2006 that Japan had been under-reporting its total catches for the past twenty years (Bureau of Rural Sciences 2006, 105). This means that Japan began “cheating” almost as soon as *voluntary* quotas were implemented. This suggests that although it was reluctant and unwilling to change its behavior, by intentionally hiding its actual behavior, Japan acknowledged that over-fishing had become inappropriate. If no norm had developed, Japan would likely not have been concerned about violating an informal and completely voluntary accord. While perhaps the establishment of behavioral norms did not go as far as to change Japan’s behavior, at least to the extent required by the agreements, this example illustrates the potential norms have to shape actions. For example, from 1998 to 2002, the Commission failed to agree upon harvest quotas. However, both Australia and New Zealand voluntarily opted to adhere to their 1997 limits. Such examples illustrate that the observed behavior of original member states was influenced by norms and a sense of appropriate behavior.

Edith Brown Weiss notes that nonbinding agreements “create an expectation that may shape behavior” (Brown Weiss 1997, 3). The CCSBT, which as I have illustrated is largely the same as its voluntary predecessor, may be a manifestation of this “expectation.” The establishment of an official treaty, though it is for all intents and purposes very similar to the unofficial one, may have in some ways solidified a standard of behavior established by the voluntary agreement. It is this formal establishment of the norm which may have induced other states to finally become

party to the agreement. Mitchell notes that as norms become stronger “it becomes increasingly difficult to maintain an interest-based, rather than a norm-based” approach (Mitchell 2007, 907). As tuna fishing began to be carried out more and more within the context of regulation, states such as Korea and Taiwan may have felt pressured to operate within that context as well.

Evaluation of the CCSBT’s Influence on Member Behavior

With the exception of being a legally recognized agreement, the CCSBT is essentially a continuation of the practices exercised by its nonbinding predecessor. Other than the likelihood that the implementation of a formal agreement encouraged the accession of late member states, there is no one characteristic of the CCSBT that suggests that member states, particularly original member states, are behaving differently under the treaty than they would have under the informal agreement. Factors that have been determined as influences of states’ behavior, such as quotas and self-reporting do not suggest that the CCSBT has been more influential, largely because these practices existed under the nonbinding agreement as well. In the case of norms, which appear to have had a significant influence on states’ behavior, only the idea that the adoption of the CCSBT signaled a solidification of a concept of “appropriate” behavior, is unique to the treaty itself. This is not to say that the CCSBT is fundamentally flawed or even ineffective, rather it simply does not appear to be causing most major fishing states to behave in ways that they would not have under the informal agreement. Certainly, had the CCSBT had no predecessor, we would expect it to be much more effective in influencing member behavior. Additionally, this is not to say that the CCSBT will not be a more effective influence on states’ behavior in the future, particularly as more institutions, such as its Trade Information Scheme,

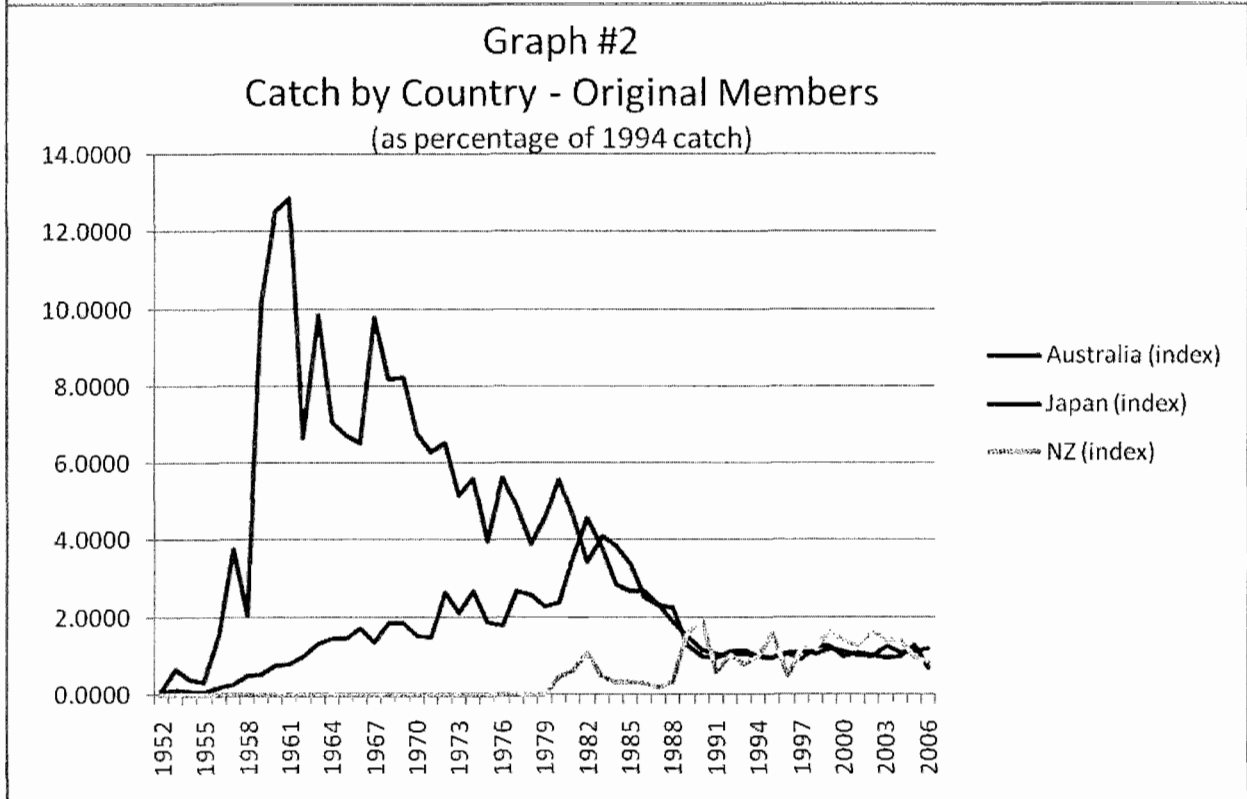
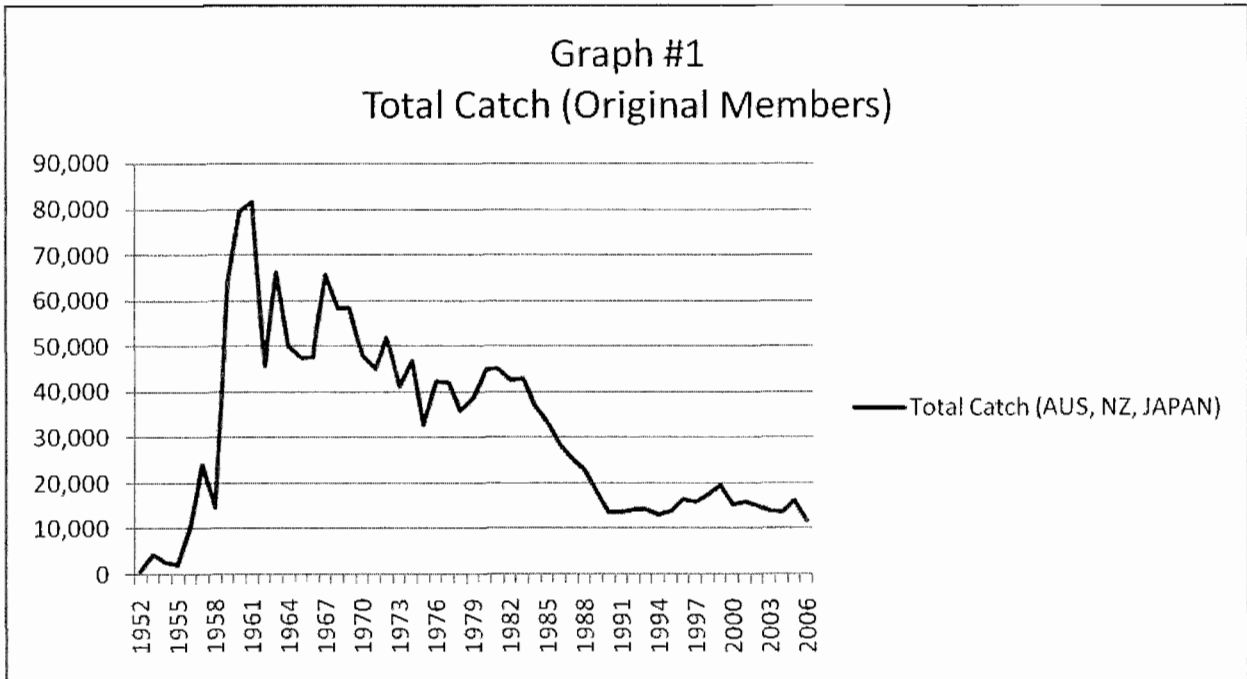
are established to encourage transparency and compliance.

Evaluation of the Effectiveness of Nonbinding Agreements

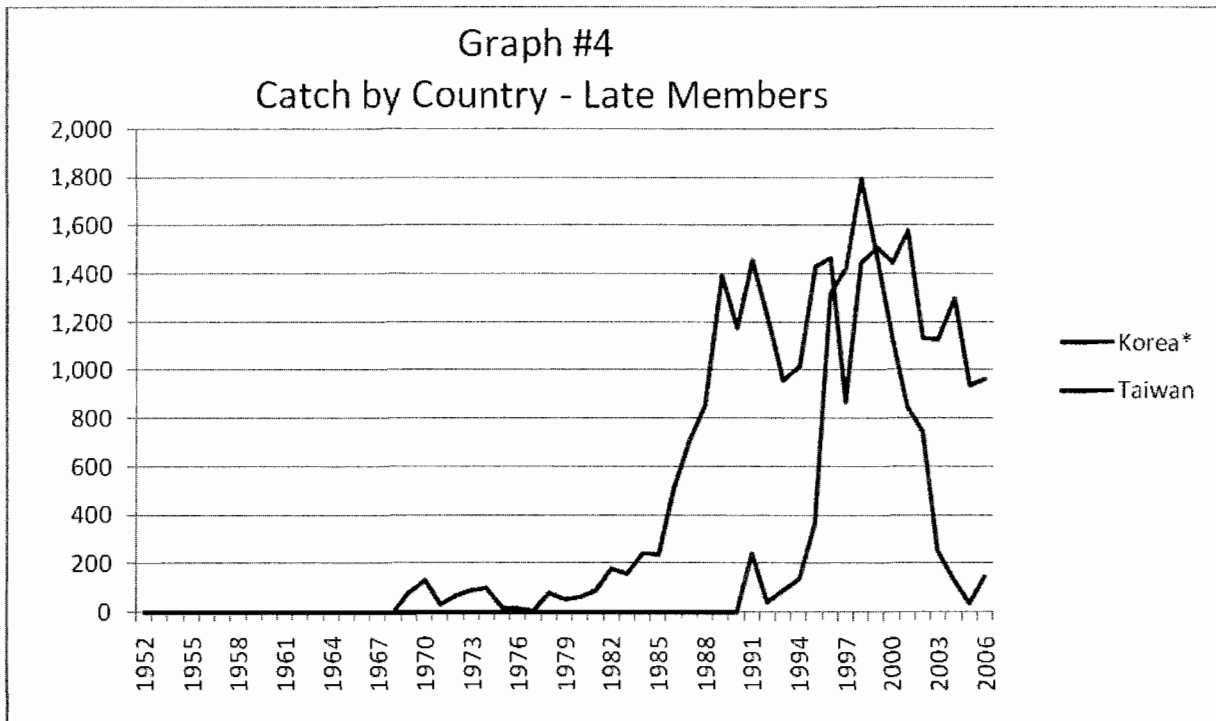
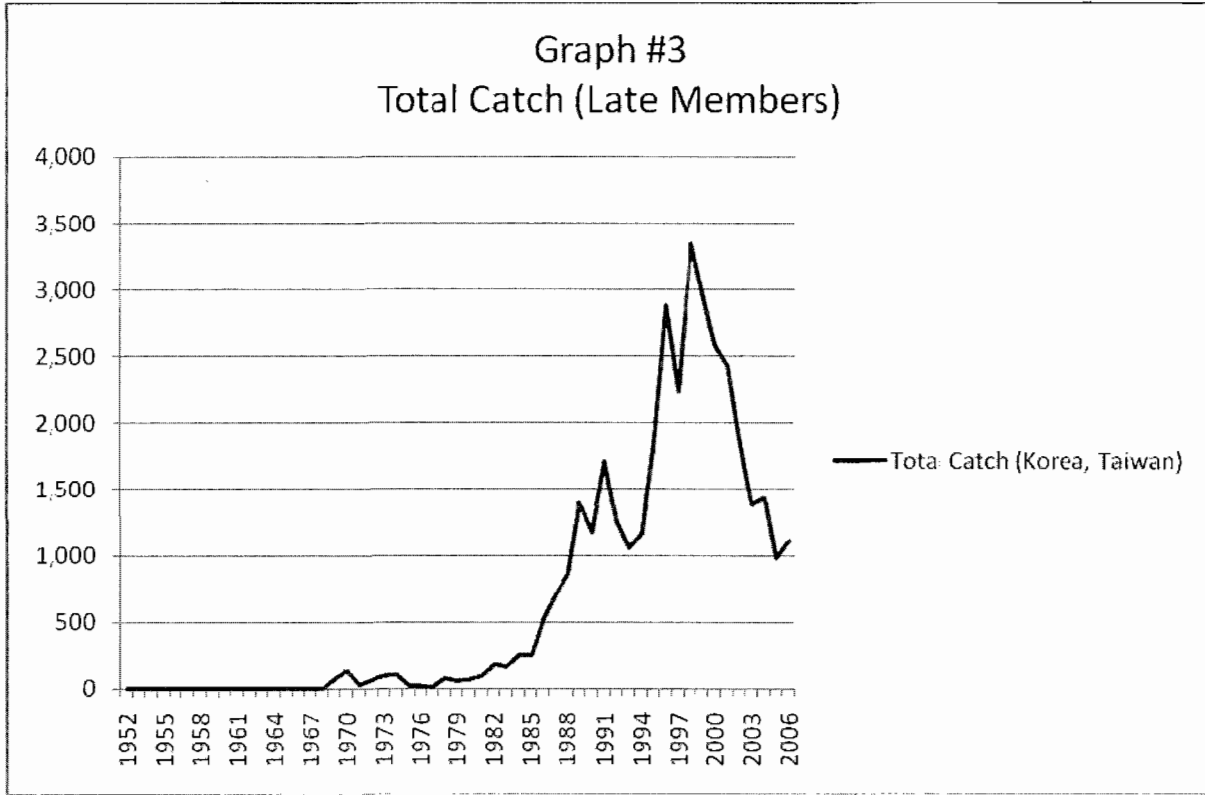
In examining the regulation of bluefin tuna populations and the behavior of states under both a nonbinding agreement and a binding one, it is clear that nonbinding agreements can significantly influence actors' behavior. The primary factors influencing the behavior of original member states, including explicit rules such as quotas (Abbot et al. 2000, 413), monitoring mechanisms such as self-reporting, and norms can all be characteristic of a nonbinding agreement. Although the idea that nonbinding agreements can be both legitimate and effective has certainly been illustrated, it is important to note that certain aspects of this situation may be more facilitative of nonbinding agreements than those of other situations. For example, over-fishing is a Tragedy of the Commons situation in which those causing the problem are also the ones suffering from it. Therefore, states may be more willing to work together to solve the problem outside of a legally binding agreement, than those in a situation where the states causing the problem are different from those being affected by it. Additionally, the effectiveness of a nonbinding agreement compared to the CCSBT, which by many definitions characterizes "soft law," may be substantially different than if it were compared to "hard law," or a treaty that actively discouraged and punished noncompliance (Jacobson and Brown Weiss 1998, x). In fact, many of the mechanisms that make "soft law" effective may also be characteristic of nonbinding accords. Despite such caveats, the situation discussed above ultimately provides strong evidence in support of nonbinding agreements' ability to effectively influence parties' behavior.

Conclusion

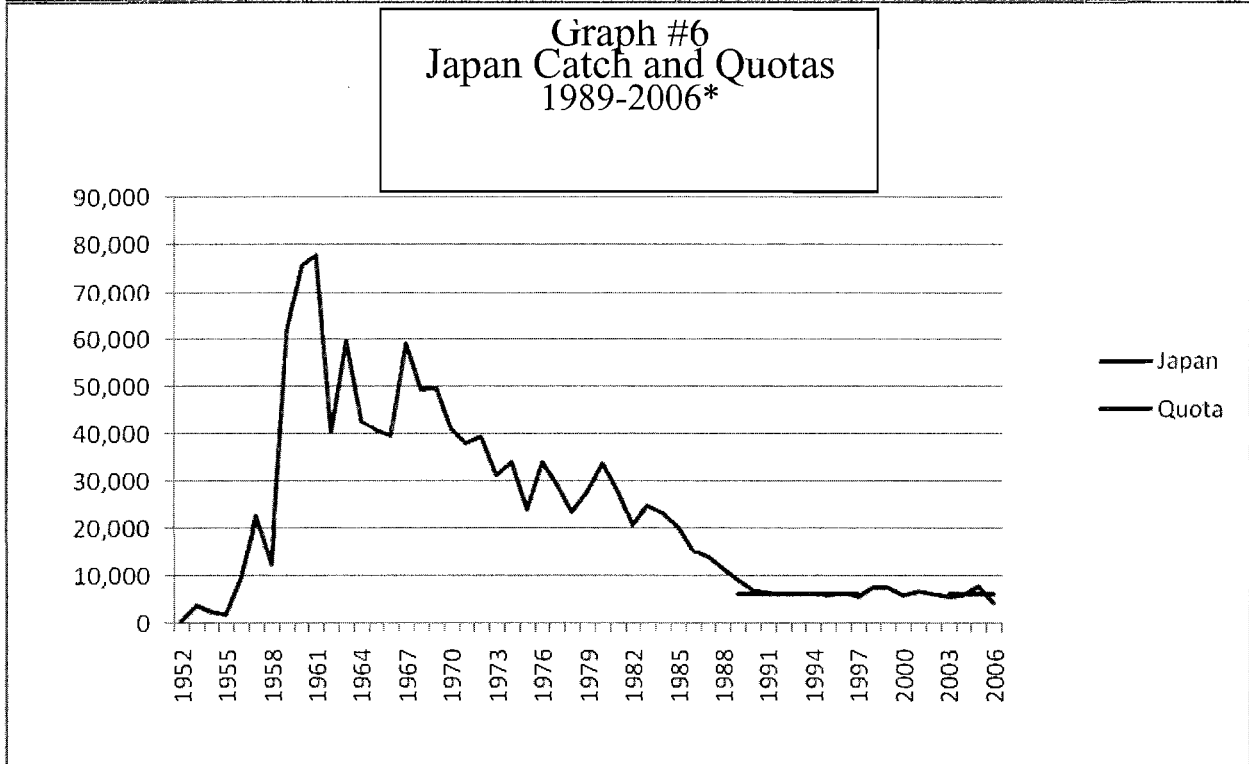
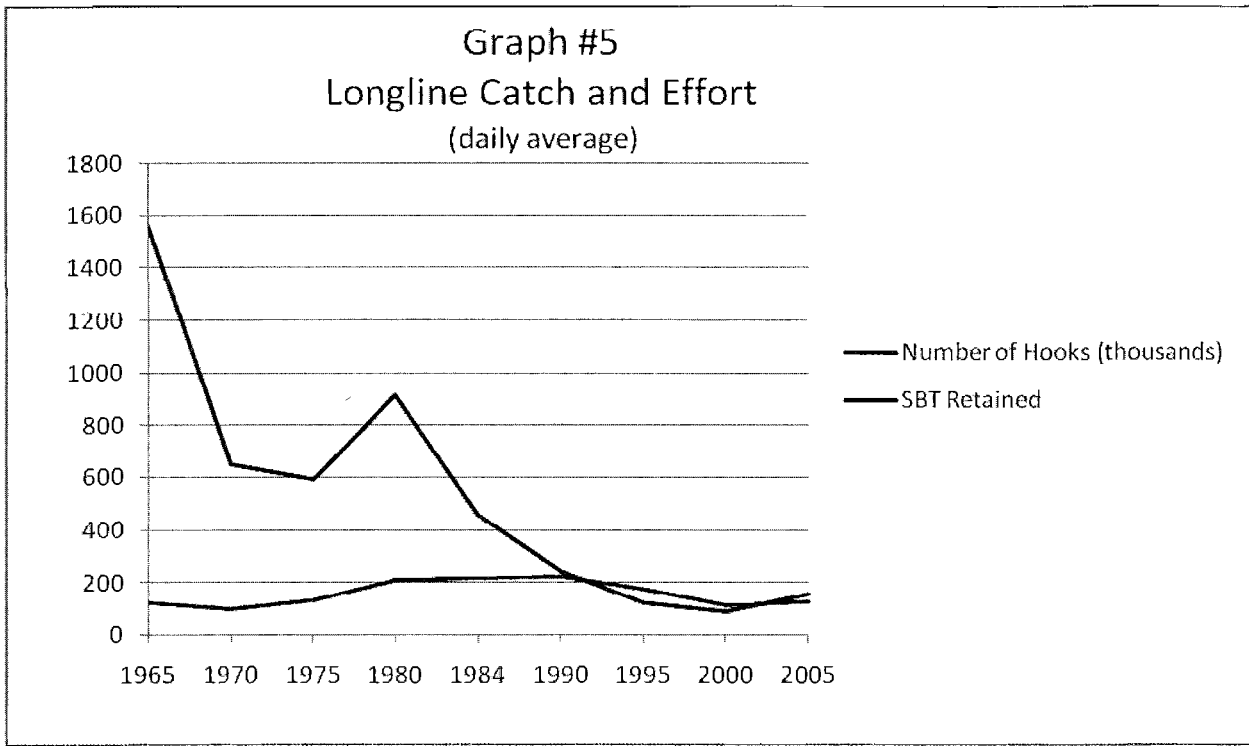
Overall, the CCSBT certainly did not worsen the plight of the bluefin tuna. As I have illustrated, the treaty was at least as effective as the voluntary agreement in addressing the problem of over-fishing. However, states' behavior under the treaty, particularly that of original member countries, would likely have been similar under a voluntary agreement. While it is certainly not a problem that bluefin tuna populations are regulated by a binding rather than a nonbinding agreement, it is important to note that this situation provides evidence for the case that nonbinding agreements can stand on their own as legitimate and effective agents of change. As Raustiala notes, nonbinding agreements can be easier to form, as they are more casual and may cause states and parties to look into changing a behavior that they would not normally be willing to commit to regulating (Raustiala 2005). In this respect, nonbinding agreements may at least be an important, and worthwhile, intermediary step in helping to mitigate particularly stubborn or complex environmental problems. Ultimately, if we can gain an understanding of which types of agreements work best in which situations, we gain access to more tools with which we can attempt to effectively take on, and perhaps even solve, environmental problems.



#1 & #2: (Commission for the Conservation of Southern Bluefin Tuna, 2006)



#3 & #4: (Commission for the Conservation of Southern Bluefin Tuna, 2006)



*No official quotas set for 1998-2002 (Bureau of Rural Sciences 2006, 104)

#5: (Commission for the Conservation of Southern Bluefin Tuna, 2006); #6: (Commission for the Conservation of Southern Bluefin Tuna, 2006; Bureau of Rural Sciences 2006, 104; McGhee 2004, 27)

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