

Marine Economic Development: International Perspectives of Article 16 of CPTPP (Disciplines on Fisheries Subsidies) in Terms of a Proposal for collaboration together with Vietnam

NAKADA Tatsuya, Ph. D in Marine Science
Kobe University, Graduate School of Maritime Sciences

k0136814@gsuite.kobe-u.ac.jp

27 June 2025 (9:30–9:45 Vietnam Time)

Online Presentation at the Auditorium, Peoples Committee, Kien Giang, Vietnam

What is ***Disciplines on Fisheries Subsidies in International Law?***

"Discipline on Fisheries Subsidies refers to the regulation of subsidies granted to marine living resources that are at stake of depletion. The World Trade Organization (WTO), whose primary purpose and objectives are to maintain and achieve free trade, has historically treated subsidies as an exception under free trade rules such as GATT article 20 (g). However, in overcoming the exceptional provision, the WTO has redefined fisheries resources as 'environmental subjects' within the legal framework. The WTO dispute settlement process serves as the newest scheme to determine the criterion which qualifies as a 'depleted resource,' making the disciplines the WTO's 'FIRST' environmental regulations under its agreements."

That is to say; this agreement suggests ***an international structural and/or philosophical shift*** from the exception to the principle.

From Dissertation Doctorate by NAKADA Tatsuya, "The Legal Structure of the Disciplines on Fisheries Subsidies: A Latent Challenge to the Conservation and Management System of Fishery Resources on the Basis of the Marine Zonal Approach in the United Nations Convention on the Law of the Sea," (Graduate School of Marine Science and Technology, TUMSAT, pp. 1-285, 28 September 2022).

Four Premises

(1) Ratification of United Nations Convention on the Law of the Sea (UNCLOS: 170 States parties)

23 June 1994 in Vietnam

20 June 1996 in Japan

(2) Agreement for the implementation of the provisions of the Convention of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks (The United Nations Fish Stocks Agreement (FSA Agreement: 94 States parties)

18 December 2018 in Vietnam

7 August 2006 in Japan

(3) Ratification of the Agreement on Fisheries Subsidies

3 July 2023 in Japan

Not ratified in Vietnam

(4) Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)

14 January 2019 in Vietnam

16 December 2016 in Japan



102 members
have formally accepted the Agreement



(WTO, 2023)

Introduction

1. What Is the Influence of "Disciplines on Fisheries Subsidies" upon Vietnamese Fisheries?
2. Main Provisions of the WTO Agreement on Fisheries Subsidies adopted on 17 June 2022, and CPTPP Article Chapter 20, Article 16
3. We Mustn't Think Lightly of the U.S. Green Paper
4. Is MSY Still Able to Be the Genuine Criteria of Depletion of Fishes?

Concluding Remarks

1. What Is the Influence of "Disciplines on Fisheries Subsidies" upon Vietnamese and Japanese Fisheries?

1-(1). A View of Thuy Thi Thanh Pham, Ph.D.

- Subsidies are considered part of a set of management measures that governments apply to modernize their fishing fleets and enable them to engage in offshore and international fishing. Nevertheless, certain subsidies also have positive effects (green subsidies).
- We take look at the study by Dr. Thuy Thi Thanh Pham (Nha Trang University) *et al.* (2021) on Vietnam's subsidy system, which is generally seen as justified on the balance among economic, social and environmental considerations.
- According to the paper, subsidies have a positive effect on fishermen's profits; however, the main reason for this is analyzed as increasing profits rather than reducing costs.
- It is concluded that subsidies only benefit owners of large fishing vessels, and the inefficiency of subsidized fishing vessels **may threaten resources and profitability in the long run.**

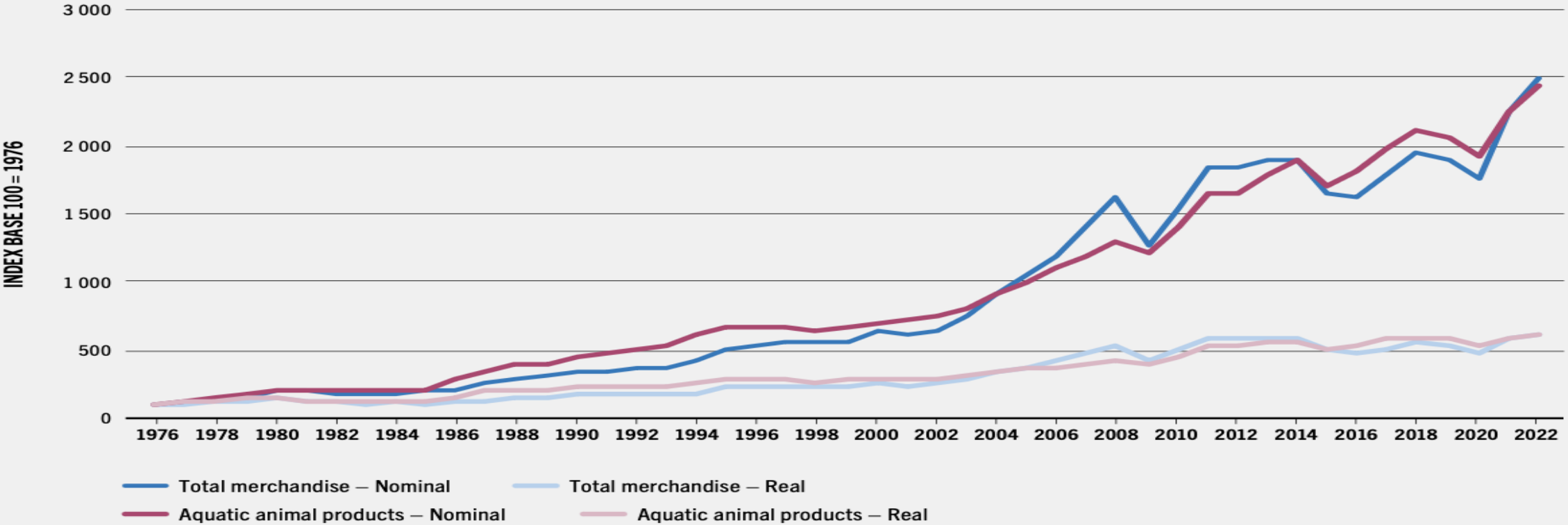
1-(2). Brief Vietnam's Background to the adoption of the agreement

In 2009, global fisheries subsidies were estimated at \$35 billion, of which \$2 billion were classified as capacity-enhancing (Sumaila *et al.*). Under **Vietnam's 2014 legal framework**, low-interest loans were offered to fishers wishing to construct large and modern fishing vessels. This was expected to promote a shift from coastal to offshore fisheries, alleviating pressure on coastal resources and providing access to richer offshore resources, thereby improving catch volumes and profitability.

- There is a substantial body of literature evaluating the effects of subsidies in fisheries, but due to limited data, empirical research remains scarce. As a result, accurately defining the positive and negative outcomes of subsidies in fisheries is challenging.
 - From the perspectives of the Anthropocene and **ecosystem approaches**, legal frameworks based on **precautionary measures or the precautionary principle** are sought; **FSA Agreement refers to them, indeed.**
- Thuy Thi Thanh Pham et al. (2021) examine subsidies related to vessel construction and modernization.
- **Vietnam's coastline stretches 3,260 km**, with an **EEZ of approximately 1 million km²** (FAO, 2005). Coastal areas host over 2,000 species of fish, including about 130 commercially valuable species.
- In 2018, offshore fisheries primarily targeted tuna and mackerel. In 2014, it was estimated that **43% of fishery resources in the EEZ** were fully exploited, 3% overfished, and 5% collapsed (Harper and Sumaila, 2019).

Most of the subsidized vessels were already large and engaged in offshore fisheries. On the other hand, the government's goal of transitioning from coastal to offshore fisheries was not achieved, and thus the social sustainability of the subsidy system was considered weak.

FIGURE 43 WORLD MERCHANDISE AND AQUATIC ANIMAL EXPORT VALUE, FIXED-BASE INDICES (1976=100), 1976–2022



SOURCES: Preliminary data. Final data available here: FAO. 2024. Global aquatic trade statistics. https://www.fao.org/fishery/en/collection/global_commodity_prod. Licence: CC-BY-4.0.
Merchandise export data are based on FAO. 2023. FAOSTAT: Crops and livestock products. [Accessed 29 February 2024]. <https://www.fao.org/faostat/en/#data/TCL>. Licence: CC-BY-4.0.
Deflator data are based on World Bank. 2024. World Bank national accounts data, and OECD National Accounts data files. [Accessed 29 February 2024]. <https://data.worldbank.org/indicator/NY.GDP.DEFL.ZS>. Licence: CC-BY-4.0.

1-(4). The impact of small-scale rather than large-scale fisheries

- On 23 October 2017, EU officially issued a Yellow Card to Vietnam, citing its non-compliance with the IUU (Illegal, Unreported, and Unregulated) fishing regulations (Vietnam Association of Seafood Exporters and Producers: VASEP, 2018).
- According to Vietnam's IUU White Paper, it is estimated that at least 20% of the catch of marine species, equivalent to between 11 million and 26 million tons, is harvested illegally, resulting in substantial profits for fishers and operators. **The majority of Vietnam's fishers are small-scale operators.**
- The Ministry of Agriculture and Rural Development (MARD) should build communication channels between ASEAN and RFMO (Regional Fisheries Management Organization)'s in the South China Sea to support the fight against IUU fishing (Tien Hoang Nguyen, 2021).

2. The Main Provisions of the WTO Agreement on Fisheries Subsidies adopted on 17 June 2022, and CPTPP Article Chapter 20, para 16

2-(1). Chronicle and World's Situation

- Target **14.6 of the SDGs** (2015) aims to "prohibit certain forms of fisheries subsidies that contribute to overcapacity and overfishing, and eliminate subsidies that contribute to IUU fishing," affirming the central role of the WTO in the Global Fisheries Subsidies Agenda.
- According to a global initiative, Vietnam ranks 5th in the world for IUU fishing with an average score of 3.26, following **four countries**: China, Taiwan, Cambodia, and Russia (IUU Fishing Index, 2020).

According to FAO, 33% of the world's 600 fish stocks are either overexploited or depleted. The remaining fish stocks are primarily limited to specific regions globally (FAO, 2020).

2-(2). WTO Agreement on Fisheries Subsidies adopted on 17 June 2022

- Once the Agreement enters into force, **the Protocol will remain open for acceptance** and will take effect for each new ratifying member as soon as it deposits its instrument of acceptance with the WTO.

ARTICLE 2: Definitions

This Agreement applies to subsidies, within the meaning **of Article 1.1 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement)** that are specific within the meaning of Article 2 of that Agreement, to **marine wild capture fishing and fishing related activities** at sea.^{1, 2, 3.}

For the purpose of this Agreement:

- (a) "fish" means all species of **living marine resources**, whether processed or not;*
- (b) "fishing" means searching for, attracting, locating, catching, taking or harvesting fish or any activity which can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish;*
- (c) omitted.*
- (d) "vessel" means any vessel, ship of another type or boat used for, equipped to be used for, or intended to be used for, fishing or fishing related activities.***



Article

- 3.8. **For a period of 2 years** from the date of entry into force of this Agreement, subsidies granted or maintained by developing country Members, including least developed country (LDC). Members, up to and within the exclusive economic zone (EEZ) shall be exempt from actions based on Articles 3.1 and 10 of this Agreement.
- 4.1. No Member shall grant or maintain subsidies for fishing or fishing related activities **regarding an overfished stock**.
- 4.2. For the purpose of this Article, a fish stock is overfished **if it is recognized as overfished by the coastal Member** under whose jurisdiction the fishing is taking place or by a relevant RFMO in areas and for species under its competence, based on **best scientific evidence** available to it.
- 4.3. Notwithstanding Article 4.1, a Member may grant or maintain subsidies referred to in Article 4.1 if such subsidies or other measures are implemented to rebuild the stock to a **biologically sustainable level**.
- 4.4. For a period of 2 years from the date of entry into force of this Agreement, subsidies granted or maintained by developing country Members, including **LDC Members, up to and within the EEZ shall be exempt from actions** based on Articles 4.1 and 10 of this Agreement.

2-(3). The Most Significant Provision in WTO Agreement on Fisheries Subsidies

Article 8: Notification and Transparency

- 8.1. Without prejudice to **Article 25 of the SCM Agreement and in order to strengthen and enhance notifications of fisheries subsidies**, and to enable more effective surveillance of the implementation of fisheries subsidies commitments, each Member shall
- (a) provide the following information as part of its regular notification of fisheries subsidies under **Article 25 of the SCM Agreement** 12, 13: type or kind of fishing activity for which the subsidy is provided;
 - (b) to the extent possible, provide the following information as part of its regular notification of fisheries subsidies under Article 25 of the SCM Agreement 12, 13:
 - (i) status of the fish stocks in the fishery for which the subsidy is provided (e.g. overfished, maximally sustainably fished, or underfished) and the reference points used, and **whether such stocks are shared with any other Member or are managed by an RFMO**;
 - (ii) conservation and management measures in place for the relevant fish stock;
 - (iii) fleet capacity in the fishery for which the subsidy is provided;
 - (iv) name and identification number of the fishing vessel or vessels benefitting from the subsidy;
 - (v) catch data by species or group of species in the fishery for which the subsidy is provided.

2-(4). Even Though Article 12 of the Agreement Takes Effect, There Is a CPTPP

- **Article 12:** If comprehensive disciplines **are not adopted within four years** of the entry into force of this Agreement, and unless otherwise decided by the General Council, this Agreement shall be immediately terminated.
- However, even if the Article is terminated, the CPTPP (which includes Vietnam) will still apply to the *Discipline on Fisheries Subsidies* to a large extent.
- Chapter 20 of CPTPP is called “Environment.”
 - ⇒ Why is Article 16 included under the “Environment” chapter?
 - ⇒ Its provisions are similar to those in the WTO Agreement on Fisheries Subsidies.
 - ⇒ Therefore, we must review the unique CPTPP provisions, especially those related to dispute settlement, such as *actio popularis*.

3. We Mustn't Think Lightly of the U.S. Green Paper

3-(1). The Impact of the U.S. Green Paper on the CPTPP

- It was U.S., under the Obama administration, that introduced the *Disciplines on Fisheries Subsidies* into the CPTPP.
- The relevant provisions were derived from the so-called Green Paper.
- Green Paper itself is only a brief outline, however, its core idea is to treat unreported fishing as illegal, considering the ineffectiveness of Article 25 of the SCM Agreement to date.
- For example, Article 16 of Chapter 20 in the CPTPP provides:

Article 20.16: Marine Capture Fisheries

3-(2). Unique Provisions on Accountability and Transparency

Chapter 20, Article 16-3

Each Party shall seek to operate a fisheries management system for **marine wild capture fisheries** that is designed to:

- (a) prevent overfishing and overcapacity;
- (b) reduce bycatch of non-target species and juveniles, including by regulating fishing gear and fishing in areas where bycatch is likely;
- (c) promote the recovery of **overfished stocks for all marine fisheries** in which the Party's nationals conduct fishing activities.

Chapter 20, Article 16-11

Each Party shall, to the extent possible, also provide information on other fisheries subsidies it grants or maintains that are not covered by paragraph 5, **in particular fuel subsidies.**

Chap. 20. article 16-12

A Party may request additional information from the notifying Party regarding the notifications under paragraphs 9 and 10. **The notifying Party shall respond to that request as quickly as possible and comprehensively.**

Chapter 20, Article 16-14(e)

To support efforts to combat IUU fishing and deter trade in products from such activities, each Party shall endeavour not to undermine catch or **trade documentation schemes operated by Regional Fisheries Management Organisations (RFMOs)** or arrangements, or by an intergovernmental organisation responsible for managing shared fisheries resources, including straddling and highly migratory stocks, **where that Party is not a member of those organisations.**

3-(3). Chapter 20-Article19: Environment Committee

2. The Parties establish an **Environment Committee (the Committee)** composed of senior government representatives, or their designees, of the relevant trade and environment national authorities of each Party responsible for the implementation of this Chapter.
4. The Committee shall meet within one year of the date of entry into force of this Agreement. Thereafter, the Committee shall meet every two years unless the Committee agrees otherwise. The Chair of the Committee and the venue of its meetings shall rotate among each of the Parties in English alphabetical order, unless the Committee agrees otherwise.
5. All decisions and reports of the Committee shall be made by consensus, unless the Committee agrees otherwise or unless otherwise provided in this Chapter.
9. The Committee shall meet within one year of the date of entry into force of this Agreement. Thereafter, the Committee shall meet every two years unless the Committee agrees otherwise. The Chair of the Committee and the venue of its meetings shall rotate among each of the Parties in English alphabetical order, unless the Committee agrees otherwise.

3. We Mustn't Think Lightly of the U.S. Green Paper

3-(4). The U.S. and WTO Agreement on Fisheries Subsidies

- In April 2023, the U.S. accepted the WTO Agreement on Fisheries Subsidies, which is **the first WTO deal to focus on environmental issues** and only the second agreement reached under the WTO's auspices. “We are proud to be among the first WTO members to accept this agreement. . . . It will help improve the lives of fishers and workers here in the United States and elsewhere,” remarked U.S. Trade Representative Ambassador **Katherine Tai (lawyer)**.
- Adopted at the WTO’s Twelfth Ministerial Conference in June 2022, the agreement — which establishes three disciplines that prohibit certain forms of fisheries subsidies— results from more than two decades of negotiations since the Doha Round (2001). **The world's top five fisheries subsidizers—China, EU, Japan, South Korea, and the U.S.—**have already signed the agreement, which will enter into force once accepted **by two-thirds (approx. 110) of the WTO's membership (as of 30 August 2024, there are 166 members)**. Though an important initial step, the agreement is only partial. Negotiations continue on “outstanding issues . . . **[to] achieve a comprehensive agreement on fisheries subsidies.**”

4. Is MSY Still Able to Be the Genuine Criteria of Depletion of Fishes?

4-(1). Is MSY still an appropriate method to conserve marine living resources?

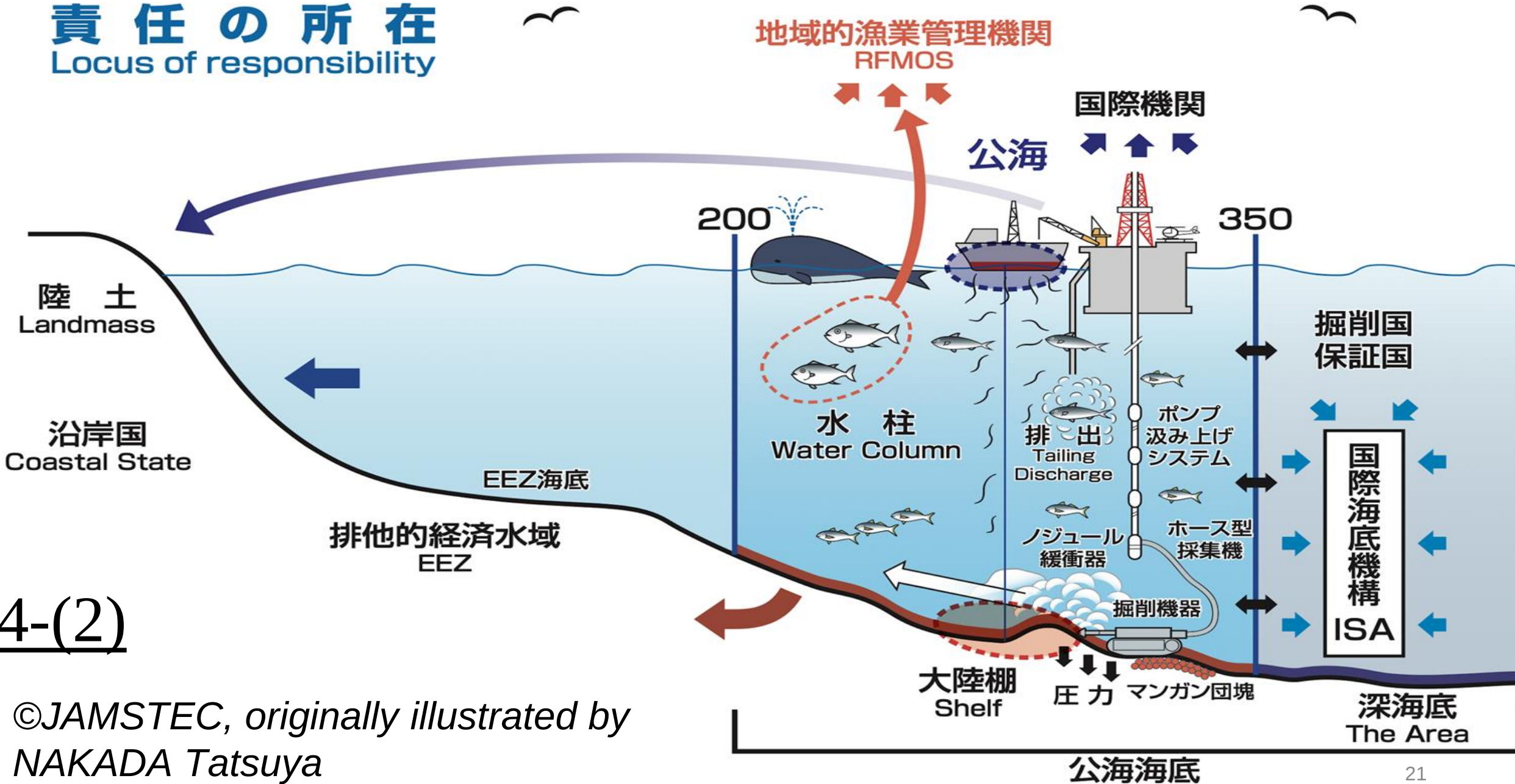
- CPTPP also incorporates MSY as a criterion of overfishing (concern about its depletion).
- However, the ecosystem approach is articulated in **FSA Agreement** as follows:
 - (a) apply the **precautionary approach** following Article 6;
 - (b) assess the impacts of fishing, other human activities, and environmental factors on target stocks and species belonging to **the same ecosystem** or associated with or dependent on the target stocks;
 - (c) adopt, where necessary, conservation and **management measures for species belonging to the same ecosystem** or associated with or dependent upon the target stocks to maintain or restore populations of such species above levels at which their reproduction may become seriously threatened.

4-(2). Who decides the concrete threshold of MSY under the discretion of Sovereign Rights?

- A Discretion to decide MSY is entirely under the control of the coastal state's jurisdiction.
- No other state is able to interfere with its determination of MSY.
- As we have seen, MSY has not gradually occupied a pivotal legal position.
- Instead of relying solely on MSY, consensus and/or joint decisions are made regarding what constitutes overexploitation or over overcapacity.

⇒ This implies a new fundamental philosophy aligned with the SDGs and reflected in recent World Ocean Conferences.

責任の所在 Locus of responsibility



4-(2)

©JAMSTEC, originally illustrated by
NAKADA Tatsuya

Regarding the emerging issue of national jurisdiction in the ocean, I will promote International Joint Research (IJR representative: NAKADA Tatsuya)

- **Leon E. Moller** (Robert Gordon University, UK, Ph.D. in Law of the Sea); A researcher I trust the most since he visited me when I was an associate professor at the TUMSAT.
- **Jay L. Batongbacal** (UP, Ph.D. in Maritime Law, Law of the Sea); One of the leading international law scholars in Southeast Asia.
- **Jeremy Potter** (U.S. Department of Interior Bureau of Ocean Energy Management: BOEM); A federal government official I keep building close friendship through the Mansfield training I taught at the request of the Ministry of Economy, Trade and Industry (METI).
- **AIZWA Teruaki** (Associate Prof. at the National Defense Academy of Japan, Master's in Development Studies); Specializes in maritime security. A colleague at the time of special senior fellow at the Ocean Policy Research Institute (OPRI).



【Main References】

- **Thuy Thi Thanh Pham**, Ola Flaaten, Luong Trong Nguyen, and Nghiep Ke Vu, Subsidies— Help or Hurt?: A Study from Vietnamese Fisheries, Marine Resource Economics, Vol. 36, No. 4 (The University of Chicago Press, 2021).
- Current situation and solutions in Vietnams national legislation.
- **Tien Hoang Nguyen**, Current Situations and Solutions in Vietnam's National Legislation on Fisheries Subsidies to Prevent Illegal, Unreported, and Unregulated (IUU) Fishing, World Maritime University, World Ocean University (31 October 2021).
- The United States Accepts the WTO's Fisheries Subsidies Agreement, 118 AJIL 173, at 173-178.
- The State of World Fisheries and Aquaculture: Blue Transformation in Action (FAO, 2024).
- <https://www.apn-gcr.org/person/thuy-thi-thanh-pham/> and so on...

Thank you for your attention!

TOOLS & DATA

GETTING STARTED

PUBLICATIONS

NEWS

PEOPLE

BOARD

INDIAN OCEAN

PROJECTS

PARTNERS

HELP

DONATE

Basic Search

Advanced Search

Mapped Data

Fisheries Economics

Biodiversity

MPAs

Mariculture

Marine Trophic Index

Search Type:

EEZ

LME

ME

RFMO

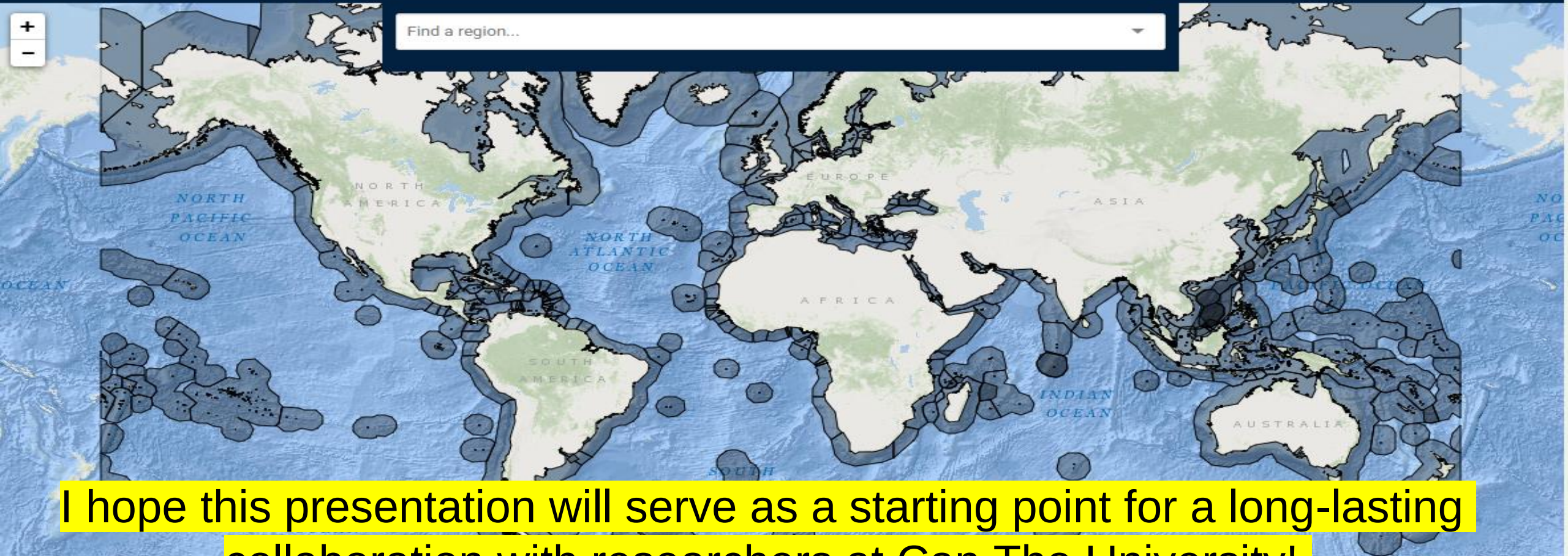
High seas

Global

FAO Area

Fishing country

Find a region...



I hope this presentation will serve as a starting point for a long-lasting collaboration with researchers at Can Tho University!