# 行政院國家科學委員會專題研究計畫 成果報告

子計畫一:公海生物資源永續利用:我國遠洋漁業之法政研 究(II)

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# 行政院國家科學委員會專題研究計畫成果報告 公海生物資源永續利用:我國遠洋漁業之法政探討(II)

計畫編號:NSC 91-2621-Z-034-002

執行期限: 2002 年 8 月 1 日至 2003 年 7 月 31 日 主持人: 王冠雄 中國文化大學政治系副教授

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## 一、摘要

# 中文摘要

聯合國環境暨發展會議於一九九二年召開之里約會議所通過之「廿一世紀議程(Agenda 21)」中,第十七章(Chapter 17)第 17.46 段明確指出:

國家承諾對公海中海洋生物資源之養護和永續利用,為達此目標,其應:

- a. 開發與增加海洋生物資源之潛力,以滿足人類營養之需求、與社會、經濟與發展的需求;
- b. 維持或持續海洋物種數量在某一水平, 使能生產符合環境與經濟因素之最高持續生產量, :
- c. 增進選擇性漁具和實踐的發展與使用,以減少捕撈目標物種時之浪費與減低非目標物種的誤捕量;
- d. 確保關於漁業活動的有效監測與執法;
- e. 保護與回復瀕臨絕種之海洋物種;
- f. 保留棲息地與其他生物敏感區域;
- g. 增進關於公海中海洋生物資源之科學研究。

因此在此一原則之下,所有國家(無論是沿海國或遠洋漁業國)均有承擔對於公海中生物資源之養護與管理的責任。而就地理位置來說,台灣四周環海,海洋不僅扮演國防上天然屏障的角色,同時也是與外國進行溝通的介面。因此如何透過對於海洋生物資源的保育,達到資源永續利用的目標,並能在此一過程中促進台灣與其他國家的溝通與合作,遂為本研究所欲探討的目標。而在推動或進行海洋生物資源永續利用合作的過程之中,所衍生之國際法律分析與國內法律和政策的調整與適應,均為本研究的重要工作內容。

關鍵詞:廿一世紀議程、公海、生物資源、永續利用、永續發展、台灣、遠洋漁業

### 英文摘要

In its Agenda 21-Chapter 17, the 1992 Earth Summit points out that:

States commit themselves to the conservation and sustainable use of marine living resources on the high seas. To this end, it is necessary to:

- a. Develop and increase the potential of marine Iving resources to meet human nutritional needs, as well as social, economic and development goals;
- b. Maintain or restore populations of marine species at levels that can produce the maximum sustainable yield as qualified by relevant environmental and economic factors, taking into consideration relationships among species;
- c. Promote the development and use of selective fishing gear and practices that minimize waste in the catch of target species and minimize by-catch of non-target species;
- d. Ensure effective monitoring and enforcement with respect to fishing activities;

- e. Protect and restore endangered marine species;
- f. Preserve habitats and other ecologically sensitive areas;
- g. Promote scientific research with respect to the marine living resources in the high seas.

Under such circumstances, all the countries, including coastal states and distant water fishing states, are responsible for conserving and managing living resources in the high seas. Because of its geographical location and its fishermen's industrious work, Taiwan has been one of the strongest distant water fishing states in the world. Therefore, as one of the members of the global village, Taiwan is responsible for taking proper approaches to conserve and manage living resources in the high seas so that the object of sustainable development of marine living resources can be reached. Furthermore, Taiwan is able to establish more positive interaction with other states through the process.

This study intends to balance academic theories and effective practices. For that reason, this study will focus on the following aims: analyzing the evolution of the concept of sustainable development of marine living resources; exploring the practices of such concept on international, regional, and national levels; examining the current situation of Taiwan's fisheries policy and related legislation; and investigating the feasible adjustment of Taiwan's fisheries policy and related legislation.

**Keywords**: Agenda 21, high seas, living resources, sustainable utilization, sustainable development, Taiwan, distant water fisheries

## 二、緣由與目的

人類對於海洋利用觀念的發展,由對距離概念的擴張管轄權(例如具有主權性質的領海寬度擴大到十二浬,和具有經濟管理性質的二百浬專屬經濟區或專屬漁業區的成立),到針對生物魚種概念的功能性管轄(例如對跨界與洄游魚群的養護與管理)和對公海中某些漁法的限制(例如對流刺網的禁用),在在顯示出不只是公海的面積在減少,且公海捕魚自由的內容也受到限制。這些對於海洋資源觀念的轉變也顯示出一個事實,那就是海洋中生物資源不再是取之不盡用之不竭。相對的,必須透過適當的養護和管理措施,方能使資源的提供不致間斷,而這正是一九九二年地球高峰會中所提出「資源永續利用、資源永續發展」原則的一項基礎。然而,在推動對海洋生物資源永續利用的過程之中,國際社會、國際組織、或是個別國家能夠扮演什麼樣的角色?在不同的時間脈絡中,會出現何種的政策要求,或是法律規範?這些問題皆為觸發進行本研究的動機。

我國由於地理位置的因素,不僅四面環海,更發展出我國具有「沿岸國」和「遠洋漁業國」的雙重角色,也由於我國漁民的努力,使得我國成為全球第六大漁捕國,這些事實驗證了我國對於海洋中生物資源的利用。然而,也由於我國漁業界和全球漁業的互動是如此之密切,遂也在前述對海洋利用觀念的發展過程中受到激烈的衝擊,一九八 年代末期出現的禁用流刺網風潮正是一例。

海洋生物資源所具有兩項特性,第一為洄游性(migratory),因為洄游性,使得此種資源的游動路徑不受人為政治界線的影響;第二為再生性(renewable),亦即此種資源經過適當的養護與管理,將可使其生生不絕,永續為人類所利用。由於這兩項特性的存在,使得全球各國在前述的發展過程中瞭解到必須透過善意的合作,方可使得此種資源能夠達到永續發展及利用的目的。因此,我國在此一觀念的發展過程中,應當由消極的被動與衝突之想法,轉變成積極的主動與合作,方能在此一演進的浪潮中生存,並能開拓出與其他國家合作的積極互動關係。然而,在面對國際社會觀念的變遷過程中,我國的漁業法律與政策應當如何適應與調整,以迎向諸多可預期及不可預期的衝擊?也因為我國漁捕實力之強大,在透過參與區域漁業組織時,外交部門能夠發揮何種功能,在確保現存漁業利益之外,尚能擴張其他相關利

益?這些都是促成本研究的動機。

在前述的背景之下,本研究計畫之目的即在於透過對公海生物資源永續利用概念之討論,明確瞭解及確實掌握此一概念的法政意涵,分析我國在漁業(特別是遠洋漁業)上所面臨的國際與國內環境,進而在法律與政策層面檢視出現的問題,並尋求適當的解決途徑。期望透過此一為期三年的持續研究,能夠透過全體國際社會、區域國際組織、與個別國家的實踐這三維架構,具體且完整地呈現公海生物資源永續利用的理念,以及此一理念對我國遠洋漁業的影響和因應。

## 三、研究報告

# 壹、前言

挪威總理布蘭特夫人(Gro Harlem Brundtland)於一九八七年時所發表的「我們共同的未來 (Our Common Future)」報告,明確敘述全球經濟和生態環境的狀態與未來發展,其規劃出下列的發展目標:<sup>1</sup>

- 一、檢討經濟發展和環境保護的相關問題,並提出可行性建議。
- 二、建議採用經濟發展和環境保護兼籌並顧的國際合作,建立以永續發展為導向的策略、資訊整合和改善方針。
- 三、加強產業界、政府組織、非政府組織、學術界和人民團體的認知及決心,並積極採取行動,以挽救日益嚴重的環境污染現況。
- 四、永續發展思想和行動有賴教育和培訓,更要使永續發展的相關行動融入日常生活和行動,諸如選擇有利環保產品的生產、行銷、採購等,迫使經濟發展必須為環境而設計。

該報告認為:人類共同之未來只有在永續的理念下,為環境保護與經濟發展尋找出相容之道,方有可能。<sup>2</sup>

吾人若回歸至「永續發展」一詞在「我們共同的未來」報告中的說法,其將「永續發展」的概念定義為:<sup>3</sup>

〔發展〕符合當前世代的需求,但不必損及未來世代滿足其需求的能力。它包含了兩個主要的觀念,第一是『需求』的觀念,特別對於世界上貧窮國家的需求,應當賦與優先的考慮;其次是對於國家科技與社會組織對環境的限制,使之能符合當前與未來的需求。〔括弧內文字為作者所加〕

本研究在第一年度的探討中理解到,若將「永續發展」之意涵推演開來,應可從下列四個層面對其概念獲得理解:

- 1、適當的管理並使用資源,使其能持續地供人類使用;
- 2、尊重後代子孫對於資源與環境的使用權,為後代子孫留下使用資源的機會;
- 3、透過適當的管理機制,使各國在資訊方面能夠充分地交流與整合,使各國在生態資源環境的保護與管理方面能夠充分地合作;

<sup>3</sup> *Ibid.*, p. 43.

<sup>&</sup>lt;sup>1</sup> World Commission on Environment and Development, *Our Common Future* (Oxford: Oxford University Press, 1987).

<sup>&</sup>lt;sup>2</sup> *Ibid*.

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4、建立可行的保護與管理制度,並使各國能夠確實遵守。

本年度計畫之執行,即在持續去年的研究成果,加入新的討論,期能對資源永續發展與 利用的內容再加探討,並能歸納分析出提供繼續研究的方向。

## 貳、永續發展概念在海洋生物資源上的發展

國際社會對於資源與環境永續發展的推動,逐漸投入愈來愈多的重視,同時其關注的層面也細緻到海洋生物資源的永續層面,以一九九二年的「里約高峰會(Rio Summit)」為例,會議中討論有關海洋漁業的議題,認為所有海洋均應受到保護、合理利用並開發其生物資源。會議中並發表「里約宣言」以及「廿一世紀議程」,並於「廿一世紀議程」第 17 章中專章討論海洋環境保護之議題。第 17 章 C 部分「永續利用和養護公海海洋生物資源」中之17.46 段強調:<sup>4</sup> 各國承諾保護和可持續地利用公海上的海洋生物資源。為此目的必需:

- (a) 開發和增加海洋生物資源的潛力,以便滿足人類營養的需要以及實施社會、經濟和發展的目標;
- (b) 考慮到各種群之間的關係,維持和恢復海洋種群水平,使之能夠在有關環境和經濟要素的限制下獲得最大的持續產量;
- (c) 促進選定捕魚器具和捕魚方法的開發和使用,目的在於把目標種群捕獲量的浪費減到最少,以及把待捕獲的非目標種群量減到最少;
- (d) 確保關於漁業活動進行有效的監測和管理;
- (e) 保護和恢復瀕臨絕種的海洋種群;
- (f) 保存棲息地和其他生態上敏感的地區;
- (g) 增進關於公海中海洋生物資源之科學研究。

而在前述一九九二年「里約宣言」公布十年之後,二 二年約翰尼斯堡「全球永續發展高峰會(World Summit on Sustainable Development, 簡稱 WSSD)」通過「執行計畫(Plan of Implementation)」, 5 其中在對於漁業資源部分的態度值得注意觀察者有:

第29段 大洋、各種海洋、島嶼和沿岸地區是地球生態系統的完整和必要的組成部分,也是全球糧食安全、永續經濟繁榮和許多國家經濟體(特別是開發中國家)幸福的關鍵。要確保海洋的永續發展,需要包括全球與區域層級之有關機構的切實協調和合作,以及在各層級的行動。

第30段 為達成?永續漁業,應在各層級採取以下行動:

- (a) 維持種群數量或使之恢復到可以生? 最高持續生產量的程度,以期在2015年年底前 盡可能緊急? 枯竭的種群實現這些目標;
- (b) 批准或加入和有效執行有關的聯合國漁業協定或安排,並酌情執行有關區域漁業協定和安排,尤其是「執行1982年12月10日聯合國海洋法公約有關保育和管理跨界魚類種群和高度洄游魚類種群的規定的協定」以及1993年「促進公海漁船遵守國際保育和管理措施的協定」;
- (c) 執行1995年「責任漁業行為規約」,並考慮到第5款、以及聯合國糧食及農業組織( 糧農組織)有關國際行動計畫和技術指導綱要所述開發中國家的特殊需要;
- (d) 緊急制定和實施國家行動計畫,並酌情實施區域行動計畫,以實施糧農組織國際行

<sup>&</sup>lt;sup>4</sup> http://sd.erl.itri.org.tw/forum/agenda21/un/第 17 章.pdf , 2002 年 1 月 14 日。

<sup>&</sup>lt;sup>5</sup> Report of the World Summit on Sustainable Development, A/CONF.199/20 (2002), p. 6.

動計畫,特別是「2005年年底前管理捕撈能力國際行動計畫」和「2004年年底前預防、阻止和消除非法、未報告和無管制的捕撈活動國際行動計畫」。建立有效監測、報告和強制執行以及控制漁船(包括由船旗國進行的)機制,以進一步執行預防、阻止和消除非法、未報告和無管制的捕撈活動國際行動計畫;

- (e) 鼓勵有關區域漁業管理組織和安排,在審議分配跨界魚類種群和高度洄遊魚類種群的漁業資源問題時充分考慮到發展中沿海國家的權利,並顧及「聯合國海洋法公約」的規定以及「執行1982年12月10日聯合國海洋法公約有關在公海和專屬經濟區內保育和管理跨界魚類種群和高度洄游魚類種群的規定的協定」;
- (f) 消除導致非法、未報告、無管制和過量捕撈的補貼,完成世界貿易組織(世貿組織)所致力的澄清和改善漁業補貼紀律的工作,並考慮到這一部門對開發中國家的重要性:

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- 第31段 按照「21世紀議程」第17章,透過在各層級的行動,並充分考慮到有關國際文書之規定,來促進永續利用和保育海洋生物資源,以便:
  - (a) 維持重要、脆弱的海洋和沿海地區,包括國家管轄區域之內和以外地區,的生? 力和生物多樣性;

. . .

- (c) 制定和便利使用多種辦法,包括生態系統辦法、消除破壞性的捕魚方法、建立符合國際公法和依據科學知識的海洋保護區(包括在2012年年底前建立代表性網路以及對保護養漁場及期間的時間/區域限制)、恰當的沿岸土地使用、分水嶺規劃,並將海洋和沿岸地區管理納入關鍵部門;
- (d) 制訂國家、區域和國際方案,以停止海洋生物多樣性(包括珊瑚礁和濕地)的消失 :
- 第32段 提前執行「保護海洋環境免受陸上活動影響全球行動綱領」和「保護海洋環境免受陸上活動影響蒙特婁宣言」,在各級採取行動,以便:

. . .

- (c) 完成區域行動綱領,並改進海岸和海洋資源永續發展策略計畫的聯繫,且特別注意環境加速變化和遭受發展壓力的領域;
- (d) 盡一切努力,在2006年下一次全球行動綱領會議舉行之前,取得實質性進展,以保護海洋環境不受陸上活動的影響。

由兩次地球高峰會的實際發展內容來看,國際社會對於漁業資源日漸枯竭窘境的憂慮和恢復資源量的急迫感,實是有增無減。

# 參、預防性措施概念的發展

就「預防性措施」觀念的發展歷史來看,此一觀念之肇始係源自環境政策,但發展至今,其所適用的領域已不限於環境議題。一九八二年聯合國大會通過的「世界自然憲章(World Charter for Nature)」中已約略地出現了預防性措施的概念,<sup>6</sup> 但一般均將一九八七年「第二屆保護北海國際會議宣言(Declaration of the Second International North Sea Conference on the Protection of the North Sea)」視為此一觀念的濫觴,在該份宣言第七段中表示:「為使北海免於受到大多數有害物質的損害,在得知完整且清楚的科學證據之前,預防措施有其必要。」「之後透過多項國際公約或協定,參與國家表達了對於「預防措施」的重視,並且確認該作為是維護及保存海洋環境的重要手段。因此由一九八年代末期至一九九年代初期所累積出的國際實踐,若干學者認為「預防性措施」已經成為習慣國際法的一部份。雖然此一名詞

<sup>&</sup>lt;sup>6</sup> UN General Assembly, World Charter for Nature, A/RES/37/7 (28 October 1982), para. 11.

<sup>&</sup>lt;sup>7</sup> 見 http://odin.dep.no/md/html/conf/declaration/london.html.

的原意在於環境保護的領域內,但是經過多年來的演變,國際社會廣泛地將此一精神應用在 不同的領域中,海洋生態環境的保護與管理即是一例。

「預防性措施」觀念發展的另一重要里程碑是在一九九二年巴西里約熱內盧所召開的地球高峰會中所普遍接受的原則,在該次會議宣言的原則十五(Principle 15)中宣示:<sup>8</sup>

為了保護環境的目的,各國應依其各自的能力,廣泛性地適用預防性作為(措施)。若有嚴重的或是無法逆轉的傷害或威脅,缺乏完整科學依據將不可作為延緩避免環境降級的藉口。

由上可知,預防性措施即是在認為對海洋環境會產生影響時,立即採行預防性或補救性措施,也就是任何的決策都應著眼於安全的角度。換句話說,這種思考方式正是科學證據與政策思考之間的轉變。更進一步來看,不需等到不利於環境的最後科學證據之呈現,即可採行任何預防性或補救性措施。這種思考對於決策者來說是一種新的思維和挑戰,因為他們必須要對於環境影響的可能性與不確定性列入其決策的參考因素,而非將之作為不決策的藉口

在里約地球高峰會之後,預防性措施的觀念廣為國際社會所接受,並出現在許多涉及環境保護的國際協定中,例如一九九二年東北大西洋海洋環境保護公約(1992 Convention for the Protection of the Marine Environment of the North-East Atlantic)、 9 一九九二年生物多樣性公約(1992 Convention on Biological Diversity)、 10 一九九二年聯合國氣候變遷公約(1992 United Nations Climate Change Convention)、 11 一九九二年歐盟條約(1992 Treaty on European Union)、 12 與一九九三年黑海宣言(1993 Black Sea Declaration) 13 等。

## 8 原文為:

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

- <sup>9</sup> 約文見 8 International Journal of Marine and Coastal Law (1993), pp. 50-76. Article 2(2)(a):
  - 2. The Contracting Parties shall apply:
    - a. the **precautionary principle**, by virtue of which preventive measures are to be taken when there are reasonable grounds for concern that substances or energy introduced, directly or indirectly, into the marine environment may bring about hazards to human health, harm living resources and marine ecosystems, damage amenities or interfere with other legitimate uses of the sea, **even when there is no conclusive evidence of a causal relationship between the inputs and the effects**;[emphasis added]
- <sup>10</sup> 約文見 31 International Legal Materials (1992), p. 818. 在其前言中述及:

  Aware of the general lack of information and knowledge regarding biological diversity and of the urgent need to develop scientific, technical and institutional capacities to provide the basic understanding upon which to plan and implement appropriate measures,
- 11 約文見 31 International Legal Materials (1992), p. 849. 在其第三條第三項中:
  - 3. The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors. Efforts to address climate change may be carried out cooperatively by interested Parties.
- <sup>12</sup> 約文見 31 International Legal Materials (1992), p. 247. 在其第 130 條第 2 項中表示:
  - 2. Community policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Community. It shall be based on the precautionary principle and on the principles that preventative action should be taken, that environmental damage should as

關於「預防性措施」的規定亦可在「履行協定」14第六條中第一及第二項中得知:

第六條 預防性作為的適用

- 各國對跨界魚群和高度洄游魚群的養護、管理和開發,應廣泛適用預防性作為,以保護海洋生物資源和保全海洋環境。
- 2. 各國在資料不明確、不可靠或不充足時應更為慎重。不得以科學資料不足為由而推遲或不採 取養護和管理措施。

此外,在二 二年約翰尼斯堡永續發展高峰會中所通過的「全球永續發展高峰會執行計畫(World Summit on Sustainable Development Plan of Implementation)」第二十二段初步提及預防性措施,並在第一 三段第 F 點中對於預防性措施做出進一步的闡釋:<sup>15</sup>

促進和改進基於科學的決策,重申關於「環境與發展的里約宣言」原則15所述的謹填做法,其中指出:「為了保護環境,各國應依據自己的能力,廣泛採用謹慎的做法。如果存在造成嚴重或不可扭轉的破壞之威脅,不得以缺乏確定的科學結論為理由而延遲採取成本效益高的措施以防止環境惡化。」

因此若將「預防性措施」適用於漁業資源的管理層面,此一措施是為了養護與管理漁業 資源的目的,在危害尚未發生前,先行採取某些預防性的作為,以避免漁業資源的損傷,或 是對保護與管理措施的破壞。以下提出三個近年來新發展的國際漁業組織對於預防性措施的 實踐,期能窺其發展內容。

#### IATTC

Article 4 Application of the Precautionary Approach

- 1. The members of the Commission, directly and through the Commission, shall apply the precautionary approach, as described in the relevant provisions of the Code of Conduct and/or the 1995 UN Fish Stocks Agreement, for the conservation, management and sustainable use of fish stocks covered by this Convention.
- 2. In particular, the members of the Commission shall be more cautious when information is uncertain, unreliable or inadequate. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures.
- 3. Where the status of target stocks or non-target or associated or dependent species is of

a priority be rectified at source and that the polluter should pay.

全稱應為 1993 Ministerial Declaration on the Protection of the Black Sea, 約文見 23 Environmental Policy and Law (1993), pp. 235-236. 在其前言中表示:

To these ends they confirm their commitment to integrated management and sustainable development of coastal areas and the marine environment under their national jurisdiction and will base their policies on the following:

A precautionary approach ...

- <sup>14</sup> 亦即「執行聯合國海洋法公約有關養護與管理跨界魚群及高度洄游魚群條文協定(Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks)」。
- 15 原文見:http://www.johannesburgsummit.org/html/documents/summit\_docs/2309\_planfinal.doc.
  - (f) Promote and improve science-based decision-making and reaffirm the precautionary approach as set out in principle 15 of the Rio Declaration on Environment and Development, which states:

    "In order to protect the environment, the precautionary approach shall be widely applied by States according

to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."

concern, the members of the Commission shall subject such stocks and species to enhanced monitoring in order to review their status and the efficacy of conservation and management measures. They shall revise those measures regularly in the light of new scientific information available.

## South-East Atlantic Fisheries Organization, 簡稱 SEAFO

東南大西洋漁業組織在其公約<sup>16</sup>的序言中即已明白表示將「致力於在管理漁業資源上實踐與施行預防性措施」,並在第七條中對於「預防性措施」的實踐加以規定,表示「為了保護漁業資源與維護海洋環境,委員會對於漁業資源之養護、管理與開發應廣泛適用預防性措施」:

# Article 7 Application of the Precautionary Approach

- 1. The Commission shall apply the precautionary approach widely to conservation and management and exploitation of fishery resources in order to protect those resources and preserve the marine environment.
- 2. The Commission shall be more cautious when information is uncertain, unreliable or inadequate. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures.
- 3. In implementing this article, the Commission shall take cognisance of best international practices regarding the application of the precautionary approach, including Annex II of the 1995 Agreement and the FAO Code of Conduct for Responsible Fisheries, 1995.

#### **WCPFC**

# WCPFC 則以第六條共六項的方式,將適用預防性措施予以詳細的規範:

- 1. In applying the precautionary approach, the members of the Commission shall:
  - (a) apply the guidelines set out in Annex II of the Agreement, which shall form an integral part of this Convention, and determine, on the basis of the best scientific information available, stock-specific reference points and the action to be taken if they are exceeded;
  - (b) take into account, *inter alia*, uncertainties relating to the size and productivity of the stocks, reference points, stock condition in relation to such reference points, levels and distributions of fishing mortality and the impact of fishing activities on non-target and associated or dependent species, as well as existing and predicted oceanic, environmental and socio-economic conditions; and
  - (c) develop data collection and research programmes to assess the impact of fishing on non-target and associated or dependent species and their environment, and adopt plans where necessary to ensure the conservation of such species and to protect habitats of special concern.
- 2. Members of the Commission shall be more cautious when information is uncertain, unreliable or inadequate. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures.
- 3. Members of the Commission shall take measures to ensure that, when reference points are approached, they will not be exceeded. In the event they are exceeded, members of the Commission shall, without delay, take the action determined under paragraph 1(a) to restore the stocks.
- 4. Where the status of target stocks or non-target or associated or dependent species is of

http://www.environment.gov.za/PolLeg/Conventions/FishResources1.htm.

- concern, members of the Commission shall subject such stocks and species to enhanced monitoring in order to review their status and the efficacy of conservation and management measures. They shall revise those measures regularly in the light of new information.
- 5. For new or exploratory fisheries, members of the Commission shall adopt as soon as possible cautious conservation and management measures, including, inter alia, catch limits and effort limits. Such measures shall remain in force until there are sufficient data to allow assessment of the impact of the fisheries on the longterm sustainability of the stocks, whereupon conservation and management measures based on that assessment shall be implemented. The latter measures shall, if appropriate, allow for the gradual development of the fisheries.
- 6. If a natural phenomenon has a significant adverse impact on the status of highly migratory fish stocks, members of the Commission shall adopt conservation and management measures on an emergency basis to ensure that fishing activity does not exacerbate such adverse impacts. Members of the Commission shall also adopt such measures on an emergency basis where fishing activity presents a serious threat to the sustainability of such stocks. Measures taken on an emergency basis shall be temporary and shall be based on the best scientific information available.

# 肆、國際漁業組織在資源永續利用上的積極作為

若由國際區域漁業組織的發展情形觀之,吾人亦可見到若干重要的組織亦將海洋生物資源的保育與養護觀念列入其組織的基本性文件中,例如:

一、南極海洋生物資源養護委員會(Commission for the Conservation of Antarctic Marine Living Resources,簡稱 CCAMLR)

# 第二條17

- 1. 本公約之目的在養護南極海洋生物資源。
- 2. 為本公約之目的,「養護」一詞包括了合理之使用。
- 3. 在本公約適用範圍內採行之任何採捕及附屬活動,應符合本公約條文及以下養護原則之規範:
  - (a) 避免對任何採捕群體之大小產生降低至確保其穩定恢復的水準,為此目的,該群體之大小不 應低落至接近確保最大淨年度增加量;
  - (b) 保持採捕、依賴和相關南極海洋生物資源群體之間的生態關係,並且對前(a)項定義之過漁群體的水準。
- 二、 南方黑鮪保育委員會(Commission for the Conservation of Southern Bluefin Tuna, 簡稱 CCSBT)

#### Article II

1. The objective of this Convention is the conservation of Antarctic marine living resources.

- 2. For the purposes of this Convention, the term "conservation" includes rational use.
- 3. Any harvesting and associated activities in the area to which this Convention applies shall be conducted in accordance with the provisions of this Convention and with the following principles of conservation:
- (a) prevention of decrease in the size of any harvested population to levels below those which ensure its stable recruitment. For this purpose its size should not be allowed to fall below a level close to that which ensures the greatest net annual increment;
- (b) maintenance of the ecological relationships between harvested, dependent and related populations of Antarctic marine living resources and the restoration of depleted populations to the levels defined in subparagraph (a) above.

<sup>&</sup>lt;sup>17</sup> 見 Convention on the Conservation of Antarctic Marine Living-Resources 1980, http://sedac.ciesin.org/pidb/texts/antarctic.marine.resources.1980.html, 原文為:

### 第三條18

本公約之目的在透過適當的管理,以確保南方黑鮪之養護與最高利用。

三、波羅地海國際漁業委員會(International Baltic Sea Fishery Commission, 簡稱 IBSFC)

締約國應當密切合作以保存和增加波羅地海和貝爾次海域之生物資源,並維持最高生產量,以及為上述目的而延伸與協調研究。(第一條)<sup>19</sup>

四、 大西洋鮪類保育國際委員會(International Commission for the Conservation of Atlantic Tunas, 簡稱 ICCAT)

參加政府表達樂意合作,為食物及其他之目的,以維持鮪魚及類鮪魚魚種最大持續捕撈量的水準,同意締結本約,以養護大西洋鮪魚及類鮪魚資源。<sup>20</sup>

五、 印度洋鮪類委員會(Indian Ocean Tuna Commission, 簡稱 IOTC)

委員會應增進成員間之合作,透過適當的管理,以確保本協定涵蓋魚種之養護和最高利用之目的,並鼓勵此種漁業的永續發展。(第五條)<sup>21</sup>

18 見 Convention for the Conservation of Southern Bluefin Tuna 1993, http://www.ccsbt.org/docs/pdf/about\_the\_commission/convention.pdf, 原文為:

#### Article 3

The objective of this Convention is to ensure, through appropriate management, the conservation and optimum utilization of southern bluefin tuna.

<sup>19</sup> 見 Convention on Fishing and Conservation of the Living Resources in the Baltic Sea and the Belts 1973, http://sedac.ciesin.org/pidb/texts/fishing.baltic.sea.belts.1973.html, 原文為:

#### Article I

The Contracting States shall:

Co-operate closely with a view to preserving and increasing the living resources of the Baltic Sea and the Belts and obtaining the optimum yield, and, in particular to expanding and coordinating studies towards these ends, Prepare and put into effect organizational and technical projects on conservation and growth of the living resources, including measures of artificial reproduction of valuable fish species and/or contribute financially to such measures, on a just and equitable basis, as well as take other steps towards rational and effective exploitation of the living resources.

<sup>20</sup> 見 International Convention for the Conservation of Atlantic Tunas 1966, http://www.iccat.es/Documents/BasicTexts.pdf,原文為:

The Government whose duly authorized representatives have subscribed hereto, considering their mutual interest in the populations of tuna and tuna-like fishes found in the Atlantic Ocean, and desiring to co-operate in maintaining the populations of these fishes at levels which will permit the maximum sustainable catch for food and other purposes, resolve to conclude a Convention for the conservation of the resources of tuna and tuna-like fishes of the Atlantic Ocean...

<sup>21</sup> 見 Agreement for the Establishment of the Indian Ocean Tuna Commission 1993, http://www.austlii.edu.au/au/other/dfat/treaties/1996/20.html, 原文為:

#### Article V

1. The Commission shall promote cooperation among its Members with a view to ensuring, through appropriate management, the conservation and optimum utilization of stocks covered by this Agreement and encouraging sustainable development of fisheries based on such stocks.

## 六、 國際捕鯨委員會(International Whaling Commission, 簡稱 IWC)

保障未來世代利用鯨類之最大資源量,並強調休漁在資源管理上的重要性。(前言)<sup>22</sup> 七、 西北大西洋漁業組織(Northwest Atlantic Fisheries Organization, 簡稱 NAFO)

為增進西北大西洋區域內漁業資源之養護和最大利用,以及鼓勵對於此類資源之國際合作和諮詢。

締約方同意建立及維持一個國際組織,該組織之目標在透過合作和諮詢,以促進資源的最大利用、合理管理和漁業資源的養護。(第二條第一項)<sup>23</sup>

- 八、 東北大西洋漁業委員會(Northeast Atlantic Fisheries Commission, 簡稱 NEAFC) 原則上採取與「西北大西洋漁業組織」相同的態度。<sup>24</sup>
- 九、中西太平洋漁業委員會(Western and Central Pacific Ocean Fisheries Commission, 簡稱 WCPFC)

決心確保中西太平洋區域內高度洄游魚種的長期養護與持續利用,特別為了現在與未來 世代人類糧食之消費。(前言)<sup>25</sup>

十、美洲熱帶鮪類委員會(Inter-American Tropical Tuna Commission,簡稱 IATTC) 該委員會係為最早成立之關於管理鮪類資源的國際組織,雖然其成立初期僅為美國與哥

Recognize the interest of the nations of the world in safeguarding for future generations the great natural resources represented by the whale stocks; ...

Recognizing that in the course of achieving these objectives, whaling operations should be confined to those species best able to sustain exploitation in order to give an interval for recovery to certain species of whales now depleted in numbers.

<sup>23</sup> 見 Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries 1978, http://www.iigr.ca/pdf/documents/417\_Convention\_on\_Future\_Mul.pdf, 原文為:

Desiring to promote the conservation and optimum utilization of the fishery resources of the Northwest Atlantic area within a framework appropriate to the regime of extended coastal State jurisdiction over fisheries, and accordingly to encourage international cooperation and consultation with respect to these resources

#### Article II

1. The Contracting Parties agree to establish and maintain an international organization whose object shall be to contribute through consultation and cooperation to the optimum utilization, rational management and conservation of the fishery resources of the Convention Area.

<sup>24</sup> 見 Convention on Future Multilateral Cooperation in North-East Atlantic Fisheries 1980, http://www.neafc.org, 原文為:

Desiring to promote the conservation and optimum utilization of the fishery resources of the North-East Atlantic area within a framework appropriate to the regime of extended coastal State jurisdiction over fisheries, and accordingly to encourage international co-operation and consultation with respect to these resources

<sup>25</sup> 見 Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean 2000, http://www.ocean-affairs.com/pdf/text.pdf,原文為:

Determined to ensure the long-term conservation and sustainable use, in particular for human food consumption, of highly migratory fish stocks in the western and central Pacific Ocean for present and future generations.

<sup>&</sup>lt;sup>22</sup> 見 International Convention for the Regulation of Whaling 1946, http://sedac.ciesin.org/pidb/texts/intl.regulation.of.whaling.1946.html, 原文為:

斯大黎加兩國,但是至二 三年為止,該組織之會員國已達十三國。同時,於二 三年六月完成之修約內容,也廣泛地將海洋法律制度的新發展納入該修約的實質體系中。其公約前言中即名是所有國家均有責任採取必要之措施,以對海洋生物資源進行養護與管理,並且與其他國家合作採行此等措施,此外並列舉了近十於年來,國際社會所通過的若干海洋法律文件,特別是對於海洋生物資源的利用與管理的規範。<sup>26</sup>

由以上對於若干重要的國際漁業組織對於永續利用海洋生物資源所明示的基本態度,可以看出這些區域性國際漁業組織的發展延續著對於海洋生物資源的永續生產和利用之軌跡,這與當前對於海洋生物資源的利用植基於養護和管理的學理和法律制度之發展一致。

# 伍、貿易措施之應用

關於貿易措施(trade measures)之應用,應可以美國與墨西哥兩國間對於海豚保育問題的爭議,其爭議點可以追溯至美國為保護海洋哺乳動物,使其不至於因為人類捕魚活動而產生有害之影響,故於一九七二年制訂通過「海洋哺乳動物保護法(Marine Mammal Protection Act)」, 27 並依此一法律對不符合美國保育和管理標準的國家實施禁運(embargo)。

除此之外,透過美國民間商業活動的推動,成立了「保育海豚(dolphin safe)」生態標籤 (eco-labeling)制度的推廣。生態標籤的概念在於透過消費者與生產者之間的商業行為,對於漁捕活動加以規範。美國羅德島大學環境和自然資源經濟系的威索(Cathy Wessel)教授對於生態標籤的解釋是,具有生態標籤的產品,是一種向消費者明示的特殊方法,用以驗證生產者已經採取特別措施,於製造過程中,盡量避免或減低對環境的不良影響。而在海產食品生態標籤方面,則主要著重於生產製造過程,是否符合這項認證。<sup>28</sup> 透過此種生態標籤的使用,能夠鼓勵和教育消費者食用捕自漁源已經獲得繁衍補充的魚種。目前這種作法已經獲得全球約兩百餘家企業、政府與義工團體的支持。

<sup>&</sup>lt;sup>26</sup> 見 Convention for the Strengthening of the Inter-American Tropical Tuna Commission Established by the 1949 Convention between the USA and the Republic of Costa Rica, also known as Antigua Convention 2003, http://www.iattc.org/PDFFiles2/Antigua%20Convention%20Jun%202003.pdf.

<sup>16</sup> USC 1361 et seq 而若就美國針對養護海洋生物資源所實行的國內法律制度來看,尚有:Atlantic Coastal Fisheries Cooperative Management Act, 16 USC 5101 et seq.; Atlantic Salmon Convention Act, 16 USC 3601; Atlantic Tuna Conventions Act of 1975, 16 USC 971 et seq.; Central Bering Sea Enforcement Act of 1992, 16 USC 1823 et seq.; Eastern Pacific Tuna Licensing Act of 1984, 16 USC 972 et seq.; Endangered Species Act of 1973, 16 USC 1531 et seq.; Fur Seal Act of 1966, 16 USC 1151 et seq.; High Seas Driftnet Fishing Moratorium Protection Act, 16 USC 1801; High Seas Fishing Compliance Act of 1995, 16 USC 5501 et seq.; Lacey Act Amendments of 1981, 16 USC 3371 et seq.; Magnuson-Stevens Fishery Conservation and Management Act, 16 USC 1801, et seq.; Marine Protection, Research, and Sanctuaries Act, 16 USC 1431 et seq.; North Pacific Anadromous Stocks Convention Act of 1992, 16 USC 5001 et seq.; North Pacific Halibut Act of 1982, 16 USC 773 et seq.; Northwest Atlantic Fisheries Compliance Act of 1995, 16 UCS 5601 et seq.; Pacific Salmon Treaty Act of 1985, 16 USC 3631 et seq.; South Pacific Tunas Act, 16 USC 973 et. seq.; Sponge Act, 16 USC 781 et seq.; Tuna Conventions Act, 16 USC 973 et seq.; Whaling Convention Act, 16 USC 916 et seq. 可見其制度之完備。

<sup>&</sup>lt;sup>28</sup> 徐新亮,「生態標籤:一個主要政策的議題」*,國際漁業資訊,*第七十七期(民國八十八年四月),頁 63。

美國政府即透過此種國內立法與國內商業施壓的雙重方式,對世界許多捕魚國產生壓力,墨西哥即為其中之一。一九九 年,美國引用「海洋哺乳動物保護法」,對墨西哥所生產的鮪魚實施禁運,但引發墨西哥以當時之「關稅暨貿易總協定」之規範提出反制。引發此一爭端的原因在於在東太平洋海域中,海豚與鮪魚經常一同洄游,這促使漁民在進行捕撈鮪魚作業時,常以在海面洄游的海豚做為參考標的,下網捕撈在較深水域的鮪魚,但是卻會連帶地造成對海豚的誤捕。因此這種作業方式引起美國的若干海洋環境與生態資源保育團體的注意與抗議,並推動美國政府對墨西哥漁產品的抵制。

此種因為生態與資源養護而引發的爭端並未因為時間的流逝,或是墨西哥改善漁法而減弱。一九九二年時,該海域之區域漁業組織 IATTC 內部還成立了「海豚養護計畫(Dolphin Conservation Program)」,致力於對海豚的養護,並降低因為作業而造成的海豚死亡率。在該計畫項下,由 IATTC 會員國政府、漁業界、和環境保育團體代表組成名為「國際審查小組(International Review Panel)」的團體,由該團體審查隨船觀察員提出的報告、判定是否違反作業規定、提出建議的制裁方式等。

而由「海豚養護計畫」的執行成效來看,根據統計,捕撈作業時所造成的海豚死亡率由 一九八六年的 130,000 尾降低到一九九四年的 3,000 尾,其成效不可謂不顯著。<sup>29</sup> 然而雖然 美國政府於一九九七年解除了禁運的限制,但是在美國國內的製罐業者和經銷者的聯合杯葛 之下,仍然使得如墨西哥等國的鮪魚產品銷美受到限制,而這種限制至今仍未解除,並且形 成美國與拉丁美洲國家(特別是墨西哥)的貿易衝突。<sup>30</sup>

雖然美國政府於一九九七年解除了禁運的限制,但是在美國國內的製罐業者和經銷者的 聯合杯葛之下,仍然使得如墨西哥等國的鮪魚產品銷美受到限制,而這種限制至今仍未解除 ,並且形成美國與拉丁美洲國家(特別是墨西哥)的貿易衝突。

學者 Richard Parker 提出此種貿易上的制裁對於強調自由貿易者來說可能會三種型態的 濫用,第一是偽裝的保護主義、第二是特定地為了環境的因素而施加貿易上的壓力、第三是 制裁國以雙邊的經濟壓力改變多邊的合作,或是在合作中加入過度的不公平條件。<sup>31</sup>

無論以上的推測何者符合未來的發展,運用貿易措施做為達成環境保護目的的手段已然形成,並且應會在未來的環保議題中持續出現相關的討論。

# 陸、研究發現與建議

本研究之探討係以第一年度的研究成果做為基礎,向上積累研究的深度和廣度。本年度 之研究內容主要在持續對國際漁業法律制度的發展和永續利用的交叉討論,對於研究所獲致

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Richard W. Parker, "Trade and the Environment: Implications for Global Governance: the Case for Environmental Trade Sanctions", *Widener Law Symposium Journal*, 7 (Spring 2001), p. 25.

<sup>\$\</sup>text{\$\sigma}\$ 除了關於鮪魚產品禁運的案例之外,另有在世界貿易組織爭端解決體制之下的關於馬來西亞與美國間之「若干蝦類與蝦類產品禁止進口」案(Import Prohibition of Certain Shrimp and Shrimp Products), World Trade Organization, WT/DS58/AB/RW, 22 October 2001 (01-5166). 在該案中,美國引用其國內法(Section 609 of the US Public Law 101-162)的規定,禁止輸入因使用拖網捕撈蝦類而導致海龜死亡的蝦類產品。此一作為固與生態環境之保育有關,但是引起了馬來西亞訴求世界貿易組織解決爭端的作法。同時,澳洲、歐盟、香港、中共、印度、日本、墨西哥與泰國等國亦提交第三關係國的立場文件。

<sup>&</sup>lt;sup>31</sup> *Ibid*, p. 29.

### 的重點與建議如下:

- 預防性措施已然被接受。經過多年的實務發展及理論提出及驗證,預防性措施已經成為預防環境保護遭受破壞的重要手段。若將此一措施加以應用,則將會對於以遠洋漁業當作重要漁獲來源的我國漁業借來說,必然形成重大影響。我國的行政界及實務界應當正視此一發展,密切注意及蒐集相關的漁業科學資料,以便於未來之應用。
- 留意貿易措施的發展。貿易措施可說是透過經貿手段,達成環境保護的結果。特別是在國際貿易已經形成密集網絡的現代,貿易措施的運用,除了具有環境保育和資源永續利用的後果之外,更有可能會產生國際貿易上的消滅與取代之效應這對於我國的漁業發展顯有重大的影響。
- **需配合 WSSD 所制訂的工作時程表**。在漁業議題方面, WSSD 的 Plan of Implementation 已經訂出了時間表:

2004 年年底前 預防、阻止和消除非法、未報告和無管制的捕撈活動

2005 年年底前 各國與區域漁業組織達成全球性之有效的、衡平的和透明的漁捕能力管理

2006年 能夠取得實質性進展,以保護海洋環境不受陸上活動的影響

2012 年年底前 建立代表性網路以及對保護養漁場及期間的時間/區域限制

2015 年年底前 維持種群數量或使之恢復到可以生? 最高持續生產量的程度

此種作法,固然顯示了國際社會對於漁業資源日漸枯竭窘境的憂慮和恢復資源量的 急迫感,以時間表方式訂出應當完成的時限,卻也彰顯了 WSSD Plan of Implementation 所企圖達到的拘束效果。但是我國的因應措施是否已然相對形成,並能肆應此一全球性 的發展?這些都是有待進一步探討解決的議題。

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