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978-1-107-00156-5 - The New Entrants Problem in International Fisheries Law

Andrew Serdy

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## THE NEW ENTRANTS PROBLEM IN INTERNATIONAL FISHERIES LAW

Are international fisheries heading away from a global commons with open access towards a regime of property rights? The distributional implications of denying access to newcomers and re-entrants that used the resource in the past are fraught. Should the winners in this process compensate the losers, and, if so, how? Regional fisheries management organisations, in whose gift participatory rights now mostly lie, are increasingly having to deal with this question, which has hitherto been little analysed. This book provides a review of the practice of these bodies and the States that are their members. The recently favoured response of governments, combating 'IUU' – illegal, unreported and unregulated – fishing, is shown to rest on a flawed concept, and the solution might lie less in law than in legal policy: compulsory dispute settlement as an incentive to moderate their claims, and an expansion of the possibilities of trading of quotas to make solving the global overcapacity issue easier.

ANDREW SERDY is a Professor of Public International Law and Ocean Governance at the University of Southampton. Before his appointment in 2005, he served the Australian Government Department of Foreign Affairs and Trade in several diplomatic positions before specialising in the law of the sea in the Department's Legal Branch.

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LAW

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- Brill, in respect of both “Property Rights in Areas Beyond National Jurisdiction – Not Too Late for a Proper Debate?”, in E.J. Molenaar and A.G. Oude Elferink (eds.), *The International Legal Regime of Areas Beyond National Jurisdiction* (Leiden: Martinus Nijhoff Publishers, 2010), 143–58 and “Fishery Commission Quota Trading under International Law”, (2007) 21 *Ocean Yearbook* 265–88.
- Wiley-Blackwell, in respect of “Trading of Quota in Internationally Managed Fisheries: Principles and Precedents”, in R. Allen, J. Joseph and D. Squires (eds.), *Conservation and Management of Transnational Tuna Fisheries* (Ames, IA, 2010), 99–125.
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*Southampton, March 2014*

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## ABBREVIATIONS

ABT	Atlantic bluefin tuna
AFZ	Australian Fishing Zone
<i>AJIL</i>	<i>American Journal of International Law</i>
CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
CCSBT	Commission for the Conservation of Southern Bluefin Tuna
CNM	Cooperating non-member
CPUE	Catch per unit effort
CSIRO	Commonwealth Scientific and Industrial Research Organisation
EC	European Community
EEZ	Exclusive economic zone
EU	European Union
FFA	Forum Fisheries Agency
GATT	General Agreement on Tariffs and Trade
IAC	Industries Assistance Commission
IATTC	Inter-American Tropical Tuna Commission
IBSFC	International Baltic Sea Fisheries Commission
ICCAT	International Commission for the Conservation of Atlantic Tunas
ICJ	International Court of Justice
<i>IJMCL</i>	<i>International Journal of Marine and Coastal Law</i>
ILC	International Law Commission
<i>ILM</i>	<i>International Legal Materials</i>
IOFC	Indian Ocean Fishery Commission
IOTC	Indian Ocean Tuna Commission
IPOA	International Plan of Action
ITLOS	International Tribunal for the Law of the Sea
ITQ	Individual transferable quota
IUU	Illegal, unreported and unregulated
IWC	International Whaling Commission
MEY	Maximum economic yield
MSY	Maximum sustainable yield
NAFO	Northwest Atlantic Fisheries Organization
NEAFC	North-East Atlantic Fisheries Commission
<i>ODIL</i>	<i>Ocean Development &amp; International Law</i>

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OECD	Organisation for Economic Co-operation and Development
RFMO	Regional fisheries management organisation
SBT	Southern bluefin tuna
SPRFMO	South Pacific Regional Fisheries Management Organisation
TAC	Total allowable catch
TAE	Total allowable effort
UK	United Kingdom
UN	United Nations
UNCED	UN Conference on Environment and Development
UNCLOS	United Nations Convention on the Law of the Sea
<i>UNTS</i>	<i>United Nations Treaty Series</i>
US	United States
USSR	Union of Soviet Socialist Republics
WCPFC	Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean
WTO	World Trade Organization