

Clarifications to the Record
Nineteenth Annual Stetson International Environmental
Moot Court Competition
2014–2015

Clarifications regarding the scope of arguments

- Q1. May we contest jurisdiction?
A1. No. The intent of the Special Agreement is to remove the jurisdictional argument.
- Q2. Under Paragraph 31 of the Special Agreement between Alopias and Rhincodon, is Rhincodon limited only to assertions that its trade sanctions are justified under TARA 15(a), or will it be able to make assertions under (b) and (g)?
A2. Rhincodon’s primary justification for the trade sanctions is Article 15(a). [While you may make other arguments, a discussion of Article 15(a) is expected to be the main focus of the memorial for that issue.]
- Q3. In Paragraph 29 of the Record, the Rhincodon Minister of Foreign Affairs states that the prohibition on shark finning is part of customary international law. Is this statement considered an accurate statement of law or is it subject to being proved?
A3. That is an assertion made by Rhincodon, with which Alopias disagrees.
- Q4. Would it be appropriate to assume Alopias is the Applicant and Rhincodon the Respondent for the purposes of this competition?
A4. Yes.
- Q5. Are both parties seeking injunctive relief?
A5. You may request any relief consistent with the Record.

Clarifications regarding sharks, finning, and spining

- Q6. Is the continued finning of mako sharks by Alopias fishing vessels occurring in Alopias’s EEZ only or in the high seas and territorial seas?
A6. The activities are occurring only in the territorial seas and EEZ of Alopias.
- Q7. What other shark species are present in the Varium Sea region?
A7. There are numerous shark species, but primarily mako sharks, nurse sharks, reef sharks, and hammerhead sharks.
- Q8. Are all fishing fleets in Alopias harvesting mako sharks as a targeted species?
A8. No. While data is unavailable on the precise percentage of vessels engaged in the practice of finning and/or spining, the practice is common. It has become more prevalent in the past ten years as demand has increased in overseas markets (outside of the Varium Sea region).

- Q9. Is there any data with regards to the quantity of shark fins being landed in Alopias in a particular year?
A9. No
- Q10. Has the practice of shark finning/spining been prevalent among other nations in the Varium Sea region?
A10. No.
- Q11. Are the mako sharks on the IUCN Red List or considered endangered?
A11. This is a subject you can research.
- Q12. Is there any estimate regarding the sub-population of shortfin mako and longfin mako sharks found in Varium Sea region?
A12. There is no specific data, but studies suggest that the populations are not currently in decline.
- Q13. Is Alopias referring to economic development of its citizens through shark spinning in Paragraph 26 of the Record?
A13. No. The statement refers to general economic development concerns unrelated to sharks.
- Q14. How many countries other than Alopias and Rhincodon are range states to mako sharks?
A14. This is a subject you can research.
- Q15. What is the number of mako sharks/shark fins imported to Rhincodon after the sanctions?
A15. All of the shark fins consumed in Rhincodon come from its domestic fishing fleets (both before and after the sanctions).
- Q16. What is the weight of a longfin mako shark after spinning? What is the weight of a shortfin mako shark after spinning?
A16. This is a subject you can research, if you think it is relevant in some way.
- Q17. What is the definition of “landing”? Is there a substantive distinction between “landing” and “harvesting”?
A17. Landing generally refers to the amount of fish harvested from the sea and brought to the land.

Clarifications regarding concentrated animal feeding operations (CAFOs)

- Q18. What are the CAFOs that were said to be a common and legal practice in Rhincodon?
A18. CAFOs are large-scale industrial agricultural facilities that raise animals, usually at high-density, for the consumption of meat, eggs, or milk.
- Q19. Can you provide any additional information concerning CAFOs in Rhincodon’s territory?
A19. Rhincodon’s CAFOs are identical to those in the United States. There are approximately 5,000 CAFOs in Rhincodon.

- Q20. Paragraph 30 of the Record contains allegations made by Alopias Minister of Foreign Affairs regarding CAFOs. Are they to be treated as indicative of Rhincodon's policies?
- A20. As noted above, Rhincodon does permit approximately 5,000 CAFOs to operate within its territory.

Clarifications regarding domestic laws

- Q21. Are the natures of the legal systems of the parties based on the civil law or common law?
- A21. Both parties have a mixed system of law that is influenced by both civil and common law.
- Q22. What is the intent of Rhincodon behind the enactment of the Humane Fishing Act? What does the Preamble of the Act state?
- A22. There was no preamble. You may make reasonable inferences on the intent based on the Record. The Humane Fishing Act was passed almost unanimously by the Rhincodon Parliament, 350-2.
- Q23. Are sharks the only fish species covered under the Humane Fishing Act?
- A23. Yes.
- Q24. Is shark spining illegal under Rhincodon domestic law?
- A24. Yes, Rhincodon agencies and courts have interpreted spining to be prohibited under the Humane Fishing Act.
- Q25. Is it illegal under Rhincodon law to provide development assistance to other countries?
- A25. As per Paragraph 20 of the Record, general development assistance is not prohibited; however, it is illegal to provide assistance to foreign law enforcement agencies, including those that would enforce the Shark Finning Prohibition Act.
- Q26. What is the purpose behind banning "all fish and fish products" being imported to Rhincodon?
- A26. The Record provides statements explaining Rhincodon's reasoning.
- Q27. Is the Humane Fishing Act derived from the TARA?
- A27. The Act makes no specific reference to the TARA.
- Q28. What measures have been undertaken by Alopias for the purpose of enforcing its Shark Finning Prohibition Act?
- A28. Beyond those actions referred to in the Record, Alopias has no plans to increase its current levels of enforcement unless financial assistance is provided, which has not been forthcoming at this point.

Clarifications regarding TARA, WTO/GATT, and other international law matters

Q29. Has TARA been concluded out of the auspices of WTO platform to negotiate Bilateral Trade Agreements?

A29. No.

Q30. Is Alopias to be considered a full-fledged party to GATT, unlike WTO in which it is an observer member?

A30. No.

Q31. What is the correct interpretation of the phrase “public morals”?

A31. That should be a focus of your arguments in the memorial.

Q32. Regarding Article 25, Paragraph 2, of the TARA, does the provision apply to only formally adopted GATT/WTO decisions or reports?

A32. Provisions of the TARA may be subject to differing interpretations.

Q33. Article 25, Paragraph 2, of the TARA provides that GATT and WTO panel decisions shall be considered subsidiary sources of law. Is it to be understood that the same may be used in arguments before ICJ or is it meant to be used before the panel constituted under Article 25, Paragraph 1?

A33. The ICJ is an “appropriate body” under Article 25, Paragraph 1.

Q34. In Paragraph 10 of the Record, aside from attending and fully participating in the enumerated Conferences, did Applicant or Respondent sign or ratify the instruments that resulted from any of the said Conferences?

A34. The Record provides information about conventions. With respect to non-treaty instruments (such as, for example, declarations) that are adopted by consensus, typically parties do not formally sign or ratify them.

Q35. Was a delegation from Alopias present at the UN General Assembly at the time of the adoption of Resolution 68/71?

A35. Yes.

Q36. Is Alopias considered an SIDS (Small Island Developing State) for the purposes of certain exceptions within UNCLOS?

A36. No.

Q37. When did Alopias and Rhincodon sign CMS, CITES, CBD, and UNCLOS?

A37. In the first year in which the conventions were opened for signature.

Q38. Is Rhincodon contributing any funds through any MEA’s financial mechanism?

A38. Yes. Rhincodon’s contributions are at the same level as those of Japan.

Q39. Did Rhincodon ever take the issue of shark finning/spining in the Varium Sea region at MEA forums?

A39. Yes, and at the UN General Assembly as well.

Clarifications regarding economic and trade matters

- Q40. What percentage of fins/fin products is exported to other countries, including Rhincodon?
A40. It is estimated that approximately 90–95 percent of the fins/fin products are exported to countries outside the Varium Sea region. Rhincodon does not import any fins/fin products from Alopias.
- Q41. How many fishing vessels have been registered with Alopias?
A41. There are 450 vessels registered to fish for sharks; however, there is an unknown number of unregistered vessels that also fish for sharks.
- Q42. Are any tariffs being imposed by Rhincodon on imports of fish and fish products from Alopias and if yes, what is the percentage of the same?
A42. Currently, there is a complete ban on such importation and thus no tariffs are applicable.
- Q43. What percentage of Rhincodon’s import of fish and fish products typically comes from Alopias?
A43. Approximately 30 percent of Alopias’s exports of fish and fish products typically are sent to Rhincodon. That amount, however, is less than five percent of total fish and fish product imports into Rhincodon. Note that 75 percent of all fish and fish product consumption in Rhincodon comes from domestic suppliers.
- Q44. What is the population of Alopias living under the International Poverty Line?
A44. Approximately ten percent.
- Q45. Has Rhincodon ever imposed such trade sanctions in the past?
A45. While Rhincodon has imposed trade sanctions in a variety of different contexts, this is the first time it has done so under the Humane Fishing Act.

Clarifications regarding geography

- Q46. Are both Alopias and Rhincodon to be understood as island countries?
A46. No.
- Q47. Are there other countries in the Varium Sea region and what are their positions regarding shark finning and spining?
A47. There are ten other countries in the region. They have been largely silent on the issue, but were present at the UN General Assembly for the relevant votes and aligned with Rhincodon.