



Book - Unit 3 - The Fish Stock Agreement

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Course: Introductory Course to the International Legal Framework on Marine Biodiversity

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1. Introduction

In the early 1990s, the international community agreed that something needed to be done concerning international cooperation in the conservation and management of straddling fish stocks and highly migratory fish stocks.

This eventually led to the adoption of the United Nations 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 (“1995 Fish Stocks Agreement”) in New York, on 4 August 1995.

The 1995 Fish Stocks Agreement entered into force on 11 December 2001, and has currently 82 parties (as of June 2015).

2. Objective and scope

The objective of the 1995 Fish Stocks Agreement is to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through effective implementation of the relevant provisions of UNCLOS.

It sets out the legal regime for the conservation and management of straddling and highly migratory fish stocks, and therefore do not deal with the other categories of species in articles 63(1) and 65-68 of UNCLOS and discrete high seas species.

However, some of the provisions and concepts in the 1995 Fish Stocks Agreement would be very useful for the international management and conservation of some of these categories of species as well. Some of these provisions could even be argued as already being part of customary international law.

3. Broader obligations

The 1995 Fish Stocks Agreement does not fundamentally change the balance of rights of UNCLOS between coastal states and states that fish on the high seas. As the full title of the Agreement reveals, it implements certain provisions of UNCLOS. While building on the balance of rights of UNCLOS, it makes the obligations of states broader, stronger and more detailed.

4. Precautionary approach

The widening of the obligations is, among other things, evident in the obligation to apply the precautionary approach and to protect marine biodiversity under articles 5(c) and 5(g) of the Agreement. The precautionary approach is described in article 6, noting that “The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures.” The remainder of the provision, as well as Annex II, give states very detailed guidance on how the precautionary approach needs to be implemented.

The 1995 Fish Stocks Agreement places marine capture fisheries in a much wider context in comparison with UNCLOS. In addition to the need to take account of associated and dependent species, paragraphs (d), (e) and (f) of article 5 require states to take account of a wide range of ecosystem considerations, for instance assessing the impacts of non-fisheries activities on target stocks, minimizing pollution, waste, discards, catch by lost or abandoned gear and catch of non-target species. Together, the provisions require states to pursue a much more holistic approach to fisheries management. This is undoubtedly a significant advance of international law, even though the real litmus test remains, as always, implementation at the national and regional level.

5. Compatibility of measures and international cooperation

The strengthening of obligations is, among other things, reflected in the concept of compatibility. Accordingly, article 7 stipulates that the conservation and management measures that the coastal state applies in its EEZ with respect to straddling and highly migratory fish stocks should be compatible with the conservation and management measures applied by states fishing on the high seas for those stocks.

Moreover, article 8 firmly recognizes the role of the Regional Fisheries Management Organizations (“RFMOs”) as international vehicles for fisheries governance. Only states that are members of RFMOs or that cooperate with them “shall have access to the fishery resources” (paragraph (4)). While this is a treaty provision that applies in principle only between states that are parties to the 1995 Fish Stocks Agreement, many RFMOs already take measures against non-cooperating states.

Cooperation also extends to the enforcement of the adopted measures. Where there are reasonable grounds for believing that a vessel on the high seas has been engaged in unauthorized fishing within an area under the jurisdiction of a coastal State, the flag State of that vessel, at the request of the coastal State concerned, shall immediately and fully investigate the matter. The flag State shall cooperate with the coastal State in taking appropriate enforcement action in such cases and may authorize the relevant authorities of the coastal State to board and inspect the vessel on the high seas. The Agreement details the basic procedures for boarding and inspection.

6. Duties of the flag State

A State whose vessels fish on the high seas shall take the necessary measures to ensure that vessels flying its flag comply with sub-regional and regional conservation and management measures. Such measures shall include:

- Control of vessels on the high seas by means of fishing licences, authorizations or permits, Establishment of a national record of fishing vessels authorized to fish on the high seas
- Requirements for marking of fishing vessels and fishing gear for identification in accordance with uniform and internationally recognizable vessel and gear marking systems
- Requirements for recording and timely reporting of vessel position, catch of target and non-target species, fishing effort and other relevant fisheries data
- Requirements for verifying the catch of target and non-target species through such means as observer programmes, inspection schemes, unloading reports, supervision of trans-shipment and monitoring of landed catches and market statistics
- Monitoring, control and surveillance of such vessels, their fishing operations and related activities

7. Measures taken by a port State

A port State has the right and the duty to take measures to promote the effectiveness of subregional, regional and global conservation and management measures. A port State may, inter alia, inspect documents, fishing gear and catch on board fishing vessels and adopt regulations empowering the relevant national authorities to prohibit landings and trans-shipments.

8. Institutional arrangements

Like UNCLOS, UNDOALOS also acts as Secretariat of the Fish Stock Agreement and the UNGA is the supreme decision body.

According to the Agreement, Review Conference been convened twice to assess the effectiveness of the Agreement by reviewing and assessing the adequacy of its provisions and make recommendation to strengthen the implementation of the Agreement to better address the conservation and management of stocks. There will be a resumption of the Review Conference at a date not earlier than 2015.

UNGA established in 2001 the Informal Consultations of States Parties to the Agreement to regularly discuss issues relating to the implementation of the Agreement and to take preparatory steps for the Review Conference and the resumed Review Conference and the consideration by the General Assembly of agenda items on oceans and the law of the sea.