



Book - Unit 8 - Regional Fisheries Instruments and Bodies

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

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Table of contents

1. Introduction

List of Regional Fisheries Bodies

2. International Convention for the Conservation of Atlantic Tunas

Objective and scope

Institutional arrangements

Statistical documentation and management measures

3. Convention on the Conservation of Antarctic Marine Living Resources

Objectives and scope

Geographical scope

Ecosystem approach

Conservation measures

Institutional arrangements

Decision-making process

1. Introduction

As most fish stocks are not confined to the maritime zones of a single coastal state, management and conservation needs to take place at the bilateral, regional or sub-regional level. The framework character of the UNCLOS and the Fish Stocks Agreement envisages this as well. Article 8 of the Fish Stocks Agreement clearly confirmed the international community's preference for Regional Fisheries Bodies (RFBs) as the appropriate international vehicles for fisheries governance.

There are currently almost 40 regional fisheries bodies. They have different geographical and substantive mandates; those that have a management mandate that allows them to adopt management measures, such as determine a total allowable catch (TAC) or allocate the TAC between the participating states, are called Regional Fisheries Management Organizations (RFMOs). There are RFMOs which mandate focus in the management of tuna and tuna-like species. The fisheries bodies established under article VI(1) and (2) of the Constitution of the United Nations Food and Agriculture Organization have, for instance, merely an advisory role. Other bodies only have a scientific advisory role, such as the International Council for the Exploration of the Sea ("ICES"). Many RFBs take account of associated and dependent species as required by the UNCLOS Convention but only CCAMLR and the IBSFC take a more holistic, ecosystem-oriented approach.

Some RFBs are in the process or have recently updated their constitutive instruments or replaced them to provide appropriate frameworks to address current critical fisheries management issues.

To illustrate some of the differences among RFBs, two of them will be discussed in more detail. These are ICCAT and CCAMLR.

List of Regional Fisheries Bodies

Tuna RFMOs

CCSBT	Commission for the Conservation of Southern Bluefin Tuna
IATTC	Inter-American Tropical Tuna Commission
ICCAT	International Commission on the Conservation of Atlantic Tunas
IOTC	Indian Ocean Tuna Commission
WCPFC	Western and Central Pacific Fisheries Commission

Non-tuna RFMOs

CCAMLR	Commission on the Conservation of Antarctic Marine Living Resources
CCBSP (COP)	Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea
CTMFMM	Joint Technical Commission of the Maritime Front
GFCM	General Fisheries Commission for the Mediterranean
IPHC	International Pacific Halibut Commission
Joint Commission	Joint Norwegian-Russian Fisheries Commission
NAFO	Northwest Atlantic Fisheries Organization
NASCO	North Atlantic Salmon Conservation Organization
NEAFC	North-East Atlantic Fisheries Commission
NPAFC	North Pacific Anadromous Fish Commission
NPFC*	North Pacific Fisheries Commission
PSC	Pacific Salmon Commission
RECOFI	Regional Commission for Fisheries
SEAFO	South East Atlantic Fisheries Organization
SIOFA (MOP)	Southern Indian Ocean Fisheries Agreement
SPRFMO	South Pacific Regional Fisheries Management Organization

Advisory RFBs - Science

ICES	International Council for the Exploration of the Sea
PICES	North Pacific Marine Science Organization
SPC	Secretariat of the Pacific Community

Advisory RFBs - Management

APFIC	Asia-Pacific Fisheries Commission
BOBP-IGO	Bay of Bengal Programme Inter-Governmental Organization

CECAF	Fishery Committee for the Eastern Central Atlantic
COMHAFAT	Ministerial Conference on Fisheries Cooperation among African States Bordering the Atlantic Ocean
COREP	Regional Fisheries Committee for the Gulf of Guinea
CPPS	Permanent Commission for the South Pacific
CRFM	Caribbean Regional Fisheries Mechanism
FCWC	Fishery Committee of the West Central Gulf of Guinea
FFA	Forum Fisheries Agency
NAMMCO	North Atlantic Marine Mammal Commission
OLDEPESCA	Latin American Organization for Fisheries Development
OSPESCA	Central America Fisheries and Aquaculture Organization
PERSGA **	Regional Organization for the Conservation of the Environment of the Red Sea and Gulf of Aden
SEAFDEC	Southeast Asian Fisheries Development Center
SRFC	Subregional Fisheries Commission
SWIOFC	Southwest Indian Ocean Fisheries Commission
WECAFC	Western Central Atlantic Fishery Commission

Table based on information from the White Paper on Regional Oceans Governance (UNEP, 2014) and the FAO website

2. International Convention for the Conservation of Atlantic Tunas

The International Convention for the Conservation of Atlantic Tunas (“1966 ICCAT”) was adopted on 14 May 1966, entered into force on 21 March 1969 and was amended in 1984 and 1992. There were 50 contracting parties to 1966 ICCAT as of June 2015.

In addition, the special status known as ‘Cooperating Party, Entity or Fishing Entity’ was created, which was enjoyed by Chinese Taipei, Bolivia, Suriname and Guyana at the time of writing.

Objective and scope

The objective of 1966 ICCAT, as stated in the Preamble, is to maintain the populations of tunas and tuna-like fishes caught in the Convention Area at levels which will permit the maximum sustainable catch, or yield for food and other

The Preamble and article IV of 1966 ICCAT stipulate that the species covered by the Convention are the tuna and tuna-like species and such other species of fish exploited in tuna fishing in the Convention area that are not under the auspices of any other international organization. About 30 species are of direct concern, including yellowfin, skipjack, bigeye, albacore and bluefin tuna. The Convention applies to “all waters of the Atlantic Ocean, including the adjacent Seas” (such as the Mediterranean Sea and the Caribbean Sea). There is no precise definition in terms of longitude and latitude.

Institutional arrangements

ICCAT establishes as its main regulatory body the International Commission for the Conservation of Atlantic Tunas (“the Commission”). While the Commission takes decisions by a simple majority, as provided by article III(3), there is also an opting-out procedure under article VIII(3).

The Commission works through a variety of Committees, Subcommittees, Working Groups and Panels, which deal with a wide range of issues, such as stock assessment, compliance and allocation.

The Secretariat is located in Madrid, Spain. It facilitates the work carried out by the Commission regarding data entry and collection, compliance and preparing for the Commission meetings.

Statistical documentation and management measures

The Commission has also introduced statistical documentation programmes for tuna and tuna-like fishes, such catch-at-size, tagging, flag, fishing effort and gear. These programmes require contracting parties to ensure that imports of these species are accompanied by validated statistical documents. The Commission occasionally also imposes import prohibitions on consignments from non-complying states. The research mandate of the Commission encompasses the oceanography of the environment in which the target species live and the effects of natural and human factors upon their abundance, as provided by article IV(1).

The recommendations adopted by the Commission include, for example, TACs, TACs allocation, catch limits, minimum size limits, Area and time restrictions, prohibition of transshipment, vessel effort limitations, inspection at port, identification of the vessels carrying out Illegal Unregulated and Unreported (IUU) fishing.

While it has been in the agenda for some time, there has been some modest progress towards ecosystem-based management. For example, Parties whose vessels have been actively fishing for bluefin tuna in the eastern Atlantic and Mediterranean shall implement a 15 year Recovery Plan for bluefin tuna in the eastern Atlantic and Mediterranean starting in 2007 and continuing through 2022. Another example, the Commission is currently working in the development of a Catch Certificate Scheme for tuna and tuna-like species

However, there is no agreement yet regarding discussion on broadening the scope of the Convention in particular with regard to shark conservation and management, the application of an ecosystem approach to fisheries management and the use of the precautionary approach in implementing ICCAT conservation and management measures.

3. Convention on the Conservation of Antarctic Marine Living Resources

The Convention on the Conservation of Antarctic Marine Living Resources (“1980 CAMLR”) was adopted on 20 May 1980, and entered into force on 7 April 1982.

At the time of writing, there were 36 parties to the CAMLR Convention, 25 of which were Members of the convention’s regulatory body, the Commission for the Conservation of Antarctic Marine Living Resources (“CCAMLR”).

Objectives and scope

The objective of 1980 CAMLR is the “conservation of Antarctic marine living resources,” while “the term ‘conservation’ includes rational use,” as provided by article II.

1980 CAMLR applies to Antarctic marine living resources, which are defined in article I as “the populations of fin fish, molluscs, crustaceans and all other species of living organisms, including birds, found south of the Antarctic Convergence.” Article IV recognizes the primacy of the International Convention for the Regulation of Whaling and the Convention on the Conservation of Antarctic Seals in relation to whaling and sealing. The main fisheries that took place at the time of writing targeted Patagonian and Antarctic toothfish, krill and mackerel icefish. While the estimates of the total annual removals of toothfish in recent years indicate a serious risk of over- exploitation of some or all stocks, the annual catches of krill have remained well below the annual TAC. This is not to say that technological innovations and changing market forces may not bring an end to the under-utilization of the krill resources in the future.

Geographical scope

Under article I, the geographical scope of 1980 CAMLR includes large areas north of the Antarctic Treaty Area (south of 60° South latitude) and is based on an approximation of the Antarctic Convergence, which separates the warmer northern waters from the cooler southern waters.

The CAMLR Convention Area is therefore regarded as one of the few RFMOs whose regulatory area largely overlaps with that of a Large Marine Ecosystem (“LME”), with all the consequential advantages that should offer for ecosystem-based management. In reality, however, several species managed by CCAMLR also occur outside the Convention Area. The actual and alleged occurrence of Patagonian toothfish outside the Convention Area has in recent years caused serious difficulties in combating illegal, unreported and unregulated fishing for this species.

Ecosystem approach

Paragraph (3) of article II lists the three principles of conservation that are to be observed for harvesting and other activities in the CAMLR Convention Area. Even though these principles are not named, it is generally accepted that they embrace ecosystem-based (fisheries) management and a precautionary approach *avant la lettre*. This addresses the concerns that led to the negotiation of the convention, namely that large-scale krill harvesting would threaten the Antarctic marine ecosystem as a whole.

In view of the relatively low biodiversity and the few trophic levels in the Southern Ocean, an ecosystem approach was a logical choice. Today, CCAMLR is widely credited for its efforts in ecosystem-based fisheries management and is regarded as the leading RFMO in this respect. Among CCAMLR's successes in this context are its measures to minimize by-catch of birds, in particular albatrosses and petrels, in long-line fishing and CCAMLR's Ecosystem Monitoring Program ("CEMP").

Conservation measures

CCAMLR at each annual meeting agrees on binding measures to conserve the Antarctic marine living resources and manage the Southern Ocean fisheries. The Conservation Measures are published in the annual Schedule of Conservation Measures in Force.

Conservation measures, such as data reporting and catch documentation, vessel identification and vessel monitoring systems, seasonal fishing and gear regulation, fall into one of the following categories:

- Compliance
- General fishery matters
- Fishery regulations
- Protected areas

Institutional arrangements

CCAMLR is charged with giving effect to the Convention's objective and principles of conservation. The various ways by which it can fulfill its mandate are listed in paragraph (1) of article IX. These include facilitating research, compiling data, adopting and reviewing conservation measures. The non-exhaustive list of types of Conservation Measures in paragraph (2) of article IX include the designation of TACs, protected species and open and closed seasons for harvesting.

The Commission is assisted by a Scientific Committee, whose recommendations and advice must be taken fully into account as provided by article IX(4). This leaves the Commission a margin of discretion that is quite common in RFMOs. Since 1980 CAMLR came into force, the Commission has established two permanent subcommittees: the Standing Committee on Administration and Finance ("SCAF") and the Standing Committee on Implementation and Compliance ("SCIC").

The Secretariat of 1980 CAMLR is based in Hobart, Australia, which is also the venue for all the annual meetings of the Commission and the Scientific Committee. The challenges for CCAMLR in the future are likely to be related on the one side to its ambitious commitment to ecosystem-based fisheries management and on the other side to dealing with illegal, unreported and unregulated fishing

Decision-making process

CCAMLR takes decisions by consensus on matters of substance while on other matters decisions are taken by a simple majority of the Members present and voting as required by article XII(1) and (2). To accommodate members that do not want to oppose consensus, but nevertheless want to avoid becoming legally bound by Conservation Measures, article IX(6)(c) and (d) of 1980 CAMLR contains an opting-out procedure. Instead of blocking consensus, members often prefer to voice their informal objections and concerns in Commission Reports. Consensus decision-making is a characteristic of the Antarctic Treaty System (“ATS”), of which CCAMLR is part.

While the advantages and disadvantages of this method of decision-making are well known, the prospects for majority decision-making in the ATS are especially bleak in view of the sensitive Antarctic sovereignty issue.

A state that becomes party to 1980 CAMLR or even a Member of CCAMLR, but not party to the Antarctic Treaty, should realize that CCAMLR is more than ‘just’ another RFMO. This is evident in article IV of 1980 CAMLR, which makes the agreement to disagree as laid down in article IV of the Antarctic Treaty applicable to states that are parties to 1980 CAMLR, and reiterates its substance.