

**Are present high seas fisheries
governance structures
sufficient to reap the benefits
of globalization?**

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Round Table on Sustainable
Development at the OECD

The assumptions

- Vertical integration between the catch sector and the rest of the value chain is only taking place in fisheries that can assure stock abundance (long-term sustainability) and secure access rights (Macfarlane)
- Inference is that the inability of current governance structures to provide secure access rights discourages globalized investment in fisheries

Outline

- Review the current legal regime for high seas fisheries – how free is the “freedom” to fish on the high seas
- Status and legal consequences of RFMOs as the paradigm for cooperative management
- What improvements have been made?
- What remains to be done?

What do we know about managing shared stocks?

- Non-cooperation leads not only to over-exploitation, but may lead to near or total stock extinction.
- Cooperation **always** leads to higher rents and higher stock levels than non-cooperation.
- The more players, the more difficult it becomes.
- Effective monitoring and control is essential.
- “Free riding” and non-compliance (IUU) must be dealt with.
- Cooperative management depends on a solution to the new member problem.

The “freedom of fishing” on the high seas – a misleading concept

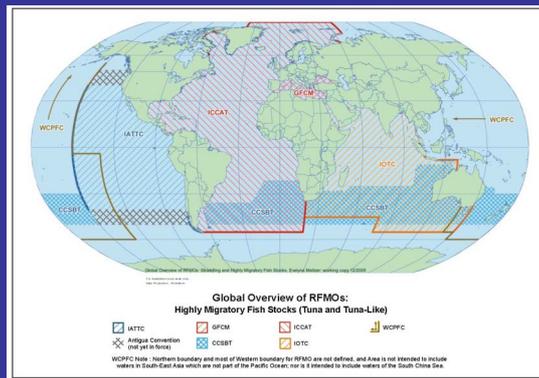
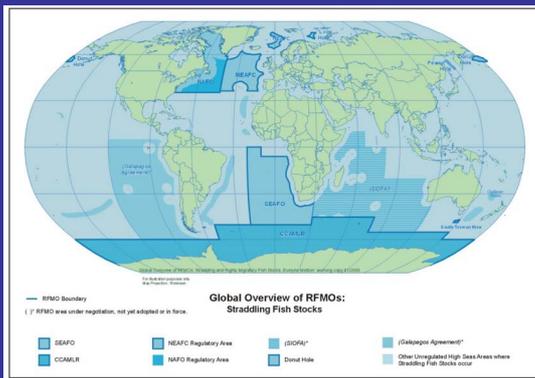
“It is one of the advances in maritime international law, resulting from the intensification of fishing, that the former laissez-faire treatment of the living resources of the sea in the high seas has been replaced by a recognition of a duty to have due regard to the rights of other States and the needs of conservation for the benefit of all.”

(ICJ, Fisheries Jurisdiction Case, 1974)

RFMOs – the emerging paradigm

- “Intergovernmental fisheries organisations or arrangements that have the competence to establish fisheries conservation and management measures” (FAO)
- UNFSA 1995: RFMOs the primary mechanism for achieving cooperation.
- 38 RFBs (including 18 RFMOs).

Global overview of RFMO coverage



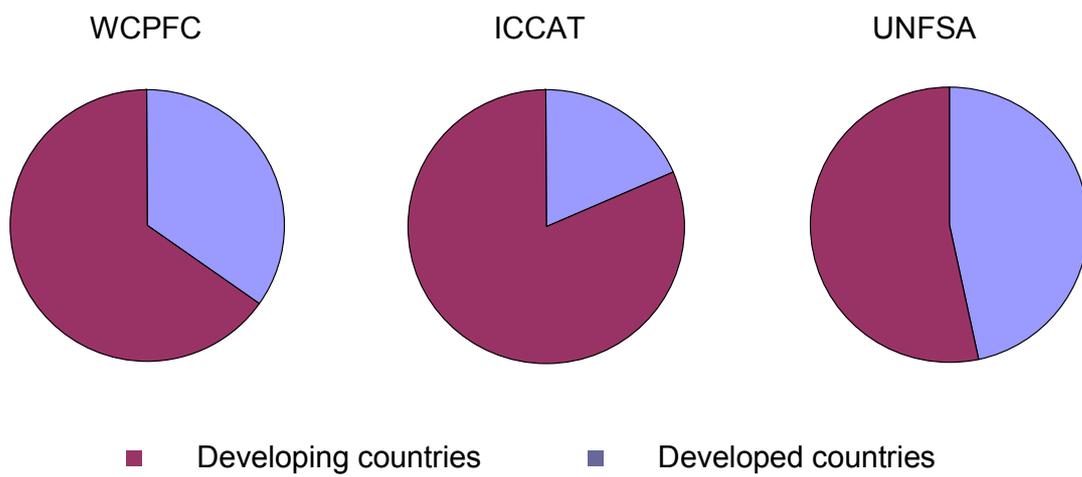
Some important legal consequences

- Duty to cooperate applies to members and non-members.
- Duty to cooperate persists even where members fail to agree: should be no unilateral action.
- Non-members which do not agree to apply RFMO measures are “not discharged” from duty to cooperate.
- Where no RFMO exists, States are under a duty to cooperate to establish an RFMO or apply conservation measures.

What are the major threats to stability in RFMOs

- Free riding
- Non-compliance (IUU) by members and non-members
- Failure to heed special requirements of developing States
- Failure to deal with new members
- Failure to agree on allocation

Developing country participation in RFMOs



What are the conditions for success in RFMOs?

- Effective conservation and management practices (ecosystem-based management, precautionary approach)
- Effective compliance and enforcement
- Effective decision-making procedures
- Effective dispute settlement procedures
- Transparency
- Effective participation by developing States
- Robust institutional structures

How to move towards stability

- Emphasis on better implementation
- UNFSA Review Conference 2006 and General Assembly resolution
- Moves towards RFMO performance assessment and review (NEAFC, NAFO)
- Guidelines on “best practice”
- Kobe and FAO 2007 – RFMOs to review performance against common criteria

Challenges

- Central problem remains distribution of rights
- State-based (who or what do governments represent?)
- Overlap with national management (put own house in order first)
- Should industry have a greater role?
- Can we view RFMOs as corporations?