

# **THE GUATEMALAN FISHERY AND AQUACULTURE GENERAL LAW VERSUS INTERNATIONAL LAWS RELATED TO FISHERY AND AQUACULTURE**

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## Abstract

It is not a secret to anyone that some marine resources under national or international jurisdiction, are being taken without regulation. In addition, it is a reality that some existing fisheries legislation enforced by developing countries may be inadequate on a number of bases including not taking into account evolving fishing methods, existing laws that are out of date or a failure to legislate at all for particular stocks or areas. This situation makes it tremendously difficult for developing States to sustainably manage their fisheries. Similarly, there is a lack of legislation with respect to aquaculture, which is a growing alternative for fishing. Both problems have an explanation and one of the most significant reasons is the lack of knowledge about this theme in some countries and not giving importance to the regulation and management of public domain resources.

Just leafing through the *Guatemalan Fisheries and Aquaculture General Law*, the reader can clearly observe that there are deficiencies that circumscribe the access to the different fisheries which exist in Guatemalan waters in a way that makes it difficult for the commercial, sport, inshore and scientific fisheries to obtain the support that the State should be able to facilitate the correct use of the marine resources. For that reason, this research has the objective to make a comparative analysis of Guatemalan and Australian fisheries legislation, highlighting the differences between each jurisdiction's approach to regulating fisheries and aquaculture. The comparison will uncover the similarities and differences that exist at a national level, while also considering the international obligations that each of the States may have to consider.

Finally, this research will indicate a clear vision to improve both, in regulation and enforcement the *Guatemalan Fishery and Aquaculture General Law*. It is hoped this will demonstrate to Guatemalan authorities that there is an urgent need for reform, to allow the development of Guatemalan fisheries and aquaculture in a competitive and sustainable manner.

# Summary

**SUPERVISORS:**

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## Acronyms

<b>ACRICON</b>	<i>Asociación de Criadores de Camarón</i> / Shrimp Farmers Association
<b>AECID</b>	<i>Agencia Española de Cooperación Internacional para el Desarrollo</i> / Spanish Agency for International Cooperation Development
<b>AFMA</b>	Australian Fisheries Management Authority
<b>AGEXPRONT</b>	<i>Asociación Gremial de Exportadores de Productos No Tradicionales</i> / The Union Association of Non-traditional Products Exporters
<b>AFZ</b>	Australian Fishing Zone
<b>BPC</b>	Border Protection Command
<b>CEMA</b>	<i>Centro de Estudios del Mar y Acuicultura</i> / Centre for Ocean and Aquaculture Studies
<b>DITEPESCA</b>	<i>Dirección Técnica de Pesca y Acuicultura</i> / Technical Department of Fishery and Aquaculture
<b>DPI</b>	Department of Primary Industries
<b>EEZ</b>	Exclusive Economic Zone
<b>EFZ</b>	Exclusive Fisheries Zone
<b>FAO</b>	Food and Agriculture Organization of the United Nations
<b>GDP</b>	Gross Domestic Product
<b>ICRW</b>	International Convention for the Regulation of Whaling
<b>IFM</b>	Integrated Fisheries Management
<b>IATTC</b>	Inter-American Tropical Tuna Commission
<b>ICCAT</b>	International Commission for the Conservation of Atlantic Tunas
<b>KM</b>	Kilometers
<b>LGPA</b>	<i>Ley General de Pesca y Acuicultura</i> / Fishery and Aquaculture General Law
<b>MAC</b>	Management Advisory Committee

<b>MAGA</b>	<i>Ministerio de Agricultura, Ganadería y Alimentación / Ministry of Agriculture, Live Stock and Food</i>
<b>NRT</b>	Net Registered Tonnage
<b>NSW DPI</b>	New South Wales Department of Primary Industries
<b>OSPESCA</b>	<i>Organización del Sector Pesquero y Acuícola en el Istmo Centroamericano / Organization for Fisheries and Aquaculture in the Central American Isthmus</i>
<b>PAPCA</b>	<i>Plan de Apoyo a la Pesca en Centroamérica / Plan to Support Fisheries in Central America</i>
<b>PRADEPESCA</b>	<i>Programa Regional de Apoyo al Desarrollo de la Pesca en el Istmo Centroamericano / Regional Program to Support Fishery and Aquaculture in the Central American Isthmus</i>
<b>RFMOs</b>	Regional fisheries management organizations
<b>RLGPA</b>	<i>Reglamento de la Ley General de Pesca y Acuicultura / Regulation for the Fishery and Aquaculture General Law</i>
<b>SBT</b>	Southern Bluefin Tuna
<b>SFR</b>	Statutory Fishing Rights
<b>UN</b>	United Nations
<b>UNCLOS</b>	United Nations Convention on the Law of the Sea
<b>UNEPA</b>	<i>Unidad Especial de Ejecución para la Pesca y Acuicultura / Special Unit for the Implementation of Fishery and Aquaculture</i>
<b>UNFSA</b>	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.
<b>UNIPESCA</b>	<i>Unidad de Manejo de la Pesca y Acuicultura / Management of Fishery and Aquaculture Unit</i>
<b>USPADA</b>	<i>Unidad Sectorial de Planificación Agropecuaria y de Alimentación / Agriculture and Food Sectorial Planning.</i>

**Australian states and territories:**

<b>NSW</b>	New South Wales
<b>NT</b>	Northern Territory
<b>Qld</b>	Queensland
<b>SA</b>	South Australia
<b>Tas.</b>	Tasmania
<b>Vic.</b>	Victoria
<b>WA</b>	Western Australia

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# Introduction

Public officials and fishermen in developing countries know that fisheries are chaotic, and policies that ignore this insight seem ineffective, unrealistic and even foolish attempts are made to implement them. Accordingly, despite the eagerness to improve the fishing and aquaculture sectors, they largely remain without results. Through the years, Guatemala had inadequate legislation in regard to fisheries and aquaculture which failed in some aspects. This is in contrast to other countries, such as the Commonwealth of Australia, which have significant experience in how to manage common resources and nowadays have one of the most productive fisheries sector worldwide due to its comprehensive and adaptive normative approach.

However, before analysing the activities and the legislation pertaining to fisheries, it is necessary to provide an outline of three important legal disciplines, in an attempt to highlight the complexity of national and international fisheries legislation. Ocean space, resources and activities are subject to many different branches of law including maritime law, law of the sea and fisheries law, and at a certain level these are interrelated as their ultimate objective is to provide a legal framework for the oceans.

Maritime law, also known as admiralty law, is the body of international private law that regulates relationships between private entities operating vessels on the oceans. It is also the law that relates to harbours, ships, seafarers, marine commerce, navigation, shipping, transportation of passengers and property by sea, and other maritime matters.<sup>1</sup> In summary, admiralty law may be defined as a corpus of rules, concepts and legal practices governing certain centrally important concerns of the

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<sup>1</sup> Spiller, Peter. *Butterworths New Zealand Law Dictionary*. New Zealand, LexisNexis NZ Limited, 2005. p. 183.

business of carrying goods and passengers by water.<sup>2</sup> The traditional focus of this body of law is the ship and any legal implications that can result from its operation.<sup>3</sup>

Maritime law has a distinctive feature – its international character.<sup>4</sup> Although its application varies between countries, the essential concepts, institutions and ideas persist, resulting in similarities across all countries around the world.<sup>5</sup> Admiralty law in Australia is essentially contained in the *Admiralty Act 1988*, which came into force on January 1989 and which contains all aspects of admiralty jurisdiction.<sup>6</sup> In Guatemala, the current Code of Commerce states that the relevant part of the old Code of Commerce is still in force for maritime commerce.<sup>7</sup>

Because private maritime law relates to the rights and obligations of private persons in marine matters such as the carriage of goods by sea and marine insurance, it must be distinguished from the law of the sea, that part of public international law that governs the rights and duties of States (and possibly other subjects of international law)<sup>8</sup> regarding the use and utilisation of the oceans. Furthermore, the law of the sea deals only with international law in times of peace and does not include the rules governing the conduct of naval warfare and maritime neutrality.<sup>9</sup>

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<sup>2</sup> Gilmore, Grant and Black, Charles L. *The Law of Admiralty*. Second Edition, The foundation Press, Inc., Mineola, New York, 1975. p 1.

<sup>3</sup> Schoenbaum, Thomas J. *Admiralty and Maritime Law*. Practioner's edition. West Publishing Co. St. Paul, Minnesota, USA, 1987. p. 1.

<sup>4</sup> *ibid.* p. 2.

<sup>5</sup> *loc. cit.*

<sup>6</sup> Cremean, Damien. *Admiralty Jurisdiction: Law and Practice in Australia*. The Federation Press, Sydney, Australia, 1997. p. 3.

<sup>7</sup> Section 1, subsection 1, *Code of Commerce / Código de Comercio*, Decree 2-70 of the Guatemala's Republic Congress.

<sup>8</sup> As an example, other subjects of international law are stated under the United Nations Convention on the law of the Sea, in which the States Parties consented to be bound by the Convention in all the provisions regarding to limits of the territorial sea, regime of the high seas, international navigation, among others.

<sup>9</sup> Bledsoe, Robert L. and Boczek, Boleslaw A. *The International Law Dictionary*. ABC-Clio, Inc., Engalnd, 1987. p. 222.

Maritime law was originally defined by some Latin American jurists as “[...] all legal acts that have the ocean as a scenario [...]”.<sup>10</sup> This definition creates confusion between the terms ‘maritime law’, ‘law of the sea’ and ‘fisheries law’ because each, in some way, has the ocean as a scenario. When definitions such as this were published in Latin America, these three laws were just starting to develop and the jurists did not distinguish one from the other. However, over the years, as these areas of law continued to evolve Latin American jurists started to write about maritime law, fisheries law and law of the sea as independent fields.

In 1996, when the United Nations Convention on the Law of the Sea (UNCLOS)<sup>11</sup> was approved by the Congress of the Republic of Guatemala, even though in the doctrine the differences between maritime law and law of the sea were clear, this decree stated that the UNCLOS was a codification for the maritime law field: reflecting, one more time the confusion that existed between both branches of law.

For its part the law of the sea deals with navigational rights, mineral rights, jurisdiction over coastal waters, peaceful uses of the seas and oceans, equitable and efficient utilisation of the resources, conservation, study, protection and preservation of living resources, among others. This body of law is primarily codified in the UNCLOS.

The confusion between maritime law and law of the sea started a couple of centuries ago, at a time when the only important uses of the sea were navigation and fishing,<sup>12</sup> and the character and scope of these traditional maritime pursuits did not require a sophisticated law of the sea.<sup>13</sup> Today, however, it is clear that both maritime law and law of the sea belong to different law areas: maritime law belongs to private international law and law of the sea belongs exclusively to public international law.

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<sup>10</sup> Osorio, Manuel. *Diccionario de Ciencias Jurídicas, Políticas y Sociales*. Editorial Heliasta S.R.L., Buenos Aires, Argentina, 1981. p. 226.

<sup>11</sup> Decree 56-96 of the Congress of the Republic of Guatemala. See also Resolution 5-96 of the Congress of the Republic of Guatemala. (List of errata in the publication of Decree 56-96 of the Congress of the Republic of Guatemala).

<sup>12</sup> Schoenbaum, Thomas J., op. cit., p.20.

<sup>13</sup> loc. cit.

Latin America's interest in the law of the sea is not recent. Since the independence of its countries at the beginning of the 19th Century, the Latin American countries were conscious of the importance of the sea for their defence, security, commerce, navigation, and as a source of food among other things. At the end of the Second World War, a revision and actualisation of the international law of the sea had begun, culminating in the establishment of UNCLOS. Some Latin American countries played an active role in this process, and during regional and subregional forums in three United Nations' Conferences on the law of the sea, had made significant contributions towards the elaboration of new rules regarding this field of law.<sup>14</sup>

Once UNCLOS was opened for signature in 1982, some definitions regarding fisheries law began to evolve in Latin America. For example, fisheries law was variously described as a "Group of public law rules which the objective is to regulate the human activity of taking species that lives in the water",<sup>15</sup> and also as a "group of public law rules which sets the rational way to exploit the hidrobiological resources [...]".<sup>16</sup>

Fisheries law was in a state of flux in the early 1980s, but its basic principles and rules were codified and developed in UNCLOS, which in general can be considered to reflect the customary international law of fisheries.

International law of fisheries is that part of law of the sea which regulates marine fisheries and in general, the exploitation, management, and conservation of the living resources of the sea.<sup>17</sup> Freedom of fishing has always been one of the fundamental freedoms of the high seas, and for a long time this freedom was able to be exercised by States in all parts of the ocean outside a fairly narrow belt of territorial sea. The significant depletion of marine resources, caused to a large extent

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<sup>14</sup> Aguilar Mawdsley, Andrés. *El Derecho del Mar: Punto de vista Latinoamericano*. Publicaciones Jurídicas Venezolanas, Revista 21, Venezuela, 1999. p 13.

<sup>15</sup> Torres Córdova, Roberto. *El Derecho Pesquero como Rama Autónoma del Derecho*. Secretaría de Pesca, México, 1983. p 15.

<sup>16</sup> López Chavarría, José Luis. *Derecho Pesquero*. Primera Edición, McGraw Hill, México, 1997. p. 1.

<sup>17</sup> Bledsoe, Robert L. and Boleslaw A. Boczek, op. cit., p. 202.

by rapid advances in fishing technology during the latter part of the 20th Century, made the conservation and management of these resources increasingly important. The process of limiting freedom of fishing in the high seas began,<sup>18</sup> resulting in treaties and agreements regarding fishing in high seas<sup>19</sup> being signed by some States to improve the management of international fisheries.<sup>20</sup>

When we talk about hidrobiological resources it is very difficult not to talk about administrative law. Managing the common resources of a country has not been an easy task for public officials at a domestic level because the constitutional responsibility of the States is to assure the enjoyment of rights and the autonomy of the citizens through the administration of the public domain resources to satisfy their needs. The administration can be discretionary or regulated and administrative law is mostly about power and discretion. The 'power' aspect of administrative law includes those principles requiring public officials to either establish the source of their authority or to remain within the scope of that authority. Authority and concepts such as jurisdiction are central to administrative law because they underpin the need for public officials to explain their exercising of power. The 'discretion' aspect of administrative law comes into play after the 'power' issues are satisfied. Discretion means choice, namely that an official who is granted power to act or decide is also granted the freedom to choose from a range of possible outcomes which an exercise of that power might allow.<sup>21</sup>

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<sup>18</sup> Boyle, Allan and David Freestone. *International Law and Sustainable Development: Past achievements and future challenges*. Oxford University Press, New York, 1999. p 113.

<sup>19</sup> United Nations Convention on the Law of the Sea, International Convention for the Regulation of Whaling, the Convention on the High Seas, Convention for the Establishment of an Interamerican Tropical Tuna Commission, The Agreement on the International Dolphin Conservation Program, The International Convention for the Conservation of Atlantic Tunas, Convention on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stock, among others.

<sup>20</sup> Cifuentes Velasco, Bryslie Siomara. *Análisis del Cumplimiento del Acuerdo sobre el Programa Internacional para la Conservación de los Delfines en Guatemala*. Universidad Rafael Landívar, Guatemala, 2006. p.24.

<sup>21</sup> Groves, Matthew and Lee HP. *Australian Administrative Law: Fundamentals, principles and doctrines*. Cambridge University Press, United States, 2007. p. 2.

Fisheries and aquaculture are essentially public resources. Both activities imply taking and farming fish from public domain waters,<sup>22</sup> which ultimately includes administrative law due to the existing relationship between the State and the users. It is also important to note that the level of compliance with fisheries and aquaculture legislation (and other similar issues concerning management and decision making) is directly related to the stakeholders' acceptance of the regimes.<sup>23</sup> Administrative remedies against State officers administering State acts are available,<sup>24</sup> and from the moment a person takes marine resources or starts to farm them, the administrative law has an impact. Consequently, the fisherman and fish farmers need to prove that they are undertaking activities legally by holding a license or a permit. These concessions are regulated by the internal laws of each country.<sup>25</sup>

Some countries have the constitutional right to intervene in all issues concerning the management of common resources.<sup>26</sup> Such 'omnipotent' involvement<sup>27</sup> is an attempt to guide and control each and every act of its citizens through, among other things,

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<sup>22</sup> The water contained in the maritime zone of the coastal territory, lakes, rivers, sources, etc. pursuant to the Guatemalan Constitution are property of the State. See section 121, subsection b). **While the original language of Guatemala official texts is Spanish, for reference purposes these have been unofficially translated here within by the author.**

<sup>23</sup> In Australia, two methods are available to challenge administrative decisions: judicial review and merits review. Judicial reviews cases can only be heard at court and are limited to a determination of whether or not the decision under review was made lawfully. Judicial reviews are always available but it is an expensive and complicated option which, if is successful, only leaves the applicant with a court determination that a legal error has been made, and the flawed decision is set aside. In the other hand merits review, where it is available, allows a more wide-ranging review of administrative decisions. The tribunals or various state specialist environmental courts empowered to hear merits review appeals are able to substitute a new decision for the one being review. This may result in the applicant's preferred decision in most of the cases. Gullet, Warwick. *Fisheries Law in Australia*. LexisNexis Butterworths, Australia, 2008. p.114.

<sup>24</sup> In Guatemalan Administrative Law, the remedies against administrative acts are pursuant in the law named *Ley de lo Contencioso Administrativo* (Administrative Litigious Law), which contains the administrative proceedings to appeal to the courts against acts of the Government; those remedies are contained specifically in section 7 and 9.

<sup>25</sup> Guatemala has two types of concessions: licenses and permits. One of the most important differences between the two is the expiration date. Licenses are issued for 10 years and must be publicised in the official newspaper, while permits are issued for five years, are not formal, and do not have to be published, making access to a permit easier than access to a license.

<sup>26</sup> Politic Constitution of the Guatemalan Republic, section 119, subsection c). See the Australia Commonwealth Constitution section 51, subsection x).

<sup>27</sup> Soto Kloss, Eduardo. *Derecho Administrativo: Bases Fundamentales*. Tomo I, Editorial Jurídica de Chile, Chile, 1996. p. 35.

permits, licences, approvals, resolutions, contracts and agreements.<sup>28</sup> Without stringent measures and guidelines, however, this intervention can result in poor execution of the State's responsibility and lead to the State being criticised as a "Jack of all trades, master of none".

Basic day to day administrative decisions (such as granting concessions) play an important role in fisheries and aquaculture activities. Such administrative proceedings can appear to be easy but when put into practice, they can be difficult for public officials to enforce and therefore hinder the management of resources. Adding to this difficulty is the often deficient budget assigned to the management of fishing and aquaculture by some Governments,<sup>29</sup> where funds are allocated using gross domestic product (GDP) as an activity reference rather than the people who participates in these activities.<sup>30</sup> In 2007 for example, Guatemala's Treasury Department was only providing to the *Unidad de Manejo de la Pesca y Acuicultura* (Manage of Fishery and Aquaculture Unit UNIPESCA) for its function two million quetzals per year (approximately US\$270,000).<sup>31</sup> This meagre budget is likely to be reduced even more in 2008, making it increasingly difficult for authorities to hire enough professional staff to manage the resources adequately.<sup>32</sup>

The slow process of learning about oceans has resulted in scientific uncertainty and precautionary acts that may be risky and may create dysfunctional management institutions.<sup>33</sup> The last few decades have seen the decline of some of the world's most important fisheries because these stocks have been under managed for years. In other words, marine resources are diminishing because marine policies are

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<sup>28</sup> loc. cit.

<sup>29</sup> OSPESCA, AECID, Xunta de Galicia. *Plan de Apoyo a la Pesca en Centroamérica –PAPCA-*. Agencia Española de Cooperación Internacional para el Desarrollo –AECID-, Madrid, España, 2008. p. 21.

<sup>30</sup> FAO. *Perfil de Pesca y Acuicultura por País: Guatemala, Desarrollo Rural*. FAO 2000-2008, [http://www.fao.org/fishery/countrysector/FI-CP\\_GT/es](http://www.fao.org/fishery/countrysector/FI-CP_GT/es)

<sup>31</sup> UNIPESCA, *Informe de la Pesca y la Acuicultura en Guatemala 2004-2007*. UNIPESCA, 2008, Guatemala. p. 8.

<sup>32</sup> FAO. *Perfil de Pesca y Acuicultura por País: Guatemala, Desarrollo Rural*. op. cit., [http://www.fao.org/fishery/countrysector/FI-CP\\_GT/es](http://www.fao.org/fishery/countrysector/FI-CP_GT/es)

<sup>33</sup> Ostrom, Elinor. *The Drama of the Commons: Committee on the human dimensions of global change*. National Academies Press, US, 2002. p. 328.

failing.<sup>34</sup> Because of years of mismanagement, we have what is called “the tragedy of the commons”. Even though the term originally derives from a comparison of medieval village land holdings noted by William Forster Lloyd,<sup>35</sup> it is also relevant for other common resources such as the oceans,<sup>36</sup> and particularly for the mass extinction of the marine life.<sup>37</sup> Ocean ecosystems are complex and have been very difficult to manage, as evidenced by the collapses of many large scale fisheries.<sup>38</sup> For this reason, most States are trying to find other ways to manage public resources. For example, they may privatise public resources or manage them by concessions. And in some cases, a social norm can either play a beneficial or detrimental role in the solution of “the tragedy of the commons”.<sup>39</sup>

Based on the explanation above, the scope of this research is to compare the Guatemalan and Australian fishery legislation so as to: 1) study the background of the Guatemalan and Australian legislation; 2) analyse at the domestic and global levels the similarities and differences between both normative approaches; 3) through 1) and 2), provide suggestions and improvements to amend the current Guatemalan law and related regulations. The above was undertaken through extensive literature reviews and some interviews were conducted with representatives of certain fishing and aquaculture organizations in Australia and Guatemala to obtain more information and to ascertain the point of view of these organizations in regard to fisheries and aquaculture legislation.

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<sup>34</sup> Acheson, James M. and James A. Wilson. *Order Out of Chaos: The case for parametric Fisheries Management*. American Anthropological Association, 98 new series, 1996. p. 579.

<sup>35</sup> Hardin, Garrett. *The Tragedy of the Commons*. Science v 162, 1968. p. 1243-8.

<sup>36</sup> Knight, H. Gary. *Managing the Sea's Living Resources*. Lexington books, USA, 1977. p.3.

<sup>37</sup> Hardin, Garrett, op. cit., p. 1248.

<sup>38</sup> Ostrom, Elinor, op. cit., p. 327.

<sup>39</sup> Drobak, John. *Norms and the Law*. Washington University School of Law, Cambridge University Press, New York, USA, 2006. p. 135.

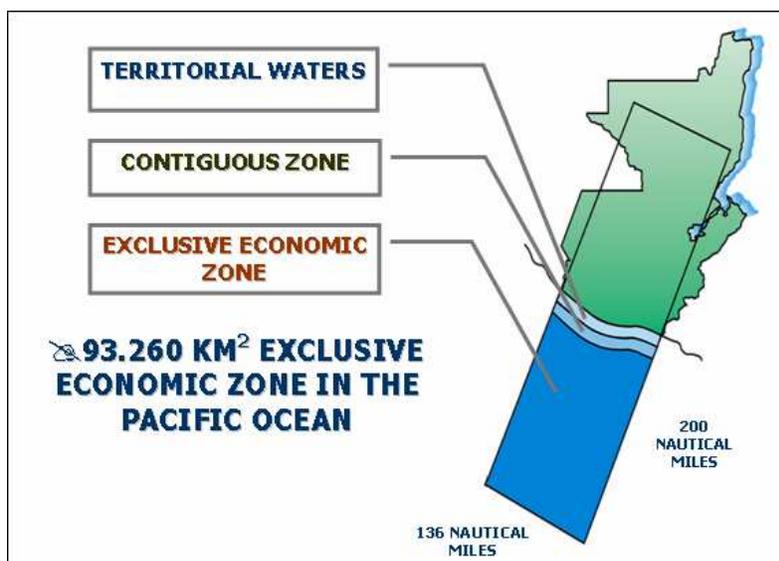
# 1. Guatemala: A country with fishery resources and complex legislation

After reviewing the general administrative issues which authorities who manage hydrobiological resources deal with day to day, it is important to focus on the specific case of Guatemala. Therefore, the present chapter will describe the fisheries and aquaculture activities of the country, the fisheries and aquaculture legislation by analysing every norm prior the *Ley General de Pesca y Acuicultura / Fishery and Aquaculture General Law (LGPA)*, the law itself and the authority in charge of its enforcement.

## GUATEMALA:

Guatemala is a country located in Central America bordered by Mexico to the north-west, the Pacific Ocean to the south, Belize and the Caribbean Sea to the north-east, and Honduras and El Salvador to the south-east. The waters within Guatemala's jurisdiction are almost the same size as the country itself (Figure 1); in essence almost doubling its territory only on the Pacific side.

**Figure 1:** Waters within Guatemala's jurisdiction in the Pacific Ocean



Source: Dr. Hugo Alsina, 2006

Guatemala's legal system is based on civil law only, where legislative enactments rather than judicial precedents are considered legally binding. Its principal source of law, the Guatemalan Constitution<sup>40</sup> aims to organise the State both politically and legally. This does not mean that the courts do not pay attention to previous decisions; they do, especially those decisions made by higher courts. Besides the Constitution, another important Guatemalan law is the *Ley del Organismo Judicial* which recognises 'the law' as the main legal source and also establishes that 'jurisprudence' as a complementary source.<sup>41</sup> Yet another important source is the 'legal doctrine',<sup>42</sup> the most common source practiced. Legal doctrine refers to a qualified series of identical resolutions in similar cases, pronounced by higher courts whose decisions become binding for lower courts.

The entire Guatemalan fishery and aquaculture legislation is based on the LGPA which only has one regulation, the *Reglamento de la Ley General de Pesca y Acuicultura*, RLGPA (Regulation of the Fishery and Aquaculture General Law).<sup>43</sup> This law has been in force since 2002 and the regulation since 2005. Prior to this time, there was an insufficient set of fishery and aquaculture laws.

## 1.1. Fisheries activities in Guatemala

Guatemala's fisheries are tremendously important to the country because fisheries and associated activities are an important source of jobs, nutrition, food security and income, particularly in many of the more needy areas. Fishing contributes to national food security<sup>44</sup> and foreign currency income through the export of its products, but this is not its only function. It also means the territory can exercise its sovereignty, jurisdiction and maritime rights<sup>45</sup> even though the meagre budget currently assigned

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<sup>40</sup> Exact name in Spanish: '*Constitución Política de la República de Guatemala*' (Hereafter the Guatemalan Constitution).

<sup>41</sup> "Sources of Law. The Law is the source of the legal ordinance. Jurisprudence will complement it." Section 2 of the *Ley del Organismo Judicial*.

<sup>42</sup> Section 43 of the *Ley de Amparo y Exhibición Personal*.

<sup>43</sup> Hereafter the regulation.

<sup>44</sup> Ruiz, Edilberto (Manager of the hydrobiology resources department), interviewed by author via email, UNIPESCA. Guatemala, October, 2008.

<sup>45</sup> UNIPESCA, op. cit. p. 40.

to manage its fisheries seems to indicate that such an activity is not a strategic political priority for the Guatemalan Government.<sup>46</sup>

Guatemala's maritime area within the Pacific Ocean is 93,000 square kilometres.<sup>47</sup> While its maritime area within the Atlantic Ocean is not settled yet, negotiations have recently commenced between the Governments of Guatemala and Belize to finally try to solve maritime territorial difference between each country. Fishing activities are conducted in both Guatemala's exclusive economic zone (EEZ), in the first 14,700 square kilometres of the Pacific Ocean and the first 2,100 square kilometres of the Atlantic Ocean. Furthermore, 80 per cent of the boats from commercial and inshore fisheries concentrate their activities in the first 12 nautical miles of the 200 nautical miles available in the Pacific Ocean EEZ. And in the case of the Atlantic Ocean, these boats concentrate their in the first 2,100 square kilometres because commercial boats are prohibited from fishing inside Amatique Bay.<sup>48</sup>

Fisheries in the Pacific Ocean are currently classified according to existing legislation<sup>49</sup> related to:

- ✓ commercial fishing of coastal shrimp, with the most common species caught being *Xiphopenaeus riveti*, *Litopenaeus vannamei*, *Farfantepenaeus californiensis*, *Penaeus brevirostris* and *Litopenaeus stylirostris* (approximately 65 boats);
- ✓ inshore fishing of demersal and pelagic fish and coastal shrimp (approximately 1,400 boats);
- ✓ tuna fishing (approximately 12 boats);
- ✓ dolphinfish and sharks from the families of *Coryphaenidae* and *Alopiidae*, *Carcharhinidae*, *Ginglymostomatidae*, *Lamnidae*, *Sphyrnidae* and *Triakidae* (approximately 31 medium and large scale boats);

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<sup>46</sup> loc. cit.

<sup>47</sup> FAO, *Resumen informativo sobre la pesca por países*. FAO, 2005, <http://www.fao.org/fi/fcp/es/GTM/profile.htm>

<sup>48</sup> loc. cit.

<sup>49</sup> UNIPESCA, 2008, op. cit., p. 41.

- ✓ prawn fishing of *Pleurocondes planipes* (no boats currently fishing this marine resource);
- ✓ sardine fishing of *Clupeidae* family (no boats currently fishing from this marine resource); and
- ✓ sport fishing (approximately 80 boats).

In the Atlantic Ocean, however, fishing activities are classified according to existing legislation to:

- ✓ small scale shrimp fishing from the *Penaeidae* family (approximately 64 boats);
- ✓ inshore fishing of general fish (approximately 1,100 motorboats);
- ✓ inshore fishing of anchovy (approximately 60 motorboats);
- ✓ inshore fishing of lobster from the *Palinuridae* family (approximately 22 motorboats);
- ✓ sport fishing (approximately 25 boats); and
- ✓ large scale tuna fishing (two boats).

Most (95 per cent) of the fishing activities within Guatemala's territory consist of inshore fishing in 1,151 bodies of water, and in Guatemala's 3,000 kilometres of rivers, 100 per cent of fishing activity is used for subsistence fishing activities. While the number of sport fishing activities in lakes or rivers is unknown, Guatemala's fishing authority recently advised that there has been an increase relating to sport fishing activities in seven lakes during the last few years.<sup>50</sup> Currently the entire fleet in the jurisdiction of the EEZ are Guatemalan-flagged.<sup>51</sup>

Shrimp fishing started in 1949 with two boats and in 1961 the first fishing license was granted for 21 large scale boats.<sup>52</sup> In 1967 and 1970 two more licenses were granted for two different companies, adding 18 medium scale boats to the

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<sup>50</sup> loc. cit.

<sup>51</sup> *ibid.*, p. 42.

<sup>52</sup> *ibid.*, p. 44.

Guatemalan shrimp fleet.<sup>53</sup> In 1971 a study revealed that this marine resource would support a fishery fleet of between 21 and 28 fishing boats, but by 1986 there were signs of over-fishing.<sup>54</sup> In general terms, shrimp resources have decreased considerably all over the Middle America region, which includes the Tehuantepec Gulf in Mexico through to Costa Rica. From 1960 to 2004, the average catch was 1,636 metric tons; by 1995 the maximum catch was 3,243 metric tons, and in 2005 the catch was approximately 500 metric tons.<sup>55</sup> In the last five years, however, the catch has maintained an average of only 915 metric tons, dramatically reflecting the overfishing of this particular marine resource.<sup>56</sup> It is noteworthy to mention that some concessionary companies were aware of the overfishing of this marine resource and thus reduced their fleet accordingly.<sup>57</sup>

The situation is similar in the Atlantic Ocean even though boat capacities are lower than in the Pacific Ocean. The evident overfishing is mainly due to the lack of scientific information about this resource.<sup>58</sup> In the last few months, UNIPESCA has started to obtain photographs and general information, and to conduct a census of the entire shrimp fleet in this area.

The fishing of dolphinfish and sharks has become very important from a social and economic perspective. This activity is not only a valuable source of food and jobs, it is also free to access, which means any person or association who meets the necessary requirements of the fishing application form can access to the resource.

Pelagic fishing in Guatemala is tropical multi-species fishing consisting of 15 species taken in a commercial manner, primarily those fish in the orders *Carcharhiniformes*

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<sup>53</sup> loc. cit.

<sup>54</sup> MAGA, USPADA, DITEPESCA. *La Situación de la Pesca y Acuicultura en Guatemala y los Lineamientos para su Desarrollo Futuro*. Segunda versión, Guatemala, 1986.  
<http://www.fao.org/docrep/field/003/AC587S/AC587S00.htm>

<sup>55</sup> UNIPESCA, 2008. op. cit., p. 45.

<sup>56</sup> loc. cit.

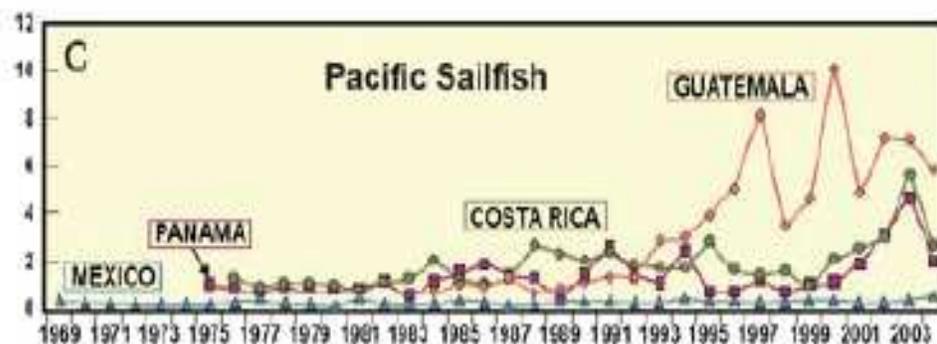
<sup>57</sup> Ruiz, Edilberto (Manager of the hydrobiology resources department), interviewed by author via email, UNIPESCA. Guatemala, October, 2008.

<sup>58</sup> *ibid.*

and *Lamniformes*. There has been little research into the abundance of pelagic fish, dolphinfish and sharks, but experts stated that in the last five years, catches saw a remarkable reduction in these fish. In 2002, for example, the catch reached 404.7 metric tons for sharks, but by 2006, the catch was down to 69.7 metric tons.<sup>59</sup> As a result, the Central American countries decided to implement a national program – the “*Plan de acción nacional para la conservación y ordenación de los tiburones / National action plan to conserve and manage sharks*” – to strengthen the regulations, and the conservation of sharks.<sup>60</sup>

Most Guatemalan sports fishermen have the opportunity to catch sailfish, dolphinfish, marlin and tuna (among other species), with the Port of San Jose, for example, being considered one of the ‘sailfish capitals’. Further, many websites and magazine and television articles refer to the Pacific coast of Guatemala as a common place to catch more than 25 sailfish per day, with between 15 and 22 fish hooked and released per boat per day, and declaring that there is good fishing all year round.

**Figure 2:** Catch of sailfish in the Middle America Region



Source: Department of Commerce USA, 2005.

## 1.2. Aquaculture activities in Guatemala

Aquaculture’s world production has grown remarkably in the past 50 years, and in spite of insufficient institutional support, aquaculture activity in Guatemala has

<sup>59</sup> UNIPESCA, 2008. op. cit., p. 51.

<sup>60</sup> FAO. *Documentos mixtos y publicaciones PAI-TIBURONES*. FAO, Roma, 1999. p. 13.

increased among small farmers in rural areas.<sup>61</sup> Since the LGPA came into force, the State declared its best intention to promote and develop aquaculture<sup>62</sup> particularly in rural areas,<sup>63</sup> even though it has been a challenge to register all the small fish farmers in Guatemala's territory.<sup>64</sup> Several reasons for this situation have been cited, including the rapid growth in the number of small farmers in recent years, fisheries staff shortages, lack of information about registering fish farms, and the fear of being taxed for having a fish farm.

Aquaculture in Guatemala is basically divided in two farming activities: marine shrimp farming (because of its industrial significance) and the farming of tilapia (due to its commercial importance for internal consumption). The growth of shrimp farming has been slow because of the reduction in international shrimp prices. Even so, expectations are high for greater productivity in the future because exports are increasing and there is a tendency for this activity to continue and escalate.<sup>65</sup> In general, fish farms grew quickly because of tilapia farming. Tilapia fish farms are significant at a rural level because of the drop in prices of other agricultural products. It is also important to note that by law, UNIPESCA must promote and develop aquaculture given its role as the Government office in charge of aquaculture. Such promotion has occurred through training aimed at small rural producers, which has resulted in increased farming activity.<sup>66</sup>

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<sup>61</sup> FAO, *Visión General del Sector Acuícola Nacional*. Guatemala, 2008, [http://www.fao.org/fishery/countrysector/naso\\_guatemala/es](http://www.fao.org/fishery/countrysector/naso_guatemala/es)

<sup>62</sup> Section 42, LGPA.

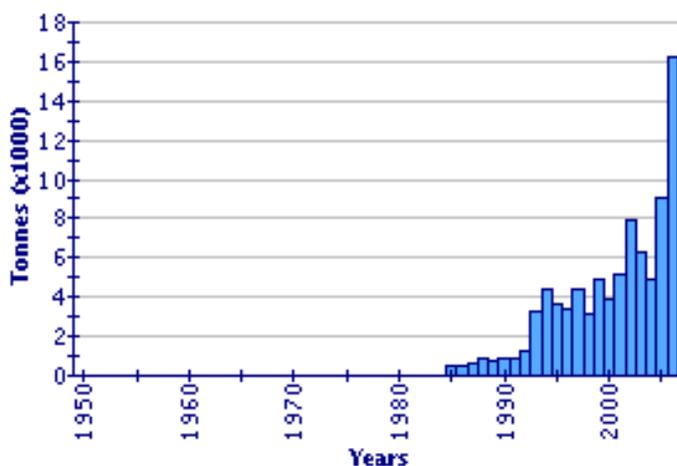
<sup>63</sup> Section 46, LGPA.

<sup>64</sup> UNIPESCA, 2008. op. cit., p. 124.

<sup>65</sup> FAO, op. cit. [http://www.fao.org/fishery/countrysector/naso\\_guatemala/es](http://www.fao.org/fishery/countrysector/naso_guatemala/es).

<sup>66</sup> The training is executed by UNIPESCA aquaculture staff in collaboration with the Governments of China and Taiwan. One centre is located in the south of Guatemala and the other in the north.

**Figure 3:** Aquaculture production reported in Guatemala since 1950



Source: UNIPESCA, 2007.

There is little information about marine aquaculture in Guatemala, partly because it is an emerging activity. While the LGPA<sup>67</sup> defines marine aquaculture as “the farming in the sea”, current laws and bylaws do not legislate on this activity. Because this particular issue has gone unlegislated, difficulties in relation to aquaculture in Guatemalan waters are evident. Twenty five years ago when aquaculture was being developed, this was not the case in countries like the United States or Canada. Problems such as bureaucracy<sup>68</sup> and over regulation<sup>69</sup> were common in the early days of aquaculture in these countries.<sup>70</sup>

Some recent studies have highlighted the possibility of growing aquaculture in the Lake of Güija,<sup>71</sup> an inland resource shared by Guatemala and El Salvador. There are also some aquaculture projects developing in Guatemala, but the most significant are in Santiago Atitlán and San Lucas Tolimán, both of which were founded as an initiative of the Ministry of Agriculture, Live Stock and Food (MAGA) to provide

<sup>67</sup> Section 8, subsection 10 of the LGPA.

<sup>68</sup> Bowden, Gerald. *Coastal Aquaculture Law Policy: A case Study of California*. Westview Press, US, 1981. p 15.

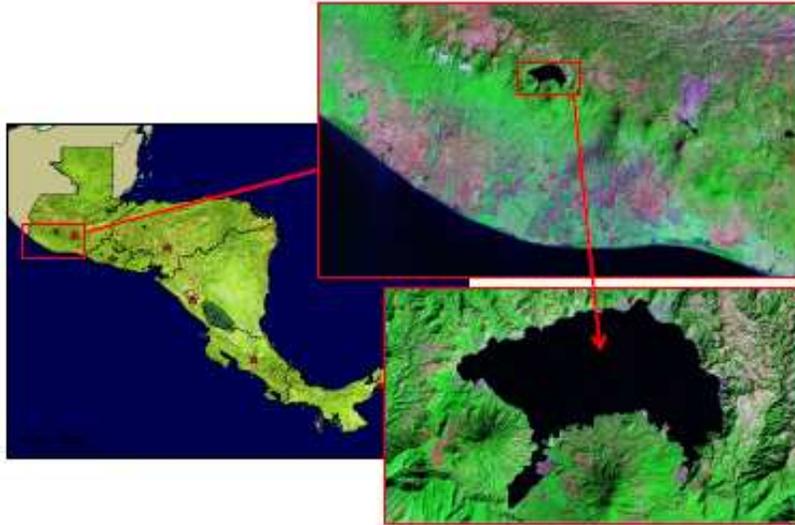
<sup>69</sup> Wildsmith, Bruce. *Aquaculture: The legal framework*. Emoond-Montgomery Limited, Toronto, Canada, 1982. p 7.

<sup>70</sup> Bowden, Gerald. op. cit. p.16.

<sup>71</sup> PREPAC. *Caracterización del Lago de Güija con Énfasis en la Pesca y Acuicultura*. PREPAC (OSPESCA, OIRSA, Taiwán). El Salvador, 2006. p. 91.

economic support to vulnerable and poor rural areas.<sup>72</sup> It is worthwhile mentioning here that current Guatemalan legislation did not envisage rules or norms for aquaculture in inland waters, meaning that current aquaculture activities are occurring without any legislation to support and protect them.

**Figure 4:** Lake Atitlán



Source: PREPAC, 2006.

### **1.3. Background to Guatemalan fishery and aquaculture legislation**

#### **1.3.1. Decree-law number 1235, *Ley que Reglamenta la Piscicultura y la Pesca* (Law which regulates fish farming and fishing)**

Guatemalan fishery and aquaculture legislation was first enacted in 1932 when president Jorge Ubico Castañeda, the last of the liberal authoritarian rulers in Latin America, decided to intensify fishing and fish farming production with decree-law number 1235, *Ley que Reglamenta la Piscicultura y la Pesca* (Law which regulates fish farming and fishing). This decree-law was used to regulate fishing and fish farming in Guatemala for almost 70 years, but the rules were very general and

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<sup>72</sup> PREPAC. *Caracterización del Lago de Atitlán con Énfasis en la Pesca y Acuicultura*. PREPAC (OSPESCA, OIRSA, Taiwán). Guatemala, 2006. p. 58.

contained a considerable number of legal gaps. Further, the decree-law did not contain clear objectives, incorrect terms were used, and no scientific, biological, aquacultural or other technical support was used to help create the rules. The Ministry of Agriculture was the Government office in charge of fisheries and fish farming at the time, and its functions were delegated to the municipalities, which played an important role in managing these public domain resources. The mayor, for example, was the only person who could authorise or deny a licence (licences were granted for one year and they were subject to a cost, which was subsequently reduced after an amendment to the decree-law).<sup>73</sup> Before the LGPA was published, however, the decree-law was still in force even though some of its contents were obsolete.

There were some exceptions, however such as the large scale fishery or fish farming licenses in internal waters which in their cases the concession used to be ten years and twenty five years respectively. One of the most significant characteristics of this decree-law was the lack of regulations in regard to sustainable development and with respect for the environment. There are few sections in regard to this particular matter, for example there is a section<sup>74</sup> that established the prohibition of pollution in rivers, lakes and over the sea. This prohibition did not apply for companies that had the right to do it by a legal authorization of the Government; at present every company needs an environmental impact study approved by the Ministry of Environment to obtain an aquaculture licence<sup>75</sup> which proves that the company's activity respect the ecology. Furthermore, this particular decree regulated prohibitions with the respective penalties (fine or prison punishments).

### **1.3.2. Decree 1470 of the Congress of the Republic of Guatemala**

In 1961, as a result of the need to complement the decree-law in force (29 years after its creation), the Congress decided to promote the rational exploitation of

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<sup>73</sup> Section 1, *Decreto 159 del Congreso de la República de Guatemala* (Decree 159 of the Congress of the Republic of Guatemala).

<sup>74</sup> Section 40, *Decreto Ley 1235 Ley que Reglamenta la Piscicultura y la Pesca* (Law regulating fishfarming and fisheries).

<sup>75</sup> Section 64, subsection h, RLGPA

Guatemala's fishery resources<sup>76</sup> by publishing Decree 1470. Even though decree-law number 1235 ordered the creation of special regulations, none were elaborated, which is why the Congress decided to complement the existing law (1235) with another law (1470).

Decree 1470 complemented the existing legislation by creating new terms for licences, enforcing reports issued by the office in charge, and prohibiting the transfer of concessions. It also considered the legal concept of a 'guarantee deposit' to all individual persons or companies who were entitled to a specific class of concession, and contributed to determining amounts to be paid for each licence according to the class of concession. Licences were classified into three types, (see table 1).

**Table 1:** Types of Licences

Type of licence	Definition according to the decree 1470
Type 'A'	For national or foreign companies or natural persons engaged in fishery or transport of fishing products using boats or ships with Guatemalan registration numbers and whose product is unloaded in national ports for its preparation and further (total or partial) exportation.
Type 'B'	For national or foreign companies or natural persons engaged in fishery or transport of fishing products using boats or ships with Guatemalan or foreign registration numbers and whose product is unloaded in national ports for its preparation and further (total or partial) exportation.
Type 'C'	For national or foreign companies or natural persons who use foreign boats and ships engaged in fishery or transport of fishing products in the Republic's jurisdictional waters, with the purpose of assigning the product directly and exclusively (in fresh state) to exterior markets.

Source: Adapted by the author from Section 5, Decree 1470 of the Congress of the Republic of Guatemala, was amended by section 18 of the *Ley de Inversión Extranjera* (foreign investment law) Decree 9-98 of the Congress of the Republic of Guatemala.

Licences type 'B' and 'C' used to pay the guarantee deposit mentioned above plus the cost of the licence, while for the licence type 'A', any deposit amount was accepted in addition to the actual licence fee.

<sup>76</sup> Introductory part of the judgment

Enforcement of the present decree (1470) only revoked one section<sup>77</sup> of the 1932 decree-law (1235) which means that all legal gaps continued even after the new legislation was enacted.

### **Regulation for concessions of special maritime fishing licences and its amendments, 28 February 1979**

This regulation was created by section 22 of Decree 1470, but it was not until 1979 that it was created as legislation by the then president of Guatemala. For the first time in Guatemala's fisheries legislation, the terms 'protection' and 'conservation' were used. It is the view of the writer that this bylaw considered some important rules that were remarkable for the time. Unfortunately they were not implemented, and in some cases, they were revoked, reflecting some of the mismanagement marine resources currently experience.

The repeals and amendments were made in 1986 by Governmental Agreement 6-86, seven years after the enforcement of the bylaw. It is worth mentioning section 6 of the regulation, dated 1979, which states:

Thirty six boats have authority to fish for shrimp in the EEZ of the Pacific Ocean and ten have authority for the same purpose in the EEZ of the Atlantic Ocean; in both cases these are the maximum numbers. For general fishing, fifty boats can operate in the EEZ of the Pacific Ocean and twenty five in the EEZ of the Atlantic Ocean. For tuna fishing, ten boats have authority to operate in the EEZ of the Pacific Ocean and five in the EEZ of the Atlantic Ocean [...].

Although the number of boats is fairly small, it is the author's opinion that it was not necessary to repeal the entire section: it would have been better just to amend the section concerning scientific and biological studies. By repealing this particular

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<sup>77</sup> Section 134 of Decree Law 1235 was repealed by section 20 of Decree 1470. The revocation section previously contained a prison sentence of 10 days for persons who committed a crime which was not included in the decree-law. Besides being ambiguous, the revocation of this particular section was well done according to the *nullum crimen, nulla poena sine lege*.

section and allowing more boats access without any restriction, marine resources in Guatemala have suffered unnecessarily.

This ruling provided that medium and large scale concessions were granted by the Ministry of Agriculture, while municipalities of each coastal town were in charge of small scale and inshore fishing concessions. Sport fishing for nationals was free of charge while the regulation did not deal with foreign sports fishermen or foreign boats.

A significant section of bylaw established a prohibition to make nets for sale with mesh sizes different to those stated in the law, which currently is one of the problems of the existing legislation. Further, the fees for “the right to have access to fisheries” were determined at 2.5 per cent over the production value based on the ‘dock price’<sup>78</sup> a figure assigned specifically by the Ministry of Agriculture. This fee used to be set aside for the investigation, promotion and development of the fishing sector.

Another regulation (Governmental Agreement 1-79) was used to determine rules regarding medium and small scale fishing, while yet another (Governmental Agreement 360-82) settled the local excise taxes imposed by the Government to be distributed to the municipalities. There are of course many other regulations but these are not relevant to this research paper.

#### **1.4 Fishery and aquaculture general law and its bylaw**

As explained previously, existing legislation regarding fisheries and aquaculture was not accepted by the fishery sector, and the aquaculture sector was dissatisfied about not being included in the prior set of laws. Before the LGPA was enforced, different groups who engaged in fishing and aquaculture activities met to discuss the proposed law with MAGA and its agency UNIPESCA, the Government institutions in charge at the time. Once the proposed law was discussed and accepted, it was sent

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<sup>78</sup> The ‘dock price’ is the first sale price at the unloading of fishing products.

to the Congress to start proceedings to create the legislation. The first full meeting of the Congress of the Republic of Guatemala was on 20 March 2001.<sup>79</sup> Eight months later, on 30 November 2001, a second full meeting was held<sup>80</sup> but it was not until 24 December 2002 that the eagerly awaited law was finally published – the perfect Christmas gift for the aquaculture and fishery sectors. This law is contained in Decree 80-2002 of the Congress of the Republic of Guatemala and is divided into five titles with 95 sections.

The creation of the LGPA is based on the State's obligation to promote social and economic development through increased production and productivity and the rational use of resources. By encouraging freedom and entrepreneurship in fishing and aquaculture, the State can contribute to better social development. This can be achieved by providing equal rights to both fishing and farm fishing, access to jobs in rural areas, generation of currency, and the availability of highly nutritious food for all Guatemalans.<sup>81</sup> This is consistent with the notion that Guatemala's natural resources, which include all marine resources, should be considered part of the nation's wealth.<sup>82</sup>

The law's primary objective is to regulate fishing and aquaculture activities in line with advances in science, adjusting them according to current methods and procedures to ensure optimisation of hydrobiology resources in public domain waters.<sup>83</sup> For the first time in Guatemalan fishing legislation, this law provides a glossary with definitions; for example, the law clearly states that UNIPESCA is the relevant authority in charge of hydrobiology resource management and application of the law, while the MAGA is responsible for the rules, planning and promotion of aquaculture and fishing activities. This law also categorises and classifies fishing

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<sup>79</sup> Proposed law number 2429, Congress of the Republic of Guatemala, Guatemala 2001. [http://www.congreso.gob.gt/gt/ver\\_iniciativa.asp?id=543](http://www.congreso.gob.gt/gt/ver_iniciativa.asp?id=543)

<sup>80</sup> Proposed law number 2591, Congress of the Republic of Guatemala, Guatemala 2001. [http://www.congreso.gob.gt/gt/ver\\_iniciativa.asp?id=705](http://www.congreso.gob.gt/gt/ver_iniciativa.asp?id=705)

<sup>81</sup> First 'whereas clause' LGPA.

<sup>82</sup> Second 'whereas clause' LGPA.

<sup>83</sup> Section 1, LGPA.

activities which means that those are the only fisheries activities currently authorized in Guatemala's jurisdiction (see table 2).

**Table 2:** Classification and categories of fishing activities

Classification	Category
<ul style="list-style-type: none"> <li>• Maritime</li> <li>• Inland waters</li> </ul>	<ul style="list-style-type: none"> <li>• Commercial fishing</li> <li>• Sport fishing</li> <li>• Scientific fishing</li> <li>• Subsistence fishing</li> </ul>

Source: Adapted by the author from Section 16 and 17, LGPA.

The law further divides commercial fishing<sup>84</sup> into inshore, small scale, medium scale, large scale and tuna fishing. The above classification helps to determine the fees for fishing and what kind of concession the relevant authority must grant. These fees are calculated using the registration number of each boat, which are based on the volume (net registered tonnage) of the ship's hold capacity.<sup>85</sup>

Concessions cannot be transferred in any way,<sup>86</sup> because they are individually issued. This means that one concession only can be granted for each boat, effort unit,<sup>87</sup> determined fishery or each production unit of an aquaculture entrepreneurship.<sup>88</sup> Guatemala has two types of concessions: permits and licenses. The main differences between them involve the term of the concession, how a concession is

<sup>84</sup> Section 18, LGPA.

<sup>85</sup> Section 75, LGPA.

<sup>86</sup> Section 50, LGPA.

<sup>87</sup> Name of the concession granted to a particular person who practice a fishery activity without a boat, or who employ a canoe or similar which is not registered in the maritime authority due to its condition.

<sup>88</sup> Section 60, LGPA.

obtained, and the cost<sup>89</sup> of the concession. Table 3 describes the most significant differences between the concessions.

**Table 3:** Differences between licences and permits

Licenses	Permits
<ul style="list-style-type: none"> <li>✦ Highly formal</li> <li>✦ Granted for:               <ul style="list-style-type: none"> <li>✓ Inshore fishing</li> <li>✓ Small scale</li> <li>✓ Medium scale</li> <li>✓ Large scale</li> <li>✓ Tuna fishing</li> <li>✓ Sport fishing (national boats)</li> <li>✓ Commercial aquaculture</li> </ul> </li> <li>✦ A management contract must be signed to obtain a licence. After it is signed, the Ministry of Agriculture provides a ministerial agreement which must be published with the management contract in the official newspaper</li> <li>✦ Term of the concession: 10 years.</li> </ul>	<ul style="list-style-type: none"> <li>✦ Less formal</li> <li>✦ Granted for:               <ul style="list-style-type: none"> <li>✓ Inshore fishing</li> <li>✓ Small scale</li> <li>✓ Scientific fishing</li> <li>✓ Sport fishing (foreign boats)</li> <li>✓ Scientific aquaculture</li> </ul> </li> <li>✦ To obtain a permit, it is necessary to submit a completed application to UNIPESCA who will decide whether a fishing certificate will be granted</li> <li>✦ Term of the concession: 5 years except scientific and sport licenses.</li> </ul>

Source: Adapted by the author from the LGPA and the RLGA.

The law also establishes bans, prohibitions and sanctions. Bans in Guatemalan jurisdiction must be published in the official newspaper 30 days before enforcement. It should be mentioned that the law also orders the creation of a National Register for Fishery and Aquaculture. This register is barely functioning at present for a number of reasons, including the lack of economic and staffing resources. Recent work undertaken to sort out the aquaculture and fishery sectors has also highlighted that there is little information about the registration of boats, motorboats, canoes, licenses and permits. In 2006, the Spanish Government<sup>90</sup> provided UNIPESCA with

<sup>89</sup> The word 'cost' does not mean the concession has a price or fee that must be paid to the Government authority. It means that people interested have to publish the ministerial agreement and the management contract, which is expensive for the concessionary.

<sup>90</sup> Through AECID and the project called "Apoyo a la Pesca Artesal en Guatemala / Support for inshore fishing in Guatemala".

financial assistance to support and evaluate inshore fishing in Guatemala's jurisdiction by conducting a census in both its coastal areas. Given this opportunity, UNIPESCA granted an identity card instead of permits to determine exactly how many inshore fishermen were engaged in this activity. This effort was widely accepted within the sector and is now being developed for fishing in inland waters. This initiative means it is now possible to grant subsistence permits in Amatitlán Lake, one of the most important achievements for UNIPESCA in the last few years.

To complement the general rules, this particular law stated that a bylaw had to be created within 120 days after publication of the law. This did not occur, and it took almost three years to approve the aforementioned regulation. The RLGPA was published on 5 July 2005 in Governmental agreement number 223-2005 and contains all information with respect to obtaining concessions; the equipment, methods and tackle permitted according to sustainable development; different fisheries and areas of Guatemalan waters where fishing is allowed; and other instructions in terms of UNIPESCA's management. On 9<sup>th</sup> January 2008, the RLGPA was subject to an amendment in its section 50, which was one of the most important advances of the government to solve some of the issues regarding to adequate fishing gears in Guatemala's inland waters.<sup>91</sup>

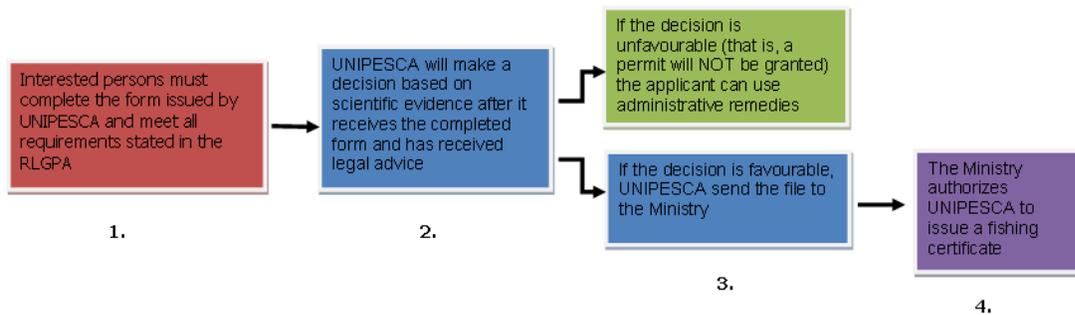
The procedure for obtaining fishing permits is easier than that for obtaining a licence. This procedure is being put into practice for the first time, since the fishing and aquaculture sectors became aware last year of the importance of being registered. In fact, after UNIPESCA delivered identification cards, fishermen requested formal fishing permits; issuing of permits is now in process.

By law, UNIPESCA must issue a technical opinion/decision based on scientific proof about whether or not to grant a fishing licence or permit to every fishery.

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<sup>91</sup> Section 1, Governmental Agreement 564-2007, President of the Republic of Guatemala.

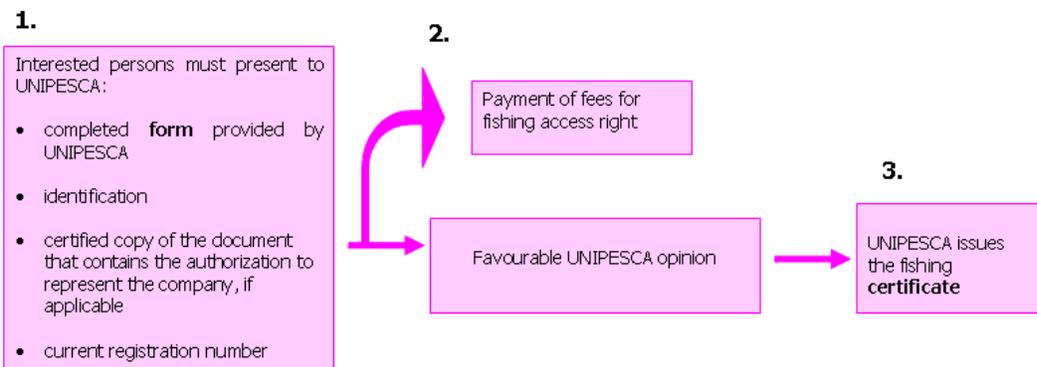
**Figure 5:** Procedure for obtaining a fishing permit



Source: Adapted by the author from the LGPA, RLGA and the *Ley de lo Contencioso Administrativo* (Administrative Litigious Law).

For a sport fishing concession, the law states that a license is required for Guatemalan-flagged boats. In the case of foreign boats participating in a tournament,<sup>92</sup> a permit is issued exclusively for that activity after payment of a fee. This means that the term of the concession will correspond exactly with the dates of the tournament.

**Figure 6:** Procedure for obtaining a sport fishing permit



- The foreign vessels must pay for each tournament two thousand quetzals Q. 2,000.00 according to the LGPA.

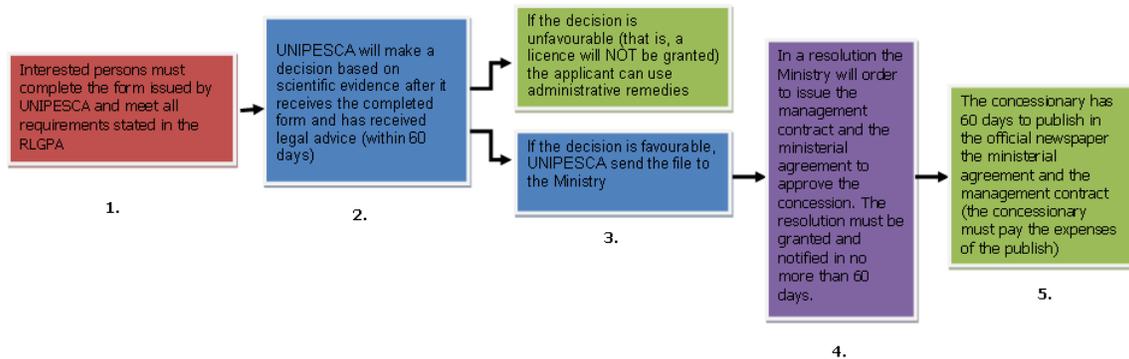
Source: Adapted by the author from the LGPA and the RLGA.

The procedure for issuing licenses is more time consuming than that for issuing permits because administrative officials have more involvement in this process. Both,

<sup>92</sup> In this case a tournament should be known as the sporting competition in which contestants play a series of games to decide the winner, specifying the teams, place and dates for the competition.

resolution and manage contract require the signature of the Ministry which in most the cases previously his personal advisors check the file which takes more time to be due.

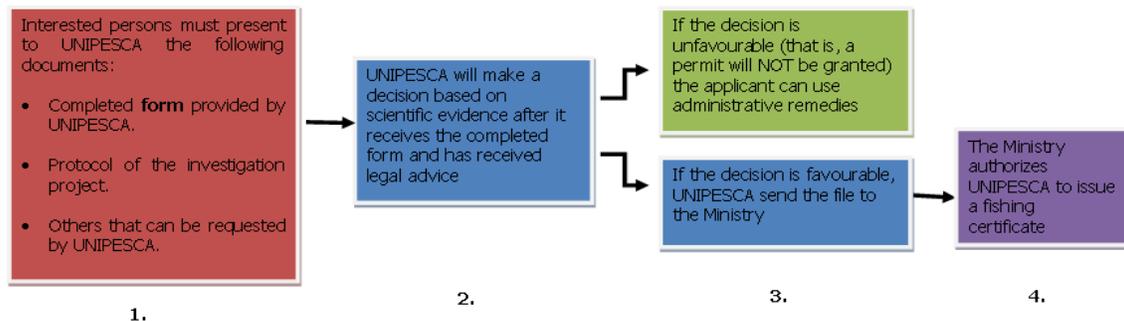
**Figure 7:** Obtaining an aquaculture or fishing licence



Source: Adapted by the author from the LGPA, RLGA and the *Ley de lo Contencioso Administrativo* (Administrative Litigious Law).

Last but not least, figure 8 outlines the process for granting permits for scientific aquaculture and fishing. The period of this concession will depend on the investigation and on UNIPESCA’s opinion. Since this law was enforced, only one company has requested such a permit but it has not yet been issued. It is the writer’s opinion that the Government does not seem to have any intention to promote this kind of activity, even though section 30 of the law specifies that the State through the relevant authority reserves the right to permit scientific fishing so that individual persons and national or foreign companies can practice this activity.

**Figure 8:** Obtaining aquaculture and scientific fishing permits



- Before granting the permit, the entity must formalize an agreement with the relevant authority to stipulate the conditions of the concession.

Source: Adapted by the author from the LGPA, RLGA and the *Ley de lo Contencioso Administrativo* (Administrative Litigious Law).

## 1.5 Management of Fishery and Aquaculture Unit –UNIPESCA

In 1998, as a result of the regional sector's effort sponsored by the Regional Program to Support Fishery and Aquaculture in the Central American Isthmus (*Programa Regional de Apoyo al Desarrollo de la Pesca en el Istmo Centroamericano* – PRADEPESCA), the Special Unit for the Implementation of Fishery and Aquaculture (UNEPA) was created.<sup>93</sup> The idea for this unit was developed at a workshop called the 'Institutional Restructuring of the Technical Department of Fishery and Aquaculture (DITEPESCA)'. The workshop was attended by representatives from fishery and aquaculture associations including the Centre for Ocean and Aquaculture Studies (CEMA), the Union Association of Non-Traditional Products Exporters (AGEXPRONT)<sup>94</sup> the Shrimp Farmers Association (ACRICON), MAGA and PRADEPESCA, who all agreed to present a proposal about the structure of the new guiding entity for fishery and aquaculture. UNIPESCA was created a year later to replace UNEPA and became a legal part of the Ministry.<sup>95</sup>

UNIPESCA's responsibilities are stated in MAGA's regulation and in its own internal regulation contained in Ministerial Agreement 25. UNIPESCA's objective is to manage the national hydrobiology resources through plans, strategies, programs and actions that allow sustainable use of these resources, the correct application of the fisheries normative, and legal provisions.<sup>96</sup>

UNIPESCA's vision is to be a leadership institution which has the scientific and technological expertise needed to promote the sustainable use of hydrobiology resources. Sustainability can be achieved by legal means and by developing strategies to implement fisheries and aquaculture policies to ensure resources are

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<sup>93</sup> Ministerial Agreement 334–98.

<sup>94</sup> Nowadays AGEXPRONT change its name and is known as AGEXPORT (*Asociación guatemalteca de Exprtadores / Guatemalan Exporters' Association*).

<sup>95</sup> Governmental Agreement number 746-99, which modified the "Regulation of the Ministry of Agriculture, Live Stock and Food".

<sup>96</sup> Section 2, Ministerial Agreement 25.

managed in a responsible, ethical, equitable, efficient, honest and independent manner.

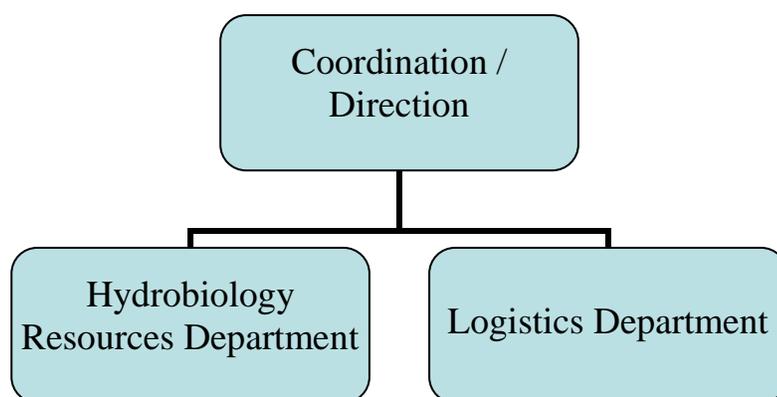
Some of UNIPESCA's functions are stated in section 3 of its internal regulation, which states that UNIPESCA must:

- ✓ propose, in conjunction with the Policy and Strategic Information Unit, strategies and policies, as well as manage actions for the sustainable use of the hydrobiology resources;
- ✓ formulate and publish norms and proceedings for the utilisation of hydrobiology resources and monitor performance;
- ✓ establish, keep and supervise all official national registers of fisheries' production;
- ✓ evaluate, consider and pass judgment on the legitimacy of granting, denying, cancelling or extending a concession for the sustainable use of the country's hydrobiology resources;
- ✓ authorise professionals, entrepreneurships or non-governmental associations to provide services that the Ministry can delegate to accomplish the hydrobiology legislation, as well as undertaking necessary studies regarding protection, concession, management and use of resources;
- ✓ participate in national and international forums, meetings, seminars and conventions on hydrobiology resource issues;
- ✓ pursue Guatemala's subscription or adherence to treaties, pacts or agreements with national or international organisations related to fishery and aquaculture's development where there is a national interest;
- ✓ promote the decentralisation of services such as training, technology, investigation, commercial promotion and fisheries development projects that can be efficiently performed by other entities according to the law;
- ✓ collect and manage, in coordination with the Financial and Administrative Unit, the financial resources derived from fishing grants, licences and permits and from other related internal/external sources; and
- ✓ propose to the cabinet ministry appropriate ordinance measures to guarantee the sustainable use of fishery resources, among others.

The LGPA also designates this particular Government office as the relevant authority in charge of the management of hydrobiology resources and the

enforcement of the law, its regulations and other dispositions according to its objectives and functions.<sup>97</sup> Figure 9 shows how UNIPESCA is organised in accordance with its internal regulation.

**Figure 9:** UNIPESCA organisational structure



Source: Adapted by the author from the Ministerial agreement 25.

The Hydrobiology Resources Department is in charge of marine inspections, aquaculture, evaluation and monitoring of fishery resources, and inshore fishing development. For its part, the Logistics Department is responsible for UNIPESCA's administrative staff and financial issues.

The description of the present situation with respect to aquaculture in Guatemala, the Guatemalan fishing fleet, the institution involved, the past and the current legislation, all clearly connotes the manner in which the Guatemalan Government has been handling fishery and aquaculture issues through the years. Also, the pros and cons of the legislative approach can be noted as well as how the fishery and aquaculture authority has been improved so as to enforce it in a better way despite the several complications that it is presently experiencing.

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<sup>97</sup> Section 8, subsection 20 of the LGPA.

## 2. Fisheries law in developed countries: case study of Australia

As mentioned above, fishing and aquaculture have been practiced since ancient times and continue to be a very important source of food for the world's population. Fishing and aquaculture have been evolving and have been the subject of different studies, from scientific through to ecological, in an attempt to understand the most appropriate ways for promoting sustainable use. These types of studies have typically emanated from developed countries which had been struggling with the optimisation of their resources over time and which realized that sustainable development of fishery resources requires treatment at both the national and international level. By undertaking such studies, these countries encourage other countries to implement similar guidelines to improve their own fisheries and aquaculture activities.

For the purposes of this research, the expression 'developed countries in fisheries law' means those countries which consider they have a 'millionaire fishing industry' that represents a high percentage of their economy and which are endowed with large fishery resources.<sup>98</sup> In other words, those countries where the laws relating to fisheries are satisfactorily contributing to the development of this activity and which promote and emphasise the sustainable utilisation of resources. One such developed country is Australia, and a comparative analysis in the Commonwealth of Australia follows comprising fisheries and aquaculture activities, description of the prior and current legislation and authority in charge of enforcing the laws.

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<sup>98</sup> Dupuy, René-Jean. *The Management of Humanity's Resources: the Law of the Sea*. Hague Academy of International Law, Martinus Nijhoff Publishers, The Hague, 1982. p. 200.

## 2.1 Fisheries activities in Australia

### 2.1.1 Commonwealth

Australia is officially known as the Commonwealth of Australia. Prior to the establishment of the Commonwealth of Australia in 1901, the land mass of Australia was governed by six separate British dominions. The colonies of New South Wales, Victoria, Tasmania, Western Australia and Queensland and the Province of South Australia. The Northern Territory initially was part of South Australia before it was transferred to the Commonwealth in 1910.<sup>99</sup> The laws that operated in the colonies were a combination of British laws and laws created and developed by the colonies. The laws of England flowed to the Australian colonies at the time of British settlement. By the mid-1830s it had been determined that, in addition to the arrival of common law<sup>100</sup> the colonies had adopted the laws contained in English statutes that were suitable to colonial conditions.<sup>101</sup>

The main source of Commonwealth power over fisheries is contained in section 51(x) of the Australian Constitution.<sup>102</sup> This section provides a similarly broad power to the Commonwealth, including enabling regulations regarding employment conditions in the fishing industry.<sup>103</sup>

Fishing is a multi-billion dollar industry for Australia and is the country's fifth largest food producing industry, worth more than \$2.1 billion annually to Australia's economy.<sup>104</sup> Australians consume around 16kg of fish and seafood per person each year, purchased from fish markets, supermarkets and food outlets.<sup>105</sup> The Australian

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<sup>99</sup> Gullet, Warwick. *op. cit.*, p 9.

<sup>100</sup> 'Common Law' refers to law made through decisions of courts and similar tribunals, rather than through legislative statutes or executive action.

<sup>101</sup> Gullet, Warwick. *op. cit.*, p. 9.

<sup>102</sup> Waugh, John. ***Australian Fisheries***. Special Project Series 1: The Offshore Areas, Intergovernmental Relations in Victoria Program, Australia, 1988. p 11.

<sup>103</sup> Gullet, Warwick. *op. cit.*, p 30.

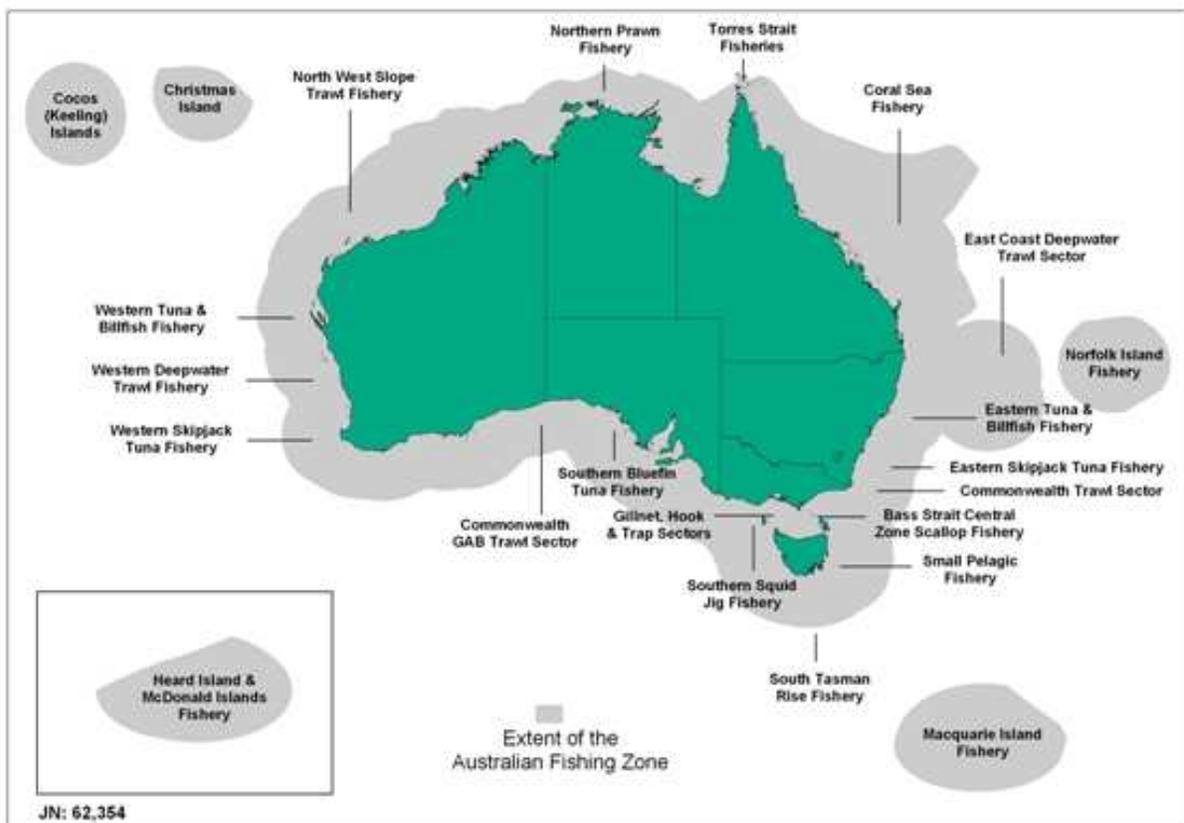
<sup>104</sup> Commonwealth Department of Agriculture, Fisheries and Forestry. ***Looking to the future: A review of Commonwealth fisheries policy***. Commonwealth of Australia, 2003. p. 10

<sup>105</sup> AFMA, ***The commercial Fishing Industry***. Australia, 2005.

<http://www.afma.gov.au/fisheries/industry/default.htm>

Fishing Zone (AFZ) is the third largest in the world, covering nearly nine million square kilometres. It extends to 200 nautical miles from the Australian coastline and also includes the waters surrounding its external territories, such as Christmas Island in the Indian Ocean, and Heard and McDonald Islands in the Antarctic.<sup>106</sup> The Australian Fisheries Management Authority (AFMA) manages Commonwealth commercial fisheries,<sup>107</sup> which in general extends from 3 nautical miles out to the extent of the AFZ. All States and the Northern Territory (NT) are responsible for the majority of recreational and commercial coastal and inland fishing, and inland and coastal aquaculture operations.<sup>108</sup>

**Figure 10:** The Australian Fishing Zone



Source: AFMA, 2005.

<sup>106</sup> loc. cit.

<sup>107</sup> *ibid.*

<sup>108</sup> *Fisheries Management Act 1991*, section 5, subsection 1.

Because fish do not recognise borders, the AFMA shares responsibility for managing some fisheries with the States and the Northern Territory. As a general rule, however, the States and the Northern Territory manage inshore species such as rock lobster and abalone, while the AFMA generally manages deeper water finfish and tuna species. AFMA manages more than 20 Commonwealth fisheries<sup>109</sup> worth nearly \$500 million in production value alone and generating more than 72,000 tonnes of catch annually. The largest of these (by value) are the Northern Prawn, Southern Bluefin Tuna, Eastern Tuna and Billfish fisheries, and the Commonwealth trawl sector of the Southern and Eastern Scalefish and Shark Fishery<sup>110</sup> (providing much of the table fish for eastern Australia residents).<sup>111</sup>

In Australia, every single fishery is managed by the *Fisheries Management Act 1991* and by supporting and complementary rules contained in individual management plans. This totally innovative method seems to help in the enforcement of the Australian fisheries legislation without the need for new amendments to be made.

Some of the most important fishing activities in Australia involve small pelagic fishery, scalefish and shark fishery, scallop and squid jig fishery, prawn, tuna, and billfish fishery, among others. Small pelagic fishery was previously known as the Commonwealth Jack Mackerel Fishery. While a small fishery in terms of its production value, the small schooling pelagic species targeted in the Commonwealth Small Pelagics Fishery are recognised as an important component of Australia's temperate marine ecosystem. They are also an important food source for a wide range of higher level predators, including the tuna and billfish caught in Australia's valuable recreational and commercial fisheries.

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<sup>109</sup> AFMA, op. cit., <http://www.afma.gov.au/fisheries/industry/default.htm>

<sup>110</sup> The Marine Scalefish Fishery operates in all coastal waters of South Australia including gulfs, bays and estuaries (excluding the Coorong estuary), from the Western Australian border to the Victorian border. The fishery includes most marine species of fish, molluscs, crustaceans, annelids and sharks, but excludes rock lobster, prawns, abalone, blue crabs and freshwater fish species, all of which are managed separately. PIRSA Fisheries, **Marine Scalefish Fisheries**, Australia, 2009.

[http://www.pir.sa.gov.au/fisheries/commercial\\_fishing/marine\\_scalefish\\_fishery](http://www.pir.sa.gov.au/fisheries/commercial_fishing/marine_scalefish_fishery)

<sup>111</sup> AFMA, op. cit., <http://www.afma.gov.au/fisheries/industry/default.htm>

A management policy<sup>112</sup> that recognises the importance of these species for a range of stakeholders is in use, but there is limited scientific information available on their stock structure and abundance.<sup>113</sup> This particular fishery comprises various jack mackerels including the greenback jack mackerel (*Trachurus declivis*), the Peruvian jack mackerel (*T. symmetricus*), the yellowtail jack mackerel (*T. novaezelandiae*), the blue or slimy mackerel (*Scomber australasicus*), and redbait (*Emmelichthys nitidus*).<sup>114</sup>

The Southern and Eastern Scalefish and Shark Fishery bring together the South East Trawl, the Great Australian Bight Trawl and the Gillnet Hook and Trap (formerly the Southern Shark and South East Non-trawl) fisheries under a common set of management objectives.<sup>115</sup> These areas are regulated in the Southern and Eastern Scalefish and Shark Fishery Management Plan 2003, which together with the *Fisheries Management Act 1991* under which it is made, establishes the framework for the management of the Southern and Eastern Scalefish and Shark Fishery. The plan sets out the objectives and the measures by which those objectives are to be attained, and performance criteria against which measures may be assessed. Among other regulatory measures, the plan establishes a system of Statutory Fishing Rights (SFR).<sup>116</sup> Scalefish means fish belonging to the Class Osteichthyes (bony fishes), other than the following fish:

- ✓ fish in the Istiophoridae family (commonly known as marlin)
- ✓ fish of the genera *Allothunnus*, *Auxis*, *Cybiosarda*, *Euthynnus*, *Gasterochisma*, *Gymnosarda*, *Katsuwonus*, *Orcynopsis*, *Sarda* or *Thunnus* in the family Scombridae (commonly known as tuna and tuna-like fish)

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<sup>112</sup> AFMA. **Management Policy for the Small Pelagic Fishery**. Australia, 2001. p.3.

<sup>113</sup> AFMA. **Small Pelagic Fishery**. Australia, 2007.  
[http://www.afma.gov.au/fisheries/small\\_pelagic/mgt/default.htm](http://www.afma.gov.au/fisheries/small_pelagic/mgt/default.htm)

<sup>114</sup> AFMA, 2001. op. cit., p. 3.

<sup>115</sup> AFMA. **Southern and Eastern Scalefish and Shark**. Australia, 2007.  
<http://www.afma.gov.au/fisheries/sess/sess/mgt/about.htm>

<sup>116</sup> Attorney-General's Department COMLAW. **Southern and Eastern Scalefish and Shark Fishery Management Plan 2003**, Commonwealth of Australia, 2007.  
<http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200507929?OpenDocument>

- ✓ fish of the genera *Acanthocybium*, *Grammatorcynus*, *Rastrelliger*, *Scomberomorus* or *Scomber* in the family Scombridae and fish of the genera *Emmelichthys* or *Trachurus* (commonly known as mackerel). By sharks, the management plan refers to fish belonging to the class Chondrichthyes (cartilaginous fish).<sup>117</sup>

The scallop fishery (*Pecten fumatus*) is concentrated in the Bass Strait Zone is managed under a management plan and under SFRs, using a combination of input (limited entry, size limits, seasonal and area closures) and output controls (catch limits). Boat SFRs and quota SFRs were issued to all eligible stakeholders in the fishery in December 2004 and took effect from 1 January 2005. Prior to 2005, the scallop fishery was managed under a temporary system of annual fishing permits, and until 2007, a boat SFR was required in addition to quota SFRs. Quota SFRs take the form of commercial scallop quota SFRs and doughboy scallop quota SFRs and are fully tradeable. This particular fishery was closed due to the sharp decline in scallop catches in the Central Zone during the 1998 season, a perfect example that demonstrates the effectiveness of the Australian regulations.<sup>118</sup>

Towed dredges are used to collect shellfish such as scallops from the sea floor. The dredge used in the Commonwealth scallop fishery is constructed of a heavy steel frame covered with steel mesh (but open on the front) which is towed and is used to dig scallops out of the sand and mud. The dredge is towed along the bottom until it is full then lifted onto the boat and the contents tipped out (figure 11).<sup>119</sup>

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<sup>117</sup> Scalefish and Shark Fishery Management Plan 2003, Section 3.

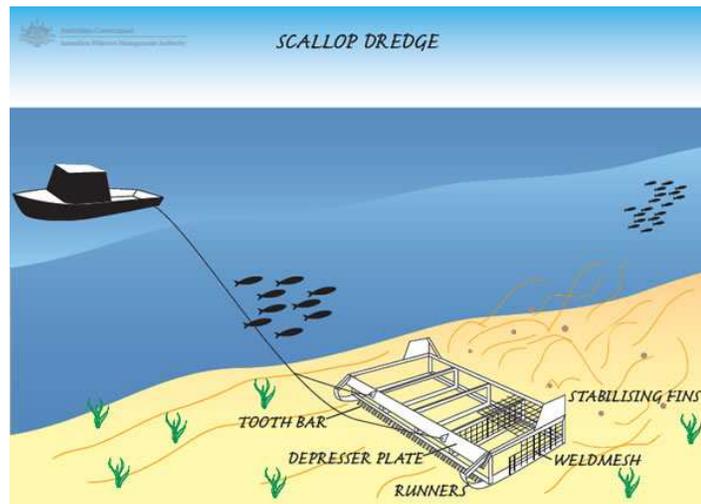
<sup>118</sup> AFMA, **Bass Strait Central Zone Scallop Fishery**. Australia, 2005.

[http://www.afma.gov.au/fisheries/scallop\\_squid/scallop/mgt/default.htm](http://www.afma.gov.au/fisheries/scallop_squid/scallop/mgt/default.htm)

<sup>119</sup> AFMA, **Dredges**, Australia, 2005.

<http://www.afma.gov.au/information/students/methods/dredge.htm>

**Figure 11:** Collecting scallops by dredge



Source: AFMA, 2005.

The lack of restrictions in the 1980s led to over-exploitation of this species, with fishing activities reaching a peak in 1982-83. The fishery was closed in 1990 because the stock had collapsed, but reopened in 1991 under a statutory management plan that reduced and limited entry to the fishery.<sup>120</sup> This example is further proof that fisheries can be managed and can recover with the appropriate legislation and rigorous control.

Another experience under Australia's fisheries management pertaining to over-fishing, was the particular case of the Australian orange roughy fishery, as the most striking example of what can occur when a new fishery is exploited without any knowledge.<sup>121</sup> The orange roughy was discovered in Australian waters in the mid-1980's and was nearly wiped out by the mid-1990's. This peculiar species is a deep sea cold water fish. Because of its habitat is a difficult fish to catch. Scientific knowledge about this fish is still incomplete, but it is estimated that it lives for upwards of 75 years and takes over 30 years to reach sexual maturity. None of

<sup>120</sup> loc. cit.

<sup>121</sup> Nicholls, David and Tom Young. *Australian Fisheries Management and ESD – the One that got away?*. Environmental and Planning Law Journal, volume 17, Lawbook Co., Australia, 2001. p. 273.

these facts were known when the orange roughy fishery out of St. Helens in Tasmania was developing. In order to spawn, huge populations of orange roughy aggregates on the sides of underwater hills. It is only when the fish aggregate to spawn that they can be targeted by trawlers using deep operating nets. When the specie collapse after 1989, the decline in the fishery was first noticed that the biology of the fishery was studied and the enormity of the problem was appreciated. The fishery is now strictly controlled within the AFZ and by the agreement between the Australian and New Zealand Governments through quotas. However, it may take the orange roughy of Southern Tasmania Rise a century to recover as a result of failing to apply the precautionary principle.<sup>122</sup>

Management of the fishing of southern arrow squid (*Nototodarus gouldi*) is via the SFR and its own management plan. Fishing for this species employs what is known as a squid jigging machine.<sup>123</sup> While there has been very little research undertaken on arrow squid stocks of the Southern Squid Jig Fishery, they are known to reach a maximum age of 12 months, with environmental changes thought to have an impact on the age reached. The principal markets for this species are both domestic and export.<sup>124</sup>

Tuna fishing is distributed according to the area of fishing and the species. The Eastern Tuna and Billfish Fishery extends from Cape York in Queensland to the South Australian/Victorian border. Fishing occurs in both the AFZ and in the adjacent high seas. The species that can be caught in this particular area are yellowfin tuna (*Thunnus albacares*), bigeye tuna (*T. obesus*), albacore tuna (*T. alalunga*), broadbill swordfish (*Xaphias gladius* – longline and minor line), and striped marlin (*Tetrapturus audax*). Guidelines are contained in the Eastern Tuna and Billfish Management Plan 2005.<sup>125</sup>

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<sup>122</sup> loc. cit.

<sup>123</sup> The Southern Squid Jig Fishery Management Plan 2005.

<sup>124</sup> AFMA, **Southern Squid Jig Fishery**, Australia, 2007.

[http://www.afma.gov.au/fisheries/scallop\\_squid/squid\\_jig/at\\_a\\_glance.htm](http://www.afma.gov.au/fisheries/scallop_squid/squid_jig/at_a_glance.htm)

<sup>125</sup> AFMA, **Eastern Tuna and Billfish Fishery**, Australia, 2008.

[http://www.afma.gov.au/fisheries/tuna/etbf/at\\_a\\_glance.htm](http://www.afma.gov.au/fisheries/tuna/etbf/at_a_glance.htm)

Southern bluefin tuna is a highly migratory species and is widely distributed throughout waters of the southern oceans, including the AFZ. The key areas where this tuna is caught are the Great Australian Bight and waters off south eastern Australia. The principal species caught is *Thunnus maccoyii* and its main markets are Japan and some smaller but growing markets in the Republic of Korea, China and the United States of America. Fishing of southern bluefin tuna is regulated under the 1995 management plan.<sup>126</sup>

The Western and Eastern Skipjack Fisheries are also managed by limited entry and a range of other management conditions on fishing permits. The specifications for this fishery are contained in the Skipjack Tuna Fisheries Management Plan 2002, among others.<sup>127</sup>

The States and the Northern Territory are responsible for the majority of recreational and commercial coastal and inland fishing. Under the Australian Constitution, State and territory Governments have primary responsibility for management of land and waters within a state or territory, and management of inland and coastal waters out to the three nautical mile limit. The Australian Government is responsible for managing marine waters between the three and two hundred nautical mile limits, which is why control of sport fishing and inshore fishing activities are not assigned to the AFMA.

Recreational fishing can be defined as any fishing other than commercial fishing. An important characteristic about this fishing activity in all Australia's jurisdiction is that it is an offence to sell fish caught recreationally. Recreational fishing includes freshwater angling and fishing conducted on charters fishing tours some States it is distinguished from Aboriginal fishing.<sup>128</sup> Regulations for recreational fisheries differ across the jurisdictions and they are constantly updated. Recreational is not

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<sup>126</sup> AFMA, **Southern Bluefin Tuna Fishery**. Australia 2008.

<http://www.afma.gov.au/fisheries/tuna/sbt/default.htm>

<sup>127</sup> AFMA, **Skipjack Tuna Fishery**, Australia, 2008.

<http://www.afma.gov.au/fisheries/tuna/skipjack/default.htm>

<sup>128</sup> Gullet, Warwick. op. cit., p. 250.

managed by allocation of quotas instead it is managed by size limits for example by prohibiting the taking of fish of specified species below or above certain size. Minimum size limits are imposed to ensure that juvenile fish are not taken. The juvenile fish must be released alive back into the water so they will have the opportunity to reach the age and sexual maturity.<sup>129</sup> Sizes limits will depend according to each State or territory regulations. The regulations can also limit the number of specified species of fish that can be taken or possessed by a person in one day.<sup>130</sup>

Recreational fishing is starting to become the nation's biggest participation sport in Australia. In South Australia, for example, about one quarter (or an estimated 328,000) of its population enjoys fishing each year. Apart from enjoyment, recreational fishing injects millions of dollars into the economy from the purchase and maintenance of boats, marine engines, tackle and equipment.<sup>131</sup> The State of Victoria through the Government promote recreational fishing by the "Go Fishing in Victoria" initiative, which aims to improve recreational fishing facilities and infrastructure, as well as promote opportunities for fishing as a family activity mostly in lakes.<sup>132</sup> The other States and the NT also promote and have their own specific acts and regulations regarding to recreational fisheries.

The period of a concession can vary according to each State or territory from one day to three years. For example in NSW, a recreational fishing fee can be paid for three days, one month, one year or three years. Also there are exceptions to hold concessions regarding to recreational fisheries, such as, people under 18 years old, people assisting a fisher less than 18 years of age and others according to the States' or territories' regulations.<sup>133</sup>

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<sup>129</sup> Ibid., p. 256.

<sup>130</sup> Ibid., p. 258.

<sup>131</sup> Government of South Australia. *Recreational Fisheries*. Australia, 2007.

<http://www.pir.sa.gov.au/fisheries>

<sup>132</sup> Department of Primary Industries. *Go Fishing in Victoria: Catch a new hobby!*, DPI, The state of Victoria, Australia, 2006. p.1.

<sup>133</sup> Gullet, Warwick. op. cit., p. 262

### 2.1.2. Overview of the Australia's states and territories in regard to fisheries

All States and the Northern Territory have requirements for the management of commercial fisheries, recreational fisheries and the licensing of fishers. The general structure of the arrangements is similar, including the use of management plans for fisheries.<sup>134</sup> Furthermore there are some differences between each, but not all, such as jurisdiction and quota controls.<sup>135</sup> Determining the area in which a State or the Northern territory fisheries law applies is complicated. As a general rule it will depend on the species and the way to be fished respecting the three nautical miles from the low water mark which allows the State or the territory to make fishing laws in that area. However, their fisheries law can be extended further where there is an Offshore Constitutional Settlement agreement with the Commonwealth.<sup>136</sup>

#### **Victoria**

In Victoria the department in charge of Fisheries and Aquaculture is Fisheries Victoria, which is a division of the Department of Primary Industries (DPI). Victoria is rich in natural resources and has a strong story of primary industry development. Fisheries Victoria manages the fisheries resource by developing and implementing policies and projects and delivering a wide range of services.<sup>137</sup> Victoria's commercial fisheries are diverse and geographically extensive. Commercial fishing in Victoria occurs mostly in marine areas and in some bay inlet and estuarine areas. The most common fishing species are snapper, flathead, garfish, calamari, among others.<sup>138</sup> Commercial fisheries are managed by output and input controls such as allocation of quotas.<sup>139</sup>

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<sup>134</sup> *ibid*, p. 226

<sup>135</sup> *loc. cit.*

<sup>136</sup> *loc. cit.*

<sup>137</sup> Department of Primary Industries - Fisheries Victoria. **Positioning Statement 2006-2010**. DPI, the State of Victoria, Australia, 2006. p. 1.

<sup>138</sup> D'Silva Dallas (Manager of Marine Fisheries), interviewed by author at Fisheries Victoria. Australia, August 2008.

<sup>139</sup> Fisheries Act 1995, section 64.

Aquaculture and recreational fishing occur in marine, estuarine and inland waters. Fisheries Victoria's external stakeholders include recreational users, aquaculturalists, commercial fishers, cultural users and the broader community. These stakeholders have different environmental, social and economic values and expectations. It is often difficult for the division to reconcile these differences.<sup>140</sup> The species most commonly farmed in Victoria are mussels, abalone and trout. Fisheries Victoria also implements the Aquaculture Strategy, regulations and licence conditions to manage aquaculture.<sup>141</sup>

Fisheries Victoria's vision and directions underpin its projects, policies and services within the legislative framework established by the *Fisheries Act 1995* and *Fisheries Regulations 1998*.<sup>142</sup>

### ***New South Wales***

The New South Wales (NSW) wild harvest commercial fishing industry is a dynamic network of skilled businesses.<sup>143</sup> Commercial fishers operate throughout NSW State waters including estuaries, beaches, bays and ocean. Over three nautical miles (or 5.5km) to sea is generally considered Commonwealth waters, however, under an Offshore Constitutional Settlement, some species of fish and methods of fishing have been given to the State to manage commercial fishers are licensed and only operate in a particular fishery geographic area for which they have an authority.<sup>144</sup>

The NSW commercial fisheries are carefully managed by New South Wales Department of Primary Industries (NSW DPI), in partnership with commercial fishers. The resource is shared amongst over 2050 commercial fishers<sup>145</sup> who catch fish for

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<sup>140</sup> Department of Primary Industries - Fisheries Victoria. loc. cit., p.2.

<sup>141</sup> D'Silva Dallas (Manager of Marine Fisheries), interviewed by author at Fisheries Victoria. Australia, August 2008.

<sup>142</sup> *ibid*, p.5.

<sup>143</sup> New South Wales Department of Primary Industries. ***Prime Facts***. NSW DPI, State of New South Wales, Australia, 2008. p. 1.

<sup>144</sup> loc. cit.

<sup>145</sup> Derwent, Laurie (Manager Fisheries Business Services), interviewed by author. New South Wales Department of Primary Industries, New South Wales, October, 2008.

the whole community to eat and enjoy. The industry has recognised the challenges in making fisheries sustainable and has led many of the changes introduced to improve environmental performance, such as the completion of detailed environmental assessments for the major commercial fisheries in NSW.<sup>146</sup>

Fisheries in NSW are managed under the *Fisheries Management Act 1994*. Its policies regarding to commercial fishing are based on management plans.<sup>147</sup> The Minister is to coordinate the preparation of a draft management plan for a share management fishery as soon as practicable after the fishery becomes a limited access fishery.<sup>148</sup> The most common way to grant concessions in NSW is through fishing licences which are not transferable according to section 104 subsection 4 (d) of the *Fisheries Management Act 1994*. The minister can also grant permits authorising aquaculture, taking and possession of fish, among others.<sup>149</sup>

### ***Northern Territory***

NT Fisheries is a division of the Department of Primary Industry, Fisheries and Mines it works in partnership with commercial and recreational fishing industries, the aquaculture industry, Indigenous communities and other stakeholders to achieve optimum sustainable utilisation of the Northern Territory's valuable aquatic resources.<sup>150</sup> It follows a consultative and precautionary-based approach to ensure that all NT wild harvest fisheries, aquaculture and associated aquatic resources are ecologically, economically and socially sustained. Fisheries' resource management programs are based on high quality scientific indicators and designed to ensure that the Territory's aquatic resources are not over-exploited.

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<sup>146</sup> Ibid., p. 2.

<sup>147</sup> Gullet, Warwick. op. cit., p. 228.

<sup>148</sup> *Fisheries Management Act 1994 (NSW)*, section 56, subsection 1.

<sup>149</sup> *Fisheries Management Act 1994 (NSW)*, section 37.

<sup>150</sup> Northern Territory Government. ***Fisheries***. Northern Territory, Australia, 2008.  
<http://www.nt.gov.au/d/Fisheries/>

The waters of the NT hold an abundance of aquatic life which is underpinned by the pristine nature of much of the environment.<sup>151</sup> The NT also count with recreational fishing controls such as a possession limit which is the maximum number of fish each person may have in possession at any time, other than in their place of permanent residence. It is not a boat limit, a trip limit or a daily limit.<sup>152</sup>

The NT fisheries are managed under the *Fisheries Act 1988*. Commercial fishing is provided in most of the cases by management plans and in some other cases by licences conditions, regulations and gazettal notices. Management plans and gazettal notices have the status of regulations.<sup>153</sup> The Minister also has the faculty to impose emergency restrictions by a gazettal notice.<sup>154</sup>

### **Queensland**

Queensland's commercial fisheries are a significant contributor to the national and State economy. The Department of Primary Industries and Fisheries supports a profitable commercial fishing sector, while protecting and conserving fisheries resources. For its control, Queensland's Department of Primary Industries and Fisheries give concessions through licences and permits. Licences are usually renewable and transferable, whereas permits and personal licences, such as the commercial fisher licence, are not transferable. Licences, Authorities to Take Fish for Trade or Commerce and permits all allow fishers to take particular marine species for trade or commerce as long as they abide by certain conditions, including gear restrictions, area restrictions and management policies.<sup>155</sup> Recreational fisheries are subject to specific regulations. The only exception is fishing with anglers which do

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<sup>151</sup> Department of Primary Industry, Fisheries and Mines. *Fishery Status Report 2006, No. 87*. NT Fisheries. Northern Territory, Australia, 2006. p.1.

<sup>152</sup> Northern Territory Government. *Recreational Fishing Controls*. Northern Territory, Australia, 2007. p. 2.

<sup>153</sup> Gullet, Warwick. op. cit., p. 235.

<sup>154</sup> *Fisheries Act 1988 (NT)*, section 29.

<sup>155</sup> Department of Primary Industries and Fisheries. *Commercial Fisheries in Queensland*. Department of Primary Industries and Fisheries, Queensland, Australia, 2008.  
<http://www2.dpi.qld.gov.au/fishweb/12540.html>.

not require a license to fish recreationally in Queensland, except if fishing in some stocked impoundments.<sup>156</sup>

The management of fisheries in Queensland is undertaken under the *Fisheries Management Act 1994*. Advisory committees or other bodies may be established to assist the Minister in the administration of the Act.<sup>157</sup>

### **South Australia**

In South Australia the commercial and the recreational fishing industry rely on a healthy, well-managed fisheries resource. The Department of Primary Industries and Resources is in charge through the Fisheries Division acts as the caretaker of the fishing resource in South Australia.<sup>158</sup>

The management of fisheries is provided under the *Fisheries Management Act 2007*. This particular act is the most recent act compared to the other States and the NT. The Act established the Fisheries Council of South Australia to prepare and review management plans, preparing or promotes codes of practice, promoting research, among others. Committees may be established to provide advice to the Minister or Council related with the administration of the Act.<sup>159</sup> According to the Fisheries Manager, Abalone and Sardine Fisheries, the Act is a complete tool to manage fisheries and also provides the opportunity for the fishers to have a higher involvement in fisheries management through co-management.<sup>160</sup>

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<sup>156</sup> Tanner, Peter. ***Brief guide to recreational fishing rules and regulations for Queensland***. Department of Primary Industries and Fisheries, Queensland, Australia, 2006.

[http://www.dpi.qld.gov.au/cps/rde/dpi/hs.xml/28\\_2981\\_ENA\\_HTML.htm](http://www.dpi.qld.gov.au/cps/rde/dpi/hs.xml/28_2981_ENA_HTML.htm)

<sup>157</sup> Gullet, Warwick. op. cit., p. 237.

<sup>158</sup> Government of South Australia. ***Fisheries***. Department of Primary Industries and Resources, South Australia, Australia, 2007. <http://www.pir.sa.gov.au/fisheries>

<sup>159</sup> Gullet, Warwick. op. cit., p. 239.

<sup>160</sup> Besley, Michelle (Fisheries Manager), interviewed by author. . Department of Primary Industries and Resources, South Australia, October 2008.

## **Tasmania**

The Department of Primary Industries and Water is responsible for the management of sea fisheries in Tasmania's Island and which has a strong focus on education and promoting public awareness. Marine farming, which is also regulated by the Department, has expanded rapidly in Tasmania in the past decade to become one of Tasmania's major industries.<sup>161</sup> This particular Department does not manage freshwater fishing and freshwater aquaculture instead the office in charge is the Inland Fisheries Service. According to the *Inland Fisheries Act 1995* the Minister of Inland Fisheries is responsible of the inland waters listed on Schedule 1 of the *Inland Fisheries Act 1995*.

The Department manages commercial fishing and recreational fishing to ensure that the fisheries remain sustainable for the future. All Tasmanian wild fisheries are managed under the *Living Marine Resources Management Act 1995* and the subordinate legislation that supports it. Under this Act, all commercial fishing must be under licence and a management plan for a fishery.<sup>162</sup> A wide range of rules may be made in the management plans in relation to a specific fishery, including closures. Pursuant to section 34 of the *Living Marine Resources Management Act 1995*, rules may be made in relation to the matters relating to fishing licences, such as, different classes, number to be granted, criteria and qualifications for the granting, among others.

## **Western Australia**

The Department of Fisheries is responsible for the conservation of most marine and freshwater fauna in Western Australia, the protection of their habitats and food chains, and ensuring the use of these resources is undertaken in a sustainable manner.<sup>163</sup> Fisheries are managed under *Fish Resources Management Act 1994*.

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<sup>161</sup> Department of Primary Industries and Water, ***Sea Fishing and Aquaculture***. Tasmania, Australia, 2008. <http://www.dpiw.tas.gov.au/inter.nsf/ThemeNodes/DREN-4VH86L?open>

<sup>162</sup> Gullet, Warwick. op. cit., p. 243.

<sup>163</sup> Department of Fisheries. ***Annual Report to Parliament 2006-07***. Department of Fisheries, Western Australia, Australia, 2007. p. 10

Amendments to this act are expected to take place in 2008 due to a formal proposal to reform initiated in 2006.<sup>164</sup>

The Government of Western Australia is executing and promoting a policy named 'Integrated Fisheries Management (IFM)' which is aimed at addressing the issue of how fish resources can be best shared between competing users as indigenous, recreational and commercial fishers, within the broad context of Ecologically Sustainable Development.<sup>165</sup> This specific policy was included in the suggested amendments which may be in force by 2008.<sup>166</sup>

According to the *Fish Resources Management Act 1994*, management plans, managed fishery licences, interim managed permits and interim managed licences are authorised to administrate fisheries in Western Australia.<sup>167</sup>

## 2.2 Aquaculture activities in Australia

Australia recognises the definition of aquaculture as the farming of aquatic organisms in inland and coastal areas, involving intervention in the rearing process to enhance production and the individual or corporate ownership of the stock being cultivated.<sup>168</sup>

Aquaculture in Australia consists of various forms, including:

- ✓ a hatchery operation which is producing fertilised eggs, larvae or fingerlings
- ✓ a nursery operation which is nursing small larvae to fingerlings or juveniles
- ✓ a grow-out operation which is farming fingerlings or juveniles to marketable size.

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<sup>164</sup> Gullet, Warwick. op. cit., p. 245.

<sup>165</sup> Department of Fisheries, op. cit., p. 28.

<sup>166</sup> Gullet, Warwick. op. cit., p. 245.

<sup>167</sup> Millington, Peter. Department of Fisheries Western Australia, interviewed by author, Australia, September 2008.

<sup>168</sup> FAO, *Glossary of Aquaculture*, FAO 2000-2008.

<http://www.fao.org/fi/glossary/aquaculture/default.asp?lang=en>

Aquaculture can be carried out in freshwater, brackish water or marine water under different weather conditions depending on the species being targeted. The systems used for aquaculture are varied they include but are not limited to ponds, fibreglass or concrete tanks, pens, and floating cages.<sup>169</sup>

By world standards, Australia’s aquaculture industry is small but continues to grow.<sup>170</sup> As in the case of sport fishing and inshore fishing, the States and the Northern Territory are responsible for inland and coastal aquaculture operations. Table 4 provides details of the Government agencies leading the development of aquaculture in Australia.

**Table 4:** Government agencies responsible for aquaculture

Government	Government Agency
Commonwealth Government	Department of Agriculture Fisheries and Forestry – Australia
Victoria	Victoria Fisheries / Department of Primary Industries
New South Wales	New South Wales Fisheries / Department of Primary Industries
Queensland	Department of Primary Industries and Fisheries
Western Australia	Department of Fisheries
South Australia	Department of Primary Industries and Resources
Tasmania	Department of Primary Industries, Water and Environment
Northern Territory	Department of Primary Industry, Fisheries and Mines

Source: Adapted by the author from the governmental websites.

<sup>169</sup> Department of Agriculture, Fisheries and Forestry. **Aquaculture**. Commonwealth of Australia, 2008. <http://www.daff.gov.au/fisheries/aquaculture>

<sup>170</sup> FAO. **Fisheries and Aquaculture in Australia**. 2008. [http://www.fao.org/fishery/countrysector/FI-CP\\_AU/en](http://www.fao.org/fishery/countrysector/FI-CP_AU/en)

All States or territories have fisheries or aquaculture legislation that regulates its production. In New South Wales, Victoria, Queensland and Western Australia, for example, aquaculture is regulated under general fisheries legislation covering commercial and recreational fishing and aquaculture; while Tasmania has two pieces of legislation relating to marine and inland fisheries respectively. Separate legislation provides for marine aquaculture leases in Victoria (*Land Act 1958*), Tasmania (*Marine Farming Planning Act 1995*), and potentially in Queensland (*Land Act 1994*). In contrast, South Australia has a single dedicated *Aquaculture Act 2001* (amended in 2003 and 2005), while Western Australia has dedicated legislation for pearling (*Pearling Act 1990*).<sup>171</sup>

Aquaculture is the fastest growing primary industry in Australia; in fact it is the fastest growing food production sector in the world. The stagnant, or diminishment of, world wild-caught fisheries together with the growing world population have led to reliance on aquaculture as the means of fish production to meet the world demand for fish protein.<sup>172</sup>

Most aquaculture species in Australia are high value species aimed at export markets, and include fish, molluscs and crustaceans; the top five are tuna, pearl oysters, salmon, edible oysters and prawns. But it is also worth mentioning that there are at least an additional 40 valuable species in the Australian aquaculture list such as abalone, fresh water finfish, mussels, marine sponges, ornamental fish and sea cucumbers, among others. The aquaculture industry in 2004 was valued at \$732 million, accounting for almost a third of the total gross value production of the seafood industry

Aquaculture producers must comply with a range of federal, State and local Government environmental laws and codes of practice to ensure the long-term

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<sup>171</sup> FAO. **National Aquaculture Legislation Australia**. FAO 2000-2008.

[http://www.fao.org/fishery/legalframework/nalo\\_australia](http://www.fao.org/fishery/legalframework/nalo_australia)

<sup>172</sup> Department of Agriculture, Fisheries and Forestry. **Aquaculture Industry Overview**. Commonwealth of Australia, 2001. <http://www.daff.gov.au/fisheries/aquaculture/overview>

sustainability of the industry and the environment. A report in 1999 asserted that the aquaculture industry in Australia created more than 7,000 direct and 20,000 indirect jobs. This industry projection also indicated that if aquaculture production reaches \$2.5 billion in 2010, 36,000 jobs are expected to be created.<sup>173</sup>

The diversity of aquaculture products including crocodiles, algae, various species of fresh water crayfish, mussels, clams and scallops has grown in recent times, but production levels are still relatively low by world standards.<sup>174</sup> Aquaculture production may be subject to Commonwealth legislation such as the *Environment Protection and Biodiversity Conservation Act 1999* and the *Great Barrier Reef Marine Park Act 1975* (the latter affects Queensland only). Other Commonwealth legislation that may be relevant includes the *Native Title Act 1993* that may affect the use of public land and waters. Commonwealth quarantine legislation can also affect aquaculture operators' access to new species, broodstock and feed.<sup>175</sup>

Aquaculture policy is set at all levels of Australian Government. These settings have both direct and indirect impact upon the research and innovation effort undertaken in aquaculture. As a general rule the States maintain the majority of legislative responsibility, with jurisdiction over aquaculture development, monitoring and management. Local Government is usually responsible for development approval for inland aquaculture.<sup>176</sup>

Just like UNIPESCA, the Commonwealth Department of Agriculture, Fisheries and Forestry also promotes aquaculture in Australia, most recently via the Aquaculture Workshop 2008 which took place on 3 August 2008. The workshop was open to indigenous people strictly to promote aquaculture.<sup>177</sup>

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<sup>173</sup> loc. cit.

<sup>174</sup> FAO. op. cit., [http://www.fao.org/fishery/countrysector/FI-CP\\_AU/en](http://www.fao.org/fishery/countrysector/FI-CP_AU/en)

<sup>175</sup> FAO op. cit., [http://www.fao.org/fishery/legalframework/nalo\\_australia](http://www.fao.org/fishery/legalframework/nalo_australia)

<sup>176</sup> National Aquaculture Council, ***Australian Aquaculture Research and Innovation Strategy***. Department of Agriculture, Fisheries and Forestry, Australia, 2004. p.22

<sup>177</sup> Department of Agriculture, Fisheries and Forestry. op. cit., <http://www.daff.gov.au/fisheries/aquaculture>

The 1994 National Strategy on Aquaculture and the 1999 Code of Conduct for Australian Aquaculture formed the basis for the future growth of Australia's aquaculture industry.<sup>178</sup> To maintain ecological and economic sustainability, the aquaculture industry has adopted a set of six principles that form the basis of the underlying philosophy for the Code of Conduct, specifically:<sup>179</sup>

- ✓ ecologically sustainable development;
- ✓ economic viability;
- ✓ long-term protection of the environment to ensure availability of suitable sites for aquaculture operations;
- ✓ compliance with and auditing of adherence to regulations and the Code of Conduct;
- ✓ resource sharing and consideration of other users of the environment; and
- ✓ research and development to support the achievement of the above five priorities.

These principles provide the industry with the mechanism to implement the Code of Conduct. They also provide specific sectors or regions of the industry with the necessary framework for developing their own codes of practice. The Code of Conduct emerged from a 15-month consultation process involving more than 350 representatives from industry, Government, environmental interest groups, Aboriginal groups, and other stakeholders with a commitment to the sustainable management of Australia's aquatic environment.<sup>180</sup>

The code is voluntary, except for those parts that may have been given binding legal effect by means of legislation. On behalf of the wider Australian aquaculture industry, the Australian Aquaculture Forum's national and store member associations have

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<sup>178</sup> FAO. op. cit., [http://www.fao.org/fishery/countrysector/FI-CP\\_AU/en](http://www.fao.org/fishery/countrysector/FI-CP_AU/en).

<sup>179</sup> Gippsland aquaculture Industry Network, INC. *The Australian Aquaculture Code of Conduct*. Australia, 2003.

[http://www.growfish.com.au/cat\\_content.asp?catid=117&contentid=163](http://www.growfish.com.au/cat_content.asp?catid=117&contentid=163)

<sup>180</sup> loc. cit.

prepared and endorsed this code to provide minimum standards for environmental performance.<sup>181</sup>

Another example of the industry's desire for a guideline that enhances and promotes the principle of sustainable development can be seen in the case of the Australian prawn farmers. The Australian prawn farming industry was the first prawn farming sector in the world to develop an environmental code of practice. The Environmental Code of Practice for Australian Prawn Farmers sets out requirements and standards which must be met by members of the Australian Prawn Farmers Association. The code was developed with the support of the Queensland Environment Protection Agency and was released for public comment and review in May 2000. After incorporating recommendations from public consultation, the code was approved by the Queensland Minister for Environment in September 2001.<sup>182</sup>

The Environmental Code of Practice for Australian Prawn Farmers is a responsible and practical response to community concerns, and has led to improvements in the industry's environmental performance and its public image. The code is a straightforward document with a practical, on-farm focus. It informs farmers which practices are acceptable and how to implement those practices to minimise environmental impacts. The code applies to both existing and new farms.<sup>183</sup>

### **2.3 Brief history of Australia's fishery and aquaculture legislation**

By 1900, each Australian State had extensive fisheries legislation that applied to commercial and recreational fishing in inland waters and at sea, and that regulated the use of fishing gear for example. Until the implementation of the Offshore Constitutional Settlement, such legislation generally covered only waters within the land territory of the States and areas three nautical miles out to sea. The States

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<sup>181</sup> loc. cit.

<sup>182</sup> APFA. *Environmental Code of Practice for Australian Prawn Farmers*. Australia, 2006.

<http://www.apfa.com.au/environment/environment.cfm>

<sup>183</sup> loc. cit.

developed the necessary structures to administer and enforce the provisions of their acts, in particular their systems of licensing and registration.<sup>184</sup>

Some of the first Commonwealth legislation relating to fisheries was the *Beaches, Fishing Grounds and Sea Routes Protection Act 1932* and the *Whaling Acts 1935* and *1948*.<sup>185</sup> The first significant Commonwealth legislation<sup>186</sup> however, was the *Fisheries Act 1952* and the *Pearl Fisheries Act 1952*, which commenced operation in January 1955.<sup>187</sup>

The seven-page Fisheries Act 1952 was not limited in its operation by any specified distance from Australia.<sup>188</sup> The role of the Commonwealth Fisheries Act was to extend the legislative control of fisheries to areas beyond what was thought to be the limit of the State jurisdiction, the three mile line. This control was designed to ensure, through proper conservation and management measures, that the living resources of the AFZ were not endangered by over-exploitation while maximising use of the living resources of the AFZ were not endangered by over-exploitation while maximising use of the living resources of the AFZ.<sup>189</sup> The Commonwealth Department of Commerce and Agriculture took on administration of the Act.

Some time after the Act was implemented, discrepancies (such as the multiplication of licenses and separate jurisdictions which arose through the division of State and Commonwealth control at the three mile line) began to emerge. As a result, the Act was amended several times particularly in the period before the Offshore Constitutional Settlement. At that time, Australia's international claims to fisheries jurisdiction changed as the implementation of the 12 and then 200 mile fishing zones were fixed in 1968 and 1978 respectively.<sup>190</sup> State power offshore was also

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<sup>184</sup> Waugh, John. op. cit., p. 30.

<sup>185</sup> Gullett, Warwick. op. cit., p. 207.

<sup>186</sup> Waugh, John. op. cit., p. 30.

<sup>187</sup> Gullett, Warwick. op. cit., p. 207.

<sup>188</sup> loc. cit.

<sup>189</sup> *Fisheries Act 1952*, Section 5B, subsection a) and b).

<sup>190</sup> Waugh, John. op. cit., p. 31.

discussed in *Bonser v La Macchia* (1969)<sup>191</sup> which was a challenge to the validity of the Commonwealth fisheries law.<sup>192</sup> Similarly, other jurisprudence such as *New South Wales v The Commonwealth*,<sup>193</sup> *Union Steamship Company of New Zealand v Ferguson*, and *Harts v Woods* among others helped in some way to settle the jurisdiction between the Commonwealth and the States.<sup>194</sup>

Each and every piece of legislation, its amendments, and the final jurisprudence clarified the scope of the geographical application of fisheries legislation. This was the subject of much discussion after implementation of the *Fisheries Act 1952*, but by July 1979 all negotiations ended with the announcement of the Offshore Constitutional Settlement, which was designed to reorder the offshore powers and responsibilities of the Commonwealth and the States.<sup>195</sup> At the present, States and Territory Governments generally manage fisheries inside three nautical miles. In practice, Commonwealth and State and Territory Governments have negotiated Offshore Constitutional Settlement arrangements that rationalise management, generally on a species basis. Under the terms of these arrangements, the States and the Northern Territory generally manage coastal or inshore species such as rock lobster and abalone, while the Commonwealth manages offshore or migratory species such as blue grenadier and tuna.<sup>196</sup>

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<sup>191</sup> “The decision contained powerful obiter remarks that the territorial limits of the states was at the low water mark, upsetting the long and widely-held belief that it was at three miles offshore.” Gullett, Warwick. op. cit., p. 31.

<sup>192</sup> Gullett, Warwick. op. cit., p. 25.

<sup>193</sup> Action commenced by the six States of Australia in High Court against the *Seas and Submerged Lands Act 1973* (Cth) challenging the validity of the Act on the basis that it was beyond the powers of the Commonwealth to asserted Commonwealth sovereignty beyond the low water mark in respect of the territorial sea. Gullett, Warwick. op. cit., p. 32.

<sup>194</sup> Decisions to determine the location of the territorial limits of the Australian States were considered in the mentioned jurisprudence. In the case of *Union steamship Company of New Zealand v Ferguson* the issues to consider that the whole of Emu Bay in northern Tasmania was not *fauces terrae* while the wharves and adjacent water within Emu Bay were was discussed. In *Hart v Woods* the decision of the Supreme Court of Tasmania held that the Tasmanian Parliament possesses legislative competence to make laws for the peace, order and good Government which meant that the parliament was able to enact laws related to fisheries. Gullett, Warwick. op. cit., p. 35, 36 and 37.

<sup>195</sup> Gullett, Warwick. op. cit., p 48

<sup>196</sup> AFMA. **Annual Report 2007-07**, National Capital Printing, Commonwealth of Australia, 2006. p. 18.

**Table 5:** Principal Australian fisheries legislation prior to 1988

Commonwealth	Fisheries Act 1952
New South Wales	Fisheries and Oyster Farms Act 1935
Victoria	Fisheries Act 1968
Queensland	Fisheries Act 1976
South Australia	Fisheries Act 1982
Tasmania	Fisheries Act 1959
Western Australia	Fisheries Act 1905
Northern Territory	Fisheries Act 1979

Source: Adapted by the author from p. iii of the book *Australian Fisheries* by Waugh, John.

## 2.4 Australian fisheries and aquaculture laws

Current Australian legislation related to fisheries and aquaculture is based on sustainable development,<sup>197</sup> which has emerged as a principal objective of countries in the environment and development arena, including fisheries management.<sup>198</sup> The concept has been accepted by the international community, and some international agreements relating to sustainable development have been signed because of the need for cooperation in controlling marine pollution and protecting marine habitats and species.<sup>199</sup> The 'sustainable development' concept relates to the conservation of natural resources and was introduced in 1980 through the World Conservation

<sup>197</sup> *Fisheries Management Act 1991*, section 3), subsection 1) (b)

<sup>198</sup> Gullett, Warwick. *Op.Cit.* p. 112.

<sup>199</sup> VanderZwaag, David. ***Canada and Marine Environmental Protection: Charting a legal course towards sustainable development.*** Klumer Law International, Great Britain, 1995. p. 211.

Strategy.<sup>200</sup> The Brundtland Report describes sustainable development as development which “meets the needs of the present without compromising the ability of future generations to meet their own needs”.<sup>201</sup>

In Australia, sustainable is defined as “using, conserving and enhancing the community’s resources so that the ecological process, on which life depends, are maintained, and the total quality of life, now and in the future, can be increased”.<sup>202</sup> This definition clearly describes fishing and aquaculture management, which accords with Australia’s fisheries legislation. Since this concept was introduced into legislation by the Commonwealth of Australia<sup>203</sup> all the States have included similar concepts in their own acts and rules.

Every State has its own legislation (typically contained in the environmental and fisheries provisions of its legislation) and is also bound by provisions under the *Commonwealth Fisheries Management Act 1991* where applicable.<sup>204</sup>

**Table 6:** Australian State and Territory fisheries legislation

New South Wales	<i>Fisheries Management Act 1994</i>
Northern Territory	<i>Fisheries Act 1988</i>
Queensland	<i>Fisheries Act 1994</i>
South Australia	<i>Fisheries Management Act 2007</i>
Tasmania	<i>Living Marine Resources Management Act 1995</i>
Victoria	<i>Fisheries Act 1995</i>
Western Australia	<i>Fish Resources Management Act 1994</i>

<sup>200</sup> Ginther, Konrad, et al. ***Sustainable Development and Good Governance***. Martinus Nijhoff Publishers. Netherland, 1995. p. 17.

<sup>201</sup> Gullett, Warwick. op. cit., p. 112.

<sup>202</sup> National Strategy for Ecologically Sustainable Development, Commonwealth of Australia, 1992.

<sup>203</sup> *Environment Protection and Biodiversity Conservation Act 1999*.

<sup>204</sup> Gullett, Warwick. op. cit., p. 114.

Each piece of legislation describes ecologically sustainable development as the overarching objective of the law. The scope or objective of all legislation is to conserve, enhance,<sup>205</sup> protect, develop,<sup>206</sup> utilise<sup>207</sup> and share fishery<sup>208</sup> resources in an efficient, effective and ecologically sustainable manner,<sup>209</sup> taking into account the community's needs<sup>210</sup> and benefits for present and future generations.<sup>211</sup>

For its part the AFMA, pursuant to section 516A of the *Environment Protection and Biodiversity Conservation Act 1999*, reports annually on all actions relating to the environment and all outcomes, and any measures taken to minimise the impact of fisheries in accordance with the principles of ecologically sustainable development.<sup>212</sup> A more detailed discussion about the AFMA is provided in section 4.4 below.

The current legal framework for commercial fisheries in Australia is a complicated collection of legislation, regulations and management plans. Commercial fishermen need to obtain authorisations for fishing activities subject to a range of laws and regulations about how they conduct fishing. Authorisations are issued, for example, depending on the jurisdiction, target species, location and fishing method, which in some cases may require separate authorisations from multiple jurisdictions.<sup>213</sup>

### **2.4.1 Commonwealth *Fisheries Management Act 1991***

The *Fisheries Management Act 1991* is the principal piece of Commonwealth legislation which provides the objectives, guidelines and framework for fisheries management. Its objectives must be pursued by the Minister for Agriculture,

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<sup>205</sup> *Fisheries Act 1994 (Qld)*, section 3), subsection 1).

<sup>206</sup> *Fisheries Management Act 2007 (SA)*, section 7), subsection 1).

<sup>207</sup> *Fisheries Act 1994 (Qld)*, section 2A), subsection a).

<sup>208</sup> *Fisheries Management Act 1994 (NSW)*, section 3), subsection 1).

<sup>209</sup> *Fisheries Act 1995 (Vic)*, section 3), subsection a).

<sup>210</sup> *Living Marine resources Management Act 1995 (Tas)*, section 7), subsection c).

<sup>211</sup> *Fish Resources Management Act 1994 (WA)*, section 3, subsection 1).

<sup>212</sup> AFMA. **Annual Report 2006-07**. Published by AFMA, Commonwealth of Australia, 2007, p. 220.

<sup>213</sup> Gullett, Warwick. op. cit., p. 206.

Fisheries and Forestry in administering the Act and by the AFMA in performing its functions. The Act's objectives include:<sup>214</sup>

- ✓ implementing efficient and cost effective fisheries management on behalf of the Commonwealth;
- ✓ ensuring that the exploitation of fisheries resources and the carrying on of any related activities are conducted in a manner consistent with the principles of ecologically sustainable development (which include the exercise of the precautionary principle), in particular the need to have regard to the impact of fishing activities on non target species and the long term sustainability of the marine environment;
- ✓ maximising the net economic returns to the Australian community from the management of Australian fisheries;
- ✓ ensuring accountability to the fishing industry and to the Australian community in the AFMA's management of fisheries resources; and
- ✓ achieving Government targets in relation to the recovery of the costs of the AFMA.

The Act requires, for example, that the Minister, the AFMA and joint authorities ensure, through proper conservation and management measures, that the living resources of the AFZ are not endangered by over-exploitation, and that the optimum use of all living resources of the AFZ are achieved.<sup>215</sup>

The third section of the Act was amended in 1997, 1999, 2004 and 2006 respectively. The amendments were made to either add objectives relating to international law obligations or to clarify the existing objectives.<sup>216</sup>

The Act also has an important section which describes the principles of ecologically sustainable development.<sup>217</sup> This section states that decision making may need to integrate long and short term economic, environmental, social, and equity

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<sup>214</sup> *Fisheries Management Act 1991*, section 3).

<sup>215</sup> *Fisheries Management Act 1991*, section 3), subsection 2).

<sup>216</sup> Gullett, Warwick. op. cit., p. 116.

<sup>217</sup> *Fisheries Management Act 1991*, section 3A.

considerations, and others such as the principle of inter-generational equity, conservation of biological diversity, ecological integrity and the precautionary principle. As mentioned previously, this Act also settles the parts of Australia's territorial sea.<sup>218</sup> *Prima facie*, the Act provides a glossary to help explain the legal and technical content. The Act also includes a general section about regulations that deal with fishing methods (including prohibitions and penalties), AFMA's objectives,<sup>219</sup> plans of management and concessions, among others.

### **A. Plans of management**

Management plans are in place for all fisheries unless the AFMA is of the view that one is not warranted for a particular fishery.<sup>220</sup> Management plans are determined following the preparation of a draft plan, and after a public notice inviting interested persons (including registered persons and organizations) to make representations in connection with the draft plan by a date specified in the notice, being not less than one month after the date of publication.<sup>221</sup> A management plan for fisheries must contain:<sup>222</sup>

- ✓ objectives;
- ✓ measures by which the objectives are to be attained; and
- ✓ performance criteria against and time frames within which the measures taken under the plan may be assessed.

Additional content may be included in a fishery management plan such as:<sup>223</sup>

- ✓ determine the method or methods by which the fishing capacity of the fishery or a part of the fishery is to be measured which may be or include, but are not limited to, a method based on a particular area, a particular species or type or a particular quantity of fish, a particular kind, size or quantity of

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<sup>218</sup> *Fisheries Management Act 1991*, section 5.

<sup>219</sup> Objectives and management of the institution can be found in the *Fisheries Administrative Act 1991*.

<sup>220</sup> *Fisheries Management Act 1991*, section 17, subsection 1A.

<sup>221</sup> *Fisheries Management Act 1991*, section 17, subsection 2.

<sup>222</sup> *Fisheries Management Act 1991*, section 17, subsection 5.

<sup>223</sup> *Fisheries Management Act 1991*, section 17, subsection 6.

fishing equipment, a particular number of boats, a particular period of fishing, or any combination of the above;

- ✓ determine, or provide for the AFMA to determine, the fishing capacity, measured by that method or those methods;
- ✓ provide for the management of the fishery by means of a system of statutory fishing rights, and other fishing concessions;
- ✓ contain a description of the fishery by reference to area, fish species, fishing methods to be employed or any other matter;
- ✓ formulate procedures to be followed for selecting persons to whom fishing concessions are to be granted;
- ✓ specify the kind and quantity of equipment that may be used in the fishery; specify the circumstances in which a statutory fishing right may authorise fishing by or from a foreign boat;
- ✓ impose obligations on the holders of fishing concessions and prohibit or regulate recreational fishing in the fishery; and
- ✓ prohibit or regulate fishing for scientific research purposes in the fishery.

If the management plan is inconsistent with a provision of the Act, the plan may have no effect.<sup>224</sup> Once a plan is developed by the AFMA, it is submitted to the Minister who must accept it if it appears the AFMA has given due consideration to any representations it received, and conducted adequate consultation to determine that the plan is also consistent with the AFMA's corporate plan and current annual operational plan.<sup>225</sup> If the Minister does not accept the plan, he/she must refer it to the AFMA and advise why it was not accepted.<sup>226</sup> The AFMA may, at any time, amend or revoke a plan of management. If any management plan is revoked, all SFR, fishing permits, foreign fishing licences, scientific permits, foreign master fishing licences and fish receiver permits granted by the AFMA cease to have effect in relation to that fishery.<sup>227</sup>

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<sup>224</sup> *Fisheries Management Act 1991*, section 17, subsection 9.

<sup>225</sup> *Fisheries Management Act 1991*, section 18, subsection 1 and 2.

<sup>226</sup> *Fisheries Management Act 1991*, Section 18, subsection 3.

<sup>227</sup> *Fisheries Management Act 1991*, section 20, subsection 3 and 4.

## **B. Fishing concessions**

Pursuant to the Act, the AFMA can grant different types of concessions: the most common concessions to be granted are the SFR or fishing permits. Furthermore, the AFMA can authorise scientific permits, foreign fishing licences and fish receiver permits.<sup>228</sup>

### ***Statutory fishing rights***

As its name suggests, a SFR is a right to fish, and according to the Act, it must be granted following receipt of an appropriate management plan for the particular fishery. The granting of an SFR is the principle method of managing commercial fisheries<sup>229</sup> and a separate SFR can be granted for each of the following rights:<sup>230</sup>

- ✓ Right to take a particular quantity of fish, or a particular quantity of a specie or type, or from a particular area in a managed fishery.
- ✓ Right to a particular proportion of the fishing capacity that is permitted under a plan of management.
- ✓ Right to engage in fishing in a managed fishery at a particular time or times, days weeks or months or a combination of the mentioned.
- ✓ Right to use a boat in a managed fishery for the purposes stated in the plan of management.
- ✓ Right to use particular equipment in a managed fishery.

AFMA is required to provide a person to whom it grants a fishing right a certificate as evidence of the granting of the right.<sup>231</sup> The fishing right granted must contain the conditions of the concession. Such conditions may include a requirement to comply with the plan of management, which may cease if the plan is revoked or be cancelled if the holder is convicted of an offence against the Act, among others.<sup>232</sup> The duration of an SFR may be specified, but if not, it remains in force until

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<sup>228</sup> Gullett, Warwick. op. cit., p. 221.

<sup>229</sup> *ibid.*, 222.

<sup>230</sup> *Fisheries Management Act 1991*, section 21.

<sup>231</sup> *Fisheries Management Act 1991*, section 22, subsection 2.

<sup>232</sup> *Fisheries Management Act 1991*, section 22, subsection 3.

cancelled or surrendered. SFRs are transferable and can be subject to a lease.<sup>233</sup> Furthermore, the AFMA must keep an electronic register of SFRs.<sup>234</sup> When a fishing right is created, assigned, transferred, transmitted or extinguished, the Act indicates what to do and how to register the action.<sup>235</sup> Division IV of the Act describes how to obtain an SFR, noting that the AFMA may, by public notice, declare its intention to grant a fishing right or rights in relation to a specified plan of management.<sup>236</sup> Applicants must be registered<sup>237</sup> and the SFR may be granted (after the prescribed procedures have been followed<sup>238</sup>) to the highest bidder.<sup>239</sup>

### ***Fishing permits***

In accordance with the Act, this particular type of concession can be granted where it is provided for in a fishery management plan; a concession can, however, also be granted for fisheries for which there is no management plan.<sup>240</sup> A fishing permit allows for the use of an Australian boat for fishing within a managed area. The AFMA may grant a fishing permit authorising use by that person, or by a person acting on that person's behalf, of an Australian boat for fishing in a specified area of the AFZ or a specified fishery, and on the high seas.<sup>241</sup> Fishing permits may be effective for up to five years,<sup>242</sup> even though the general practice is to issue them for a period of one year and re-issue them annually.<sup>243</sup> In addition to the SFR, fishing permits must include conditions such as:<sup>244</sup>

- ✓ Fish that may be taken
- ✓ Quantity of fish that may be taken
- ✓ Rate at which fish may be taken

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<sup>233</sup> Gullett, Warwick. op. cit., p. 222.

<sup>234</sup> *Fisheries Management Act 1991*, section 44, subsection 1 and 2.

<sup>235</sup> *Fisheries Management Act 1991*, section 46.

<sup>236</sup> *Fisheries Management Act 1991*, section 24.

<sup>237</sup> *Fisheries Management Act 1991*, section 26.

<sup>238</sup> *Fisheries Management Act 1991*, section 28.

<sup>239</sup> *Fisheries Management Act 1991*, section 29.

<sup>240</sup> Gullett, Warwick. op. cit., p. 223.

<sup>241</sup> *Fisheries Management Act 1991*, section 32, subsection 1.

<sup>242</sup> *Fisheries Management Act 1991*, section 32, subsection 6 (c).

<sup>243</sup> Gullett, Warwick. op. cit., p. 223.

<sup>244</sup> *Fisheries Management Act 1991*, section 32, subsection 7.

- ✓ Methods or equipment that may be used to take fish
- ✓ Methods or equipment that may be used to process or carry fish.

Except where a fishing permit is stated to be non-transferable, the AFMA may, on the application of the holder of the permit and of another person as proposed transferee, transfer the permit to that other person.<sup>245</sup> For example an exception involves transferring permits to close family members where the permit holder is seriously incapacitated or has died.<sup>246</sup>

### ***Scientific permits***

Under the Act, scientific permits can be granted by the AFMA to a person for a specific boat authorising the use of the boat by that person, or a person acting on that person's behalf, for scientific research purposes in specified areas of the AFZ or a specified fishery.<sup>247</sup> Persons interested in this type of concession must make an application and provide information that is reasonably required for due consideration.<sup>248</sup> The granting of the permit is subject to conditions which may be specified on the permit and which cannot be for more than six months.<sup>249</sup>

### ***Foreign fishing licences***

This particular concession is granted by the AFMA after an application is made by a person interested in using a specified foreign boat for commercial fishing in a specified area of the AFZ or a specified fishery.<sup>250</sup> A foreign fishing licence is granted subject to the conditions stated in section 34, subsection 4 of the Act, specifically:

- ✓ if the licence authorises commercial fishing in a specified managed fishery, the holder of the licence must comply with any obligations imposed by, or imposed by the AFMA under, the relevant plan of management;

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<sup>245</sup> *Fisheries Management Act 1991*, section 32, subsection 10.

<sup>246</sup> Gullett, Warwick. op. cit., p. 224.

<sup>247</sup> *Fisheries Management Act 1991*, section 33, subsection 1.

<sup>248</sup> *Fisheries Management Act 1991*, section 33, subsection 2.

<sup>249</sup> *Fisheries Management Act 1991*, section 33, subsection 4 (c).

<sup>250</sup> *Fisheries Management Act 1991*, section 34, subsection 1.

- ✓ if the licence authorises commercial fishing in a specified managed fishery, the licence will cease to have effect in relation to the fishery if the plan of management for the fishery is revoked;
- ✓ the licence may be cancelled if the concessionary is convicted of any offence under section 39 of the Act;
- ✓ no compensation is payable because the licence is cancelled.

Foreign fishing licences come into force on the day specified for the purpose indicated on the licence, and if not specified, on the day it is granted for a period of up to 12 months after the day on which comes into force.<sup>251</sup> This type of concession is granted under a fisheries agreement between Governments, which must contain a provision about which foreign fishing licences are agreed to be granted in respect of foreign boats.<sup>252</sup>

### ***Treaty licences***

A treaty licence is taken to be in force with respect to a particular boat at all times during the period of validity of the Treaty licence as stated in the licence. Treaty licences are issued with respect to the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America, which was signed at Port Moresby on 2 April 1987.<sup>253</sup> A treaty licence can be suspended when:<sup>254</sup>

- ✓ each Party to the Treaty has been notified in writing by the Minister that an investigation is being conducted in relation to an alleged contravention of a provision of the Treaty with the use of, or in relation to, the boat; or
- ✓ if the Minister is notified in writing by the Administrator that a treaty licence has been suspended due to the lack of a full payment of any amount as a result of a final judgement or other final determination deriving from an

<sup>251</sup> *Fisheries Management Act 1991*, section 34, subsection 5 (c) and (d).

<sup>252</sup> *Fisheries Management Act 1991*, section 3 and 36.

<sup>253</sup> The primarily objective of the Treaty is to maximise benefits from the fisheries resources of the Pacific Island Parties. The achievement is reached with the co-operation of the United States of America through the provision of technical and economic support.

<sup>254</sup> *Fisheries Management Act 1991*, section 37, subsection 2.

occurrence in waters within the jurisdiction, for any purpose, of a Pacific Island Party.<sup>255</sup>

### ***Foreign master fishing licences***

The AFMA may, after an application is made using the approved form, grant a foreign master fishing licence. This licence authorises a person to be in charge of a foreign boat being used for commercial fishing in a specified area of the AFZ or a specified fishery. This concession is granted for a period of up to 12 months.<sup>256</sup> The AFMA can cancel the licence by issuing written notice to the holder of the licence, if the holder of the licence is convicted of an offence against the Act, the regulations or any other law of the Commonwealth relating to fishing, or against a law of New Zealand and Papua New Guinea, or a state or territory relating to fishing.<sup>257</sup>

### **C. Quotas**

The concept of fishing quotas arose as a result of many years of conflict over limiting access to marine resources, and until recently, an apparent social and legal commitment to the principle of open access. Quotas have been depicted as "[...] a part of one of the great institutional changes of our times: the enclosure and privatisation of the common resources of the ocean".<sup>258</sup> For many fisheries, the most effective mechanisms to ensure that a fish stock can continue to be productive are by placing limits on the number of fish harvested and removed from the breeding population and by protecting critical habitats. Two general types of techniques can be used to control the level of harvest: input and output controls.<sup>259</sup> An example of managing fishing by output controls is the allocation of quotas as an SFR or as a fishing permit, with the preference being to allocate on the basis of commercial fishers' prior catch records, known as the 'catch history'. Other potential methods, such as fishers' investments in, and financial dependence on, the industry, are more

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<sup>255</sup> Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America, paragraph 8, article 5.

<sup>256</sup> *Fisheries Management Act 1991*, section 40, subsection 1.

<sup>257</sup> *Fisheries Management Act 1991*, section 40, subsection 8.

<sup>258</sup> Neher, P.A., Arnason, R. and Mollett, N. ***Rights-Based Fishing***. Kluwer Academic Publishers, Netherland, 1989. p.3.

<sup>259</sup> Commission on Geosciences, Environment, and Resources. ***Share the Fish: Toward a National Policy on Individual Fishing Quotas***. National Academy Press, Washington, D.C., 1999. p. 26.

difficult to assess and verify.<sup>260</sup> The *Fish Stock Agreement* (UNFSA)<sup>261</sup> on which Australia is Party is also managed by a quota system.<sup>262</sup>

#### **D. Co-management**

In Australia, the Commonwealth may make an arrangement with a State or States to establish a joint authority consisting of the Commonwealth Minister and the appropriate state Minister or Ministers.<sup>263</sup> This arrangement is designed to create a joint authority fishery, which has in force a joint authority arrangement.<sup>264</sup> Under offshore constitutional settlement arrangements, three fisheries are managed by joint authorities; the Queensland Fisheries Joint Authority, the Western Australian Fisheries Joint Authority and the Northern Territory Fisheries Joint Authority.<sup>265</sup> In the case of the Queensland Fisheries Service, for example, the AFMA provides fishery services in conjunction with the Torres Strait, on behalf of the Torres Strait Protected Zone Joint Authority. And under the *Torres Strait Fisheries Act 1984*, the Commonwealth and Queensland Governments are under specific obligations to consider the rights and obligations conferred on Australia by the Torres Strait Treaty.<sup>266</sup>

A key principle of the 1991 fisheries legislation was to increase the transparency of fisheries management and to make decision making processes more inclusive of stakeholders.<sup>267</sup> The principal method of inviting input from industry and affected individuals into the fisheries management decision making process is via management advisory committees (MACs). For example, the AFMA has the power to direct fishery closures, but only after consultation with the MAC for the particular

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<sup>260</sup> Gullett, Warwick. op. cit., p. 224.

<sup>261</sup> Full name: 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.

<sup>262</sup> UNFSA, paragraph 11, article 21.

<sup>263</sup> *Fisheries Management Act 1991* Section 61, subsection 1.

<sup>264</sup> *Fisheries Management Act 1991* Section 58, subsection 1.

<sup>265</sup> Gullett, Warwick. op. cit., p. 218.

<sup>266</sup> AFMA, 2007. op. cit., p. 19.

<sup>267</sup> Gullett, Warwick. op. cit., p. 225.

fishery.<sup>268</sup> A MAC consists of individuals who are capable of providing information and advice to the joint authority on matters related to any fishery.<sup>269</sup> The AFMA may set up a MAC for any fishery, and is compelled to do so where this is provided for in a plan of management.<sup>270</sup> A MAC's general role is to assist the AFMA perform its functions and exercise its powers in relation to a fishery.<sup>271</sup> The MACs also play a vital role in helping the AFMA to pursue its legislative objectives, acting as the main advisory body and link between the AFMA and those with an interest in the relevant fishery.<sup>272</sup> The *Fisheries Management Act 1991* also contains procedures for surveillance, prohibitions, forfeits, offences and enforcement.

## 2.5 The Australian Fisheries Management Authority

The Australian Fisheries Management Authority (AFMA) was established as a statutory authority in February 1992 under the *Fisheries Administration Act 1991*.<sup>273</sup> The AFMA replaced the Australian Fisheries Service, which was located in the Department of Primary Industries and Energy.<sup>274</sup> The AFMA's role is to manage Australia's Commonwealth fisheries on behalf of the Australian community and other people with an interest in Commonwealth fisheries, by applying the provisions of the *Fisheries Management Act 1991* described above.

The *Fisheries Management Act 1991* and the *Fisheries Administration Act 1991* created a statutory authority model for fisheries management that gives the AFMA the responsibility for day to day management of the Commonwealth fisheries. They also give the Department of Agriculture, Fisheries and Forestry responsibility for broader fisheries policy, international negotiations and strategic policy issues.<sup>275</sup>

As a general rule, the AFMA looks after commercial fisheries operating three nautical miles out from shore to the boundary of the AFZ. The AFMA also acts as a

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<sup>268</sup> *Fisheries Management Act 1991*, section 41A, subsection 2 (a).

<sup>269</sup> *Fisheries Management Act 1991*, section 68.

<sup>270</sup> *Fisheries Administration Act 1991*, section 56.

<sup>271</sup> *Fisheries Administration Act 1991*, section 56, subsection 1.

<sup>272</sup> AFMA, 2007. op. cit., p. 20.

<sup>273</sup> Ibid., p. 18.

<sup>274</sup> Gullett, Warwick. op. cit., p. 218.

<sup>275</sup> AFMA, 2007. op. cit., p. 18.

resource manager, making sure Australia's fisheries are managed efficiently and cost effectively, taking into account the impact of fishing activities and encouraging ecologically sustainable development.<sup>276</sup> The Commonwealth is also responsible for international fisheries matters, including preventing illegal foreign fishing in the AFZ and managing high seas fishing by Australian operators.<sup>277</sup>

The Minister for Agriculture, Fisheries and Forestry is bound by the objectives of the Fisheries Management Act in the same way as the AFMA. The Minister oversees the AFMA's operations through key legislative provisions that require him/her to approve the AFMA's corporate and annual operational plans. The AFMA must also submit an annual report to the Minister and the Parliament, and the Minister must formally accept each fishery management plan before it can come into effect.<sup>278</sup>

The AFMA's functions, as set out in section 7 of the *Fisheries Administration Act*, are.<sup>279</sup>

- ✓ to devise management regimes in relation to Australian fisheries and fish stocks that are consistent with Australia's obligations under international agreements;
- ✓ to devise fisheries adjustment programs and fisheries restructuring programs and to manage and carry out such programs;
- ✓ to consult, and cooperate with, the industry and members of the public generally in relation to the AFMA's activities;
- ✓ to devise exploratory and feasibility programs relating to fishing and to manage and carry out such programs;
- ✓ to establish priorities for research relating to fisheries managed by the AFMA and arrange for such research to be undertaken;
- ✓ to make arrangements to place observers on foreign fishing vessels operating or intending to operate outside the AFZ if such placements are consistent with international obligations;

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<sup>276</sup> loc. cit.

<sup>277</sup> loc. cit.

<sup>278</sup> *ibid.*, p. 20.

<sup>279</sup> *ibid.*, p. 21.

- ✓ to consult and negotiate with foreign Governments and foreign business interests in relation to access by foreign fishing vessels to Australian fisheries and Australian ports;
- ✓ to consult and exchange information with, and make its expertise in fisheries management available to, state, territory or overseas bodies having functions similar to the AFMA's functions;
- ✓ to liaise and cooperate with overseas and international bodies on matters relating to global, regional or subregional fisheries management organisations or arrangements;
- ✓ to consult other people in relation to the performance of our functions;
- ✓ to develop corporate and annual operational plans such as:
  - to establish and allocate fishing rights;
  - to establish and maintain a register of fishing rights;
  - to undertake functions relating;
  - to plans of management;
  - to undertake functions relating to recreational fishing;
  - to undertake, on behalf of the Commonwealth, management responsibilities in relation to fisheries management arrangements entered into with the states and territories; and
  - to collect, on behalf of the Commonwealth, a payment in the nature of a community return payable by people exploiting fisheries resources.
- ✓ to take action in accordance with international law to deter the use of vessels on the high seas for activities that contravene or reduce the effectiveness of measures that are for the conservation and management of fish stocks; and
- ✓ to undertake other functions conferred on the AFMA by or under associated laws.

The AFMA is also invested with wide-ranging powers that are set out in section 8 of the *Fisheries Administration Act*. Under this legislation, the AFMA may:<sup>280</sup>

- ✓ enter into agreements and contracts;
- ✓ acquire, hold and dispose of real and personal property;
- ✓ collect information and data relevant to the management of fisheries;
- ✓ charge such fees and impose such charges as are reasonable in respect of work done, services provided or information given by the AFMA;

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<sup>280</sup> loc. cit.

- ✓ accept gifts, grants, bequests and devises made to us, and act as trustee of money or other property vested in the AFMA on trust; and
- ✓ do anything incidental to any of our powers.

The AFMA must also comply with its legislative objectives and other additional objectives contained in section 78 of the *Fisheries Management Act*. It is worthwhile mentioning that according to this Act, the AFMA's principal economic objectives are to implement efficient and cost effective fisheries management, to maximise the net economic returns to the Australian community from the management of Australian fisheries, and to achieve Government targets in relation to cost recovery.<sup>281</sup>

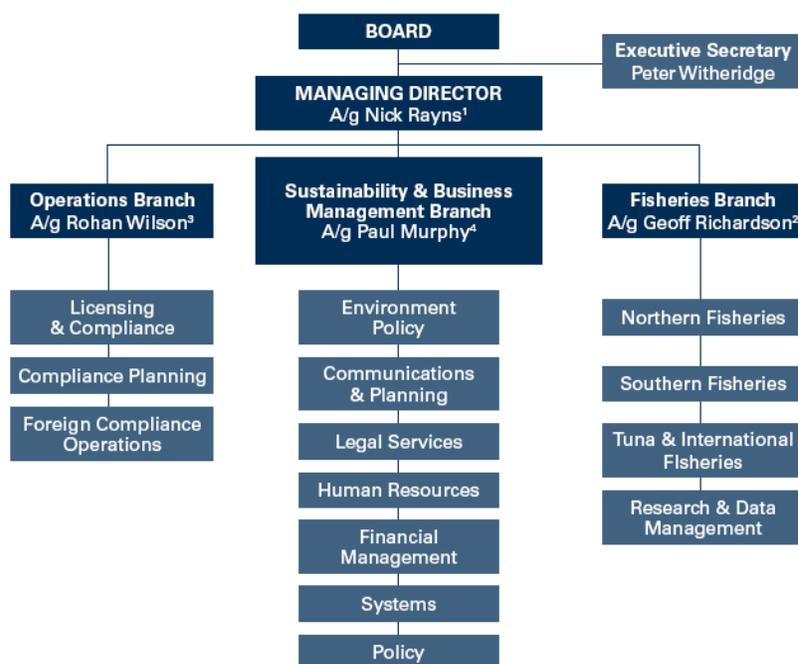
The AFMA's structure includes three branches – the Fisheries Branch, the Sustainability and Business Management Branch and the Operations Branch – each of which reports through a General Manager or Executive Manager to the Managing Director and the Board of Directors. Each branch comprises a number of discrete sections with responsibility for specific fisheries or for operational and administrative functions. The Fisheries Branch, for example, groups individual fisheries according to a range of factors, including similarity of fishing method, species or area of operation.<sup>282</sup>

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<sup>281</sup> Gullett, Warwick. op. cit., p. 123.

<sup>282</sup> *ibid.*, p. 24.

**Figure 12:** The AFMA's organisational structure



Source: AFMA Annual Report 2006-07.

The AFMA offers a range of career options, targeted training opportunities and a flexible work environment to all staff and aims to be an employer of choice in the field of fisheries management. In fact, the performance and commitment of AFMA's staff attest to its success in this area.<sup>283</sup> The majority of its staff are located in the central office in Canberra but AFMA also has an office in Darwin with 48 ongoing staff, and an office on Thursday Island in the Torres Strait with nine staff.<sup>284</sup>

Australia's Commonwealth fisheries are managed in accordance with Government policy, on full cost recovery basis. The vast majority of AFMA's operating costs are recovered through fees and levies paid by fishermen; for example, the commercial fishing industry pays for costs directly attributed to, and recoverable from, the fishing industry, while the Government pays for activities that benefit the broader

<sup>283</sup> *ibid.*, p. 25.

<sup>284</sup> *loc. cit.*

community. Costs are recovered on a fishery by fishery basis.<sup>285</sup> These are supplemented by a cost recovery policy for Commonwealth fisheries and cost recovery guidelines, which are reviewed periodically by the Australian Government.<sup>286</sup>

By considering the current situation of Australia's fishery and aquaculture it is possible to determine how the legislation contributed to the development of both activities throughout the years. Despite the differences that existed between the Australian States and Territories to solve the offshore constitutional settlement, this has not been an obstacle for Australia to grow in the production of fisheries and aquaculture. The legislation notorious development over the years is strong evidence to declare the evolution of fisheries law. Therefore, that the legislation has been subject to different amendments year by year. Leading Australia to count with an adequate and complete normative to manage the hidrobiological resources in a sustainable manner through input and output controls, which has been efficiently enforced by the responsible authority.

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<sup>285</sup> *ibid.*, p. 19.

<sup>286</sup> Gullett, Warwick. *op. cit.*, p. 226.

### 3. International fisheries law

The consensual nature of international law to regulate the activities of nations engaged in particular fisheries has become an ideal way to help manage the sea's living resources. High seas fisheries management has evolved in four stages.<sup>287</sup>

- ✓ unrestricted and unregulated freedom of the seas;
- ✓ reasonable use of the high seas;
- ✓ regulate use of the high seas; and
- ✓ establishment of property rights in high seas.

International fishery agreements were adopted in the early 18th Century to create management mechanisms, and these only proliferated in the 1900s, particularly after 1950.<sup>288</sup> To solve the fisheries management crisis, the tragedy of the commons and the increasing number of unilateral claims, important negotiations between nations were conducted through international fishery conventions.

Through evolving international fisheries management, Australia and Guatemala became parties to different international fishery agreements. As outlined above, in order to limit the freedom of fishing in high seas, both countries signed treaties and agreements regarding fishing in the high seas.

Most of the agreements and commissions in which Guatemala and Australia are members were signed for different reasons, according to their jurisdictional approach. Guatemala became party to fisheries organisations and conventions such as the Inter-American Tropical Tuna Commission (IATTC), the International Commission for the Conservation of Atlantic Tunas (ICCAT) and the Organization for Fisheries and Aquaculture in the Central American Isthmus (OSPESCA), among others. For its part, Australia is a signatory to other commissions, conventions and agreements

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<sup>287</sup> Knight, H. Gary. op. cit. p. 27.

<sup>288</sup> Ibid., 47

such as the Commission for the Conservation of Marine Living Resources, the Commission for the Conservation of Southern Bluefin Tuna, and the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America, among others. Some of the conventions, agreements and commissions which have an important relevance to both countries in common are described below.

### 3.1 International Convention for the Regulation of Whaling

Several species of whales were in need of protection prior to World War II and some lawyers and diplomats who were part of the League of Nations expressed some concern about the need to protect valuable 'marine fauna' against extermination by uneconomic exploitation.<sup>289</sup> The League of Nations was the first organisation to initiate an action, but its efforts in 1924 and 1927 failed to produce results. The first agreement with regard to whaling was reached in 1931. Although this agreement was revised in 1937, 1938 and 1939, it did not result in the effective protection of whales.<sup>290</sup> In 1944 the League of Nations was able to reach an agreement on a seasonal limit of 16,000 'blue whale unit'<sup>291</sup> for all waters south of 40° South latitude. The total catch limit for Antarctic pelagic whaling became part of the *International Convention for the Regulation of Whaling (ICRW)*.<sup>292</sup>

The ICRW was signed on 2 December 1946 in Washington and established the International Whaling Commission. Australia and Guatemala are members of the Commission, with Australia joining on 10 November 1948 and Guatemala joining years later on 16 May 2006.<sup>293</sup> Even though this fishing activity has never been practiced or commercialised in Guatemala for local consumption, it was approved by

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<sup>289</sup> Juda, Lawrence. *International Law and Ocean Use Management: The evolution of ocean governance*. Routledge, London, 1996. p. 67.

<sup>290</sup> Koers, Albert. *International Regulation of Marine Fisheries*. Eyre & Spottiswoode Ltd., England, 1973. p. 87.

<sup>291</sup> One blue whale unit was equal to: one blue whale, two fin whales, two and a half humpback whales, or six sei whales.

<sup>292</sup> Koers, Albert. op. cit., p. 87.

<sup>293</sup> International Whaling Commission. *IWC Members and commissioners*, United Kingdom, 2008. <http://www.iwcoffice.org/commission/members.htm>

the Congress of Guatemala in decree numbers 61-2005 and 61-2006 to preserve the whales.

The major responsibilities of the Whaling Commission have been to propose amendments to the ICRW and to promote the scientific investigation of the member States. The ICRW made the Commission responsible for protecting the stocks by keeping these regulations updated, (which includes promoting research, rebuilding stocks which have been depleted and preventing overfishing).<sup>294</sup> Over the years there have been more agreements to reduce the catch limits due to overfishing, improve scientific knowledge of the resource and influence public opinion.

Being one of the first signatories of the ICRW, Australia has become a world leader in the protection and conservation of whales since the end of Australia's whaling industry in 1978. Australian waters are home to 45 species of whales and the protection of these species at domestic, regional and international levels is a priority for the Australian Government.<sup>295</sup>

Both countries have recognised in their legislation the importance of the preservation of whales. The Australian *Fisheries Management Act 1991* states the obligation to ensure, as far as practical, that measures adopted in pursuit of the objectives of the Act must not be inconsistent with the preservation, conservation and protection of all species of whales.<sup>296</sup> Also, Guatemala's Fishery and Aquaculture General Law states the prohibition of intentionally capturing or catching marine mammals and other declared endangered species.<sup>297</sup>

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<sup>294</sup> *ibid.*, p. 88.

<sup>295</sup> Department of the Environment, Water, Heritage and the Arts. ***How is Australia protecting whales?*** Australian Government, Australia, 2008, <http://www.environment.gov.au/coasts/species/cetaceans/protecting.html>

<sup>296</sup> *Fisheries Management Act 1991*, section 3, subsection 2.

<sup>297</sup> *Fishery and Aquaculture General Law*, section 80, subsection g.

Since Guatemala became a Party to the ICRW in 2006, all obligations have been met. But Guatemala has started a process whereby it is giving its notice to leave the ICRW due to the lack of real benefits to the State by remaining Party.<sup>298</sup>

### 3.2 Convention on the High Seas

In 1958, both countries signed the convention in Geneva, Switzerland. The ratification took place for Guatemala on 3 November 1961 and for Australia on 14 May 1963.

The *Convention on the High Seas* provides a definition of 'high seas',<sup>299</sup> and outlines the right for all signatory states to enjoy the freedom of the sea equally.<sup>300</sup> This convention codifies the principle of freedom of fishing on the high seas<sup>301</sup> while qualifying it by the rule of reasonableness in the exercise of that freedom. The convention also provides for pursuit of foreign boats for offences committed in internal waters, the territorial sea, or the contiguous zone of the coastal State.<sup>302</sup>

The *Convention on the High Seas*, the *Convention on the Continental Shelf* and the *Convention on the Territorial Sea and the Contiguous Zone*, among others, became part of the substantive contribution to the eventual codification of the law of the sea through the first and second law of the Sea Conferences from 1958 to 1960.<sup>303</sup>

### 3.3 United Nations Convention on the Law of the Sea

The UNCLOS was convened after several conferences.<sup>304</sup> The third United Nations Conference on the Law of the Sea was convened in New York in 1973 to produce a comprehensive treaty covering the world's oceans, and ended nine years later with its adoption in 1982 as a constitution for the seas. During those

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<sup>298</sup> UNIPESCA, op. cit. p. 24.

<sup>299</sup> *Convention on the High Seas*, Article 1.

<sup>300</sup> *ibid.*, Article 3.

<sup>301</sup> *ibid.*, subsection 2, Article 2.

<sup>302</sup> Knight, H. Gary. op. cit. p. 24.

<sup>303</sup> Bain Jones, Erin. *Law of the sea: Oceanic resources*. Southern Methodist University Press, USA, 1972. p. 38

<sup>304</sup> Adopted in Montego Bay, Jamaica, 10 December 1982.

nine years shuttling back and forth between New York, Caracas and Geneva, representatives from more than 160 sovereign States discussed the issues and bargained and traded national rights and obligations in the course of the lengthy negotiations that produced the Convention.<sup>305</sup>

The 1982 UNCLOS is a complex document which addresses a wide variety of ocean uses and jurisdictional questions and is composed of some 320 articles and nine annexes. Australia became signatory to the Convention on 5 October 1994, with Guatemala following on 11 February 1997 according to decree number 56-96 of the Congress of the Republic of Guatemala. Both countries have ratified this Convention undoubtedly because it represents a significant move towards the development of international law and especially for the law of the sea.

With this Convention, the ocean law regime marks a basic shift from the view of the oceans beyond narrow territorial seas to one that is free and open to all.<sup>306</sup> The UNCLOS embodies five major trends:<sup>307</sup>

- ✓ acceptance of greater national control and jurisdiction over the most significant areas, in terms of human use, of ocean space;
- ✓ recognition of the growing multiplicity of ocean uses and the conflicts that they may cause;
- ✓ the need to provide a balanced regime which recognises the rights of coastal states;
- ✓ a growing understanding of the physical environment, protection of the oceans and management of its resources; and
- ✓ recognition of the need for international coordination, cooperation, control and institutions to govern ocean spaces.

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<sup>305</sup> Oceans and Law of the Sea. Division for Ocean Affairs and Law of the Sea. ***The United Nations Convention on the Law of the Sea***. United Nations, 2007, [http://www.un.org/Depts/los/convention\\_agreements/convention\\_historical\\_perspective.htm](http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm)

<sup>306</sup> Juda, Lawrence. op. cit., p. 225.

<sup>307</sup> loc. cit.

The structure of the UNCLOS also includes other regimes for regulating the rights to exploit and to regulate access to and conservation of marine fisheries resources such as:<sup>308</sup>

- ✓ flag state jurisdiction in high seas areas;
- ✓ regimes for regulating the rights to exploit and to regulate access to and conservation of various transboundary stocks or species;
- ✓ highly migratory species;
- ✓ marine mammals;
- ✓ anadromus stocks; and
- ✓ catadromus species.

Last but not least, the UNCLOS is considered one of the most important international agreements. As mentioned, the UNCLOS general aim is to establish a legal order for the seas and oceans; facilitate international communication; promote peaceful uses of the ocean; the equitable and efficient use of their resources; and the study and protection of the marine environment and the conservation of the living resources. Although aquaculture is not dealt with, the aim of UNCLOS and the scale of the issues it deals with have implications for aquaculture.<sup>309</sup>

The UNCLOS is related to aquaculture through the settled sovereignty of the coastal State, the territorial sea and contiguous zone, which allows all States to protect what goes on within their jurisdictions. This means that all sanitary, fiscal, fishing and aquaculture regulation, among others, are under the sovereignty of the State in their zones of maritime jurisdiction.<sup>310</sup>

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<sup>308</sup> Hey, Ellen. *The Regime for the Exploitation of Transboundary Marine Fisheries Resources*. Martinus Nijhoff Publishers, The Netherlands, 1989. p. 45.

<sup>309</sup> Wildsmith, Bruce. op. cit., p. 16.

<sup>310</sup> *ibid.*, p.17.

### **3.4 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**

The United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks<sup>311</sup> was convened in accordance with the mandate agreed upon at the United Nations Conference on Environment and Development in which the States should take effective action including through bilateral and multilateral cooperation, where appropriate at the subregional, regional and global levels, to ensure that high seas fisheries are managed in accordance with the provisions of UNCLOS.<sup>312</sup>

After six sessions, on 4 August 1995, the mentioned Conference adopted UNFSA without a vote. Finally, on 4 December 1995, a Conference was held for a signing ceremony for the Agreement and Final Act and request to the Secretariat to prepare the final text of the Agreement.<sup>313</sup> Pursuant to article 37, UNFSA was opened for signature from 4 December 1995 to 4 December 1996.

As its name states, UNFSA's objective 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.<sup>314</sup> Setting out principles for the conservation and management of those fish stocks and establishes that such management must be based on the precautionary approach and the best available scientific information.<sup>315</sup> According to the Chairman of the Conference at the closing of the fifth session on 12 April 1995, UNFSA is built on three essential pillars which together are design to ensure that the Agreement achieves its

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<sup>311</sup> Paragraph 1 of General Assembly resolution 47/192 (Agenda 21) of 22 December 1992.

<sup>312</sup> Paragraph 17.49, United Nations Conference on Environment and Development (Agenda 21).

<sup>313</sup> *ibid.*, p. 5.

<sup>314</sup> UNFSA, article 2.

<sup>315</sup> The Agreement elaborates on the fundamental principle, established in UNCLOS, that States should cooperate to ensure conservation and promote the objective of the optimum utilization of fisheries resources both within and beyond their exclusive economic zones.

objective.<sup>316</sup> The first pillar consists of a statement of the principles and practices on which better management of stocks should be based. The second pillar is to ensure that the conservation and management measures are adhered to and complied with, and that they are not undetermined by those who fish for the stocks.<sup>317</sup> The third pillar is the provision for the peaceful settlement of disputes.<sup>318</sup>

Australia ratified UNFSA on 23 December 1999.<sup>319</sup> Even though the need for universal participation in UNFSA has been emphasize repeatedly in numerous resolutions of the United Nations (UN) and other international bodies, there are many countries such as the case of Guatemala that have not ratified the Agreement for different reasons. For Australia, UNFSA is the most important international agreement governing high seas fisheries as the key instrument to conserve and manage fisheries.<sup>320</sup> On the other hand, Guatemala, as the majority of Latin American countries, has not become Party due to the omission of fundamental provisions stated under UNCLOS including those of articles 7, 21, 22 and 23,<sup>321</sup> and the lack of economic and human resources to implement it.<sup>322</sup>

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<sup>316</sup> Lodge, Michael W. and Satya N. Nandan. *Some Suggestions Towards Better Implementation of the United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks of 1995*. The International Journal of Marine and Coastal Law. Vol 20, NV 2005. p. 351.

<sup>317</sup> loc. cit.

<sup>318</sup> ibid., p. 352.

<sup>319</sup> Division of Ocean Affairs and the Law of the Sea. *Chronological lists of ratifications of, accessions and successions to the Convention and the related Agreements as at 07 November 2008*. Office of Legal Affairs, United Nations, New York, 2008.

[http://www.un.org/Depts/los/reference\\_files/chronological\\_lists\\_of\\_ratifications.htm](http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm)

<sup>320</sup> High Seas Task Force. *A Ministerially-Led Task Force on Illegal, Unreported and Unregulated Fishing on the High Seas*. IUU Fishing Coordination Unit, United Kingdom, 2006.

[http://www.high-seas.org/docs/Media/B%20-](http://www.high-seas.org/docs/Media/B%20-%20Broader%20Participation%20in%20UNFSA%20and%20FAO%20CA.pdf)

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<sup>321</sup> Asamblea General. *Conferencia de revisión del Acuerdo sobre la aplicación de las disposiciones de la Convención de las Naciones Unidas sobre el Derecho del Mar de 10 de diciembre de 1982 relativas a la conservación y ordenación de las poblaciones de peces transzonales y las poblaciones de peces altamente migratorios*. Naciones Unidas, Nueva York, 2006. p.9.

<sup>322</sup> Guatemalan statement to the 63<sup>rd</sup> session of the United Nations General Assembly, Oceans and Law of the Sea and Sustainable fisheries Plenary, New York, 4 December 2008.

The mentioned articles contain some aspects which hinder the possibility for some countries<sup>323</sup> to become Party of UNFSA. These aspects include.<sup>324</sup>

- ✓ That the provisions under article 4 of UNFSA<sup>325</sup> should be duly complied with, which means that they shall be interpreted and applied in the context of, and in a manner consistent with, the UNCLOS.
- ✓ Articles 5, 6, and 7 of UNFSA<sup>326</sup> shall not be interpreted in a manner incompatible with the rights under the UNCLOS because coastal States are not bound to adopt any measures within the 200 nautical miles under their national jurisdiction or take any action that could affect the free exercise of their sovereign rights.
- ✓ Article 23, paragraph 4 of UNFSA recognises and reaffirms the sovereignty that in accordance to the law of the sea and UNCLOS is given the port State over its maritime terminals and internal waters, for that reason paragraphs 1, 2 and 3 of article 23 of UNFSA shall just be considered as examples of the powers that such sovereignty entails.
- ✓ The concept 'real interest'<sup>327</sup> contained under article 8 of UNFSA qualifies a State to become member of a regional organization;<sup>328</sup> however, as it was

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<sup>323</sup> Argentina, Chile, Colombia, Cuba, Ecuador, El Salvador, Guatemala, Mexico and Peru.

<sup>324</sup> Annex to the note verbale dated 22 May 2006 from the Permanent Missions of Argentina, Chile, Colombia, Cuba, Ecuador, El Salvador, Guatemala, Mexico and Peru to the United Nations addressed to the Secretariat. A/CONF.210/2006/12, New York, 2006.

<sup>325</sup> Article 4 of UNFSA clearly states that nothing in the Agreement shall prejudice the rights, jurisdiction and duties of States under the UNCLOS.

<sup>326</sup> Article 5, 6 and 7 of UNFSA contained the general principles as to ensure and adopt measures, collect and share data, application of the precautionary approach, compatibility of conservation and management measures, among others regarding to the straddling fish stocks and highly migratory fish stocks.

<sup>327</sup> The inclusion of the term 'real' was suggested as a Chilean proposal, its principal objective was to interpret in a constraint manner article 118 of UNCLOS, preventing new fisheries management organizations and limit the participation of States that fish from distance. Vázquez Gómez, Eva M.<sup>a</sup>. **Las Organizaciones Internacionales de Ordenación Pesquera, La cooperación para la conservación y gestión de los recursos vivos del alta mar.** Consejería de Agricultura y Pesca, Córdoba, España, 2002, p. 215.

<sup>328</sup> Therefore, some authors such as Tahindro, A. affirms that "[...] article 8.3 stipulates that in order to encourage states' participation in such organizations and arrangements, they should be open to all states having 'real interest' in the fisheries concerned and shall not discriminate against any state or group of states[...]". Tahindro, A. "**Conservation and Management of Transboundary Fish Stocks: Comments in Light of the Adoption of the 1995 Agreement for the Conservation and**

provided by UNCLOS decisions on conservation measures must be taken by the coastal States and fishing States.

- ✓ Need to evaluate and review articles 21 and 22 of UNFSA<sup>329</sup> while considering alternative systems of surveillance and monitoring that would make boarding and inspection unnecessary.
- ✓ Lack of annex for UNFSA regarding the mechanism for the payment of compensation that an inspecting State would owe if damage or loss should result from boarding contrary to international law.

For countries like Guatemala, the regulation of fishing of straddling fish stocks and highly migratory fish stocks on the high seas is very important. For that reason, Guatemala has been expressing support for UNFSA and intended to help to identify the aspects that prevented a greater number of States to become Parties through its permanent mission to the UN in New York.

The link that exist between the regional fisheries management organizations (RFMOs) and UNFSA is addressed under article 8, paragraph 3 of the Agreement, which establish that where a subregional or regional fisheries management organization or arrangement has the competence to establish conservation and management measures for the fish stocks stated under UNFSA, coastal States are constrained to cooperate by becoming members of such organization or participants in such arrangement, or by agreeing to apply the conservation and management measures established by such organization or arrangement. However, although Guatemala is not Party of UNFSA, the country joined the concern of the International Community in regard to this issue by becoming Party to RFMOs such as IATTC and ICAAT, among others, while it analyses the possibility of becoming a Party to UNFSA.

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**Management of Straddling Fish Stocks and Highly Migratory Fish Stocks**". Ocean Development and International Law, vol. 28, 1997, p. 20.

<sup>329</sup> Both articles provide mechanism for subregional and regional cooperation in enforcement, allowing the States and regional fisheries organizations to create procedures for boarding and inspection.

Finally, it is important to mention that even though Guatemala is not a Party to UNFSA, section 22 of the LGPA declares:

**Section 22. Tuna fishing.** The commercial tuna fishing will be regulated by the provisions stated in the law and the regulation and especially by the provisions settled in the agreement for the implementation of the provisions of the United Nations Convention on the Law of the Sea.

This inappropriate section is currently contained in the law, which is a mistake that was not noticed by the legislators when the proposed law was discussed, and unfortunately it was also overseen at the moment of enacting the law. It can also be noted that the correct name of the agreement is not used. Were the congressmen leaving open the possibility of an eventual ratification of UNFSA; or was this just a mistake?

### 3.5 Code of Conduct for Responsible Fisheries

FAO's functions concerning marine and inland fisheries are based on article 1 of its constitution. The preamble to the FAO's constitution states that the most important goals of the organisation are to raise the level of nutrition and standards of living and improve the efficiency of food and agricultural products.<sup>330</sup> To increase the efficiency of fisheries, a process of negotiation commenced with the Declaration of Cancún, where more than 170 FAO States adopted the *Code of Conduct for Responsible Fisheries* on 31 October 1995.<sup>331</sup> The code is voluntary, and is aimed at everyone working in, and involved with, fisheries and aquaculture, irrespective of whether they are located in inland areas or in the oceans.<sup>332</sup> Guatemala and Australia as members of the FAO practice the principles stated in the code, which in some ways is reflected in each country's internal laws.

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<sup>330</sup> Koers, Albert. op. cit., p. 104.

<sup>331</sup> Kaye, Stuart. *International Fisheries Management*. Kluwer Law International, The Netherlands, 2001. p. 221.

<sup>332</sup> Food and Agriculture Organization of the United Nations. *What is the Code of Conduct of Responsible Fisheries?* FAO, Rome, 2001, p. 2.

The Code of Conduct, consists of a collection of principles, goals and elements for action and took more than two years to elaborate. Representatives from members of FAO, inter-Governmental organizations, the fishing industry and non-Governmental organizations worked long and hard to reach agreement on the Code. It is therefore a result of effort by many different groups involved in fisheries and aquaculture. In this respect the Code represents a global consensus or agreement on a wide range of fisheries and aquaculture issues.<sup>333</sup> FAO's initiatives for the contribution of sustainable fisheries do not stay only with the Code of Conduct, many international plans of action are being promoted to improve fisheries such as: International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing; International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries; International Plan of Action for the Conservation and Management of Sharks; International Plan of Action for the Management of Fishing Capacities, among others.<sup>334</sup>

After analysing the prior conventions and agreements in which both countries have an interest, it can be stated that Guatemala and Australia have playing an important role in the law of the sea and ocean affairs issues contributing to finding mechanisms to manage fisheries at an international level. It is worthy to mention that both countries have a remarkable participation by fully implementing all the instruments to which they are Parties.

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<sup>333</sup> loc. cit.

<sup>334</sup> Food and Agriculture Organization of the United Nations. *International Plans of Action*. FAO, Rome, 1999. <http://www.fao.org/DOCREP/006/X3170E/X3170E00.HTM>

## 4. Comparison between Guatemala's Fishery and Aquaculture General Law and Australia's Fisheries Management Act 1991. Including suggestions for improving the Guatemalan legislation

The above analysis highlights the challenges involved in comparing Guatemalan fisheries legislation with similar legislation in Australia, because of the differences between the two legal systems. Guatemala's fisheries legislation only comprises the Fishery and Aquaculture General Law and the Regulation of the Fishery and Aquaculture General Law, whereas Australia has extensive fisheries legislation, regulations and management plans. The following comparison is, therefore, exclusively made between Guatemala's two norms and the *Fisheries Management Act 1991* as the principal piece of Australian fisheries legislation. After each comparison some suggestions of the author has been included as to improve the norms.

### 4.1 Objectives, principles and priorities

Guatemala's Fishery and Aquaculture General Law has three objectives:<sup>335</sup>

- ✓ to regulate fishery and aquaculture activities;
- ✓ to harmonise both activities with the advances of science; and
- ✓ to monitor and adapt fisheries, aquaculture methods and practices for the rational utilisation of hydrobiology resources in public domain waters.

The application of the law must be pursued by UNIPESCA.<sup>336</sup>

The *Fisheries Management Act 1991* is administered by the Minister for Agriculture, Fisheries and Forestry and the AFMA. The objectives of the Act are:<sup>337</sup>

- ✓ to implement efficient and cost-effective fisheries management on behalf of the Commonwealth;

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<sup>335</sup> *Fishery and Aquaculture General Law*, section 1

<sup>336</sup> *ibid.*, section 8, subsection 46

<sup>337</sup> *Fisheries Management Act 1991*, section 3

- ✓ to ensure that the exploitation of fisheries and related activities are conducted consistently and according to the principles of ecologically sustainable development;
- ✓ to maximise the net economic returns to the Australian community from the management of Australian fisheries;
- ✓ to ensure accountability to the fishing industry and to the Australian community in the management of fisheries resources; and
- ✓ to achieve Government targets in relation to the recovery of the costs (to assist administrators and judges understand the intended outcome of applying the legislation and interpreting other provisions).

Both countries' laws are committed to applying the principles of ecologically sustainable development. The Fisheries Management Act details this principle as one of its objectives, and even though it is not stated as strongly in the LGPA, the principle can be seen in Food and Agriculture Organization's Code of Conduct for Responsible Fisheries. This is particularly evident in the application of the precautionary principle<sup>338</sup> and the sustainable utilisation of the hydrobiology resources.<sup>339</sup> As a result, it is clear that both norms seek the rational utilisation of fisheries resources while ensuring their conservation.

## 4.2 Glossary

The Australian Act contains an extensive list of definitions to demonstrate its intentions and to make clear the intent of every section or subsection. Every single definition described in the Act is mentioned throughout the sections and subsections. The LGPA also contains a brief glossary to assist in the interpretation of the law and to help explain the meaning of some concepts. Some concepts were, however, developed in the glossary but were not contained in any sections of the law, such as 'subsistence aquaculture', 'marine aquaculture' and 'gross registered tonnage', for example. These concepts are not applicable under the law, so to mention them without them being further developed in the law is of very limited use. Some other concepts such as 'fishing method', 'fishing art' and 'fishing gear' are also not defined

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<sup>338</sup> *Fishery and Aquaculture General Law*, section 7.

<sup>339</sup> *ibid.*, section 8, subsection 14.

in the glossary, making it difficult to distinguish between each concept. Further, the concept of a 'fishing licence' is described in the glossary but there is no definition of a 'fishing permit'.

**Recommendations:**

1. That a review of all definitions contained in section 8 of the LGPA be undertaken to determine if they can be extended to correct 'gaps' in defining activities such as marine and subsistence aquaculture.
2. That the glossary include a definition of concepts which at present are generating confusion, including 'fishing method', 'fishing technique', 'fishing art', 'fishing permit' and 'aquaculture permit', among others.

## **4.3 Fisheries Management**

### **Management plans**

Plans of management are determined by the AFMA for all fisheries after consultation with those engaged in a specific fishery<sup>340</sup> and approval is gained from the Minister. The plan of management is designed to set out measures, performance, concessions, methods, fishing capacity (number of licences to be granted), particular prohibitions and closures, among others. On the other hand, Guatemalan legislation provides regulation to manage all fisheries and aquaculture activities. While a management plan cannot be inconsistent with the Act, the Guatemalan regulation cannot be inconsistent with the law either. Once the legal documents are in force, each must be met, without exception, by those persons engaged in fisheries. In Australian legislation, management plans are subject to amendments and revocations, which can include amendment and revocation to any concession. In Guatemala, the regulations can also be subject to any amendment or revocation, but it is a long procedure, similar to making an amendment to a law. And where the

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<sup>340</sup> Pursuant to section 17A of the *Fisheries Management Act 1991*, the AFMA maintains a register of persons concerned about plans of management.

regulation or law is repealed, it is not necessarily the case that certain concessions will cease.

Under Guatemala's legislation, plans of management were not envisaged for the management of fisheries. For the Lake of Atitlán, however, a management plan was approved in November 2007 to manage fishing activities practiced in the lake that were not foreseen under the regulation.<sup>341</sup> The management plan was justified under the precautionary principle and the State's accountability for the protection of the hydrobiological resources. Because plans to manage a fishery cannot be inconsistent with the law or the regulation, particular fishing issues were not improved. This situation has not contributed to an improved management of a fishery.

Another similar document relating to management plans is the UNIPESCA 'technical opinion'. Which is the decision based on scientific evidence before granting a concession or to justify a fishing closure.

**Recommendations:**

1. That plans of management – which may permit UNIPESCA to make decisions about fishing zones, methods and number of licences, and other such decisions – be embraced under the legislation to obtain better management of fisheries.
1. That procedures to create plans of management for fisheries, including how to revoke or modify them, be included in the legislation.
2. That the glossary and a specific section in the legislation define the scope of 'technical opinions' issued by UNIPESCA.

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<sup>341</sup> *Acuerdo Ministerial 687-2007, MAGA 13 November 2007.*

4. That plans of management be considered as a way to make a ruling on fishing activities not managed under the current legislation, including:
  - a. new methods and equipment in lakes
  - b. ornamental species fishing
  - c. billfish fishing
  - d. prohibitions regarding fishing activities such as shark 'finning'.

## Regulations

According to the *Fisheries Management Act* the Governor-General is accountable for making regulations (not inconsistent with the Act) about such issues as deemed necessary or permitted by the Act.<sup>342</sup> An array of regulations may be developed to enforce the Act. This includes prescribing penalties for offences against the regulations; providing for the remission or refund of a levy or charge or penalties in relation to such levy or charge; and providing for or giving effect to and enforcing the observance of plans of management, among others.

Before the regulations of the LGPA came into force in 2005, different points of view about the regulations started to emerge because the law was not clear about how many, or which, regulations need to be issued to complement the legislation. The Ministry also considered that having one set of regulations could work better than having an extensive range of regulations. As a result, only one regulation came into effect pursuant to section 91 of the LGPA. This regulation includes the provisions for each fishing concession, the requirements to apply for a fishing concession, and the type of fishery, methods, fishing equipment for some fisheries and closures, among others. This particular decision resulted in many legal gaps in terms of correct application of the law, because it failed to take into account many other activities related to fisheries and aquaculture. This is currently stopping the evolution of fisheries and aquaculture management.

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<sup>342</sup> *Fisheries Management Act 1991*, section 168.

It is important to highlight that the Australian Act contains a list of regulations which foreshadow all cases in which the Minister may make regulations. On the contrary, the Guatemalan legislators did not include this important provision in the law, which is making it difficult for UNIPESCA to manage fisheries and aquaculture.

**Recommendations:**

1. That the law be clarified regarding the number, type or scope of regulations that can be issued by the Ministry.
2. That once this inconsistency is clarified, the Ministry amend or add sections or create new regulations as required.

**Grant of fishing concessions**

Under Australian legislation, fishing concessions are granted according to the type of concession. For example, fishing permits are granted to a person but the concession can be used by that person, or by a person acting on that person's behalf, using an Australian boat for fishing in a specified area of the AFZ or a specified fishery. SFRs are granted to the higher bidder and scientific permits are granted to a person for a specified boat authorising the use of the boat by that person, or a person acting on that person's behalf for scientific research purposes, and so on. Furthermore, Guatemala's legislation only contains procedures for issuing one type of concession (fishing licences) but excludes procedures for issuing for fishing permits. Licences are granted one per boat or effort unit and specified fishery; permits are not mentioned.

**Recommendations:**

1. That there is clarification about how a licence or permit may be granted by providing different options and procedures, including that a permit or licence can be used by the person who applies for one, or by a person, a fishing boat or a specified fishery acting on that person's behalf.

The *Fisheries Management Act* recognises three types of concessions: statutory fishing rights (SFRs), fishing permits and foreign fishing licences, and the AFMA must register all in accordance with the Act. SFRs are subject to conditions specified in the Act, the management plan and the certificate, and fishing rights can be transferred. The Act also contains provisions for granting SFRs, such as giving public notice declaring the intention to grant them, and persons interested in this type of concession must be part of an auction. No compensation<sup>343</sup> is payable because a fishing right, fishing permit or licence is cancelled, ceases to have effect or ceases to apply to a fishery.

Pursuant to the LGPA, however, UNIPESCA is only required to maintain a register for two types of concessions: permits and licences. None of the Guatemalan fishing concessions are transferable – the licences are granted exclusively to the boat, effort unit, and specific fishery or to each production unit of an aquaculture entrepreneurship.

In Australia, licences are granted to boats managed under a treaty or to foreign boats under the Act, with articles settled under the treaty or conditions stated by the AFMA. Treaty licences and foreign licences cannot be in force for more than 12 months: these types of concessions need the approval of the Minister. Even though this kind of concession is envisaged in the Australian act, nowadays the AFMA has not granted any foreign treaty licences.<sup>344</sup> In Guatemala, although the State is a signatory to some treaties, this particular kind of concession it is not currently practiced.

Australian fishing permits cannot be granted for more than five years and they may not be transferable. An SFR is also subject to the terms of the plan of management. Under Guatemalan law, licences can be granted for 10 years and permits for no

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<sup>343</sup> Compensation is envisaged in the Acts and regulations of some States or Territories; for example in New South Wales, shareholders are entitled to compensation if the fishery is closed.

<sup>344</sup> Ryan, Paul (Manager, Environmental Assessments), interviewed by author at the Australian Fisheries Management Authority, Canberra, Australia, October, 2008.

more than five. In terms of specific and clear procedures, the law does not contain much information regarding fishing permits, which complicates the way they are granted. A compensation concept was not included in the set of Guatemalan laws, instead the conditions of a concession are stated in the administrative contract or the certificate respectively.

The Australian Act also includes procedures for surrendering a fishing right or a permit. The Guatemalan law does not include a procedure for substituting a boat by written notice: instead the administrative contract must be modified, which means publishing the amended administrative contract in the official newspaper.

#### **Recommendations:**

1. That improvements be made to speed up common activities such as the replacement of a boat or any other procedure to surrender any type of concession.
2. That the law clearly state that a concession is not subject to any compensation in case of cancellation.

#### **Levy and charges**

The Australian Act states that the collection of a levy must be according to the *Fishing Levy Act 1991*, which imposes a levy with respect to fishing concessions. The Australian Act states that every levy is payable according to the regulations of the *Fishing Levy Act*, otherwise it is liable to a penalty for non-payment if it remains unpaid after the day which it becomes due for payment. In addition to the amount of the levy, the penalty consists of an amount calculated at the rate of 20 per cent per year in addition to the amount of the levy for the time it remains unpaid.<sup>345</sup> The Australian legislation also includes provisions relating to the collection of a levy imposed by the *Foreign Fishing Licences Levy Act 1991*. According to the *Fisheries Management Act*, arrangements such as the time for payment or the manner of the

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<sup>345</sup> *ibid.*, section 112.

payment can be made between the AFMA and the person who must pay the levy. The Act also includes penalties for non-payment of the levy.<sup>346</sup>

In the case of the SFR, a charge may be imposed according to the *Statutory Fishing Rights Charge Act 1991* which states that the regulations may determine the charges payable through instalments for each SFR.<sup>347</sup> Penalties for non-payment are also included and are similar to the penalties described under the Fishing Levy Act.<sup>348</sup>

In Guatemala the 'right of access to fisheries' is provided to the holders of a fishing concession through an installment according to the type of fishery, type of boat according to its NRT, or the specific regulation for a particular concession.<sup>349</sup> The law also includes a penalty, which may be the 100 per cent of the non-payable amount.<sup>350</sup>

#### **Recommendations:**

1. That as a general rule, the NRT of a boat excludes other boats engaged in commercial fishing. Accordingly it is important to analyse another manner to impose the charge.
2. That suspension or cancellation of concessions, or the application of other penalties be considered important under the law or regulation.

#### **Recreational fishing**

The Act does not apply to recreational fishing carried on within or outside the AFZ by an Australian boat, other than recreational fishing that is prohibited or regulated by a plan of management or temporary order.<sup>351</sup> This means that the Act applies only to

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<sup>346</sup> *ibid.*, section 117.

<sup>347</sup> *ibid.*, section 121.

<sup>348</sup> *ibid.*, section 122.

<sup>349</sup> *Fishery and Aquaculture General Law*, section 74.

<sup>350</sup> *ibid.*, section 76.

<sup>351</sup> *Fisheries Management Act 1991*, section 10, subsection 3.

‘charter boats’ (boats used exclusively for recreational fishing)<sup>352</sup> granted a permit under a management plan.<sup>353</sup> As mentioned above, all recreational fishing activities are under the jurisdiction of the States and the Territory. In Guatemala, the law does not define recreational fishing; instead it recognises inshore fishing, subsistence fishing and sport fishing activities.

Under each piece of regulation it is prohibited to catch specific species, such as blue marlin or black marlin under the Australian Act and sailfish under the Guatemalan law. Both countries’ legislation states that the fishermen must take immediate steps to return such fish to their natural environment.

People who practice subsistence fishing in Guatemala do not need a permit or a licence because the State considers this activity to be free. For inshore commercial and sport fishing activities, however both permits and licences are required. The sport fishing concession granted for a Guatemalan-flagged boat is a licence while a permit is issued for a foreign-owned boat. The law did not foresee the emergence of ‘charter boats’ as has occurred in the Australian legislation. This situation is unfair for the sport fishing sector because only some fishermen are subject to the ‘right to access fisheries’ charge. Charter boats are not subject to any payment or additional control because they are not covered by the legislation.

#### **Recommendations:**

1. That the law define ‘recreational fishing’ and state a set of provisions regarding which operators are considered to be engaged in recreational fishing.
2. That the law be amended to include ‘charter boats’ so that efficient control can be executed.
3. That the law implement a smooth procedure to issue sport fishing concessions.
4. That a licence for sport fishing activities for a Guatemalan-flagged boat not be necessary because boats are often replaced and owners substituted; rather that a simple system be adopted to issue permits for this type of activity.

<sup>352</sup> *ibid.*, section 4, subsection 5.

<sup>353</sup> *ibid.*, section 32, subsection 4.

## 4.4 Prohibitions and offences

Prohibitions are contained in Australia's array of laws, including its Acts and regulations. Some of the prohibitions, according to the Fisheries Management Act include:

- ✓ driftnet fishing activities in the AFZ;
- ✓ contravening any regulation for the purpose of conserving the marine environment or the employment of specified fishing practices or methods, specified fishing equipment;
- ✓ contravening any regulation relating to taking and treatment of by-catches, and the making of returns in relation to by-catches taken;
- ✓ littering at sea;
- ✓ taking black cod (*Epinephelus daemeli*) or other fish specified in regulations (otherwise than in accordance with the terms of a scientific permit);
- ✓ taking blue marlin (*Makaira mazara*) or black marlin (*Makaira indica*) unless the person is authorised by a scientific permit or the fish was taken as part of recreational fishing;
- ✓ engaging in commercial fishing without a concession;
- ✓ having a fish in a person's possession or under his or her control in a boat at any time when the taking of the fish was not authorised by a fishing concession;
- ✓ being the holder of a fishing concession but contravening a condition of the concession or a person acting on his or her behalf contravening a condition of the concession;
- ✓ keeping or purporting to keep a logbook, or furnish or purport to furnish a logbook or return, relating to the content of the logbook order by operation of law;
- ✓ removing fish from a net, trap or other equipment for the taking of fish unless the person is the owner; and
- ✓ receiving fish without a fish receiver permit.

Additional enforcement provisions apply for foreign boats, such as:

- ✓ using a foreign boat for recreational fishing;
- ✓ using a foreign boat for processing or carrying fish that have been taken in the course of recreational fishing with the use of that boat or another boat;
- ✓ using a foreign boat in the AFZ without a concession;

- ✓ having a foreign boat equipped with nets, traps, or other equipment for fishing at a place in the AFZ or in territorial sea within AFZ without a fishing concession, approval or authorisation;
- ✓ using a boat outside the AFZ to support illegal foreign fishing in the AFZ
- ✓ land fishing in Australia with a foreign boat without approval or authorisation; and
- ✓ contravening conditions of the treaty licence.

Offences in areas beyond the AFZ for Australian-flagged boats include:

- ✓ intentionally having fish in person's possession or control without a fishing concession;
- ✓ a person intentionally having in his or her possession, or changing an Australian-flagged boat equipped with nets, traps, or other equipment for fishing without a concession;
- ✓ an Australian-flagged boat fishing in foreign waters without an authorisation; and
- ✓ Australian citizens contravening conservation and management measures on the high seas.

Other offences according to the Act include:

- ✓ failing to facilitate by all reasonable means the boarding of a boat by an officer;
- ✓ refusing to allow a search while an officer is authorised under the Act;
- ✓ giving a false name or address to an officer;
- ✓ using abusive or threatening language to an officer or other person exercising a power or performing a function under the Act; and
- ✓ assaulting, resisting or obstructing an officer exercising his or her powers or functions, or impersonating an officer.

Pursuant to section 80 of the LGPA it is prohibited to:

- a) perform fishing or aquaculture activities without a concession or with an expired concession
- b) remove fishing products from prohibited domain waters such as in a natural reserve or protected area or during a closure

- c) fish using unlawful methods such as toxic materials, explosives and others that can jeopardise hydrobiology resources. It is also forbidden to have on board such materials
- d) carry on board or use methods of fishing different from those authorised in the regulations
- e) use fishing boats for unauthorised purposes
- f) take all or part of any fishing products from one boat to another
- g) intentionally capture or catch marine mammals, marine turtles and other declared endangered species
- h) export eggs, larvae, post-larva, fries, fingerlings and reproducers from their natural habitat
- i) use fishing equipment without the necessary devices to protect those hydrobiology species mentioned in the regulations
- j) take and commercialise sailfish (*Istiophorus Platypterus*) unless the person is authorised by a sport fishing concession and takes immediate steps to return the fish to its natural environment
- k) abandon on beaches and shores or throw into the water litter, pollutant scraps and other objects that can represent any risk to navigation or which represent a threat to hydrobiology resources
- l) use nets to embrace or cover canals, tidal waterways entrances, sea routes or mouths of rivers
- m) use fishing gear without adequate signs which as a result, obstruct and make difficult the manoeuver of another boat
- n) transfer any type of commercial licence rights
- o) furnish false, incorrect or incomplete information to the relevant authority or deny access to a boat or infrastructure
- p) pollute aquatic ecosystems with any kind of chemical, biological, solid or liquid litter which jeopardises hydrobiology resources
- q) place any kind of fishing gear which can represent any risk to navigation or human life in rivers, lakes, marshes or maritime zones where ships, boats and other vessels normally travel.

Several similarities can be found when comparing both countries' legislation, specifically in terms of environmental protection including the conservation of marine species and pollution. For both norms it is important to prevent illegal fishing activities such as fishing without a legal concession, approval or authorisation. The Australian Act does not present prohibitions in only one division or chapter, instead,

they appear in all sections depending on the activity. On the other hand, the Guatemalan law summarises all prohibitions in one section, leaving some relevant prohibitions out of the scope of the legislation.

It is worthwhile mentioning that the Australian Act states that prosecuting an offence must occur within two years of the offence being committed, otherwise it becomes invalid. Conversely, the Guatemalan legislation does not contain such provisions.

When offences are committed under the Australian Act, in any proceeding for an offence an averment of the prosecutor, contained in the information or complaint is *prima facie* evidence of the matter averred which means that any other evidence against the offered must be provided by the defendant. Under the Guatemalan legislation the burden of proof in the administrative procedure to set a fine was excluded to mention.

**Recommendations:**

1. That a section be included in the law to permit the creation of new prohibitions or activities not regulated in the law through plans of management, ministerial agreements or resolutions.
2. That a section be included in the law to strengthen the conditions of any concession, particularly in the case of contravention.
3. That the law acknowledge a contravention can be made by a person acting on behalf of the concessionary, and articulate procedures to remedy the contravention.
4. That the law publish the 'fish receiver permit' figure to support UNIPESCA's efforts to improve and control the commercialisation of prohibited species.
5. That the law incorporate prohibitions about manufacturing fishing gear not stated in the provisions.
6. That the law contain a section establishing a term within which an offence must be prosecuted to remain valid.

7. That the law include a section about treaties to which Guatemala is a Party, including sanctions in the case of contravention of some of the clauses regarding conservation and management measures.
8. That the law include prohibitions and sanctions against persons who:
  - a. obstruct officers in the performance of their official duties;
  - b. refuse to state their name and address;
  - c. use abusive or threatening language to an officer or other person exercising a power or performing a function under the law; and
  - d. assault, resist or obstruct an officer exercising his or her power or performing official functions, or impersonating an officer.
9. That the law impose sanctions on aquaculturists for environmental damage.

#### **4.5 Penalties and the application of the criminal code**

Complying with the *Fisheries Management Act* means certain actions or fishing methods must be punished in accordance with the penalties stated in the fisheries legislation, and in some cases, for strict liability in accordance with the Criminal Code. These penalties are based on the system of 'penalty units'.<sup>354</sup> On the contrary, section 81 of the LGPA sets the fines, which have been in force since 2002. In most cases, the fines are not adjusted according to the type of fishing activity undertaken across all of Guatemala's waters. This means, for example, that a fine should not be the same for a contravention committed in a lake as for one committed in the sea, primarily because subsistence fishing is not an activity commonly practiced in the sea. Such fishing is more common on lakes and in rivers and involves fishermen who cannot afford the high fines provided by the current law.

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<sup>354</sup> A 'penalty unit' is a way to set a fine for an offence, which multiplies the number of penalty units by the specific amount contained in the Act so avoiding the need to amend the Act every few years to ensure the fine remains at the cost of living level.

The Guatemalan law does not state that, apart from what is included under its provisions, criminal offences can be the subject of prosecution under the Criminal Code.

#### **Recommendations:**

1. That the law classify fines according to fishing and aquaculture activities or by fishing zones.
2. Because Guatemala does not have a system of 'penalty units', that it determine how to set penalties or fines by using the minimum wage or by short-dated or long-term reviewing of the amounts.
3. That the law state that offences can be the subject of prosecution where a crime has been committed under the Criminal Code.

## **4.6 Surveillance and enforcement**

Under the Australian legislation, it is clear how officers are to be appointed and the powers they have.<sup>355</sup> The Act provides that an officer can be:<sup>356</sup>

- ✓ an officer or employee of AFMA or the Commonwealth, of the Administration of a Territory or an authority of the Commonwealth;
- ✓ an officer or employee of a State, the Northern Territory or the Australian Capital Territory;
- ✓ a member of the Australian Federal Police or a member of the police force of a State or Territory; and
- ✓ a member of the Defence Force.

The Australian Act contains a detailed list of sections regarding the inspection of boats including a specific schedule about the detention of suspected illegal foreign fishers. This particular provision identifies all possible situations and how an officer should handle each situation from the moment the officer boards the vessel. The Guatemalan legislation only includes two sections regarding surveillance and

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<sup>355</sup> *Fisheries Management Act 1991*, section 84.

<sup>356</sup> *ibid.*, sections 4 and 83.

enforcement, which is inadequate to allow inspectors to be able to correctly execute an inspection, which means the inspector is unable to justify his or her actions.

The enforcement of both sets of legislation is the responsibility of each country's relevant authority, with the support of the Ministry. It is important to highlight that for the application of penalties in Australia, all the cases must be committed for trial, while Guatemala's relevant authority handles all administrative cases related to contraventions to the LGPA or its regulation. The only exception is in the case of any contravention of the Criminal Code, which is a Criminal Court jurisdiction.

**Recommendation:**

1. That the power of officers and a clear definition of who can be an officer be included in the legislation.
2. That a set of sections be incorporated in the law and its regulation relating to the procedures which inspectors must follow to board a fishing boat, whether on land prior to sailing or in places where there is commercialisation of prohibited species.
3. That a list of accountabilities and institutions to support UNIPESCA be established allowing it to execute its power to undertake operations or inspections.

**Suspension and cancellation of fishing concessions**

General and specific offences are stated throughout the *Fisheries Management Act*, including the suspension or cancellation of fishing concessions, penalties, and in the worst cases, imprisonment. Suspension of fishing concessions may be given in writing to the holder of a fishing concession if any fee, levy, charge or money relating to the concession is not paid when due, if there are reasonable grounds that there has been a contravention of a condition of the concession, or if false or misleading information has been provided to the AFMA. The term will vary according to the AFMA's criteria.

Cancellation of a fishing concession may occur by writing to the holder. This may occur regardless of whether the concession has previously been suspended because the holder was convicted of an offence against the Act, regulations or any other relevant law of the Commonwealth, New Zealand, Papua New Guinea or a State or Territory. This may also occur in accordance with conditions stated in the concession relating to cancellations, or if any fee, levy, charge or other money related to the concession is not paid, or the holder does not enter into an arrangement with the AFMA. The Act also states a range of directions that must be noted in the register regarding suspensions or cancellations of any concessions.

The Guatemalan legislation only includes two possible ways to proceed to a suspension of a concession. A suspension must be executed if the holder commits a second offence against subsections a) to h) of section 80 of the LGPA (from six to 12 months) or in the case a third offence, if it is committed against subsections i) and j) of section 80 of the LGPA (from three to six months). Cancellations are not stated in the law: instead the administrative contract may have a clause regarding decisions about cancelling a concession.

**Recommendation:**

1. That under the law, suspensions should apply more broadly to cover other issues such as contraventions to the conditions of a concession.
2. That cancellations should also be included to aid in the enforcement of the fishery or aquaculture conditions.
3. That to improve control and surveillance, communication and sharing of information be considered important when dealing with concessions, illegal fishing and offences against the fisheries legislation of other countries of the region as to implement the Fisheries and Aquaculture Integration Policy for the Central American Isthmus.

## Forfeitures

Where a court convicts a person of certain offences relating to fishing activities under the Australian legislation, officers can seize a boat, net, trap, equipment and fish on board if any such item was used in committing an offence. The proceeds of the sale of fish found may also be seized.<sup>357</sup> Other items owned by the person who owns the boat or owned by persons who commit offences can also be seized by a court order.<sup>358</sup> Any boat or other property (including fish) ordered by a court to be forfeited under the Act becomes the property of the Commonwealth and must be dealt with or disposed of in accordance with the directions of the Minister.<sup>359</sup> The Act also contains cases in which forfeitures can be automatically processed. The AFMA, on behalf to the Commonwealth, may cause the item to be disposed of or destroyed. If the item is a boat, it must fulfil all the requirements stated in the Act.<sup>360</sup> The Act also provides a range of possibilities in case the item seized is not claimed in time, and what to do when it is or is not claimed.<sup>361</sup>

According to Guatemalan law, seizures (even though this is not clearly stated) can be automatically undertaken if any person contravenes the prohibitions provided under section 80. In the case of the contravention of subsection a) to h), for example, such seizures can include the forfeiture of fish caught, fishing gear or equipment used. The law does not provide any regulations regarding how the relevant authority can deal with this situation. In the case of a foreign boat committing an offence in Guatemala's jurisdiction, the fish are seized and the owner of the boat is fined. In the case of a second offence, the boat, accessories, fishing gear and the catch may be seized and immediately become the property of UNIPESCA.<sup>362</sup>

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<sup>357</sup> *ibid.*, section 106.

<sup>358</sup> *ibid.*, section 106AAA.

<sup>359</sup> *ibid.*, section 106AAB.

<sup>360</sup> *ibid.*, section 106D.

<sup>361</sup> *ibid.*, section 106F and 106G.

<sup>362</sup> A procedure to deal with this situation is stated in section 83 of the LGPA.

**Recommendations:**

1. That the forfeitures *prima facie* are exclusively dealt with under subsection a) to h) only. In the case of a contravention of subsection i) and j), for example using fishing equipment without the necessary devices or equipment to protect the hydrobiology species or taking and commercialising sailfish, a fine may be imposed but the offender can sell the product to pay the penalty. Without any kind of seizure it is almost impossible to impose a fine and receive payment of the penalty.
2. That the phrase ‘forfeiture of the illegal methods, fishing gear or equipment used’ be amended to make clear that it is not permitted to commit illegal activities using legal methods, fishing gear or equipment, and that it is not in the spirit or intention of the law. Inconsistencies such as this occur throughout the law and require special attention.
3. That the law make clear that a boat can be the subject of a seizure in the case of any contravention of the law.
4. That the law provide rules regarding the proceedings that UNIPESCA must follow regarding forfeiture of items such as property, and how to deal with it, dispose of it or destroy it.
5. That the law contain provisions about how to deal with the abandonment of fishing equipment.

The above analysis is a clear example of amendments that the fisheries legislation in Guatemala requires so as to properly regulate the existing fishery and aquaculture sectors. Through these amendments, the Government not only will be able to satisfy the evident need for legal reform and its related regulation, but will also, facilitate the sustainable and lucrative development of fisheries and aquaculture sectors thereby attracting national entrepreneurship and foreign investment.

## 5. Presentation and analysis of the interviews

This chapter presents the views and opinions of representatives from various fishing and aquaculture organizations in Australia and Guatemala who were interviewed by the author in person or via email. These interviews took place in August, September and October of 2008. The fisheries organizations which participated in the interviews included:

- ✓ Australian Fisheries Management Authority (AFMA) Commonwealth of Australia
- ✓ Fisheries Victoria / Department of Primary Industries (Victoria, Australia)
- ✓ Department of Fisheries (Western Australia, Australia)
- ✓ Department of Primary Industries and Resources (South Australia, Australia)
- ✓ Department of Primary Industries (New South Wales, Australia)
- ✓ Border Protection Command (Commonwealth of Australia)
- ✓ Management of Fishery and Aquaculture Unit (UNIPESCA), Guatemala
- ✓ Organization for Fisheries and Aquaculture in the Central American Isthmus (OSPESCA), Central America.

The overall aim of the interviews was to acquire information from the authorities in charge of fisheries and aquaculture in the countries that are the subject of this comparative research. The interviews also provided an opportunity for these organizations to express their views and opinions, and to share their experiences about the management of fisheries and aquaculture. This important information has helped to develop and inform the findings of the present research.

The questionnaire, which is attached in annexe 1, endeavoured to capture important information such as the legal framework and institutional management so as to enhance understanding and facilitate comparisons between institutions and countries. The questionnaire included the following topics and herein a brief explanation of why the set of question were formulated:

- ✓ ***the importance of the fisheries and aquaculture legislation***, as to affirm the individual point of view of the interviewers to know how important the legislation is and the place that it holds inside the organization to handle the management of the resources on a day to day basis.
- ✓ ***the adequacy and current legislation***, to confirm the status of the fishery and aquaculture legislation and be able to understand if it is being implemented and if it needs to be future amended.
- ✓ ***deficiencies and virtues of the current legislation***, to understand the existing legislation, learn from the experience of the countries through the way they are being enforced even when some of them have gaps or problems.
- ✓ ***environmental and sustainability principles***, to confirm if each set of laws are taking into account these important principles in the management of their fisheries and aquaculture.
- ✓ ***management of fisheries and aquaculture***, to have information regarding the species and type of concessions to compare them between countries.
- ✓ ***procedures to obtain fishing concessions***, to analyse the manner in which the countries grant the concessions and the effectiveness of the procedure.
- ✓ ***surveillance and control***, to acquire information to know how the organizations enforce their legislation.
- ✓ ***collapsed fisheries***, to establish if the legislation or policies had failed somehow contributing to the diminishing of a fishery and how this type of problem is being handled by the institutions in charge.
- ✓ ***budget and staff to discharge obligations***, to compare the importance that each Government gives to the fishery and aquaculture sectors to accomplish their responsibilities by allocating enough of the budget to the organizations.
- ✓ ***creation of regulations by the authority***, to establish if every institution has the authority to create norms adjusted to every case in particular and the effectiveness of being able to do this.

The responses received are summarized below:

- ✓ All the representatives agreed that ***fishing and aquaculture legislation is very important*** to provide an adequate framework to manage common resources being widely essential as a tool to rule fisheries and aquaculture at the domestic and international level. In Australia, the importance of fisheries reflected in the evolution of the policies and strategies through the years which aim to improve fisheries such as the implementation of 'total allowable catch'.
  
- ✓ The interviewees in Australia stated that the current legislation is appropriate for the sustainable development of fisheries and aquaculture and it is also adjusted to the reality of the fishers. The body of legislation is continuously being reviewed to keep it current. Whereas in Guatemala, although the legislation is current, it cannot be considered as an adequate normative to ***improve the sustainable development*** of fishing and aquaculture activities. The current law is not enough to control such activities in a sustainable manner due to the lack of information about size limits, fishing gears, among others.
  
- ✓ Regarding to the ***deficiencies and virtues of the current legislation*** in Australia, the interviewees agreed that some of the most important virtues of the norms reflect the ecological sustainable development approach to marine management and the opportunity that it gives to the general community for consultation. The deficiencies of the Australian legislation can be amended in a term according to the priority of the section that must be change. In some other cases, such as in South Australia, the Act is relatively new so it is not yet possible to determine its deficiencies. Even though it is not a deficiency of the legislation, for the Commonwealth one of the most important deficiencies for the management of the resources at the present is the lack of research regarding climate change. In Guatemala, some of the virtues are that the

legislation is partially applicable allowing the development of the fisheries and aquaculture activities while some of the deficiencies consist in the thorny procedures to obtain concessions, incapacity to make decisions by the authority, vacuums, gaps and lack of enforcement, among others.

- ✓ The institutions that were interviewed all concurred with the importance of applying **environmental and sustainable principles** provided in their laws, acts and regulations. The legislations are updated in all manners to apply the principles which help to increase the sustainable development of fisheries and aquaculture.
- ✓ In Australia, every organization have a similar **management of fisheries and aquaculture** approach based on ecologically sustainable development through management plans, seasonal closures, total allowable catch, size limits, compliance and education, among others. Whereas in Guatemala the management is provided through the law, its regulation and technical opinions.
- ✓ **Procedures to obtain concessions** in Australia are done through the internet and the renewals must be done each year in the same way. This means that all the websites are current and complete with information for the concessioners and for the public in general. In Guatemala, the procedure must be done by completing a form. According to the law, the resolution which determines the decision to obtain or renew a concession must notify to the applicant in no more than 60 days. Despite this provision, the administrative procedure in the practice took a few more months.
- ✓ In both countries **surveillance and control** is executed by the institutions with their own staff and the help of other Governmental organizations in charge of enforcing the laws. In Australia, this important activity is jointly undertaken by the AFMA and the Border Protection Command (BPC). Since the BPC was created, the work done in conjunction with AFMA had become a

successful way to prevent illegal fishing using the experience of the BPC in surveillance and the research, knowledge and direction of AFMA's representatives. In the case of Australia's States, the police is also involved in surveillance. Control and surveillance in the borders to eliminate illegal fishing by non-Australian vessels is executed as a priority in order to control domestic fishing. It is important to mention that the BPC apply besides the *Fisheries Management Act* an array of acts related to border protection such as the *Custom Act and the Migration Act* same as in the case of Guatemala in which the Maritime Authority enforce the sanitary, port and migration laws, among others.

- ✓ According to the Australian experts, no **fishery has collapsed** under their management in the last years. One of their responsibilities is to rebuild some species by recovery actions which are being undertaken for some species at the present. The Commonwealth and the States assure endangered species with low catch limits, or under conservation programmes (gemfish and orange roughy respectively). In Guatemala, the case of shrimp is the most significant example of a collapsing fishery. At present, no concessions are being granted for this fishery and there is not enough research to indicate the cause of the collapse.
  
- ✓ For the Australian Government the assignation of **budget and staff to discharge obligations** is satisfactory according to the interviewees. The institutions also function under a cost recovery model from the fishing industry. The departments must operate within the resources supplied through the Government's budgetary processes and priorities which is enough to operate and execute their mandates. The staff working for the Australian fishery departments vary in each State but it is not less than 60 workers, which includes administrative and policy staff. In the Commonwealth, the AFMA counts approximately 200 workers. One of the most remarkable differences between the two countries is that AFMA have 50 people in charge of

complains and five members who work in the BPC for the surveillance and control. For its part, Guatemala does not count with resources like staff and budgetary assignment having at present 28 workers which includes administrative staff, with about 15 persons to cover both coasts of the Guatemalan jurisdiction.

- ✓ The **creation of regulations** by the Australian and for Guatemala authorities are made by the Minister on the advice of the fisheries departments. In some other States, like South Australia, the acts and regulations are made by the Parliament. Plans of management are made by the fisheries department of each State of Australia.

The information given by the interviewers significantly contributed to chapters 1, 2 and 4 of the present research by adding practicable information about fisheries and aquaculture activities in both countries, which helped the author to understand not only what is stated in the legislation, references, doctrine and jurisprudence but by knowing the way the organizations involved enforce and improve these activities every day within the reach of the authorities' jurisdiction. By understanding the way the institutions act in accordance with their mandates, it is possible to appreciate and recognize the efforts executed by them to enforce the existing legislation.

## Conclusions

In developing countries maritime law, law of the sea and fisheries law may not be law fields in which common attorneys will be interested to practice. A reason could be due to the innumerable economic and social problems that developing States are going through nowadays. Although these difficulties and problems, it is important to focus on these fields that maybe at this moment do not seem to address problems of society, but they are indeed affecting the development of the country. It is urgent to remark that marine resources need to receive the attention they deserve as a worldwide problem.

This dissertation may not provide solutions for the set of problems existing within the fishing and aquaculture sector in Guatemala. However, it describes the legal situation according to the past and current legislation and most importantly aims to understand the problems and give options to gradually correct some difficulties within the reach of the Guatemalan reality. It is important to clarify that some of the constructive critique made with respect to the Guatemalan fishery and aquaculture legislation does not imply that the current norms are useless. On the contrary, it is important to take into account the current body of laws and to improve on these through the recognition of the need to amend and develop norms in accordance with the development of the fishery and aquaculture activities.

Since the enforcement of the *Fishery and Aquaculture General Law* and its regulation presents some difficulties, it is important to understand that in practice things are different and to learn from the mistakes made in the drafting of the prior legislation. Fisheries law is a field that is constantly changing at a national and international level and so should the legislation. Today, it can be applicable but tomorrow because of the evolution of the stocks, technology and species its effectiveness can suddenly change.

After analysing the Australian legislation, it can be clearly noted how this country, through the years has improved the policies in regard to fisheries and aquaculture.

Whereas at the present Guatemala is in the stage of improvement of its law and regulation. It is also possible to assert that it is necessary to improve the administrative law and the existing legislation related to fisheries and aquaculture in Guatemala to finally implement all its international commitments.

The scope of this research had studied the Australian and Guatemalan legislation analysing them to set out all the similarities and differences. Obtaining information from the organizations who, day to day are in charge of the enforcement of each normative, allowing the author to establish different recommendations to improve the Guatemalan legislation using the mentioned tools. As a result it can be noticed that the *Fishery and Aquaculture General Law* and its regulation need to be improved and that there is an enormous eager from the authorities who manage the hydrobiology resources and from the sector, to change and develop the legislation.

## References

### Bibliography:

Acheson, James M. and James A. Wilson. ***Order Out of Chaos: The case for parametric Fisheries Management.*** American Anthropological Association, 98 new series, 1996.

AFMA. ***Annual Report 2006-07.*** Published by AFMA, Commonwealth of Australia, 2007.

AFMA. ***Annual Report 2007-07.*** National Capital Printing, Commonwealth of Australia, 2006.

AFMA. ***Management Policy for the Small Pelagic Fishery.*** Australia, December, 2001.

Aguilar Mawdsley, Andrés. ***El Derecho del Mar: Punto de vista Latinoamericano.*** Venezuela, Publicaciones Jurídicas Venezolanas, Revista 21, 1999.

Bain Jones, Erin. ***Law of the sea: Oceanic resources.*** Southern Methodist University Press, USA, 1972.

Bledsoe, Robert L. and Boczek, Boleslaw A. ***The International Law Dictionary.*** Engalnd, ABC-Clio, Inc. 1987.

Bowden, Gerald. ***Coastal Aquaculture Law Policy: A case Study of California.*** Westview Press, US, 1981.

Boyle, Allan and David Freestone. ***International Law and Sustainable Development: Past achievements and future challenges.*** New York, Oxford University Press, 1999.

Cifuentes Velasco, Bryslie Siomara. ***Análisis del Cumplimiento del Acuerdo sobre el Programa Internacional para la Conservación de los Delfines en Guatemala.*** Universidad Rafael Landívar, Guatemala, 2006.

Cremean, Damien. ***Admiralty Jurisdiction: Law and Practice in Australia.*** The Federation Press, Sydney, Australia, 1997.

Cremean, Damien. ***Admiralty Jurisdiction: Law and Practice in Australia and New Zealand.*** The Federation Press, Sydney, Australia, 2003.

Commission on Geosciences, Environment, and Resources. ***Share the Fish: Toward a National Policy on Individual Fishing Quotas.*** National Academy Press, Washington, D.C., 1999.

Commonwealth Department of Agriculture, ***Fisheries and Forestry. Looking to the future: A review of Commonwealth fisheries policy.*** Commonwealth of Australia, 2003.

Department of Primary Industries. ***Go Fishing in Victoria: Catch a new hobby!***, DPI, The state of Victoria, Australia, 2006.

Department of Primary Industries-Fisheries Victoria. ***Positioning Statement 2006-2010.*** DPI, the State of Victoria, Australia, 2006.

Department of Primary Industry, Fisheries and Mines. ***Fishery Status Report 2006, No. 87.*** NT Fisheries. Northern Territory, Australia, 2006.

Department of Fisheries. ***Annual Report to Parliament 2006-07.*** Department of Fisheries, Western Australia, Australia, 2007.

Division of Ocean Affairs and the Law of the Sea, ***International Fisheries: Instruments with Index.*** Office of Legal Affairs, United Nations, New York, 1998.

Drobak, John. ***Norms and the Law.*** Washington University School of Law, Cambridge University Press, New York, US, 2006.

Dupuy, René-Jean. ***The Management of Humanity's Resources: the Law of the Sea.*** Hague Academy of International Law, Martinus Nijhoff Publishers, The Hague, 1982.

Food and Agriculture Organization of the United Nations. ***What is the Code of Conduct of Responsible Fisheries?*** FAO. 2001.

Food and Agriculture Organization of the United Nations. ***Documentos mixtos y publicaciones PAI-TIBURONES.*** FAO, Roma, 1999.

Gilmore, Grant and Charles L. Black. ***The Law of Admiralty.*** Second Edition, The foundation Press, Inc., Mineola, New York, 1975.

Ginther, Konrad, et al. ***Sustainable Development and Good Governance.*** Martinus Nijhoff Publishers. Netherland, 1995.

Groves, Matthew and Lee HP. ***Australian Administrative Law: Fundamentals, principles and doctrines.*** Cambridge, University Press, United States, 2007.

Gullet, Warwick. ***Fisheries Law in Australia.*** LexisNexis Butterworths, Australia, 2008.

Hardin, Garrett. ***The Tragedy of the Commons.*** Science, v 162, 1968.

Hey, Ellen. ***The Regime for the Exploitation of Transboundary Marine Fisheries Resources***. Martinus Nijhoff Publishers, The Netherlands, 1989.

Juda, Lawrence. ***International Law and Ocean Use Management: The evolution of ocean governance***. Routledge, London, 1996.

Kaye, Stuart. ***International Fisheries Management***. Kluwer Law International, The Netherlands, 2001.

Knight, H. Gary. ***Managing the Sea's Living Resources***. Lexington books, USA, 1977.

Koers, Albert. ***International Regulation of Marine Fisheries***. Eyre & Spottiswoode Ltd., England, 1973.

Lodge, Michael W. and Satya N. Nandan. ***Some Suggestions Towards Better Implementation of the United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks of 1995***. The International Journal of Marine and Coastal Law. Vol 20, NV 2005.

López Chavarría, José Luis. ***Derecho Pesquero***. Primera Edición, México, McGraw Hill, 1997.

National Aquaculture Council, ***Australian Aquaculture Research and Innovation Strategy***. Department of Agriculture, Fisheries and Forestry, Australia, 2004.

Neher, P.A., Arnason, R. and Mollett, N. ***Rights-Based Fishing***. Kluwer Academic Publishers, Netherland, 1989.

New South Wales Department of Primary Industries. ***Prime Facts***. NSW DPI, State of New South Wales, Australia, 2008

Nicholls, David and Tom Young. ***Australian Fisheries Management and ESD – the One that got away?***. Environmental and Planning Law Journal, volume 17, Lawbook Co. Australia, 2001.

Northern Territory Government. ***Recreational Fishing Controls***. Northern Territory, Australia, 2007.

Osorio, Manuel. ***Diccionario de Ciencias Jurídicas, Políticas y Sociales***, Buenos Aires, Argentina, Editorial Heliasta S.R.L, 1981.

OSPESCA, AECID, Xunta de Galicia. ***Plan de Apoyo a la Pesca en Centroamérica –PAPCA-***. Agencia Española de Cooperación Internacional para el Desarrollo –AECID-, Madrid, España, 2008.

Ostrom, Elinor. ***The Drama of the Commons: Committee on the human dimensions of global change***. National Academies Press, US, 2002.

PREPAC. ***Caracterización del Lago de Atitlán con Énfasis en la Pesca y Acuicultura***. PREPAC (OSPESCA, OIRSA, Taiwán). Guatemala, 2006.

PREPAC. ***Caracterización del Lago de Güija con Énfasis en la Pesca y Acuicultura***. PREPAC (OSPESCA, OIRSA, Taiwán). El Salvador, 2006.

Schoenbaum, Thomas J., ***Admiralty and Maritime Law***. Practitioner's edition. West Publishing Co. St. Paul, Minnesota, USA, 1987.

Soto Kloss, Eduardo. ***Derecho Administrativo: Bases Fundamentales***. Tomo I, Editorial Jurídica de Chile, Chile, 1996.

Spiller, Peter. ***Butterworths New Zealand Law Dictionary***. New Zealand, LexisNexis NZ Limited, 2005.

Tahindro, A. "Conservation and Management of Transboundary Fish Stocks: Comments in Light of the Adoption of the 1995 Agreement for the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks". *Ocean Development and International Law*, vol. 28, 1997.

Torres Córdova, Roberto. ***El Derecho Pesquero como Rama Autónoma del Derecho***. México, Secretaría de Pesca, 1983.

UNIPESCA, ***Informe de la Pesca y la Acuicultura en Guatemala 2004-2007***. UNIPESCA, 2008, Guatemala.

Vázquez Gómez, Eva M.<sup>a</sup>. ***Las Organizaciones Internacionales de Ordenación Pesquera: La cooperación para la conservación y gestión de los recursos vivos del alta mar***. Consejería de Agricultura y Pesca, Córdoba, España, 2002.

VanderZwaag, David. ***Canada and Marine Environmental Protection: Charting a legal course towards sustainable development***. Klumer Law International, Great Britain, 1995

Waugh, John. ***Australian Fisheries***. Special Project Series 1: The Offshore Areas, Intergovernmental Relations in Victoria Program, Australia, 1988.

Wildsmith, Bruce. ***Aquaculture: The legal framework***. Emoond-Montgomery Limited, Toronto, Canada, 1982.

## **Legal sources:**

### ***Guatemala:***

*Constitución Política de la República de Guatemala* (Politc Constitution of the Guatemalan Republic), Guatemala, 1985.

*Ley de Amparo y Exhibición Personal*, Decree 1-86 of the Constitutional Nacional Assembly.

*Ley del Organismo Judicial*. Decree 2-89 of the Congress of the Republic of Guatemala.

*Código de Comercio* (Code of Commerce), Decree 2-70 of the Congress of the Republic of Guatemala

*Ley de lo Contencioso Administrativo* (Administrative Litigious Law), Decree 119-96 of the Congress of the Republic of Guatemala.

*Ley de Inversión Extranjera* (Foreign Investment Law) Decree 9-98 of the Congress of the Republic of Guatemala.

*Ley General de Pesca y Acuicultura* (Fishery and Aquaculture General Law ), Decree 80-2002 Congress of the Republic of Guatemala.

Decree 56-96 of the Congress of the Republic of Guatemala which approved the United Nations Convention on the Law of the Sea.

Regulation of the Fishery and Aquaculture General Law / *Reglamento de la Ley General de Pesca y Acuicultura*, Gubernamental Agreement 223-2005

*Decreto 159 del Congreso de la República de Guatemala*, Decree 159 of the Congress of the Republic of Guatemala, revoked.

*Ley que Reglamenta la Piscicultura y la Pesca* (Law regulating fishfarming and fisheries) Decree-Law 1235, revoked.

Decree 1470 of the Congress of the Republic of Guatemala, revoked.

Regulation for concessions of special maritime fishing licences and its amendments (*Reglamento para la concesión de licencias especiales de pesca maritima*), 28 February 1979, of the President of the Republic of Gautemala, revoked.

Governmental Agreement number 746-99, which modified the “Regulation of the Ministry of Agriculture, Live Stock and Food”.

Governmental Agreement number 564-2007, President of the Republic of Guatemala which modified the Regulation of the Fishery and Aquaculture General Law.

Ministerial Agreement 687-2007, MAGA, 13 November 2007, Lake Atitlan plan of Management.

Ministerial Agreement 334–98, creation of UNEPA, revoked.

***Australia:***

*Australia Commonwealth Constitution*

*Fisheries Management Act 1991*

*Fisheries Administrative Act 1991*

*Commonwealth Coastal Waters Act 1980*

*Environment Protection and Biodiversity Conservation Act 1999 Commonwealth*

*Fisheries Management Act 2007 (SA)*

*Fisheries Act 1994 (Qld)*

*Fisheries Act 1995 (Vic)*

*Living Marine resources Management Act 1995 (Tas)*

*Fish Resources Management Act 1994 (WA)*

Fisheries Act 1988, Northern Territory

Scalefish and Shark Fishery Management Plan 2003,

The Southern Squid Jig Fishery Management Plan 2005.

Fisheries Management Act 1994, New South Wales National Strategy for Ecologically Sustainable Development, Commonwealth of Australia, 1992.

Department of Agriculture, Fisheries and Forestry. National Aquaculture Policy Statement, Commonwealth of Australia.

### **Conventions and Treaties:**

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

Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America

Convention on the High Seas

International Convention for the Regulation of Whaling

United Nations Convention on the Law of the Sea

Code of Conduct for Responsible Fisheries of the FAO

### **Electronic sources:**

AFMA, **Bass Strait Central Zone Scallop Fishery**. Australia, 2005.  
[http://www.afma.gov.au/fisheries/scallop\\_squid/scallop/mgt/default.htm](http://www.afma.gov.au/fisheries/scallop_squid/scallop/mgt/default.htm)

AFMA, **Dredges**, Australia, 2005.  
<http://www.afma.gov.au/information/students/methods/dredge.htm>

AFMA, **Eastern Tuna and Billfish Fishery**. Australia, 2008  
[http://www.afma.gov.au/fisheries/tuna/etbf/at\\_a\\_glance.htm](http://www.afma.gov.au/fisheries/tuna/etbf/at_a_glance.htm)

AFMA. **Small Pelagic Fishery**. Australia, 2007.  
[http://www.afma.gov.au/fisheries/small\\_pelagic/mgt/default.htm](http://www.afma.gov.au/fisheries/small_pelagic/mgt/default.htm)

AFMA, **Southern Bluefin Tuna Fishery**. Australia 2008.  
<http://www.afma.gov.au/fisheries/tuna/sbt/default.htm>

AFMA. **Southern and Eastern Scalefish and Shark**. Australia, 2007.  
<http://www.afma.gov.au/fisheries/sess/sess/mgt/about.htm>

AFMA, **Southern Squid Jig Fishery**. Australia, 2007.  
[http://www.afma.gov.au/fisheries/scallop\\_squid/squid\\_jig/at\\_a\\_glance.htm](http://www.afma.gov.au/fisheries/scallop_squid/squid_jig/at_a_glance.htm)

AFMA, **Skipjack Tuna Fishery**. Australia, 2008.  
<http://www.afma.gov.au/fisheries/tuna/skipjack/default.htm>

AFMA, **The commercial Fishing Industry**. Australia, 2005.  
<http://www.afma.gov.au/fisheries/industry/default.htm>

APFA. **Environmental Code of Practice for Australian Prawn Farmers**. Australia, 2006.  
<http://www.apfa.com.au/environment/environment.cfm>

Attorney-General's Department COMLAW. **Southern and Eastern Scalefish and Shark Fishery Management Plan 2003**, Commonwealth of Australia, 2007.  
<http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200507929?OpenDocument>

Department of Agriculture, Fisheries and Forestry. **Aquaculture**. Commonwealth of Australia, 2008.  
<http://www.daff.gov.au/fisheries/aquaculture>

Department of Agriculture, Fisheries and Forestry. **Aquaculture Industry Overview**. Commonwealth of Australia, 2001.  
<http://www.daff.gov.au/fisheries/aquaculture/overview>

Department of the Environment, Water, Heritage and the Arts. **How is Australia protecting whales?**. Australian Government, Australia, 2008.  
<http://www.environment.gov.au/coasts/species/cetaceans/protecting.html>

Department of Primary Industries and Fisheries. **Commercial Fisheries in Queensland**. Department of Primary Industries and Fisheries, Queensland, Australia, 2008.  
<http://www2.dpi.qld.gov.au/fishweb/12540.html>

Department of Primary Industries and Water. **Sea Fishing and Aquaculture**. Tasmania, Australia, 2008.  
<http://www.dpiw.tas.gov.au/inter.nsf/ThemeNodes/DREN-4VH86L?open>

FAO. **Fisheries and Aquaculture in Australia**. 2008.  
[http://www.fao.org/fishery/countrysector/FI-CP\\_AU/en](http://www.fao.org/fishery/countrysector/FI-CP_AU/en)

FAO, **Glossary of Aquaculture**, FAO, 2000-2008.  
<http://www.fao.org/fi/glossary/aquaculture/default.asp?lang=en>

FAO. **International Plans of Action**. FAO, Rome, 1999.  
<http://www.fao.org/DOCREP/006/X3170E/X3170E00.HTM>

FAO. **National Aquaculture Legislation Australia**. FAO, 2000-2008.  
[http://www.fao.org/fishery/legalframework/nalo\\_australia](http://www.fao.org/fishery/legalframework/nalo_australia)

FAO. **Perfil de Pesca y Acuicultura por País: Guatemala, Desarrollo Rural.** FAO, 2000-2008.

[http://www.fao.org/fishery/countrysector/FI-CP\\_GT/es](http://www.fao.org/fishery/countrysector/FI-CP_GT/es)

FAO, **Resumen informativo sobre la pesca por países.** FAO, 2005, <http://www.fao.org/fi/fcp/es/GTM/profile.htm>

FAO, **Visión General del Sector Acuícola Nacional.** Guatemala, 2008, [http://www.fao.org/fishery/countrysector/naso\\_guatemala/es](http://www.fao.org/fishery/countrysector/naso_guatemala/es) .

Gippsland aquaculture Industry Network, INC. **The Australian Aquaculture Code of Conduct.** Australia, 2003.

[http://www.growfish.com.au/cat\\_content.asp?catid=117&contentid=163](http://www.growfish.com.au/cat_content.asp?catid=117&contentid=163)

Government of South Australia. **Fisheries.** Department of Primary Industries and Resources, South Australia, Australia, 2007. <http://www.pir.sa.gov.au/fisheries>

Government of South Australia. **Recreational Fisheries.** Australia, 2007. <http://www.pir.sa.gov.au/fisheries>

High Seas Task Force. **A Ministerially-Led Task Force on Illegal, Unreported and Unregulated Fishing on the High Seas.** IUU Fishing Coordination Unit, United Kingdom, 2006.

<http://www.high-seas.org/docs/Media/B%20-%20Broader%20Participation%20in%20UNFSA%20and%20FAO%20CA.pdf>

International Whaling Commission. **IWC Members and commissioners,** United Kingdom, 2008.

<http://www.iwcoffice.org/commission/members.htm>

MAGA, USPADA, DITEPESCA. **La Situación de la Pesca y Acuicultura en Guatemala y los Lineamientos para su Desarrollo Futuro.** Segunda versión, Guatemala, 1986.

<http://www.fao.org/docrep/field/003/AC587S/AC587S00.htm>

Northern Territory Government. **Fisheries.** Northern Territory, Australia, 2008. <http://www.nt.gov.au/d/Fisheries/>

Oceans and Law of the Sea –Division for Ocean Affairs and Law of the Sea. **The United Nations Convention on the Law of the Sea.** United Nations, 2007.

[http://www.un.org/Depts/los/convention\\_agreements/convention\\_historical\\_perspective.htm](http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm)

PIRSA Fisheries, **Marine Scalefish Fisheries,** Australia, 2009.

[http://www.pir.sa.gov.au/fisheries/commercial\\_fishing/marine\\_scalefish\\_fishery](http://www.pir.sa.gov.au/fisheries/commercial_fishing/marine_scalefish_fishery)

Tanner, Peter. *Brief guide to recreational fishing rules and regulations for Queensland*. Department of Primary Industries and Fisheries, Queensland, Australia, 2006.

[http://www.dpi.qld.gov.au/cps/rde/dpi/hs.xsl/28\\_2981\\_ENA\\_HTML.htm](http://www.dpi.qld.gov.au/cps/rde/dpi/hs.xsl/28_2981_ENA_HTML.htm)

#### **Others:**

Annex to the note verbale dated 22 May 2006 from the Permanent Missions of Argentina, Chile, Colombia, Cuba, Ecuador, El Salvador, Guatemala, Mexico and Peru to the United Nations addressed to the Secretariat. A/CONF.210/2006/12, New York, 2006.

Besley, Michelle (Fisheries Manager), interviewed by author via email. Department of Primary Industries and Resources, South Australia, Australia, October, 2008.

Campbell, Ian (Command Legal Officer), interviewed by author at the Border Protection Command, Canberra, Australia, October, 2008.

Derwent, Laurie (Manager Fisheries Business Services), interviewed by author via email. Department of Primary Industries, New South Wales, Australia, October, 2008. D'Silva Dallas (Manager of Marine Fisheries), interviewed by author at Fisheries Victoria. Australia, August, 2008.

Asamblea General. Conferencia de revisión del Acuerdo sobre la aplicación de las disposiciones de la Convención de las Naciones Unidas sobre el Derecho del Mar de 10 de diciembre de 1982 relativas a la conservación y ordenación de las poblaciones de peces transzonales y las poblaciones de peces altamente migratorios. Naciones Unidas, Nueva York, 2006.

General Assembly resolution 47/192 (Agenda 21) of 22 December 1992.

Gibson, Beth (Senior Manager, Demersal and Midwater Trawl Fisheries), interviewed by author at the Australian Fisheries Management Authority, Canberra, Australia, October, 2008.

Guatemalan statement to the 63<sup>rd</sup> session of the United Nations General Assembly, Oceans and Law of the Sea and Sustainable Fisheries Plenary, New York, 4 December 2008.

Millington, Peter (CEO), interviewed by author via email. Department of Fisheries, Western Australia, Australia, September, 2008.

Report of the United Nations Conference on Environment and Development, Río de Janeiro, 3-14 June 1994.

Ruano Sergio (Technical Assistant), interviewed by author via email. Organization for Fisheries and Aquaculture in the Central American Isthmus, Guatemala, October, 2008.

Ruiz, Edilberto (Manager Hydrobiology Resources Department), interviewed by author via email. Manage of Fishery and Aquaculture Unit, Guatemala, October, 2008.

Ryan, Paul (Manager, Environmental Assessments), interviewed by author at the Australian Fisheries Management Authority, Canberra, Australia, October, 2008.

# Annex

## Annex 1: Questionnaire

Name:

Position / charge:

1. Do you think fisheries legislation is important for the country/state?
  
2. Do you consider that your country/state has appropriate and current legislation for sustainable development in fisheries adjusted to the reality of fishermen?
  
3. Which are, from your personal point of view, the deficiencies and virtues of the current legislation compared to other countries?
  
4. Do you believe that your country/state filled all the environmental and sustainable conditions to be an example for other states or countries?
  
5. How does your institution manage the commercial fisheries in the AFZ related to:
  - A) most common fishing species
  
  - B) Type of concession
  
  - C) Surveillance

6. Has your institution had an experience in which a fishery collapsed because of over-exploitation? If yes, how does the situation was handled?
  
7. How long does it take to renew a concession and which are the requirements to apply?
  
8. Does your institution receive sufficient economic support to discharge its obligations?
  
9. The institution has the authority to create its own regulations?
  
10. Does the Department count with its own fisheries inspectors or the surveillance and control is made by other Governmental organization?