HIGH SEAS FISHERIES GOVERNANCE?

Silent revolution, or just new veneer on old wood?

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The LOS Convention and areas under different jurisdictions

Sovereign rights of Coastal State

EEZ

200 nautical miles

IW

TS

High Seas

CS

Seabed Authority

Adapted from J. Batongbacal, 2006
High Seas Governance Regime

Equity, sovereignty and independence of the States
Shared resources

- Freedom to fish (‘open access regime’)
- Flag State responsibility
- Conservation duty
- Cooperation duty
- Dispute settlement duty

Consent of the States to be bound by conservation measures

ill-defined
‘Tensions’ in UNCLOS

- Freedom of the high seas vs. conservation

- *Pacta tertiiis* vs. global fisheries management
From 1982 to the present...

Global standards, guidelines and good practices

UNFSA
FAO Compliance Agreement

Code of Conduct
FAO IPOA
FAO Technical guidelines
COFI resolutions
UN resolutions (including review Conference of UNFSA)
UNICPOLOS resolutions
Other political declarations: 2005 Rome Declaration on IUU
2001 Reykjavik Declaration on Responsible Fisheries
1995 Kyoto Declaration and Plan of Action on Sustainable Contribution of Fisheries to Food Security
Also environmental instruments:

- Rio Declaration and Agenda 21 chapter 17
- Johannesburg Plan of Implementation
- Convention on Biological Diversity
  - COP decisions (on ecosystem approach and marine and coastal biodiversity)
  - Jakarta mandate

And even others:

- WTO
- Labor organization
Precautionary approach
Multi-species approach
Ecosystem approach
Fishing capacity

Environmental protection
From fishing activities
Environmental protection
Biodiversity

Compliance and Enforcement
Flag State responsibilities
Port State measures
Coastal State measures
Market-based measures

Fisheries Management

Conservation

Cooperation

RFMOs or arrangements
Regional fisheries bodies

- The LOS Convention

- UNFSA: RFMOs

- FAO IPOA-IUU: an intergovernmental fisheries organization or arrangement, as appropriate, that has the competence to establish fisheries conservation and management measures.

- Political Declarations (UNGA)
“Strengthening RFMOs”

- In relation to the global standards
- In relation to their members
- In relation to third States
RFMOs and the global standards

A network of regional organizations, covering all the high seas areas and species, implementing the goals and objectives set by the ‘international community’.

- Fill the geographical and species gap
- Inclusiveness: all the relevant/interested States (States with “real interest” in the fisheries) shall be participating in the RFMO
- Revise statues to allow RFMOs to fulfill the ‘mandate’ of UNFSA and other international instruments
- Coordination and cooperation among RFMOs.
- Performance assessment

Are the member States free to choose the RFMOs mandate, objective and goals?
RFMOs and their members

Rational collective choices reflecting the interest of the community, binding for and enforceable against the members.

- **Improve decision making processes**
  - Eliminating consensus-based decisions
  - Eliminating/conditioning opt-out clauses
  - Science based

- **Transparent and participatory**

- **Stronger secretariats and subsidiary bodies**

- **Stronger mechanisms to ensure compliance and enforcement**
  - Standard sanctions
  - Satellite monitoring systems
  - Observers
  - Catch reports
  - Port measures
RFMOs and third States

Third States are bound by the measures adopted by the RFMO (even access to the fishery!)

- UNFSA
- Code of Conduct
- IPOA-IUU
- HSTF
- Political Declarations
A network of regional organizations, covering all the high seas areas and species, implementing the goals and objectives set by the ‘international community’, through rational collective choices reflecting the interest of the community, binding for and enforceable against members and non members (the entire international community!)

Where did the ‘freedom of the high seas’ go? What are the RFMOs becoming?
Internationalization?
Accountability?
Creeping Jurisdiction?
Remaining questions:

- Building on week foundations?
- Fait of unregulated, new and exploratory fisheries
- The importance of equity
Chile, alone (?) in the South East Pacific...
Unilateral Measures: Port State

Galápagos Agreement

Southpacific RFMO

China/Chile

UE/Chile

ITLOS/WTO

CCAMLR
Unilateral Measures: Port State

Galápagos Agreement

China/Chile/EU Russian Federation

Southpacific RFMO

I-ATTC

UE/Chile

ITLOS/WTO

Unilateral Measures: Port State

CCAMLR
Conclusions

- South East Pacific is experiencing the consequences of legal uncertainties (unregulated area)
- Jack Mackerel is more vulnerable to IUU
- The best solution to protect straddling stocks is to establish the strongest RFMO possible
- Chile needs to ratify UNFSA
Save the Jack mackerel!

Thank you!!