

**REGIONALISM VERSUS NATIONAL SOVEREIGNTY: THE
PROMISE AND PROBLEMS OF A CARICOM FISHERIES
AGREEMENT**

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ABSTRACT

The Caribbean Sea is the second largest sea in the world and is characterised by its complex biogeography and diversity of marine life. Thirty-three States and territories border the region, including the fifteen members and five associate members of the Caribbean Community (CARICOM). The CARICOM States have had a long and tumultuous history of economic integration, culminating with the formation of the CARICOM Single Market and Economy (CSME) in 2006.

In February 2003, the CARICOM Heads of Government accepted and endorsed a proposal by one of its member States to create a Common Fisheries Policy and Regime (CFPR) for the CARICOM region. This regime would essentially extend the rights and freedoms enjoyed under the CSME to the fisheries economic sectors of member States. In so doing, it would create a regional arrangement that would include the creation of a Common Fisheries Zone (CFZ), encompassing the Exclusive Economic Zones (EEZ) of member States beyond the 12-mile territorial sea. Within the CFZ, the Community members would be allowed equal access to surplus stocks deemed able to sustain harvest.

Many Governments in the region, while accepting the principle of the CFPR, have expressed a reluctance to the creation of the CFZ as it would necessitate them divulging sovereignty over portions of the EEZ to the regional regime. On the other hand, the Legal Working Group established to formulate the policy agreement has determined that the creation of the CFZ is implicit in the mandate laid out by the Heads of Government in 2003, as well as the provisions in the revised Treaty of Chaguaramas (establishing CARICOM and the CSME) that authorize the creation of the CFPR.

By examining other regional fisheries arrangements, including the Common Fisheries Policy (CFP) of the European Union (EU) an attempt was made to determine international precedence for the establishment of such mechanisms. The EU CFP was found to be comparable to the proposed CFPR and offered some insight on the process. In particular, the 2002 review of the CFP helped in understanding some of the deficiencies of such an arrangement and may prove useful in forwarding the CFPR negotiation process.

Of particular relevance are conclusions reached by the review that pointed to inherent flaws in the policy directive that established the CFP. These included:

- Broad, undefined objectives that failed to achieve sustainability;
- Inadequate mechanisms for rationalising the EU's fishing fleet, leading to overcapacity;
- Deficiencies in the monitoring and control activities with little coordination across States; and
- Inadequacies in the mechanism for addressing emergency circumstances within member States

There is no indication that the member States of the European Union experienced the same reluctance to the creation of a common zone (referred to as the "Community Waters" under the CFP); however, there is clearly a precedence set internationally for the establishment of such an arrangement. In order to avoid the same failings experience under the EU CFP, it is necessary for the nations of CARICOM to adopt a thorough approach to outlining the conservation provisions of the agreement.

SUMMARY

TITLE:

Regionalism versus National Sovereignty: The Promise and Problems of a CARICOM Fisheries Agreement

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ACRONYMS

ACS	Association of Caribbean States
ASBAO	Regional Convention on Fisheries Cooperation among African States Bordering the Atlantic Ocean
APFIC	Asia-Pacific Fishery Commission
BPOA	Barbados Programme of Action for the Sustainable Development of Small Island Developing States
BVI	British Virgin Islands
CARICOM	Caribbean Community
CARICOM-IGA	CARICOM Agreement on Cooperation in the Development and Management of the Living Resources of the Exclusive Economic Zone
CARIFORUM	Caribbean Forum
CARIFTA	Caribbean Free Trade Association
CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
CCSBT	Commission for the Conservation of Southern Bluefin Tuna
CECAF	Fishery Committee for the Eastern Central Atlantic
CERMES	Centre for Resource Management and Environmental Sustainability
CFPR	Common Fisheries Policy and Regime (of CARICOM)
CFRAMP	CARICOM Fisheries Resource Assessment and Management Programme
CFU	European Union Common Fisheries Policy
CFSZ	Common Fisheries Surveillance Zone
CFZ	Common Fisheries Zone
CIDA	Canadian International Development Agency
CLME	Caribbean Large Marine Ecosystem
COFAP	The Council for Financing and Planning
COFCOR	Council for Foreign and Community Relations
COFI	FAO Committee on Fisheries
COHSOD	Council for Human and Social Development
CORESPECA	Regional Committee on Fisheries (for the Central American Isthmus)
COTED	Council for Trade and Economic Development

CPPS	Commission on the Exploitation and Conservation of the Marine Resources of the South Pacific
CRFM	Caribbean Regional Fisheries Mechanism
CSME	CARICOM Single Market and Economy
DWFN	Distant Water Fishing Nations
ECLAC	Economic Commission for Latin America and the Caribbean
EEC	European Economic Community
EEZ	Exclusive Economic Zone
EPC	Environmental Policy Committee (of OECS Ministers)
ESDU	Environment and Sustainable Development Unit (of the OECS Secretariat)
EU	European Union
FAO	Food and Agriculture Organisation of the United Nations
FFA	Forum Fisheries Agency (of the South Pacific Forum)
FMO	Fisheries Management Organisation
FSP	Full Sized Project
GDP	Gross Domestic Product
GEF	Global Environment Facility
GFCM	General Fishery Council for the Mediterranean
ICCAT	International Commission for the Conservation of Atlantic Tuna
ICES	International Council for the Exploration of the Sea
ICZM	Integrated Coastal Zone Management
IOTC	Indian Ocean Tuna Commission
IPHC	International Pacific Halibut Commission
IPOA	International Plan of Action
IUU	Illegal Unreported and Unregulated (fishing)
IWC	International Whaling Commission
LME	Large Marine Ecosystem
MOU	Memorandum of Understanding
NAFO	North Atlantic Fisheries Organisation
NAMMCO	North Atlantic Marine Mammal Commission
NASCO	North Atlantic Salmon Conservation Organisation

NEAFC	Northeast Atlantic Fisheries Commission
NGO	Non-Governmental Organisation
NPAC	North Pacific Anadromous Fish Commission
OECS	Organisation of Eastern Caribbean States
OLDEPESCA	Latin American Organisation for Fisheries Development
OSPESCA	Central American Organisation of the Fisheries and Aquaculture Sector
PDF-B	Project Development Facility - Block B
PICES	North Pacific Marine Science Organisation
PSC	Pacific Salmon Commission
RFB	Regional Fisheries Body
RFO	Regional Fisheries Organisation
RFMO	Regional Fisheries Management Organisation
RSP	Regional Seas Programme
SEAFO	Southeast Atlantic Fisheries Organisation
SGD	St. George's Declaration
SIDS	Small Island Developing States
SIDS-POA	Small Island Developing States – Programme of Action
SRCF	Sub-Regional Commission on Fisheries
TAC	Total Allowable Catch
UN	United Nations
UNCED	United Nations Conference on Environment and Development
UNCLOS	United Nations Convention on the Law of the Sea
UNCLOS I	First United Nations Conference on the Law of the Sea
UNCLOS II	Second United Nations Conference on the Law of the Sea
UNCLOS III	Third United Nations Conference on the Law of the Sea
UNEP	United Nations Environment Programme
UNFSA	United Nations Fish Stocks Agreement
UWI	University of the West Indies
WECAFC	Western Central Atlantic Fisheries Commission
WECAFC-LAC	WECAFC-Lesser Antilles Commission
WISA	West Indies Associated States Council of Ministers

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1. INTRODUCTION

1.1 Background

The entry into force of the United Nations Convention on the Law of the Sea (UNCLOS) and the codification of coastal States' ability to claim 200 mile Exclusive Economic Zones (EEZ) has been characterized by one commentator as "one of the most far reaching institutional changes in international society of the twentieth century"¹. As coastal States began claiming EEZs pursuant to this principle, vast areas of the world's oceans that had previously been open to all were effectively closed to activities and individuals of other States². For the countries of the Caribbean region, where most coastal States are unable to delimit the full extent of their EEZs without encountering the adjacent boundaries of neighbouring States, UNCLOS brought an additional challenge. The extension of maritime claims also led to the displacement of fishing communities that had previously fished freely in the waters beyond the territorial sea.

Such developments in international law are particularly significant to the countries that make up the Caribbean Community (CARICOM)³. The vast majority of these countries are small, insular, developing States occupying a region characterised by its complex geomorphology and diverse culture. The region continues to be occupied by several colonial powers, with dependent territories including the United Kingdom, France and the United States of America. For the countries of the Caribbean, the sea that unites them also plays a critical role in their economic development as it is intricately linked to their cultures, customs and traditions.

The countries of CARICOM have had a relatively long history of economic cooperation and integration, which has extended significant freedoms to community members, in respect of intra-regional trade in goods and services. These freedoms, however, have heretofore only

¹ Hoel, A. H, A. K Syndes, and S. A. Ebbin. 2005. Ocean governance and Institutional Change. *in* S. A. Ebbin, A. H. Hoel and A. K Syndes (eds) *A Sea Change: The Exclusive Economic Zone and Governance Institutions for Living Marine Resources*. Springer. The Netherlands. p. 3.

² *Ibid.*

³ CARICOM is made up of the following member States: Antigua & Barbuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, St. Lucia, St. Kitts & Nevis, St. Vincent & the Grenadines, Suriname and Trinidad & Tobago. The Community also includes the following associate members: Anguilla, Bermuda, British Virgin Islands, Cayman Islands and the Turks and Caicos Islands.

applied to economic activities on the land, excluding sectors and industries operating within the marine environment, particularly fisheries. In February 2003, the Governments of CARICOM endorsed a proposal submitted by one of its member Governments for the creation of a “CARICOM Regional Fisheries Policy and Regime” (CFPR). The CFPR is an instrument that is intended to address the directive laid out in the Treaty of Chaguaramas, the regional treaty establishing CARICOM, regarding (1) the creation of a Single Market and Economy and (2) the establishment of a regime for fisheries management within the Community. The timing of the proposal was significant as it came at a period when tensions between several CARICOM member States had begun to increase in the face of mounting maritime boundary disputes.

1.2 Scope and Organisation of Report

This paper examines the implications of coastal State EEZ claims in the context of State practices among CARICOM member States within the Caribbean region. In so doing, it assesses the tension between two objectives being pursued simultaneously: individual State claims of greater EEZs, and the regional CARICOM effort to fashion a fisheries agreement between its members. The aim of the research is to analyse the proposed CFPR within CARICOM in light of the region’s integration process and with regard to the apparent opposition by member States to divulge sovereignty over their maritime claims to a regional authority. In developing the theme, the research will seek to address three basic questions:

- Can the countries of the CARICOM region reach a political, economic and equitable balance between the need to maintain regional cooperation and the drive to uphold sovereignty over their maritime space?
- Is there a prospect for reaching agreement among CARICOM States to the CFPR in its current form?
- What are the prospects and pitfalls of establishing such an arrangement?

In trying to address these questions, the discussion will also include a critical analysis of the proposed regional agreement in light of similar cooperation arrangements that have been pursued elsewhere, in particular the European Union Common Fisheries Policy (EU-CFP).

Chapter 2 of the paper introduces the Caribbean region and establishes CARICOM's place within the Wider Caribbean. It also outlines the relevant history of the nations that constitute CARICOM in respect of the road to integration as well as the prevailing socioeconomic conditions.

Chapter 3 examines maritime issues within CARICOM, including an overview of the fisheries sector as well as national and regional governance frameworks. It also reviews the issues of maritime sovereignty and boundary delimitation between CARICOM member States. The chapter highlights the varying claims of Exclusive Economic Zones by the member States and the efforts over the years to fashion agreements on fishing access among and between the States. In doing so it highlights the fact that, while CARICOM States have made a number of concerted efforts to arrive at bilateral and multilateral fisheries arrangements, few effective agreements have resulted. Furthermore, it aims to draw attention to the duality of the issues facing the region; on the one hand the struggle for a deeper cooperation while seeking to maintain their sovereignty over maritime areas.

Chapter 4 examines the evolving role of Regional Fisheries Management Organisations (RFMOs) as a result of developments in international law. It also outlines CARICOM's efforts to integrate international policies and principles into the regional fisheries integration process, in light of developments in the international community, the Wider Caribbean and the CARICOM sub-region.

Chapter 5 outlines the most recent (and ongoing) effort to construct a regional fisheries agreement among CARICOM member States. It sets forth the objectives sought to be achieved, the tactics employed in the endeavour and the respective concerns of the member States that have influenced the direction and content of a possible agreement.

Chapter 6 analyses the most recent draft of the instrument designed to achieve this objective and assesses how member States' earlier concerns have been considered. It also compares and contrasts the CARICOM effort to regional fishery agreements that have instituted elsewhere. This analysis is aimed not only at highlighting the similarities and differences

between these various arrangements and the CARICOM effort but constitutes a launching point for the discourse on the CFPR Agreement. By analysing the successes and failures of similar agreements at reaching their stated objectives, while satisfying the interests of participating States, the discussion will focus on addressing the advantages and disadvantages of entering into such an arrangement.

Chapter 7 of the paper concludes with observations on the CARICOM effort that analysts of regional marine resource agreements may find useful in assessing other agreements currently in effect as well as opportunities and impediments that may exist in other regions. In so doing, it will seek to address the central theme of the thesis; i.e. can the countries of CARICOM successfully reconcile these two competing interests; regionalism in an increasingly globalised world versus national sovereignty? Furthermore, while pursuing these simultaneous objectives, what are the problems and prospects of doing so?

2. PROFILE OF THE CARIBBEAN REGION

The group of countries that constitute CARICOM occupy a region that is diverse and complex, with perhaps the largest assemblage of politically distinct nations and territories occupying a single geographical space. Understanding the prevailing bio-geographical and geopolitical environment, as well as the socioeconomic conditions of the countries in the region is key to uncovering the underlining issues and problems that may arise in the establishment of a regional fisheries arrangement as envisioned within the context of the CFPR. As will be shown, the countries of CARICOM, despite their shared vision of regional cooperation, wield different political influence over the group and at times may differ with regard to how best to move the region forward. Yet in an increasingly globalised world, they have chosen to take on the developmental challenges of the 21st Century with a united voice.

2.1 Biogeography and Ecology

The Caribbean Sea is the second largest sea in the world, covering an approximate area of 3.2 million square kilometres⁴ (Figure 1). It forms part of the Western Central Atlantic Fisheries Commission (WECAFC) area⁵, which extends eastward into the Atlantic Ocean. Comprising the territorial waters of 33 bordering countries and territories, the Wider Caribbean, as defined by the United Nations Environment Programme (UNEP) Regional Seas Programme⁶, extends from the Northeast coast of Brazil to Cape Hatteras off North Carolina and includes all coastal States in between⁷. It comprises three Large Marine Ecosystems (LMEs)⁸; the Gulf of Mexico in the North, the Caribbean Sea and the Guiana-Brazil shelf off the coast of South America.

⁴CARSEA. 2006. Caribbean Sea Ecosystem Assessment: Executive Summary. The Cropper Foundation. Port of Spain, Trinidad.

⁵ The WECAFC area extends from 5° 00' N latitude (off South America), northward along the coast past the Atlantic entry to the Panama Canal; continuing along the coasts of Central and North America to 35° N 00' N; eastward along this latitude to 42° 00' W; then due north to 36° 00' N latitude; due east to 40° 00' W; south to 5° 00' N latitude then due west along the coast of South America to the original point.

⁶ The United Nations Environment Programme institutes the Regional Seas Programme. It was established following the 1972 UN Convention on the Human Environment and aims to address the accelerating problem of the decline of the world's oceans.

⁷ Fanning, L., R. Mahon, P. McConney, J. Angulo, F. Burrows, B. Chakalall, D. Gil, M. Haughton, S. Heileman, S. Martinez, L. Ostine, A. Oviedo, S. Parsons, T. Phillips, C. S. Arroyam, B. Simmons, and C. Toro. 2007. A Large Marine Ecosystem Governance Framework. *Marine Policy*. 31: 434-443. p. 435.

⁸ LMEs are large areas of the ocean delineated according to continuities in their physical and biological characteristic, including; bathymetry, hydrography, productivity and trophically dependent populations (Source: UN Ocean Atlas – [<http://www.oceansatlas.org>] Last Accessed: 26 February 2008).

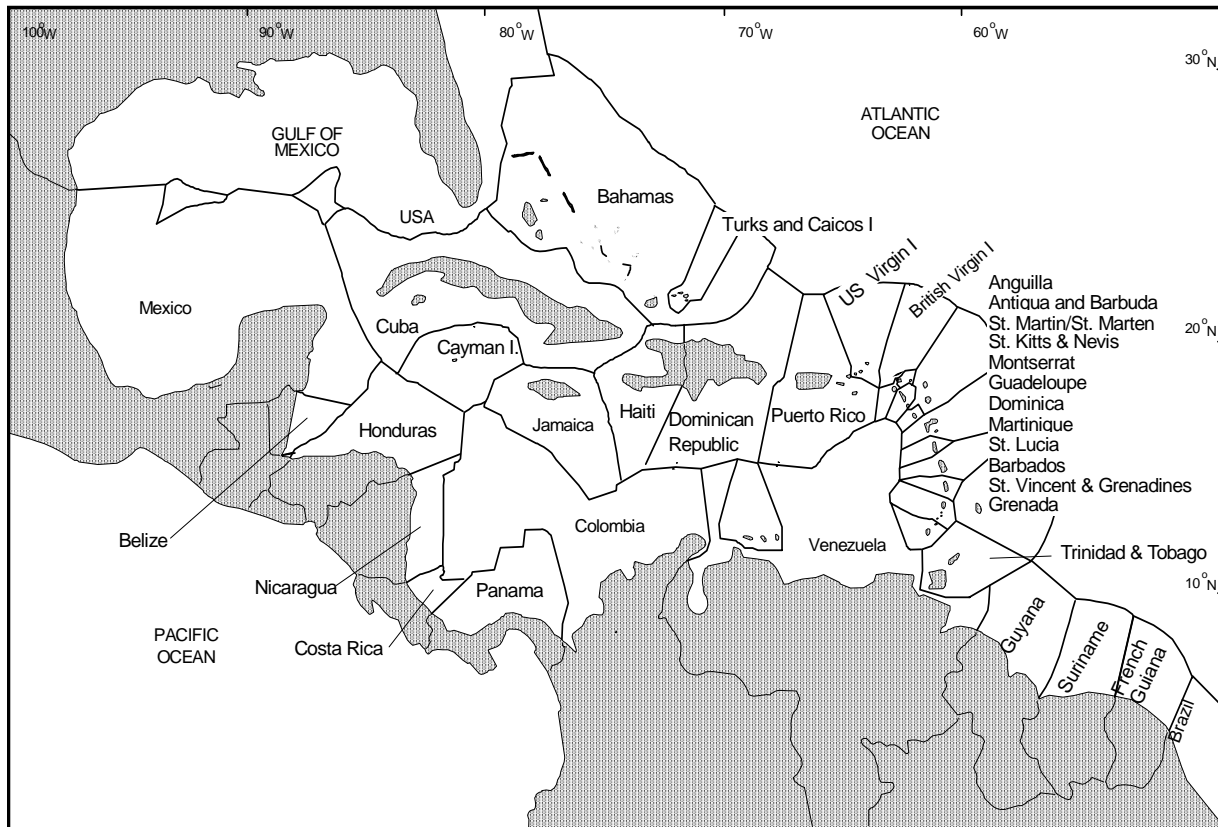


Figure 1: The Wider Caribbean region (maritime boundaries are indicative only and remain largely unsettled)

Source: http://www.cavehill.uwi.edu/cermes/margov_profile.html

The region's geology is complex and a direct result of its tectonic history⁹. A number of deep ocean basins separated by shallow zones at island platforms, offshore banks and the continental shelf divide the area¹⁰. The shallow coastal waters of the region hold several important marine systems; coral reefs, sea grass beds, and mangroves and other estuarine systems. Approximately 14% of the world's coral reefs can be found in the Caribbean region, including the Meso-American Barrier Reef off the Caribbean coast of the Central American countries of Mexico, Belize, Guatemala and Honduras¹¹. This reef system is the second largest barrier reef in the world and is extremely important to the region's fisheries.

⁹ Nelson, Justice L. D. M. 2007. The Delimitation of Maritime Boundaries in the Caribbean. *in* K. Hall and M. Chuck-A-Sang (eds). *Intervention Border and Maritime Issues in CARICOM*. Ian Randle Publishers. Kingston, Jamaica. pp. 203-250. p. 204.

¹⁰ WECAFC. 2003. *The Status of Fisheries Resources in the Western Central Atlantic Region*. WECAFC/XI/03/2E. October 2003. p. 2.

¹¹ Breton, Y., D. N. Brown, and M. Haughton. 2006. *Social Sciences and the Diversity of Caribbean Communities*. *in* Y. Breton, D. Brown, B. Davy, M. Haughton and L. Ovares. (eds). *Coastal Resource*

The region is also characterised by its complex oceanography, which varies both temporally and spatially¹². The West to Northwest flowing Caribbean current dominates the surface flow of the region; however, it is also greatly influenced by fresh water runoff from large river systems originating on the South American continent¹³. Two of the world's largest rivers, the Orinoco and the Amazon, flow into the Caribbean basin delivering sediment and fresh water into the nearshore coastal environment of the Guiana Brazil shelf. However, it is the nutrient poor equatorial current, entering the Caribbean Sea through Lesser Antillean passages that most influences of the islands of the region¹⁴.

Oil and gas are the region's main mineral deposits with the largest reserves located in the Northern and Southern Caribbean in areas where "thick organic, land derived sediments coincide with shallow coastal waters¹⁵". Trinidad & Tobago and Venezuela are two of the region's largest producers along with Barbados and Cuba.

There is significant variation in the width of the continental shelf in the Caribbean Sea; however, it is relatively narrow over much of the area. Owing to its relatively narrow continental shelf and few upwelling areas, except along the coast of Venezuela and Colombia, the Caribbean Sea is classified as a low productivity ecosystem. Nonetheless, the countries of the region are significantly dependent on fisheries resources both for their livelihoods and for food security. Commercial and artisanal fisheries operators in the Caribbean target a diverse array of fish and invertebrate species, including an estimated 680 species of bony fish and 49 species of sharks¹⁶.

Increasing global concerns over the over-exploitation of fisheries resources in the Caribbean region, coupled with the exploitation of mineral deposits and the high demand for oil on the World Market all serve to increase the importance of the maritime environment in the

Management of the Wider Caribbean: Resilience, Adaptation and Community Diversity. Ian Randle Publishers. Kingston, Jamaica. IDRC. Ottawa, Canada. pp. 17-49. p. 40.

¹² Chakalall B., R. Mahon and P. McConney. 1998. Current Issues in Fisheries Governance in the Caribbean Community (CARICOM). *Marine Policy*. 22(1): 29-44. p. 30.

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ Nelson, Justice L. D. M. 2007. *op cit.* p. 208.

¹⁶ CARSEA. *op cit.*

Caribbean¹⁷. Because of the close proximity of Caribbean States and the tremendous resource potential of the sea that unites them, the claims for extended jurisdiction over maritime areas (as justified by the recent developments in customary international law) have increased the need for greater maritime cooperation in the region¹⁸. This is particularly significant for the small island nations of the Eastern and Northern Caribbean, given their limited capacity to manage the living marine resources of the EEZs effectively. As will be illustrated, several countries, in an effort to overcome these limitations, have made significant progress towards achieving greater cooperation in fisheries resource management. These countries have, for several decades, also worked progressively towards creating a stable “economic union” in an increasingly globalised world. Understanding this history is critical to ascertaining the underlying intention of the CFPR.

2.2. Relevant History of the Nations that Constitute the Caribbean Community

The countries of the English speaking Caribbean are bound by their shared history as well as a common heritage and culture. Within these States, the people are descended from many races, including African slaves, European colonists and migrant workers from Asia; yet they share a common vision for the future of their region. This common identity provided a strong foundation for the integration movement that began long before independence came to the region, culminating most recently with the formation of the CARICOM Single Market and Economy (CSME). It is important to understand this history of CARICOM’s integration as the Governments of the region seek to extend its reach to maritime economic industries, in particular the fisheries sector. As will be illustrated, the struggle for economic integration has at times met with opposition but is always pursued. This is probably a testament to the fact that the participating States recognise that, in an increasingly globalised economy, individualistic ideals will lead to weakness on the world market. In fact, the reluctance of some CARICOM States to certain elements of the CFPR echoes some of the concerns that raised during the early integration movement of CARICOM States; but which were overcome with time.

¹⁷ Nelson, Justice L. D. M. 2007. *op cit.* p. 202.

¹⁸ *Ibid.* p. 203.

The struggle for regional integration in the Commonwealth Caribbean has been a long and tumultuous journey. The earliest attempts at integration were short-lived, as the ill fated West Indian Federation collapsed in January 1962, a mere four years after ten territories¹⁹ in the region signed on to the 1958 political union. Belize, Guyana and the British Virgin Islands did not take part in the Federation partly due to fears of mass immigration in the case of Belize and Guyana²⁰. The now famous words of the then Premier of Trinidad & Tobago, Dr. Eric Williams, “one from ten leaves nought”, after Jamaica’s withdrawal from the arrangement, signalled the death of the Federation but did not result in total abandonment of the ideals of regional cooperation and Caribbean integration²¹.

1962 also saw the two largest nations of the Federation, Jamaica and Trinidad & Tobago, gain their political independence from Great Britain. By 1966, Barbados and Guyana had also declared their independence from British colonial powers. The remaining territories of the former Federation, did not gain their independence until the mid to late 1970s into the early 1980’s.

With the four largest territories in the British Caribbean Commonwealth now independent, the smaller countries of the former West Indian Federation (Antigua & Barbuda, Dominica, Grenada, St. Kitts-Nevis & Anguilla²², St. Lucia, and St. Vincent & the Grenadines) were forced to seek new ways of restructuring their own political relations²³. In November 1966, five of these territories (excluding St. Vincent & the Grenadines) joined forces to form the West Indies Associated States Council of Ministers (WISA). WISA gained self-Government from Britain one year later. St. Vincent & the Grenadines joined the new organisation in 1969, thereby gaining internal self-Government, while Montserrat established administrative

¹⁹ Antigua & Barbuda, Barbados, Dominica, Grenada, Jamaica, Montserrat, the then St Kitts-Nevis-Anguilla, Saint Lucia, St Vincent and Trinidad & Tobago.

²⁰ Müllerleile, C. 1995. Caribbean Integration, Progress and Hurdles: A European View. Kingston Publishers Ltd. Kingston, Jamaica. p. 26.

²¹ Bryan, A. 1984. “CARICOM and Latin American Experiences” in CARICOM Secretariat. *Ten Years of CARICOM: Papers Presented at a Seminar on Economic Integration in the Caribbean held in Bridgetown Barbados*, July 1983. IADB. ILAT, CARI-Sec. Washington. pp. 71-94. p. 73.

²² St. Kitts Nevis and Anguilla were a single Federation until 1980 when Anguilla reverted to the status of a dependent British territory. The State is now called St. Kitts & Nevis.

²³ CARICOM Secretariat. 2005. *op cit*. pp. 48-50.

relations with WISA but remained a colony of Britain²⁴. WISA preceded the Organisation of Eastern Caribbean States (OECS)²⁵, which was established on 18 June 1981 through the Treaty of Basseterre. This sub-regional grouping provided the smallest territories of the British Commonwealth Caribbean with a strengthened bargaining position as the region began making strides towards creating a Free Trade Area for the Commonwealth Caribbean²⁶.

The Caribbean Free Trade Association (CARIFTA) provided the stimulus for the formation of a new Caribbean Community, which culminated in 1973 with the formation of CARICOM and the Common Market²⁷. The formation of CARIFTA came at a time when there was a pervading trend worldwide of countries “associating to form powerful economic blocs”²⁸. Three British territories, Antigua & Barbuda, Barbados, and British Guiana (later Guyana) signed on to the Dickenson Bay Treaty, which established CARIFTA, on 15 December 1965²⁹. The treaty was scheduled to take effect in three years and within three months of its inauguration, on 1 May 1968, the membership had expanded to include the original ten members of the West Indies Federation and Guyana³⁰. Belize (then British Honduras) later signed on 1 May 1971.³¹

CARIFTA gave way to CARICOM with the signing of the Treaty of Chaguaramas³² on 4 July 1973³³, a move that coincided with Britain’s accession to the European Community³⁴.

²⁴ *Ibid.*

²⁵ OECS is a nine member grouping of smaller Caribbean States within the English speaking Caribbean: Antigua & Barbuda, Anguilla, British Virgin Islands, Commonwealth of Dominica, Grenada, Montserrat, St. Kitts & Nevis, St. Lucia, and St. Vincent & the Grenadines.

²⁶ CARICOM Secretariat. 2005. *op cit.* p. 48.

²⁷ Bryan, A. 1984. *op cit.*

²⁸ UWI-CARICOM. 2003. Reinventing CARICOM: The Road to a New Integration. Kenneth O. Hall (ed). Ian Randle. Kingston, Jamaica. Pg. ix.

²⁹ Will, W. M. 1991. A Nation Divided: The Quest for Caribbean Integration. *Latin American Research Review*. 26(2): 3-37. p. 15.

³⁰ *Ibid.* pg. 16.

³¹ Axline, W. A. 1978. Integration and Development in the Commonwealth Caribbean: The Politics of Regional Negotiations. *International Organisation*. Vol. 32 (4): 953-973. p. 960.

³² The Treaty of Chaguaramas was signed by Barbados, Guyana, Jamaica and Trinidad & Tobago in 1973. In 1974, nine new members joined the community; Antigua & Barbuda, Belize, Dominica, Grenada, Montserrat, St. Kitts & Nevis, St. Lucia and St. Vincent & the Grenadines. The Commonwealth of the Bahamas joined in 1983, Suriname in 1995 and Haiti in 2002.

³³ Will, W. M. 1991. *op cit.* p. 16.

For the four independent States (Barbados, Guyana, Jamaica and Trinidad & Tobago), the treaty came into force on 1 August 1973. However, for the remaining eight former CARIFTA members, dependent territories of Britain, the treaty did not become effective until 1 May 1974. In July 1983, the Bahamas became the thirteenth member of CARICOM. They were later joined by Suriname (a former Dutch Colony) in July 1995 and Haiti in 2002.

With the creation of CARICOM, the Caribbean integration movement became the first example of a free trade area moving to a customs union³⁵. This new arrangement incorporated two distinct divisions: the Caribbean Community and the Caribbean Common Market³⁶, allowing States to join the community without being party to the Common Market regime, as in the case of the Bahamas³⁷. Unfortunately, the Common Market regime that was visualised in the original Treaty of Chaguaramas did not materialise within the first thirty years of CARICOM³⁸. However, the Grande Anse Declaration³⁹ of 1989 brought about a recommitment on the part of CARICOM heads of States to the move towards full integration. Through that declaration, the CARICOM Governments pledged to work towards the “establishment, in the shortest possible time, of a single market and economy for the Caribbean Community”⁴⁰.

In 2001, the revision of the Treaty of Chaguaramas [revised treaty] brought into force the CSME. This new arrangement established “a single economic space within which business and labour operate; in order to stimulate greater productive efficiency, higher levels of

³⁴ Grenade, W. C. 2004. Exploring the Implications of European Integration for The Anglophone Caribbean: From Lomé to EPA. John Monnet/Robert Schuman Paper Series. Vol. 4 (17). p. 3

³⁵ Axline, W. A. 1978. *op cit.* p. 953.

³⁶ Will, W. M. 1991. *op cit.* p. 16.

³⁷ Website of the CARICOM Secretariat. [http://www.caricom.org/jsp/community/original_treaty.jsp]. Last Accessed: 26 February 2008.

³⁸ Grenade, W. C. 2007. “CARICOM: Coming of Age”. John Monnet/Robert Schuman Paper Series. Vol. 7. (4). p. 7.

³⁹ The Grand Anse Declaration was signed by CARICOM Heads of Government at their 10th Conference in July 1989, held in Grand Anse Grenada.

⁴⁰ CARICOM. 1989. The Grande Anse Declaration and Work Programme for the Advancement of the Integration Movement. Available at: [http://www.caricom.org/jsp/communications/meetings_Statements/grand_anse_declaration.jsp]. Last Accessed: 26 February 2008.

domestic and foreign investment, increased employment and growth of intra-regional trade and extra-regional exports”⁴¹. Three pillars guide the community⁴²:

- Economic integration through a common market and trade policies;
- Functional cooperation; and
- Coordination of foreign policies.

Article 6 of the Revised Treaty outlines the objectives of the Community; i.e.

- Improved standards of living and work;
- Full employment of labour and other factors of production;
- Accelerated, coordinated and sustained economic development and convergence;
- Expansion of trade and economic relations with third States;
- Enhanced levels of international competitiveness;
- Organisation for increased production and productivity;
- The achievement of a greater measure of economic leverage and effectiveness of member States in dealing with third States, groups of States and entities of any description;
- Enhanced co-ordination of member States’ foreign and [foreign] economic
- policies; and
- Enhanced functional co-operation, including -
 - more efficient operation of common services and activities for the benefit of its peoples;
 - accelerated promotion of greater understanding among its peoples and the advancement of their social, cultural and technological development;
 - intensified activities in areas such as health, education, transportation, and telecommunications.

The revised treaty, with the addition of several new protocols also provided for the inclusion of new issues such as electronic commerce, Government procurement, treatment of goods from free zones, free circulation of goods and the rights of establishment, provision of

⁴¹ Girvan, N, in collaboration with the CARICOM Secretariat and the Special Task Force on the Single Economy. 2007. *Towards A Single Development Vision And The Role Of The Single Economy*. CARICOM Secretariat. Georgetown, Guyana. 63 pp. p. 7.

⁴² CARICOM Secretariat. 2005. *op cit*. p. 52.

services and movement of capital⁴³. The advent of the CSME in June 2006 promised to deepen integration among CARICOM nationals by expanding the common market.

Among the most significant developments under the revised treaty was the introduction of an integrated Agriculture Policy for CARICOM. The new Agriculture Policy also addressed the matter of fisheries cooperation; in particular, Article 60 of the revised treaty guides the effort on Fisheries Management and Development indicating that:

- The Community, in collaboration with competent national, regional and international agencies and organisations, shall promote the development, management and conservation of the fisheries resources in and among the member States on a sustainable basis [...].

- The Community shall collaborate with the member States in:
 - the management of straddling and highly migratory fish stocks;
 - ongoing surveillance of their exclusive economic zones;
 - the delimitation of maritime boundaries; and
 - safeguarding their marine environment from pollutants and hazardous wastes.

- Without prejudice to the provisions of Article 56, COFCOR shall promote the establishment of a regime for the effective management, conservation and utilisation of the living resources of the exclusive economic zones of the member States.⁴⁴

With the acceptance of the new Agriculture/Fisheries policy, CARICOM Heads of Government recognised for the first time the need for including the issue of fisheries management into the regional integration process. This is extremely pertinent given the significance of regional fisheries in the overall economic development of the member States and its role in food security and poverty alleviation for rural communities.

⁴³ *Ibid.* p. 244-245.

⁴⁴ CARICOM Secretariat. 2001. Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CSME. Article 60. (1, 3, 4). CARICOM Secretariat. Georgetown, Guyana.

With the establishment of the CSME Caribbean Governments agreed, “while CARICOM would remain a Community of Sovereign States, certain fundamental changes were required to improve the structure and management of the Community” as a whole, and specifically the way decisions were taken⁴⁵. Thus, the revised treaty lays out the following institutional structure. The Conference of the Heads of Government and its Bureau determine the main policy directions for the community as a whole. The Bureau comprises the chairperson of the Conference along with the incoming and outgoing Chairs and the Secretary General of CARICOM, who acts in the capacity of Chief Executive Officer for the Bureau. The Community Council of Ministers is CARICOM’s second supreme body and guides the community’s vision in the areas of economic integration, functional cooperation and external relations, in accordance with the policy directive laid down by the Conference. This body is also empowered to “consider allegations of breaches of Treaty obligations by member States”⁴⁶. Four Ministerial Councils, 3 administrative bodies and the CARICOM Secretariat, assist the two principal organs of the Community (Figure 2). The Secretariat, as the ‘Principal Administrative Organ’ of CARICOM, facilitates and supports the work of the main decision-making bodies⁴⁷. The Secretary General who is the chief executive officer of the Community heads the Secretariat⁴⁸. The four ministerial councils coordinate the Community’s position on various issues. Thus:

- The Council for Financing and Planning (COFAP) holds responsibility for economic coordination, financial and monetary integration of member States;
- The Council for Foreign and Community Relations (COFCOR) determines relations between CARICOM and international organisations and third States and promotes the development of friendly and mutually beneficial relations among member States;
- The Council for Human and Social Development (COHSOD) promotes human and social development; and

⁴⁵ CARICOM. 2005. *op cit.* p. 227.

⁴⁶ Farier, J. 2004. Compliance, Enforcement and Dispute Settlement in CARICOM: A Preliminary Review. *in*. UWI-CARICOM Project. CARICOM: Appropriate Adaptation to a Changing Global Environment. Ian Randle Publishers. pp. 119-152.

⁴⁷ CARICOM. 2005. *op cit.* p. 232.

⁴⁸ *Ibid.*

- The Council for Trade and Economic Development (COTED) promotes trade and economic development of the Community and oversees the operations of the Single Market and Economy.⁴⁹

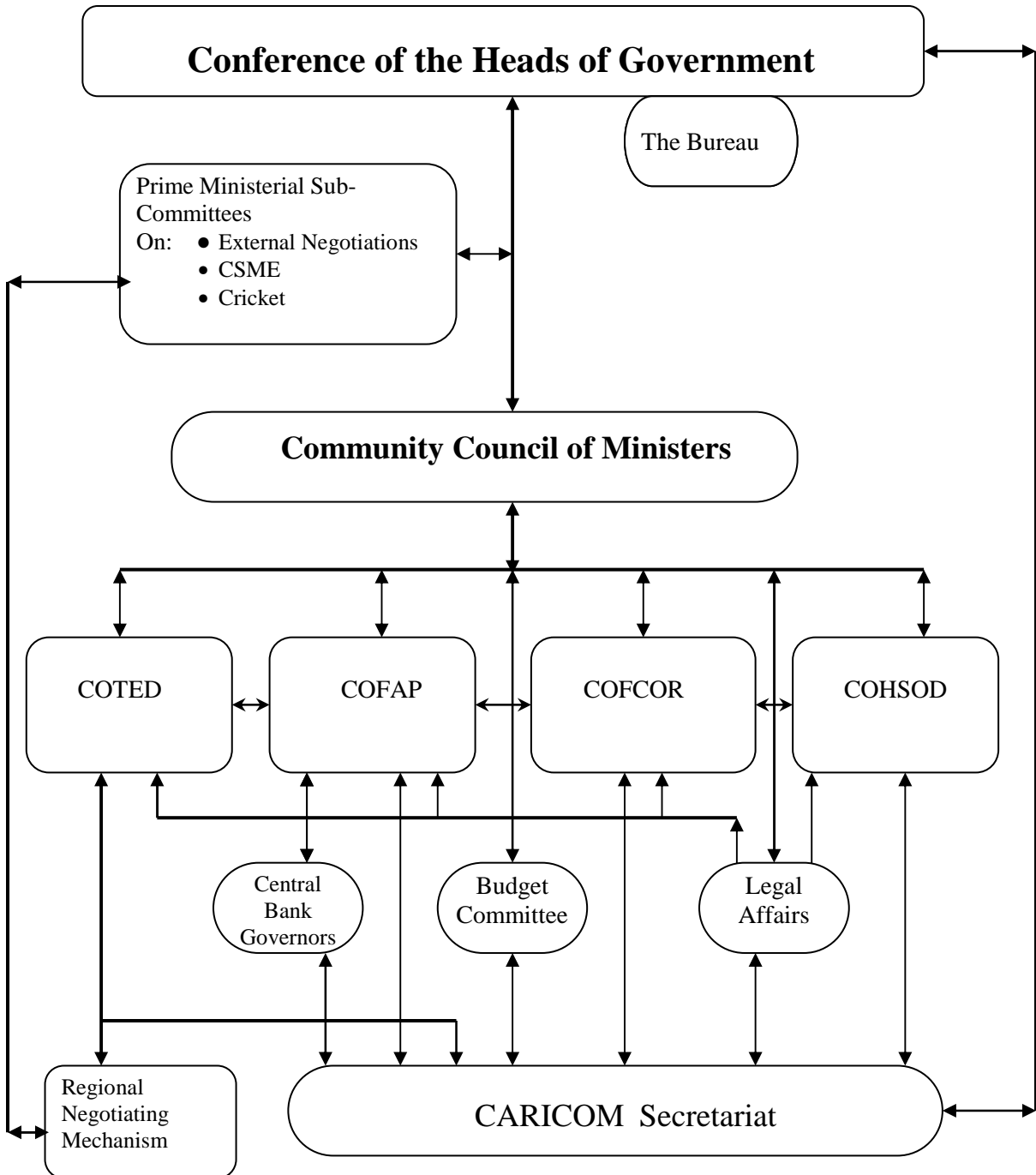


Figure 2: The organs and bodies of the Caribbean Community
 Source: Adapted from CARICOM Secretariat. 2005

⁴⁹ *Ibid.* p. 231.

2.3 Socioeconomic Conditions

The paper focuses on developments within CARICOM, aimed at achieving regional integration within the fisheries economic sector; even while States have begun to exert sovereignty over their EEZs, as declared under UNCLOS. It is important to underline that while these States have successfully negotiated the establishment of a Single Market and Economy within the sub-region, there is a great disparity between individual States with regard to their economic development as well as the technical capacity to exploit the resources of the region. The variance in economic capacities demonstrably influenced the wider economic integration process, and may now affect the new fisheries integration process. It is therefore important to highlight the differences between the national economies of CARICOM member States.

The nations of the Wider Caribbean range from among the smallest and poorest countries on the globe to one of the largest and most developed. The region is highly fragmented and is characterised by a mix of cultures derived from former European and North American colonial powers⁵⁰. Among these, the tiny nations of the British Commonwealth, along with Haiti and Suriname, have forged an integrated union, CARICOM, which includes fifteen independent members and five associate members. The Community's geographical boundary stretches from the Bahamas in the North to Suriname in the South. It also extends from Belize on the Central American isthmus eastward to Barbados, the most eastern of the Caribbean islands. With a combined population of more than fourteen million people, CARICOM countries are among the smallest in the world ranging in size from 270 square kilometres (St. Kitts & Nevis) to 215 000 square kilometres (Guyana)⁵¹.

The nations of CARICOM also show great diversity with regard to levels of social and economic development, yet they are all classified as developing countries (Table 1). For instance, with a population of more than eight million, Haiti is the region's poorest country with a GDP per capita of approximately US \$570. On the other hand, the twin island State of Trinidad & Tobago is able to wield significant economic and political influence within

⁵⁰ Breton, Y. 2006. *et al. op cit.* p. 32.

⁵¹ CARICOM Secretariat. 2005. CARICOM: Our Caribbean Community – An Introduction. Ian Randle Publishers. Kingston, Jamaica. p. 4.

CARICOM as it dominates intra-regional trade, exporting more products to neighbouring member States than all others combined (Figure 3). These exports are primarily energy resources, as Trinidad & Tobago's economy is largely based on the oil and gas sectors⁵². That country is the Community's richest member, with a GDP per capita of US \$7 392.1 million⁵³. There is also great disparity between member States in terms of the number and quality of research and resource management institutions, particularly in the marine sector⁵⁴.

Table 1: Profile of CARICOM member States and Associate Members

Country	Total land area (square km)	Population (2002)	GDP per Capita (US\$)
Antigua & Barbuda	442	76 485	\$9 425.5
The Bahamas	13 939	312 000	\$16 378.9
Barbados	431	270 000	\$9 594.4
Belize	22 966	265 200	\$3 592.4 million
Commonwealth of Dominica	750	71 079	\$3 570.3
Grenada	345	102 638	\$3 910.9
Republic of Guyana	214 969	774 800	\$937.4
Republic of Haiti	27 750	8 357 000 (2000)	\$567.1 (2000)
Jamaica	10 991	2 641 600	\$3 238.4
Montserrat	103	4 501	\$8 447.5
Federation of St. Kitts & Nevis	269	46 710	\$7 554.3
St. Lucia	616	159 133	\$4 300.8
St. Vincent & the Grenadines	389	109 164	\$3 307.9
Suriname	163 820	441 356 (2001)	\$1 645.1 (2001)
Republic of Trinidad & Tobago	5 128	1 276 000	\$7 309.9 million
Anguilla**	91	12 200	\$7 442.2
British Virgin Islands**	157	23 500	\$37 252
Cayman Islands**	264	42 800	\$36 419
Turks and Caicos Islands**	500	20 900	\$10 977

** Associate member States

Source of data: CARICOM 2005

⁵² *Ibid.* p. 419.

⁵³ *Ibid.* p. 433.

⁵⁴ Davy, B. and Y. Breton. 2006. Introduction. in Y. Breton *et al.* (eds). Coastal Resource Management in the Wider Caribbean: Resilience, Adaptation and Community Diversity. Ian Randle Publishers. Kingston, Jamaica. IDRC. Ottawa, Canada. pp. 1-16. p. 6.

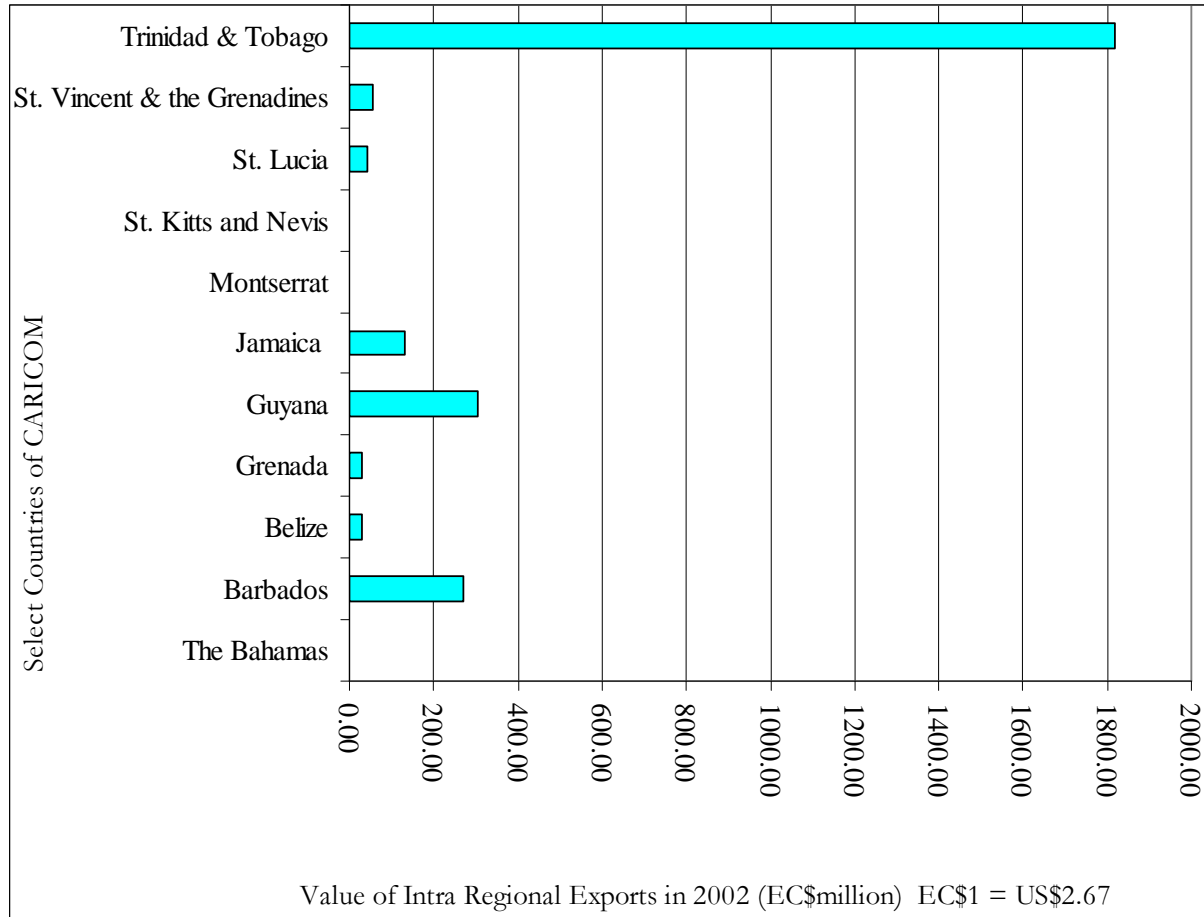


Figure 3: Value of intra-regional trade for 2002 within CARICOM countries
Source of data: CARICOM Secretariat 2005

Such disparity in the economic outlook of individual member States has the capacity to affect any integration process whereby States are expected to cede national sovereignty over resources to regional agencies. As will be demonstrated, this diversity extends to the fisheries economies, which varies greatly across the various sub-regions within CARICOM.

While CARICOM members for years have demonstrated a commitment to cooperating in fisheries management, the CFPR may require far greater sacrifice on the part of individual States than ever before. This may be a more difficult prospect for the Governments of the region to commit to than any other aspect of the regional integration movement.

3. MARITIME ISSUES IN THE CARICOM REGION

In order to examine fully the issues at stake in the establishment of the CFPR it is necessary to understand the prevailing conditions of member States with respect to the fisheries economic sector of the region. As will be described, while there are significant similarities across the region with regard to the profile of the sector and management frameworks both nationally and regionally, the fisheries sector of the region is by no means uniform. In fact, there are considerable differences in terms of the fleet structure, and the various technologies employed by fishing communities of individual States as well as the management policies employed.

Also of importance is the position taken by member States with regard to maritime sovereignty and jurisdictional claims over their EEZ. The Caribbean region is evidently very complex with a number of unresolved maritime issues that have the potential to undermine the fisheries integration process currently underway. Highlighting these issues is essential to addressing the fundamental theme under consideration; i.e. how do Governments reconcile the idealism of a regional fisheries policy and regime with the rights and duties over EEZ accorded them under international law.

3.1 The CARICOM Fisheries Sector

3.1.1: Profile of the Sector

While the fisheries sectors of the CARICOM region contribute relatively little to annual gross domestic product (GDP), up to about 12% in some member States in some years⁵⁵ it plays a significantly greater role to the overall economic development and cultural identity of individual States (Table 2). The fisheries sector is particularly important to the region's food security and poverty alleviation for rural communities⁵⁶, with per capita consumption of seafood in the region averaging between 23 – 25 kg per year⁵⁷. The vast majority of fisheries

⁵⁵ CRFM. 2003. EU/Caribbean ACP States: Cooperation in Fisheries. Prepared for the workshop on the future of EU-ACP countries fisheries relations. CRFM Secretariat. Belize City. Belize. 10 pp. p. 3 Available at: [<http://www.agricta.org/events2003/fisheries/Haughton-EN.doc>]. Last Accessed: 26 February 2008.

⁵⁶ Chakalall, B. and K. Cochrane. 2004. Issues in the Management of Large Pelagic Fisheries in CARICOM Countries. *in* FAO. Management of Large Pelagic Fisheries in CARICOM Countries. Mahon, R. and P. McConney (eds). FAO. Rome. pp. 1-3. p. 1.

⁵⁷ CRFM. 2003. *op cit.* p. 3.

in the region involve small scale and rural fishers for whom the sector often represents their only possible source of income; underlining its importance to poverty alleviation⁵⁸. The sector also serves as an important income generator and foreign currency earner for many States in the region⁵⁹. One of the most important roles for CARICOM fisheries is its contribution to employment in the region. Often seen as a sector of last resort, CARICOM fisheries provide employment for up to 135 500⁶⁰ individuals region wide; typically, the most socially disadvantaged members of society⁶¹.

Table 2: Fisheries Contribution to GDP for CARICOM member States and Associate Members

Member State	Fisheries Contribution to GDP
Antigua & Barbuda	1.48%
Bahamas	1.5%
Barbados	1%
Belize	5 – 7.2%
Dominica	1.87%
Grenada	1.5-2%
Guyana	2.8 - 8%
Jamaica	0.4%
Haiti	2.5%
St Kitts	1.42%
St. Lucia	1.5%
St. Vincent & the Grenadines	1.93%
Suriname	4%
Trinidad & Tobago	0.09%
<i>TCI</i>	2.5%
<i>BVI</i>	0.61-0.7%
<i>Anguilla</i>	2.6%

Source of data: FAO Country profiles and CRFM

⁵⁸ Chakalall, B. and K. Cochrane. 2004. *op cit.* p. 1.

⁵⁹ *Ibid.*

⁶⁰ Based on estimates from Haughton, M. O. Fisheries Subsidy and the Role of Regional Fisheries Management Organisations: The Caribbean Experience and the FAO.

⁶¹ Haughton, M. O. Fisheries Subsidy and the Role of Regional Fisheries Management Organisations: The Caribbean Experience. CRFM. Belize City, Belize.

The environmental complexity and diversity of marine areas within the region has resulted in a complex assemblage of marine biota⁶² and a fisheries sector that is widely varied across States. Geomorphologic features such as the width of the continental shelf, extent of important habitats such as coral reefs and seagrass beds, and the impact of land-based features such as the Orinoco river outflow largely influence these biological assemblages and, as a result, the fisheries of individual States. The diverse nature of Caribbean communities is also reflected in their fishing communities, which can consist of a wide range of social and sometimes physical units⁶³.

Some of the most valuable fisheries resources in the region are crustacean species, particularly the Caribbean spiny lobster⁶⁴. The other important fisheries of the region vary significantly across individual States, based largely on their bathymetric and oceanographic features. Large pelagic species (e.g. tuna and pelagic mackerels such as the wahoo) are traditionally harvested in the Windward islands (Dominica, St. Lucia, St. Vincent & the Grenadines and Grenada), while continental shelf demersals (e.g. species of the families Balistidae, Haemulidae, and Acanthuridae), conch, and reef species are most heavily exploited in the Northern Antilles (Antigua & Barbuda, St. Kitts & Nevis) as well as the Bahamas, Belize, Jamaica and the Turks and Caicos Islands⁶⁵. Shrimp and groundfish are found primarily in the Southern Caribbean (Guyana, Suriname and Trinidad & Tobago)⁶⁶. Other important fisheries species include deep slope and bank fishes and coastal pelagics. Less important fisheries for marine mammals, sea turtles, sea urchins and marine algae also exist in the CARICOM region⁶⁷.

⁶² Parsons, S. 2007. Governance of Transboundary Fisheries Resources in the Wider Caribbean: A discussion paper for the CLME Synthesis Workshop. CLME-TT/7Prov. CLME Project Implementation Unit. Cave Hill, Barbados. 41 pp. p. 3.

⁶³ Kishore, R. *et al.* 2006. Political Organisation and Socioeconomics of Fishing Communities of Trinidad & Tobago, Belize and Grenada. *in* Y. Breton *et al.* (eds). Coastal Resource Management in the Wider Caribbean: Resilience, Adaptation and Community Diversity. Ian Randle Publishers. Kingston, Jamaica. IDRC. Ottawa, Canada. Pp. 191-222. p. 206.

⁶⁴ FAO 2002. Trends and Challenges in Agriculture, Forestry and Fisheries in the Caribbean Region. FAO Regional Office for Latin America and the Caribbean. 39 pp. p. 28.

⁶⁵ Chakalall *et al.* 1998. *op. cit.* p. 31.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

The fisheries of CARICOM countries are generally multi-species (Figure 4), multi-gear fisheries operating under an open access arrangement. As a result, the fishers of a State share common fishing areas, with no regulatory zoning⁶⁸. Like fishers, the world over, Caribbean fishers are not homogeneous⁶⁹, and may be categorised as full time or part time, career or transient. In some islands of the region, other categories of fishers are also recognised: subsistent, recreational or sport. Particularly in the northeastern Caribbean, recreational and sport fishers do not engage in fishing for commercial gain but typically operate as weekenders or participate in sport fishing tournaments.



Figure 4: Landing of mixed demersal species
Source: Fisheries Division, Antigua

The fisheries economies of the region vary greatly in terms of the level of exploitation, advancement of gear and vessels employed, importance of the sector to national economies, and the approach of individual States to development and management of the resources⁷⁰. For instance, small open boats that deploy wire-meshed traps, hand lines or gill nets into coastal waters dominate the demersal fisheries of the Northern Antilles. These operators rarely spend more than a few hours at sea. On the other hand, foreign owned trawlers that

⁶⁸ *Ibid.*

⁶⁹ Salas, S., U. R. Sumaila and T. Pitcher. 2004. Short-term Decisions of Small-scale Fishers Selecting Alternative Target Species: A Choice Model. *Canadian Journal of Fisheries and Aquatic Sciences*. 61: 374-383. p. 381.

⁷⁰ *Ibid.*

may spend up to fifty days at sea primarily operate in the industrial shrimp and ground fish fleet of Guyana⁷¹. The vast majority of CARICOM fisheries are small-scale or artisanal in nature with a fishing fleet dominated by small open vessels of 5-12 m length, powered by outboard engines (Figure 5)⁷². One noteworthy exception to this is the shrimp and ground fish fishery, where trawlers ranging from 20-30 m are used⁷³. Some countries have also begun to introduce mid-size vessels (12-15 m) into their fishing fleet, particularly for harvesting large pelagics; deep slope species and conch and lobster on offshore banks⁷⁴. Such fleets can spend up to several days at sea sending feeder boats out to the fishing grounds (e.g. the conch fishing fleet of Pedro Bank in Jamaica).



Figure 5: Traditional fishing vessels at a landing site in Antigua
Source: Fisheries Division Antigua

Although the true status of many Caribbean fisheries stocks remains largely unknown, it is widely accepted that CARICOM fisheries have suffered many of the same pressures experienced by global stocks. Rising stock collapses caused by overfishing and environmental degradation due to pollution and habitat loss threaten many Caribbean

⁷¹ Shepherd, D. Hackett, A. and R. Charles. 1997. National Report of Guyana – Shrimp and Groundfish Fisheries of Guyana. Presented at the CFRAMP/FAO/DANIDA Stock Assessment Workshop on the Shrimp and Groundfish Fisheries on the Guiana-Brazil Shelf. FAO Fisheries Report No. 600. FAO. Rome, Italy. pp. 21-42. pp. 25-26.

⁷² Chakalall et al. 1998. *op cit.* p. 32.

⁷³ *Ibid.*

⁷⁴ Parsons, S. 2007. *op cit.* p. 6.

fisheries⁷⁵. Fish landings in the Wider Caribbean rose steadily from the 1950s to as much as 500 000 tons in the late 1990s. However, fish catch has declined steadily since then, by approximately 33% between 1990 and 2000⁷⁶. Among CARICOM countries flyingfish landings in Barbados, Guyana, and Trinidad & Tobago peaked at about 6000t in 1988 but more recently have fluctuated between 1000 and 2800t⁷⁷. The problem of overexploitation is most acute in nearshore/coastal areas, prompting many fisheries authorities in the region to refocus their attentions to the offshore and to stocks of large pelagic species: e.g. - yellowfin tuna, Atlantic blue marlin and swordfish⁷⁸. CARICOM countries have begun to exploit these resources more frequently as they have been for years by distant nations (e.g. the Korea, Japan and Taiwan – The Republic of China)⁷⁹.

Due to the prevalence of common shelf areas that traverse the EEZs of several countries the most abundant fisheries resources within the region are shared stocks⁸⁰, underlining the need for regional cooperation in management. To this end, CARICOM Governments have recently proposed and endorsed the creation of a Common Fisheries Policy and Regime (CFPR) for the sub-region as a way of deepening the integration process and eliminating tensions arising between CARICOM member States in the future. As envisioned, the Caribbean Regional Fisheries Mechanism (CRFM), which all CARICOM members signed on to in 2002, will form the basis for the new fisheries policy. However, this new arrangement is likely to have implications for concerns regarding the perceived loss of sovereignty by member States over the full extent of their Exclusive Economic Zones⁸¹.

⁷⁵ Kishore, R. *et al.* 2006. *op cit.* p. 191.

⁷⁶ CARSEA. 2003. *op cit.* p. 6.

⁷⁷ Cochrane, K. 2005. B 3. Western Central Atlantic: FAO Statistical Area 31. *in.* FAO 2005. Review of the State of the World Marine Fishery Resources. FAO Fisheries Technical Paper 457. FAO Fisheries Department, Rome, Italy. pp. 31-42. p. 33.

⁷⁸ Heileman, S. 2007. Thematic Report for the Insular Caribbean Sub-Region. Prepared for the CLME Project. CLME Project Implementation Unit. Cave Hill, Barbados. 3 pp. p. 10.

⁷⁹ Dundas C. and C. Mitchell. 2004. *op cit.* p. 5.

⁸⁰ Haughton *et al.* 2004. Establishment of the Caribbean Regional Fisheries Mechanism. *Marine Policy* 28: 351-359. p. 351.

⁸¹ Dundas C. and C. Mitchell. 2004. *op cit.* p. 16.

3.1.2 Governance of CARICOM Fisheries – The National Perspective

In most CARICOM countries, the State plays the central role in all aspects of fisheries management, regulation and conservation. This is achieved through direct intervention and implementation of relevant policies and development programmes⁸². Most fisheries departments are located within a wider Ministry of Agriculture or Natural Resources, and are generally small with limited human and technical capacity⁸³. In many instances, such agencies may be involved in the regulation and management of a range of other marine resource issues, including coastal zone management, aquaculture development and fisheries extension. Thus, many of these national fisheries management agencies are limited due their broad mandates while lacking the technical, institutional and human capacity to carry out their duties. In many of these instances, the sector is largely unmanaged or is managed only elementarily⁸⁴, thus undermining conservation objectives.

In particular, there is little capacity for the monitoring, control and surveillance of fisheries regulations within many fisheries agencies of the region⁸⁵. For the small island nations of CARICOM, their maritime space under the EEZ regime is substantially larger than the land area. For example, Antigua & Barbuda, with a land area of 440 square km has an EEZ of 110, 103 square km⁸⁶. This poses a significant challenge to the relatively small, technologically challenged fisheries enforcement agencies within the member States. In fact, in many cases, fisheries authorities are dependent on national maritime enforcement agencies such as the coast guard or marine police, which are often also engaged in other activities such as drug interdiction. Thus, it is quite common for fisheries enforcement patrols to be deferred in favour of larger maritime security issues.

This issue of insufficient capacity, is however, not universal throughout the region. In some countries, there are significant human and institutional capacities for assessing, managing and monitoring the marine fisheries sector⁸⁷. This is particularly through in the more

⁸² Chakalall *et al.* 1998. *op cit.* p. 32.

⁸³ *Ibid.*

⁸⁴ Haughton, M. O. *op cit.*

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

developed countries of the region, which in addition to Government regulating agencies also have privately run institutions dedicated to marine resource conservation (e.g. the Institute of Marine Affairs in Trinidad & Tobago).

In almost all countries of the region, the institutional structure of the fisheries sector is arranged linearly⁸⁸. In this institutional model, Government acts as the central regulator of the sector, through its fisheries department, with varying levels of involvement from other Government agencies, research institutions and the fishing industry (Figure 6). This top-down management approach is characteristic of traditional fisheries management models that rely on Government-instituted programmes for management.

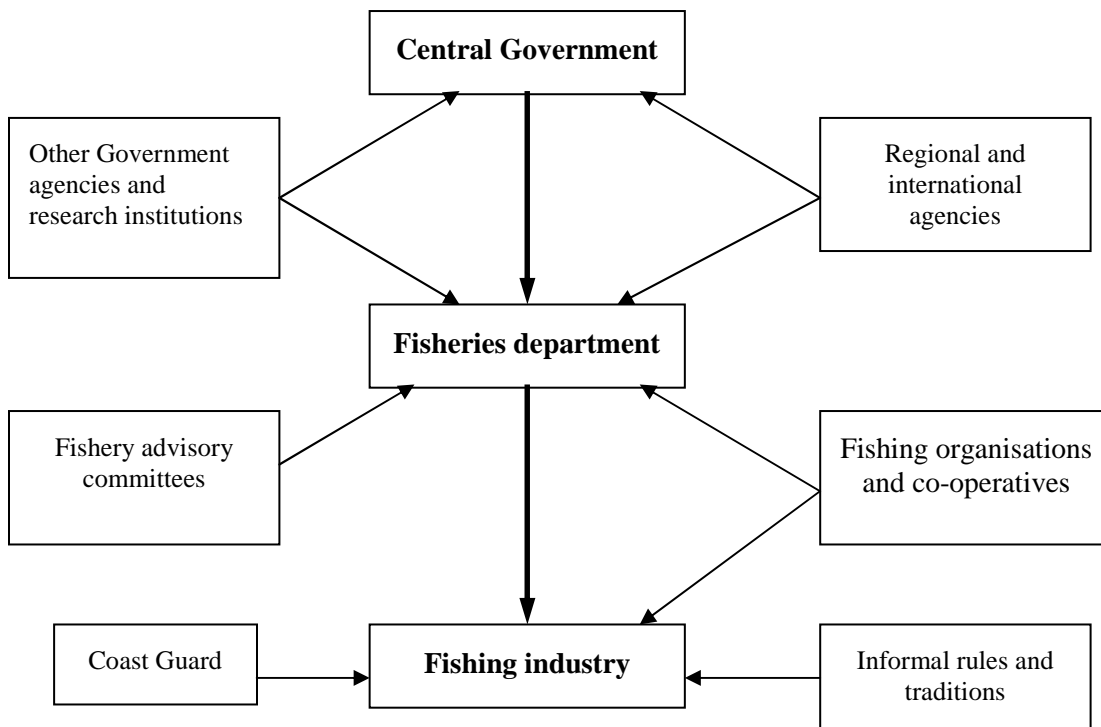


Figure 6: Schematic outline of institutional arrangements for the fisheries sector of CARICOM countries

Source: Kishore et al. 2006

In this regime, Government regulatory bodies employ traditional fisheries management measures, through interventions such as gear restrictions (e.g. mesh size limit for traps and

⁸⁸ Kishore *et al.* 2006. *op. cit.* p. 196.

nets), minimum or maximum size limits for particular species (e.g. spiny lobster) and catch quotas⁸⁹. Other measures employed include closed seasons, closed areas and the prohibition of certain gear (e.g. restriction on the use of SCUBA to harvest queen conch in the Bahamas). These old management measures focus on sustaining fish harvest based on the sustainable yield model⁹⁰. However, a new perspective based on the sustainability concept has begun to redefine fisheries management regimes, worldwide, taking into account the interactions between fisheries resources and supporting ecosystems with the human system in order to achieve a balance between resource conservation and human concerns⁹¹. Many CARICOM member States have made significant strides in adopting this ecosystem approach to fisheries management including measures for increasing stakeholder participation in resource management. This is largely due to the recognition by fisheries authorities in the region of the failure of traditional management methods to achieve sustainability in the fisheries sector. CARICOM Governments are now employing new strategies that include a departure from the old top down, linear management model to co-management arrangements for small-scale fisheries.

3.1.2 Governance of CARICOM Fisheries – The Regional Perspective

At the regional level, the governance framework for fisheries management is decidedly more complex. In fact, there are currently “many overlapping and competing arrangements for various aspects of marine governance” in the Caribbean region.⁹² At the international level, UN organisations such as the Food and Agriculture Organisation (FAO) and UNEP provide instruments with broad norms and principles that are agreed upon and that provide a global foundation for regional level governance.⁹³ Within Latin America and the Caribbean, several indigenous regional and subregional institutions of a political and economic nature help to direct the regional agenda for fisheries management (Figure 7).⁹⁴ Many of the agencies

⁸⁹ *Ibid.* p. 192.

⁹⁰ Charles, A. 2005. The Big Picture: A Fishery System Approach Links Fishery Management and Biodiversity. in Proceedings of the Workshop on Biodiversity Challenges for Fishery Management. Conference on Biodiversity: Science and Governance. IFREMER, Paris, France. Available on the IFREMER website: [<http://www.ifremer.fr/gascogne/actualite/colloque/atelier-biodiversite/index.htm>]. Last Accessed 17 March 2008

⁹¹ *Ibid.*

⁹² Chakalall *et al* 2007. *op cit.* p. 94.

⁹³ *Ibid.*

⁹⁴ *Ibid.*

pictured in the figure share overlapping, often competing mandates, yet there is currently no regional effort under way to streamline or coordinate these agencies. Chapter 4 will expand on the roles and responsibilities of many of these agencies. However, they include: the Association of Caribbean States (ACS); the Caribbean Community (CARICOM) and its fisheries mechanism the Caribbean Regional Fisheries Mechanism (CRFM); the Caribbean Forum of African, Caribbean and Pacific States (CARIFORUM); the International Commission for the Conservation of Atlantic Tuna (ICCAT); the Organisation of Eastern Caribbean States (OECS), the Organisation of the fisheries and aquaculture sector in Central America (OSPESCA), the Latin American Organisation for Fisheries Development (OLDEPESCA); WECAFC and the WECAFC Lesser Antilles Commission (WECAFC-LAC).

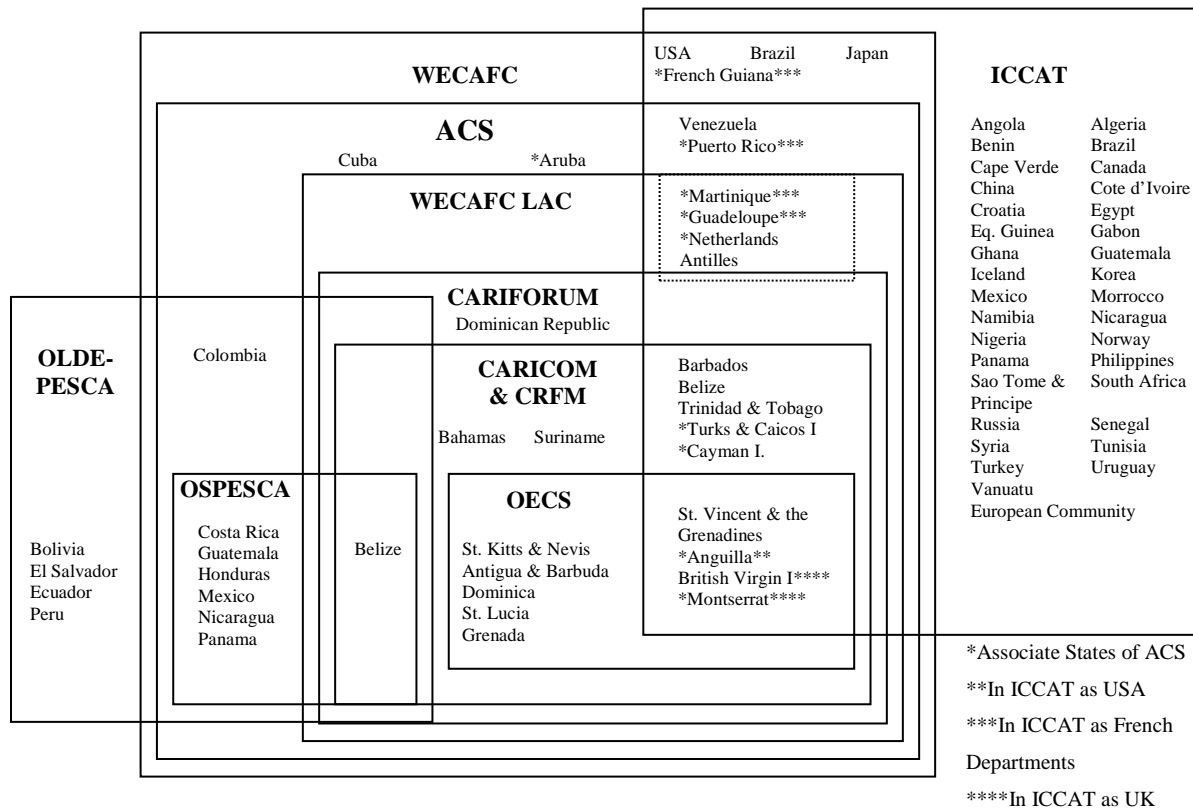


Figure 7: Membership in relevant regional and international organisations with responsibility for fisheries management and development in the Wider Caribbean
 Source: Chakalall et al 2007

With respect to ocean governance in the Wider Caribbean, any regional arrangement must have the mandate and capacity to perform “the full range of functions and processes that

constitute governance”.⁹⁵ Such mechanisms must have a mandate at the appropriate geographical scale to address the management needs of the resource throughout its range of distribution⁹⁶. None of the organisations pictured in Figure 7 have the mandate or capacity to effectively fulfil these functions, but instead present a complex array of agencies, operating at different geopolitical scales with varying mandates and scope of operation.⁹⁷

For example, ICCAT is a full regional fisheries management organisation that covers the entire Wider Caribbean and the Atlantic region but is only concerned with the management of tuna and tuna-like species. On the other hand, WECAFC provides a coordination functions for the development of regional fisheries but holds no decision-making powers. Finally, OLDESPESCA, in the case of Latin American States, and the CARICOM – CRFM both cover a wide range of management functions for all species, but only for particular geopolitical groupings in the region.⁹⁸ In both cases, these are largely fisheries development organisations that function to coordinate national policies among the contracting member States. Unfortunately, the current situation does not provide a coherent governance framework for the region and is “unlikely to lead to the emergence of a rational, integrated governance framework”⁹⁹, yet the members of CARICOM are on the verge of formulating a policy and regime that would essentially extend the mandate of one of these institutions.

The central theme of this research focuses on the CARICOM sub-region, where the member States are on the verge of formalising a new institutional regime for the management and development of the fisheries sector of the subregion. The CFPR will effectively increase the mandate and responsibilities of the CRFM. In doing so, it will create in the region a large maritime zone of overlapping EEZs to be managed by a regionally instituted management organisation. This new organisation will be empowered with some of the rights and privileges, in respect of marine resource management, normally reserved for coastal States.

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

3.1.3. Existing Bilateral Fisheries Agreements involving CARICOM Members States

Despite the long history of economic cooperation between the members of CARICOM, few States have successfully negotiated bilateral fisheries agreements for the management of shared or straddling stocks. To date, with the exception of Barbados and Guyana, no CARICOM member State has successfully negotiated a bilateral fisheries cooperation agreement with another CARICOM member. However, Trinidad & Tobago signed on to an arrangement with a non-CARICOM State, Venezuela, in the mid 1980s.

The Governments of Barbados and Guyana began negotiations in 2001 to establish a joint zone between the two countries, before signing an accord on 2 December 2003. The Treaty titled, *The Exclusive Economic Zone Cooperation Treaty between the State of Barbados and the Republic of Guyana Concerning the Exercise of Jurisdiction in their Exclusive Economic Zones in the Area of Bilateral Overlap Within Each of their Outer Limits and Beyond the Limits of the Exclusive Economic Zones of Other States*, was the first such agreement between two member States of CARICOM. The agreement created a cooperation zone “in the area of bilateral overlap between the [EEZs] encompassed within each of their outer limits [...] and beyond the outer limits of the [EEZs] of other States”¹⁰⁰. Consistent with Article 74(3) of UNCLOS, the treaty established a provisional arrangement and did not derogate from the responsibility of either State to delimit their maritime zone in the future¹⁰¹. The Cooperation Zone that the treaty created was primarily concerned with the management, development and regulation of living and non-living resources within the joint zone¹⁰². In this regard, the articles of the Cooperation Treaty provided for: a joint fisheries licensing agreement¹⁰³, a joint non-living resources commission¹⁰⁴ and a security agreement¹⁰⁵. It also outlined the mechanism for settling disputes, first through direct diplomatic means failing

¹⁰⁰ Exclusive Economic Zone Cooperation Treaty between the State of Barbados and the Republic of Guyana Concerning the Exercise of Jurisdiction in their Exclusive Economic Zones in the Area of Bilateral Overlap Within Each of their Outer Limits and Beyond the Limits of the Exclusive Economic Zones of Other States. 2004. Article 2(1).

¹⁰¹ *Ibid.* Article 1(3).

¹⁰² Colson, D. A and R. W. Smith (eds). 2005. *op cit.* p. 3578.

¹⁰³ Exclusive Economic Zone Cooperation Treaty between the State of Barbados and the Republic of Guyana Concerning the Exercise of Jurisdiction in their Exclusive Economic Zones in the Area of Bilateral Overlap Within Each of their Outer Limits and Beyond the Limits of the Exclusive Economic Zones of Other States. 2004. Article 5(2).

¹⁰⁴ *Ibid.* Article 6(2).

¹⁰⁵ *Ibid.* Article 7(2).

which dispute resolution mechanisms under UNCLOS may be employed¹⁰⁶. Although this agreement constitutes a non-binding cooperation agreement between two CARICOM members, it corresponds to the general policy by both States “to establish a precise and equitable regime for the orderly exercise of jurisdiction in the area of bilateral overlap [...] taking into account the interests of other States.”¹⁰⁷

3.2. Maritime Delimitation Issues within CARICOM

Against the backdrop of ecological complexity and cultural diversity, the nations of the CARICOM hold sovereign and jurisdictional rights over a large portion of the Caribbean Sea and most of the area with exploitable fisheries resources¹⁰⁸. However, the closeness of the island States, particularly in the Eastern Caribbean, presents a challenge to maritime delimitation as large areas of States’ maritime claims overlap¹⁰⁹. This challenge has led to tensions between neighbouring countries, the most recent of which (the fisheries dispute between Trinidad & Tobago versus Barbados) went to binding arbitration under UNCLOS¹¹⁰. This is despite the recent developments in the regional integration process, which culminated in the formation of the CSME in June 2006. The following paragraphs will highlight the current situation with regard to the delimitation of maritime boundaries by CARICOM member States. They will also illustrate that while the Governments of the region have made significant strides towards integrating their economies in respect of land-based industries, they still need to do a lot of work to extend the freedoms envisioned in the revised treaty to maritime economic sectors.

3.2.1 Delimitation of Maritime Boundaries by CARICOM States

As early as 1972, the nations of the Caribbean region adopted a common position on the issue of extended maritime jurisdiction by coastal States when they adopted the 1972 Declaration of Santiago, which embodied the notion of the “patrimonial sea” (the precursor

¹⁰⁶ *Ibid.* Article 10.

¹⁰⁷ Colson, D. A. and R. W. Smith (eds). 2005. *op cit.* p. 3580.

¹⁰⁸ Dundas C. and C. Mitchell. 2004. A Common Fisheries Regime for the Caribbean Sea. CRFM Secretariat. Belize City. Belize. 52 pp. p. 3.

¹⁰⁹ *Ibid.* p. 8.

¹¹⁰ See website of the Permanent Court of Arbitration: [http://www.pca-cpa.org/showpage.asp?pag_id=1152]. Last Accessed: 26 March 2008

to the EEZ described under UNCLOS)¹¹¹. By later signing on to and ratifying UNCLOS these nations agreed to be bound by international law and recognised their obligations as coastal States in managing the marine resources now under their jurisdiction. All independent members of CARICOM have ratified UNCLOS. However, only a few States have signed the straddling stocks protocol, which is of direct relevance to the proposed common fisheries policy and regime under discussion (Table 3).

Table 3: Status of CARICOM Countries Ratifying the Law of the Sea Convention

State/Territory	Signature	Date of Ratification to UNCLOS	UN Fish Stocks Agreement Ratification; Accession (a) or declaration
Antigua & Barbuda	√	February 2, 1989	---
Anguilla*			
The Bahamas	√	July 29, 1983	January 16, 1997 (a)
Barbados	√	October 12, 1993	September 22, 2000 (a)
Belize	√	August 13, 1983	July 14, 2005
British Virgin			
Dominica	√	October 24, 1991	---
Grenada	√	April 25, 1991	---
Guyana	√	November 16, 1993	---
Haiti	√	July 31, 1996	---
Jamaica	√	March 21, 1983	Signed
Montserrat**	√		
Saint Kitts & Nevis	√	January 7, 1983	---
Saint Lucia	√	March 27, 1985	August 9, 1996
Saint Vincent & the Grenadines	√	October 1, 1993	---
Suriname	√	July 9, 1998	---
Trinidad & Tobago	√	April 25, 1986	September 13, 2006 (a)

* British dependent Associate member of CARICOM; Member of CRFM

** British dependent; full member of CARICOM; Member of CRFM.

Source: United Nations Division for Ocean Affairs and Law of the Sea

All fourteen independent members of CARICOM have also enacted national legislation governing maritime jurisdiction and have claimed their EEZs under UNCLOS (Table 4). The maritime legislation enacted by the States regarding the breadth of the EEZ and the jurisdictional rights over the resources therein are modelled after the relevant provisions in UNCLOS¹¹². With one exception, all reflect a similarity with respect to the determination of

¹¹¹ Nelson, Justice L. D. M. 2007. *op cit.* p. 212.

¹¹² Nelson, Justice, L. D. M. 2007. *op cit.* p. 212.

their outer limits in areas where the outer limit intersects with the waters of foreign States¹¹³. In such instances “the outer limit shall be resolved by agreement or other means recognised by international law” or (in the absence of agreement) it shall be the median line¹¹⁴.

Table 4: Claims to maritime jurisdiction as at December 29, 2006

State/Territory	Does the legislation provide for straight baselines	Does the State claim Archipelagic status	Territorial Sea	Contiguous Zone	Exclusive Economic Zone	Fisheries Zone	Continental Shelf: Outer limit claims as reflected in legislation
			Breadth of the zone in nautical miles ¹¹⁵				
<i>Antigua & Barbuda</i>		Yes	12	24	200		CM/200 ¹¹⁶
<i>Bahamas</i>		Yes	12		200		N/A
<i>Barbados</i>	Yes		12		200		N/A
<i>Belize</i>	Yes		12 ¹¹⁷		200		N/A
<i>Dominica</i>	Yes		12	24	200		N/A
<i>Grenada</i>	Yes		12		200		N/A
<i>Guyana</i>	Yes		12		200		CM/200
<i>Haiti</i>	Yes		12	24	200		EXPL. ¹¹⁸
<i>Jamaica</i>		Yes	12	24	200		CM/200
<i>Saint Kitts & Nevis</i>	Yes		12	24	200		CM/200
<i>Saint Lucia</i>			12	24	200		CM/200
<i>Saint Vincent & the Grenadines</i>		Yes	12	24	200		N/A
<i>Suriname</i>			12		200		N/A
<i>Trinidad & Tobago</i>		Yes	12	24	200		CM/200
<i>British territories (Montserrat, Anguilla, BVI)</i>			3				N/A

Source: United Nations Division for Ocean Affairs and Law of the Sea

¹¹³ Scotland, B. 2007. Delimitation in the Caribbean – CARICOM States: Prospects, Problems, Prognosis. in Hall, K. and M. Chuck-A-Sang (eds). Intervention Border and Maritime Issues in CARICOM. Ian Randle Publishers. Kingston. Jamaica. pp. 277-290. p. 280-281.

¹¹⁴ *Ibid.*

¹¹⁵ The number reflects a claim regarding the breadth of the zone (in nautical miles) as contained in national legislation – regardless of whether this legislation contains an additional reference to the need for delimitation of maritime boundaries with adjacent or opposite States.

¹¹⁶ Outer edge of the continental margin, or to 200 nautical miles where the outer edge does not extend up to that distance.

¹¹⁷ Three-mile limit applies from the mouth of Sarstoon River to Ranguana Caye.

¹¹⁸ Depth of exploitability.

Such consideration is particularly important for the members of CARICOM as few States are situated at distances from neighbouring States that would permit the maximum extension of their maritime zones. Some States like Barbados and Guyana, situated in the Atlantic Region of the Wider Caribbean, may be at the outer extremities of the maximum expanse of their EEZ, while the proximity of others such as Trinidad & Tobago and Grenada offers a very limited expanse of ocean space for division between the two States¹¹⁹. This is further complicated by the fact that as many as six CARICOM members (Antigua & Barbuda, The Bahamas, Grenada, Jamaica, Saint Vincent and the Grenadines and Trinidad & Tobago) have qualified and declared themselves archipelagic States under UNCLOS¹²⁰. The archipelagic status of States within CARICOM affects boundary delimitation mainly through the addition of another zone of waters (archipelagic waters) between the inland waters and the territorial sea¹²¹.

There are over sixty boundary delimitation agreements to be concluded by CARICOM member States; including intra-CARICOM Agreements between two CARICOM member States and CARICOM/extra-CARICOM Agreements between CARICOM and non-CARICOM member States¹²². To date, only seven maritime boundaries have been settled through bilateral negotiations and one provisional agreement reached between Barbados and Guyana¹²³ under Article 74 (3) of UNCLOS (Table 5). Two others were delimited only after the disputing parties submitted the matter to the Permanent Court of Arbitration. This failure to delimit maritime boundaries may stem from the fact that in almost every instance, particularly in the case of CARICOM/extra-CARICOM delimitation, CARICOM members would be required to negotiate with States that are much better equipped to undertake such an exercise; both from the point of view of the resources required and the experience needed to negotiate an agreement that is equitable to both parties¹²⁴. The associate members of CARICOM have had five treaties concluded on their behalf by the United Kingdom.

¹¹⁹ Scotland, B. 2007. *op cit.* p. 277.

¹²⁰ Dundas, C. and C. Mitchell 2004. *op cit.* p. 7.

¹²¹ *Ibid.* p. 8.

¹²² Scotland, B. 2007. *op cit.* p. 278.

¹²³ Dundas, C. and C. Mitchell. 2004. *op cit.* p. 10.

¹²⁴ Scotland, B. 2007. *op cit.*

Table 5: Bilateral delimitation treaties among CARICOM States

BILATERAL DELIMITATION TREATY	DATE OF AGREEMENT	ENTRY INTO FORCE
Treaty between Haiti and the Republic of Colombia in respect of delimitation of marine and sub-marines	17 February 1978	
Treaty between St. Lucia and the Republic of France in respect of the area between St. Lucia and Martinique	4 March 1981	4 March 1981
Treaty between Dominica and the Republic of France in respect of delimitation of areas between Dominica and Martinique and Dominica and Guadeloupe, Saintes and Marie Galante Islands.	7 September 1987	23 December 1998
Treaty between the Republic of Trinidad & Tobago and the Republic of Venezuela in respect of delimitation of marine and sub-marine areas	18 April 1990	23 July 1991
Treaty between Great Britain and the United States in respect of delimitation of the area between Anguilla and the US Virgin Islands	5 November 1993	1 June 1995
Treaty between Great Britain and the United States in respect of delimitation of the area between the British Virgin Islands and Puerto Rico/US Virgin Islands	5 November 1993	1 June 1995
Treaty between Jamaica and the Republic of Colombia in respect of delimitation of marine and sub-marine areas	12 November 1993	14 March 1994
Treaty between Jamaica and the Republic of Cuba in respect of delimitation of marine and sub-marine areas	18 February 1994	
Agreement on delimitation between Great Britain and the French Republic in respect of the area between Montserrat and Guadeloupe	27 June 1996	15 January 1997
Agreement on delimitation between Great Britain and the French Republic in respect of the area between Anguilla and St. Martin & St. Barthelemy	27 June 1996	15 January 1997
Treaty between Great Britain and Honduras in respect of delimitation of maritime areas between Cayman Islands and Honduras	4 December 2001	1 March 2002
EEZ Cooperation Treaty between Barbados and Guyana in the area overlap within each of their outer limits and the beyond the outer limits of the EEZs of other States	2 December 2003	5 May 2004
Tribunal Award of the dispute between the Republic of Trinidad & Tobago and Barbados	11 April 2006	
Tribunal Award between of the dispute between Guyana and Suriname	17 September 2007	

Source: United Nations Division for Ocean Affairs and Law of the Sea

Although the region as a whole has yet to adopt a harmonised approach to the delimitation of maritime boundaries, the countries of the OECS have harmonised their boundary delimitation preparatory strategy aimed at negotiation with the metropolitan powers with dependent territories in the OECS sub-region as well as with Venezuela, in respect of Aves Island¹²⁵.

3.2.2. Maritime Boundary Disputes between CARICOM member States

Despite the promise to cooperate under the revised treaty, the members of CARICOM have demonstrated a fierce desire to protect their national sovereignty over their maritime jurisdiction. Two cases of maritime disputes between CARICOM member States help to illustrate this point. The cases of Guyana versus Suriname and Trinidad & Tobago versus Barbados both required the intervention of the Permanent Court of Arbitration after decades of negotiations between the parties had failed to result in mutually acceptable agreements.

3.2.2.1 Guyana versus Suriname

In the case of Guyana and Suriname, the only two CARICOM member States on the South American continent, decades of conflict regarding the delimitation of an offshore maritime boundary were only resolved after the matter was sent to an Arbitration panel under UNCLOS. Guyana initiated arbitration procedures on 24 February 2004 stating, “It was fed up with years of delay tactics and aggression by Paramaribo” (the Surinamese capital)¹²⁶. The disputed area lies in a region called the Guyana Basin and is an underexploited area on the South American shelf¹²⁷. It is adjacent to the very productive oil fields of the Caribbean Plateau (off Trinidad & Tobago) and the Venezuelan extension¹²⁸. Although limited oil exploration has been conducted in the disputed area, a 2000 preliminary assessment by the United States Geological Survey indicated the potential for up to 15.2 billion barrels of oil from the area¹²⁹.

¹²⁵ Dundas, C. 2005. Middle American and Caribbean Maritime Boundaries. *in* Colson, D and R. W. Smith (eds). *International Maritime Boundaries Volume V*. Martinus Nijhoff Publishers, The Netherlands. p. 3407.

¹²⁶ Denney, P. 2004. Guyana Goes to UN to Settle Maritime Row. *in* Stabroek News. February 26, 2004. Available at: [http://www.stabroeknews.com/index.pl/article_archive?id=3914469]. Last Accessed: 14 February 2008.

¹²⁷ Donovan, T. W. 2003. Suriname-Guyana Maritime and Territorial Disputes: A Legal and Historical Analysis. *Journal of Transnational Law and Policy*. 13 (1): 41-98. p. 48.

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

The long-standing dispute between both parties came to a head in June 2000 when Surinamese military gunboats evicted a Guyanese licensed oilrig from the area¹³⁰. After diplomatic negotiations, CARICOM involvement and third party intervention by Jamaica's foreign minister all failed to resolve the dispute; the matter was finally elevated to binding arbitration under UNCLOS¹³¹. Guyana and Suriname submitted their memorials and counter-memorials to the International Arbitration courts between March 2005 and August 2006 after which oral proceedings were held in December 2006. The Arbitral Tribunal handed down its ruling on 17 September 2007, in which it established a single equidistant boundary line that was different from the boundaries claimed by both parties in their pleadings before the Panel¹³².

3.2.2.2 Trinidad & Tobago versus Barbados

Throughout much of the 2004 and 2005, the region focused much of its attention on the heated dispute between two CARICOM member States in the Southern Caribbean. The dispute between Barbados and Trinidad & Tobago captured the region's attention as it happened at a time when the region was making great strides towards achieving closer economic ties and it involved two countries that had been involved in the integration process from the time of the Federation. On 16 February 2004, the Government of Barbados triggered dispute settlement procedures under UNCLOS when it initiated the binding arbitration process with Trinidad & Tobago with whom they had been unable to finalise a fishing agreement for access to migratory flying fish resources found mainly in waters off Tobago¹³³. This action came after more than a decade of bilateral negotiations between both countries had failed to produce an agreement that was acceptable to both parties. At the centre of the dispute was the issue of maritime delimitation and the sovereign rights of States

¹³⁰ La Rose, M. 2007. Maritime Award may Open New Era in Guyana's Development – Sir Shridath. *In*. Stabroek News. September, 22, 2007. Available at: [<http://www.stabroeknews.com/index.pl/article?id=56529324>]. Last Accessed: 14 February 2008.

¹³¹ Donovan, T. W. 2003. *op cit.* p. 65.

¹³² Arbitral Tribunal. 2007. *In the Matter of an Arbitration between Guyana and Suriname: Award of the Arbitral Tribunal*. Permanent Court of Arbitration. The Hague, The Netherlands.

¹³³ Griffin, C. E. 2007a Friend versus Interests: Strategic Rationality in the Barbados – Trinidad & Tobago Maritime Dispute. *in* K. Hall and M Chuck-A-Sang (eds.). *Intervention Border and Maritime Issues in CARICOM*. Ian Randle Publishers. Kingston, Jamaica. pp. 184-202. p. 185.

to exercise exclusive control over living and non-living resources within their EEZ¹³⁴. However, as the process went before the arbitration panel it would become clear that, there were extremely complex issues at stake including the rights of access to migratory fish stocks, sovereignty over EEZs and the prospects for control of potential hydrocarbon resources¹³⁵.

As early as 1976, the two countries had begun negotiations, which eventually led to the signing of a bilateral Memorandum of Understanding (MOU) on 30 April 1979, which covered among other things hydrocarbon exploration and fishing¹³⁶. During this time the Government of Barbados passed its Maritime Boundaries Act (1978) claiming its EEZ of 200 nautical miles. Eight years later, in 1986, Trinidad & Tobago passed its own Archipelagic Waters Act declaring itself an archipelagic State¹³⁷. With less than 200 nautical miles separating both countries, within their zone of adjacency, and with this zone being an area within which migrating stocks of flying fish moved into the territorial waters of Trinidad & Tobago¹³⁸, the stage was set for conflict to erupt between the two countries. During this same period, Trinidad & Tobago's Coast Guard had begun to arrest with increasing frequency Barbadian fishers found harvesting flying fish resources off Tobago¹³⁹. In an effort to reduce the growing conflict both countries re-entered bilateral negotiations and successfully brokered a one-year fishing agreement in November 1990. This agreement outlined the conditions by which fishers from Barbados could access flying fish resources in Trinidad & Tobago's EEZ¹⁴⁰. Just prior to the expiration of the agreement, the Government of Barbados submitted a request for a new agreement. After reviewing the request, the Trinidad & Tobago Cabinet offered a one-year extension to the agreement. However, Barbados refused to accept this new offer.

¹³⁴ Griffin, C. E. 2007b. *The Integrationist - The Race for fisheries and hydrocarbons in the Caribbean Basin: The Barbados-Trinidad & Tobago Maritime Dispute, Regional Delimitation Implications*. UWI-CARICOM Project. Ian Randle Publishers. Kingston, Jamaica. p. ix.

¹³⁵ Griffin, C. E. 2007a. *op cit.* p. 185.

¹³⁶ *Ibid.*

¹³⁷ *Ibid.* pp. 185-186.

¹³⁸ Griffin, C. E. 2007b. *op cit.* p. xiv.

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid.*

During the period of the negotiations between Trinidad & Tobago and Barbados, the Government of Trinidad & Tobago had also entered into an agreement with the Republic of Venezuela in 1990, which came into force on 23 July 1991¹⁴¹. In that agreement, both countries agreed to the joint exploration of their shared maritime space¹⁴². This action, along with a 2003 MOU between the Governments of Venezuela and Trinidad & Tobago related to commercial oil exploitation within the area of dispute between Barbados and Trinidad & Tobago, probably aided in triggering Barbados' response to elevate the matter to binding arbitration.

Two years after the arbitration process began, on 11 April 2006, the Permanent Court of Arbitration's Tribunal rendered its decision¹⁴³. In its decision, the arbitration panel delimited a single maritime boundary within the area of dispute. They also concluded that both parties were:

under a duty to agree upon the measures necessary to co-ordinate and ensure the conservation and development of flyingfish stocks, and to negotiate in good faith and conclude an agreement that will accord fisherfolk of Barbados access to fisheries within the Exclusive Economic Zone of Trinidad & Tobago, subject to the limitations and conditions of that agreement and to the right and duty of Trinidad & Tobago to conserve and manage the living resources of waters within its jurisdiction¹⁴⁴.

Following the tribunal's decision, the two countries re-entered into negotiations on access to flying fish resources. In August 2007, one newspaper article reported that the negotiations had taken a "very important step" with the two countries reaching agreement on an arrangement to determine the status of flying fish stocks in the waters off Tobago¹⁴⁵.

¹⁴¹ Griffin, C. E. 2007a *op cit.* p. 188.

¹⁴² *Ibid.*

¹⁴³ *Ibid.*

¹⁴⁴ The Arbitral Tribunal. 2006. In the Matter of an Arbitration between Barbados and Trinidad & Tobago: Award of the Arbitral Tribunal. Permanent Court of Arbitration. The Hague, The Netherlands. p. 115.

¹⁴⁵ Caribbean Media Corporation. 2007. Trinidad & Tobago, Barbados, Report Progress in Fish Talks. *in* The Daily Observer. 3 August 2007. p. 7.

Both these events illustrate that the task of negotiating a CFPR Agreement that is favourable to all parties will not be easily achieved. There is clearly a desire by member States to exert jurisdictional sovereignty over their EEZs despite the regional integration process. It is perhaps necessary, therefore, to examine how other regional fisheries arrangements have been pursued as a means of informing the discussion underway.

4. REGIONAL FISHERIES ORGANISATIONS: EVOLVING ROLES AND INTERNATIONAL INSTRUMENTS

The recognition that regional cooperation is critical to achieving sound fisheries management is not unique to the Caribbean region. In fact, it is a mechanism that has been employed globally since the early 20th Century. Following is a look at the evolving role of such regional fisheries arrangements, including an in-depth review of the various international instruments that mandate their establishment.

4.1 The Evolving Role of Regional Fisheries Organisations in the Management of Fish Stocks

Regional Fisheries Organisations (RFOs) or Regional Fisheries Bodies (RFBs) are “international organisations established to perform specific functions related to international fisheries at a regional level”¹⁴⁶. They are established by States who see common gains in cooperating to overcome collective-action problems related to the use of regional fisheries¹⁴⁷. The term Regional Fisheries Body (interpreted as Regional Fisheries Organisation), as defined by the FAO refers to:

A mechanism through which three or more States or international organisations that are parties to any international fisheries agreement or arrangement collaboratively engage each other in multilateral management of fisheries affairs related to transboundary, straddling and highly migratory fish stocks, through the collection and provision of scientific information and data, serving as a technical and policy forum, or taking decisions pertaining to the development of conservation, management and responsible utilisation of the resources. It also refers to fisheries organisations that are charged with the production of scientific information to other bodies responsible for management. A RFB in other words is the instrument for fisheries governance at the regional level. Such a body may be concerned with a single species or a group of closely related species or a whole range of species as well as the affiliated aspects of fisheries in a defined region or sub-region.¹⁴⁸

From this definition, it can be ascertained that RFOs are not uniform entities but may vary in scope, competence, and mandate. However, the definition does identify one aspect of

¹⁴⁶ Syndes, A. K. 2001. Regional Fishery Organisations: How and Why Organisational Diversity Matters. *Ocean Development and International Law* 32: 349-372. p. 350.

¹⁴⁷ *Ibid.* p. 351.

¹⁴⁸ FAO. 1999. Report of the Meeting of FAO and non-FAO Regional Fisheries Bodies or Arrangements. Rome, 11-12 February 1999. FAO Fisheries Report No. 597. FAO. Rome. 53 p.

commonality between all such bodies. RFOs are usually formulated by agreements establishing the principles, procedures and rules for their cooperation¹⁴⁹.

By this definition, the first recorded RFO dates back as early as 1902, when the International Council for the Exploration of the Sea (ICES) was formed¹⁵⁰. The ICES promotes and encourages research and investigation for the study of the living marine resources of the North Atlantic Ocean and adjacent seas¹⁵¹. Shortly after the formation of ICES several other regional and international fisheries management bodies were formed including: the International Whaling Commission (IWC), the General Fishery Council for the Mediterranean (GFCM) and the International Baltic Sea Fisheries Commission (IBSFC), all instituted in 1949¹⁵². These early regional fisheries bodies operated under the old high seas regime, which was constituted under Hugo Grotius' *mare liberum* ("freedom of the seas") doctrine of 1609¹⁵³. In this era, the living organisms of the world's oceans were largely viewed as a global resource, free for all to use. The only limitation to these freedoms was the zone of the territorial sea, normally set at three nautical miles¹⁵⁴. The sustainability of the high seas regime rested on the ability of States to cooperate in the management of high seas fisheries beyond the 3-mile limit¹⁵⁵. Unfortunately, many of the RFOs established under the high seas regime proved largely inefficient¹⁵⁶. This was because the "freedom of the seas" doctrine did not differentiate between the rights and duties of States to fisheries resources on the high seas, nor establish penalties to nations that did not cooperate or abide by the regulatory measures set out by the authority¹⁵⁷.

¹⁴⁹ Syndes, A. K. 2002. Regional Fishery Organisations in Developing Regions: Adapting to Changes in International Fisheries Law. *Marine Policy*. 26: 373-381. p. 373.

¹⁵⁰ Lutgen, G. L. A 1999. Review of Measures Taken by Regional Marine Fishery Bodies to Address Contemporary Fishery Issues. FAO Fisheries Circular No. 940. FAO. Rome, Italy. 97 pp.

¹⁵¹ Convention for the International Council for the Exploration of the Sea. 1964. Articles 1 and 2.

¹⁵² Lutgen, G. L. 1999. *op cit*.

¹⁵³ Syndes, A. K. 2005. Regional Fisheries Organisations and International Fisheries Governance. In S. A. Ebbin, A. H. Hoel and A. K. Syndes (eds). *A Sea Change: The Exclusive Economic Zone and Governance Institutions for Living Marine Resources*. Springer. Dordrecht, The Netherlands. p. 119.

¹⁵⁴ *Ibid*.

¹⁵⁵ Henriksen, T., G. Hønneland and A. Syndes. 2006. Law and Politics in Ocean Governance: The UN Fish Stocks Agreement and Regional Fisheries Management Regimes. Martinus Nijhoff Publishers. The Netherlands. p. 3.

¹⁵⁶ Burke 1994, 1995 cited in *Ibid*.

¹⁵⁷ Henriksen, T., *et al*. 2006. *op cit*. p. 3.

Following World War II, the number of regional fisheries bodies operating worldwide grew significantly, with increasing mandates to those assigned to the early 20th century organisations¹⁵⁸. In this post World War II era, a growing number of coastal States began to regard the high seas regime as inequitable and inefficient in the management and conservation of fisheries¹⁵⁹. To solve this dilemma, a number of coastal States reacted by unilaterally extending their jurisdictional claim to waters beyond their 3 mile territorial sea¹⁶⁰. These unilateral actions on the part of a few coastal States challenged the “freedom of the seas” doctrine and paved the way for the first of three UN Conferences on the Law of the Sea¹⁶¹. UNCLOS I (1958) and UNCLOS II (1960) largely failed to address the growing issues of international fisheries and spurred further unilateral claims among States in Latin America and Africa¹⁶². The proliferation of such claims placed the issue of coastal State jurisdiction as well as the rights and duties of fishing nations on the agenda for UNCLOS III¹⁶³.

Following the entry into force of UNCLOS, which codified into international law the rights of coastal States to extend their maritime jurisdiction out to 200 nautical miles under certain conditions, the incentive for regional fisheries cooperation was altered from the need to manage a global resource to one of strengthening interests for development purposes¹⁶⁴. With the extension of coastal States’ maritime jurisdiction, many developed countries with large fisheries fleets, distant water fishing nations (DWFNs), sought new fishing grounds on the high seas beyond their national EEZs¹⁶⁵. Therefore, the introduction of EEZs by coastal States forced a revision of the old statutes of regional fisheries organisations under the high seas regime¹⁶⁶. In this post EEZ era, RFOs were responsible for filling the void created by “the lack of institutional fit between the EEZs under national control and the migratory

¹⁵⁸ *Ibid.* p. 5.

¹⁵⁹ *Ibid.* p. 4.

¹⁶⁰ *Ibid.*

¹⁶¹ *Ibid.*

¹⁶² *Ibid.*

¹⁶³ *Ibid.*

¹⁶⁴ Syndes, A. K. 2005. *op. cit.* p. 122.

¹⁶⁵ Henriksen *et al.* 2006. *op. cit.* p. 5.

¹⁶⁶ Syndes, A. K. 2005. *op. cit.* p. 122.

patterns of fish stocks”¹⁶⁷. They were only established in cases where the value of the fisheries in the region induced the need for cooperation¹⁶⁸. Thus, RFMOs established in this post EEZ era were generally more limited in scope; either geographically or in terms of the range of species covered¹⁶⁹.

The signing of the 1995 UN Agreement on the Management of Highly Migratory Species and Straddling Stocks as well as the FAO Code of Conduct for Responsible Fisheries led to the establishment of new regional management organisations for these highly migratory species and straddling stocks. The 1995 Fish Stocks Agreement elaborates on Articles 63 (2) and 64 of UNCLOS, which govern the conservation and management of straddling stocks and highly migratory species¹⁷⁰. It also builds on Articles 116 to 199 of UNCLOS regarding the duty of coastal States to cooperate on the high seas¹⁷¹. This is reiterated in the FAO Code of Conduct through Article 6(12), which urges States to cooperate at the sub-regional, regional and international levels through MOUs or other arrangements¹⁷².

RFOs may be differentiated based on their roles in cooperative mechanisms¹⁷³. Thus, three types of RFOs may be described:

- Scientific research organisations (established to promote scientific research);
- Regional coordination and development organisations (to harmonise fisheries policy and promote development); and
- Regional management organisations (established to manage fisheries in the traditional sense at the regional level including data collection and analysis, setting of regulatory measures and enforcements procedures).

While no research and science organisations have been established in developing regions, such as the Caribbean, coordination and development organisations are only found in these

¹⁶⁷ *Ibid.*

¹⁶⁸ Syndes, A. K. 2002. *op cit.*

¹⁶⁹ Syndes, A. K. 2001. *op cit.* p. 359

¹⁷⁰ Syndes, A. K. 2005. *op cit.* p. 123.

¹⁷¹ *Ibid.*

¹⁷² *Ibid.* p. 125.

¹⁷³ *Ibid.* p. 118.

areas as they aid member States in building capacity through regional cooperation and technology transfer¹⁷⁴. In the case of regional management organisations, their effectiveness relies on “the ability of member [States] to decide upon and implement regional measures regarding the jointly managed fisheries”¹⁷⁵.

4.2 The Role of Regional Fisheries Organisations as Envisaged by Key International and Regional Instruments

The role of RFMOs in achieving sustainable management of living marine resources has been codified into international law and other fisheries instruments, including the FAO Code of Conduct, and the UN Fish Stocks Agreement. Many of these international instruments have been adopted by the member States of CARICOM¹⁷⁶ and the Wider Caribbean and will form the basis for the CFPR. Following is a more detailed description of the international instruments that establish the mandate for enacting regional fisheries arrangements.

4.2.1 United Nations Convention on the Law of the Sea

In the post-UNCLOS era, RFMOs have played a critical role in achieving sound management of global fisheries resources. As the international community began to move away from the generally held ideal that the fisheries resources of the world’s ocean were the “common property” of all, and the reality that these resources were exhaustible became fully realized, the fishing nations of the world began to look to a new regime for managing the oceans. With a large portion of the world’s oceans now subsumed under the political jurisdiction of coastal States, the shrinking pool of high seas resources became even more valuable, and therefore required new approaches to management. Estimates suggest that if all coastal States worldwide were to claim the full extent of their EEZs allowed under international law as much as 44.5% of the world’s oceans would be under some sort of State jurisdiction¹⁷⁷. This is significant given the current state of the world’s fisheries resources.

¹⁷⁴ Syndes, A. K. 2002. *op cit.* p. 374.

¹⁷⁵ *Ibid.* p. 374.

¹⁷⁶ See the CARICOM. 2002. The Agreement Establishing the Caribbean Regional Fisheries Mechanism. Preamble.

¹⁷⁷ Donaldson, J. and A. Williams. 2005. Understanding Maritime Jurisdictional Disputes: The East China Sea and Beyond. *Journal of International Affairs*. 59(1): 135-156.

Article 1(3) of the United Nations Charter notes that one of the principle purposes of the United Nations (UN) is: “to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character [...]”. Since the early part of the 20th Century, the tenet of regional cooperation has been recognised as an important mechanism for managing the common resources of the global ocean. This ideology was adopted as a core principle at the 1955 Rome Technical Conference on the Conservation of the Living Resources of the Sea, which reinforced the notion that regional agreements should be viewed as a basic “pattern for managing international fisheries”¹⁷⁸. This conference, convened in the context of UNCLOS I, concluded “conservation and management of high seas resources could be carried out only through international cooperation in research and regulation”¹⁷⁹. The conference also noted that the best way of achieving this was through “the establishment of regional conventions, based on geography and biological distribution of [relevant] marine populations”¹⁸⁰. The provisions of the 1958 Convention on Fishing and Conservation of Living Resources of the High Seas outlined recommendations for achieving this and eventually became the source for Articles 116 to 120 of UNCLOS¹⁸¹.

Cooperation is a prominent theme of UNCLOS, which articulates specific obligations to cooperate on a range of issues including the conservation and management of fisheries resources of the high seas and within EEZs¹⁸². Within its articles, UNCLOS makes provision for the establishment of joint management regimes between neighbouring States as well as regional cooperative arrangements. With regard to bilateral arrangements, Articles 74 (3) and 83 (3) of UNCLOS, regarding delimitation of the EEZ and Continental shelf between adjacent States, respectively, provide that:

Pending delimitation] agreement, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into

¹⁷⁸ Lodge, W. M. *et al.* 2007. Recommended Best Practices for Regional Fisheries Management Organisations: Report of an Independent Panel to Develop a Model for Improved Governance by Regional Fisheries Organisations. The Royal Institute of International Affairs. Chatham House. London. p. 2.

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ibid.*

¹⁸¹ *Ibid.* p. 3.

¹⁸² Lutgen, G. L. 1999. *op cit.*

provisional arrangements of a practical nature and, during this period, not to jeopardise or hamper the reaching of the final agreement.”

Such arrangements typically take the form of joint development zones along sections of the adjacent boundary, bypassing disputing areas¹⁸³.

Regarding Regional Fisheries Arrangements, UNCLOS uses a variety of terms to refer to regional fisheries organizations. However, it does not prescribe specific duties to them. The provisions outlined in the articles are “premised on the assumption that RFOs exist for [reasons] that are well understood and that any new [arrangement] will be established in a manner consistent with the framework envisioned in the Convention...”¹⁸⁴.

It is clear from the provisions outlined in UNCLOS that RFMOs are seen as mechanisms for sound governance of global fisheries. The relevant articles that point to this are laid out in Part V of UNCLOS, which governs activities in the EEZ as well as Parts VII on the high seas and Part IX on enclosed and semi-enclosed seas. Article 61 on the conservation of living resources in the EEZ provides that the coastal State shall “[take] into account the best scientific evidence available to it [in ensuring] the proper conservation and management measures” for these resources. To this end, the State “and competent international organizations, whether subregional, regional or global, shall cooperate”. Similarly, Article 61(5) recognizes the role of such organizations as entities that allow for the exchange of information among coastal States. One noteworthy point regarding the provisions of UNCLOS relating to fisheries located entirely within EEZs is that the role of RFMOs in this regard may be considered quite different from their role in relation to straddling and highly migratory fish stocks on the high seas. In the case of straddling and migratory stocks found within 200 miles, the role of the RFMO, as envisaged under UNCLOS, seems limited to an advisory body¹⁸⁵. Further, under Article 61(3), there is no specific reference to RFMOs cooperating with coastal States to restore populations to levels that may sustain a maximum yield. Thus, this article provides no equivalent role to RFMOs in this regard. Rather the

¹⁸³ Griffin, C. E. 2007b. *op cit.* p. 53.

¹⁸⁴ Applebaum, B. and A. Donohue. 1999. The Role of Regional Fisheries Management Organisations. In E. Hey (ed). *Developments in International Fisheries Law*. Kluwer Law International. The Hague, The Netherlands. p. 224

¹⁸⁵ *Ibid.* p. 227.

article highlights their role in providing standards as it urges States to “take into account fishing patterns, the interdependence of stocks and any generally recommended minimum standard, whether subregional, regional or global”.

Article 62, on the utilization of living marine resources does not ascribe particular responsibilities to RFMOs, but indicates another role for them. Paragraph five of the article mandates that a coastal State shall “give due notice of conservation and management laws and regulations.” Regarding stocks occurring in the EEZs of two or more States, Article 63 “assigns to RFOs, the role of an optional forum for the development of conservation and management measures for the stocks concerned”¹⁸⁶. The provisions of the article specify that for such stocks the coastal State shall “seek, either directly or through appropriate subregional or regional organizations to agree on measures necessary to coordinate and ensure [the] conservation of such stocks.” However, the role of such organizations in the management of straddling stocks is limited to the adjacent high seas¹⁸⁷.

Similar calls for cooperation and coordination are outlined in Articles 64 (on highly migratory species), Article 65 (on marine mammals) and Article 66 (on anadromous fish). Article 66 (5) makes specific reference to regional organizations and directs the State of origin of anadromous fish stocks to “make arrangements for the implementation of the provisions of the article, where appropriate, through regional organizations”.

The remaining Articles of Part V do not expressly provide a role for RFMOs in the management of catadromous fish (Article 67) or in the case of landlocked States (Article 69) and geographically disadvantaged States (Article 70). In the latter two cases, the articles refer to the establishment of bilateral, subregional or regional agreements, but do not ascribe a role to relevant regional fisheries bodies.

Part VII of UNCLOS, which outlines the provisions relating to high seas fisheries, lays out similar responsibilities for RFOs on the high seas. Article 118 requires that States should

¹⁸⁶ *Ibid.*

¹⁸⁷ United Nations Convention on the Law of the Sea. 1982. Article 63 (2).

“cooperate with each other in the conservation and management of living resources in the areas of the high seas [...] and, as appropriate, cooperate in establishing regional fisheries organizations”. Competent international organizations are also encouraged to assist in information exchange.

Part IX of UNCLOS is of particular relevance to the conditions that prevail in the Caribbean region since it relates to enclosed and semi-enclosed seas. Article 122 of the section defines an enclosed or semi-enclosed sea as:

A gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States.

In such regions the EEZs claimed by States largely overlap, making regional cooperation essential for the proper management of fisheries resources. Article 123 “emphasizes the need for cooperation between States bordering these areas and encourages coordination of policies and functions”. The text of the article reads:

States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end, they shall endeavour, directly or through an appropriate regional organization:

- To coordinate the management, conservation, exploration and exploitation of the living resources of the sea;
- To coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment;
- To coordinate their scientific research policies and undertake where appropriate joint programmes of scientific research in the area;
- To invite, as appropriate, other interested States or international organisations to cooperate with them in furtherance of the provisions of this article.

In essence, the article recognizes that in such zones the activities undertaken in one State's jurisdiction may directly impact the rights and duties of other States bordering the sea¹⁸⁸.

4.2.2 UN Convention on Environment and Development and the UN Fish Stocks Agreement

While UNCLOS treats regional fisheries organizations as part of its general framework, in the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (i.e. the UN Fish Stocks Agreement hereafter referred to as UNFSA) “regional fisheries organizations largely constitute the framework from which rights and duties (on the high seas) emanate”¹⁸⁹. Without them, these rights and duties “would be largely inoperable”¹⁹⁰. The UNFSA and the Conference that produced the document were a direct response to the emerging global crisis in the management of straddling stocks and highly migratory species. Both resulted from recommendations tabled at the Earth Summit, 1992's UN Convention on Environment and Development (UNCED), which was convened in Rio de Janeiro, Brazil. UNCED was the culmination of two years of preparatory work, which began in December 1989.

The Earth Summit was unprecedented, not only in terms of its size but also in the breadth of issues that it sought to address. It brought together Government officials from 178 countries, between 20, 000 to 30, 000 individuals from Government agencies, Non-Governmental Organisations (NGO) and the media¹⁹¹. The central focus of the conference was to develop a program of action to “relieve the global environmental system from continuing decline through the introduction of the paradigm of sustainable development”¹⁹². In addition to the

¹⁸⁸ Lodge, M. W. 1999. The Fisheries Regimes of Enclosed and Semi-enclosed Seas and High Seas Regimes. In. Ellen Hey (ed). *Developments in International Fisheries Law*. Kluwer Law International. The Netherlands. p. 197.

¹⁸⁹ Applebaum, B. and A. Donohue. 1999. *op cit.* p. 231.

¹⁹⁰ *Ibid.*

¹⁹¹ Cutler, J. and I. Kubiszewski. (Lead Authors). M. Miller (Contributing Author); United Nations (Content Source) and P. Saundry (Topic Editor). 2007. United Nations Conference on Environment and Development (UNCED), Rio de Janeiro, Brazil. *Encyclopaedia of Earth*. C. J. Cleveland (ed). [First published in the Encyclopaedia of Earth May, 7, 2007; Last Revised November 9, 2007]. Available at: [[http://www.eoearth.org/article/United_Nations_Conference_on_Environment_and_Development_\(UNCED\),_Rio_de_Janeiro,_Brazil](http://www.eoearth.org/article/United_Nations_Conference_on_Environment_and_Development_(UNCED),_Rio_de_Janeiro,_Brazil)]. Last Accessed: 14 February 2008.

¹⁹² *Ibid.*

27 principles of environment and development enunciated in the Rio Declaration, the Summit also produced an ambitious plan of action for managing the global environment. Agenda 21 is one of the most significant documents produced in the latter half of the 20th Century, as it outlined an action plan for implementing the principles codified in the Rio Declaration.

Chapter 17 of Agenda 21 set out the strategy for the protection and sustainable development of the marine environment and outlined seven program areas for achieving this goal. Each of the programme areas was developed to provide a framework on how to effect change in the global environment¹⁹³. Thus, Agenda 21 provided objectives, suggested activities and a programme for implementing each action¹⁹⁴. Programme area C of Chapter 17 gave recognition to the contemporary problems of high seas fishing while programme area F specifically recognized the importance of international cooperation and coordination including regional cooperation. As the basis for action, Article 17.115 recognised “that role of international cooperation is to support and supplement national efforts”. In this regard, States were encouraged to consider, as appropriate:

- Strengthening, and extending where necessary, interGovernmental regional cooperation, the Regional Seas Programmes of UNEP, regional and subregional fisheries organizations and regional commissions;
- Introduce, where necessary, coordination among relevant United Nations and other multilateral organizations at the subregional and regional levels, including consideration of co-location of their staff;
- Arrange for periodic intraregional consultations; and
- Facilitate access to and use of expertise and technology through relevant national bodies to subregional and regional centres and networks, such as the Regional Centres for Marine Technology.

¹⁹³ Lutgen, G. L. 1999. *op cit*.

¹⁹⁴ *Ibid*.

Chapter 17 also paid particular attention to the role of regional cooperation among small islands, which were considered “ecologically fragile and vulnerable”¹⁹⁵. In this regard, Article 17.130 provides that:

Small Island Developing States (SIDS), with the support, as appropriate, of international organizations, whether subregional, regional or global, should develop and strengthen inter-island, regional and interregional cooperation and information exchange [...]

One of the most important recommendations of Agenda 21 was to convene a UN Conference to implement effectively the UNCLOS provisions on straddling and highly migratory fish stocks. The provisions for highly migratory and straddling stocks outlined in Section C of Chapter 17 noted that:

Action by States, whose nationals and vessels fish on the high seas, as well as cooperation at the bilateral, subregional, regional and global levels, is essential particularly for highly migratory species and straddling stocks.

To this end,

Such States should take effective action, including 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 the United Nations Convention on the Law of the Sea

Following the recommendation made at the Earth Summit, the UN General Assembly adopted a resolution to convene such a conference. The 1995 UNFSA was adopted three years later. This document has had the most direct impact on Regional Fisheries Organisations involved in the management of straddling stocks and highly migratory species to date¹⁹⁶.

As its name suggests, the UNFSA is intended to **implement** the provisions of UNCLOS relating to the management of straddling and highly migratory fish stocks. This is taken even

¹⁹⁵ UN 1992. Agenda 21: The Rio Declaration on Environment and Development. Chapter 17 Article 17.123.

¹⁹⁶ Sydes, A. K. 2005. *op cit.* p. 126.

further in Article 2 of the Agreement, which outlines its main objectives. According to this article the objective of the Agreement is:

To ensure the long term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks, through effective implementation of the relevant provisions of the Convention.

The UNFSA established new principles and rules for members of these organizations to take into consideration in setting conservation and management measures for these stocks¹⁹⁷ both on the high seas and within their EEZs. Notably, Article 6 of the Agreement directs parties to:

Apply the precautionary approach widely to conservation, management and exploitation of straddling fish stocks and highly migratory fish stocks in order to protect the living marine resources and preserve the marine environment.

In the same vein, Article 7 underscores the need for harmonised approaches by urging States to employ compatible measures to areas under national jurisdiction taking into account:

- The conservation and management measures adopted and applied in accordance with article 61 of the Convention in respect of the same stocks by coastal States within areas under national jurisdiction and ensure that measures established in respect of such stocks for the high seas do not undermine the effectiveness of such measures;
- Previously agreed measures established and applied for the high seas in accordance with the Convention in respect of the same stocks by relevant coastal States and States fishing on the high seas;
- Previously agreed measures established and applied in accordance with the Convention in respect of the same stocks by a subregional or regional fisheries management organization or arrangement;
- The biological unity and other biological characteristics of the stocks and the relationships between the distribution of the stocks, the fisheries and the

¹⁹⁷ *Ibid.*

geographical particularities of the region concerned, including the extent to which the stocks occur and are fished in areas under national jurisdiction; and

- The respective dependence of the coastal States and the States fishing on the high seas on the stocks concerned.

The UNFSA set the agenda for processes of institutional change taking place in regional fisheries organisations, particularly in the area of enforcement¹⁹⁸. The relationship between the UNFSA and UNCLOS is outlined in Article 4 of the Agreement itself. Article 4 notes that:

Nothing in the Agreement shall prejudice the rights, jurisdiction and duties of States under the Convention. This Agreement shall be interpreted and applied in the context of and in a manner consistent with the Convention.

The primary objective of UNFSA, therefore, is to seek effective and compatible conservation and management regulations inside and outside areas of national jurisdiction. While the agreement is meant to apply only to areas of high seas beyond the waters of national jurisdiction, Article 3 requires that coastal States in exercising national jurisdiction apply *mutatis mutandis* the general provisions of conservation and management enumerated in Article 5¹⁹⁹. Its success is largely dependent on the number of States that ratify or accede to it, since, like other international treaties; its provisions are binding only on State parties²⁰⁰.

The UNFSA governs the conservation and management of straddling and highly migratory fish stocks, however, neither are defined within its articles. As the Agreement is an implementing protocol of UNCLOS, guidance may be sought from the text of UNCLOS. Article 64 of UNCLOS introduces the term “highly migratory species” with reference to a list of species listed in its Annex I. It does not, however, define “straddling stock” since this

¹⁹⁸ UN. 1995. 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. Article 3(2).

¹⁹⁹ Lodge, M. W. *et al.* 2007. *op cit.* p. 4.

²⁰⁰ Henriksen, T. *et al.* 2006. *op cit.* p. 12.

is a recent concept used to describe stocks residing both within the EEZs of coastal States and in an area beyond and adjacent to the zone²⁰¹.

Part III (Articles 8 – 16) of UNFSA expands on Article 118 of UNCLOS and outlines the mechanisms for international cooperation concerning straddling fish stocks and highly migratory species. Among the provisions outlined in the articles, coastal States and States fishing on the high seas are encouraged to “pursue cooperation in relation to straddling stocks and highly migratory species either directly or through appropriate subregional or regional fisheries management organizations”²⁰². In the event that no such fisheries management organisation exists, States are encouraged to “establish conservation and management measures for particular stocks [...] or to cooperate to establish such an organization”²⁰³. This provision suggests that regional or subregional fisheries organisations and arrangements are given exclusive competence to regulate high seas fisheries of straddling stocks and highly migratory species²⁰⁴. In fact, Article 8(4) of UNFSA confirms this, as it establishes the link between the right of access to the resources and membership in or acceptance of the management measures of regional fisheries organisations²⁰⁵. Article 8(4) states that:

Only those States which are members of such an organization or participants in such an arrangement, or which agree to apply the conservation and management measures established by such organization or arrangement, shall have access to the fishery resources to which those measures apply.

According to the UNFSA, the responsibility of regional fisheries management arrangements established under this regime include the whole process of fisheries conservation and management; including scientific research and advice, adoption of conservation and management measures and the implementation of management decisions²⁰⁶. All tasks require the cooperation of member States and other interested parties with the relevant

²⁰¹ *Ibid.* pp. 13-14.

²⁰² UN. 1995. *op cit.* Article 8(1).

²⁰³ *Ibid.* Article 8(5).

²⁰⁴ Henriksen, T. *et al.* 2006. *op cit.* p. 16.

²⁰⁵ *Ibid.*

²⁰⁶ *Ibid.* p. 36.

regional management authority²⁰⁷. While UNFSA clearly outlines the broad mandate of the RFMO in the management and conservation of relevant stocks, it does not elucidate on its role in implementation of management decisions²⁰⁸. Rather, it focuses on the responsibility of the flag State but assumes that the RFMO will play a central role in implementing the management and conservation measures it may set out²⁰⁹. In particular, it is assumed to have a key role in the adoption of joint schemes for control and inspection and in coordination of information exchange between member States²¹⁰.

Article 15 of UNFSA considers implementation of the Agreement in enclosed and semi-enclosed seas by directing States to take into account the natural characteristics of the sea and to act in a manner consistent with part IX of UNCLOS, which governs enclosed and semi-enclosed seas.

4.2.3 The Code of Conduct and other FAO instruments

The FAO Code of Conduct was negotiated on a parallel track as the UNFSA. Although it is a non-binding instrument, the Code sets out a comprehensive program of action for achieving sustainable management and utilisation of the world's fisheries resources. It was mandated by the 1992 Declaration of Cancun, which was adopted at the International Conference on Responsible Fisheries held in Cancun, Mexico from 6 to 8 May 1992. Paragraph 10 of the Declaration provides for responsible fishing within zones of national jurisdiction, while Paragraph 11 prescribes that:

States should cooperate on bilateral, regional and multilateral levels to establish, reinforce and implement effective means and mechanisms to ensure responsible fishing on the high seas, in accordance with the provisions of UNCLOS [...]

The FAO Council on Fisheries (COFI) adopted the Code of Conduct as a voluntary fisheries agreement in 1995.

²⁰⁷ *Ibid.*

²⁰⁸ *Ibid.* p. 3.

²⁰⁹ *Ibid.* p. 36.

²¹⁰ *Ibid.*

Compared to the more focused UNFSA, the FAO Code of Conduct has a relatively broad scope²¹¹ as reflected in Article 1.2, which states that the Code is:

Global in scope, and is directed towards members and non-members of the FAO, fishing entities, subregional, regional and global organisations, whether Governmental or non-Governmental, and all persons concerned with the conservation of fishery resources and management and development of fisheries, such as fishers, those engaged in processing and marketing of fish and fishery products and other users of the aquatic environment in relation to fisheries.

Article 1.3 continues that the Code applies to:

The capture, processing and trade of fish and fishery products, fishing operations, aquaculture, fisheries research and the integration of fisheries into coastal area management.

Thus, the Code applies to fisheries on the high seas and within EEZs and territorial seas as well as to inland and shared water fisheries²¹².

The Code makes numerous references to the role of RFBs in establishing “a responsible international fisheries regime”. Article 4.1 charges such entities with the responsibility of collaborating with each other at relevant levels to implement the provisions of the Code²¹³. The Code further provides several standards to which coastal States should strive in developing and implementing fisheries policies²¹⁴. Among the general principles outlined in its articles, the Code of Conduct recognises and reiterates the duty of States to cooperate in the management of fisheries. This provision is integrated throughout all its provisions relating to fisheries management (Article 7), fishing operations (Article 8) and fisheries research (Article 12). In particular, Article 6.12 notes that:

States should...cooperate at subregional, regional and global levels through fisheries management organisations, other international agreements or other

²¹¹ Edeson, W. 1999. Towards Long-term Sustainable Use: Some Recent Developments in the Legal Regime of Fisheries. In: A. Boyle and D. Freestone (eds). *International Law and Sustainable Development: Past Achievements and Future Challenges*. Oxford University Press. New York. p. 171.

²¹² *Ibid.*

²¹³ Lugten, G. L. 1999. *op cit.*

²¹⁴ Hoel, A. H., A. K. Synnes and S. A. Ebbin. 2005. *op cit.* p. 7.

arrangements to promote conservation and management, ensure responsible fishing and ensure effective conservation and protection of living aquatic resources throughout their range of distribution, taking into account the need for compatible measures in areas within and beyond national jurisdiction.

In support of implementing the provisions of the Code of Conduct, COFI has also adopted a number of International Plans of Action (IPOAs) and has initiated a wide range of other activities. The Agreement to promote Compliance with International Conservation and Management of Measures by Fishing Vessels on the High Seas was one such initiative that was developed in parallel with the Code of Conduct. While the Compliance Agreement is primarily concerned with the issues related to the flagging of vessels on the high seas, it also recognises the need for entering into regional cooperative arrangements in order to achieve fisheries management objectives. Its Preamble calls upon States not participating in global, regional or subregional fisheries arrangements to do so with a view to achieving compliance with international conservation and management measures. Article V(3) of the Compliance Agreement further provides that States shall “enter into cooperative arrangements of mutual assistance at global, regional or sub-regional scales, as appropriate, to promote the objectives of [the] Agreement”.

The International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU) is another legal instrument developed by the FAO that recognises the role of regional fisheries organisations and arrangements in the management of these resources. RFMOs are considered extremely important mechanisms for combating IUU fishing. In this regard, the IPOA-IUU urges members of RFMOs to establish and enforce measures to prevent IUU fishing. Article 5.3 of the IPOA sets out this provision:

To maximize its ability to prevent, deter and eliminate IUU fishing in waters under its jurisdiction, a coastal State must work close with other States on a variety of levels. The IPOA-IUU calls on coastal States in particular to cooperate and exchange information with others, including neighbouring coastal States and RFMOs.

Additionally;

A group of neighbouring coastal States may find it advantageous to create joint or common rules for fisheries access as a way to combat IUU fishing. Similar calls for cooperation and coordination are laid out for flag States (Article 4.5), port States (Article 6.2), and between RFMOs (Article 6.3)

These broad international instruments are directed coastal States in all regions and primarily focus on cooperation as a means of achieving sustainability in fisheries management. However, in regions like the Caribbean, where States are faced with additional developmental challenges, there is an inherent need to cooperate as a means of overcoming these challenges. This is particularly true in the case of SIDS, like most CARICOM member States, where their EEZs are significantly larger than the country's land mass and which often lack the capacity to effectively manage and monitor fishing activities to their limits. Having recognised this vulnerability, the UN has also developed an international instrument, which focuses on the unique circumstances of SIDS.

4.2.4 International Instruments Directed At Small Island Developing States

As SIDS, the vast majority of CARICOM countries are particularly vulnerable to environmental change, particularly in the marine environment. In recognising the vulnerability of SIDS, the United Nations embarked on a similar initiative as was undertaken at UNCED to address the needs of vulnerable island States. The SIDS Program of Action (SIDS-POA) began in April 1984, when the first Global Conference on the Sustainable Development of SIDS was convened in Barbados. The conference broke significant ground, as it transformed the provisions of Agenda 21 to make them relevant to the needs of small island States. In this regard, the most significant product of the SIDS conference was the "Barbados Program of Action for the Sustainable Development of Small Island Developing States" (BPOA). Like its guiding document, Agenda 21, the BPOA addressed a broad range of environmental and development issues facing islands. It set forth an ambitious set of policies, actions and measures to be implemented at the national regional and international level for the sustainable development of SIDS.

Among the provisions outlined in the BPOA, Part IV addresses issues relating to coastal and marine resources and their development and management. A key theme throughout this section (as well as much of the document) was the need for SIDS to enter into cooperative arrangements at the regional (and international) level. Among the measures outlined for implementation at the national level, States were encouraged to: “ratify and/or adhere to regional and international conventions concerning the protection of coastal and marine resources and combat unsustainable fishing and related practices”.

Regionally, States were also urged to:

- Develop and/or strengthen the capacity of regional organisations to undertake activities in coastal and marine areas, including research into commercial and non-commercial fisheries with a view to sustainable harvesting and utilisation[...];
- Harmonise policies and strategies for the coordination of the sustainable management and utilisation of coastal and marine resources.

Chapter IV, Section C of the BPOA, regarding international action, directs the international community to support SIDS in establishing national and regional capabilities for, among other things, setting up regional and other joint venture fishing enterprises²¹⁵.

Ten years after the adoption of the BPOA, the UN General Assembly called for a comprehensive review of the document. The International Review Meeting was held in Mauritius in January 2005, at which time the international community adopted the “Mauritius Strategy for the further Implementation of the Barbados Programme of Action for Sustainable Development of Small Island Developing States”. Like the previous document, the Mauritius Strategy, recognised the need for collaborative efforts among small island nations. In this regard, Article 28(b) of the Strategy required further action by SIDS with the support of the international community to:

Strengthen or develop, where necessary, national and regional sustainable and responsible fisheries management mechanisms, consistent with the 1995 Food

²¹⁵ Barbados Programme of Action for the Sustainable Development of Small Island Developing States. 1994. Chapter IV Section C (iv).

and Agriculture of the United Nations Code of Conduct for Responsible Fisheries.

Additionally, Article 30 requires that SIDS work in collaboration with other States and regional mechanisms to: "put in place integrated policies and sound management approaches[...]consistent with relevant international agreements.

While Article 31 urges: "SIDS and relevant regional and international development partners [to] work together to develop and implement regional initiatives to promote the sustainable conservation and management of coastal resources, drawing upon best practices in other regions".

4.3 Relevant Instruments and Arrangements Developed in the Wider Caribbean Region and CARICOM.

As parties to UNCLOS, CARICOM countries are obligated to adhere to the provisions outlined in its articles. Similarly, all members of CARICOM are also members of the FAO and have accepted the principles outlined in the 1995 Code of Conduct as well as the International Plan of Action related to IUU Fishing. While only a few CARICOM members are party to the 1995 UNFSA, the countries of the region have demonstrated a clear acceptance of its guiding principles²¹⁶.

In addition to these international instruments, CARICOM members have also participated in a number of regional instruments that have recognised the role of regional fisheries cooperation in achieving sustainable and effective conservation, management and utilisation of the region's marine resources. Some of these initiatives have been developed with a broad scope, encompassing the entire Wider Caribbean region including the Gulf of Mexico and the Guiana Brazil shelf. Other instruments have been formulated at the level of CARICOM, or in some cases at the OECS sub-regional level. In the case of Wider Caribbean initiatives, these have largely been driven by external international agencies such as UNEP and FAO. On the other hand, the countries of CARICOM and the OECS, with varying degrees of success, have also created their own regional arrangements with a view to advancing regional

²¹⁶ See the Treaty Establishing the Caribbean Regional Fisheries Mechanism.

cooperation in the area of fisheries management and marine area conservation. Many of these initiatives have been supported by external development agencies such as the Canadian International Development Agency (CIDA).

4.3.1 WIDER CARIBBEAN

4.3.1.1 The Association of Caribbean States

The Association of Caribbean States (ACS) is a regional cooperative arrangement comprising 25 Latin American and Caribbean nations. All full members of CARICOM are part of the arrangement along with the British dependent territory of the Turks and Caicos Islands, which is an Associate Member. According to paragraph 1 of Article III of the ACS Convention:

- The Association is an organisation for consultation, cooperation and concerted action, whose purpose is to identify and promote the implementation of policies and programmes designed to:
- harness, utilise and develop the collective capabilities of the Caribbean Region to achieve sustained cultural, economic, social, scientific and technological advancement,
- develop the potential of the Caribbean Sea through interaction among member States and with third parties,
- promote an enhanced economic space for trade and investment with opportunities for cooperation and concerted action, in order to increase the benefits which accrue to the peoples of the Caribbean from their resources and assets, including the Caribbean Sea,
- establish, consolidate and augment, as appropriate, institutional structures and cooperative arrangements responsive to the various cultural identities, developmental needs and normative systems within the region.²¹⁷

To this end, the ACS is committed to promoting “gradually and progressively among its members”:

²¹⁷ ACS. 1994. Convention Establishing the Association of Caribbean States. Article III. Paragraph 1.

- Economic integration, including the liberalisation of trade, investment, transportation and other related areas;
- Discussion on matters of common interest for the purpose of facilitating active and coordinated participation by the region in the various multilateral fora;
- The formulation and implementation of policies and programmes for functional cooperation in the fields mentioned in paragraph 1(a) of this Article;
- The preservation of the environment and conservation of the natural resources of the region and especially of the Caribbean Sea;
- The strengthening of friendly relationships among the Governments and peoples of the Caribbean;
- Consultation, cooperation and concerted action in such other areas as may be agreed upon.²¹⁸

One of the most significant achievements of the ACS in the area of marine resource conservation has been its collaborative work with the Economic Commission for Latin America and the Caribbean (ECLAC) to have the Caribbean Sea declared as a special area, in the context of sustainable development. This initiative dates back to 1997 when the first proposal was submitted to the *Caribbean Ministerial Meeting on the Implementation on the Barbados Programme of Action for the Sustainable Development of Small Island Developing States*.²¹⁹ In December 2006, the UN General Assembly adopted a special resolution entitled: Towards the Sustainable Development of the Caribbean Sea for Present and Future Generations. In its preamble and introduction the resolution recalls relevant international instruments regarding the environment and sustainable development, including the Rio Declaration and the BPOA, as well as regional conventions on the protection and

²¹⁸ *Ibid.* Article III. Paragraph 2.

²¹⁹ Caribbean Development and Cooperation Committee. 2004. Recent Developments in Relation to the Proposal for Securing the International Recognition of the Caribbean Sea as a Special Area in the Context of Sustainable Development. LC/CAR/L.3. CDCC20/Inf. 4. p. 1.

development of the marine environment in the Caribbean²²⁰. The resolution urges States of the Wider Caribbean region to “develop national, regional and international programmes to halt the loss of marine biodiversity in the Caribbean Sea”²²¹ and calls upon the international community to “support national and regional efforts of Caribbean States towards the promoting the sustainable management of coastal and marine resources”²²². It also points to the need to support the efforts of Caribbean States to “implement sustainable fisheries management programmes”.²²³

Although the ACS is not a fisheries management arrangement, it plays a valuable role in supporting Caribbean wide initiatives for supporting the conservation and protection of marine biodiversity. It can therefore play an invaluable role in connecting fisheries issues of the region with larger ecosystem matters.

4.3.1.2 UNEP Regional Seas and the Cartagena Convention

In the 1970’s UNEP created the Regional Seas Programme (RSP) as a global effort to improve the state of the world’s oceans. The Programme is implemented through regional components and is based on an action-oriented approach²²⁴. Although it is not a regional fisheries arrangement, the Regional Seas Programme focuses on larger environmental issues that impact heavily on the marine environment. As a result, the Regional Seas initiative has the capacity to improve the health of regional fisheries by focusing on the ecosystems on which they depend. The primary objective of the programme is the mitigation of the causes and consequences of environmental degradation within regional seas²²⁵.

In 1974, at the request of Caribbean governments, UNEP developed an Action Plan for the Caribbean Environment Programme, which would hold responsibility for instituting the

²²⁰ Denis, W. R. 2007. Greater Caribbean this Week: New UN Resolution on the Caribbean Sea. *Caribbean Net News*. 22 January 2007. Available at: [http://www.caribbeannetnews.com/cgi-script/csArticles/articles/000052/005290.htm]. Last Accessed: 14 February 2008.

²²¹ UN General Assembly. 2006. Resolution 61/197: Towards the Sustainable Development of the Caribbean Sea for Present and Future Generations. Article 10.

²²² *Ibid.* Article 11.

²²³ *Ibid.* Article 8.

²²⁴ Akiwumi, P. and T. Melvasalo. 1998. UNEP’s Regional Seas Programme: Approach, Experience and Future Plans. *Marine Policy*. 22 (3): 229-234. p. 230.

²²⁵ *Ibid.*

Regional Seas Programme of the Wider Caribbean²²⁶. The Action Plan, which outlines the components of the Regional Seas Programme, was later adopted in Montego Bay in April 1981²²⁷. The programme is implemented through the Cartagena Convention, which came into force in 1983. The Cartagena Convention along with its three protocols (oils spill protocol, special areas protocol and land based pollution protocol) is one of the most comprehensive Regional Seas Programme in operation²²⁸. It is also considered one of the most successful of the Regional Seas Programmes²²⁹. However, some experts have questioned its success²³⁰ in light of the failure of many Caribbean Governments to sign on to or ratify the protocols²³¹.

Within its preamble, the Cartagena Convention specifically recognises the responsibility of the coastal States of the Wider Caribbean region to cooperate “amongst themselves and with competent international organisations” to ensure the “coordinated and comprehensive development” of the region “without environmental damage”. Among its general provisions, Article 3 of Cartagena mandates that:

Contracting parties shall endeavour to conclude bilateral or multi-lateral agreements including subregional agreements, for the protection of the marine environment of the Convention area.

Additionally, Article 4 (1) provides that:

The Contracting Parties shall cooperate with the competent international, regional and subregional organisations for the effective implementation of this Convention and its protocols.

The Regional Seas Programme and the Cartagena Convention are important to the region’s fisheries governance framework as they provide a legal mandate for

²²⁶ UNEP. 1989. The Action Plan for the Caribbean Environment Programme: Evaluation of its Development and Achievements. UNEP Regional Seas Reports and Studies No. 109. UNEP.

²²⁷ *Ibid.*

²²⁸ Sheehy, B. C. 2003. International Marine Environment Law: A Case Study in the Wider Caribbean Region. Bepress Legal Series. Working Paper 109. Available at: <http://law.bepress.com/expresso/eps/109>. Last Accessed: 14 February 2008.

²²⁹ *Ibid.*

²³⁰ See Sheehy, B. C. 2003.

²³¹ See Appendix.

furthering cooperation arrangements in the area of marine resource conservation. Like the ACS, both provide a link between ecosystem considerations and marine fisheries issues.

4.3.1.3 The Caribbean Large Marine Ecosystem Project

The most recent regional initiative for the Wider Caribbean is the work that has begun in developing a Large Marine Ecosystem model for the Caribbean region. The CLME project has recently completed the project development phase (PDF-B) as required under the Global Environmental Facility (GEF) in which Government stakeholders from throughout Latin America and the Caribbean participated in the formulation of a GEF-Full Sized Project (FSP) proposal. The FSP was completed in September 2007 and submitted to the GEF Council for review.

The LME approach to fisheries governance is developed as a means of integrating and mobilising national and multi-national efforts for ecosystem based management²³². It is argued that this is the appropriate level to do this as LMEs recognise the ecosystem's numerous biological and physical elements and the complex dynamics that exist between them²³³. LMEs adopt a modular approach to ecosystem-based management, utilising five components that use suites of indicators to assess and monitor ecosystem attributes²³⁴.

The formulation of the CLME project at the time when CARICOM Governments are negotiating a CFPR for the region is fortunate; since it presents an opportunity to link developments at the sub-regional level to the Wider Caribbean process.

4.3.1.4 Western Central Atlantic Fisheries Commission

In 1973, the FAO established WECAFC by resolution 4/61 of the FAO Council under article VI(1) of the FAO Constitution²³⁵. All CARICOM States are members of the Commission

²³² Fanning, L. *et al.* 2007. *op cit.* p. 435.

²³³ [www.oceansatlas.org/cds_static/en/large_marine_ecosystems_lmes__en_12727_all_1.html]. Last Accessed: 17 March 2008.

²³⁴ Fanning, L. *et al.* 2007. *op cit.* p. 435.

²³⁵ WECAFC. December 2003. Report of the XI Western Central Atlantic Fishery Commission: April 26-30, 2004. LARC/04/Inf/9. p. 1.

along with countries in Latin America, and the United States. Although the WECAFC area extends beyond the Caribbean Sea, this sea (and by extension the maritime zones of CARICOM countries) take up a significant portion of the area. At its ninth session held in St. Lucia in September 1999, member States agreed that WECAFC could serve as an umbrella organisation for achieving a regional approach to the management of fisheries resources of the Western Central Atlantic²³⁶. Although it is an important organisation for fisheries management in the region, WECAFC functions purely as an advisory body without regulatory powers. Its primary focus is to facilitate the coordination of research and encourage education and training for fisheries managers within the Western Central Atlantic Region²³⁷.

The terms of reference of the Commission are:

- To promote and assist in the collection of national statistics and biology data relating to fisheries in general, and the shrimp fisheries in particular and to provide for the compilation and dissemination of these data on a real basis;
- To facilitate the coordination of national research programmes and to pro where appropriate, the standardization of research methods;
- To promote the interchange of information relating to the fisheries of the region;
- To promote and coordinate, on a national and regional basis, studies of the effect of the 'environment and of pollution on fisheries, and studies of appropriate methods of control and improvement;
- To promote and assist the development of aquaculture and stock improvements;

²³⁶ WECAFC. 2000. Report of the Twenty sixth FAO Regional Conference for Latin America and the Caribbean and the Ninth Session of the Western Central Atlantic Fishery Commission. 10-14 April 2000. LARC/00/INF/9a. 12345678.

²³⁷ Chakalall, B. *et al.* 2007. Governance of Fisheries and Other Living Marine Resources in the Wider Caribbean. *Marine Policy*. 87: 92-99. p. 95.

- To encourage education and training through the establishment or improvement of national and regional institutions and by the organization of training centres and seminars;
- To assist Member Governments in establishing rational policies for the development and utilization of the resources consistent with national objectives and the conservation and improvement of the resources;
- At the request of Member Governments concerned, to promote the development, conservation, rational management and best utilization sources that are of living marine resources that are of interest to two or more countries; and
- To promote and coordinate international aid to further the achievement of the objectives referred to in the preceding sub-paragraphs."²³⁸

Like the CLME initiative, WECAFC provides a mechanism for connecting the fisheries developments within CARICOM with the wider regional process, which is extremely significant given the complexities inherent in the institutional maze of regional fisheries governance.

4.3.2 CARICOM

Within CARICOM, the CFPR is the latest attempt to extend the principles entrenched in the Revised Treaty of Chaguaramas to the fisheries sectors of the region. It will essentially extend the mandate of the CRFM (formally CFRAMP), moving beyond a regional fisheries cooperation arrangement to regional fisheries management body. This new arrangement is similar to previous initiatives undertaken with varying degrees of success among the smaller countries of CARICOM, the OECS. The OECS States have made significantly greater progress towards achieving economic integration than the wider CARICOM community.

²³⁸ FAO. 1973. Resolution 4/61: Establishment of the Western Central Atlantic Fishery Commission. Article 2.

4.3.2.1 CRFAMP and the CRFM

Within CARICOM, member States have benefited from a regional cooperation effort on fisheries management made possible through assistance provided by the Canadian Government. The CARICOM Fisheries Resource Assessment and Management Programme (CFRAMP) was established in 1991 with the assistance of the Canadian Government through its International Grant Programme, CIDA²³⁹. The goal of the project was to promote the enhancement of information availability and institutional capacity for managing and developing fisheries among CARICOM member States²⁴⁰. The project established a regional fisheries mechanism to promote cooperation and facilitate the management of shared stocks. Activities under the CFRAMP project included the training of fisheries personnel in data collection, management and analysis; establishment of fisheries data and information management systems; preparation of fisheries management plans and the establishment of fisheries advisory/decision making mechanisms²⁴¹.

When the CFRAMP programme ended in 2003, CARICOM Governments and fisheries managers began to explore options for continuing this initiative in the region. On 26 March 2003, Caribbean Governments launched the CARICOM Regional Fisheries Mechanism (CRFM) after the Heads of Governments signed the legal agreement establishing the mechanism at their thirteenth Conference in 4 - 5 February 2002²⁴². Three bodies make up the new mechanism²⁴³:

- A Ministerial body (of Ministers responsible for fisheries within member States);
- The fisheries forum (main technical and scientific decision making body); and
- A technical unit/Secretariat with offices in Belize and St. Vincent.

In its preamble, the Agreement establishing the CRFM recognised “the need for cooperation and consultation among all States Parties to [the] Agreement, third States, interested

²³⁹ CARICOM Secretariat. 2005. *op cit.* p. 85.

²⁴⁰ *Ibid.*

²⁴¹ *Ibid.*

²⁴² Saul, H. 2004. From the desk of the Executive Director of the Caribbean Regional Fisheries Mechanism (CRFM) Secretariat. *in* CRFM Newsletter Issue 1. CRFM Secretariat. Belize City, Belize. p. 1.

²⁴³ CARICOM Secretariat. 2005. *op cit.* p. 85.

international institutions and bodies involved in fisheries in the Caribbean region.” It was also noted that the CRFM Agreement would serve to “enhance cooperation in the area of fisheries among States Parties and interested third Parties, contributing to the general well being of the peoples of the region.”

Among its objectives, the CRFM focuses on:

- The efficient management and sustainable development of marine and other aquatic resources within the jurisdiction of member States;
- The promotion and establishment of cooperative arrangements among interested States for the efficient management of shared, straddling or highly migratory marine and other aquatic resources; and
- The provision of technical advisory and consultative services to the fisheries departments of member States in the development, management and conservation of their marine and other aquatic resources²⁴⁴.

The Mechanism is further guided by the following principles of sound fisheries management:

- Scientific approach to fisheries management;
- Management of fishing capacity to facilitate resource sustainability;
- Precautionary approach;
- Awareness building through education and training; and
- Recognition of the contribution of small scale and industrial fisheries to the livelihoods of communities and the food security of the region²⁴⁵.

The CRFM promotes sustainable utilisation of fisheries and aquatic resources in and among States by developing, managing and conserving these resources in collaboration with stakeholders and to the benefit of the region²⁴⁶. It achieves this mandate by focusing on nine priority areas as agreed to by its members²⁴⁷:

²⁴⁴ CRFM. 2002. Agreement Establishing the Caribbean Regional Fisheries Mechanism. Article 4.

²⁴⁵ *Ibid.* Article 5.

²⁴⁶ CARICOM Secretariat. 2005. *op cit.* p. 85.

²⁴⁷ Haughton, M. *et al.* 2004. Establishment of the Caribbean Regional Fisheries Mechanism. *Marine Policy* 28: 351-359. p. 355.

- Research and data analysis to support policy formulation and decision-making;
- Preparation for global competitiveness;
- Resources assessment and management;
- Human resource development and institutional strengthening;
- Strengthening of fishers' organizations and improved community participation;
- Promotion of the expansion and utilization of unutilised and under-utilized aquatic resources;
- Development and promotion of aquaculture;
- Development and promotion of risk reduction programmes for fishers; and
- Development and promotion of programs for conflict resolution among multi-users in coastal zones.

All CARICOM members and Associate are full members of the CRFM. It is also open to other countries and territories as associate members²⁴⁸.

4.3.3 OECS

4.3.3.1 St. George's Declaration

The St. George's Declaration of Principles for Environmental Sustainability in the OECS (SGD) is a regional strategy outlining the "framework for environmental management" in the OECS subregion. The Declaration was developed in response to a request made by the Environment Policy Committee of OECS Ministers at their third meeting held in 1999²⁴⁹.

The SGD recognises its role in the realisation of the goals established through the Rio Declaration and Agenda 21 as well as the BPOA for SIDS. Of particular significance is the recognition the Declaration gives in its preamble to the fact that as small island countries, with limited technical, financial and human resources, the member States of the OECS

²⁴⁸ CARICOM Secretariat. 2005. *op cit.* p. 85.

²⁴⁹ Heileman, S. (ed). 2005. Caribbean Environment Outlook: Special Edition for the Mauritius International Meeting for the 10-Year Review of the Barbados Programme of Action for the Sustainable Development of Small Island Developing States. UNEP, CARICOM, UWI.

subregion are constrained in their ability to achieve unilaterally their own sustainable development goals while meeting their international obligations²⁵⁰.

The SGD is structured around 21 principles, each of which is translated into a framework for achieving sustainable development by ordering them under four main goals. For each goal, specific targets, indicators and supportive actions are identified. The four goals of the SGD are:

- To build the capacity of member States and regional institutions to guide and support the process of sustainable development;
- To incorporate the objectives, perspectives, resources and talents of all of society in environmental management;
- To achieve the long term protection and sustained productivity of the region's natural resource base and the ecosystem services it provides; and
- To ensure that natural resources contribute optimally and equitably to economic, social and cultural development.

In addition to the roles identified for regional institutions and arrangements under each goal including, *inter alia*, the provision of advice to national agencies, such bodies are expected to play a key role in the implementation and review of the SGD. In this regard, they are also expected to collaborate with national agencies and the OECS in²⁵¹:

- Drafting appropriate legislation to develop and implement the programmes;
- Facilitating cooperation between Governments in adopting and implementing appropriate programmes to give effect to the goals;
- support research programmes to implement the Declaration and National Environmental Management Strategies; and
- ensure the compilation, dissemination and storage of information and expertise relating to the Management Strategy.

²⁵⁰ OECS Secretariat. 2006 (Revised). The St. Georges Declaration for the Principles of Environmental Sustainability in the OECS. Preamble Paragraph (f). OECS. Castries, St. Lucia.

²⁵¹ *Ibid.* Annex A. Article 2(1).

4.3.3.2 OECS Common Fisheries Zone and Fisheries Policy

Within the CARICOM region, the members of the OECS have recorded significant progress in achieving strong cooperation in fisheries management for the sub-region. Efforts began as early as 1982 with the development of the harmonised fisheries legislation for the OECS sub-region, made possible through technical assistance from the FAO Law Advisory Programme²⁵². In the years following, between 1983 and 1985, at least five member States of the OECS enacted this into their national laws²⁵³.

Further, in response to the growing trends of destructive fishing practices through the use of unselective gear, the OECS heads of Government signed the Castries Declaration in November 1989. The declaration resolved to:

- Seek to establish a regional regime for the regulation and management of pelagic resources in the Lesser Antilles region that would outlaw the use of driftnets and other disruptive methods; and
- Take all possible measures to prevent indiscriminate fishing...within their EEZs²⁵⁴.

Two years later, in 1991, the OECS heads signed on to an agreement establishing the OECS Common Fisheries and Surveillance Zone (CFSZ). This agreement authorised OECS enforcement officers from any member State to enforce the fisheries laws within the waters of another State signatory to the agreement. In June of that same year, the OECS Heads decided that the CFSZ should be extended to a CFZ for the OECS sub-region as it “provided the best condition for the expansion of the harvesting sub-sector of the fishing industry [...] bearing in mind the provisions of the UN Convention on the Law of the Sea²⁵⁵. Similar to the proposed CARICOM Fisheries Policy and Regime, the OECS CFZ was to consist of the waters of the EEZs of parties to the agreement, excluding the territorial sea and archipelagic waters. Additionally, that agreement also proposed the establishment of a coordinating unit

²⁵² Cruikshank, J., P. A. Murray, T. Phillips, S. Singh-Renton and L. Straker. 2004. Discussion Paper: Implementing Mechanism for the Common Fisheries Policy and Regime. Submitted to the CFP Working Group Meeting – November, 2004. 23 pp.

²⁵³ *Ibid.*

²⁵⁴ OECS Secretariat. 1989. The Castries Declaration. OECS. Castries, St. Lucia.

²⁵⁵ Cruikshank *et al.* 2006. *op cit.*

that would be responsible for “the coordination of policy guidelines issued by the OECS Heads” including the criteria for granting access to the CFZ by parties and non-parties to the agreement²⁵⁶. The OECS CFZ Agreement was never fully implemented as the Heads agreed:

Since the OECS region is comprised of four (geographic) zones, territories sharing the same zone should first establish a common fishing zone among themselves with a view to the gradual merging of the zones in the entire OECS region²⁵⁷.

In the spirit of continued cooperation within the subregion, the OECS ministers of the Environmental Policy Committee (EPCII) requested the preparation of a regional fisheries policy for the OECS territories. The OECS Secretariat, through its Natural Resources Management Unit²⁵⁸ was charged with preparing the document, which was completed in 1999.

The goal of the regional fisheries strategy was to achieve “the optimal utilisation of fisheries resources to generate sustainable economic and social benefits”,²⁵⁹. Its purpose was to develop a diversified regional fisheries sector for the OECS subregion. To achieve this four broad aims were identified²⁶⁰:

- Improved management of national fisheries industries;
- Market diversification within the sector;
- Diversified sustainable production base; and
- Improved regional capability for fisheries management.

The relevant actions proposed for the implementation of Program Area 4 included the need to define mechanisms for the exploitation and management of shared resources including the implementation of management mechanisms for the subregion. Similarly, Article 4.3 focused on the need to define roles and responsibilities of various regional and international agencies with respect to international fisheries agreements, including monitoring of their

²⁵⁶ *Ibid.*

²⁵⁷ *Ibid.*

²⁵⁸ Later subsumed under the Environmental and Sustainable Development Unit (ESDU).

²⁵⁹ OECS-NRMU. 1989, OECS Fisheries Management and Development Strategy 2000-2005. OECS Secretariat. Castries, St. Lucia.

²⁶⁰ *Ibid.*

implementation. The OECS Fisheries Management Strategy also included an implementation plan outlining the role of relevant agencies as well as the estimated cost of delivering these actions.

Clearly, as indicated in this and the previous chapter, the regional fisheries governance framework for the Caribbean is multi-tiered, intricate and quite complex. The CFPR represents a single facet of the regional mosaic of fisheries governance agencies. However, its success or failure will undoubtedly influence the wider region.

5. THE EMERGENCE OF A COMMON FISHERIES POLICY AND REGIME

To the members of CARICOM, fisheries play a critical role in the overall economic development. However, even as the countries seek to eke out a regional arrangement aimed at not only improving cooperation in fisheries but also forwarding the wider integration process, it is clear that for many Governments the task of reconciling national sovereignty with the process of regionalism holds some difficulty. This truth becomes even more apparent when analysing the negotiation process that has been undertaken in the past few years, and the objections that have been raised by some member States.

5.1 Negotiating the Regional Agreement

While the structure of CARICOM and the regional trade agreement indicates a significant level of cooperation within and among member States, recent developments related to maritime jurisdictions have prompted some States to exert sovereignty over EEZ claims. As a result, nations have found themselves pushed out of historical fishing grounds. Thus, CARICOM countries are now struggling to reconcile the regional cooperation effort with the principle of individual sovereignty over their exclusive economic zones and, as a result, must strike a balance between these two competing interests. The CFPR is proposed as a means of bridging this divide in the face of mounting tensions among some member States regarding sovereignty over their maritime zones.

In developing the discussion, it has been quite difficult to obtain official documentation outlining the process through which the CARICOM CFPR was proposed and developed. However, secondary literature suggests that as early as 1992 the Government of Barbados introduced the concept through a draft CARICOM Agreement on Cooperation in the Development and Management of the Living Resources of the Exclusive Economic Zone (i.e. CARICOM-IGA)²⁶¹.

Just over ten years later at the fourteenth intercessional meeting of the CARICOM Heads of Government, held 14 – 15 February 2003, the Government of Barbados again presented a

²⁶¹ Murray, P. 2004. A Proposed Common Fisheries Regime for the Caribbean Community. *in* CRFM Newsletter Issue 1. CRFM Secretariat. Belize City, Belize. p. 7.

similar proposal titled: “The Imperative of Elaborating a Common Fisheries Regime”. It was argued that “the principles being advocated[...]within the CSME should not be limited in application to goods and services[...]in respect of the land mass of the member States, but should also include the marine space of countries”²⁶². The Heads of Government and senior Government officials of the 15 member States present at the meeting²⁶³ endorsed the proposal and charged the CARICOM Secretariat with doing the necessary research on the concept for presentation to the 24th Heads of Government Conference²⁶⁴ held 2 – 3 July 2003. The heads also instructed that in carrying out this research, the CARICOM Secretariat should take note and include in the research the overlapping maritime boundaries between member States of the Community and third States²⁶⁵. The inaugural meeting of the Caribbean Regional Fisheries Mechanism – Forum (CRFM-Forum), which was held on 27 March 2003, also discussed the proposal²⁶⁶. At that meeting the Forum agreed that, “as the regional fisheries body established by CARICOM”²⁶⁷, the CRFM-Forum would formulate a Working Group to develop a draft position on the CFPR for presentation to the CARICOM Committee on Trade and Economic Development (COTED)²⁶⁸. The Forum decided that the Working Group should comprise, at least, of the Executive Committee of the Forum (Belize, Jamaica, Barbados, St. Lucia, Trinidad & Tobago), the CARICOM Secretariat, the CRFM Secretariat, the OECS – Environment and Sustainable Development Unit (OECS-ESDU), the University of the West Indies, and member States Guyana and/or Suriname²⁶⁹. The Working group would also include personnel with skills in legal and foreign affairs as could be provided by the CARICOM Secretariat or member States²⁷⁰.

²⁶² CRFM 2005a. CRFM Annual Report April 1st, 2003 to March 31st, 2004. CRFM Secretariat. Belize City, Belize p. 11.

²⁶³ Present at the meeting were the Heads of State for Antigua & Barbuda, Barbados, Grenada, Haiti, Jamaica, Montserrat, St. Kitts & Nevis, St. Lucia, St. Vincent & the Grenadines, Republic of Suriname, Trinidad & Tobago and Guyana. Also in attendance were the Ministers of Foreign Affairs from the Commonwealth of the Bahamas, the Commonwealth of Dominica and the Ambassador of Belize to CARICOM.

²⁶⁴ Murray, P. 2004 *op cit*.

²⁶⁵ CRFM. 2005a. *op cit*. p. 12.

²⁶⁶ Murray, P. 2004. *op cit*.

²⁶⁷ CRFM. 2005b. Annual Report Caribbean Regional Fisheries Mechanism: April 1st, 2004 to March 31st, 2005. CRFM Secretariat. Belize City, Belize. p. 9.

²⁶⁸ Murray, P. 2004 *op cit*.

²⁶⁹ *Ibid*.

²⁷⁰ *Ibid*.

The working group held its first meeting on 5 – 6 June 2003 where the CRFM-Secretariat presented information on other Common Fisheries Policies occurring globally²⁷¹. The working group also developed a vision, goals and objectives of the proposed CFPR and discussed focus areas that would allow them to refine their programme of work²⁷². A suggested Programme of Work for the way forward consisted of the following elements:

- Phased Implementation;
- Working Group Meetings;
- Stakeholder Participation and Consultation;
- National and Regional Workshops;
- Consultancies on Specific Issues;
- Identification and Sourcing of Financial and Technical Resources;
- Political Commitment; and
- Governing Institutions²⁷³.

With regard to the scope of their work, the group agreed to focus on the following issues:

- Membership and Scope,
- Legal Issues,
- Socio-economic Issues,
- Recreational Considerations,
- Linkages, (6) Trade Related,
- Biological and Technical Issues, and
- Support Measures²⁷⁴.

At the fifteenth intercessional meeting, held 25-26 March 2004, the Heads of Government again endorsed the CFPR²⁷⁵ and decided that its elaboration should proceed independently and separately from, and without prejudice to, the settlement of maritime boundary disputes

²⁷¹ *Ibid.*

²⁷² *Ibid.*

²⁷³ Murray, P. 2004 *op cit.*

²⁷⁴ *Ibid.*

²⁷⁵ Communiqué Issued at the Conclusion of the Fifteenth Intercessional Meeting of the Conference of Heads of Government of the Caribbean Community, 25-26 March 2004, Basseterre, St. Kitts & Nevis. Available at: [http://www.caricom.org/jsp/communications/communiques/15inthgc_2004_communique.jsp]. Last Accessed: 25 March 2008.

between and among member States and third Parties²⁷⁶. This decision was significant, given the large number of unsettled boundaries among CARICOM member States. The meeting also considered and approved the Working Group’s Plan of Action for the establishment of the CFPR²⁷⁷.

The working group held its second meeting on 9 – 10 June 2004, at which time they continued discussions on the concept of the CFPR²⁷⁸. The meeting reviewed two draft consultants’ reports²⁷⁹: “A Common Fisheries Regime for the Caribbean Sea”, prepared by Carl Dundas and Carlyle Mitchell and “Delimitation of Maritime Boundaries within CARICOM: Development of Relevant Rules for Delimitation of Maritime Boundaries, Including Practical Illustrations of the Operations of Such Rules”. The group commented and made recommendations on the reports before finalising them²⁸⁰. The meeting also prepared progress reports for the consideration of COTED, which would meet on 14 – 17 June 2004²⁸¹. Both COTED and the Heads of Government at their 25th Meeting (held 4 – 7 July 2004) approved, with modification, the proposal for the way forward that came out of the working group meetings²⁸². Thus, the following activities were outlined:

- The Consultants would refine the draft working reports for circulation to member States by 15 August 2004, taking on board the inputs of the 9 - 10 June 2004 Workshop and the written submissions received from member States;
- National Consultations, informed by the draft framework for Regional Fisheries Policy and Regime, as adopted by the Second Meeting of the Working Group 9 – 10 June 2004 and the final Reports of the Consultants, was to be held in member States from August to October 2004;
- Convene a Third Meeting of the Working Group, in November 2004, to consider the output of the national consultations, the draft framework for the

²⁷⁶ CRFM 2005b. *op cit.* p. 9.

²⁷⁷ *Ibid.*

²⁷⁸ Phillips, T. 2004a Second Meeting of the Working Group on the Common Fisheries Policy and Regime. *in* CRFM Newsletter Issue 2. CRFM Secretariat. Belize City, Belize. p. 3.

²⁷⁹ *Ibid.* p. 4.

²⁸⁰ *Ibid.*

²⁸¹ *Ibid.*

²⁸² *Ibid.*

Regional Policy and Regimes, and a discussion paper (to be prepared by the CRFM Secretariat) on the implementation mechanism for the CFPR;

- Convene a regional multidisciplinary workshop of the member States in January 2005 to consider the output of the third Working Group and refine the Draft Framework for the Regional Fisheries Policy & Regime;
- Convene a legal workshop in January 2005 to develop a working draft of possible legal arrangements for the CFPR; and
- Prepare a Progress Report for submission to COTED with appropriate Legal and Foreign Affairs Ministerial participation, with the recommendations from the COTED going to the Sixteenth Intercessional Meeting of the Conference of Heads of Governments.

The working group held its third meeting on 29 - 30 November 2004, where consultants presented two discussion papers on²⁸³: “The Role of a Regional Fisheries Management Organisation²⁸⁴” and “Implementing Mechanism for the CFPR²⁸⁵”. member States updated the meeting on the status of their national consultation processes²⁸⁶. The working group also “highlighted the need for the consideration of socio-economic and linkage issues” in the process and decided on the following course of action:²⁸⁷

- Undertake a study to review and elaborate socioeconomic and linkage issues (with a team of resource persons drawn from the Fisheries Department of Trinidad & Tobago, University of the West Indies – Centre for Resource Management and Environmental Sustainability (UWI-CERMES), and the CRFM Secretariat;
- Conclude national consultations on the CFPR with the outputs sent to the CRFM Secretariat by 28 February 2005;
- Request that the CRFM Secretariat make a presentation on the CFPR to the Intercessional Meeting of the Heads of Government in February 2005;

²⁸³ CRFM 2005b. CRFM Annual Report April 1st, 2004 to March 31st, 2005. pg. 9.

²⁸⁴ Paper prepared by Dr. Susan Singh-Renton for the Third Meeting of the Working Group

²⁸⁵ Discussion paper prepared by Jennifer Cruikshank, Peter A. Murray, Terrence Phillips, Dr. Susan Singh-Renton and Leslie Straker.

²⁸⁶ CRFM 2005b.*op cit.* pg. 9.

²⁸⁷ *Ibid.*

- Postpone the Regional Multidisciplinary meeting to April 2005; and
- Present a report on the draft framework document on the CFPR to the Conference of the Heads of Government in July 2005.

The CRFM Secretariat convened the Regional Multi-disciplinary Workshop 18 - 19 April 2005²⁸⁸ at which member States again presented the concerns articulated through their national consultative processes²⁸⁹. Among these were expressed concerns regarding access being granted to their countries' Territorial Seas, archipelagic waters or Exclusive Economic Zones; and in some member States, fishers' and other stakeholders' resistance to the formation of a common fishery zone²⁹⁰. Consultants presented two discussion papers on "the implementing mechanism for the CFPR", and "the establishment of an RFMO in the Caribbean"²⁹¹. At that meeting, it became clear that there was the need to consider carefully the legal implications of the CFPR, hence the formation of the *Ad hoc* Legal Working Group²⁹². The Multi-disciplinary workshop outlined the following proposal for continued work on the issue²⁹³:

- The *Ad Hoc* Working Group on Socioeconomic and Linkage Issues would undertake its activities in keeping with the Revised Terms of Reference and provide a report by 30 June 2005;
- The *Ad Hoc* Legal Working Group would undertake the tasks set out in the Terms of Reference and provide a report by 30 June 2005;
- The CRFM Secretariat would circulate the updated Draft Framework Document for the CFPR, together with a summary of the comments from the Multidisciplinary Workshop to the Executive Committee of the Caribbean Fisheries Forum, with a request for feedback by 27 April 2005;

²⁸⁸ Phillips, T. 2004 *op cit.* p. 8.

²⁸⁹ Phillips, T. 2004b Regional Multi-disciplinary Workshop on the Common Fisheries Policy and Regime. *in* CRFM Newsletter Issue 3. pp. 8-9.

²⁹⁰ *Ibid.* p. 9.

²⁹¹ *Ibid.*

²⁹² *Ibid.*

²⁹³ *Ibid.*

- A report for transmission to the 19th Meeting of the Council for Trade and Economic Development (COTED) would be prepared and submitted to the CARICOM Secretariat by 29 April 2005; and
- The conducting of a cost/benefit analysis of the implementation of the CFPR would be undertaken after the development and elaboration.

The Ad Hoc Working Group on Socioeconomic and Linkage Issues conducted electronic discussions and held its first meeting on 19 March 2006 “to discuss the format and content of the Study; outline a schedule of work for its completion; and review the bibliographic references on the subject compiled by the Study Team”²⁹⁴. At that meeting, the group was able to hammer out themes to be addressed in the study: Ecological sustainability; Management effectiveness; Regional governance; International governance and Socio-economics and equity²⁹⁵. The group also developed a communication strategy that outlined three main objectives as well target audiences and the main products and pathways for disseminating the strategy. These discussions resulted in a draft report titled: “Report on the Study to Review and Elaborate on the Social, Economic and Linkage Issues that could Impact on the Establishment of a CFPR for CARICOM”²⁹⁶.

In developing the report, the Working Group considered the February 2006 version of the draft CFPR Revised Framework document. The group focused only on those elements they considered were unlikely to change significantly in subsequent redrafts²⁹⁷. The group examined the stated goal of the CFPR Framework Document, breaking it down into five broad components²⁹⁸:

- Ecological sustainability;
- Management effectiveness;
- Regional governance;

²⁹⁴ Phillips, T. 2004c. Meeting of the *ad hoc* Working Group on the Social and Economic and Linkage Issues. *in* CRFM Newsletter Issue 5, p. 8.

²⁹⁵ *Ibid.*

²⁹⁶ Report prepared by Terrence Phillips, Dr. Patrick McConney, Peter A. Murray and Arthur Potts

²⁹⁷ Phillips, T. 2006. Draft Report on the Study to Review and Elaborate on the Social, Economic and Linkage Issues that could Impact on the Establishment of Common Fisheries Policy and Regime for CARICOM. CRFM. Secretariat. Belize City, Belize. p. 6.

²⁹⁸ *Ibid.* p. 7.

- International governance; and
- Socioeconomic/equity.

In completing their analysis, the group then produced a matrix for each of the five theme areas considering; the criteria for analysis as determined by their Terms of Reference; social, economic and linkage issues or implications related to the theme; and the strategies for dealing with each issue. From their analysis, the group concluded, “there was little startling or alarming in terms of social, economic and linkage issues” related to the CFPR²⁹⁹. Since many of the issues identified were already well known the fisheries authorities in the region, the suggested strategies and initiatives were already under consideration by these Government agencies³⁰⁰. The group suggested that a crucial component to the success of the CFPR was to enact regionally harmonised fisheries management plans within member States that were tied to international instruments³⁰¹.

While the work of the *ad hoc* Working Group on Socioeconomic and Linkage Issues has been invaluable to the process, much of the work on hammering out the agreement has been the responsibility of the *ad hoc* Legal Working Group. Since its formation, the *ad hoc* Legal Working Group has undertaken the major task of reviewing and updating the policy agreement that would establish the CFPR. The working group held its first meeting on 20 - 21 February 2006. Ms. Yvonne Joy Crawford, Crown Council for Jamaica, chairs the group, which includes legal officers from Antigua & Barbuda, Barbados, the British Virgin Islands, Guyana, Trinidad & Tobago and the Turks and Caicos Islands, along with staff from the CARICOM and CRFM Secretariats³⁰². This first meeting provided an opportunity of the group members to:³⁰³

- Meet, discuss and clarify the Terms of Reference and Scope of Work;
- Develop a common understanding of the background, objectives and process of development of the CFPR and the concept of its assignment;

²⁹⁹ *Ibid.* p. 22.

³⁰⁰ *Ibid.*

³⁰¹ *Ibid.*

³⁰² CRFM 2006. Report of the First *ad hoc* Legal Working Group on the Preparation of a Common Fisheries Policy and Regime; February 20-21, 2006, Turkeyen, Guyana. CRFM Secretariat. Belize City. Belize. p. 1.

³⁰³ *Ibid.* pp. 1-2.

- Identify, discuss and clarify issues related to the preparation of a Common Fisheries Policy;
- Identify and obtain legal material and other background documentation needed to understand and prepare recommendations on the CFPR;
- Begin review and analysis of CFPR framework documents and preparation of the report with findings and recommendations; and
- Agree on sharing of responsibility among the group members and arrangements to maintain communication between meetings.

To continue its work, the group agreed to assign different sections of the policy document for further review and analysis³⁰⁴. Since the first meeting, the working group has met on five other occasions, each time updating the policy agreement document to reflect the most recent agreement by Member Governments. At its second meeting on 7 – 8 April 2006, the Legal Working Group made significant progress in elaborating several sections of the agreement, and presented the output to the Forum in April 2006 and to COTED in May 2006³⁰⁵. The group held its third and fourth meetings on 31 July – 2 August 2006 and 21 – 22 September 2006 respectively³⁰⁶. The group presented its findings to the Fisheries Forum, which held a special meeting on 23 – 24 October 2006 to review the revised framework along with the draft document that was prepared by the Social and Economic Linkages Working Group³⁰⁷. At that meeting, the forum made a number of recommendations for improving the policy document.

The Legal Working Group held its final meeting in February 2007, before presenting its findings to the Fisheries Forum, which met for the fifth time on 3 – 4 May 2007. The Forum considered the recommendations provided by the Legal Working Group and accepted their explanations and recommendations. The forum also requested that the policy agreement document be refined in order to improve its clarity. Although the latest version of the CFPR

³⁰⁴ *Ibid.* Pg. 5.

³⁰⁵ CRFM. September 2006. Progress and Financial Report for the Period April 1, 2006 – June 20, 2006. CRFM Secretariat. Belize City, Belize. p. 22.

³⁰⁶ CRFM. March 2007. Progress and Financial Report for the Period April 1– December 31, 2006. CRFM Secretariat. Belize City, Belize. p. 2.

³⁰⁷ *Ibid.*

Agreement represents significant progress towards reaching a regional fisheries agreement for CARICOM, it is still considered a work in progress.

5.2 Reaching a Consensus Agreement: Issues Raised During the Negotiation Process

The CFPR, as proposed by CARICOM Governments, would be a regional management organisation set up to manage the living marine resources of the member States. This initiative is particularly pertinent as it comes at a time when CARICOM Governments are struggling to reconcile the issue of maritime sovereignty in an era of deepening economic integration through the CSME. In this regard, the CFPR may represent a small step towards bridging this divide. It has been affirmed that the CFPR would allow for the integration of fisheries into the new economy of the CSME³⁰⁸. Prior to its formulation, some scholars outlined the main elements of the regime: 1) the acceptance of a common fisheries policy and strategy; 2) the demarcation of a CFZ; and 3) the appropriate regional organisation for administering implementing and enforcing the policy³⁰⁹. The Zone, as proposed, is a large area of marine space for which member States would cede regulatory authority to a competent regional organisation responsible for fisheries in the region. It is based on the declared EEZs of CARICOM member States and is therefore not be contiguous (Figure 8)³¹⁰. The zone would consist of two large sub-regions (Jamaica to Bahamas in the North; and St. Lucia to Suriname in the South), interspersed with several smaller sub-areas (Dominica, the Leeward Islands of Antigua & Barbuda, Montserrat and St. Kitts & Nevis, and Belize)³¹¹. The management of the CFZ is largely based on the provisions of the Article 62(2) UNCLOS, which directs States to determine their capacity to harvest living resources found within their EEZs. In the event that States do not have the capacity to harvest the total allowable catch (TAC), they may allocate surplus stocks to other States. Additionally, under Article 63 of UNCLOS, regarding stocks of species occurring in the EEZs of two or more coastal States, States are encouraged “to agree upon measures necessary to coordinate and ensure the conservation and development of such stocks” through the appropriate regional or sub-regional organisations. The CFPR constitutes a regional arrangement within CARICOM

³⁰⁸ Haughton M. 2005.*op cit.* p. 2.

³⁰⁹ Dundas C. and C. Mitchell. 2004.*op cit.* pp. 15-16.

³¹⁰ *Ibid.* p. 17.

³¹¹ *Ibid.*

where the responsibility for granting access to fisheries resources in the CFZ would reside with the competent regional organisation.

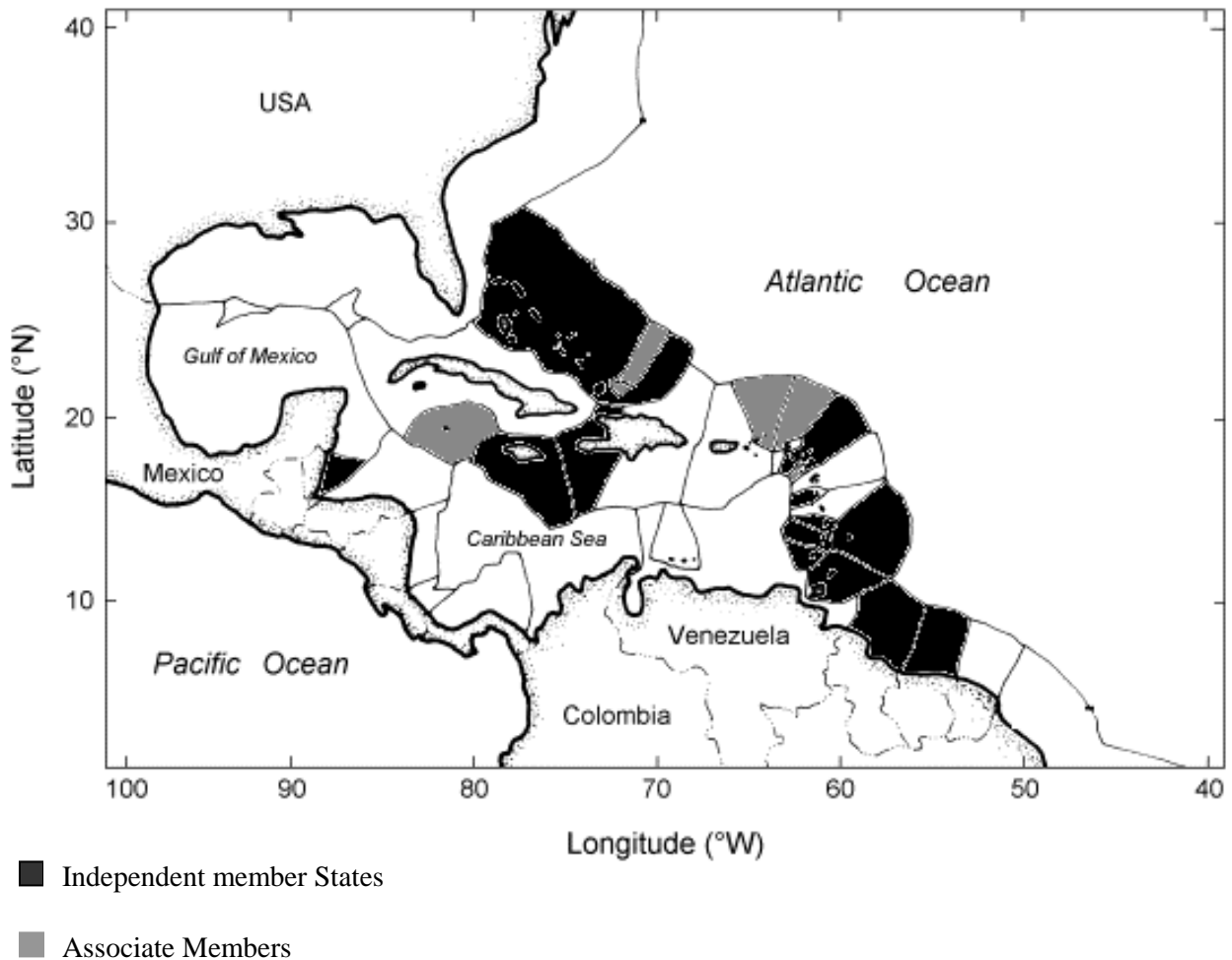


Figure 8: Approximate area of the CARICOM Common Fisheries Zone (maritime boundaries are indicative only and remain largely unsettled)
 (Source: Adapted by author from <http://cordis.europa.eu/inco/fp5/icons/mcconn20.gif>)

Furthermore, it has been proposed that the two most important aspects of the CFPR would relate to: 1) agreement on access to the resources of the CFZ by member States and 2) resource access of third parties that have historical presence in the region³¹². However, member States have voiced serious opposition to this aspect of the CFP& R more than any other. National consultations in some member States have revealed some measure of

³¹² *Ibid.* p. 16.

opposition to the creation of a CFZ by stakeholder groups³¹³. In the report of its first meeting, the *ad hoc* Legal Working Group noted that³¹⁴:

- The issue of sovereignty over their living resources and the granting of access thereto was one over which few States were prepared to cede their rights;
- All States were adamant that territorial seas and archipelagic waters be excluded from access by non nationals as well as any collective policies and collaborative management regimes; and
- A minority of States were also adamant that notwithstanding access conditions that might be determined in the future access to their EEZs would also be excluded for non-nationals unless robust scientific evidence is provided to support utilisation of the target fisheries resources at a higher level without detriment to the welfare of nationals.

Since then, discussions at the Legal Working Group meetings have been mixed on the issue of the CFZ and access to EEZs. Discussions at the fifth Legal Working Group meetings once again failed to establish consensus among member countries. Meeting notes indicate that while Belize, Barbados and Guyana hold no objections to the establishment of a common zone, most other countries still held some reservation towards its establishment³¹⁵. Trinidad & Tobago, Bahamas and the Turks and Caicos Islands all objected to the creation of the CFZ; while Jamaica proposed that the establishment of the CFZ be deferred and urged the Legal Working Group to consider other options to its creation. Several other States, including Anguilla, Montserrat, St. Kitts & Nevis, St. Lucia along, with several of the countries that disagreed with its establishment, echoed this sentiment³¹⁶.

Through its deliberations, the Legal Working Group has determined that the principles and freedoms outlined in the Revised Treaty of Chaguaramas also apply to the fisheries sector

³¹³ Phillips, T. 2005 in CRFM Newsletter Issue 3. pg. 4.

³¹⁴ CRFM 2006. Report of the First Ad Hoc Legal Working Group on the Preparation of a Common Fisheries Policy and Regime. February 20-21, 2006.

³¹⁵ CRFM. January 2007. Draft Agreement Establishing the Common Fisheries Policy and Regime. January 31, 2007.

³¹⁶ *Ibid.*

and the waters falling under the jurisdiction of CARICOM members³¹⁷. Thus, the group has maintained that the CFZ is an essential element of the Regional Fisheries Policy. However, in revisions of the framework agreement, the expanse of the CFZ is narrowed to the waters beyond the 12-mile territorial sea, giving participating States absolute authority over access to their territorial seas and archipelagic waters where these exist³¹⁸. In this revised arrangement, States would delegate authority to a regional body that would be responsible for managing access to areas of the common zone beyond 12 miles. This was seen as a way of protecting the interest of small-scale fisheries and coastal communities that traditionally depend on the resources in the coastal waters for their livelihood³¹⁹. Additionally, several other provisions were added recognising the need to secure the livelihoods of traditional fishers in countries with a reduced fishing capacity. In particular Article 6.0 (1) of the latest draft agreement instructs the Implementing Agency to “give due consideration to less developed countries in the application of” those sections of the agreement dealing with access to the fisheries resources.

³¹⁷ *Ibid.*

³¹⁸ *Ibid.* p. 15.

³¹⁹ *Ibid.*

6. ANALYSIS OF THE COMMON FISHERIES POLICY AND REGIME

6.1 Elements of the Current CFPR Draft Agreement

In its latest form, the CFPR is guided by several important principles that are particularly significant to the current trends in fisheries management, including the precautionary approach and the ecosystem approach to management and conservation of fisheries resources. It is also guided by the need to comply with the Revised Treaty of Chaguaramas, socio-economic considerations and the use of best scientific information. The current draft agreement is arranged into 27 Articles as follows:

- (1) A Preamble;
- (2) Vision, Goals and Objectives;
- (3) Principles;
- (4) Scope of the Policy;
- (5) The Common Fisheries Zone;
- (6) Access to Fisheries Resources;
- (7) Implementation (Powers of the Implementing Agency);
- (8) Conservation and Management of Fisheries Resources;
- (9) Data Collection and Research;
- (10) Intellectual Property Rights;
- (11) Dissemination of Information;
- (12) Registration of Fishing Vessels;
- (13) Marketing and Trade of Fisheries Resources;
- (14) Links with Other Organisations;
- (15) Dispute Settlement;
- (16) Public Awareness;
- (17) Inspection, Enforcement and Sanctions;
- (18) Signature;
- (19) Ratification;
- (20) Entry into Force;
- (21) Registration;
- (22) Amendments;
- (23) Reservations;

- (24) Accession;
- (25) Withdrawal;
- (26) Status of Protocols; and
- (27) Authentic Text.

The overarching goal of the CFPR is to:

Establish a common fisheries policy and regime within the context of the Revised Treaty for the conservation, management, sustainable use and development of living aquatic resources and related ecosystems and the promotion of competitive trade for the present and future social and economic benefits to the people of the participating States³²⁰.

To this end, fourteen objectives have been described:

- To use fisheries resources to improve income and employment opportunities, alleviate poverty and to contribute to food security and nutrition in the participating States;
- To transform the fisheries sector towards being market oriented, internationally competitive and environmentally sustainable;
- To increase production and diversification of primary fish production and value-added, processed fishery products;
- To ensure availability of adequate supply of fish and seafood for consumers in participating States;
- To improve the welfare and livelihood of fishers and fishing communities;
- To set out harmonized measures and operating procedures for fisheries management, trade in fish and fishery products, fish quality assurance and the

³²⁰ CRFM. October 2007. Draft Agreement Establishing the Common Fisheries Policy and Regime: Second Special Meeting of the Caribbean Fisheries Forum. 3-4 October 2007. Article 2.2.

administration of the fishing industry consistent with the Revised Treaty and other relevant international agreements;

- To build institutional capabilities of participating States to, *inter alia*, conduct research, collect and analyse data, improve networking and collaboration among participating States, formulate and implement policies, and make decisions;
- To promote and conduct research to facilitate decision-making regarding sustainable use, management and conservation of the living aquatic resources, including aquaculture.
- To provide technical assistance to participating States, *inter alia*, on the delimitation of maritime boundaries;
- To promote the safeguarding of the marine environment from pollutants and hazardous waste, and fishing communities from the impact of global warming, climate change, and natural disaster;
- To promote the sustainable development of aquaculture, including mariculture in the Caribbean Region as a means of improving food security and nutrition, alleviating poverty, and increasing employment opportunities and export earnings;
- To establish and maintain effective monitoring, control and surveillance systems to protect the fisheries and ecosystems;
- To establish and maintain an effective sanitary and phytosanitary regime for the fishing industries of participating States; and

- To promote integrated coastal management and wider marine ecosystem management in an effort to enhance the conservation and management of species and habitat.³²¹

Its scope includes all living aquatic resources in the CFZ defined as the waters of participating States that would otherwise be under their jurisdiction and beyond the limits of the territorial sea³²². It also takes into account the welfare of fishing communities as well as the production, processing, marketing and trade of fishery and aquaculture products.

Under the current Draft Agreement, participating coastal States continue to hold exclusive rights over the living resources found within the EEZs up to the boundary of their territorial sea. Article 6.1(b) provides that within the territorial sea participating States shall:

- Have absolute authority to manage access to fisheries resources taking into account such conservation and management measures as may be adopted from time to time by competent regional and international bodies
- Determine the status of their stock or fisheries resources in their territorial waters and, in the event of surplus may allocate licences to such other Participating State or Third State, pursuant to the applicable management plan.

Within the CFZ, participating States would retain the rights to fish under condition. In this instance, the Implementing Agency, in collaboration with individual States and other regional bodies, would hold responsibility for determining access to fisheries resources. Thus, participating States must be authorised by the Implementing Agency to harvest these resources within the CFZ. However, fishers fishing within their own EEZs (encompassed within the CFZ) would continue to do so under licence from their respective national agencies. Articles 6.1 (c – l) outline the rights and responsibilities of participating States

³²¹ *Ibid.* Article. 2.3.

³²² *Ibid.* Article 5.1.

within the CFZ. Thus, regarding the CFZ, participating States in collaboration with the Implementing Agency and, where relevant, any competent RFMO, shall:

- Be responsible for determining access by and of fishing vessels
- Prior to allowing access, determine the status of fisheries resources and establish conservation and management measures [...];
- Have conditional access [for fishing vessels being not less than 51% owned and operated by persons of the State] to waters and resources[...], subject to such conservation and management measures and criteria for allocation of fishing opportunities as may be adopted;
- Review applications by vessels operating under bare boat chartering arrangements [to] determine whether access [may be granted];
- Be authorised by the Implementing Agency to fish[...]for species or groups of species which have been determined by the Implementing Agency or competent body to be under exploited or un-exploited or where there is surplus;
- Not exceed the total allowable catch, or be inconsistent with any other appropriate reference point, established for target[...] species;
- [Within their zone of jurisdiction, fish exclusively] for species or groups of species, which on the basis of the best available scientific information, have been determined to be nearing full exploitation (or-over-exploited);
- Comply with conservation and management measures and other terms and conditions established or adopted by the Implementing Agency;
- [Continue to have access to fisheries resources] in their EEZ[...]no part of the CFZ.

In granting access to the resources of the CFZ the Implementing Agency shall "give due consideration to the respective capacities of less developed countries"³²³.

The CRFM through its Ministerial Council, Fisheries Forum and Technical Unit (executing arm) is named as the Implementing Agency for the CFPR Agreement. Article 7.2 of the current draft outlines the powers of the Implementing Agency, which include the right to:

³²³ *Ibid.* Article 6.1(L).

- Establish and review access rights to resources in the CFZ and on the high seas;
- Decide on catch and fishing effort limits within the CFZ;
- Adopt conservation measures for the management of stocks under its jurisdiction;
- Reduce fishing effort where it is determined that overcapacity exists;
- Maintain a register of fishing vessels flying the flags of participating States; and
- Coordinate data collection efforts and disseminate information regarding the status of resources.

The Implementing Agency would also be responsible for granting access to third party States by a written access agreement between the Implementing Agency and the third party, including conditions for the proper management, conservation and control of the fishery³²⁴.

Article 7.2 (w) of the draft agreement makes provisions for the development of protocols “to provide for the governance and operation of the CFPR”. Any such protocol would form an integral part of the agreement³²⁵.

Articles 8 and 9 of the draft agreement outline the Conservation measures and data collection procedures respectively. Both recognise the need for participating States to cooperate with the Implementing Agency in order to achieve sustainable management of the living marine resources within the agreement area. The conservation measures to be employed will be harmonised across participating States and include the development of recovery and management plans for specific fisheries, the adoption of an ecosystem approach and the use of preventative measures to avoid the risk of stock or habitat degradation³²⁶. Article 8 also outlines monitoring and control measures to be employed by participating States, including:

- The responsibility on the part of participating States to take inspection and enforcement measures necessary for complying with the draft agreement;

³²⁴ *Ibid.* Article 6.2 (a; ii).

³²⁵ *Ibid.* Article 26.0.

³²⁶ *Ibid.* Article 8.

- Establishment of appropriate Vessel Monitoring Systems for monitoring vessels at sea; and
- Employment of education programmes and management response plans by member States.

The data collection measures, outlined in Article 9 of the Draft Agreement, are proposed to ensure that decisions made within the CFPR are based on the best scientific information available³²⁷. The measures proposed include:

- The compilation of data on the changes in population status and factors affecting the distribution of living aquatic resources in the agreement area;
- Collection of catch, effort and socioeconomic data for relevant fisheries;
- Maintenance of national and regional databases containing catch and effort data for harvested populations; and
- Analysis, dissemination and publication of the information compiled from data programmes.

Data collected within the context of the CFPR would be owned by the Implementing Agency, while participating States would retain ownership of data they have submitted to the regional body³²⁸.

Regarding intellectual property rights and ownership of the data collected under the regime, Article 10 of the draft Agreement lays out the general provisions in respect of ownership, data confidentiality and confidentiality of data sources. Article 10.1 (a) provides that the Implementing Agency will retain ownership of any data, documents and products it has developed within the context of the CFPR. In the same vein, any information submitted by participating States to the Implementing Agency would remain the property of the Participating State. In the event a Participating State provides assistance to the Implementing Agency in developing products relevant to the CFPR, both entities would share ownership of the information.

³²⁷ *Ibid.* Article 9.

³²⁸ *Ibid.* Article 10.1.

Both the Implementing Agency and participating States are expected to maintain confidentiality with respect to information provided by other participating States³²⁹ and individuals³³⁰. Individual sources of information can only be identified in reports or other communications only if written consent is provided prior to finalisation of reports.

Article 11 of the CFPR Draft Agreement governs the dissemination of information and outlines the responsibilities of participating States and the Implementing Agency in this regard. Participating States are expected to cooperate with the Implementing Agency in promoting the outflow of information regarding programmes and projects of the CFPR³³¹. To achieve this, participating States are required to produce and disseminate reports in respect of fisheries management and conservation measures being employed nationally and submit these reports to the Implementing Agency or other interested participating States.³³² Both the Implementing Agency and participating States are required to cooperate in disseminating information to stakeholders and relevant groups with a view to updating them on developments in regional and international fisheries³³³.

Management of vessels operating inside the CFZ is the joint responsibility of the Implementing Agency and participating States. Article 12 of the current Draft Agreement lays out the provisions for the registration of vessels operating in the CFZ. In carrying out their mandates, Article 12.1 instructs the Participating State to “take into account the available fisheries resources when registering fishing vessels”. Further, with the assistance of the Implementing Agency each State is required to:

- Keep an updated national register of fishing vessels flying its own flag, to include the minimum information on vessel characteristics and activity necessary; and
- Make this information available to the Implementing Agency.

For its part, the Implementing Agency is expected to:

³²⁹ *Ibid.* Article 10.2.

³³⁰ *Ibid.* Article 10.3.

³³¹ *Ibid.* Article 11.2.

³³² *Ibid.* Article 11.3.

³³³ *Ibid.* Article 11.5.

- Maintain a regional register of fishing vessels containing the information provided by participating States.

Membership in the regional regime is restricted to signatories of the CRFM Agreement; however, the draft CFPR recognises the need to forge linkages with other regional arrangements³³⁴. Currently, all members and associate members of CARICOM are signatory to the CRFM Agreement and enjoy full membership privileges in that arrangement. However, it is important to note that the CFPR Agreement, as envisioned was initiated through the CARICOM Heads of Government and is mandated through the Revised Treaty of Chaguaramas. Under the Revised Treaty, Associate Members of CARICOM are given limited rights including restrictions on the right to vote at regional meetings. It is unclear in the current draft how this issue will be addressed.

Article 15 of the current draft highlights the procedures for settlement of disputes between parties and adopts the provisions outlined in Articles 188 to 192 of the Revised Treaty of Chaguaramas (i.e. good offices, mediation, consultation, arbitration and adjudication). The draft also sets out its own dispute settlement procedure in Articles 15.1 and 15.2. Under the outlined provisions, the Secretary General of CARICOM may appoint an adjudicator to settle a dispute between parties once notification of such is received. In the event that the parties object to the decisions reached by the adjudicator, the matter may be elevated to an Arbitral Tribunal panel for binding arbitration. Parties may withdraw from the agreement by submitting a request to the Secretary General one year in advance.

6.2. Comparison with Other Initiatives inside CARICOM and the Wider Caribbean

The CFPR as proposed would establish a regional management body that would hold responsibility for managing on a regional basis surplus stocks fisheries stocks of CARICOM nations in the waters beyond their territorial seas (the CFZ). This arrangement is vastly different from previous initiatives within the Caribbean region, in which CARICOM member States have participated. Most of these other arrangements constitute regional cooperation

³³⁴ *Ibid.* Article 14.0.

and development mechanisms designed to assist participating countries in building capacity or to harmonise policy directives. They were not designed to manage regional resources, nor did they require participating States to divulge fisheries management responsibility over any portion of their EEZs to a regional body.

The CFPR also differs from the fisheries integration process that has been implemented on the Central American Isthmus by seven countries in that region³³⁵. The Organisation for the Fishing and Aquaculture Sector of the Central American Isthmus (OSPESCA) recently finalised the “Fisheries and Aquaculture Integration Policy for the Central American Isthmus”; a document designed to harmonise the management of common, migratory or highly migratory fisheries resources for that region. In comparing the CARICOM process to developments in the Central American region, it is first important to point out that unlike CARICOM States, the countries participating in the Central American fisheries and aquaculture integration process have not signed on to an economic integration treaty. Rather, they are a group of countries, occupying the same region, that have come together in the spirit of cooperation to address common fisheries management problems. The general objectives of the Central American integration policy is to “establish a common regional system to increase the integrated participation of the countries” of that region³³⁶. This is achieved through:

- The promotion of regional and national organisation of the sectors dealing with fisheries and aquaculture;
- Institutional strengthening of national and regional agencies;
- Integration of regional actions to promote sustainability of fisheries and aquaculture sectors; and
- Encouragement of joint research for better development of the aquaculture and fisheries sectors in the Central American Region³³⁷.

³³⁵ The Central American Isthmus includes the Republics of Belize (also member of CARICOM), Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama.

³³⁶ OSPESCA. 2005. Fisheries and Aquaculture Integration Policy for the Central American Isthmus Article 3.1. General Secretariat for the Central American Integration Process. El Salvador.

³³⁷ *Ibid.* Article 3.1(a-d).

The policy also recognises the role of the Regional Committee of Fisheries (CORESPESCA), created in February 2005 to coordinate and monitor harmonised fisheries management measures. These objectives indicate that the Central American policy is primarily designed to coordinate and harmonise the national fisheries and aquaculture management strategies within the seven States. It does not elaborate access arrangements or establish a regional body that would hold responsibility for managing Central American fisheries. The policy document merely outlines the process by which harmonisation may be achieved.

When compared to the OECS Common Fisheries Agreement, an initiative that was never fully implemented, the CFPR shows a striking similarity to this arrangement. In this case, however, the OECS countries established close economic integration when they signed out to its treaty in 1981.

6.3. Comparison with Other Regional Initiatives outside the Caribbean Region

If CARICOM Governments accept the Agreement for the Establishment of the CFPR, it would create a regional fisheries management organisation unlike most of the established regional fisheries organisations created to date. Many of these were created as a direct result of developments in the international community, concerning the management of shared and straddling stocks and highly migratory species. The UN Conference on Straddling Stocks and Highly Migratory Fish Stocks as well as the FAO's Code of Conduct for Responsible Fisheries both recognised the duty of coastal States to cooperate through regional fisheries management. Thus, for those regions, fisheries cooperation centred on achieving conservation of shared stocks. In the case of the CFPR, the agreement is as much about regional management of shared stocks as it is about the wider economic integration process. It also attempts to address the historical rights of fishers to access resources in neighbouring States' waters. The Government of Barbados, from whom the initial proposal was received, is central to this issue given that country's involvement in a fisheries dispute with Trinidad & Tobago.

In 2001, an analysis was conducted of several regional fisheries management arrangements³³⁸, including sixteen regional management organisations, six organisations based on cooperation and development, and two scientific research organisations. Of these, thirteen covered geographic areas comprising both the EEZs of participating States as well as high seas. Twelve of the organisations analysed, covered selected fish stocks while the remaining twelve held competence over all stocks within their geographic area of operation. The analysis found that regional management organisations were primarily based on the management of species straddling between EEZs and the high seas, highly migratory, anadromous and high seas stocks. Moreover, the rights duties and interests of the member States were “diversified between coastal States and distant water fishing nations”³³⁹.

When compared to these other initiatives the CFPR is found to be comparable in scope and membership protocols (Table 6), however it is vastly different in terms of the powers granted to the regional implementing agencies/fisheries commissions established under these other regional arrangements. For instance, the Northwest Atlantic Fisheries Organisation (NAFO) is a regional management organisation established to manage stocks within a declared zone of the Northwest Atlantic that includes both high seas and the EEZs of some members³⁴⁰. Under this arrangement, a Fisheries Commission holds responsibility for the management and conservation of fisheries resources in the zone. However, the Commission holds no regulatory power in those areas of the convention zone that occur under the national jurisdiction of participating States³⁴¹. Similarly, the Northeast Atlantic Fisheries Commission (NEAFC) only holds regulatory authority over three areas of high seas in the Northeast Atlantic³⁴². None of the regional bodies examined required State parties to devolve authority over sections of their EEZ or allowed the regional arrangement to grant access to resources of the member States’ EEZs. Given the similarities between CARICOM and the European Community, it would be prudent to analyse in depth the Common Fisheries Policy (CFP) that was instituted in the EU in the early 1980s.

³³⁸ Syndes, A. K. 2001. *op cit*.

³³⁹ *Ibid.* 361.

³⁴⁰ Member States of NAFO are: Bulgaria, Canada, Cuba, Denmark (in respect of Greenland and the Faroe Islands), the European Union, France (in respect of St. Pierre and Miquelon), Iceland, Japan, South Korea, Norway, Russia, the Ukraine, and the United States of America.

³⁴¹ Henriksen. *et al.* 2006. *op cit*. p.

³⁴² Henriksen *et al.* 2006.

Table 6: Comparison between the proposed CFPR and other Regional Fisheries Arrangements outside the Caribbean region

RFMO	Type of organisation	Geographic Scope	Species Managed	Regulatory authority to grant access
ICES	Scientific Research	High seas and EEZ	All stocks	N/A
PICES		High seas and EEZ	All Stocks	N/A
ASBAO	Coordination Development	EEZ	All stocks	N/A
CEFCAF		High seas and EEZ	All stocks	N/A
FFA		EEZ	Tuna Species	N/A
SRCF		Undefined	All stocks	N/A
APFIC	Management	Undefined	All stocks	No regulatory power
CCAMLR		High seas and EEZ	Marine mammals	High seas
CCSBT		Undefined	Tuna species	Allocates TAC
CPPS		Undefined	All stocks	Access granted by States
GFCM		High seas and EEZ	All stocks	Recommends measures
IPHC		EEZ	Pacific halibut	Formulates recommendations
ICCAT		High seas and EEZ	Tuna species	Recommends measures
IOTC		High seas and EEZ	Tuna species	Adopts conservation measures
NAFO		High seas and EEZ	Excludes stocks managed by other arrangements	High seas
NAMMCO		High seas and EEZ	Marine mammals	Mainly scientific work
NASCO		High seas and EEZ	Anadromous stocks	Recommends measures
NEAFC		High seas and EEZ	Excludes stocks managed by other arrangements	High seas
NPAFC		High Seas	Anadromous stocks	Recommends measures
PSC		High seas and EEZ	Anadromous stocks	Provides advice
SEAFO		High seas	Restricted stocks	High seas
CFPR	Management	EEZ	All stocks	CFZ

Source: Adapted from Syndes, A. K. 2001.

6.3. The European Union Common Fisheries Policy

The CARICOM CFPR is probably most comparable to the European Union Common Fisheries Policy (CFP). Like the CFPR, the CFP was mandated through provisions set out in the treaty establishing the economic union. Given the similarities between the two regional arrangements, it is necessary to undertake a comprehensive analysis of the CFP, as it could aid in highlighting some of the challenges and issues that may arise in implementing the CFPR. The experiences within the EU could further serve to inform the regional process underway in the CARICOM region.

6.3.1. Legal Framework Establishing the EU Common Fisheries Policy

Articles 32 to 38 of the Treaty Establishing the European Union provide the mandate for establishing the CFP³⁴³. Although the Articles outline the provisions of the common market with regard to agricultural products with no specific reference to the development of a fisheries policy, Article 32(1) of the treaty defines agriculture products to include fisheries resources. In this vein, Article 32(4) mandates that the “operation and development of the common market for agricultural products must be accompanied by the establishment of a common agriculture policy”. The treaty therefore assigns the same general objectives to the establishment of a CFP as laid out in Article 33, relating to the objectives of a Common Agriculture Policy:

- To increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour;
- To ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture;
- To stabilise markets;
- To assure the availability of supplies; and
- To ensure that supplies reach consumers at reasonable prices.

The CFP of the EU was adopted on 25 January 1983 through Council Regulation 170/83 – *“Establishing a Community System for the Conservation and Management of Fishery*

³⁴³ EEC. 1957 (Revised 2003). Treaty Establishing the European Community. Articles 32-38.

Resources”³⁴⁴. Since that time, the CFP has been revised every decade, with the latest review occurring in 2002. EEC Regulation 3760/92 replaced Regulation 170/83 and adopted most of the management measures contained therein³⁴⁵. While the 1983 regulations were concerned only with resource conservation, Regulation 3760/92 also provided for the management of exploitation activities³⁴⁶. The Common Fisheries Policy was modified a third time in 2002 with the adoption of EEC Regulation 2371/2002, “On the Conservation and Sustainable Exploitation of Fisheries Resources Under the Common Fisheries Policy”³⁴⁷.

The main objective of the CFP is to “ensure exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions”³⁴⁸.

Its scope extends to:

the conservation, management and exploitation of living aquatic resources, aquaculture, and the processing and marketing of fishery and aquaculture products where such activities are practised on the territory of member States or in Community waters or by Community fishing vessels or, without prejudice to the primary responsibility of the flag State, nationals of member States³⁴⁹.

The CFP further provides for management measures concerning:

- Conservation, management and exploitation of living aquatic resources;
- Limitation of the environmental impact of fishing;
- Conditions of access to waters and resources;
- Structural policy and the management of the fleet capacity;
- Control and enforcement;
- Aquaculture;
- Common organisation of the markets; and

³⁴⁴ Proutiere-Maulion, G. 2005-2006. From Resource Conservation to Sustainability: An Assessment of Two Decades of the European Union’s Common Fisheries Policy. *Ocean and Coastal Law Journal*. 11: 37-45. p. 37

³⁴⁵ *Ibid.* p. 39.

³⁴⁶ *Ibid.*

³⁴⁷ *Ibid.*

³⁴⁸ EEC 2002. EEC Council Regulation No. 2371/2002 of 20 December 2002: on the Conservation and Sustainable Exploitation of Fisheries Under the Common Fisheries Policy. Article 2. in OJ L 358/59. 31.12. 2002.

³⁴⁹ *Ibid.* Article 1.

- International relations³⁵⁰.

In granting access to resources of the “Community Waters” defined as the “waters under sovereignty or jurisdiction of the member States”³⁵¹, the Council of European Community is granted the responsibility of establishing Community measures governing access to waters and resources and of the sustainable pursuit of fishing activities³⁵². In so doing, the Council is required to take into account available scientific, technical and economic advice³⁵³. These may include measures for limiting fishing mortality and environmental impact on individual stocks or groups of stocks by:

- Adopting recovery plans under Article 5³⁵⁴;
- Adopting management plans under Article 6³⁵⁵;
- Establishing targets for the sustainable exploitation of stocks;
- Limiting catches;
- Fixing the number and type of fishing vessels authorised to fish;
- Limiting fishing effort;
- Adopting technical measures, including:
 - measures regarding the structure of fishing gear, the number and size of fishing gear on board, their methods of use and the composition of catches that may be retained on board when fishing with such gear
 - zones and/or periods in which fishing activities are prohibited or restricted including for the protection of spawning and nursery areas
 - minimum size of individuals that may be retained on board and/or landed;
 - specific measures to reduce the impact of fishing activities on marine eco-systems and non target species

³⁵⁰ *Ibid.*

³⁵¹ *Ibid.* Preamble.

³⁵² *Ibid.* Article 4(1).

³⁵³ *Ibid.* Article 4(2).

³⁵⁴ Article 5 of EEC Regulation 2371/2002 directs the Council to adopt recovery plans for fisheries exploiting species outside safe biological limits in order to ensure the recovery of stocks. Such plans shall employ the use of conservation targets against which the recovery of stocks will be assessed.

³⁵⁵ Article 6 of EEC Regulation 2371/2002 directs the Council to prepare management plans, as necessary, to maintain harvested stocks within safe biological limits. Such plans are to be based on the precautionary approach and shall include conservation targets as well as harvesting practices.

- Establishing incentives, including those of an economic nature, to promote more selective or low impact fishing; and
- Conducting pilot projects on alternative types of fishing management techniques³⁵⁶.

All Community vessels are granted equal access to the waters and resources within the Community Waters, subject to any measures adopted by the Council³⁵⁷. However, member States of the EU are authorised to maintain sovereignty over the 12-mile territorial sea where they are allowed to:

Restrict fishing, to fishing vessels that traditionally fish in those waters from ports on the adjacent coast, without prejudice to the arrangements for Community fishing vessels flying the flag of other member States under existing neighbourhood relations between member States and the arrangements contained in Annex I of the Regulation³⁵⁸.

In this regard, member States are allowed to adopt:

non-discriminatory measures for the conservation and management of fisheries resources and to minimise the effect of fishing on the conservation of marine eco-systems within 12 nautical miles of its baselines provided that the Community has not adopted measures addressing conservation and management specifically for this area³⁵⁹.

Such measures shall be compatible with the objectives set out in Article 2 of the Regulation and no less stringent than existing Community legislation³⁶⁰.

6.3.2. Comprehensive Assessment of the EU Common Fisheries Policy

It is apparent that there are significant similarities between the CFP of the European Union and the CFPR currently being proposed within CARICOM; notably, the broad mandates of both policies to manage all fish stocks within the area of competence and the extension of scope to include aquaculture, marketing and processing of fisheries product. Another striking

³⁵⁶ EEC. 2002. *op cit.* Article 4(2).

³⁵⁷ *Ibid.* Article 17.

³⁵⁸ EEC. 2002. *op cit.* Article 17(2).

³⁵⁹ *Ibid.* Article 9.

³⁶⁰ *Ibid.*

similarity between the proposed CFPR and the EU CFP is the access regime that allows equal access to all participating member States to resources within “Community waters” (in the case of the EU) and the CFZ (in the case of CARICOM), beyond 12 miles. With this in mind, it is therefore quite useful to undertake a comprehensive assessment of the EU-CFP, giving due consideration to both successes and failures of the regional arrangement.

Prior to the 2002 review of the CFP, a Green Paper reflection was prepared on the previous ten years, with a view to outlining the future of the CFP. The major finding of that review was that the CFP was confronted with “major challenges” and had largely failed to deliver on the promise of “sustainable exploitation of fisheries resources” outlined in its main objective³⁶¹. Further, it was noted that many stocks were, at that time, outside safe biological limits, and were either too heavily exploited or contained few mature fish to sustain harvest³⁶². This was thought to be largely due to deficiencies in the management of these resources. In particular, while the Commission had employed a system of limiting harvests through Total Allowable Catch (TAC), the CFP had almost exclusively used the upper limits of such quotas³⁶³. In some cases, TACs were set at levels higher than indicated scientific advice³⁶⁴.

Another issue of significance was the size of the fleet operating within the Community waters. The fishing fleet was considered too large, with technological advances increasing the efficiency of these vessels³⁶⁵. Such advances in technology were felt to undermine the efforts of capacity reduction programmes³⁶⁶. Additionally, many member States had continued to apply subsidies to aid in the construction, modernisation and running costs of the sector, further undermining the objectives of the fleet policy³⁶⁷.

The Green Paper also concluded that the CFP framework was inadequate for addressing emergency circumstances affecting member States (e.g. real-time, short-term closures of

³⁶¹ European Commission. 2001. Green Paper on the Future of the Common Fisheries Policy: Volume 1. EC. Brussels. P. 4.

³⁶² *Ibid.*

³⁶³ *Ibid.* p. 8.

³⁶⁴ *Ibid.*

³⁶⁵ *Ibid.* p. 10.

³⁶⁶ *Ibid.*

³⁶⁷ *Ibid.* p. 11.

fishing areas)³⁶⁸. Further, it was found that there was insufficient involvement of stakeholder groups in the decision making process³⁶⁹.

Monitoring and control enforcement activities were deemed largely inefficient with little coordination across States and fragmented control mechanisms³⁷⁰. This was mainly due to the absence of harmonised sanctions across States and limited enforcement powers granted to Community inspectors³⁷¹.

The result of these inefficiencies was a community fisheries arrangement that had largely failed to address its broad policy objectives. Thus, it was concluded that the CFP was largely in need of revision. However, it should be noted that the Green Paper also outlined some positive aspects of the CFP. In particular, it was felt that the CFP had aided in providing some degree of stability to the fisheries sector of the EU, while assisting in containing conflicts at sea between individual member States³⁷². Thus, it is an arrangement that could be effective if the proper implementation procedures are set in place. How then can this be achieved?

One of the interesting findings of the Green Paper review was the conclusion that much of the CFP failure resulted from a lack of precision of its stated objectives³⁷³. It was largely felt that the CFP had broad objectives that provided little guidance to how fisheries should be managed³⁷⁴. Thus, the Commission identified the following clear objectives for the future of the CFP:

- To establish responsible and sustainable fisheries that ensure healthy marine ecosystems maintaining the quality, diversity and availability of marine resources and habitats. To that end there is an urgent need to strengthen and improve the conservation policy in order to reverse the current negative trends of many stocks;

³⁶⁸ *Ibid.*

³⁶⁹ *Ibid.*

³⁷⁰ *Ibid.* p. 12.

³⁷¹ *Ibid.*

³⁷² *Ibid.* p. 4.

³⁷³ *Ibid.* p. 20.

³⁷⁴ *Ibid.*

- To contribute, through appropriate fisheries management action, to achieve the environmental objectives set out in Article 174 of the Treaty. Appropriate measures to reduce the negative environmental impact of other human activities, such as maritime transport, oiling and dredging should be envisaged as a complement to fisheries policy measures;
- To integrate health requirements into the CFP in order to protect public and animal health and safety and to ensure the stable supply of the European market at prices reasonable for the consumer;
- To bring fleet capacity into line as soon as possible with the availability and sustainability of the resources;
- To promote better governance by putting in place more transparent, accountable and flexible management and decision-making processes which involve stakeholders also at the regional and local levels and ensure that emergencies and conservation problems of a local nature are adequately addressed;
- To ensure effective enforcement of CFP rules through transparent arrangements which can guarantee a level playing-field across the Union;
- To secure an economically viable and self-sufficient fisheries and aquaculture sector which can be competitive in a globalised economy;
- To address the problems of structural adjustment that will result from a commitment to sustainable fisheries.
- To promote the responsible and rational exploitation of fishery resources in international waters and to develop partnerships with third countries in a manner coherent with Community development policy; and
- To improve the quality and amount of relevant data to support decision-making and to promote multidisciplinary scientific research which will allow for obtaining timely and qualitative scientific information and advice on fisheries, associated ecosystems and relevant environmental factors.³⁷⁵

This new set of objectives proposed by the Commission was detailed and precise and took account of the deficiencies identified during the Green Paper review. It is particularly

³⁷⁵ European Commission. 2002. *op cit.* p. 21.

noteworthy that the objectives took note of the shortsightedness that the Commission had been guilty of in the past and called for greater transparency, and accountability in governance. Of course, objectives by themselves cannot achieve sound fisheries governance. Thus, it was also necessary to outline a plan of action that would set the course for the future of the CFP. In this regard, the Commission recommended the following plan of action:

- Strengthen and improve the conservation policy through:
 - The implementation of multi-annual and ecosystem-oriented management
 - Adoption of stronger technical measures to protect juveniles and reduce discards
 - Development of a system to track the progress of the CFP towards sustainable development and the performance of the management schemes and policies against Stated objectives
 - Roll-over of the access regime to the 6-12 limit and to the Shetland Box³⁷⁶
- Promote the environmental dimension of the CFP through:
 - Full implementation of the relevant environmental instruments, Action Plans and Strategies for the protection of the Biodiversity and the integration of environmental protection requirements into the CFP
 - Launch of a debate on the eco-labelling of fisheries products
- Promote animal and public health and safety in the fisheries sector to ensure consumer protection by
 - Addressing the repercussions of the current overhaul of Community food legislation on fisheries products
 - Ensuring consumer protection in respect of third country imports
- Revise the fleet policy by:
 - Establishing a more effective fleet policy in line with multi-annual objectives, taking into account technological progress and ensuring that public aid does not contribute to or increase in fishing effort
 - Ensuring transparency and efficiency with tighter control and enforcement by Members and stronger sanctions for non-compliance

³⁷⁶ The Shetland Box is an area of marine space within Community waters that was set up to control access to species of special importance in the region and which are biologically sensitive. It limits the number of vessels fishing for whitefish around Shetland.

- Improve governance within the CFP through:
 - The establishment of regional advisory committees to involve more effectively the stakeholders in policy-making
 - Decentralisation of certain management responsibilities to address local and emergency situations
 - Promotion of transparency of scientific advice
 - Improvement of the capacity of the CFP with other policies that affect the coastal zone through Integrated Coastal Zone Management (ICZM)
- Improve monitoring, control and surveillance activities by:
 - The coordination of national policies, the harmonisation of sanctions, the follow-up infringements and on the definition of the respective responsibilities of member States and the Commission in the implementation of control schemes adopted within regional fisheries organisations
 - Establish a Community Joint Inspection Scheme to coordinate the national and Community inspection policies and activities that should be considered as an option
- Strengthen the social and economic dimension of the CFP through:
 - A new approach to economic management to secure a sustainable and economically viable sector through the reconsideration of the role of public aid
 - Measures to help former fishermen find alternative employment
 - Exploration of the implications of new management tools such as rights-based management
 - Reconsideration of the priorities for aid to aquaculture and processing sectors³⁷⁷

The proposed way forward, as outlined above, took a multi-disciplined approach to improving the implementation of the CFP. It took into account the complexity and multi-faceted nature of fisheries systems and, in so doing, attempted to address a broad range of management issues. By taking account of technical management tools, as well as environmental considerations, effort control procedures and enforcement actions, the action

³⁷⁷ European Commission. 2002. *op cit.*

plan addresses the key elements that contribute to fisheries sustainability. Additionally, by acknowledging the socio-economic “dimension” of the fisheries sector, the plan recognises the need to ensure that fishing communities are guaranteed a stake in the process. Furthermore, it addresses the matter of displaced communities that could result from management restrictions (e.g. fleet restructuring).

Another key component of the action plan proposed by the Commission is the provision laid out for the coordination and harmonisation of management policies. For a community like the EU where so many States are involved, each with their own fishing traditions and management policies, it is important to ensure that management actions within one State do not impact on or undermine the larger policy directive of the community as a whole. Thus, harmonisation of policies is essential to guaranteeing this. These findings by the Green Paper review as well as the proposed recommendations of the Commission, serve to highlight short-comings that may exist in the current Draft CFPR Agreement for the CARICOM region as well as inform the process for a way forward. However, before analysing the CARICOM process, a more recent review of the CFP will be examined. This will aid in gaining further insight into how the implementation of a fisheries arrangement, in which participating States are required to cede some degree of sovereignty over portions of their EEZ to regional body, could aid in achieving sustainable fisheries management.

A 2007 review of the EU-CFP³⁷⁸ drew a similar conclusion as was reached in the 2002 Green Paper review; i.e. the overall performance of the CFP was poor in achieving its stated objective of sustainable management of the living aquatic resources of the Community³⁷⁹. Further, it was determined that the objectives of the CFP failed to provide operational guidance for fisheries management and was lacking in scale, at times vague and gave little guidance on tradeoffs³⁸⁰. In addressing this issue, the 2007 review recommended a restructuring of the CFP, “relinquishing some of the control over detailed management to

³⁷⁸ Disentwine, M. and D. Sims. 2007. Reflections on the Common Fisheries Policy: Report to the General Directorate for Fisheries and Maritime Affairs of the European Commission.

³⁷⁹ *Ibid.* p. 23.

³⁸⁰ *Ibid.* p. 14.

member States and industry based organisations, through the exercise of subsidiarity³⁸¹. It was felt that the Commission, Council and Parliament of the EU were ill suited to micro-manage Europe's fisheries, as they were too remote from the realities of the sector³⁸². Thus, the reviewers recommended that management should operate at three levels:

- High order governance (meta-governance) responsible for laying down the principles and determining the broad rationale of the policy and outlining the broad parameters of long-term strategies to be undertaken by the European institutions (i.e. the Commission and Fisheries Councils);
- A second order of governance concerned with translating the principles and strategies into detailed plans and procedures, which fit the particular characteristics of local circumstances to be undertaken by member States; and
- A third level dealing with the day-to-day management of the fishery to be undertaken by industry based organisations under the supervision of the member States.³⁸³

This recommendation given in the 2007 review of the CFP sought to address specifically the failures of the CFP, and respond to emerging issues within member States because of the bureaucratic ladder created within the CFP. This particular proposal of applying multiple levels of governance has the capacity to transform the CFP into a workable policy that not only addresses the broad objectives of sustainability and economic stability, but also outlines how these may be achieved. Finding a way to enact large-scale Community policies at the national level is a difficult but necessary undertaking. The proposed framework took account of this.

As these reviews and their resulting recommendations are relatively new, their impact cannot be adequately assessed. However, the experiences of the European Union provide a singular opportunity for informing the process underway in CARICOM to define a regional fisheries policy and regime, by highlighting the difficulties and consequences that may result from such an arrangement. The following section will open with a discussion on the aspects of the region and CARICOM fisheries that leave it vulnerable to failure if the CFPR is not

³⁸¹ *Ibid.* p. 73.

³⁸² *Ibid.* p. 64.

³⁸³ *Ibid.* p. 64-65.

implemented effectively. This discussion will be in light of the findings of the EU CFP Green Paper and the 2007 review. In so doing, the following issues will be considered:

- How can the lessons learned from the EU CFP review be used to inform the CARICOM process?
- What aspects of the region's fisheries may pose a threat to the failure of the CFPR?
- Is the proposed CFPR framework plausible, given the demonstrated reluctance by some member States to aspects of its implementation?

Once these issues are established, the discussion will return to the central thesis of the research; i.e. the three main questions identified in the opening paragraphs:

- Can the countries of the CARICOM region reach a political, economic and equitable balance between the need to maintain regional cooperation and the drive to uphold sovereignty over their maritime space?
- Is there a prospect for reaching agreement among CARICOM States to the CFPR in its current form?
- What are the prospects and pitfalls of establishing such an arrangement?

7. CONCLUSIONS

From the discussion in the previous chapter, it is clear that the approach favoured by CARICOM Governments for enacting the CFPR is not the first attempt to integrate the fisheries economies of a region. While many of the other arrangements examined stopped short of granting the authority of the regional agency over the EEZs of participating States the EU - CFP was unique in that it created a zone of “Community Waters” encompassing the EEZs of all EU member States beyond 12 nautical miles, whereby a regional commission was given responsibility for allocating access. For this reason, the discussion will focus on an examination of the CFPR in light of the EU process.

However, before developing this discussion further, it is important to point out some inherent differences between the two regions under consideration. The EU is a political economic community that comprises a single market guaranteeing freedom of movement to people, goods, services and capital³⁸⁴. While CARICOM has similarly expressed goals and objectives within its founding treaty, it is a long way from the EU model. There is still no single currency union within CARICOM, while not all States have equally applied the free movement provisions of the treaty. Furthermore, there are no similar arrangements within CARICOM that would allow the community to adopt legislation as a supra-Government. Thus, as declared by the Heads of Government, CARICOM remains a Community of sovereign States that have established mechanisms that allow them to function as a union.

Despite this apparent difference between the two regions, the striking similarity between the proposed CFPR and the EU CFP cannot be denied. Both seek to establish a community resource base for the living marine resources of their region, to which equal access will be granted to all member States. Both arrangements have tried to safeguard the rights of local coastal communities by limiting the extent of the community resource to areas beyond the territorial sea. Both involve a large number of States that may be required to sacrifice national sovereignty over maritime jurisdictions in the name of regional cooperation. The

³⁸⁴ EEC. 1957 (Amended by subsequent Treaties). Treaty Establishing the European Community. Articles 2 and 3.

CARICOM region is fortunate to have the EU model as it can learn from both its successes and failures on the best way to proceed in implementing such a complex arrangement.

With regard to the implementation of the CFPR, there are a number of concerns about the structure of CARICOM fisheries sectors that may contribute to the failure of the CFPR. CARICOM fisheries are open access and continue to be viewed by many Governments as a sector that is important to poverty alleviation, particularly in rural communities. For this reason, it is difficult to envision a mechanism whereby the implementing agencies of the CFPR (both nationally and regionally) would place severe restrictions on fishing fleets of member States. While it is likely that these participants would continue to operate within coastal areas of the EEZ; there is a demonstrated need to ensure that conservation provisions are comparable both inside and outside the territorial sea. Furthermore, while subsidies are no longer applied universally within CARICOM, a number of countries in the region continue to assist fishing communities through the provision of subsidies for the purchase of fishing vessels, gear and fuel. Such practices have the potential to undermine any fleet restructuring programmes that may form a part of the CFPR. In order to avoid such potential hazards, there is a need to harmonise vessel licensing and monitoring policies between CARICOM States.

Also of relevance is the lack of coherence between existing fisheries legislation between member States of CARICOM. While the members of the OECS sub-region have operated under a harmonised policy regime for decades, this has not been universally applied throughout CARICOM. There are a number of differences throughout CARICOM with regard to catch restrictions (including size limits and gear restrictions), closed seasons and areas, and enforcement sanctions. These differences if not addressed could serve to undermine the CFPR process. As illustrated, in the case of the EU, such disparities in national fisheries policies were one of the key failings of the CFP in addressing sustainable fishing practices. If CARICOM governments are to continue with the development of the CFPR, it will be necessary to undertake a comprehensive review of laws and regulations within CARICOM member States with a view to working towards harmonisation.

Having recognised those aspects of CARICOM and the fisheries sectors of the region that are likely to affect the implementation of the CFPR, it is important to now critically examine the current draft Agreement in light of the EU model. The current draft of the CFPR Agreement has set a broad goal for the establishment of a regime that would lead to sustainability of the fisheries sector and the conservation of the living aquatic resources of the region, while promoting social and economic benefits for its people. At the outset, it is important to ensure that one of these ideals is not pursued to the detriment of the other. In the case of the EU, it is clear that economic considerations often overrode conservation objectives, as catch limits were often set outside safe limits or at the high end of TAC ranges in order to satisfy economic goals. It is not clear from the current CFPR draft Agreement how this will be avoided. However, it does grant authority to the Implementing Agency to reduce fishing effort where it has been determined that overcapacity exists. This particular provision is largely dependent, however, on the perceived inclusiveness of participating States, at all levels, in the decision making process. It will require clear and precise planning on the part of the regional mechanism as well as alternatives for displaced fishers. Furthermore, as the draft CFPR Agreement allows for fishers from member States to continue fishing in those of the CFZ that would normally be under their jurisdiction, it is important to ensure that member States are able to predict precisely the number of local vessels operating in these areas. This is to allow the Implementing Agency to track adequately fishing effort with the CFZ.

One of the significant advantages of the CFPR is the role it can play in boosting the monitoring and enforcement activities within CARICOM. Enforcement capabilities of many States in CARICOM are extremely limited. As SIDS, many of which are archipelagos, CARICOM States generally lack the capacity to patrol their outer limits effectively. Furthermore, the CRFM, as it currently exists and which has been proposed as the Implementing Agency for the CFPR, has no monitoring and enforcement capabilities beyond national intervention. By allowing States to cooperate actively in fisheries monitoring and surveillance, the CFPR could aid in bolstering enforcement activities within individual member States. However, it will require CARICOM members to remain vigilante in tracking fishing operations by locally registered vessels, including keeping up to date registers of

licensed vessels. It will also require effective communication between national fisheries authorities and the regional Implementing Agency. Considerable effort will need to be placed on how monitoring and surveillance activities will be conducted within the CFZ, including mechanisms for bolstering national enforcement capacities.

Given the direction of the integration process in CARICOM, the proposal of a CFZ is consistent with the spirit and intent of the revised treaty. Furthermore, the proposed structure of the CFPR management mechanism guarantees that States have a voice in the allocation of access rights to resources within areas of the CFZ previously under their jurisdiction. However, discussions during the CARICOM negotiation of the CFPR indicate that some member States have strongly opposed the creation of the CFZ. Undoubtedly, this is due to the perceived loss of sovereignty over portions of their EEZs that some member States consider is too great a price to pay for regional cooperation. Overcoming this challenge will not be easy; however, an examination of the EU perspective may provide some insight. The EU member States were able to cooperate with regard to operations within the Community Waters. By ceding authority over the Community Waters to the Commission, an arrangement in which all members have an equal voice, States are guaranteed an equal share of the community resources. Thus, it is clear that such an arrangement is not only plausible, but with the right conditions in place, it could also be workable. This is likely a surmountable obstacle if the countries of the CARICOM region are truly committed to the process as proposed.

The CRFM, which has been named as the Implementing Agency under the CFPR draft Agreement, includes a mechanism for incorporating the technical views of fisheries managers along with the policy perspectives of CARICOM ministers from all member States. Hence, such an arrangement, by its very nature ensures the voices of all States are heard equally. This arrangement is quite similar to the EU model, which includes a scientific committee as well as the Commission. During the negotiation of the Agreement some consideration has been given to delaying the enactment of those provisions of the CFPR that require the formation of the CFZ but there is clearly a long way to go in reaching an arrangement that is agreeable to all parties.

In order to avoid a situation of inequity, consideration will also have to be given to lesser-developed States in the region that may lack the capacity to exploit resources at the outer limits of their EEZs beyond the territorial sea. There is a demonstrable difference across CARICOM States with regard to the advancement of the fisheries sector. This could lead to a situation where some member States are guaranteed a greater share of the community resources residing within the CFZ, simply because they have a distinct advantage in terms of fisheries technologies. The CFPR draft Agreement recognises this danger in Article 6.1(L), by pointing to the need for the Implementing Agency to give “due consideration to the respective capacities of less developed countries in the application of [the section of the Agreement dealing with the operations of participating States within the CFZ]”. However, the Article does not continue to explain how to achieve this.

It is important to note that this approach will only be successful if States view the CFPR as a regional arrangement that has relevance in, not only the proposed CFZ, but also guides the fisheries policies and management systems within the territorial sea. If CARICOM adopts this approach, it must include a mechanism that would ensure that operations within the territorial sea do not undermine the conservation objectives within the CFZ. The current draft Agreement clearly points to a need to “harmonise” fisheries conservation management and development strategies³⁸⁵, but does little to outline how to achieve this. Notably, however, the draft Agreement does make provisions for the enactment of additional protocols that may give action to the broad mandates of the Agreement.

One of the most significant failings of the EU CFP was its inability to adapt to emerging situations within the member States. It is reasonable to suggest that such a situation could emerge within CARICOM if the region’s fisheries managers do not heed this valuable lesson from the EU. The proposal put forward in the EU to address this was to adopt a principle of subsidiarity, where governments employ the appropriate levels of management to issues of scale. Thus, the lowest competent authority would be responsible for making decisions affecting individual States. This is a principle that should form part of the CFPR model as it allows member States to retain power where conditions may warrant it. However, it will

³⁸⁵ CRFM. October 2007. *op cit.* Article 8.2.

require effective channels of communication between the national and regional tiers of the CFPR arrangement.

One major difference between CARICOM and the EU that needs to be expressly addressed is the complexity of management agencies with overlapping mandates and competences existing within CARICOM and the Wider Caribbean community. This is a situation, which is not immediately apparent in the EU region. It is unclear how CARICOM member States will come to reconcile the CARICOM process with the management initiatives within the Wider Caribbean; however, a number of avenues for doing so are currently ongoing. In particular, the proposed CLME governance project currently before the GEF council for review³⁸⁶. It is important for CARICOM to continue to participate in these wider regional arrangements since the Caribbean region, which is so diverse and complex requires a multi-tiered approach to fisheries management.

The CFPR remains an open dialogue between the members of CARICOM. Thus, there is no way to predict how States will proceed with the establishment of this new arrangement; Whether the CFZ will remain an integral part of the Agreement and how States will overcome fears over loss of sovereignty. If the process is to continue, it will likely require States to examine carefully their own situations with respect to optimal resource utilisation and national capacities to harvest the fisheries resources of their EEZ. UNCLOS allows States to grant third parties access to surplus fisheries resources within their EEZs pursuant to terms and conditions laid out in related access agreements³⁸⁷. Thus, the proposed CFPR is consistent with the provisions laid out in international law. Furthermore, while States may be required to cede some degree of sovereignty over living marine resources to the common regime, by signing on to the arrangement they would also be guaranteed access to a wider pool of resources subject to conservation measures that may be laid out as part of the CFPR Agreement. This arrangement could serve to reduce some of the tensions that have arisen in recent years between neighbouring CARICOM States while addressing historical access claims by some member States (e.g. Barbados' claim to flying fish stocks off the coast of

³⁸⁶ See Fanning, L. *et al.* 2007. *op cit.*; and project documents of the CLME project available at the project website: [<http://cavehill.uwi.edu/cermes/clme.html>]. Last Accessed: 25 March 2008.

³⁸⁷ UN. 1982. UN Convention on the Law of the Sea. Article 62(2)

Tobago). By allowing, locally licensed vessels of individual States to continue harvesting resources within areas of the CFZ previously under their jurisdiction, the CFPR seeks to avoid issues of displaced fishing communities. This is essential, if CARICOM governments are to accept an arrangement in which rights of access to fisheries resources within some areas of their EEZs are managed by a regional Implementing Agency. It is not clear whether the draft Agreement guarantees access to areas of the CFZ occurring within the EEZs of the member State to new entrants from within that State. However, based on the provisions outlined in Articles 6.1 and 7 of the draft Agreement, the Implementing Agency will grant access to such groups based on the determined availability of resources

The CFPR clearly has some advantages, particularly as one considers the potential for cooperation between small, developing States, many of which lack the resources to manage effectively their fisheries in a sustainable manner. However, it is also important to recognise the potential drawbacks and impediments to the effective implementation of such an arrangement. The CFPR will require CARICOM member States signing on to the Agreement to commit to undertake rigorous stock assessments of fish stocks within their EEZs in order to determine whether surplus stocks exist that may form part of the community resource to be harvested from the CFZ. Most of the fisheries departments in the region have limited human and technical capabilities required to carry out this task effectively. Fortunately, there is an existing framework within the CRFM that allows members to collaborate at regional forums, convened to aid countries in improving data collection and analysis systems. The CFPR will also require some means of controlling fishing effort by member States, particularly in those countries where an open access arrangement still exists. Part of the Implementing Agency's responsibility must be to ensure that the mistakes experienced within the EU, with regard to fleet overcapacity, are not repeated within the CARICOM region. Particularly since the CARICOM countries only make up a portion of the resource users within the Caribbean Sea.

Given the EU model, there is clearly a mandate for the establishment of a regional arrangement as that envisioned by the CFPR; where States pool resources in to a CFZ to which they area all guaranteed equal rights of access. It is the task of the CARICOM

Governments, however, to formulate a sound policy document, with clearly stated objectives and actionable plans that will achieve the broad ideals of conservation and economic stability in the fisheries sector of the region. While the CFPR seeks to integrate the fisheries economic sector into the larger vision of CARICOM, member States are faced with the challenge of reconciling regional goals with national sovereignty. This will not be easy to overcome. However, the governments of CARICOM have always found a way to reach a cooperative arrangement, which serves the best interest of its people. Undoubtedly, this time will be no different.

8. APPENDIX

Ratification of the Cartagena Convention and Protocols by CARICOM member States

State	Date of Signature (s); Ratification (r); Accession (a)			
	<i>Cartagena Convention</i>	<i>Oil Spill Protocol</i>	<i>SPAW Protocol</i>	<i>LBS Protocol</i>
Antigua & Barbuda	11 September 1986 (a)	11 September 1986 (a)	18 January 1990 (s)	
Bahamas				
Barbados	28 May 1985 (r)	28 May 1985 (r)	14 October 2002 (a)	
Belize	22 September 1999 (a)	22 September 1999 (a)		
Dominica	5 October 1990 (a)	5 October 1990 (a)		
Grenada	17 August 1987 (r)	17 August 1987 (r)		
Guyana				
Haiti				
Jamaica	1 April 1987 (r)	1 April 1987 (r)	18 January 1990 (s)	
St. Kitts & Nevis	15 June 1999 (a)			
St. Lucia	30 November 1984 (r)	30 November 1984 (r)	25 April 2000 (r)	
St. Vincent & the Grenadines	11 July 1990 (a)	11 July 1990 (a)	26 July 1991 (a)	
Suriname				
Trinidad & Tobago	24 January 1986 (a)	24 January 1986 (a)	10 August 1999 (r)	28 March 2003 (a)
United Kingdom (on behalf of Cayman I and Turks and Caicos I, reserving right to extend it at a future date. Extended to BVI on 21 November 1987.	28 February 1986 (r)	28 February 1986 (r)	January 18 1990 (s)	