

DOALOS/United Nations – Nippon Foundation Alumni Law of the Sea Training Programme



UN Photo/Milton Grant

An introduction to fisheries under UNCLOS and related instruments

Welcome and opening

Programme

Welcome and opening

2:00 pm - 2:10 pm

Ms. Valentina Germani, Senior Legal Officer
(Programme Advisor), DOALOS

Introduction to fisheries under UNCLOS and related instruments

2:10 pm - 2:45 pm

Mr. Michele Ameri, Legal Officer, DOALOS

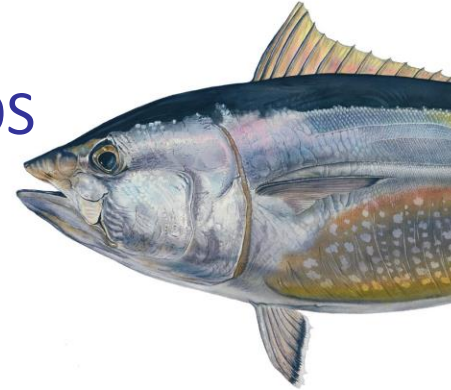
Q&A session

2:45 pm - 3:30 pm

Moderated by Ms. Jessica Howley, Associate Legal Officer, DOALOS

Introduction to the international legal regime for sustainable fisheries

Mr. Michele Ameri, Legal Officer, DOALOS
9 October 2020



Outline

- Legal regime in for sustainable fisheries in *UNCLOS*
- Legal regime in for sustainable fisheries in the *United Nations 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* (also known as the United Nations Fish Stocks Agreement)
- Other relevant fora and instruments

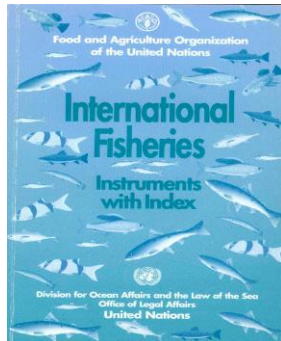
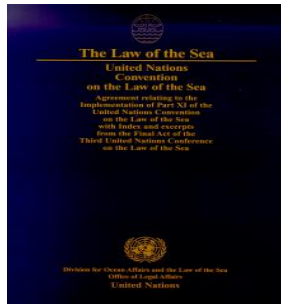
Sustainable fisheries by the numbers

- Global total marine catches increased from 81.2 million tonnes in 2017 to 84.4 million tonnes in 2018.
- Almost 39 million people employed in fisheries, globally
- 4.56 million fishing vessels in 2018
- In 2018, about 88 percent of total fish production was utilized for direct human consumption
- 67 million tonnes of fish (live weight equivalent) were traded internationally with a total export value of USD 164 billion
- Percentage of stocks fished at biologically unsustainable levels increased, especially in the late 1970s and 1980s, from 10 percent in 1974 to 34.2 percent in 2017
- Only 6.2% of global fish stocks are underfished
- COVID-19 pandemic is expected to impact fisheries in different ways
- Effective fisheries management has been shown to improve stock sustainability

Fisheries and gender

- Employment in the primary fisheries sector is only 12% female, but when secondary post-harvest sectors are counted, 50% female
- Women, particularly in some developing countries, face substantive challenges to engaging in and benefiting equitably from these sectors, including:
 - limited access to and control over assets and resources,
 - constraining gender norms, time and labor burdens of unpaid work, and barriers to sustaining entrepreneurship
 - Diminished visibility of the contribution of women to the functioning of the sector
- The result is women having fewer opportunities and receiving smaller returns from fisheries and aquaculture than men—including lower income
- Gender equality in fisheries and aquaculture could bring many potential benefits including higher fish productivity and household incomes, as well as positive nutritional outcomes.

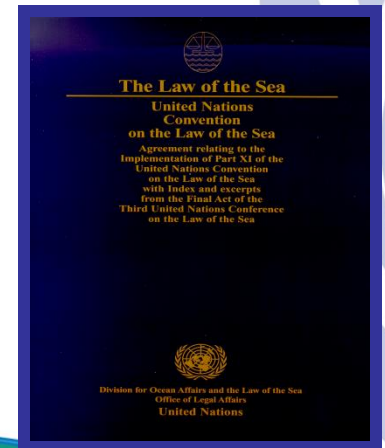
UNCLOS and the United Nations Fish Stocks Agreement



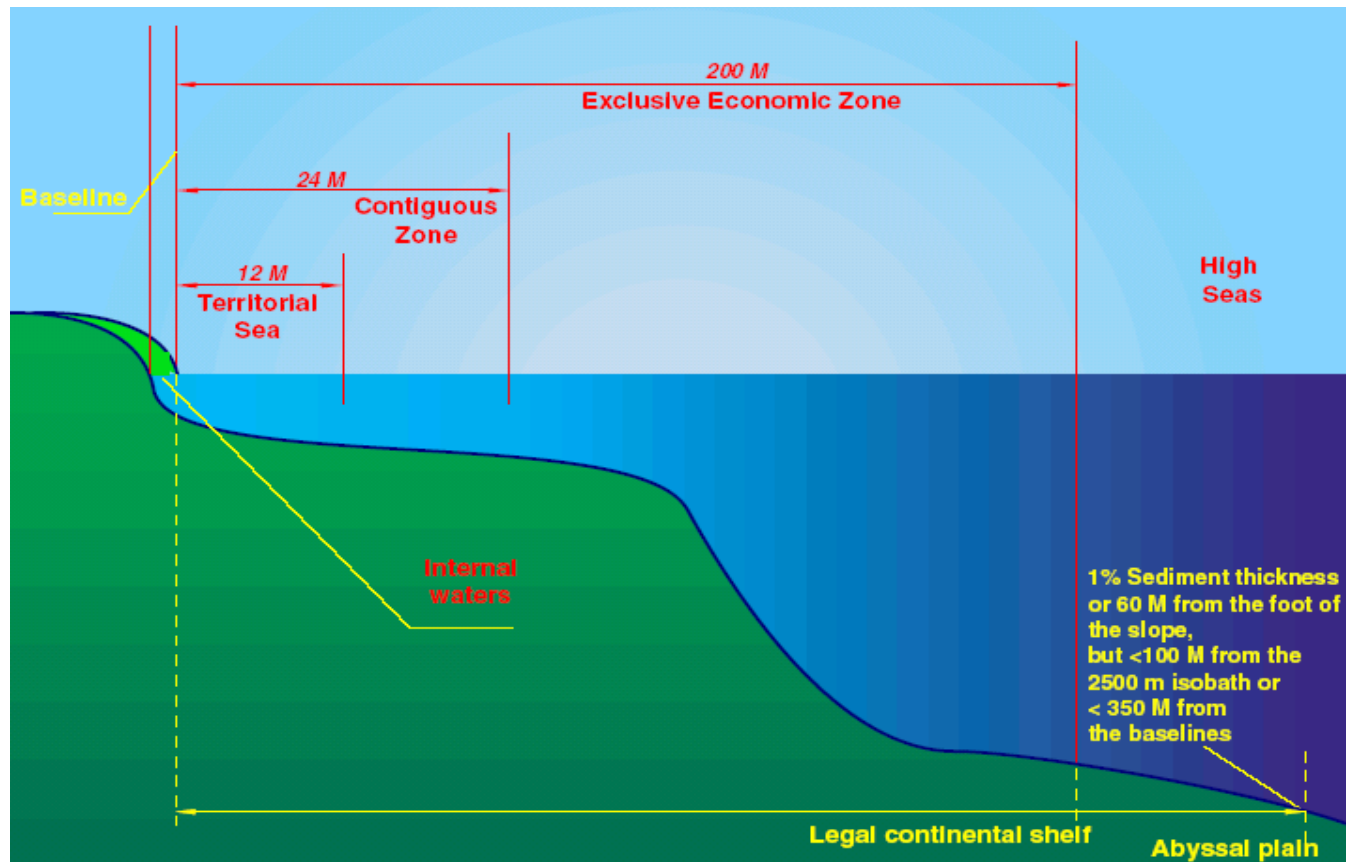
- UNCLOS = overarching legal regime for sustainable fisheries under international law
- United Nations Fish Stocks Agreement = detailed legal regime for straddling fish stocks and highly migratory fish stocks
- Complemented by other international rules

1982 United Nations Convention on the Law of the Sea

- General character of the Convention:
 - Delicate balancing of rights and interests
 - Interrelated, integral package
 - Rights and obligations go hand-in-hand
- Maritime zones
 - Territorial Sea, EEZ, High Seas
 - Continuum of rights and interests



Maritime zones under UNCLOS



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Legal regime in UNCLOS – Territorial Sea

- In the territorial sea (up to 12 nm):



- Coastal State has sovereignty over marine living resources
- No fishing activities without coastal State consent
- Coastal State may issue licenses

Territorial Sea – other States

- Ships flying flags of other States (foreign vessels)
 - Right of innocent passage (arts. 17 to 26)
 - Coastal State may adopt laws and regulations
 - Fishing is not innocent passage
 - Foreign ships shall comply with all laws and regulations in conformity with UNCLOS
 - Coastal State may take necessary steps to prevent passage that is not innocent

Legal regime in UNCLOS - EEZ

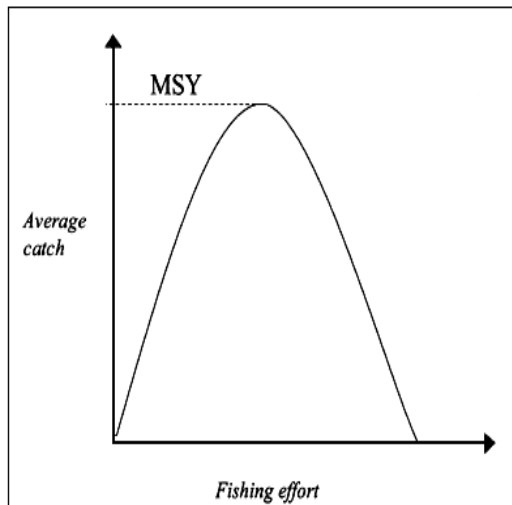
- In the exclusive economic zone (up to 200 nm):



- Coastal State has sovereign rights over marine living resources
- Coastal State can adopt laws regulating fishing
 - ✓ Conservation and management
 - ✓ Enforcement

Utilization and conservation

Coastal State has duty to conserve and manage marine living resources to promote “**optimum utilization**”



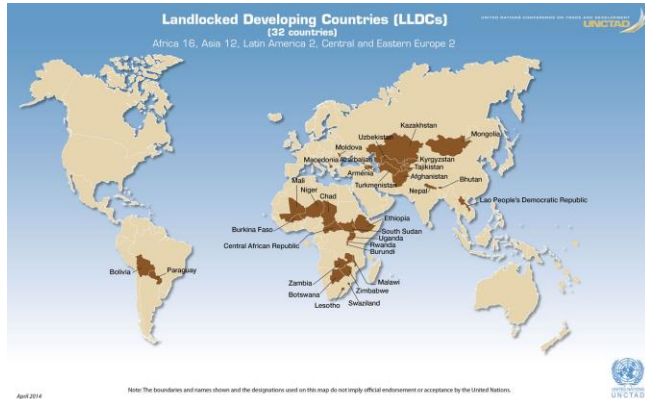
- Coastal State must determine the “**total allowable catch**” to maintain “**maximum sustainable yield**” (MSY)
- Requires scientific knowledge and technical expertise to effectively implement

FAO

Access by other States



- Other States can access the surplus of the total allowable catch
 - Conditions set by coastal State (licences)



- Particular regard given to rights of landlocked States and geographically disadvantaged States, especially developing States

Enforcement in the EEZ



- Foreign ships must comply with coastal State laws and regulations
- The coastal State can enforce against violators
- Penalties may not include imprisonment unless an agreement exists, and no corporal punishment
- Prompt release required

Legal regime in UNCLOS – High Seas

- Qualified freedom to fish
- Duty to cooperate in conservation and management of high seas stocks
- Duty to adopt measures for conservation of high seas marine living resources

Enforcement on the high seas

- Flag States
- States of nationality
- Regional fisheries management organizations and arrangements
- Port States

IUU Fishing

3.1 Illegal fishing refers to activities:

- 3.1.1 conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations; 3.1.2 conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or 3.1.3 in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.

3.2 Unreported fishing refers to fishing activities:

- 3.2.1 which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or 3.2.2 undertaken in the area of competence of a relevant regional fisheries management organization which have not been reported or have been misreported, in contravention of the reporting procedures of that organization.

3.3 Unregulated fishing refers to fishing activities:

- 3.3.1 in the area of application of a relevant regional fisheries management organization that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization; or 3.3.2 in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.

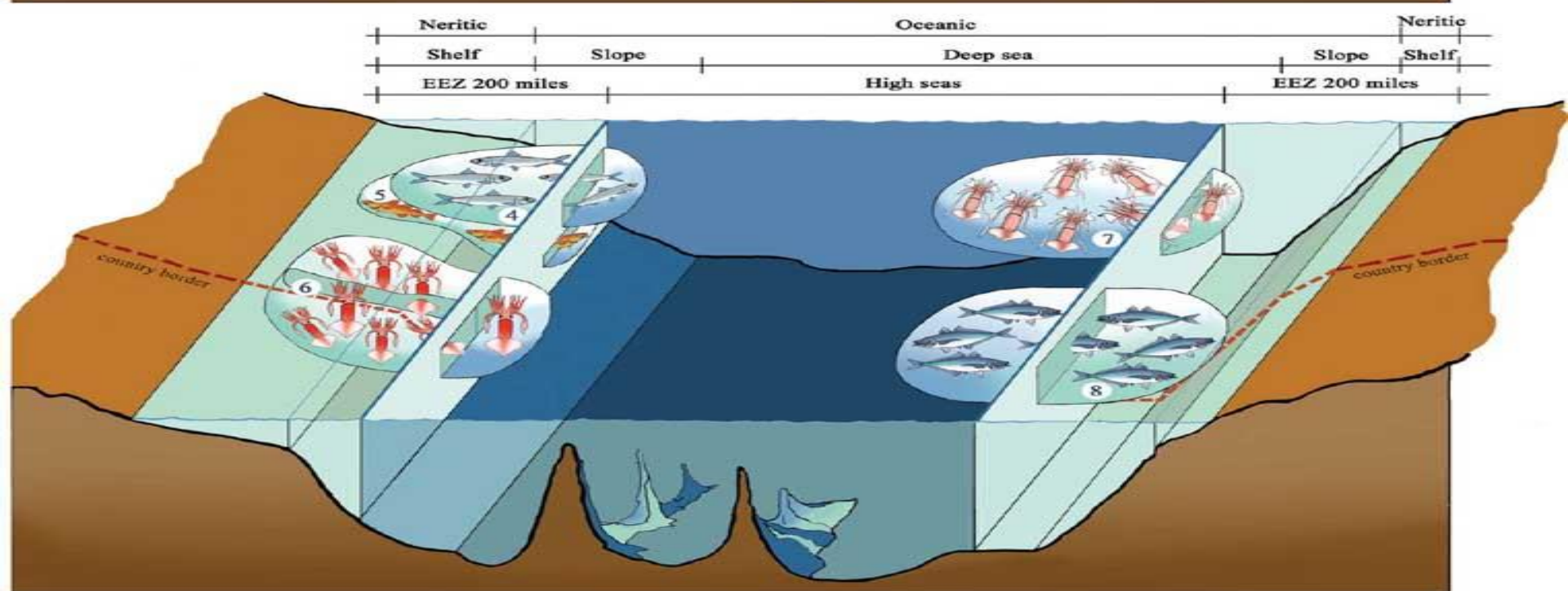
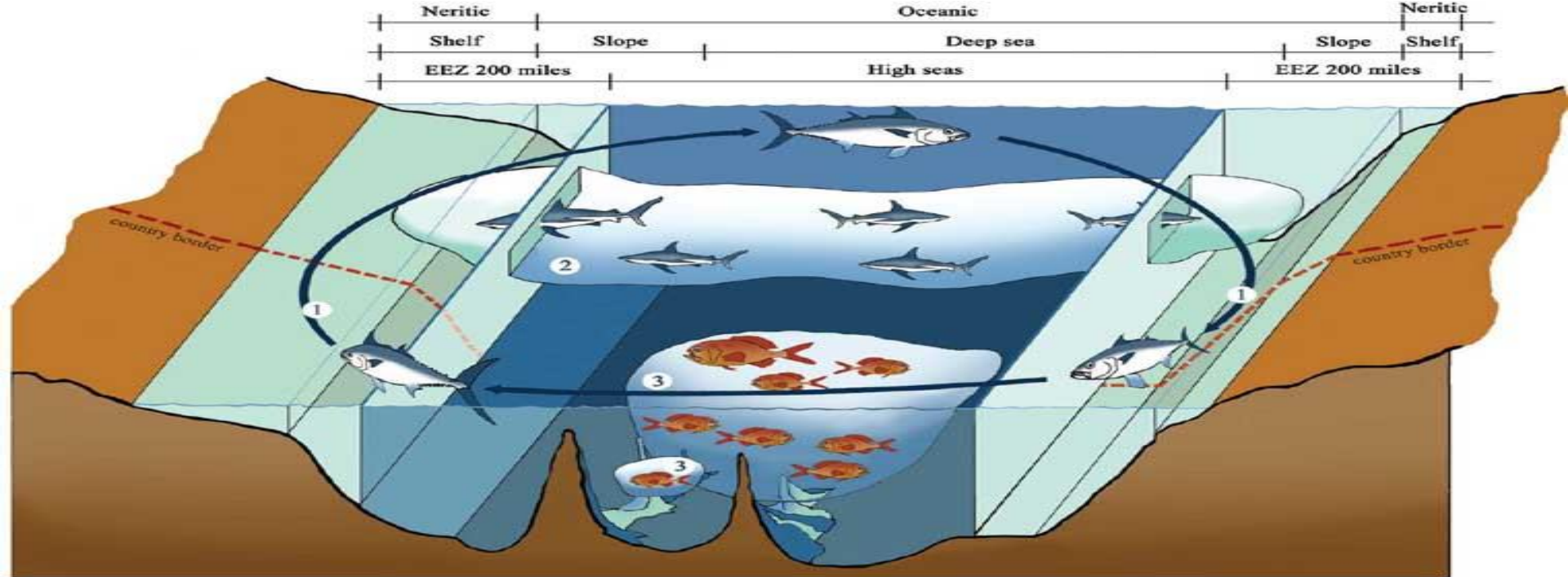


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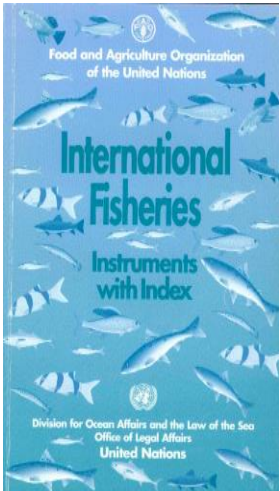
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Cooperation for specific stocks

- Highly migratory fish stocks
- Straddling fish stocks
- Catadromous fish stocks
- Anadromous fish stocks
- Marine mammals



1995 UN Fish Stocks Agreement

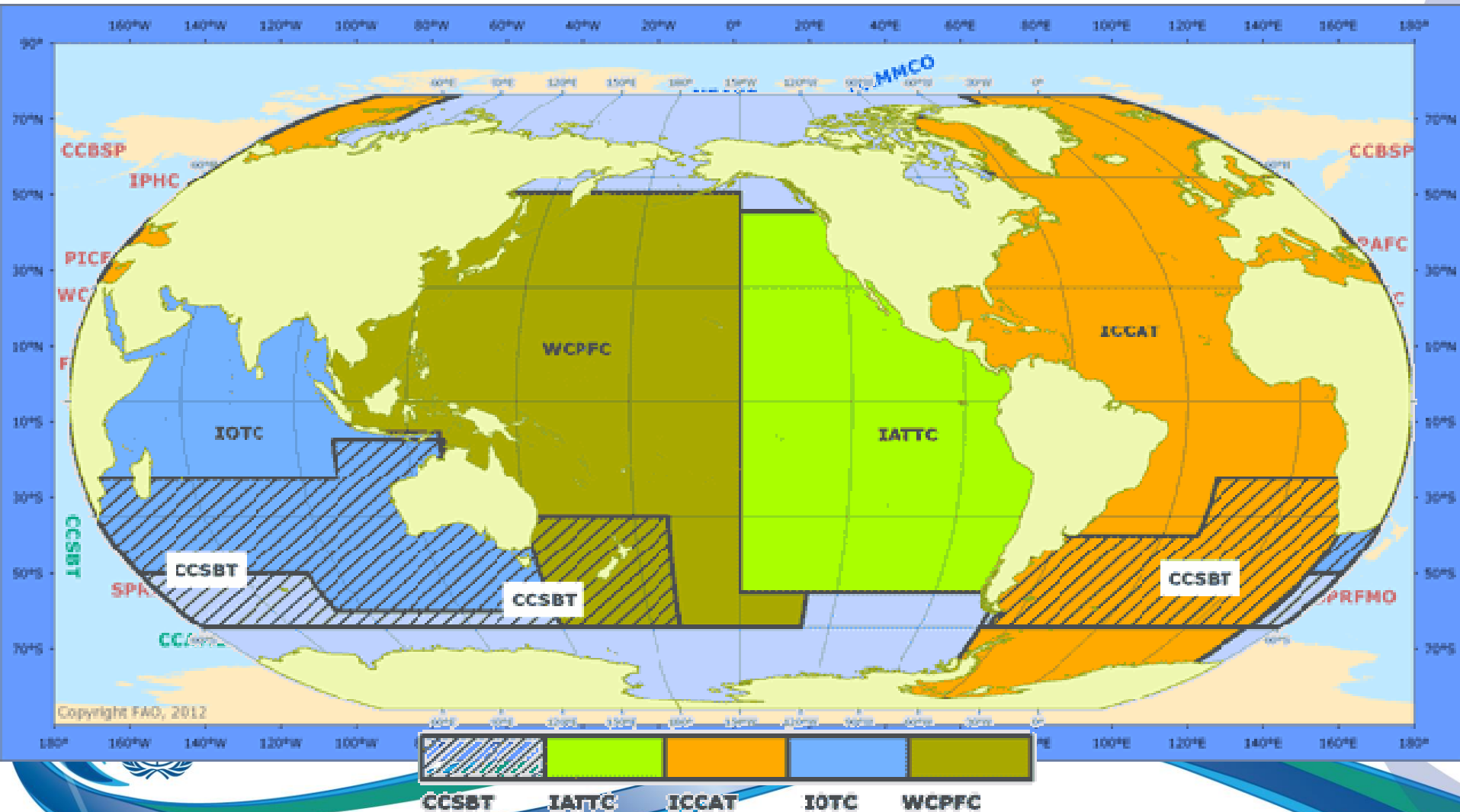


- Legal framework for the conservation and management of straddling fish stocks and highly migratory fish stocks on the high seas areas
- Builds on provisions in UNCLOS
- 91 States Parties
- Voluntary trust fund to assist developing States Parties

Basic Provisions of UNFSA

- Conservation and management:
 - Promote optimum utilization
 - Measures based on the best scientific evidence available
 - Precautionary and ecosystem approaches
 - Protection of marine biodiversity
- Compatibility of measures
- Duty to cooperate, establishment of RFMOs and access to fisheries
- Cooperative enforcement schemes
- Special requirements of developing States

RFMO/As



The Review Conference on the Agreement



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Informal Consultations of States Parties to UNFSA

- Began in 2002
- 14 rounds so far
- Assists in preparation for the Review Conference
- Reviews implementation of the Agreement
- 14th round focused on “Performance reviews of regional fisheries management organizations and arrangements”



Other relevant fora and instruments

- Food and Agriculture Organization of the United Nations
 - Treaties and non-binding international rules
- Biodiversity treaties, such as
 - Convention on Biological Diversity
 - Convention on International Trade in Endangered Species of Wild Fauna and Flora
- General Assembly resolutions
- Regional fisheries bodies treaties and regulations

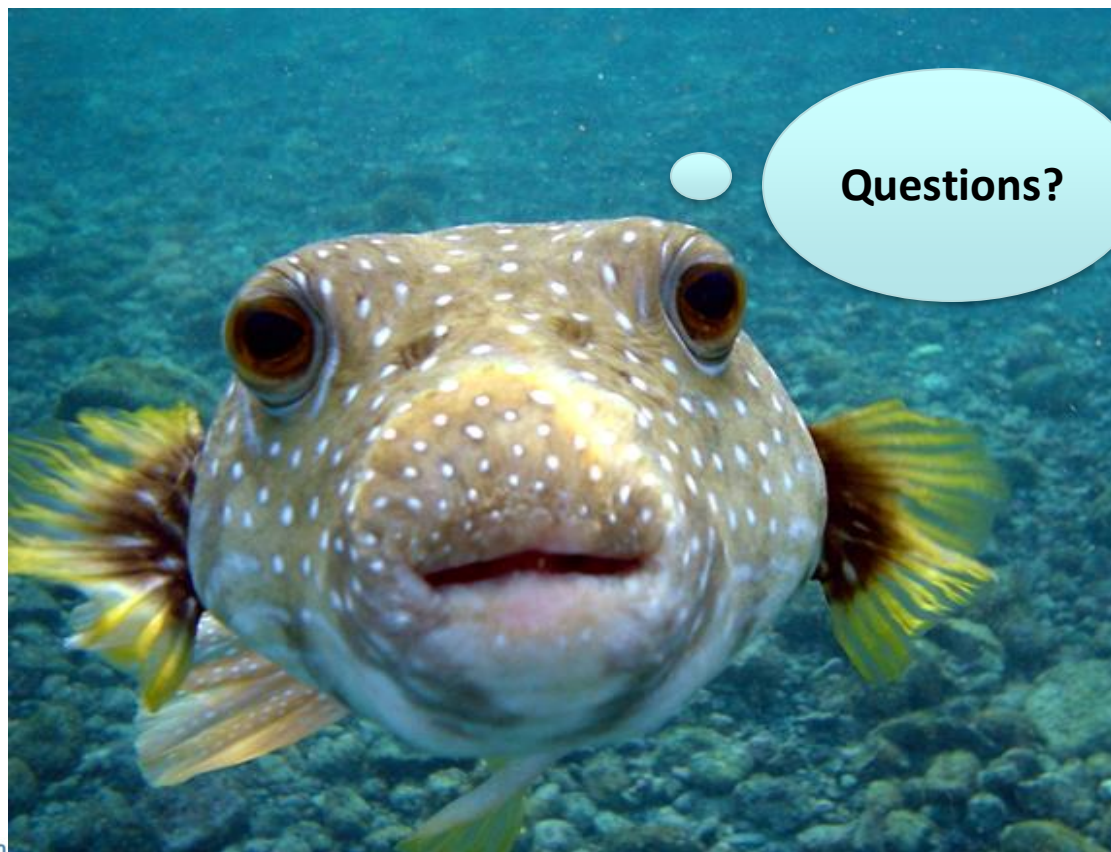
Other International Instruments

- 1993 FAO Compliance Agreement
- 1995 FAO Code of Conduct for Responsible Fisheries
- FAO International Plans of Action:
 - Management of Fishing Capacity
 - IUU Fishing
- 2009 FAO Port State Measures Agreement

Role of the General Assembly

- Annual resolutions on sustainable fisheries and on oceans and the law of the sea
- Review of impacts of bottom fishing on VMEs and long-term sustainability of deep-sea fish stocks
- Ban on high seas drift-net fishing
- Sustainable development instruments
- Other issues

Thank you for your attention!



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Q&A session

Moderated by Ms. Jessica Howley, Associate Legal
Officer, DOALOS



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