



## International Legal Instruments Governing Fisheries in Areas Beyond National Jurisdiction

Fishing activities for stocks intersecting with areas beyond national jurisdiction (ABNJ) or the high seas pose specific challenges to States looking to affect practices for the benefit of all. A recently released publication by the World Wildlife Fund contains a detailed account of those international instruments and applicable soft law approaches that establish the basis and limits for measures that individual States might undertake — such as tenure rights, certification, and other incentive-based approaches. This fact sheet summarizes important provisions in the main international instruments applicable to ABNJ fisheries. The complete WWF publication is available upon request.

### The 1992 United Nations Convention on the Law of the Sea (UNCLOS)

**UNCLOS a multilateral agreement with 168 States Parties, provides a general legal framework for all ocean activities, including fisheries, with legally binding obligations on all States Parties.**

UNCLOS sets forth a range of conservation rights and duties that apply to all fisheries. The most important provisions applicable to ABNJ fisheries include the following:

- Article 61 establishes a duty upon the coastal State to adopt conservation and management measures, which will take priority over measures on allocation or use.
- A Coastal State may impose conditions on any vessel seeking to fish in its Exclusive Economic Zone (EEZ), e.g., licensing, payment of fees, and catch documentation.

- Flag State regulations apply to the conduct of its vessels on the high seas.
- The freedom of fishing on the high seas is conditional upon cooperation with other States and compliance with treaty obligations and measures based on the best scientific advice.

### The 1995 United Nations Fish Stocks Agreement (UNFSA)

**UNFSA is based on 12 general principles that reinforce and strengthen conservation measures under UNCLOS, and apply to coastal States and States fishing on the high seas for the covered stock types.**

UNFSA establishes a specific regime for regional governance of highly migratory fish stocks and ABNJ fisheries. Important provisions include the following:

- Measures taken by coastal States within the EEZ for the conservation of highly migratory fish stocks must be compatible with measures taken on the high seas.
- High seas measures should not undermine measures within the EEZ.
- Account should be taken of the biological unity of the stock, its distribution, and location.

**High seas.** “All parts of the sea that are not included in the exclusive economic zone, in the territorial sea, or in the internal waters of a State, or in the archipelagic waters of an archipelagic State.”

- Account should be taken of the dependence of States upon the stocks.
- States are required to cooperate by joining a Regional Fishery Management Organization (RFMO) or at least by complying with its regulations.
- Port States have the right and duty to take steps to promote compliance with conservation measures.

**UNFSA established broad considerations to determine States' participatory rights in high seas fisheries.** These considerations include status of stocks and existing levels of fishing; respective interests and fishing patterns/practices of existing and new members; contributions to conservation and management; needs of dependent fishing communities; needs of dependent coastal States; and interests of developing States in the region.

**UNFSA established a basis for support/assistance for developing States with a real interest in the fishery.** Support linked to funding and capacity building could be aligned with investment initiatives. Support could also be linked to other measures such as side payments and greater shares of catch.

### Regional Fishery Management Organizations (RFMOs)

RFMOs are established by international agreements or treaties that broadly guide their voluntary agreements to manage ANBJ fisheries. RFMO member States are bound by these voluntary agreements, which are usually adopted through State regulations.

**Third-State Problem** — Treaties are only binding on State Parties and do not create rights and duties for non-Parties (third States). While this is a weakness in international law, UNFSA notes that States may take action consistent with the PSMA and international law to deter the activities of vessels that undermine their effective implementation. This problem can be partly addressed through the use of incentive-based instruments and the implementation of PSMA.

### Other International Instruments

**Port-State Measures Agreement (PSMA)** — entered into force on 5 June 2016, 48 States Parties. Key PSMA obligations are to cooperate and exchange information on conservation measures, pre-designated ports of entry, advance information conditions, and entry conditions. It covers using IUU vessel lists compiled by other States or RFMOs to restrict access to port. While port States may inspect vessels as a condition of entry and denial of entry, the flag State remains responsible for the enforcement of fisheries laws on the high seas.

**The Convention on International Trade in Endangered Species (CITES)** — establishes a general system of import- and export-based controls for protecting wild fauna and flora. While CITES does not apply to fish caught in the EEZ for domestic consumption, it does extend to fish caught on the high seas for domestic consumption.

#### FOR MORE INFORMATION:

**Richard Barnes** – Dean, Faculty of Business, Law and Politics, School of Law and Politics, University of Hull,  
r.a.barnes@hull.ac.uk  
Tel: + 44(0)1482 466320

**Vishwanie Maharaj** – Lead Economics, Oceans, WWF-Inc.  
Vishwanie.maharaj@wwfus.org  
Tel: + 1 202-495-4711