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A GLOBAL CHALLENGE

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INTERNATIONAL INSTRUMENTS FOR INTERNATIONAL FISHERIES

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The past decade has seen a burst of international rules and voluntary guidelines for fishing in coastal waters and on the high seas. In this article David Balton, director of the State Department's Office of Marine Conservation, summarizes developments from the 1992 U.N. Conference on Environment and Development to the 2002 U.N. World Summit for Sustainable Development.

Profound changes have reshaped the world of marine fisheries in the past decade. In the early 1990s, the international community was forced to recognize that the capacity of harvesting operations in many key fisheries had outpaced both the reproductive capacities of those resources as well as the tools being used by governments and international organizations to regulate those fisheries to achieve sustainability. Unresolved jurisdictional disputes between states over certain valuable fish stocks were producing heightened conflict and inhibiting effective conservation.

The 1992 Cancun Conference on Responsible Fishing and the 1992 United Nations Conference on Environment and Development (UNCED) set in motion a series of steps designed to address these problems. At the global level, these included the negotiation of two new treaties to regulate ocean fisheries as well as the adoption of a non-binding "code of conduct." The United Nations established a moratorium on the use of large-scale driftnets (longer than 2.5 kilometers) on the high seas, which became effective in 1993. Several new regimes governing ocean fisheries in specific regions have also arisen.

The international community has developed some additional measures to address more particular concerns, including non-binding instruments aimed at reducing fishing capacity, conserving sharks, minimizing by-catch of seabirds in long-line fisheries, and combating illegal fishing.

A number of regional fisheries management organizations have also taken steps to control fisheries in their respective regions more effectively. Some of these

organizations now require their members to prohibit fish from being landed or transshipped in their ports in situations where the fish may have been harvested illegally. Others require their members to restrict international trade in such circumstances. Other trends include calls for fisheries to be managed as part of ecosystems, reduction and elimination of harmful subsidies to the fisheries sector, and eco-labeling schemes.

A REVIEW OF INTERNATIONAL INSTRUMENTS

Following is a brief summary of the major international instruments, both binding and non-binding, that relate to the management of ocean fisheries today. A number of websites contain significantly more information, including that of the Food and Agriculture Organization of the United Nations (FAO), www.fao.org/fi/default.asp, and the Internet Guide to International Fisheries Law, www.oceanlaw.net/guide.htm.

1982 U.N. Convention on the Law of the Sea. This treaty, which entered into force in 1994, contains general provisions for the governance of ocean fisheries. These provisions have also served as the framework for developing more specific rules in subsequent international instruments.

In the decades leading up to the 1982 Convention, many states had advanced new claims to jurisdiction over significant ocean areas off their coasts. The 1982 Convention recognized this practice and codified the status of the "exclusive economic zone" (EEZ). Under the 1982 Convention, coastal states may claim EEZs extending up to 200 miles (about 322 kilometers) from their shores and may exercise full control over fisheries in their EEZs. Because at least 90 percent of all marine harvests occur within 200 miles of shore, the 1982 Convention effectively placed the vast majority of fishery resources at the disposal of coastal states.

In exchange for this enormous benefit, coastal states have certain responsibilities under the 1982 Convention. Each coastal state must determine the allowable catch of living resources in its EEZ, protect such resources against over-

exploitation, take certain measures to reduce by-catch, promote optimum utilization of such resources, determine its capacity to harvest such resources, and give other states access to any surplus resources in its EEZ.

Beyond the EEZs lie the remaining high seas, which, if all coastal states claimed EEZs out to 200 miles, would still cover more than 21 percent of the earth's surface and approximately 70 percent of all ocean area. The 1982 Convention reaffirms the traditional right of all nations for their nationals and vessels to fish on the high seas but makes this right subject to a number of important, though general, additional conditions.

The 1982 Convention authorizes each coastal state to enforce its fishery laws within its EEZ against any vessels that may be fishing there. Fishing vessels on the high seas, generally speaking, remain under the exclusive jurisdiction of the flag state (that is, the state in which the vessel is registered), although the flag state may consent to have enforcement action taken by another state.

FAO Compliance Agreement. This treaty — known formally as the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (the Compliance Agreement) — was adopted by the Food and Agriculture Organization of the United Nations (FAO) in 1993. The agreement has two primary objectives:

- to impose upon all states whose fishing vessels operate on the high seas an array of obligations designed to make the activities of those vessels consistent with conservation and management needs;
- to increase the transparency of all high-seas fishing operations through the collection and dissemination of data about high-seas fishing vessels and their activities.

Perhaps the most groundbreaking aspects of the agreement are three new rules contained in it regarding high-seas fishing operations:

Rule #1: Each flag state must ensure that its vessels do not engage in any activity that undermines the effectiveness of international fishery conservation and management measures, whether or not the flag state is a member of the regional fishery organization that adopted such measures.

Rule #2: No vessel is to be used for fishing on the high seas without specific flag state authorization.

Rule #3: No flag state shall grant such authority to a vessel unless the flag state is able to control the fishing activities of that vessel.

These three rules represent a new vision for high-seas fisheries. To abide by these rules, flag states must actively oversee the high-seas fishing operations of their vessels. They must decide case by case whether to authorize any vessel to fish on the high seas. Most importantly, they may not permit any vessel to fish on the high seas at all unless they are able to prevent the vessel from undermining agreed high-seas conservation rules.

In order for the Compliance Agreement to enter into force, 25 states must deposit instruments of acceptance with FAO. As of this writing, FAO has received only 23 instruments of acceptance.

U.N. Fish Stocks Agreement. This treaty — known formally as the 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 responded to a recommendation arising out of UNCED, which called for specific new measures to deal with problems of “straddling” fish stocks and “highly migratory” fish stocks.

Straddling fish stocks are those that cross between the EEZs of one or more coastal states and into adjacent high-seas areas. Among these are valuable stocks of cod in the Northwest Atlantic Ocean and pollock in the Bering Sea. Highly migratory fish stocks are those that migrate extensively across the high seas and through the EEZs of many coastal states. Examples of this type are tuna and swordfish.

The agreement builds upon certain basic provisions of the 1982 U.N. Convention relating to these two categories of fish stocks with the aim of ensuring that they are conserved and managed on a sustainable basis. Among other notable features, the agreement prescribes a precautionary approach to fishery management. This approach generally calls upon fishery managers to proceed cautiously in regulating fish harvests when information is uncertain, unreliable, or inadequate. The absence of adequate information is no reason to postpone (or to fail

to take) measures to conserve fish stocks. The agreement also reinforces the roles played by regional fisheries organizations in managing these stocks. In order for states to have access to these fisheries, they must either join the organizations or, at a minimum, apply the fishing rules established by these organizations to their own vessels. Disputes arising under the agreement are subject to compulsory and binding dispute settlement.

The United Nations adopted the U.N. Fish Stocks Agreement in 1995 after three years of negotiation. The agreement entered into force in 2001 and, as of this writing, has 32 parties.

FAO Code of Conduct for Responsible Fisheries. The FAO adopted this comprehensive blueprint for the management of fisheries in 1995. Although the code is voluntary, certain parts of it are based on relevant rules of international law, including those reflected in the 1982 U.N. Convention.

The code sets forth principles and standards applicable to the conservation, management and development of all fisheries. It also covers the capture, processing and trade of fish and fishery products, fishing operations, aquaculture, fisheries research and the integration of fisheries into coastal area management.

Among the objectives of the code are:

- to establish principles for responsible fishing and fisheries activities, taking into account all their relevant biological, technological, economic, social, environmental and commercial aspects;
- to establish principles and criteria for the elaboration and implementation of national policies for responsible conservation of fisheries resources and fisheries management and development;
- to serve as an instrument of reference to help states establish or improve the legal and institutional framework required for the exercise of responsible fisheries and to formulate and implement appropriate measures;
- to provide guidance that may be used where appropriate in the formulation and implementation of international agreements and other legal instruments, both binding and voluntary;

- to facilitate and promote technical, financial and other cooperation in conservation of fisheries resources and fisheries management and development;
- to promote the contribution of fisheries to food security and food quality, giving priority to the nutritional needs of local communities;
- to promote protection of living aquatic resources and their environments and coastal areas;
- to promote the trade of fish and fishery products in conformity with relevant international rules and to avoid the use of measures that constitute hidden barriers to such trade;
- to promote research on fisheries as well as on associated ecosystems and relevant environmental factors;
- to provide standards of conduct for all persons involved in the fisheries sector.

FAO International Plans of Action. In 1999, FAO adopted three non-binding instruments, known as International Plans of Action (IPOAs), to address three specific problems in ocean fisheries.

The most complex and far-reaching of these instruments concerns the management of “fishing capacity” — the ability (or capacity) of the world’s fishing fleet to harvest fish in the oceans. Many studies have indicated that, on a worldwide basis, total fishing capacity is too great and must be reduced. There are simply too many vessels chasing too few fish. Although excess capacity does not exist in each individual fishery, the problem of excess capacity is growing. Many key fish stocks cannot sustain any increase in harvesting but face increased capacity from new vessels and improved technology. The IPOA on the Management of Fishing Capacity commits the international community to address this problem and sets standards for bringing fishing capacity in line with sustainable fishing.

Another of these IPOAs concerns the conservation and management of sharks while the other deals with the problem of seabird by-catch in longline fisheries. A final IPOA, adopted by FAO in 2001, concerns the growing incidence of “illegal, unreported and unregulated” fishing.

World Summit for Sustainable Development. Ten years after UNCED, the world's leaders met at the World Summit for Sustainable Development (WSSD) in Johannesburg, South Africa, to review progress achieved in meeting the goals of UNCED. WSSD produced a new Plan of Implementation, which includes several

commitments related to international fisheries. The most significant of these commitments is a call to rebuild depleted fish stocks on an urgent basis and no later than 2015. □