UNCLOS ‘Implementation Agreement’ and Fisheries Law

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Overview

1. Introduction
2. Background and Context to ABNJ IA
3. BBNJ/PrepCom 1 and Fisheries
4. Scope and Content of Prospective ABNJ Agreement
5. Impact on ABNJ Agreement on Fisheries Law
2. Background and Context to ABNJ IA


- The conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction

- UN process:
  - BBNJ & PrepCom
3. BBNJ and Fisheries Issues

- Key Points:
  - Fisheries as a threat to marine biodiversity in ABNJ
  - Implementation and governance gaps
  - Fisheries and integrated approaches to conservation and sustainable use of ABNJ
  - Fisheries and Area–Based Management
  - Fisheries and Environmental Impact Assessment
RFMO Gaps


4. Scope and Content of ABNJ IA

- *Conservation and Sustainable Use of Marine Biological Diversity in ABNJ*
  - Governance Principles:

1. Duty to cooperate
2. Integrated – Cross sectoral Approach
3. Protection and Preservation of Marine Environment
4. Science-based approach to management
5. Precautionary approach
6. Ecosystem-based approach
7. Sustainable and equitable use
8. Public availability of information
9. Transparent and open decision-making
10. Protection of Biodiversity
11. Impact Assessment
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APRF, CCAMLR, CCSBT, CECAF, GFCM, IATTC, ICCAT, IOTC, NAFO, NEAFC, NPAFC, NPFC, SEAF0, SIOMA, SPRM, WCPFC, WECAPC
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4. Scope and Content of ABNJ IA

- Area-based management tools
  - *Existing Options*

1. UNCLOS - Article 194(5)
2. FSA 1995 - Article 5
4. MARPOL - PSSA/APM and SECA
5. OSPAR – MPA Network – e.g. Charlie Gibbs Fracture Zone+ others
6. Barcelona Convention and SPAMIS in ABNJ
7. FAO – Deep-Sea Guidelines? Developing tools on MPA?
Area-based Management - Fisheries

• Some examples of ABM in RFMOs
  – GFCM adopted Fisheries Restricted Areas (SPAMIs)
  – NEAFC closed areas of 2009.
  – NAFO closed shrimp fisheries on the Flemish Cap, Fogo Seamounts, Corner Seamounts, New England Seamounts and Orphan Knoll
  – SEAFO has closed 11 vulnerable marine areas since 2006
  – SIODFA - 13 Benthic Protected Areas

• Key Issues
  1. Coordination?
  2. Bindingness?
  3. Compliance?
  4. FAO Guidelines as a Model?
  5. Costs of ABM?
4. Scope and Content of ABNJ IA

- Environmental Impact Assessment
  - *Existing Options...*

1. UNCLOS – Article 206
2. FAS Article 5
4. ISA Regulations on Nodules and Sulphides
5. CBD Article 14
8. EIA under customary law – *Pulp Mills case, Area Advisory Opinion*
EIA and Fisheries

• **Key Issues:**

1. Fisheries are often apart from EIAs
2. FAO Guidelines – general regime of assessment – not comparable to domestic EIA
3. UNGA Res which calls for impact assessments – e.g. 61/105 para 83(a) and 64/72
4. Questions re use of SEA and coordinated fisheries assessments
5. Use of EIA as a precondition for any new fishery/all fisheries in ABNJ?
4. Scope and Content of ABNJ IA

Implementation Agreement Scenarios

- **Centralized**
  - **A1 Single ABNJ Management Authority**
    - ISA+ option
  - **A2 ABNJ Advisory Body/Process**
    - Status quo?

- **Weak Integration**

- **Strong Integration**
  - **B1 Composite Regional ABNJ Management Organizations**
    - Combined RFMO/Regional Environmental regimes
  - **B2 Coordinated Sectoral Management Organizations**
    - Retain regional bodies, subject to structured coordination

- **Decentralized**
4. Scope and Content of ABNJ IA

**Principles of Good Regulation**

1. **Effectiveness** – does the regulatory approach secure the desired policy outcome

2. **Mixed Regulation**. Most forms of regulation require a range of tools and options for their use – Flexibility

3. **Compatibility** – any regulatory options must be compatible with each other, and with existing regulatory regimes

4. **Less intervention** – regulation should be facilitative rather than coercive

5. **Scaled/Sequenced Regulation** – In a system which uses a range of techniques

6. **Efficiency** – is the intervention or regulatory approach cost effective (or indeed feasible). This reinforces less interventionist approaches

7. **Transparency** – legitimacy and knowing ‘terms of the deal’
6. Impact on ABNJ IA on Fisheries Law

• Tentative Conclusions
  1. Decentralised system favours retention of State control over activities
  2. Discussions indicate retention of RFMO in some capacity
  3. Governance Principles support RFMO/As in some form:
     a. Compatibility, instrument mix, effectiveness, scaled approaches (regionalism), efficiency...

• Main issues going forward
  1. Closing gaps in species/geographic coverage
  2. Inclusion of fisheries issues within other forums?
  3. Inclusion of other concerns in RFMO/As?
  4. Strengthening use of ABM and EIA in RFMO/As
  5. Oversight of regional approaches
  6. Learning from regional approaches – OSPAR/EU