

Designing Regulatory Options and Innovations for Tuna Fisheries in ABNJ

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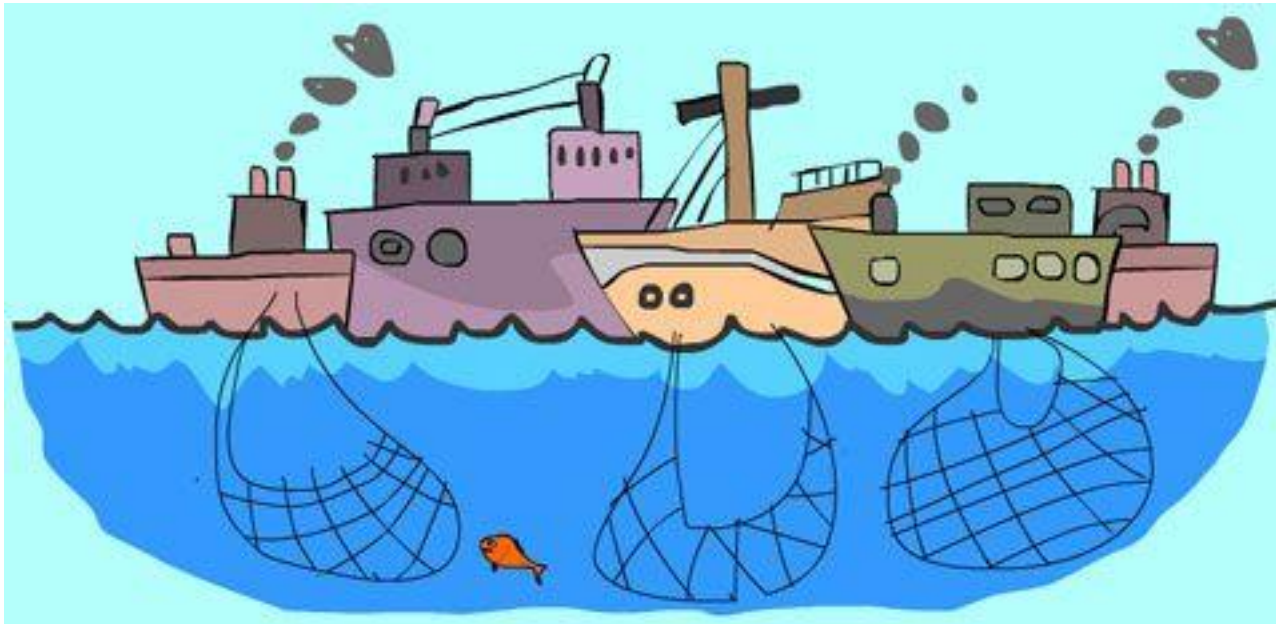
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Overview

1. Context
 2. Good regulatory design principles
 3. Case Study 1: International Law & ABNJ Agreement
 4. Case Study 2: ITQs
 5. Case Study 3: MSC Certification
 6. Discussion points
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Context: Managing Fisheries in ABNJ

- ABNJ – high seas and seabed
 - Nature of resource: ‘common property’ - common pool
 - Absence of centralised governance institution



Context: Managing Fisheries in ABNJ

- ABNJ – Challenges as for other fisheries
 - Complex ecosystem – limited knowledge
 - Destructive fishing
 - Overfishing
 - Increased Shipping
 - Climate change
 - Subsidies....

 - **Lack of exclusivity** in governance – it depends upon flag State and port State control, with coastal States influencing adjacent sea areas.
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Good regulatory design principles

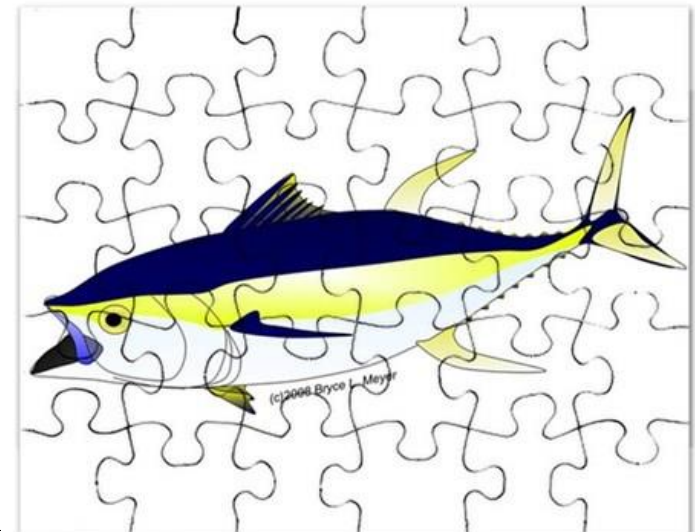
- **Overview of different schools of thought**
 - Baldwin and Cane – ‘Good/Legitimate Regulation’
 - Braithwaite – ‘Responsive Regulation’
 - Gunningham and Sinclair – ‘Smart Regulation’
 - Baldwin and Black – ‘Really Responsive Regulation’
 - **General observations**
 - Growth of pluralism and public/private mixes
 - Increasing complexity of regulatory theory and principles
 - Importance of context – hence design principles..
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Good regulatory design principles

1. Regulatory Objectives set
 2. Complementary Instrument Mix
 3. Less Interventionist Measures
 4. Sequencing/Scalability
 5. Empowering other actors
 6. Win-win scenarios (net-gain)
 7. Attitudinal fit
 8. Institutional fit
 9. Performance responsive
 10. Assess Impacts
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Complementarity

- There must be instrument fit and complementarity
 - With same legal or management system
 - Treaties...
 - Between different legal or management systems
 - ITQs?
- How do different instruments fit ?



Case Study 1: International Law & ABNJ Agreement

- International Fisheries Law – law between States
 - Key elements: UNCLOS 1982, Fish Stocks Agreement 1995, FAO Code of Conduct 1995
 - ‘ABNJ Agreement’ ?????
 - Unfinished agenda
 - Regulatory lag and governance gaps
 - Fisheries: Are they in or out?
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3. Case Study 1: International Law & ABNJ Agreement

- ‘Fisheries in or out? ... Political not legal issue
 - Fisheries should be **included**:
 1. Fishing is main threat to biodiversity
 2. Need for an integrated approach
 3. **As a minimum ABNJ Agreement will indirectly affect fisheries**
 - Fisheries should be **excluded** because an ABNJ Agreement must not should be interpreted and applied in a manner which would not undermine existing instruments, frameworks and bodies.
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Case Study 1: International Law & ABNJ Agreement

- Negotiations to date....
 - Section A: areas of convergence
 - Non-prejudice of rights under UNCLOS
 - List of 21 general principles
 - Management tools: ABM and EIA
 - Need for institutional framework/body
 - Section B: main areas of divergence:
 - CHM or Freedom of high seas
 - Precise nature of institutional body
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4. Case Study 2: ITQs

- **Individual transferable quotas**
 - Legally defined interest vested in individuals
 - Attributes of property – but creation of statute
 - Cap on quantity of fish-divided into quotas
 - Quotas are alienable, transferable, durable and secure – in varying degrees
 - Used in domestic fisheries. Future use in RFMBs? Largely untested.
 - Challenge of excludability...
 - Challenge of locating individual entitlements in international system
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4. Case Study 2: ITQs

- **ITQs regulatory qualities**

1. Encourage preservation of resource?
 2. Low intervention?
 3. Depend upon market and market orientated political systems
 4. Require strong institutional support
 5. Expand regulatory options to include private actors and remedies
 6. More effective if simply designed and controlled (security of expectation)
 7. May operate impersonally and at large scales
 8. Problem of externalities
 9. Tend to consolidate, and may become rigid
 10. Tensions with regulatory limits
 11. May limit knowledge (commerciality)
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Case Study 3: MSC Certification

- Covers 12% of marine catch
 - 3 Pillars: Sustainable Stocks, Minimizing Environmental Impact, and Effective Management
 - Includes assessment of regulatory compliance
 - Voluntary and private sector driven. User led-process
 - Fills potential governance gap in States
 - Improved sustainable harvesting and increased market value
 - Accountability of MSC process?
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Applying design principles – provisional assessment

Regulatory Principle	ABNJ Agreement	ITQ	Certification
1. Regulatory objectives	✓?	?	?
2. Complementary Instrument mix	✓?	✓	✓
3. Efficiency	X	✓	? ✓
4. Scalability	✓	✓?	✓
5. Empowering actors	X	✓	✓
6. Net gain	?	?	✓?
7. Attitudinal fit	?	? X	? ✓
8. Institutional fit	?	? X	✓
9. Performance responsive	X	✓ X	✓?
10. Assess Impacts	✓	? X	✓

5. Final Points

- Smart Design principles have intuitive appeal, and growing use.
 - Useful analytical tool.
 - Smart governance/management is possible, but needs more research
 - Lack of clear goals, multiple goals/values and regime complexity make it difficult to assess instrument combinations
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