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**THE IMPORTANCE OF THE EFFECTIVE IMPLEMENTATION OF  
THE 1982 UN CONVENTION ON  
THE LAW OF THE SEA,  
THE 1995 UN FISH STOCKS AGREEMENT AND  
THE ROLE OF THE UN GENERAL  
ASSEMBLY IN PROMOTING SUSTAINABLE FISHERIES**

**United Nations**

**Division for Ocean Affairs and the Law of the Sea**

**Office of Legal Affairs, United Nations**



**“The importance of the effective implementation of the 1982 UN Convention on the Law of the Sea, the 1995 UN Fish Stocks Agreement and the role of the UN General Assembly in promoting sustainable fisheries”**

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Summary

Sustainable fisheries have the potential to be a major contributor to sustainable development, as evidenced by their inclusion in the 2030 Agenda for Sustainable Development. However, the continuation of benefits from fisheries depends on their sustainability, which is being challenged by factors such as overfishing, illegal, unreported and unregulated fishing, destructive fishing practices and ecosystem degradation. The 1982 United Nations Convention on the Law of the Sea (“the Convention”) sets out the overarching international legal framework for all activities on the oceans and seas, including the conservation and sustainable use of living marine resources. It is complemented by the 1995 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 (“the Agreement” or “the United Nations Fish Stocks Agreement”), which sets out a comprehensive legal framework for the implementation of the provisions of the Convention that relate to the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks. Together, these two instruments form the base of a solid legal framework for the development of sustainable fisheries at all levels, which also includes a multitude of complementary international instruments at the global and regional levels. However, various challenges in the implementation of these instruments have hampered their overall effectiveness. The General Assembly, in its work on oceans and law of the sea and sustainable fisheries, has played an important role in promoting sustainable fisheries through the implementation of the Convention and the Agreement, as well as by developing policy and providing guidance at the global level. Trade initiatives relating to fish and fish products should aim to support the implementation of this legal and policy framework, and maintain consistency with the rights and obligations of States established therein.

**Introduction**

Given the contribution of oceans to sustainable development, and in particular the contribution of sustainable fisheries to poverty reduction, livelihoods, food security and ecosystems health and resilience, the conservation and sustainable use of marine living resources is firmly incorporated in the international community’s 2030 Agenda for Sustainable Development. Already, fish consumption impacts food security and nutrition, fishing provides livelihoods which can reduce poverty, and trade in fish and fish products contributes to local, regional and global economies. Fish continues to be one of the world’s

most traded commodities and the source of direct employment for tens of millions of people worldwide.

Yet the potential benefits of the world's capture fisheries are being threatened by a number of stressors to the sustainability of stocks, including overfishing, destructive fishing practices, ecosystem degradation and illegal, unreported and unregulated fishing (IUU fishing). In 2011, almost 30 percent of the world's fish stocks were fished at biologically unsustainable levels.<sup>1</sup> In addition, environmental stressors like climate change, ocean acidification, pollution and coastal development can negatively impact fish stocks by deteriorating the ecosystems they inhabit and depend upon.

Effective implementation of the international legal framework for oceans, as reflected in the Convention, and the one contained in the United Nations Fish Stocks Agreement for the conservation and management of straddling fish stocks and highly migratory fish stocks, is key to achieving sustainable fisheries. The General Assembly, through its annual resolutions on oceans and the law of the sea and sustainable fisheries, plays an important role in promoting this international legal regime, as well as further developing global policy on oceans.

### **The regime for sustainable fisheries in the Convention**

The Convention, often referred to as the “Constitution for the Oceans”, provides for a comprehensive legal framework for all activities in the oceans and seas, including fisheries. The Convention stipulates the extent of various maritime zones and the rights and obligations of States in these zones. In relation to fisheries, it provides for, inter alia, the sovereign rights of coastal States for the conservation and management of marine living resources in the exclusive economic zone (e.g. articles 56, 61 and 62) and the freedom of fishing on the high seas (e.g. articles 87 and 116).

Under the Convention, coastal States have sovereign rights over marine living resources within their exclusive economic zone (EEZ). These rights are accompanied by the responsibility for ensuring the long-term sustainability of these living marine resources. Pursuant to rights and obligations set out in Part V of the Convention, the coastal State is obligated to determine the allowable catch of the living resources in its EEZ (article 61), and its capacity to harvest those resources (article 62).

When a coastal State does not have the capacity to harvest the entire allowable catch of the living resources of the EEZ, it is required to give other States access to the surplus of the allowable catch, through agreements or other arrangements, having particular regard to the right of land-locked States (article 69) and the right of geographically disadvantaged States (article 70), especially in relation to developing States (article 62). In giving access to other States to its EEZ, the coastal State must take into account all relevant factors, including the significance of the living resources of the area to its economy and other national interests (article 62(3)).

Nationals of other States who fish in the EEZ are required to comply with the conservation measures established in the laws and regulations of the coastal State, which must be consistent with the Convention (article 62(4)). These laws and regulations shall be consistent with UNCLOS and may relate, inter alia, to regulating seasons and areas of fishing, the types, sizes and amount of gear, and the types, sizes and number of fishing vessels that may be used.

In exercising its sovereign rights to explore, exploit, conserve and manage the living resources in the EEZ, the coastal State may take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with these laws and regulations (article 73).

The Convention also requires States to take, or cooperate with other States in taking, measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas (article 117) and cooperate with each other in the conservation and management of living resources in the areas of the high seas (article 118).

In addition, the Convention has a number of provisions directly relevant to straddling fish stocks and highly migratory fish species. These provisions require the coastal State and the States fishing in the adjacent area in the high seas to seek to agree upon measures necessary for the conservation of straddling fish stocks, directly or through appropriate sub-regional or regional organizations (article 63(2)). Similarly, the Convention requires the coastal State and other States whose nationals fish in the region to cooperate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization of highly migratory species throughout the region (article 64). In this regard, it requires these States to cooperate in establishing appropriate international organizations in regions where they do not exist, and participate in their work.

Pursuant to a request by the United Nations Conference on Environment and Development in 1992, an implementing agreement to the Convention was developed to put into effect and expand upon these provisions – the 1995 United Nations Fish Stocks Agreement.

### **The significance and main elements of the Agreement**

Highly migratory fish stocks (such as tuna, swordfish and oceanic sharks) and straddling fish stocks (such as cod, halibut, pollock, jack mackerel and squid) are amongst the commercially most important marine capture fish stocks in the world.<sup>2</sup> They are also stocks which require international cooperation to effectively manage them, due to their cross-boundary nature. Thus, international cooperation through the effective implementation of applicable international law is critical to ensuring the long-term sustainability of such stocks, and consequently, the continuation of benefits accrued through international trade in such stocks.

The Agreement sets out a comprehensive legal framework for the implementation of those provisions of the Convention that relate to the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks. In particular, the Agreement gives effect to and elaborates on the duty to cooperate set out in the Convention, as enshrined in articles 63(2), 64 and 116 to 119.

It does this, *inter alia*, through the establishment of general principles for management, with specific provisions on the application of the precautionary and ecosystem approaches (articles 5 and 6 as well as Annex II); minimum standards for data collection and sharing (articles 5 and 14 as well as Annex I); mechanisms for compliance and enforcement of measures (articles 19-23); compatibility of conservation and management measures established for the high seas and those adopted for areas within national jurisdiction (article 7); and dispute settlement procedures (articles 27-32). The provisions on compliance and enforcement include an article that details measures that port States may take for the promotion of the effectiveness of conservation and management measures (article 23). The innovative

provisions of the Agreement serve to support and strengthen the regime set out in the Convention by providing a detailed framework for its implementation allowing the incorporation of robust and modern tools and management approaches in its implementation.

Regional fisheries management organizations and arrangements (RFMO/As) constitute the primary mechanism for cooperation between coastal States and high seas fishing States under the Agreement, as they have substantial responsibilities in relation to conservation and management of straddling and highly migratory fish stocks, as well as non-target and associated or dependent species. Thus, their effectiveness is at the heart of the legal framework established by the Agreement.

Importantly, the Agreement also recognizes the special requirements of developing States, including in the development of their own fisheries and in their participation in high seas fisheries for straddling and highly migratory fish stocks (articles 24-26).

### **Impact of the Agreement on the further development of international fisheries law and policy**

In the 20 years since its opening for signature, the Agreement has already had a considerable impact on the practice of States and RFMO/As, and has provided the impetus for the further development of international law and policy.

Notably, over this period, five new RFMO/As were established,<sup>3</sup> and some existing RFMO/As improved their performance through the revision of their constitutive instruments in line with the Agreement and the adoption of robust conservation and management measures.<sup>4</sup> Many of them have also completed performance reviews. Many of the provisions in the Agreement are also reflected in General Assembly resolutions on sustainable fisheries,<sup>5</sup> and have provided a benchmark for the development of new instruments by the FAO, such as the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing and the Voluntary Guidelines for Flag State Performance.

In addition, the relevance of the general principles of the Agreement to high seas fish stocks other than straddling and highly migratory fish stocks has been addressed by the Review Conference and the General Assembly, where the importance of such principles to the management of discrete high seas fish stocks has been recognized.<sup>6</sup>

The Review Conference convened pursuant to article 36 of the Agreement has also contributed to sustainable fisheries by adopting recommendations for the improved implementation of the Agreement in 2006 and 2010. These recommendations have stimulated concrete actions by States to improve the sustainability of high seas fisheries, including through the General Assembly, FAO and RFMO/As. Thus, the resumed Review Conference to be held in 2016 may provide another excellent opportunity for States parties and non-party States to cooperate to improve the governance of high seas fisheries and to consider the achievements and future implementation of the Agreement.

### **The role of the General Assembly in promoting sustainable fisheries**

The General Assembly annually considers and reviews developments relating to sustainable fisheries and ocean affairs and the law of the sea more generally, as the global institution

having the competence to undertake such a review. It plays an important role in promoting sustainable fisheries through its resolutions and processes.

Over the years, the General Assembly has played a central normative and policy-setting role in the field of oceans and the law of the sea, including sustainable fisheries, through its resolutions. In 1991, for example, it established a global moratorium on the use of large-scale pelagic drift-net fishing on the high seas. Resolution 49/116 of 19 December 1994, specifically addressed “[u]nauthorized fishing in zones of national jurisdiction and its impact on the living marine resources of the world's oceans and seas”. More recently, the General Assembly has undertaken a process to consider measures to address the adverse impacts of bottom fishing on vulnerable marine ecosystems and the long-term sustainability of deep sea fish stocks. The consideration of the issue by the General Assembly and the measures it has adopted have served as the basis for important actions to address this issue by States, RFMO/As and the FAO. For example, in 2008, the FAO adopted the International Guidelines for the Management of Deep-Sea Fisheries in the High Seas. At its seventieth session in 2016, the General Assembly will conduct a further review of the actions taken by States and RFMO/As, in order to ensure the implementation of the relevant provisions of its resolutions 64/72 and 66/68. Such review will be preceded by a two-day workshop to discuss implementation of the provisions of those resolutions relating to bottom fishing.

The General Assembly has also taken numerous actions to strengthen implementation of the Convention and the Agreement. In its most recent resolution on sustainable fisheries, resolution 69/109 of 9 December 2014, the General Assembly addressed the rights and duties of flag States and coastal States with respect to the conservation and management of marine living resources, including measures to address IUU fishing.

The resolutions have also included provisions related to trade in fish and fish products. For example, with regard to access agreements and arrangements, the General Assembly requested distant-water fishing nations, when negotiating with developing coastal States, to do so on an equitable and sustainable basis and to take into account the legitimate expectation of the developing coastal State to fully benefit from the sustainable use of the natural resources of the EEZ and to ensure that vessels flying their flag comply with the laws and regulations of the developing coastal States adopted in accordance with international law.

A number of General Assembly processes have also addressed sustainable fisheries, including the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea, which focused on IUU fishing in 2001, fisheries and their contribution to sustainable development in 2005 and the role of seafood in global food security in 2014. Another General Assembly process has recently led to the completion of the First Global Integrated Marine Assessment, also referred to as the “World Ocean Assessment” as part of the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socioeconomic Aspects.<sup>7</sup> This Assessment examines, inter alia, the status of the world’s fisheries, as well as their socioeconomic aspects, and can serve as a tool for informed decision-making at all levels.

The General Assembly has also adopted resolutions endorsing the outcomes of the major conferences on sustainable development, which have addressed sustainable fisheries and illegal, unreported and unregulated fishing. For example, General Assembly resolution 66/288 of 27 July 2012 endorsed the outcome document of the United Nations Conference on Sustainable Development, entitled “The future we want”. In the upcoming United Nations

summit for the adoption of the post-2015 development agenda from 25 to 27 September 2015, it will consider the draft outcome document, entitled “Transforming our world: the 2030 Agenda for Sustainable Development”, which includes the Sustainable Development Goals, most particularly Goal 14 “Conserve and sustainably use the oceans, seas and marine resources for sustainable development”.

### **Key action for achieving sustainable fisheries through the Convention, the Agreement and the General Assembly**

In light of the important role played by the Convention and the Agreement in the conservation and sustainable use of fish stocks, it is essential to continue to promote increased participation in, as well as more effective implementation of, these instruments. The General Assembly has repeatedly called on States to become parties to the Convention and the Agreement. It may be noted that twenty years since the opening for signature of the Agreement, the total number of Parties to the Agreement, including the European Union, is currently 82.

In this regard, it is important to promote a wider awareness and understanding of the provisions of both the Convention and the Agreement. The Division for Ocean Affairs and the Law of the Sea, as secretariat to the Convention and the Agreement, can play an important role in this regard, including in cooperation with FAO and RFMO/As. This can also contribute to the achievement of the Sustainable Development Goals, most particularly Goal 14.

However, participation must be followed by full and effective implementation of the Convention and the Agreement at the national, regional and global levels. One of the principal challenges in this regard has been the lack of capacity, particularly in developing States. Increasing capacity-building in ocean affairs and the law of the sea, and in fisheries in particular, should remain a priority for the international community. In this regard, it is important to maintain adequate funding for important trust funds, such as the Assistance Fund established under Part VII of the Agreement. Trade-related measures should seek to strengthen implementation of the existing international legal regime for international fisheries.

The General Assembly’s ability to examine various issues within ocean-related processes and to set global policy standards makes it the ideal forum to promote sustainable fisheries, which depends on international cooperation at the global, as well as the regional and subregional, levels. Moreover, it is the only body with the competence to examine ocean issues in an integrated, interdisciplinary and intersectoral manner at the global level, through its annual consideration and review of developments relating to ocean affairs and the law of the sea. In view of the inter-relations between all of the uses of the oceans and their impacts on other uses, the General Assembly’s role is vital in this regard.



## Conclusion

This is a pivotal time for the future health of the world's fisheries resources. Accordingly there is a need to ensure the effective implementation of the international legal framework for the conservation and sustainable use of living marine resources set out in the Convention and the Agreement. The General Assembly can play an important role in promoting such implementation through its resolutions, as well as by examining specific issues in its processes. Only fisheries that are truly sustainable can continue to contribute to international trade and development for many generations to come.

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<sup>1</sup> FAO, *State of World Fisheries and Aquaculture*, 2014, at p. 7.

<sup>2</sup> See FAO, *The State of World Fisheries and Aquaculture*, 2014, at p. 16.

<sup>3</sup> These are SPRFMO, SEAFO, NPFC, WCPFC, SIOFA.

<sup>4</sup> For example, NAFO, NEAFC and GFCM,

<sup>5</sup> The latest General Assembly resolution on sustainable fisheries is resolution 69/109 of 9 December 2014.

<sup>6</sup> See, e.g., General Assembly resolution 69/109, at paragraph 33; A/CONF.210/2006/15, Annex, at paras. 2 and 16.

<sup>7</sup> [http://www.un.org/depts/los/global\\_reporting/global\\_reporting.htm](http://www.un.org/depts/los/global_reporting/global_reporting.htm).