

# Some considerations from the international legal regime for sustainable fisheries



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Michele Ameri, UN/DOALOS



# Outline

- Policy overview
- Legal regime in for sustainable fisheries in the United Nations Convention on the Law of the Sea (UNCLOS)
- Legal regime in for sustainable fisheries in the *United Nations 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* (United Nations Fish Stocks Agreement)
- Other relevant fora and instruments

# 2030 Agenda for Sustainable Development

- SDG14 - Conserve and sustainably use the oceans, seas and marine resources for sustainable development
  - 14.2 - By 2020, sustainably manage and protect marine and coastal ecosystems to avoid significant adverse impacts, including by strengthening their resilience, and take action for their restoration in order to achieve healthy and productive oceans
  - 14.4 - By 2020, effectively regulate harvesting and end overfishing, illegal, unreported and unregulated fishing and destructive fishing practices and implement science-based management plans, in order to restore fish stocks in the shortest time feasible, at least to levels that can produce maximum sustainable yield as determined by their biological characteristics
  - By 2020, conserve at least 10 per cent of coastal and marine areas, consistent with national and international law and based on the best available scientific information



# 2030 Agenda for Sustainable Development

- 14.6 - By 2020, prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated fishing and refrain from introducing new such subsidies, recognizing that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the World Trade Organization fisheries subsidies negotiation
- 14.b - Provide access for small-scale artisanal fishers to marine resources and markets
- 14.c - Enhance the conservation and sustainable use of oceans and their resources by implementing international law as reflected in UNCLOS, which provides the legal framework for the conservation and sustainable use of oceans and their resources, as recalled in paragraph 158 of The Future We Want

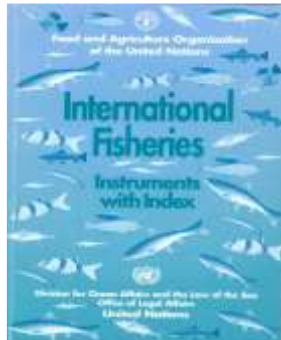
# General Assembly resolutions on sustainable fisheries

- Adopted on a yearly basis (Res. 75/89 of 8 December 2020 is latest)
- Provide key internationally agreed guidance to States regarding measures to achieve sustainable fisheries
- Cover broad range of topics on relation to fisheries, including for the implementation of relevant instruments
- Complemented by meetings of FAO Committee on Fisheries and related meetings

# UNCLOS and the United Nations Fish Stocks Agreement

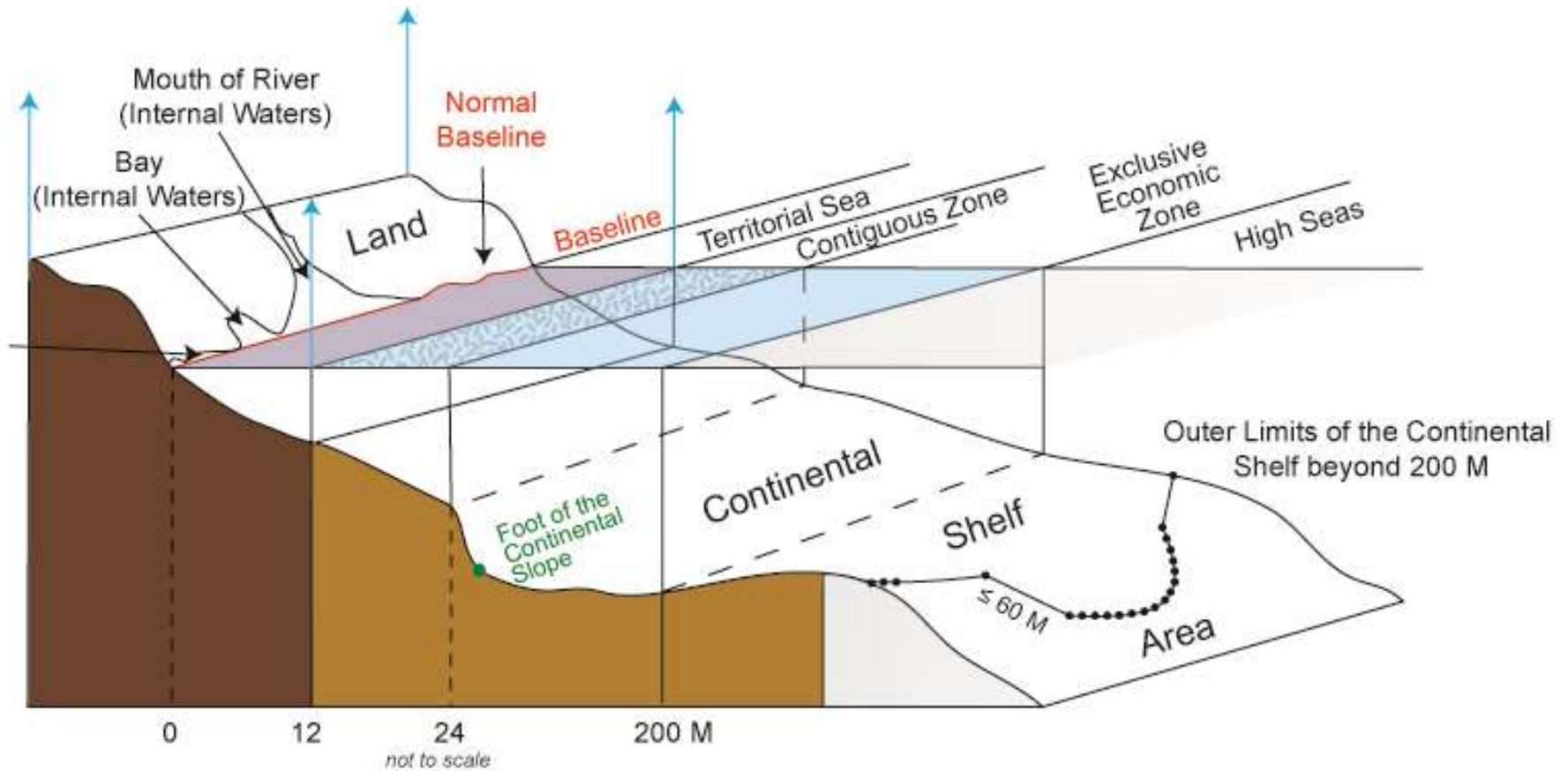


- UNCLOS = overarching legal regime for sustainable fisheries under international law



- United Nations Fish Stocks Agreement = detailed legal regime for straddling fish stocks and highly migratory fish stocks
- Complemented by other international instruments, rules and standards at the global and regional levels

# Maritime zones under UNCLOS



# Legal regime in UNCLOS – Territorial Sea

- In the territorial sea (up to 12 nm):



- Coastal State has sovereignty over marine living resources
- No fishing activities without coastal State consent
- Coastal State may issue licenses



# Territorial Sea – other States

- Ships flying flags of other States (foreign vessels)
  - Right of innocent passage (arts. 17 to 26)
    - Coastal State may adopt laws and regulations
    - Fishing is not innocent passage
  - Foreign ships shall comply with all laws and regulations in conformity with UNCLOS
  - Coastal State may take necessary steps to prevent passage that is not innocent

# Legal regime in UNCLOS - EEZ

- In the exclusive economic zone (up to 200 nm):



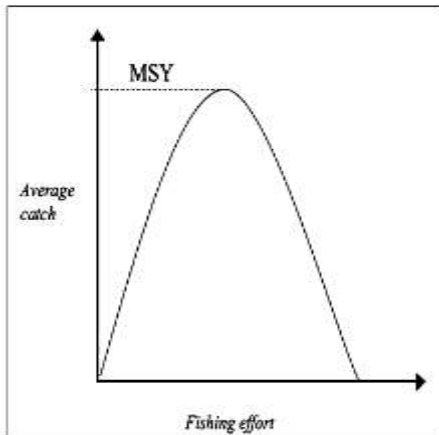
- Coastal State has sovereign rights over marine living resources
- Coastal State can adopt laws regulating fishing
  - ✓ Conservation and management
  - ✓ Enforcement

# Utilization and conservation

Coastal State has duty to conserve and manage marine living resources to promote “**optimum utilization**”

➤ Coastal State must determine the “**total allowable catch**” to maintain “**maximum sustainable yield**” (MSY)

➤ Requires scientific knowledge and technical expertise to effectively implement



FAO

# Article 61- Selected provisions

- The coastal State, taking into account the best scientific evidence available to it, shall ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation.
- Such measures shall also be designed to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the economic needs of coastal fishing communities and the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global.
- In taking such measures the coastal State shall take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened.
- Available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks shall be contributed and exchanged on a regular basis through competent international organizations, whether subregional, regional or global, where appropriate and with participation by all States concerned, including States whose nationals are allowed to fish in the exclusive economic zone.

# Access by other States



➤ Other States can access the surplus of the total allowable catch

➤ Conditions set by coastal State (e.g. through licensing regime)



➤ Particular regard given to rights of landlocked States and geographically disadvantaged States, especially developing States

# Enforcement against foreign vessels in the EEZ



- Foreign ships must comply with coastal State fisheries laws and regulations
- The coastal State can enforce against violators
- Penalties may not include imprisonment unless an agreement exists, and no corporal punishment
- Prompt release of fishing vessels required

# Legal regime in UNCLOS – High Seas

- Qualified freedom to fish
- Duty to cooperate in conservation and management of high seas stocks
- Duty to adopt measures for conservation of high seas marine living resources

# Enforcement on the high seas

- Flag States
- States of nationality
- Regional fisheries management organizations and arrangements (RFMO/As)
- Port States



# IUU Fishing

**IUU Fishing includes three categories of activities – illegal fishing, unreported fishing and unregulated fishing**

## **3.1 Illegal fishing refers to activities:**

- 3.1.1 conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations; 3.1.2 conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or 3.1.3 in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.

## **3.2 Unreported fishing refers to fishing activities:**

- 3.2.1 which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or 3.2.2 undertaken in the area of competence of a relevant regional fisheries management organization which have not been reported or have been misreported, in contravention of the reporting procedures of that organization.

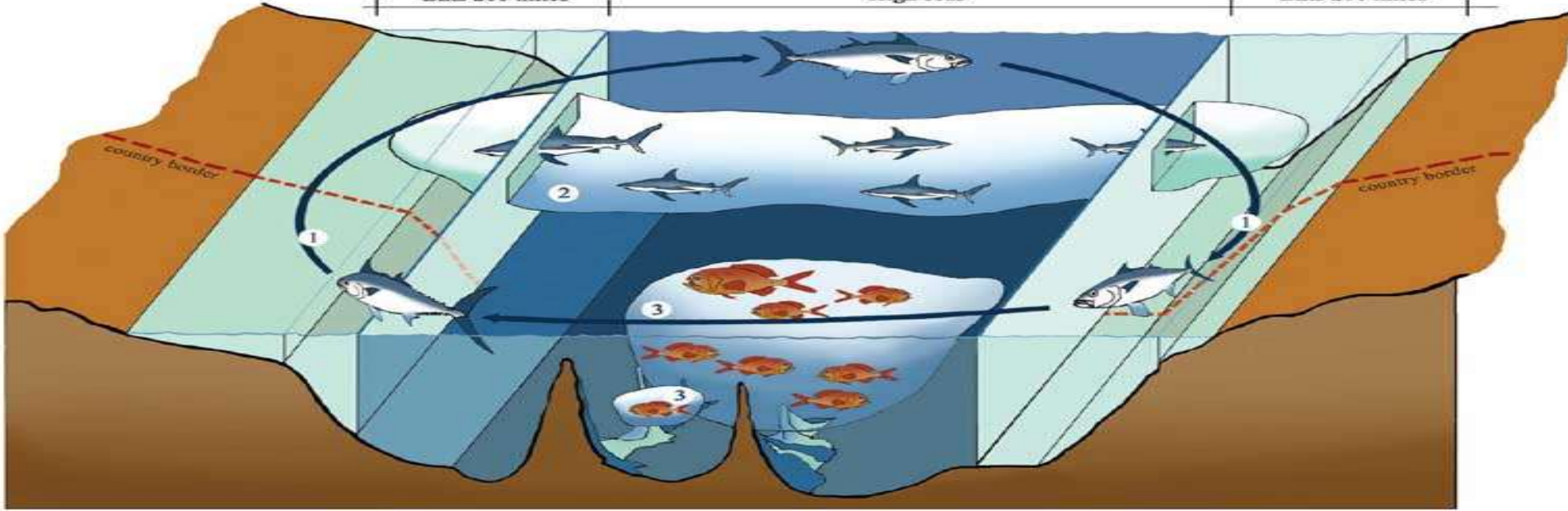
## **3.3 Unregulated fishing refers to fishing activities:**

- 3.3.1 in the area of application of a relevant regional fisheries management organization that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization; or 3.3.2 in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.

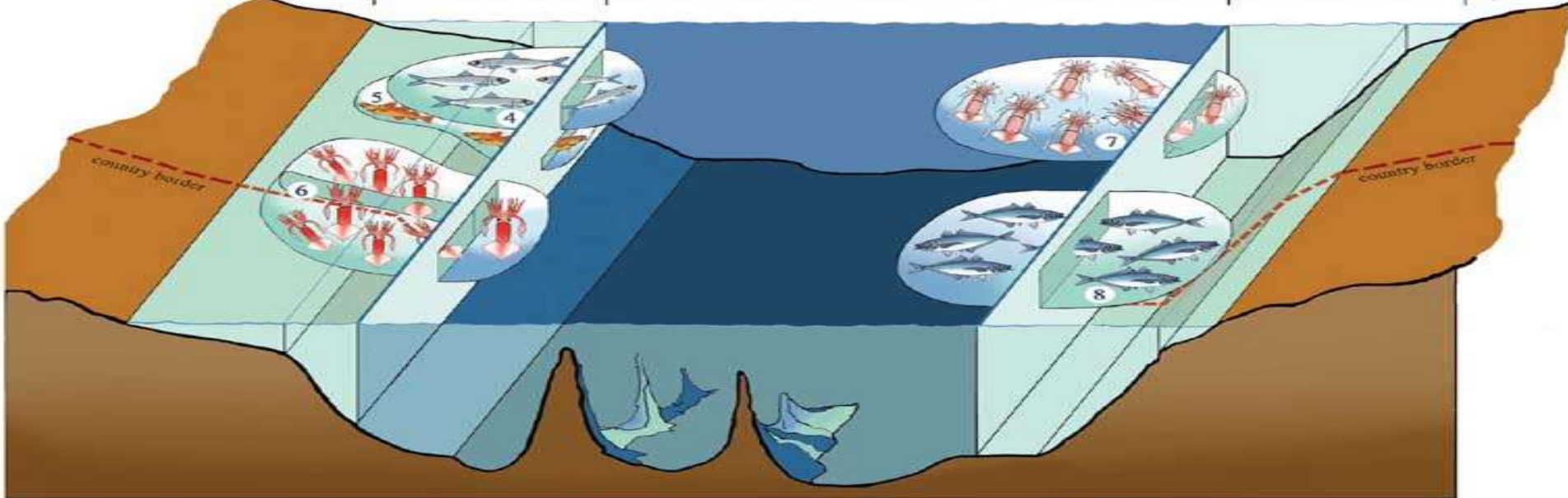
# Cooperation for specific stocks

- Highly migratory fish stocks
- Straddling fish stocks
- Catadromous fish stocks
- Anadromous fish stocks
- Marine mammals

Neritic	Oceanic		Neritic
Shelf	Slope	Deep sea	Slope Shelf
EEZ 200 miles	High seas		EEZ 200 miles

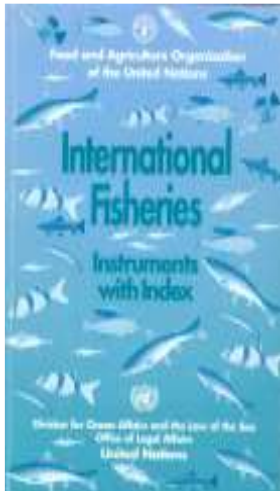


Neritic	Oceanic		Neritic
Shelf	Slope	Deep sea	Slope Shelf
EEZ 200 miles	High seas		EEZ 200 miles



# 1995 UN Fish Stocks Agreement

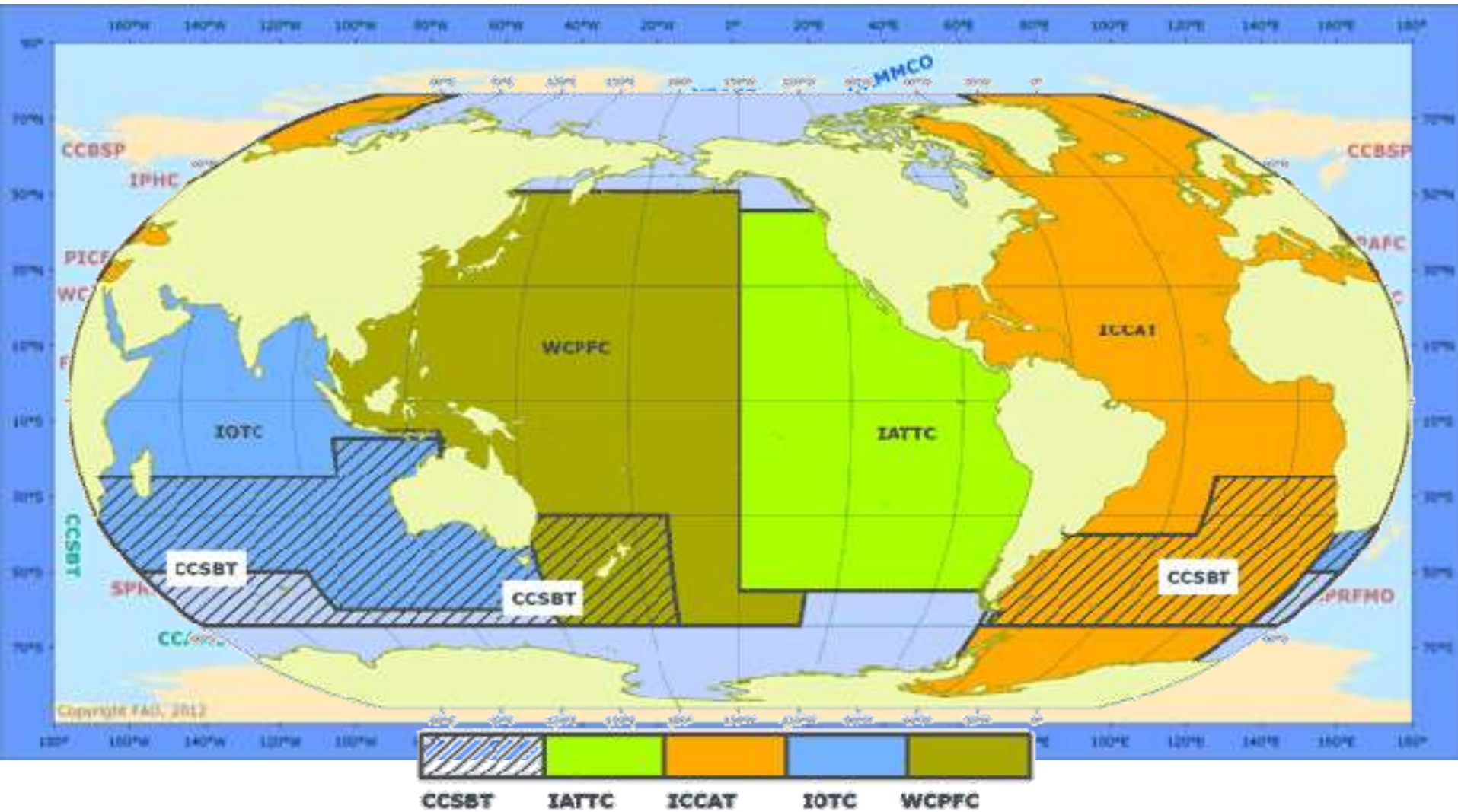
- Legal framework for the conservation and management of straddling fish stocks and highly migratory fish stocks on the high seas areas
- Builds on provisions in UNCLOS
- 91 States Parties (including Belize)
- Voluntary trust fund to assist developing States Parties



# Basic Provisions of UNFSA

- Conservation and management:
  - Promote optimum utilization
  - Measures based on the best scientific evidence available
  - Precautionary and ecosystem approaches
  - Protection of marine biodiversity
- Compatibility of measures
- Duty to cooperate, establishment of RFMOs and access to fisheries
- Cooperative enforcement schemes
- Special requirements of developing States
- Assigns RFMO/As a key role in implementation

# RFMO/As



# Other relevant fora and instruments

- Food and Agriculture Organization of the United Nations
  - Treaties and non-binding international rules
- Biodiversity treaties, such as
  - Convention on Biological Diversity
  - Convention on International Trade in Endangered Species of Wild Fauna and Flora
- General Assembly resolutions
- Regional fisheries bodies treaties and regulations