

# The fisheries regulatory framework

## At the multilateral level

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## Why do we have a mandate on SDG14 (Targets 4, 6, b)



Environmental problem:  
Damage to marine ecosystems  
Exhaustion of marine resources

“too many boats chasing too few fish” + IUU fishing



Economic / trade problem – Who captures the scarce and declining resource?

(The one with or without the subsidy?)



Difficulty of competing for access to the resource with the treasuries of developed countries



Strong competition for access to resources and markets (small-scale fishermen)

# The framework

**Fragmented & Heterogeneous  
hard law / soft law**

**Fisheries Instruments  
non specific / specific**

# The fisheries regulatory framework

At the multilateral level

**UN Convention on the Law of the Sea**

**Rio Declaration  
+  
Agenda 21**

**Code of Conduct for Responsible Fisheries**

**Compliance Agreement**

**WSSD  
+  
RIO + 20**

**IPOAs**

Sharks 1999  
Capacity 1999  
IUU 2001

**International Guidelines**

e.g : Guidelines for securing sustainable small-scale Fisheries

**Strategies**

e.g: Status & Trends on Capture Fisheries

**Port State Measures**

Model Scheme 2005 + 2009 Agreement

# The fisheries regulatory framework

## The instruments

**What are the instruments?  
What are their implications for sustainable fisheries  
management?**

# UN Convention on the Law of the Sea (UNCLOS) 1982



The fundamental Legal  
framework governing the  
use of the oceans and seas

## Enforcability

↔ binding  
international agreement



- freedom of fishing
- freedom of navigation on the high seas,
- states that these freedoms are subject to restrictions.
- stipulates that coastal States and fishing flag States have a duty to co-operate on conservation and management
- specifies that flag States have a right to exercise jurisdiction over their vessels anywhere (the high seas) + control the activities of vessels flagged by them.

# UN Fish Stocks Agreement (UNFSA)



1995

**Agreement for the  
Implementation of the Provisions  
of UNCLOS relating to the  
Conservation and Management  
of Straddling Fish Stocks and  
Highly Migratory Fish Stocks**

## Enforcability

↔ binding  
international agreement

- Requires cooperation for the conservation of straddling and highly migratory fish stocks
- Requires the application of precautionary approach by setting limit reference points for MSY
- RFMOs are encouraged as a means of fulfilling the duty of States to co-operate

# FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas



1993

**Provides an instrument for countries to take effective action, consistent with international law, to ensure compliance with applicable international conservation and management measures for living marine resources of the high seas**

## Enforcability

 **binding**  
international agreement



- Seeks to strengthen 'flag-state responsibility' and deter 're-flagging' practices

- Requires the maintenance of authorization and recording system for high seas fishing vessels



# Port State Measures Agreement

2009



To prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing through the implementation of robust port State measures

## Enforcability

↔ binding international agreement



- Enables countries to close their ports to illicit fishing products
- Allows port authorities to require vessel information, fishing permits and undertake verification

**Convention on  
International  
Trade in  
Endangered  
Species of Wild  
Fauna and Flora  
1973**



**Ensuring that international  
trade in specimens of wild  
animals and plants does not  
endanger their survival**

## **Enforcability**

 **binding**  
international agreement



## **Appendix II species**

**Controlled trade that is not  
detrimental to the survival of  
the species**

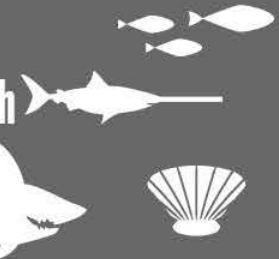
**Sturgeon**

**Paddlefish species**

**Caribbean queen conch**

**Whale shark**

**basking shark**



# Code of conduct of responsible fisheries

1995



**The Code of Conduct is a voluntary instrument, although parts of it are based on relevant sections of UNCLOS**

## Enforcability



Non-binding  
international agreement

Codes & guidelines



Establishes principles, in accordance with the relevant rules of international law, for responsible fishing and fisheries activities, taking into account all their relevant biological, technological, economic, social, environmental and commercial aspects.

# IPOA for the management of fishing capacity

1999



**Efficient, equitable and transparent management of fishing capacity.**

## Enforcability

 Non-binding  
Plans of Action

- Seeks to prevent or eliminate excess fishing capacity and should ensure that levels of fishing effort are commensurate with sustainable use of fishery resources

- Assessment and monitoring of fishing capacity , plan of actions, commensurate efforts.

- Progressively reduce subsidies

# IPOA to fight and deter IUU Fishing 2001



To prevent, deter and eliminate IUU fishing by providing all States with comprehensive, effective and transparent measures by which to act, including through appropriate regional fisheries management organizations established in accordance with international law.

## Enforcability

 Non-binding  
Plans of Action

### Measures:

- National action plans
- Port measures
- Coastal states measures
- Market related measures

# The 2030 Agenda for Sustainable Development 2015



## Target 6

By 2020, prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to IUU 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 ...”

## Enforcability



Non-binding  
Declaration



- Concept of “sustainable development”

- Recognition of the “special situation and needs of developing countries”

- The ecosystem-based approach to fisheries and aquaculture  
At the institutional level (e.g United Nations, ICP)

# FAO-UNEP- UNCTAD joint statement to address subsidies that contribute to overcapacity, overfishing and IUU fishing



2016

**OPEN**

For additional expressions of  
support.

Calls on Member States to  
address certain subsidies  
that contribute to  
overcapacity, overfishing  
and IUU fishing.



Non- binding  
Statement



**+ 15  
NGOs**

The roadmap as 4 point plan:

- Require countries to provide information on subsidies they are providing.
- Prohibit those subsidies that contribute to overfishing and IUU
- Introduce new policies tools to deter the introduction of new harmful subsidies.
- Provide special and differential treatment to developing countries

# The fisheries regulatory framework

## ENFORCEABILITY TO ADDRESS FISHERIES SUBSIDIES

**Binding? Non-Binding?**  
**Targeted?**



**ENFORCEABILITY**

**BINDING**

**Unclear and  
prone to  
disputes**

Effective for the  
purposes of  
SDG 14  
target 14.6



**NON-BINDING**

Ineffective for  
the purposes of  
SDG 14  
target 14.6

**wishful**

NO REFERENCE to  
SUBSIDIES

DISCIPLINES  
ON SUBSIDIES

DISCIPLINES ON  
FISHERIES  
SUBSIDIES

**FISHERIES SUBSIDIES SPECIFICITY**

**Enforcability**



binding



References to Fish Subsidies



No specific rules on fish subsidies

**INSTRUMENTS**

INSTRUMENTS	Availability of dispute settlement or arbitration		Non-availability of dispute settlement mechanism		Remedial actions
	Trade Dispute Resolution System	Binding resolution but not retaliatory measures	Consultations, conciliation & mediation	Monitoring, reporting and information	Unilateral measures under a multilateral umbrella
<b>WTO Agreements</b>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Antidumping & Countervailing Duties
<b>TPP *</b>	<input checked="" type="checkbox"/>	In some chapters	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
<b>UNCLOS &amp; UN FSA</b>		Compulsory jurisdiction with few exceptions under ITLOS, ICJ	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
<b>Port State Measures Agreement</b>		Under ITLOS, ICJ or arbitration but with Parties consent)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Inspections access ports...
<b>FAO Compliance Agreement</b>		Under ITLOS, ICJ or arbitration but with Parties consent)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
<b>CITES</b>		PCA Hague or arbitration with Parties consent)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Bans Export-import Permits/ traceability

\*Not yet in force

**Enforcability**



Non-binding



References to Fish Subsidies



No specific rules on fish subsidies

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Code of conduct of responsible Fisheries				✓	
IPOA IUU IPOA on Fish. capacity				✓	National plans & records Assessment
WTO Ministerial Declarations (2000-2005)				✓	
2030 Agenda				✓	

# CONCLUSIONS

- We need to consider the EXISTING regulatory framework for fisheries in trade and fish subsidies negotiations
- While not all agreements dispose of trade retaliatory measures to ensure compliance there are other measures that can have significant effect
- There is a clear gap in the existing framework for a specific and enforceable solution for fisheries subsidies
- Cooperation among relevant agencies is essential
- WTO MC11 (December 2017) provides an important opportunity to address this issue



# THANK YOU