Allocation of Fishing Rights: Principles and Alternative Procedures

Challenges of the Changing Arctic: Continental Shelf, Navigation and Fisheries

Panel VII: Regional Fisheries Management: Agreements on Allocation of Shared Fish Stocks

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Introduction

Conservation and allocation

Shared/transboundary/common resources:
• Between coastal States
• Between coastal States/high seas
• high seas

Fairness and equity
Straddling and highly migratory fish stocks
How to reconcile different regimes?

General obligation to cooperate:

• SFS: «… seek to agree on conservation measures … in the adjacent area», », LOS Convention Article 63(2)

• HMFS:“…shall cooperate …ensuring conservation and …optimum utilisation…both within and beyond [the EEZ]”, LOS Convention Article 64(1)

Relationship between the EEZ and the high seas management of the stock:

• Compatible conservation measures, UNFSA Article 7:
  ▪ Distribution of the stock (zonal attachment)
  ▪ Biological characteristics and geographical particulars
  ▪ Historical/traditional fisheries
  ▪ Dependence on fishing on the stock

FAO: Atlantic bluefin tuna
High seas fisheries
Access and allocation

Right of all states to fish, LOS Convention, LOS Convention Article 116:

• Obligation to cooperate on conservation and management, LOS Convention Article 118

• Obligation not to discriminate on the basis of nationality, LOS Convention Article 119(3)

Exclusive competence of the RFMO:

• Access to regulated fisheries for members and non-members committed to apply the measures of the RFMO, UNFSA, Article 8(4)

• The RFMO is inter alia tasked to allocate fishing rights and accommodate newcomers, UNFSA Article 10(b) and (i)

Principles of allocation, UNFSA Article 11:

• State of stock/level of harvesting
• Historic fishery
• Contribution to conservation (scientific research, conservation)
• Needs (developing states, coastal states and coastal communities)

Room for newcomers?
Practicing the principles of allocation

Principles included in new or revised constituent treaties or decisions

Included, but operationalised?

- Lack of formula, no allocation or uncertainty as to how to allocate
- Accommodating new entrants
Alternative procedures

• Operationalising the principles through long-term arrangements

• Decision-making procedures

• Dispute settlement procedures
Summing up

• Inherent weaknesses of shared or common natural resources

• Transferability of rights, an alternative?