RFMOs and the Development of High Seas Fisheries Regulations

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Fishing

• One of the Six Freedoms of the High Seas

• It becomes “OLYMPIC FISHING”!
No Fish by 2050

~Science (Nov. 2006)~

* Enjoy the next 50 years of aquatic cuisine, for that might be all we have left.
REASONS:

- Too many vessels chasing too little fish
- Overfishing will cause the result of biosphere collapse
- Even worse: IUU might be the main cause to overfishing
- IUU fishing represents a major loss of revenue, which worth between $10bn and $23.5bn per year
How to deter or eliminate IUU?

Prevent, Deter and Combat IUU

- No Transshipment
- VMS
- Quota
- Licence/Permit
- Fishing Area
- On-Board Observer
- Fishing Season
International Instruments to Combat IUU

Compliance Agreement

- UNCLOS
- CoC on Respnn. Fisheries
- UNFSA

IPOA-IUU

- 1982
- 1993
- 1995
- 2001
Agreement on PSM to Prevent, Deter and Eliminate IUU Fishing

2006

2009

WCPFC Boarding and Inspection Procedures
What is WCPFC?

**WCPFC**: Western and Central Pacific Fisheries Commission

**Established**: 19 June 2004

**Members (25)**:

Australia, China, Canada, Cook Islands, European Union, Federated States of Micronesia, Fiji, France, Japan, Kiribati, Korea, Republic of Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Philippines, Samoa, Solomon Islands, Chinese Taipei, Tonga, Tuvalu, United States of America, Vanuatu
Convention Area of the WCPFC
UNFSA, Art. 21(1): In any high seas area covered by a RFMO, a State Party may board and inspect fishing vessels flying the flag of another State Party...

UNFSA, Art. 21(2): States shall establish, through RFMO, procedures for boarding and inspection ... any subsequent enforcement action shall be conducted in accordance with such procedures.
Practices in the WCPFC Boarding and Inspection Procedure
WCPFC Convention
Article 26: establish B&I procedures in the Convention area; clearly marked and identifiable as being on government service and authorized

WCPFC B & I Procedure
5. Each Contracting Party may ... carry out boarding and inspection on the high seas
6. Also apply between a Contracting Party and a Fishing Entity
7. ensure that vessels flying its flag accept B&I
* WCPFC High Seas Boarding and Inspection Register
* List of Authorities of the Inspection Vessel
* Standardized Multi-Language Questionnaire
* Authorities of the Fishing Vessel
* Inspection personnel identity card
Would such procedure be accepted universally?

- WCPFC: 1st RFMO implements B&I
- SPRFMO: in its Convention, UNFSA Arts. 21 and 22
- IOTC: through Informal Working Group
- ICCAT: through recommendation
Observations on B&I

* A challenge to state jurisdiction? Or is it a limited universal jurisdiction through agreed arrangement among parties concerned?

* A challenge to the “flag state” principle on the high seas in customary international law?
International law generally recognizes that a State has full sovereignty and jurisdiction with respect to ports in its territory.
Port State Measures (PSM) are requirements established or interventions undertaken by port states which a foreign fishing vessel must comply with or is subjected to as a condition for port entry or use of ports within the port state.
PSM Agreement

National PSM would typically include:

* requirements related to prior notification of port entry,
* use of designated ports, restrictions on port entry and landing/transhipment of fish,
* restrictions on supplies and services, documentation requirements and port inspections,
* and related measures, such as IUU vessel listing, trade-related measures and sanctions
* In case a port State has clear evidence that a vessel having been granted access to its ports has engaged in IUU fishing activity, the port State shall not allow the vessel to land or transship fish in its ports, and should report the matter to the flag State of the vessel.
PSM Agreement

- PSM Agreement adopted on 2009/11/22
- It needs 25 ratification, acceptance, approval or accession to make PSM Agreement to be in force
- This number was reached on 6 May 2016 (Dominica, Thailand, Tonga, Vanuatu)
- PSM Agreement thus entered into force on 2016/06/05.
In order to make PSM Agreement effective and efficient, it is necessary to enforce it uniformly in different ocean areas.

RFMO is the best player in dealing with such action.
Enforcement Capacity Building

• Coastal states should be equipped with enough facilities so that it is capable of accomplishing the goal
• Practices: Designated Ports system
Observations on B&I

- Support developing countries
- Enforcement capacity building
- Need a stronger legal binding instrument
- Need a stronger cooperation among RFMOs
CONCLUSION

* RFMOs sufficient to combat IUU?
* New measures of combating IUU creates new issues?
  * Erosion on Flag State Jurisdiction?
  * Conflict of Jurisdiction in the Designated Ports system?
THANK YOU

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