The Legal Framework for Central Arctic Ocean Fisheries

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The General Legal Framework for the Central Arctic Ocean

- The Central Arctic Ocean is subject to the same global legal framework as other ocean areas.
- There is therefore not a legal vacuum in this area as is sometimes maintained.
- Seven of eight Member States of the Arctic Council, Canada, Denmark (Greenland), Finland, Iceland, Norway, Russia and Sweden, are Parties to the Convention.
- The United States is not a Party but recognizes most of the provisions of the Convention as customary international law.
- The EU and its Member States, China, Japan and South Korea are all Parties to the Convention.
The Law of the Sea Convention

- The Law of the Sea Convention includes many provisions that are of practical importance in the Central Arctic Ocean, for example on
  - maritime delimitation
  - determination of the outer limits of the continental shelf
  - navigational rights
  - ice-covered areas
- As regards shipping and protection of the marine environment, the general provisions of the Convention are complemented by specialized agreements, adopted, in particular, by the IMO
The Legal Framework for Fisheries in the Central Arctic Ocean

**EEZ fisheries:**
- Part V of the Law of the Sea Convention provides the legal framework

**High seas fisheries:**
- The 1995 UN Fish Stocks Agreement complements the general and vague provisions of the Law of the Sea Convention on high seas fisheries
- The Agreement strengthens the legal framework for conservation and management of straddling and highly migratory fish stocks by regional fisheries management organizations (RFMOs)
- All eight Member States of the Arctic Council are Parties to the Agreement
- The EU and its Member States are also Parties, as well as Japan and South Korea
- China has signed the Agreement but has not ratified it
Status of Fisheries in the Central Arctic Ocean

- The Central Arctic Ocean is characterized by a lack of knowledge on fish stocks and ecosystems which is required for science-based and ecosystem-based fisheries management.
- There is also scientific uncertainty as to how fish populations will respond to changing water temperatures and ice conditions.
- Within the EEZs in the Central Arctic Ocean, there are currently mainly small-scale subsistence fisheries and no significant commercial fisheries.
- In 2009, the United States prohibited commercial fishing in US federal waters north of Alaska.
Status of Fisheries in the Central Arctic Ocean

- No fisheries have yet taken place in the high seas portion of the Central Arctic Ocean due to the constant presence of sea ice and limited amount of fish in the area.
- However, with the ocean warming and ice melting, commercially attractive species may move northward in the near future.
- In addition, species indigenous to this area may be considered commercially attractive once they become accessible.
- There are different views on whether, in the short term, abundance of fish stocks in the area will allow for commercially viable fisheries.
- Nevertheless, it is important that relevant States react to these changing environmental circumstances in good time.
- Most of the high seas area in question is not covered by any RFMO.
- Only a small part north of Greenland and Svalbard is covered by the North East Atlantic Fisheries Commission (NEAFC).
Relevant Provisions of the UN Fish Stocks Agreement

- The UN Fish Stocks Agreement provides the legal framework for possible future fisheries in the high seas area of the Central Arctic Ocean.
- The Agreement contains a number of provisions that are particularly relevant for this area, for example regarding the establishment and functions of RFMOs and the precautionary approach to fisheries management.
The Objective of the UN Fish Stocks Agreement

- According to article 2 of the UN Fish Stocks Agreement, its objective is to “ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through effective implementation of the relevant provisions of the Convention”
- This provision, as well as article 119 of the Law of the Sea Convention, makes it clear that the resources in question shall, whenever possible, be conserved and sustainably used, and not protected for other purposes
Establishment of an RFMO

- According to article 8 of the UN Fish Stocks Agreement, relevant coastal States and States fishing on the high seas shall cooperate to establish a regional fisheries management organization where none exists.
- States having a “real interest” in the fisheries concerned may become members of such an RFMO without any discrimination.
- Under normal circumstances, two categories of States would probably be considered to have a real interest: coastal States (even if they are not fishing for the stocks in question) and States fishing for the stocks on the high seas.
- In the special case of the high seas area of the Central Arctic Ocean, where no fisheries have yet taken place and there is great uncertainty as to how fish stocks in the Arctic region will respond to changing environmental circumstances, there are arguments for interpreting the term “real interest” broader and for being inclusive rather than exclusive.
Establishment of an RFMO

- States fishing for a stock on the high seas and the relevant coastal States shall give effect to their duty to cooperate by becoming members of such RFMO or by agreeing to apply the conservation and management measures established by such RFMO.
- If a State does neither of the two, it shall not have access to the fishery resources to which the measures apply – it is with other words denied the freedom to fish for the relevant stocks on the high seas.
- Within RFMOs, Member States typically agree on the total allowable catch (TAC) for relevant fish stocks and the allocation of quotas.
- Possible conservation and management measures also include the establishment of marine protected areas (MPAs).
Establishment of an RFMO

- Before possible fisheries take place in the uncovered high seas area of the Central Arctic Ocean, the area should be covered either by existing RFMOs or a new RFMO.
- It is probably not realistic to extend the mandate of either the North East Atlantic Fisheries Commission (NEAFC) or the North Atlantic Fisheries Organization (NAFO) to cover the area in question.
- Therefore, a new RFMO for that area should be established prior to the commencement of any fisheries in the area.
- In the meantime, less formal cooperation between the relevant parties can be envisaged, possibly focusing on preliminary measures.
- In the view of the need for cost-effectiveness, a regional fisheries management arrangement (RFMA), which is also covered by the UN Fish Stocks Agreement, could be an appropriate option.
The Precautionary Approach

- Article 6 of the UN Fish Stocks Agreement provides for the precautionary approach to the management of straddling and highly migratory fish stocks.
- Accordingly, States shall be more cautious when information is uncertain, unreliable or inadequate.
- The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures.
- For new or exploratory fisheries, States shall adopt as soon as possible cautious conservation and management measures, including catch limits, which shall remain in force until sufficient data are available.
- Such catch limits may be very low, even zero.
- The precautionary approach is particularly relevant for the high seas area of the Central Arctic Ocean in light of the limited scientific knowledge available.
Other Relevant Provisions of the UN Fish Stocks Agreement

- Flag State obligations (articles 18-19)
- Regional cooperation in enforcement (articles 21-22)
- Port State measures (article 23)
  - See also the 2009 FAO Port State Measures Agreement
- Non-Parties (article 33)
Cooperation between Relevant States

- Five States, Canada, Denmark (Greenland), Norway, Russia and the United States, have in recent years held consultations on future fisheries in the high seas portion of the Central Arctic Ocean.
- These States have been developing a non-binding declaration which is expected to be signed very soon.
- The declaration will have two main elements:
  - Promotion of scientific research to improve understanding of the living marine resources in the area and their ecosystems.
  - Development of interim measures to deter unregulated fishing in the area in the future.
- There has been some criticism of the “exclusive club of five” and the classification of coastal States.
Cooperation between Relevant States

• In any event, following the signing of the declaration, it is expected that a meeting will be convened with the participation of those five States and other parties that have expressed an interest in the topic, i.e. Iceland, China, Japan, South Korea and the EU

• It is anticipated that the parties will begin developing a text of a legally binding agreement on the issue

• This process would probably take place outside the framework of any existing forum, such as the Arctic Council
Concluding Remarks

- In order that the cooperative process on future fisheries in the high seas area of the Central Arctic Ocean will be successful, it is imperative that it be inclusive rather than exclusive and that all parties have an equal status in the consultations.

- Furthermore, it is important that any resulting documents be fully in accordance with the applicable legal framework, in particular the Law of the Sea Convention and the UN Fish Stocks Agreement, and that rights and duties of States provided therein be fully respected.

- And, finally, there are strong arguments for taking action sooner rather than later – it is often easier to find the political will to conclude an agreement before competing interests arise and public opinion is engaged.