Conservation of Marine Living Resources in the Central Arctic Ocean: Some legal issues

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OUTLINE

- Arctic fish and fisheries
- RFMO/As practice in the region
- The practice of AC and A5
- Applicable governance rules and principles for CAO
- Legal issues:
  - Conservation approach: bilateralism v regionalism
  - The legality of the interim measure, unregulated fishing
  - Fisheries scientific research v MSR
Arctic fish and Fisheries

• Diadromous fishes and Marine mammals no included;

• 2013 ABA Report:
  – 250 marine fish species from Arctic waters
  – 633 known fish species in AOAS:
  – 10.6% of the bony fishes being considered genuinely Arctic and 72.2% boreal;
• 2013 ABA Report (cont.)
  – 385 species in the Bering Sea
  – 204 species in the Norwegian Sea
  – 153 species in the Barents Sea
  – 13-87 species recorded in AO and the Arctic Shelf

Number of stocks (species) harvested

Jørgen S. Christiansen et al, 2014
Fishing Vessels Activities (AMSA 2009)

http://arcticbiodiversity.is/
Arctic sea ice maximum reached lowest extent on record

NSIDC
Sea Ice Extent - Sept 16, 2012

International Waters of the Central Arctic Ocean

40% Open Water

0 500 1,000
Kilometers

Sea Ice Data: www.nps.gov/bhtn/cryosphere/index.html
## Evaluation of candidate species for moving to the Arctic Ocean

<table>
<thead>
<tr>
<th>Potential (6)</th>
<th>High potential (6)</th>
<th>Low potential (5)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Greenland halibut</td>
<td>Greenland halibut (<em>Reinhardtius hippoglossoides</em>), Atlanto-scandic herring (<em>Clupea harengus</em>), Capelin (<em>Mallotus villosus</em>), Yellowfin sole (<em>Limanda aspera</em>), Alaska plaice (<em>Pleuronectes quadrituberculatus</em>), Other elasmobranch species</td>
<td></td>
</tr>
</tbody>
</table>

Anne Babcock Hollowed, et al, 2013
Hypothesized expansion of the distribution area of beaked redfish

Anne Babcock Hollowed, et al, 2013
Response to seawater temperature trend

Hollowed, A. B. and S. Sundby (2014)
RFMO/A Practice

• NE Atlantic
  – 2004 and 2006 Amendments
  – London Declaration
  – The principles and definitions
  – Application scope, 1946 & 1959
  – ICES providing SC advice
Art. 4 of NEAFC Convention

• The Commission shall in particular:
  – ensure that such recommendations are based on the best scientific evidence available;
  – apply the precautionary approach;
  – take due account of the impact of fisheries on other species and marine ecosystems...; and
  – take due account of the need to conserve marine biological diversity.
• **Barents Sea, the Loophole**
  – Cod, haddock, capelin
  – 1999 Trilateral Agreement
  – **Norway-Russia** Joint Commission, ICES

• **Norwegian Sea, the Banana Hole**
  – Atlanto-Scandian Herring
  – EU, Faroe Islands, Iceland, Russia and Norway; ICES
  – 2013 Herring Dispute between EU and Demark (WTO, PCA)

• **Bering Sea, the Doughnut Hole**
  – Pollock
  – 1994 Agreement; closed since 1993
• Agreements on Mutual Fishery Relations
  – Greenland/Denmark and Norway, 1992
  – Denmark and Russia, 1992
  – USA and USSR, 1988
  – Canada and Greenland

• Others
  – IPHC, Canada and USA, 1953
  – PSC, Canada and USA, 1985
  – NASCO, 1982
  – NAFO, 1978
Arctic Council Practice

- Established by Ottawa Declaration in 1996
- Secretariat operative since June 1, 2013
- Fisheries touched on in 2007 SAO meeting
- Six Working Groups: PAME, CAFF
PAME

- 2009 AOR, as following-up of 2004 AMSP
- AOR I, 2009-11
  - 2.3 Conservation Status Of Arctic Species
  - Chapter 3: Global Instruments and Processes Relevant To The Arctic Marine Environment
  - 3.2 The Law Of The Sea
• **AOR II 2012-2013: 3 Recommendations**
  – Fisheries resources should be managed in accordance with the law of the sea;
  – based on the best scientific knowledge available;
  – based on cooperation in accordance with international law
• **CAFF: 5 Recommendations of ABA**
  
  – Improve *circumpolar cooperation* in data gathering;
  
  – Develop pan-Arctic conservation and management plans for shared species;
  
  – Support efforts to plan and manage *commercial fisheries* in international waters under common international objectives;
  
  – ...
  
  – ...
A5 Practice

• **USA Joint Resolution 17, 2007:**

  “(1) the United States should initiate international discussions and take necessary steps with other Arctic nations to negotiate an agreement or agreements ... in the Arctic Ocean and establishing a new international fisheries management organization or organizations for the region;”
• Three meetings of senior officials
  – June 2010, Oslo;
  – April-May 2013, D.C;
  – February 2014, Nuuk.

• Three meetings of scientific experts
  – June 2011, Alaska;
  – October 2013, Tromsø;
  – April 2015, Seattle.
• The Nuuk meeting in 2014
  – decided ‘to continue to advance scientific understanding of living marine resources and their ecosystem in the Arctic Ocean’,
  – reaffirmed that ‘there is no need at present to development any additional regional fisheries organization or arrangement for this areas’,
  – committed themselves, inter alia, to authorize their vessels to conduct commercial fishing in CAO only pursuant to one or more fisheries agreements that are or may be established and to establish a joint program of scientific research.
The third meeting in Seattle

- firstly joined by those some of the principal nationals conducting arctic research (China, Japan, Korea and Iceland).

- aiming to continue to review of current programs for research and monitoring environmental parameters and patterns of fish distribution and abundance,

- to develop a framework for a joint program of scientific research and monitoring for CAO, consider the development of an action plan, and to promote cooperation with international organizations.
Applicable rules and principles

• **Rules:**
  – International law of the sea in general
  – UNFSA in particular
  – FAO Agreements
  – FAO Code of Conduct

• **Principles**
  – Precautionary approach
  – Ecosystem-based management
  – Best Science available
  – Sustainable use...
UNFSA

- Arts. 2, 5, 6: Objective and Principle, new fisheries
- Art. 7: Compatibility of Measures
- Art. 8: Cooperation mechanism
- Art. 9: Establishing RFMO/A, interesting States
- Art. 10: Functions of RFMO/A
- Art. 14: Collection and provision of information and cooperation in scientific research
Three legal issues

1. Approach: bilateralism v regionalism
2. Interim measure: legality
3. Fisheries SR v MRS
The Approach

- **bilateralism v regionalism**
  - Olav S. Stokke proposed the concepts

- **Bilateralism practice**
  - Barents Sea, Norwegian Sea,
  - Bilateral Mutual Fisheries Relations, ICC
  - Arctic Five v Others;

- **Regionalism Practice**
  - NEAFC, without SC, ICES
PEW; Scott Heghleyman 2014

PAME, 2013
Interim Measure

• Development:
  – 2012, An Open Letter from International Scientists, Montréal
  – 2014 Feb, Arctic Five;
  – 2014 March, EU Parliament Resolution, moratorium

• Legality:
  – The purpose: unregulated fishing
  – UNFSA, LOS
  – NEAFC Members, (potential) high seas fishing or Interesting States
  – SPRFMO Practice: interim measures
• **Unregulated fishing:**
  
  – 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.
  
  – 3.4 Notwithstanding paragraph 3.3, certain unregulated fishing may take place in a manner which is not in violation of applicable international law, and may not require the application of measures envisaged under the International Plan of Action (IPOA).
Fisheries SR v MSR

• High Seas Fishing
  – freedom
  – subject to conservation
  – conditional freedom, or
  – qualified freedom
  – Art. 116-119, UNFSA
  – EEZ, sovereign right
  – Domestic Authority

• High Seas MSR
  – freedom
  – less restriction
  – cooperation and
  – publication
  – Art. 242, 244 ...
  – EEZ, normal circumstance,
  – Art. 246, direct for resources,
    NO
  – Domestic Authority
• UNFSA Art. 14 Collection and provision of information and cooperation in *scientific research*

  – ensuring that *fishing vessels* flying their flag provide such information;

  – cooperating through subregional or regional fisheries management organizations or arrangements;

  – agreeing on the *specification of data and the format*, and …
• **UNFSA, Art. 10 Functions of RFMOs**
  - agree on **standards for collection, reporting, verification and exchange of data** on fisheries for the stocks;
  - promote and conduct **scientific assessments** of the stocks and relevant **research** and disseminate the results thereof

• **Results of research**
  - used for decision-making ? improving understanding
  - **policy-relevant**
Cases 1

• **CCAMLR CM 24-01**: The application of conservation measures to *scientific research*
  
  – Application to Members taking less than 50 tonnes of finfish in a season; and
  
  – less than 0.1% of a given catch limit for non-finfish
  
  – For krill and finfish, except for catches less than 1 tonne;

<table>
<thead>
<tr>
<th>Taxon</th>
<th>Gear type</th>
<th>Expected Catch</th>
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</thead>
<tbody>
<tr>
<td><em>(a)</em> Thresholds for finfish taxa</td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Dissostichus</em> spp.</td>
<td>Longline</td>
<td>5 tonnes</td>
</tr>
<tr>
<td></td>
<td>Trawl</td>
<td>5 tonnes</td>
</tr>
<tr>
<td></td>
<td>Pot</td>
<td>5 tonnes</td>
</tr>
<tr>
<td></td>
<td>Other</td>
<td>0 tonnes</td>
</tr>
<tr>
<td></td>
<td>All</td>
<td>10 tonnes</td>
</tr>
<tr>
<td><em>(b)</em> Non-finfish taxa for which a catch threshold of 0.1% of the catch limit for a given area would apply</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Krill</td>
<td>All</td>
<td>10 tonnes</td>
</tr>
<tr>
<td>Squid</td>
<td>All</td>
<td>10 tonnes</td>
</tr>
<tr>
<td>Crabs</td>
<td>All</td>
<td>10 tonnes</td>
</tr>
</tbody>
</table>

2014, ICJ Whaling case
Case 2

- The Biological Investigation of Marine Antarctic System and Stocks (BIOMASS)
  - SCAR, SCOR, IABO & ACMR; set up 1976; within ATCM
  - FIBEX, 1980/81
  - SIBEX, 1983/84, 1984/85
  - BIOMASS, basic research
  - SC-CAMLR, management-oriented
  - Cooperation existed

(Orrego Vicuña, 1983)
• Joint Program of Scientific Research and Monitoring
  – Are there harvestable fish resources in the Central Arctic Ocean at present?
  – If so, can the Central Arctic Ocean fish resources be harvested sustainably with respect to both the target fish stocks and the dependent parts of the ecosystem?
  – Would there be an “if not” question? What are the prospects for the development of fisheries in the future?
Summary

• **Climate change making fisheries possible**
  – Pursuant to PA, Measures needed
  – Fishes migrating northwards, cooperation with existing mechanism
  – NEAFC and NAFO, redfish;

• **Agreement on the applicability of:**
  – UNFSA, LOS, FAO Agreement
  – EBA, PA, Best Scientific information available
• **The approach:**
  – Regionalism, EBA
  – CCAMLR, WCPFC and IATTC, tuna
  – Defragmentation be avoided

• **Interim Measures**
  – No international legal binding
  – More participation be encouraged
  – Unregulated fishing, no the case

• **Fisheries SR**
  – Policy-oriented
  – Be undertaken under a regional framework
  – MSR contributing to conservation
• The role of AC
  – Duplication of efforts, cost-effective
  – Coordinating SR, or contributing SR?
  – Regional SR Agreement, under negotiation
  – ATCM v CCAMLR
Thanks for your attention!