

THE ROLE OF REGIONAL FISHERY BODIES IN CONSERVATION AND MANAGEMENT OF RESOURCES¹

1. THE NATURE AND ROLE OF RFBs

The 1982 Convention provides only a few references to the subject of "regional cooperation" in the context of fisheries management. In comparison, the later instruments described above, provide an increasing number of references to, and a progressively important role for, RFBs, in the conservation and management of fish stocks. In fact, RFBs should now be viewed as critical to the realization of sustainable utilization of world marine capture fisheries.

From the terminology used in the post 1982 Convention instruments, it is important to distinguish between an onus for conservation and management being placed upon the States which comprise RFBs, and the RFBs themselves. It must be recalled that RFBs are not supra-national. They are only as strong and effective as their Members make them. In spite of this fact, many Governments have proven slow to tackle the issue of fisheries reform. There are two main reasons for this:

- benefits are slow to appear and do so only after considerable costs have been incurred for some time; and
- individuals who incur the costs are seldom convinced that they will reap the benefits, and so they resist what they perceive to be a re-distribution of their income.²

An examination of the contemporary role and efficiency of RFBs based on correspondence received directly from the RFBs, their annual reports, FAO publications, and other relevant publications has led to the following conclusions regarding their role and nature.

- **Cooperation:** Current international relations are marked by a division between wealthy, developed States and a majority of less wealthy developing States. International cooperation is therefore needed to address inequities and fulfil the provisions of the world order envisaged by international agreements such as the Charter of the United Nations, the 1982 Convention, and the subsequent international

fisheries instruments reviewed. RFBs can play a significant role in pursuing regional cooperation for these purposes, and in particular for cooperation in the conservation and management of marine capture fisheries.

- ***Incongruent Fisheries Interest of Contracting Parties:*** Despite this notion of cooperation, within many RFBs there is a conflict of interest among contracting parties which very often leads to an inability to agree on the parameters necessary for management. For example, many RFBs contain both developed and developing States, coastal States, distant water fishing States, and coastal States with an interest in becoming more active high seas fishing States. For some contracting parties, fisheries constitute a vital economic interest, while for other States, they constitute a middle or low-level economic interest. Such diversity results in varied commitments, levels of participation, and expectations regarding the objectives of the RFBs.³ All States can potentially contribute, be it financially, intellectually, ideologically, or politically to the work of a RFB and it must be remembered that the diversity of contracting parties underpins the notion of the need for cooperation.
- ***Management:*** Funding difficulties prevent greater contracting party participation in many RFB programmes, and such constraints severely weaken the ability of some secretariats to function effectively. Furthermore, according to the relevant mandate given to each RFB, many are empowered to make only advisory recommendations concerning conservation and management. Consequently they are unable to regulate the fishing activities of contracting parties.⁴
- ***Political Will:*** The effectiveness of many RFBs is further undermined by the failure of members to accept and/or implement those international instruments described above which are central to the better conservation and management of world marine capture fisheries. Until and unless the issue of enhancing political commitment to the implementation of the legal regime, and conservation and management measures is addressed, the expectation of strengthening the role of RFBs is unlikely to be realized.

2. MAJOR CONTEMPORARY ISSUES IN WORLD MARINE CAPTURE FISHERIES

There are three critical issues facing those responsible for the conservation and management of world marine capture fisheries. These are:

- the problem of over fishing - including the use of insufficiently selective gear which leads in industrial fisheries to waste in the form of by-catch and discard;
- poor monitoring, control and surveillance (MCS) of vessels in both zones of national jurisdiction and on the high seas - including the problem of reflagging to avoid compliance with international conservation and management measures, and the need for better flag and port State controls; and
- environmental degradation of fish habitats.

To the extent that the law, as opposed to education, science, economics or politics, can provide solutions to these problems, significant progress has been made by the 1982 Convention, and the subsequent international fishery instruments.

Since beginning of the 1990s, the international community has made several attempts to enhance and develop the legal framework for fisheries management as laid down in the 1982 United Nations Convention on the Law of the Sea (1982 Convention). Such attempts have included the 1992 Rio Declaration and Agenda 21 adopted by the United Nations Conference on the Environment and Development; the 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (Compliance Agreement), the 1995 Code of Conduct for Responsible Fisheries (Code of Conduct); the 1995 Rome Consensus on World Fisheries; the 1995 Kyoto Declaration and Plan of Action on the Sustainable Contribution of Fisheries to Food Security (Kyoto Declaration and Plan of Action); and the 1995 Agreement for the Implementation of the Provision of the United Nations Convention of the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stock (UN Fish Stocks Agreement). Contemporary fishery issues referred to in these instruments include excess fleet capacity; by-catch and discards; monitoring, control and surveillance (MCS) of fishing vessels; measures to enhance data collection; and application of the precautionary approach. The purpose of this paper is to analyse the extent to which the above mentioned instruments have, or have not, generally been implemented by, or incorporated in the activities of FAO and non-FAO regional fishery bodies (RFBs).

The RFBs included for analysis represent both FAO and non-FAO bodies from a wide geographic base.

The FAO regional fishery bodies covered are:

- Fishery Committee for the Eastern Central Atlantic (CECAF)
- Western Central Atlantic Fishery Commission (WECAFC)
- Indian Ocean Fishery Commission (IOFC)
- Asia-Pacific Fishery Commission (APFIC)
- General Fisheries Commission for the Mediterranean (GFCM)
- Indian Ocean Tuna Commission (IOTC)

The non-FAO regional fishery bodies covered are:

- Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR)
- Commission for the Conservation of Southern Bluefin Tuna (CCSBT)
- Forum Fisheries Agency (FFA)
- Inter-American Tropical Tuna Commission (I-ATTC)
- International Baltic Sea Fishery Commission (IBSFC)
- International Council for the Exploration of the Sea (ICES)
- International Commission for the Conservation of Atlantic Tunas (ICCAT)
- Northwest Atlantic Fisheries Organization (NAFO)
- Comité régional des pêches du Golfe de Guinée (COREP)
- Commission sous-régionale des pêches (CSRP)
- Joint Technical Commission for the Argentina/Uruguay Maritime Front (CTMFM)
- North Atlantic Marine Mammal Commission (NAMMCO)
- North Atlantic Salmon Conservation Organization (NASCO)
- North-East Atlantic Fisheries Commission (NEAFC)
- International Pacific Halibut Commission (IPHC)
- North Pacific Anadromous Fish Commission (NPAFC)

- North Pacific Marine Science Organization (PICES)
- Pacific Salmon Commission (PSC)
- South Pacific Permanent Commission (CPPS)
- Pacific Community (SPC)
- Latin American Organization for the Development of Fisheries (OLDEPESCA)
- International Whaling Commission (IWC)

The instruments impose specific duties or responsibilities upon both RFBs and their respective members. The instruments address such issues as unregulated fishing; over capitalization of fleets; excessive fleet size; insufficiently selective fishing gear; by-catch and discards; unreliable data and statistics; use of the precautionary approach; conservation and management of high seas fish stocks; MCS and enforcement by flag and port States; marine pollution; ecosystem protection; data gathering and subsequent management advice; and assistance to developing States.

RFBs should view these post-1982 Convention instruments as providing a checklist that would enable them to effectively fulfil a management role by addressing the problems described above. To demonstrate this point, the role of RFBs and other relevant provisions in the UN Fish Stocks Agreement and the Code of Conduct are as follows.

UN Fish Stocks Agreement:

- Article 8 provides *inter alia* that only States which are Members of a competent RFB, or which agree to apply the relevant RFB conservation and management measures, shall have access to the fishery resources to which the RFB measures apply. In many instances, this requires RFBs themselves to be more pro-active in promoting membership.
- Article 9 provides for the establishment of RFBs.
- Article 10 describes in detail the functions of subregional and regional fisheries management organizations.
- Article 11 provides for new members or participants within a RFB.
- Article 12 requires transparency in the activities of RFBs.

- Articles 18 to 23 address the subject of MCS and enforcement by flag and port States, and provide for regional cooperation in enforcement.

Code of Conduct for Responsible Fisheries:

- Article 1.2 notes that the Code is global in scope and directed towards fishing entities that include RFBs;
- Article 4.1 notes that such entities are charged with collaborating in the fulfilment and implementation of the objectives and principles contained in the Code;
- Article 6.5 requires RFBs to apply a precautionary approach to the conservation, management and exploitation of living aquatic resources;
- Articles 7.1 to 7.7 describe the role of RFBs in fisheries management. The sub-section covers a diverse range of subjects such as attaining management objectives, providing a management framework and procedures, data gathering and subsequent management advice, application of the precautionary approach, describing management measures and the implementation of the Code.
- Article 8 requires States within the framework of RFBs to establish systems for MCS and enforcement.

The implementation of many of these requirements for RFBs may require amendment of the RFB's constituting agreement. In many cases, the original terms of reference or mandates were constructed in an era pre-dating the post-1982 instruments. However, from information made available to FAO, only two RFBs are acting to investigate just how their mandates would need to be amended in order to allow them to implement the above mentioned requirements.

Furthermore, correspondence with the specified RFBs regarding their acknowledgement of, and attempts to implement, these measures for conservation and management, has resulted in the conclusion that although most RFBs are examining the post-1982 instruments, and considering, through appropriately constituted working groups, the consequences of, and steps necessary for, implementation of the instruments, very few RFBs have taken concrete measures to actually implement the instruments. These conclusions are summarized in general terms in Table 1.

3. CONCLUSION

The international community, by means of the post-1982 fishery instruments,

has opted to give an increasingly important role to RFBs for the management and conservation of world marine capture fisheries. Despite frequently operating in adverse circumstances due to inadequate mandates or terms of reference, incongruent fishery interests of members, funding and staffing difficulties, and lack of political commitment by members, RFBs play a primary role in the sustainable utilization of fisheries by means of facilitating regional cooperation. However, more substantial attention must be given to the implementation of the post-1982 fishery instruments which clearly envisage a more proactive role for RFBs in the conservation and management of fisheries.

A review of information provided by RFBs shows that very few bodies have started to implement the conservation and management measures provided for in the post-1982 fishery instruments. This conclusion is perhaps not surprising. The instruments present complex scientific, managerial and political considerations that cannot be resolved quickly.

The result of this state of affairs is that despite international expectations for RFBs to take effective measures to conserve and manage marine capture fisheries, there is little facility for this to occur unless their roles and functions are strengthened as presented in these fishery instruments. The deficiencies apparent with regional fisheries management must be addressed in a more comprehensive and rational manner if sustainable utilization is to be achieved. This is important because under existing international law, and within the current paradigm for the management of straddling, highly migratory and high seas fish stocks, RFBs provide the only realistic mechanism for the enhanced international cooperation in their conservation and management.

Table 1: Regional Fishery Body Implementation of the Post 1982 Convention Fishery Instruments

Regional Fishery ⁵ Body	Compliance Agreement	UN Fish Stocks Agreement	Code of Conduct
NASCO	√	N/A	√
IPHC	N/A	√	√
GFCM	X	X	√
NAFO	√	√	√

ICES	N/A	N/A	√
PICES	N/A	N/A	N/A
CECAF	√	√	√
COREP	√	√	√
CSRP	√	√	√
WECAFC	√	√	√√
IWC	√	√√	√
CTMFM	N/A	√	√
IBSFC	N/A	N/A	√√
NEAFC	√	√√	√√
I-ATTC	√	√√	√
NPAFC	X	N/A	N/A
FFA	√	√	√
SPC	√	√	√
CPPS	X	√	√
APFIC	√	√	√
IOTC	√	√√	√
CCAMLR	√√	√√	√
OLDEPESCA	√	√	√
CCSBT	√	√√	√√

ICCAT	√ √	√ √	√
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Note: √ = Under Discussion; √ √ = Implementation; X = No Consideration; N/A = Not Applicable

(These marks are made on the basis of replies from the RFB concerned.)

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- 1 This paper was prepared on the basis of a document submitted to the Twenty-third Session of COFI (15-19 February 1999), and is based on a larger study contained in FAO Fisheries Circular FIPL/940 entitled "A Review of Measures Taken by Regional Marine Fishery Bodies to Address Contemporary Fishery Issues".
 - 2 FAO (1997) *The State of World Fisheries and Aquaculture -1996* (FAO, Rome) p. 26.
 - 3 FAO Fisheries Report No. 484 (1992), *Supplement, Papers Presented at the Technical Consultation on High Seas Fishing*, Rome, 7-15 September, 1992, p. 45.
 - 4 *Ibid.*
 - 5 Information was not received from NAMMCO and PSC. IOFC is currently being restructured to permit the abolition of the parent body and consequently information was not obtained from this Commission.