

## **AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS.**

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### **ABSTRACT**

The United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks was convened in New York in August 1994 to consider a revised negotiating text that sought to implement those articles of the United Nations Convention on the Law of the Sea relating to the conservation and management of these types of fish stocks. This paper discusses the possible implications for coastal states in the wider Caribbean and Gulf of Mexico of the United Nations reaching a consensus to put in place a binding agreement that would seek to ensure long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks. of particular interest are proposals for adoption of a precautionary approach to management; the compatibility of conservation and management measures and development of mechanisms for international cooperation for adapting management measures; for the harvest of stocks and for enforcement of management measures, rules and regulations.

### **INTRODUCTION**

The United Nations Law of the Sea Convention (UNCLOS) (United Nations, 1983) commenced in 1982 and following the requisite number of ratifications will become fully operative in November, 1994. It should be noted that the United Kingdom has recently become party to this binding agreement and it is likely that the provisions will be extended to the British dependent territories in the Atlantic and Caribbean regions. This extremely broad international legislation has

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important ramifications not only for fish stocks but also in terms of maritime law, ship's registers, territorial waters, extended areas of jurisdiction (Exclusive Economic Zones), various other marine resources and pollution considerations.

A result of the implementation of the Law of the Sea will be a document that will address, specific articles of UNCLOS which make provisions for the use of fish stocks and other living marine resources in high seas. It will ensure the rights afforded coastal states under UNCLOS are protected and define the rights of flag states and port states as these also comprise important aspects of international law.

It is important to realise that the modern utilisation of marine resources has developed to such an extent that the impact of management measures taken by one country on a fish stock may well affect the resources of other countries. Similarly, lack of management and over-utilisation of resources may damage fish stocks on a regional or sub-regional basis.

Thus it is in this context that UNCLOS tries to address the concerns of coastal states (countries bordering the sea and having a claim on the resources contained therein) while not preventing free access to and utilisation of stocks found on the high seas. High seas are defined as those areas which are beyond the jurisdiction (200 mile limit generally) of any coastal state.

These initiatives are an international attempt to prevent the collapse of more fisheries on a worldwide basis and this is obviously a good thing and is much needed. It will carry with it, however, the obligation for all countries to comply with the resolutions made by the regional management agency. It is therefore important for all countries to be involved in the decision-making process and to know and understand what is being proposed.

### **DISCUSSION**

The United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, as governed by The United Nations Law of the Sea Convention, commenced on Monday, 15th August 1994 at U.N. Headquarters in New York City.

Following the various opening statements, work began on the discussion of and amending of the revised negotiating text of a proposed convention which will, in due course, govern international fisheries efforts for highly migratory species (tunas, marlins and sharks) and straddling stocks (cod, haddock and lobsters among many others).

This is expected to be a lengthy process since it involves a document of about 28 pages of text, much of which is controversial. There are fundamental differences between many of the countries present at the Conference. This is particularly with regard to issues important to coastal states as opposed to the

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Distant Water Fishing Nations (DWFN).

The so-called Distant Water Fishing Nations are those countries which exploit not only their domestic fishing zones but whose fleets harvest fish stocks all over the world. These include Japan, Korea, Poland, Spain, France, Italy, China, to name a few.

The present draft document attempts to address the concerns of the DWFN to whom continued access to the world's oceans is essential while at the same time protecting the interests of island and coastal nations which may only have artisanal fisheries.

It should be recognized that many jurisdictions in the greater Caribbean region, both sovereign nations and dependent territories, manage their own fisheries under their own laws and, in general, that these are all fully committed to the need for effective conservation and management of their respective fish stocks. A deterioration of the world fisheries situation has brought home to these islands a number of consequences including unlicensed vessels fishing in their zones; vessels fishing straddling stocks just beyond their 200 mile limits, and, the adoption of quotas of highly migratory stocks by regional fisheries organizations in which they do not participate.

Fundamental to the proposed agreement is a reliance on the formation of effective regional and/or sub-regional fisheries management organizations or arrangements. These bodies would have responsibility to:

1. define conservation and management measures
2. make allocations of quotas and limits on fishing effort, where necessary
3. recommend minimum standards for the responsible conduct of fishing operations
4. facilitate the collection of scientific advice and to review the status of fish stocks
5. produce standards for the collection, reporting verification and exchange of data on fish stocks
6. compile and disseminate accurate and complete information on fish stocks
7. promote and conduct scientific assessment of fish stocks and related research
8. establish cooperative mechanisms for effective monitoring, control, surveillance and enforcement of fishing activities;
9. provide means by which fishing interests of new members or participants in the organization can be accommodated
10. provide decision-making procedures for the adoption of conservation

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and management measures in a timely and effective manner

11. provide procedures for the peaceful settlement of disputes including compulsory procedures for binding decisions

12. ensure the full cooperation of national agencies and industries in the work of the sub-regional or regional fisheries management organization or arrangement.

It is not the intent of the agreement to set up new regional bodies but, where possible, to work within the framework of existing organizations such as the International Commission for the Conservation of Atlantic Tunas (ICCAT). On the other hand, it would seem to be necessary to establish and develop a new regional body to address the management of straddling stocks in the wider Caribbean.

The result of the August 1994 session of the Convention was a document tabled by the Conference Chair, Ambassador Satya Nandan (Fiji) entitled Draft Agreement For The Implementation Of The Provisions Of The United Nations Convention On The Law Of The Sea Of 10 December 1982 Relating To The Conservation And Management Of Straddling Fish Stocks And Highly Migratory Fish Stocks, (Nandan, 1994).

Although there were a number of matters which remained unresolved at the conclusion of the August, 1994 meeting it appeared likely that much of this draft document would be incorporated into the final product of these deliberations. A major element of the outcome of this Conference at the resumption of negotiations in March 1995 (tentative) will be a decision on whether or not the final document takes the form of a binding international agreement or is merely a series of guidelines for international participation. In either case, there will be implications of a significant nature for many of the coastal states of the Caribbean and Gulf regions.

It would be beneficial for small coastal states and island countries for the final product to be binding as this will help to ensure proper international management of the pelagic species upon which fisheries in the Gulf and Caribbean regions are largely dependent.

There is, however, another aspect of such an agreement that will impact considerably on the coastal states and that is the requirement for the enforcement, including the requirement for each country to provide the resources needed to enforce the provisions of such an agreement.

Coincidental to the Conference presently under discussion was the acceptance of the FAO Agreement (Food and Agricultural Organization, 1994) to promote compliance with international conservation and management measures by fishing vessels on the high seas. This document sets guidelines for the flagging of

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fishing vessels, and generally establishes a code of conduct relating to aquaculture development, fishing operations, trade and research.

Many of these aspects involve the commitment of funds to enable the recommendations to be carried out and, in addition, may have a detrimental effect on the generating of funds from revenue sources such as the flagging of fishing vessels.

Of particular interest to the Greater Caribbean are the highly migratory species such as tuna, marlins and sharks which are already exploited by most islands to some extent as well as straddling species such as spiny lobsters, groupers and other species which are found from Brazil to Bermuda.

Although it can be argued that regional management organizations exist for the highly migratory stocks and indeed there are some bi-lateral and multi-lateral arrangements relating to certain shared stocks, the question of straddling stocks is far more vexatious.

Generally the sections of the draft agreement dealing with straddling stocks are designed more for codfish than they are for groupers and spiny lobsters but the same principals apply.

Some stocks in the Caribbean region can be classified as straddling because eggs and larvae are widely distributed by complex ocean current patterns resulting in broadly distributed gene pools. Most grouper species and spiny lobsters fall into this category and present challenges for management on a regional basis. Unfortunately, this has never been done and in spite of the interdependency of one country's stock on another we see today the effects of overfishing and loss of critical habitat occurring at an alarming rate.

Uncontrolled fishing on aggregating spawning stocks and the virtually uncontrolled use of fish pots together with the loss of critical (inshore) habitat has resulted in the decline of a number of grouper species to levels where they are economically extinct as a commercial fishing resource in some areas and are threatened with the same fate in others.

Similarly, the protection of spawning stocks of spiny lobsters (particularly the wide ranging *Panulirus argus*) through institution of size limits or realistic and enforceable catch quotas will ensure recruitment of this valuable resource throughout its range.

The continued harvest of sub-adult animals as presently practiced in some countries like the U.S.A., Brazil and Mexico is a recipe for disaster.

The roles that a regional body must play in the long-term management of valuable regional stocks such as grouper and lobster are varied and include, inter alia, the development of effective management measures for each species of concern; the adoption of those measures by countries in the region and the strict

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enforcement of management measures by those countries. Not an easy task when one considers the number of countries involved, the number of official languages (five) spoken in those countries; the geography and the cultures, customs and economics of the region.

Overall, however, it is obvious that the regional fisheries organizations are going to become more important and it is likely that presently existing fora, particularly those already sanctioned by United Nations agencies such as the Food and Agricultural Organization (FAO), Intergovernmental Oceanographic Commission for the Caribbean (IOCARIBE) and Western Central Atlantic Fisheries Commission (WECAFC) will have to play a greater role in the future. Thus, it will be advantageous to participate in these organizations prior to the formulation of new management measures or the imposition of a system of quotas. To this end, Bermuda has already begun the process of obtaining membership in ICCAT which is the regional management organization for most of the pelagic species caught in local waters.

Other coastal states within the Gulf and Caribbean region have had representation at this United Nations Conference on Straddling and Highly Migratory Stocks and have also expressed interest in exploring the possibilities for membership in ICAAT as they too harvest tuna and related species both on a domestic level and with Distant Water Fishing Fleets.

Given the likely development of international fisheries, this is probably the best course of action for coastal states in this region and while there will still remain a number of unresolved issues which will have to be negotiated between like-minded states and their neighbors, it is likely that the overall shift to international management regimes will favour solutions that will be of benefit to the region as a whole rather than to a limited number of marine resource users.

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