



# The International Regulation of New and Exploratory Fisheries

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# New and Exploratory Fisheries

- Terminology – “new” fisheries and “exploratory” fisheries, although used interchangeably by some RFMOs and undefined in UNFSA
- Emergence of new and exploratory fisheries – climate change effects on fish dispersal and habitats; new target catch; new areas of activity; new techniques
- Only fishing opportunities in some RFMOs (NAFO, NEAFC)
- Not an equal priority for all RFMOs
- Strong influence of CCAMLR in development of concept
- Such fisheries characterised by limited data, *ad hoc* regulation and emerging management plans and principles



# NEF concerns

- Vulnerability of new stocks
- Impacts on non-target species
- Impacts upon marine environment – especially Vulnerable Marine Ecosystems and bottom fishing
- Lack of clear management principles
- Lack of data
- Oversight and compliance



# NEF: International Framework

- Fishing entitlements established through LOSC 1982
- UN Fish Stocks Agreement 1995
- Practice of particular RFMOs
- International standards on bottom fishing



# LOSC

- Fisheries arrangements and accompanying conservation obligations; silent on NEF
- EEZ- Art 61: prevent over-exploitation, associated stocks, transfer of data; Art 62: establish laws and regulations
- High Seas: Art 87, freedom of fishing, subject to obligation of due regard
- Arts 118 & 119: obligation to cooperate in conservation and management of high seas living resources
- Requirement of due diligence of coastal and flag states in this respect reiterated by ITLOS in April 2015 (context of IUU fishing)



# UN Fish Stocks Agreement

- First formalised recognition of NEF in a global fisheries instrument
- Article 6(6): "For new or exploratory fisheries, States shall adopt as soon as possible cautious **conservation and management measures**, including, inter alia, catch limits and effort limits. Such measures shall remain in force until there are **sufficient data** to allow assessment of the impact of the fisheries on the long-term sustainability of the stocks, whereupon **conservation and management measures based on that assessment** shall be implemented. The latter measures shall, **if appropriate**, allow for the **gradual development** of the fisheries."



# Ancillary instruments

- Law and policy on NEF further developed in context of concerns for responsible fisheries in marine ecosystems: particular reference to deep-sea fisheries and bottom-trawling
- UNGA Resolutions, especially A/RES/61/105
- FAO International Guidelines for the Management of Deep-Sea Fisheries in the High Seas; notes concerns over vulnerable marine ecosystems and potentially destructive fishing techniques
- Both instruments influential on recent practice and policy of RFMOs



# CCAMLR

- Most entrenched practices on NEF; informed UNFSA approach
- Dates back to 1989; first CM in 1991
- Specific policies developed for both “new” and “exploratory” fisheries
- Distinction triggered on levels of available data
- Developed to curtail unilateralism and unsustainable practices in CCAMLR Area
- Primary NEF: Patagonian and Antarctic toothfish
- New fishery becomes exploratory once some effort is applied to it





# CCAMLR: New fisheries

- CM 21-01 (2013): “fishery on a species using a particular fishing method in a statistical sub-area or division for which: (i) information on distribution, abundance, demography, potential yield and stock identity from comprehensive research/surveys or exploratory fishing have not been submitted to CCAMLR;  
(ii) catch and effort data have never been submitted to CCAMLR;  
(iii) catch and effort data from the two most recent seasons in which fishing occurred have not been submitted to CCAMLR.”
- Bottom-trawling in high seas areas of the CCAMLR Area also considered as a “new” fishery and will require approval by Commission for specific areas



# CCAMLR: New fisheries

- Process: notification, Fisheries Operation Plan and commitment to implement Data Collection Plan
- CCAMLR process must run its course; parties cannot implement a new fishery pending this decision
- Scientific Committee develops DCP
- New fisheries only open to vessels suitably equipped to comply with conservation measures and with a clean record in terms of IUU fishing
- Interesting definitional practice: continuous krill fishing v pair trawling



# CCAMLR: Exploratory fisheries

- CM 21-02 (2013):
- “any fishery previously considered “new” under CM 21-01; continues as an exploratory fishery until sufficient data to:
  - (i) Evaluate the distribution, abundance and demography of the target species, leading to an estimate of the fishery’s potential yield;
  - (ii) Review the fishery’s potential impacts on dependent and related species;
  - (iii) Allow the Scientific Committee to formulate and provide advice to the Commission on appropriate harvest catch levels, as well as effort levels and fishing gear, where appropriate.”



# CCAMLR: Exploratory Fisheries

- Similar process to new fisheries
- Commission establishes a precautionary limit for catches
- CMs elaborated for fishery on an annual basis
- Contingent upon non-IUU record
- Strict requirements on gear use and submission of data
- Must also be compliant with CM22-06 on bottom fishing
- Exacting criteria at national level for the endorsement of NEF applications: e.g. Australia, February 2015 – preference in favour of Australian crewing, vessel-ownership and landing; concerns as to negotiating position and credibility within CCAMLR



# Access to NEF

- CCAMLR Members only – reflagging possible
- Clean IUU record needed – proactive practices of Members
- Good levels of compliance with data collection rules needed
- No “pioneer” states – equal access in principle (although a head start in certain fisheries)
- Mirrored in UNFSA deletions
- Emerging SPRFMO practice adopts a similar approach (Article 21(1)(i); CMM 4.13)



# NEF Management

- Pioneered in crab fishery – voluntary submission to scientific review by US
- NEFs now predominantly for toothfish
- Initial concerns about non-prosecution: costs now lie on applicant
- Uneven pursuit of NEF – predominantly in Ross Sea; concerns of over-capacity raised
- Tagging requirements – carrot-and-stick approach



# Challenges

- Data collection challenges
- Uneven state of knowledge across EFs
- Increased “blurring” of categories of research fishing (EFs Data-Poor EFs, closed areas, newly exposed marine areas)
- Transition to managed status – procedures and criteria



# Towards managed status?

- Ross Sea toothfish fisheries
- Notified in 1997; by 2004 Scientific Committee notes potential over-capacity
- 2010: WG-FSA considers data collection requirements to have been met
- Not yet formally submitted by SC to Commission as research and assessment framework considered beneficial
- Concerns over lack of baseline knowledge remain
- Intriguing case study of application of precautionary approach – will transitioned fisheries be subject to more intensive observer coverage and research requirements?





# New developments

- NEF recognised in new RFMOs (e.g. SPRFMO,, NPFC, revised NAFO Convention; potential application in SIOFA)
- Addressed predominantly in context of bottom fishing
- Spurred by UNGA Resolutions and FAO Guidelines
- Regulatory framework for exploratory fishing expressly centred on deep-sea fisheries (e.g. NEAFC, NAFO, SEAFO, SPRFMO)
- States to identify “footprint” areas of historical activity; stringent procedures to expand this coverage into new areas
- Common features: prior assessment, scientific review, identification of footprint areas, VME mapping



# SPRFMO

- Comprehensive provision on NEF; Article 22
- 1. A fishery that has not been subject to fishing or has **not been subject to fishing with a particular gear type or technique for ten years** or more shall be opened as a fishery or opened to fishing with such gear type or technique only when the Commission has adopted **cautious preliminary conservation and management measures in respect of that fishery**, and, as appropriate, non-target and associated or dependent species, and appropriate measures to protect the marine ecosystem in which that fishery occurs from adverse impacts of fishing activities



- 2. Such preliminary conservation and management measures, which may include requirements regarding notification of intention to fish, the establishment of a development plan, mitigation measures to prevent adverse impacts on marine ecosystems, use of particular fishing gear, the presence of observers, the collection of data, and the conduct of research or exploratory fishing, shall be consistent with the objective and the conservation and management principles and approaches of this Convention. **The measures shall ensure that the new fishery resource is developed on a precautionary and gradual basis until sufficient information is acquired to enable the Commission to adopt appropriately detailed conservation and management measures.**



3. The Commission may, from time to time, adopt **standard minimum conservation and management measures** that are to apply in respect of **some or all new fisheries** prior to the commencement of fishing for such new fisheries



# SPRFMO policies

- Bottom fishing practices addressed
- New CMM 4.13 in 2016 on NEF
- Similar approach to CCAMLR: similar documentation, prior approval requirements, observer coverage
- Force majeure clause
- Extensive individual CMM on toothfish fishing
- Cooperation with CCAMLR – fishing in adjacent areas; example of promising collaborative practices between RFMOs



# Conclusions and Trends

- No global definition of NEF; regional bodies have adopted their own definitions to suit particular regulatory conditions
- CCAMLR the most advanced example of practice
- EF practice and data generation has led to refinements in catches and gear
- Strong role envisaged for precautionary oversight
- Challenges in data collection, streamlining research fishing categories



- Strong emphasis on prior approval and science-based management
- Procedural elements strong in principle – but will require clear steering from scientific bodies and a strong stance on sub-standard documentation
- CCAMLR experience suggests NEF will be relatively long-term in duration before transition to managed fisheries
- Few tangible examples of transitional practice; questions remain as to thresholds and applicable measures



# Thank you!!

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