Part I Marine Living Resources and Marine Biodiversity, 1 The FAO and Ocean Governance

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1 The FAO and Ocean Governance

1.1 Introduction

International fisheries law is an important component of ocean governance. It involves the entitlements, obligations, rules, principles, and institutions for the conservations, management, and conservation of living marine resources. The responsibility for the living marine resources is shared between individual coastal states, regional fisheries bodies (RFBs), and international organizations. Under the 1982 United Nations Convention on the Law of the Sea (UNCLOS), coastal states enjoy sovereign rights to exploit, explore, conserve, and manage the living marine resources within their 200-mile exclusive economic zones. It is obligated to conserve and manage the living marine resources and to cooperate with other states on the conservation and management of transboundary resources.

Fishing on the high seas beyond areas under national jurisdiction is among the traditional freedoms of the high seas. States exercising the freedom of fishing have the obligation to cooperate on the conservation of these resources, including with relevant coastal states in respect of trans-boundary living marine resources. States shall establish regional fisheries organizations through which they shall channel the cooperation. In exercising their obligations, coastal states and states fishing on the high seas are required to ‘[t]ake into account … any generally recommended international minimum standards, whether subregional, regional or global …’. Further, they shall contribute and share scientific information, catch, and effort statistics and other relevant data through competent international organizations.

Through these UN references the Food and Agriculture Organization of the United Nations (FAO) UNCLOS is made a relevant and legitimate actor in ocean governance. Of relevance is its two main functions, which include to provide a forum for the development of norms and for the collection, analysis, and dissemination of data and information. In addition to the legally binding treaties adopted through the FAO, non-legally binding guidelines and recommendations provide relevant and mandatory considerations to be made by states in exercising their conservation obligations. The obligation to share data with the FAO facilitates a role for the FAO as a clearing house function, an important premise for the global governance of world fisheries.

The world marine capture has stagnated or stabilized at around 90 million tons annually in recent years. Overfishing, overcapacity of the fishing fleets, and illegal, unreported, and unregulated (IUU) fishing are some of the causes. There are external threats to the fisheries sector, including marine pollution, habitat destruction, and, in recent years, climate change. As the short overview documents, there is no single international institution responsible for developing international fishery law.

The focus in this chapter will be on the role of the FAO in ocean governance. This does not only involve the FAO’s involvement in the conservation and management of living marine resources but also in other activities impacting fisheries management, such as regulating subsidies, the relationship with trade-related measures, and ensuring compliance with fisheries legislation. Further, there is recognition that there is a need for more coherent approaches to the governance of oceans as reflected in Sustainable Development Goal No 14, which calls for conservation and sustainable use of the oceans, seas, and marine resources. What role does the FAO play in the ‘greening’ of international fisheries law? Before these questions are addressed, some basic information on the FAO is called for.
1.2 Basics about the FAO

The FAO was established on 16 October 1945 by the adoption of its constitution.\textsuperscript{12} The purpose of the FAO is to ‘[p]romote the common welfare ..., including through ‘improvements in the efficiency of the production and distribution of all food and agricultural products ...’.\textsuperscript{13}

The FAO is a UN specialized agency, an autonomous organization working with the United Nations.\textsuperscript{14} This may involve the FAO providing the UN with reports or studies.\textsuperscript{15} The relationship between the FAO and the UN will be addressed later. In 1951 the FAO moved from its provisional headquarters in Washington, DC, USA, to its permanent seat in Rome, Italy.\textsuperscript{16}

(p. 5) The main functions of the FAO include:

- collecting, analysing, and disseminating information and statistics to its members
- developing international instruments, norms, and standards
- providing advice and capacity building for policy-makers
- contributing to emergency and post-emergency assistance at member states’ request, through its global network of experts and
- assisting member states and the international financing institutions with the programming of their investments in agriculture.\textsuperscript{17}

Importantly, the term ‘agriculture’ includes fisheries and marine products.\textsuperscript{18} Consequently, the FAO is competent to deal with both marine and inland capture, as well as aquaculture.

1.2.1 Membership

The FAO has 194 member states and one member organization (EU). In 1991 the FAO opened for membership of regional economic integration organizations. The European Union (EU) was admitted to the FAO on the basis of this amendment.\textsuperscript{19} The FAO is one of the largest specialized agencies of the UN. Consequently, the FAO (together with the UN) provides for a global/universal arena for dealing with fisheries issues.\textsuperscript{20}

1.2.2 Structure

The FAO has three main bodies, namely the Conference, the Council, and the Director-General.\textsuperscript{21} The Conference meets biannually to determine the policy of the FAO, to approve the budget, and exercise other powers conferred on it by the FAO Constitution.\textsuperscript{22} All FAO members are represented in the Conference. The Council consists of forty-nine member states, which serve three-year rotating terms. It is in charge of the FAO’s activities between the sessions of the Conference and functions delegated to it by the Conference.\textsuperscript{23} Both the Conference and the Council are competent to establish commissions under Article VI of the constitution to advise on formulation and implementation of policies. They may approve and submit conventions to the member states concerning food and agriculture for ratification.\textsuperscript{24} Consequently, the FAO is not competent to adopt decisions directly binding on its member states.

The Council has established several sub-committees, including the Fisheries Committee, the Forestry Committee, the Agriculture Committee, and the World Food Security Committee. The Fishery Committee (COFI), established in 1965 (p. 6) under Article V of the FAO Constitution, is open to all member states.\textsuperscript{25} It was established in recognition of a need for coordination of international fisheries.\textsuperscript{26} The two main functions of the COFI are to review the work programme of the FAO and to conduct reviews of international fishery problems and assess possible solutions, by states, the FAO, and other inter-governmental organizations. Further, it may consider preparing and submitting an international convention to the member states on fisheries issues.\textsuperscript{27} The COFI has established two sub-
committees, on trade in fish and on aquaculture. In addition to the FAO, the COFI is the only global inter-governmental forum, which is competent to consider issues related to fisheries and aquaculture.

The third main organ is the Director-General. He or she is head of the FAO secretariat, which is organized into eight departments, including the fisheries and sustainable development departments. The technical guidelines on responsible fisheries to be addressed below are developed through these departments.

In the following, two of the main functions of the FAO within the marine fishery sector will be reviewed. First, in section 1.3 the role of the FAO as a provider of data and information will be addressed, while its role in developing, confirming, and ensuring the implementation of norms will be investigated in section 1.4. The contributions of the FAO to oceans governance is increasingly happening through interaction with other international bodies such as the UN, the International Maritime Organization (IMO), the Convention on International Trade in Endangered Species (CITES), and the World Trade Organization (WTO). This aspect will be analysed in section 1.5 before summing up in section 1.6.

1.3 Collecting, Analysing, and Disseminating Information and Statistics to Its Members

Information and knowledge is essential to ensuring conservation and sustainable use of living marine resources. One of the main tasks of the FAO is to collect statistics and other information, process this knowledge, and share it with its member states. The FAO may be described as a clearing house for fisheries-related information and data. This function will enable the FAO and its member states then to assess trends in the status of fisheries and the implementation by its member states of their obligations, and if necessary take measures individually or collectively to address challenges and threats to the conservation of living marine resources.

Perhaps the most important and well-known report of the FAO analysing and disseminating data and information is the bi-annual *The State of World Fisheries and Aquaculture (SIOFA)* prepared and published by the Fisheries and Aquaculture Department of the FAO. Traditionally, SIOFA has included information on by-catch and discards, and status of marine fisheries, as well as outlook for the coming years. According to the latest South Indian Ocean Fishery Agreement (SIOFA), the world catches have stabilized at around 90 million tons. Fish stocks within safe biological limits have been reduced from 90 per cent to 68.6 per cent. The SIOFA report has been extended to include information on inter alia the relevant targets under the sustainable development goals (SDG No 14: Conserve and sustainably use the oceans, seas and marine resources for sustainable development). The report will also include information on the implementation of the Code of Conduct for Responsible Fisheries, as well as on the implementation of the Paris Agreement as relevant to the oceans. The importance of this information will be addressed in section 1.4.

The FAO is responsible for cooperating on several databases. One type provides information on fisheries-relevant statistics: global catches and trade with fish. This information is provided through cooperation with other regional and global bodies. A second type, the fisheries and resources monitoring system, provides information on the status of particular stocks. The third type of database provides information relevant for assessing the implementation of and compliance by states with FAO agreements and guidelines. The FAO has set up an inventory of fisheries measures adopted for vulnerable marine ecosystems in areas beyond national jurisdiction. It provides insight into the implementation of UN General Assembly (UNGA) resolutions and FAO guidelines, which will be presented in section 1.4. Databases have also been set up to inform on the implementation of the FAO International Plan of Action on Sharks. In the implementation of Article VI, in the 1993 Compliance Agreement, there is a work on setting up a global record of fishing vessels.
licensed to fish on the high seas.\textsuperscript{39} With the entry into force of the Port State Measures Agreement, the FAO has established a (p. 8) database with information on measures taken by states in respect of foreign-flagged vessels visiting their ports.\textsuperscript{40} The FAOLEX is a database with information on national legislation, regulations, and policies, including on fisheries.\textsuperscript{41}

### 1.4 Forum for Developing International Instruments, Norms, and Standards

In the wake of the adoption of the 1982 UNCLOS, the FAO undertook a (stronger) role in coordinating discussions on management of fisheries.\textsuperscript{42} Several international meetings and conferences on fisheries management under the auspices of the FAO have been held in the following decades producing legal and policy documents. Kaye\textsuperscript{43} has argued that they have had a normative influence on the member states.

The 1984 World Conference on Fisheries Management and Development was aimed at promoting development of the fisheries under UNCLOS and in particular to assist developing countries. The Conference adopted a strategy with programmes of work. The section of the strategy on management has been described as ‘unremarkable’.\textsuperscript{44}

At the beginning of the 1990s there was recognition that fish stocks were under growing pressure.\textsuperscript{45} In the following years the work of the FAO was influenced by what Pulvenis\textsuperscript{46} has described as ‘the convergence between these two currents’. He referred to the interaction between international environmental law and law of the sea, which has stimulated the FAO to develop ‘a coherent, comprehensive and growing body of rules, principles and standards applicable to fisheries and aquaculture’. The FAO/Netherlands Conference on Agriculture and the Environment, convened in 1991, developed the sustainable development concept in regard to natural resources.\textsuperscript{47} The conference agreed that: ‘Such development (in agriculture, forestry and fisheries sectors) conserves land, water, plant and animal genetic resources and is environmentally non-degrading, technically appropriate, economically viable and socially acceptable’.\textsuperscript{48}

The Cancún Declaration of the 1992 FAO International Conference on Responsible Fisheries called for drafting of an international Code of Conduct for Responsible Fisheries.\textsuperscript{49} Introducing the concept of responsible fishing, the Code was, according to the Declaration, inter alia to be based on the principle of sustainable use of living (p. 9) marine resources and to include requirements on selective gear to reduce by-catch and the use of area-based measures to protect the marine habitats. The Cancún Declaration also called for cooperation on means and mechanisms to ensure responsible fisheries on the high seas. It specifically called for measures to deter the reflagging and cooperation to prevent what was described as illicit fishing. The Cancún Declaration provided an important background for the 1992 UN Conference on the Environment and Development (UNCED) held in Rio.\textsuperscript{50} The 1992 FAO Technical Consultation on High Seas Fisheries was called to address the issues raised in Cancún and start development of a Code of Conduct for Responsible Fisheries.\textsuperscript{51} There was agreement to fast-track the regulation of the reflagging issue owing to concern over increased unregulated fishing on the high seas, that is, fishing conducted by vessels flying the flag of states not members of the competent regional fisheries body (RFB). Vessel-owners reflagged their vessels to non-member states to avoid having to comply with the conservation and management measures agreed through the RFB. This led to the speedy adoption of the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (Compliance Agreement).\textsuperscript{52}
The 1995 FAO Ministerial Conference on Fisheries resulting in the Rome Consensus on World Fisheries was the follow-up by the FAO of UNCED. The Rome Consensus (again) urged states and international organizations to take measures inter alia to reduce fishing to sustainable levels and to reduce discards and by-catch habitats. The Rome Consensus also supported the ongoing negotiations on the Code of Conduct, which was adopted by the FAO Conference later the same year. Four years later, in 1999, the FAO Ministerial Meeting on Fisheries adopted the Rome Declaration on the Implementation of the Code of Conduct for Responsible Fisheries. Importantly, the member states committed to develop a plan of action to deal with what was described as IUU fishing, to be coordinated between states, the FAO, RFBs, and other international agencies such as IMO. A ministerial meeting held in 2005 emphasized the need for national and regional plans of action to deter IUU fishing and highlighted issues such as use of trade-related measures, the reduction of overcapacity, and the regulation of transhipment.

In contrast to earlier conferences, the 2001 Reykjavik Conference on Responsible Fisheries in the Marine Ecosystem concentrated on more substantive issues. The (p. 10) objective of the conference was ‘[t]o review the best available knowledge on the marine ecosystem issues, to identify means by which ecosystem considerations can be included in capture fisheries management’. Under the resulting Reykjavik Declaration, the states committed to incorporate ecosystem consideration in fisheries management, as part of implementation of the Code of Conduct. Ecosystem consideration implied ‘[i]ncreased attention to interactions, such as predator-prey relationships, among different stocks and species of living marine resources’. Further, it also involved prevention of effects of non-fisheries activities on the marine ecosystems and fisheries. The ecosystem considerations had institutional implications, such as the need for cooperation between regional fisheries management organizations and regional bodies responsible for conserving the marine environment.

The 2009 FAO Port State Measures Agreement was negotiated on the basis of a technical consultation between representatives of member states. The agreement was initiated at the 2006 UN Fish Stocks Agreement Review Conference, to be built on a model scheme developed by the FAO and its International Programme of Action on IUU fishing. This reflects a trend of the recent years where there is closer cooperation and interaction between the FAO and other inter-governmental organizations, which is to be addressed below under section 1.5. This has been done through references to and support of FAO initiatives in UN resolutions, such as the 2002 Johannesburg Declaration, where states were urged to implement the Code of Conduct for Responsible Fisheries, the International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA on IUU fishing) and the ecosystem approach, with reference to the Reykjavik Declaration.

Even during the early 1990s there were already clearly interactions between the instruments developed through the FAO and the Fish Stocks Agreement negotiated through the UN. As part of its strategic objective on making agriculture, forestry, and fisheries more productive and sustainable, the FAO has launched in 2014 what it describes as the Blue Growth Initiative. It is defined as ‘Sustainable growth and development emanating from economic activities using living renewable resources of the oceans, wetlands and coastal zones that minimize environmental degradation, biodiversity loss (p. 11) and unsustainable use of aquatic resources, and maximize economic and social benefits.’ Thus, the FAO is focusing on the balancing of economic growth with improved livelihood, social security, and secure supply of food, more than ensuring protection of the marine environment.

1.4.1 The normative influence of the FAO

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In the following sub-sections, three concepts or principles either introduced by or detailed through the work of the FAO will be presented. First, they involve the introduction of norms originating from environmental law implying greening of fisheries law. Secondly, they address the major concern in fisheries law: lack of implementation of and compliance with global, regional, and national legislation, causing overfishing and other negative impacts on the marine environment. Even if it is underlined that these concepts are developed within the framework of the UNCLOS, the contribution of the FAO to these concepts has influenced and developed ocean governance. They include the precautionary approach, ecosystem approach to fisheries management, and IUU fishing.

(a) The precautionary approach

The concept, originating in national and international environmental law, was introduced at the 1992 Technical Consultation on High Seas Fisheries. The precautionary approach or principle, originally developed to deal with pollution, met with scepticism. States were concerned that the precautionary approach did not lead to a moratorium and wanted to develop the concept, focusing on the practical implications. The precautionary approach also met with scepticism at the 1992 UN Conference on Environment and Development but was included as principle 15 of the Rio Declaration. The FAO provided background information on the precautionary approach to the UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks. The precautionary approach was later included both in the Fish Stocks Agreement and in the FAO Code of Conduct for Responsible Fisheries, both adopted in 1995. The FAO has adopted a series of technical guidelines aimed at assisting member states and RFBs in implementing the Code. They include guidelines on the application of the precautionary approach to marine fisheries. States are encouraged under UNGA resolutions on sustainable fisheries to apply the precautionary approach, taking into account the guidelines developed by the FAO. The fact that the UN Fish Stocks Agreement includes similar provisions on the precautionary approach and that the UNGA refers to the FAO instruments as relevant in interpreting and applying the precautionary approach, strengthens their legitimacy.

(b) Ecosystem approach to fisheries management

The above-mentioned 2001 Reykjavik Declaration underlined the importance of including ecosystem considerations in fisheries management. The Code of Conduct for Responsible Fisheries does not explicitly refer to an ecosystem approach or ecosystem-based management. One of its objectives is ‘[t]o promote protection of living aquatic resources and their environments and coastal areas ...’. Several of the general principles implies a requirement to include ecosystem considerations in fisheries management, such as the maintenance of diversity of fishery resources and conservation of non-target species belonging to the same ecosystem. Further, the principles regarding development and application of selective and environmentally safe fishing gear and protection of critical fisheries habitats are directed at including ecosystem-based considerations in fisheries management. The concept of an ecosystem approach to fisheries management was developed in 2003 through one of the technical guidelines aimed at assisting states in implementing the Code of Conduct. In addition to the Code of Conduct, the guidelines also follow the call of the 2002 Johannesburg Declaration to develop an ecosystem approach. Further, the work of the FAO was influenced by the Conference of the Parties under the Convention on Biological Diversity, which introduced the ecosystem approach in 1995 and had developed the concept further at its subsequent meetings. The purpose of the technical guidelines was to translate the concept into operational guidelines. An ecosystem approach to fisheries management is defined as:
An ecosystem approach to fisheries strives to balance diverse societal objectives, by taking into account the knowledge and uncertainties about biotic, abiotic and human components of ecosystems and their interactions and applying an integrated approach to fisheries within ecologically meaningful boundaries. Similar to the precautionary approach, several UNGA resolutions have endorsed the ecosystem approach and encouraged states to apply the concept, by taking into account the guidelines adopted by the FAO.

(c) **IUU fishing**

The concept of ‘illegal, unreported and unregulated fishing’ or IUU fishing originates from the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). However, the concept was developed and expanded through the work of the FAO. Measures to prevent IUU fishing are now included in global, regional, and national policies and legislation. This includes the 2009 FAO Port State Measures Agreement and different measures adopted by regional fisheries management organizations (RFMOs).

The problems of IUU fishing were introduced to the FAO through the COFI meeting in February 1999. The same year, the FAO Ministerial Meeting on Fisheries adopted the Rome Declaration on the Code of Conduct for Responsible Fisheries. The meeting raised concerns about growing numbers of IUU activities, as well as fishing by so-called flags of convenience. The ministers agreed to develop a global plan of action to deal with IUU fishing activities, to implement the Code of Conduct for Responsible Fisheries. Following consultations with RFMOs and national governments, an FAO expert consultation on IUU fishing was convened with drafting the text of a draft plan of action, which was further developed through FAO technical consultations and adopted by the COFI in 2001. The IPOA on IUU fishing has been supplemented by a legally binding instrument (the Port State Measures Agreement) and by voluntary guidelines for flag state performance. Work ongoing within the FAO on developing a global record on fishing vessels, transport, and supply vessels will be a further measure to prevent IUU fishing. The latter was initiated through the 2005 Rome Declaration on IUU Fishing. The Declaration also called for the use of market-related measures (eg catch documentation schemes) and for addressing the economic incentives (eg different forms of subsidies) that lead to IUU fishing. These issues will be addressed below as they involve interaction with other legal regimes. The work of the FAO on IUU fishing has been endorsed by the UNGA Sustainable Fisheries resolutions: states are urged to take all necessary steps to implement the IPOA on IUU fishing.

1.4.2 **FAO legal and policy instruments**

The FAO has contributed to ocean governance and the development of international rules and standards through three major instruments and by the establishment of RFBs. These instruments will be presented in this section; two of them are treaties (the Compliance Agreement and the Port State Measures Agreement) and the third consists of non-legally binding guidelines (the Code of Conduct for Responsible Fisheries). They are presented chronologically.

(a) **Compliance Agreement**

The Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (the Compliance Agreement) was developed in response to the inability or unwillingness of states to regulate the activities of vessels flying their flag while fishing on the high seas. This was inter alia caused by fishing vessels being reflagged to states that were not members of the relevant RFMO, which were not bound by conservation and management measures. It entered into force in 2003 and has at present forty state parties. As correctly pointed out by Balton, the objective of the Compliance Agreement is to specify the duties of flag states when operating...
in high seas fisheries. Under Article III(1) of the Compliance Agreement, the state party is obligated to ensure that vessels flying its flag are not ‘undermining the effectiveness’ of measures adopted through RFMOs. The obligation is applicable to member states and non-member states alike. However, the Compliance Agreement stops short of defining what constitutes ‘undermining’. Vessels are not to fish on the high seas unless they have been licensed to fish there by their flag state party (Article III(2)). The flag state party is required to have a record of fishing vessels licensed to fish on the high seas (Article IV). Such information must (p. 15) be shared with the FAO (Article VI). A state party shall not issue licences to fish on the high seas unless it is able effectively to exercise its responsibilities under the Compliance Agreement (Article III(3)). The Compliance Agreement includes measures to exclude vessels that have been involved in activities undermining the effectiveness of the conservation and management measures applicable to the high seas: a state party shall not issue fishing licences to vessels that under the registry of another state have been involved in activities undermining the effectiveness of international conservation and management measures (Article III (5)). The flag state party must ensure that vessels licensed to fish on the high seas provide necessary information to ensure that they comply with their obligations (Article III (7)). In reality, the flag state party is required to have a mandatory reporting scheme for high seas fisheries. Further, the flag state party is required to take enforcement measures and impose sanctions in regard to vessels violating the regulations of the Compliance Agreement (Article III(8)). The Compliance Agreement includes a provision on port state control where the port state party is required to report to the flag state party where there are reasonable grounds for believing that a vessel has been involved in undermining conservation and management measures agreed for the high seas (Article V).

The Compliance Agreement should not be viewed in isolation. Its norms have been incorporated in the Code of Conduct and are reflected in the 1995 UN Fish Stocks Agreement. The latter follows the trend in specifying the obligations of flag states: they are required to take several specific measures to regulate the fishing activities of their vessels to ensure that they do not undermine the effectiveness of the measures of the relevant RFMO (Article 18). Further, the flag states are required to ensure compliance with these measures through enforcement and imposing of penal and other sanctions in cases of violations (Article 19). The obligations of the port state under the Compliance Agreement have been further developed in the Fish Stocks Agreement (Article 23). The port state has a clear duty to take measures in respect of foreign-flagged fishing vessels to promote the effectiveness of conservation and management measures of RFMOs. Such measures may include inspections of documents, gear, and catches. The port states may adopt regulations enabling them to ban landing and transhipments of catches taken in a manner that undermines the effectiveness of the conservation and management measures of RFMOs. The obligations of port states have been further specified and expanded through the 2009 Port State Measures Agreement to be addressed below.

(b) Code of Conduct for Responsible Fisheries

The Code of Conduct for Responsible Fisheries (CCRF) was developed in the early 1990s as a response to concern regarding overexploitation of major fish stocks and damage to marine ecosystems caused by fishing, pollution, and habitat destructions. The CCRF is not a legally binding instrument but is described as (p. 16) voluntary (Article 1.1). This follows a tradition of the FAO to develop technical, non-legally binding instruments. However, parts of it are based on the UNCLOS and provisions are made legally binding through treaties, such as the Compliance Agreement (Article 1.1). In fact, the Compliance Agreement is an integral part of the CCRF. The status of the CCRF has to be understood in the context of its objectives, which include establishing principles ‘[i]n accordance with relevant rules of international law ...’ for responsible fishing and to establish criteria for ‘[e]laboration and implementation of national policies ...’ for responsible fishing (Article 2). The CCRF has
The CCRF has four important characteristics. It is applicable to and provides for:

- all fisheries, marine and inland, as well as aquaculture (Article 1.3)
- all stages in fisheries: from fisheries research (Article 12) to fisheries management (Article 7), fisheries operations (Article 8) post-harvest practices and trade (Article 11)
- all stakeholders, including states, RFMOs, non-governmental organizations (NGOs), fishermen and industry (Article 1.3)
- a holistic approach, as fisheries are considered within the ecosystem and the fisheries sector is approached in an integrated manner, within a broader policy, legal, and institutional framework.

The CCRF consists of twelve articles. The first three deal with its nature and scope, its objectives, and its relationship with other international instruments. The fourth article is about the implementation, monitoring, and updating of the CCRF. COFI is to monitor its implementation and its effects on fisheries. The sixth article is, according to Moore, the central provision of the CCRF setting out nineteen principles for responsible fisheries, which include the precautionary approach, maintaining biodiversity, and the protection of critical habitats. The remaining articles concern the implementation of these principles not only in fisheries management and in the conduct of fisheries but also in aquaculture, coastal area management, and post-harvest practices and research.

The CCRF is supplemented by four IPOAs:

- the International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries
- the International Plan of Action for the Conservation and Management of Sharks
- the International Plan of Action for the Management of Fishing Capacity and the International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA–IUU).

In addition, the FAO has prepared a series of technical guidelines, which offer assistance to states in the implementation of the Code on matters concerning marine protected areas, precautionary approaches to capture fisheries, ecosystem approaches to fisheries (EAFs) and aquaculture, and fishing operations. These guidelines do not have any formal legal status. The COFI has endorsed several international guidelines including on by-catch management and reduction of discards and on the management of deep-sea fisheries on the high seas.

The IPOAs and technical and international guidelines provide guidance to coastal states and flag states, as well as to RFMOs in the implementation of the CCRF. Space does not allow for detailed presentations of all these instruments. The FAO has been instrumental in operationalizing both the precautionary approach and the EAF, which is a way of including ecosystem considerations into more ‘conventional fisheries management’.

The FAO International Guidelines for the Management of Deep-Sea Fisheries in the High Seas were adopted in response to calls from the UNGA. The deep-sea fisheries guidelines are applicable to fisheries for species that may sustain a low exploitation rate and to the use of fishing gear that is likely to contact the sea floor. The objective is to prevent significant adverse impacts on vulnerable marine ecosystems (VMEs) caused by overexploitation of species with low productivities and physical damage caused by fishing
VMEs are identified through criteria such as uniqueness and rareness, functional significance of the habitat, and fragility. When deep-sea fishery is likely to provide significant adverse impacts in an area, the flag state and/or the RFMO are recommended to undertake an impact assessment, to include risk assessment of likely impacts and mitigation, and management measures to prevent significant adverse impacts on VMEs and long-term conservation of low-productivity species. The FAO, in cooperation with RFMOs, has developed a database that provides an inventory of measures established in areas beyond national jurisdiction (ABNJ) applicable to deep-sea fisheries.

The IPOA for conservation and management of sharks was triggered by concern of overexploitation of populations of sharks as the fisheries moved seawards. The objective of the IPOA is to ensure their conservation and management for the long-term sustainable use. It is applicable to areas within and beyond national jurisdiction. States are advised to develop national plans of action for conservation and management of sharks applicable to vessels flying their flags conducting directed fishery for or catching shark as by-catch. Further, they are to cooperate through regional or sub-regional fisheries bodies on regional plans of action. National and regional plans shall inter alia ensure that directed and non-directed fishery for shark are sustainable and protective of critical habitats.

The IPOA–IUU was adopted in 2001 recognizing that a major cause of overexploitation lies in inadequate implementation, compliance, and enforcement of global and regional instruments. As we have seen, the IPOA–IUU has had an impact on international fisheries law through the 2009 Port State Measures Agreement. IUU fishing has also become a key consideration in the practice of the RFMOs and is applicable to areas both within and beyond national jurisdiction. The definition of illegal fishing (IPOA–IUU paragraph 3.1) is any activity within waters under national jurisdiction pursued by a foreign flagged vessel without permission of the coastal state or in contravention of its legislation. Illegal fishing on the high seas involves vessels flying the flag of a RFMO member that is in contravention of the conservation measures applicable to those members or of activities in violation of the commitments undertaken by cooperating non-members. Unreported fishing (IPOA–IUU paragraph 3.2) is defined as an activity undertaken in areas under national jurisdiction or in the area of competence of a relevant RFMO, which has not been reported or has been misreported in violation of its reporting procedures. Unreported fishing is normally considered on a par with illegal fishing. Unregulated fishing on the high seas (IPOA–IUU paragraph 3.3.1) is carried out in the regulatory area of an RFMO by stateless vessels or by vessels flying the flag of non-member states, which are not consistent with or contravene the measures of the RFMO. The definition of unregulated fishing has caused some controversies as the fishing activities of the non-members are not necessarily in violation of international law. Any fishing in an area where there are no applicable conservation and management measures and where the fishing activity is in violation of conservation obligations also constitutes unregulated fishing (IPOA–IUU paragraph 3.3.2).

The objective of the IPOA–IUU is to prevent, deter, and eliminate IUU fishing (paragraph 8). The IPOA–IUU includes a range of measures to be taken by all states, flag states, coastal states, consumer states, and RFMOs. It does not, however, specify which measures are addressing illegal fishing and which are to prevent unregulated fishing. All states are requested to ratify the relevant treaties, to adopt necessary national legislation to prevent IUU fishing, and to cooperate on the issue. The IPOA–IUU advises flag states to take appropriate action to ensure that their vessels are not involved in IUU fishing. The measures to be taken by the flag states are to a large degree identical to those regulated in the Fish Stocks Agreement and the Compliance Agreement. The flag states should inter alia use their capacity and not permit vessels that have been involved in IUU fishing to fish or to reflag. As most of the IUU fishing is taking place within areas under national jurisdiction, the measures include effective monitoring, surveillance, and control of all fishing activities,
use of licensing schemes for foreign fishing vessels, and refusal to license vessels with a
history of IUU fishing. Port states should require vessels to apply for permission to enter
their ports before arrival, including information on licence from flag state and on catches on
board.

The IPOA–IUU does include other measures than the traditional law of the sea measures.
States are encouraged to prevent export and import of catches caught by vessels involved
in IUU fishing. Possible measures could include catch documentation schemes. The IPOA–
IUU underlines that these measures should be taken consistent with WTO law. Finally,
RFMOs are important actors in preventing IUU fishing, not least by developing their
functions as envisaged by the CCRF and the Fish Stocks Agreement. The RFMOs may also
be involved in establishing trade-related measures.

Other FAO instruments supplement the IPOA–IUU. They include the 2014 Voluntary
Guidelines for Flag State Performance. In addition to setting out the basic principles for
the exercise of effective flag state responsibility, these guidelines establish criteria for
assessing the performance of the responsibility. The guidelines are directed at the flag
states listing several types of measures available to ensure effective exercise of their
responsibility, that is, the use of authorization, monitoring surveillance, and enforcement.
The flag states should regularly undertake a self-assessment based on the criteria. Initiated
by the 2005 Ministerial Declaration on IUU Fishing, the FAO is in the process of
establishing a voluntary global record of fishing vessels and other relevant vessels designed
to identify vessels involved in fishing or fishing-related activities. By providing
information such as the identity of the vessel, its capacity and capability, owners,
authorizations and history of IUU fishing, and the Global Record, facilitate for prevention of
IUU fishing.

Overall, the CCRF and its supplementing instruments provide a comprehensive set of norms
specifying, supplementing, implementing, and developing international fisheries law and
thereby the law of the sea. However, as pointed out by Pulvenis, the state of the world’s
fisheries suggests that compliance with the CCRF has been poor. The CCRF provides for a
relatively limited scheme to control its compliance. The FAO is charged with
monitoring the application and implementation of the CCRF and its effects on fisheries.
This role is exercised through the COFI, which regularly reports on the progress in the
implementation of the CCRF and related instruments. Recently, The State of World
Fisheries and Aquaculture publication is included in the report. The progress report,
based on questionnaires to member states, RFBs, and NGOs, provides a summary of
measures taken by member states and RFBs to implement the CCRF and related
instruments such as the IPOAs. Around half of the member states have responded to the
questionnaire. The report does not provide information on the status of the implementation
in individual states. Thus, the COFI seems to have a limited role in ensuring compliance
with the CCRF.

(c) Port State Measures Agreement

The objective of the 2009 FAO Port State Measures Agreement, which entered into force
on 6 May 2016, is to prevent IUU fishing by the use of so-called port state measures (Article
2). At present, the agreement has thirty-nine state parties. The concept of IUU fishing
originates from the IPOA–IUU. Both the FSA and Compliance Agreement include port state
measures, but the FAO Port State Measures Agreement includes obligations that are more
specific. The measures to be taken by the port state are also directed at enforcing
compliance with the agreed conservation and management measures for the high seas
areas through RFMOs. This agreement includes provisions on port entry, the use of ports,
and inspections and follow-up. There are also provisions made for special requirements of developing states.

The state parties must designate ports where foreign-flagged fishing vessels may request permission to enter (Article 7). Before entering such ports, the vessels are required to submit an advanced request (Article 8), which must include information inter alia on fishing authorization (for example, period, area, gear, and catches), total catches on board, and catches to be landed. The information provided assists the port state party in determining if the vessel has been involved in IUU fishing (Article 9(1)). If the port state party has sufficient evidence that the vessel has been involved in IUU fishing, for example, if it has been listed by RFMOs for prior involvement in such fishery, the port state party is obligated to refuse entry to its ports (Article 9(4)). If a vessel is permitted to enter port, but its authorization to fish on the high seas is not valid or it is unable to confirm that the fish on board was caught in compliance with relevant RFMO conservation and management measures, it may be refused landing or transhipment of catches, and/or services such as resupplying (Article 11). The Port State Measures Agreement does not exclude the port state from taking other measures consistent with international law. Arresting the vessel in port for fishing activities on the high seas would, however, violate the freedom of the high seas and the exclusive jurisdiction of the flag state. The port state is required to communicate with the flag state on these matters, and the flag state is obligated to take measures to investigate incidences where there are clear indications that a vessel has been involved in IUU fishing (Article 20).

This agreement recognizes the special requirements of developing states (Article 21) by requiring that other states provide assistance to develop capability, both legally and on capacity to comply with the obligations of the agreement. In any case, due regard must be given to ensure that developing states are not disproportionately burdened in the implementation of the obligations (Article 21(2)). This article suggests that the obligations may not be equally applied unless the capacity of developing countries is enhanced. Even if the agreement is not yet in force, its measures have been implemented at regional level through some of the RFMOs.

(d) FAO and regional fisheries bodies

As part of its global mandate and in an effort to promote long-term sustainable fisheries, the FAO has established regional fisheries bodies (RFBs). Some of them have advisory functions, established under Article VI(1) of the FAO Constitution. Other RFBs, established under FAO Constitution Article XIV(1), are competent to adopt binding decisions. They are better described as RFMOs. There are over forty RFBs worldwide. They are different in scope and with regard to their competence. While some are species specific (such as those addressing tuna species), others include all fish species within identified parts of the high seas and/or areas under national jurisdiction. Some of them are established by the FAO. Some regional fisheries bodies have a more advisory (scientific or management) role.

RFBs established by the FAO with an advisory role include:

- the Fishery Committee for the Eastern Central Atlantic (CECAF)
- the Western Central Atlantic Fishery Commission (WECAFC)
- the South-west Indian Ocean Fisheries Commission (SWIOFC).

Whereas the areas of competence of CECAF and WECAFC also include the high seas, the competence of SWIOFC is applicable only to waters under national jurisdiction.
RFMOs established by the FAO include:

- the Asia-Pacific Fisheries Commission (APFIC)\(^{129}\)
- the General Fisheries Commission for the Mediterranean (GFCM)\(^ {130}\)
- the Indian Ocean Tuna Commission (IOTC)\(^ {131}\)
- the Regional Commission for Fisheries (RECOFI)\(^ {132}\)

It should be noted that some of these RFMOs primarily regulate fisheries within areas under national jurisdiction (APFIC and RECOFI), while IOTC is competent to regulate tuna. The FAO has been involved in establishing other RFMOs such as the SIOFA.\(^ {133}\)

Most RFMOs are established outside the framework of the FAO. As mentioned, FAO instruments such as the CCRP and IPOA–IUU identify RFMOs as important instruments or tools in ensuring sustainable use of living marine resources and for preventing and eliminating IUU fishing. In the monitoring of the implementation of CCRP and other FAO instruments, the FAO has collected information from RFBs/RFMOs. Further, it has undertaken a coordinating role by hosting meetings between the secretariats of the RFBs, including non-FAO RFBs.\(^ {134}\) The meetings have been informative where representatives of RFBs/RFMOs have responded on issues on the agenda of COFI and where they discuss common challenges.\(^ {135}\) Harrison argues that the FAO has had limited influence on the development of RFMOs.\(^ {136}\)

(e) The relationship to other inter-governmental bodies

The work of the FAO inter-relates with the activities of other inter-governmental bodies. As mentioned earlier, the FAO interacts with RFBs/RFMOs and the UN. The UNGA has, as noted through its sustainable fisheries resolutions, endorsed the CCRF, the IPOA–IUU, and other FAO instruments and highlighted the importance of their implementation.\(^ {137}\) The CCRF has been identified as a primary source in implementing the Fish Stocks Agreement, thus providing the FAO with a central role.\(^ {138}\) Rice\(^ {139}\) argues that this ‘[i]s an important empowerment of the agency …’. The UNGA Sustainable Fisheries resolutions have broadened their scope by asking or encouraging the FAO to develop further instruments (eg catch documentation schemes and the global record) or to provide information and data (eg on status on implementation of the IPOA-Capacity).\(^ {140}\)

The FAO has been asked to provide advice to the UN on different occasions, such as on the precautionary approach during the negotiations on the Fish Stocks Agreement, as noted above. The organization is also on its own initiative involving itself in the UN process on development of a possible third UN Implementation Agreement, on conservation and sustainable use of marine biodiversity in ABNJs.\(^ {141}\) The UNGA has underlined the importance of cooperation between the FAO and other UN agencies in the implementation of the different international programmes of action and the contribution of the FAO to the annual report of the UN Secretary General on sustainable fisheries.\(^ {142}\)

The IPOAs developed to operationalize the CCRF have clear linkages to other legal regimes as they include measures requiring cooperation and/or some kind of coordination. The IPOA–IUU involves the use of measures to strengthen the effective exercise of flag state responsibility, which is also a concern of the IMO of the UN. The IMO recognized that the lack of implementation of flag state obligations and reflagging are causes of IUU fishing.\(^ {143}\) In 2000 the FAO and the IMO established a joint IMO/FAO Ad hoc Working Group on IUU fishing and related matters.\(^ {144}\) The three meetings of the working group have addressed two themes of common interest of the two organizations, including elements of effective flag state control and port state inspection.\(^ {145}\) It has primarily functioned as a forum for the exchange of information. However, at the last meeting there were discussions on applying
the IMO Ship Identification Number Scheme in the global record on fishing vessels to be developed through the FAO.\textsuperscript{146}

The IPOA-IUU for the Management of Fishing Capacity recommends that states shall adopt national plans of action and, if required, reduce capacity to ensure balance between capacity and available resources on a sustainable basis.\textsuperscript{147} They should also assess the possible impact of all factors, including subsidies on capacity and aim at reducing subsidies and other economic incentives that contribute to the build-up of excessive fishing capacity.\textsuperscript{148} According to Young,\textsuperscript{149} the voluntary approach of the FAO has not been successful. It has not led to any reduction in subsidies. Therefore, (p. 24) international attention was redirected to the WTO, which could provide a legal regime for reducing subsidies through the Agreement on Subsidies and Countervailing Measures.\textsuperscript{150} Talks on reducing subsidies in fisheries were introduced through the so-called Doha Round, and are still ongoing.\textsuperscript{151} Another interaction with WTO agreements may be through the use of catch documentation schemes, on which voluntary guidelines are being drafted by the FAO.\textsuperscript{152} The draft guidelines stipulate that any measures taken under the schemes should be consistent with the rights and obligations of states under WTO agreements.\textsuperscript{153}

The listing of living marine species such as sharks by the CITES\textsuperscript{154} has been used as an alternative where measures taken by coastal states, RFMOs, or through the FAO have been considered inadequate.\textsuperscript{155} The IPOA-Sharks suffers from inadequate implementation by member states.\textsuperscript{156} CITES signatories are mandated to ensure that international trade in animals and plants does not threaten their survival.\textsuperscript{157} The listing of marine living species has been criticized by other states for having an inadequate scientific basis and a lack of coordination with fisheries management regulations.\textsuperscript{158} CITES signatories are required to consult with relevant RFMOs on scientific data, and to coordinate measures before listing a species.\textsuperscript{159} The FAO and CITES Secretariat entered into a memorandum of understanding in 2006.\textsuperscript{160} CITES has also established cooperation with the International Whaling Commission and the CCAMLR.\textsuperscript{161} Under the memorandum, the FAO is invited to advise on the criteria for listing, CITES is to inform the FAO about proposals for listing, and the parties are to collaborate on ensuring adequate scientific and technical assessment of the proposals. Further, the FAO has committed to ensure that the proposals are subjected to scientific review, which are to be forwarded to the CITES state parties and to the greatest extent possible be taken into account. The criteria for listing have been developed in cooperation with the FAO. The FAO has established an expert advisory panel to assess the proposals submitted to CITES (p. 25) for listing.\textsuperscript{162} According to the FAO, 100 commercially exploited marine species have been listed.\textsuperscript{163}

The conferences on sustainable development organized by the UN during the 1990s and early 2000s identified sustainable fisheries as one of the components of sustainable development. The Earth Summit held in Johannesburg in 2002 concluded with several recommendations, including the maintenance of fish stocks at maximum sustainable yield, ratification of relevant legal treaties and agreements, and the implementation of the CRRF.\textsuperscript{164} It is recognized that fisheries management is an integrated part of conservation and management of the oceans.\textsuperscript{165} Destructive fishing practice is one of the causes of loss of marine diversity, which may be addressed by area-based measures such as marine protected areas. Finally, the conference recommended the application of the ecosystem approach, referring to the Reykjavik Declaration on Responsible Fisheries in Marine Ecosystem, organized by the FAO. Ten years later, at the UN Conference on Sustainable Development in Rio (Rio+20), the recommendations of Johannesburg were repeated.\textsuperscript{166}

The Rio+20 underlined the importance of dealing with the oceans, seas, and coastal areas as an integrated whole and further underlined the need to enhance action to manage fishing practices that have significant adverse effects on marine ecosystems.\textsuperscript{167} The FAO is seeking—pursuant to the invitation included in the Convention on Biological Diversity (CBD)—to integrate its instruments in implementing the Strategic Plan for Biological
Diversity 2011-2020, which includes the Aichi Biodiversity Targets. Several of the targets such as targets 6 and 11 are relevant for living marine resources. All fish stocks are, under target 6, to be harvested sustainably, applying ecosystem-based approaches by 2020. Further, recovery plans for all depleted species should be in place and there shall be no significant adverse impacts on threatened species and VMEs. Target 11 stipulates that by 2020 10 per cent of coastal and marine areas should be conserved through representative systems of protected areas and other area-based measures. The area-based measures will aim at protecting areas of particular importance for biodiversity and ecosystem services.

In 2000 the UN adopted the millennium development goals (MDGs) setting out general objectives and targets for sustainable development. All of the recommendations of previous UN conferences on sustainable development are acknowledged. (p. 26) MDG No 7 was titled ‘Ensure environmental sustainability’ and included targets to reverse loss of environmental resources and biodiversity, including to have a significant reduction in loss of biodiversity by 2010. The MDG is succeeded by the 2030 Agenda for Sustainable Development. The 2030 Agenda includes seventeen SDGs, of which SDG No 14 deals with life below water. Its objective is to conserve and sustainably use the oceans, seas, and marine resources.

SDG No 14 includes several targets, to some degree overlapping with the Strategic Plan for Biological Diversity, referred to above, relevant for the work of the FAO, such as:

- manage and protect marine and coastal ecosystems sustainably to avoid significant adverse impacts
- regulate harvesting and end overfishing, IUU fishing and destructive fishing practices and implement science-based management plans. The aim is to restore fish stocks in the shortest time feasible, at least to levels that can produce maximum sustainable yield as determined by their biological characteristics
- at least 10 per cent of coastal and marine areas to be conserved
- prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to IUU fishing. This work is to be channelled through the WTO fisheries subsidies negotiations.

All these targets are to be achieved by 2020. Each state is responsible for contributing to the targets, whereas there will be international funding available and UN agencies (such as the FAO) will assist. The achievement of the SDG is reviewed by the High-level Political Forum on Sustainable Development, on the basis of national reporting. The FAO will be responsible for monitoring some of the SDG indicators, including under SDG No 14, assisting the High-level Forum.

In addition to assisting the states and the High-level Forum, the FAO has developed guidelines that may assist states in implementing SDG No 14. They include guidelines on ecosystem approach to fisheries, on by-catch and the reduction of discards, and on integration of fisheries into coastal area management. The FAO has adopted guidelines on area-based measures such as the management of deep-sea fisheries in the high seas, as referred to earlier and on marine protected areas.

1.5 Summing Up

As one of the few inter-governmental organizations with almost universal participation of states, the FAO has a unique position in ocean governance. Whereas cooperation on conservation and management of living marine resources is organized at the regional level, the FAO provides a venue for more general governance of living marine resources. The presentation of the FAO has focused on some of the functions of the FAO. The technical assistance offered by the FAO to member states is important regarding their ability to adopt and implement fisheries legislation and policy consistent with FAO instruments. The role of
the FAO as a kind of clearing house be underestimated. The collection and dissemination of data and relevant information enables the member states to assess the status of the living marine resources and the effectiveness of conservation and management policies. The global record will also enable states to have a more complete overview of vessels involved in fishing activities.

The normative function of the FAO has been the main topic of this chapter. Important norms have come through the Code of Conduct for Responsible Fisheries, widening their application. It is done through incorporating legally binding norms such as from the Compliance Agreement. Further, the FAO has through different types of guidelines provided practical assistance for the implementation of these norms. Even if they are not legally binding, as Harrison argues, they have ‘[s]erved to crystallise international support for new principles …’ to be applied in fisheries management. The measures promoted by the FAO recognize that it is necessary to apply measures other than the traditional measures to ensure sustainable use and conservation of living marine resources, such as catch documentation schemes, reduction of subsidies, and assessment of flag state performance.

Three central concepts in international fisheries law has been introduced and/or developed by the FAO, including the precautionary approach, the ecosystem approach to fisheries, and IUU fishing. These concepts, as included or developed on the basis of CCRF, have been approved by the world community through the annual UNGA resolutions on sustainable fisheries and by several UN conferences on sustainable development. The FAO-initiated measures are also coordinated with the CBD, IMO, CITES, and WTO, as well as other inter-governmental institutions. However, the FAO’s The State of World Fisheries and Aquaculture, the regular report of the FAO, suggests that the major parts of living marine resources are either fully utilized or overexploited. The main challenge in international fisheries is national implementation, which the FAO has limited resources at its disposal to address. The IPOA–IUU identifies a series of relevant and important actors for implementation: flag states, coastal states, port states, and import and export states, as well as RFMOs. In the end, it is the willingness and ability of the member states that will be decisive.

Footnotes:

2 ibid arts 61, 63, and 64.
3 ibid art 87(1)(e).
4 ibid arts 116–19.
5 ibid art 118.
6 ibid arts 61(3) and 119(1)(a).
7 ibid arts 61(5) and 119(2).
10 Harrison (n 8) 201.


ibid preamble.


Agreement between the United Nations and the Food and Agriculture Organization of the United Nations (n 14), art V(2)(b).


FAO Constitution (n 12), art I.

ibid.

ibid art II(3) and (4).

Harrison (n 8) 204–05.

FAO Constitution (n 12), arts III, IV, and VII.

ibid art IV(1).

ibid art V(3).

ibid art XIV.


General Rules of the Organization (n 25), Rule XXX (6).

The Sub-committee on Fish Trade www.fao.org/fishery/about/cofi/trade/en (last accessed 21 December 2016).

The Sub-committee on Aquaculture is established by the COFI on the basis of Rule XXX(10) (n 20) www.fao.org/fishery/about/cofi/aquaculture/en (last accessed 21 December 2016).

Pulvenis (n 9) 124.


The State of World Fisheries and Aquaculture 2016 (n 31) ii–iii.


43 ibid 206.

44 ibid 208.


46 Pulvenis (n 9) 116-17.


48 ibid.


50 Charlotte de Fontaubert and Indrani Luchtman, with David Dowries and Carolyn Deere, Achieving Sustainable Fisheries: Implementing the New International Legal Regime (IUCN 2003) 105.


52 Compliance Agreement (n 38).


57 Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (adopted 22 November 2009, entered into force 5 June 2016) [2016] ATS 21 (Port State Measure Agreement).


60 Balton (n 51) 43.


64 Kaye (n 42) 212–13.


70 CCRF, art 2(g).

71 CCRP, arts 6.2, 6.6, and 6.8.


74 Decision of the Conference of the CBD II/8 Preliminary consideration of components of biological diversity particularly under threat and action which could be taken under the Convention, UNEP/CBD/COP/2/19.

75 FAO, ‘The Ecosystem Approach to Fisheries’ (n 72) 6.


77 Port State Measures Agreement (n 57).

78 Palma, Tsamenyi, and Edeson (n 76) 204–36.

79 ibid 29.


81 Palma, Tsamenyi, and Edeson (n 76) 32–34.


85 The 2005 Rome Declaration on Illegal, Unregulated and Unreported Fishing (n 55) para 4.
UNGA Res 70/75 (22 February 2016), para 59.

Compliance Agreement (n 38).

Balton (n 51) 34–35.


Balton (n 51) 33.

Fish Stocks Agreement (n 66).


ibid 90.


Pulvenis (n 9) 117.

ibid 89.


International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing (n 82).


Moore (n 92) 89.


Raphaël Billé, Lucien Chabason, Petra Drankier, Erik J Molenaar, and Julien Rochette, ‘Regional Oceans Governance: Making Regional Seas Programmes, Regional Fishery Bodies and Large Marine Ecosystem Mechanisms Work Better Together’ UNEP Regional Seas Report and Studies No 196, 10.


ibid para 6.

ibid paras 42–46.
111 ibid paras 42–53.
113 IPOA-Sharks (n 99).
115 ‘Voluntary Guidelines for Flag State Performance’ (n 83) para 1, Statement of Purpose and Principles.
116 ibid paras 6–37.
117 Rome Declaration on Illegal, Unreported and Unregulated Fishing (n 55) para 4.
118 Global Record (n 84).
119 Pulvenis (n 9) 118.
120 CCRF, art 4.2.
122 Port State Measures Agreement (n 57).
123 Status of the Port State Measures Agreement is available at www.fao.org/fileadmin/user_upload/legal/docs/037s-e.pdf. Under art 29 of the agreement it entered into force 30 days after the deposit of the twenty-fifth approval/ratification/accession instrument. The agreement currently has 33 participants.
124 FAO Constitution (n 12).
125 Raphaël Billé and others (n 105) 31.
The reports of the bi-annual meeting of the Regional Fishery Body Secretariats Network (RSN) are available at www.fao.org/fishery/topic/18244/en#RFB1 (last accessed 22 December 2016).


Harrison (n 8) 232–33.

See eg UNGA Res A/RES/70/75, paras 4, 11, and 55.


ibid 160.

UNGA Res A/RES/70/75, paras 82–86, 93, and 103.


UNGA Res A/RES/70/75, para 199.

Palma, Tsamenyi, and Edeson (n 76) 32.

ibid 33.


International Plan of Action for the Management of Fishing Capacity (n 100) para 21.


Margaret A Young, Trading Fish, Saving Fish: The Interaction between Regimes in International Law (Cambridge University Press 2011) 90–91.


See more information on WTO and its work on subsidies at www.wto.org/english/tratop_e/rulesneg_e/fish_e/fish_e.htm (last accessed 22 December 2016).


155 Young (n 149) 139.
156 ibid.
157 CITES (n 50); Appendices I, II, and III https://cites.org/eng/app/appendices.php (last accessed 22 December 2016).
158 Young (n 149) 144–45.
159 CITES (n 50), art XV(2)(b).
164 ‘Plan of Implementation of the World Summit on Sustainable Development’ (n 59) para 31.
165 ibid para 32.
166 UN General Assembly Resolution 66/288 The Future We Want, paras 168–77.
167 ibid para 168.
170 UNGA Resolution 55/2 United Nations Millennium Declaration, paras 21 ff.
171 ibid para 11.13.
172 UNGA RES 70/1 Transforming our world: the 2030 Agenda for Sustainable Development.
173 ibid paras 39–46.
174 ibid para 47, UNGA Res 70/299 Follow-up and review of the 2030 Agenda for Sustainable Development at the global level.
176 FAO, ‘The Ecosystem Approach to Fisheries’ (n 72).
181 Harrison (n 8) 234.