The Legal Mandate of Generic RFMOs

by
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Summary:
- UNCLOS imposes a generic duty to cooperate in fisheries management in the high seas.
- There is no gap in relation to a legal mandate to set conservation and management measures for relevant fishery resources in the high seas.
- RFMOs are of different types, including “Generic RFMOs”.
- Generic RFMOs are not limited to any particular type of species but have wide legal mandates that cover all fishery resources that are not a) within national jurisdiction, or b) subject to the legal mandate of other international management organisations.
- All generic RFMOs have a clear legal mandate to set conservation and management measures for all relevant fishery resources, including discrete deep sea species.
- The existing Generic RFMOs together cover all high seas areas where there are relevant high seas fisheries, except for the South-West Atlantic where there are unrelated obstacles to establishing a Generic RFMO.
- Any new international legal instrument that would create a new legal mandate for setting conservation and management measures for fishery resources in the high seas would by its nature undermine the existing legal framework for fisheries management.

The 1995 UN Fish Stocks Agreement (UNFSA) applies to straddling fish stocks and highly migratory fish stocks. It identifies Regional Fisheries Management Organisations (RFMOs) as a key tool for international fisheries management. However, it is important to note that this does not mean that the legal mandates of RFMOs are limited to straddling and highly migratory fish stocks.

The 1982 UN Convention on the Law of the Sea (UNCLOS) contains provisions on fisheries management in the high seas, most importantly in Articles 116-120, which inter alia set out the duty to conserve living marine resources, the duty to base conservation measures on the best scientific evidence available, and the duty to cooperate in setting conservation and management measures. Of particular importance in this context is Article 118, which mandates that states “whose nationals exploit identical living resources, or different living resources in the same area, shall enter into negotiations with a view to taking the measures necessary for the conservation of the living resources concerned” and that they shall “cooperate to establish subregional or regional fisheries organizations to this end.”

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All opinions and statements are those of the author and do not necessarily represent the position of the Icelandic government nor any of the organisations referred to or their members.
While the duty to cooperate is further elaborated on in UNFSA regarding straddling and highly migratory fish stocks, this UNCLOS provision applies to all living marine resources in the high seas. This generic duty to cooperate in fisheries management is the most important legal basis for RFMOs, and a key reason for RFMOs not being limited to any particular type of species. It should further be noted, although this is not the focus of this note, that RFMOs are generally not limited to considering only the resources that they are intended to manage. They also adopt conservation and management measures on the basis of the effects that the fisheries they manage can have on other parts of the marine ecosystem and on biodiversity. This includes extensive measures to protect vulnerable marine ecosystems, such as corals.2

There are different types of RFMOs. The relevant specialised agency of the UN, FAO, classifies them as Generic RFMOs and Species-Specific RFMOs.3 It is also somewhat common to split them into three different types, with Tuna RFMOs then considered as a separate category from the Species Specific RFMOs.4

While Tuna RFMOs and other Species-Specific RFMOs by design have a legal mandate that is limited to specific types of species, the legal mandates of Generic RFMOs are not in any way limited to the species that are subject to the application of UNFSA. Generic RFMOs have wide legal mandates that includes all relevant fishery resources. This means that their legal mandates cover all fishery resources that are not a) within national jurisdiction, or b) subject to the legal mandate of other international management organisations.

The notion that discrete high seas fish stocks, including many deep sea species, are outside the legal mandate of RFMOs is therefore a misunderstanding, albeit apparently a reasonably common misunderstanding. While Generic RFMOs have to varying degrees adopted conservation and management measures for all relevant fishery resources, they all have a clear legal mandate to set conservation and management measures for them.

There is therefore no gap in relation to a legal mandate to set conservation and management measures for relevant fishery resources in the high seas. This means that any new international legal instrument that would create a new legal mandate for setting conservation and management measures for fishery resources in the high seas would by its nature undermine the existing legal framework for fisheries management, of which RFMOs form an essential part.

There are currently 8 Generic RFMOs with legal mandates for areas beyond national jurisdiction. Together they cover all high seas areas where there are relevant high seas fisheries, except for the South-West Atlantic where there are unrelated obstacles to establishing a Generic RFMO. These 8 Generic RFMOs are the following:

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2 For an example of this, see this overview of the development of NEAFC’s protection of vulnerable marine ecosystems: https://www.neafc.org/system/files/NEAFC-and-VMEs-August-2015.pdf
3 See, for example: http://www.fao.org/documents/card/en/c/ca7843en
4 See, for example: https://www.neafc.org/international/15966. As it is the Generic RFMOs that are in focus here, it is not important to discuss the reasoning for whether it is more logical to consider Tuna RFMOs as a separate category or as a part of Species-Specific RFMOs. The point here is simply that Generic RFMOs are a particular type of RFMOs.
The Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR)


Article 1.2
Antarctic marine living resources means the populations of fin fish, molluscs, crustaceans and all other species of living organisms, including birds, found south of the Antarctic Convergence.

The Convention applies to all fin fish, molluscs, crustaceans and all other species of living organisms, including birds.

Conclusion: CCAMLR is not limited to straddling and highly migratory fish stocks. No relevant fisheries resource in the CCAMLR convention area is outside the legal mandate of CCAMLR.

The General Fisheries Commission for the Mediterranean (GFCM)

The GFCM Convention (http://www.fao.org/3/a-ax825e.pdf) refers throughout the text to “living marine resources” as its subject. There is no limitation to what living marine resources are covered. The Convention therefore applies to all living marine resources.

Conclusion: GFCM is not limited to straddling and highly migratory fish stocks. No relevant fisheries resource in the GFCM convention area is outside the legal mandate of GFCM.

The North East Atlantic Fisheries Commission (NEAFC)


Article 1 b)
“Fishery resources” means resources of fish, molluscs, crustaceans and including sedentary species, excluding, in so far as they are dealt with by other international agreements, highly

What follows is an overview of the RFMOs’ statutes regarding their legal mandates. As can be seen from the overview, the overall conclusion is that in all cases their legal mandates are very wide, and certainly not limited to straddling and highly migratory fish stocks. No relevant fishery resource in their convention areas is outside their legal mandate. This confirms the conclusion that there is no gap relating to a legal mandate to set conservation and management measures for relevant fishery resources in the high seas. RFMOs already have the legal mandate to address all relevant fishery resources.

CCAMLR has a wider legal mandate for conservation than other RFMOs. In addition to carrying out the role of an RFMO, CCAMLR carries out all the functions of a Regional Seas Organisation connected to UN Environment. However, it should be noted that CCAMLR does not use the term “RFMO” for itself. Rather, it classifies itself as a conservation organisation with some attributes of an RFMO.

The Convention applies to all “fish, molluscs, crustaceans and including sedentary species”. The only exclusions are for highly migratory species and anadromous stocks, and even then only “in so far as they are dealt with by other international agreements”.

**Conclusion:** NEAFC is not limited to straddling and highly migratory fish stocks. No relevant fisheries resource in the NEAFC convention area is outside the legal mandate of NEAFC.

**The North Pacific Fisheries Commission (NPFC)**
NPFC Convention ([https://www.npfc.int/system/files/2017-01/Convention%20Text.pdf](https://www.npfc.int/system/files/2017-01/Convention%20Text.pdf))
Article 1 (h)
“Fisheries resources” means all fish, mollusks, crustaceans and other marine species caught by fishing vessels within the Convention Area, excluding:

(i) sedentary species insofar as they are subject to the sovereign rights of coastal States consistent with Article 77, paragraph 4 of the 1982 Convention and indicator species of vulnerable marine ecosystems as listed in, or adopted pursuant to, Article 13, paragraph 5 of this Convention;

(ii) catadromous species;

(iii) marine mammals, marine reptiles and seabirds; and

(iv) other marine species already covered by pre-existing international fisheries management instruments within the area of competence of such instruments;

The Convention applies to “all fish, mollusks, crustaceans and other marine species caught by fishing vessels within the Convention Area”. The only exclusions are for sedentary species insofar as they are subject to the sovereign rights of coastal States, catadromous species, marine mammals, marine reptiles and seabirds, and other marine species already covered by pre-existing international instruments.

**Conclusion:** NPFC is not limited to straddling and highly migratory fish stocks. No relevant fisheries resource in the NPFC convention area is outside the legal mandate of NPFC.

**The Northwest Atlantic Fisheries Organization (NAFO)**
Article I (f)
“Fishery resources” means all fish, molluscs and crustaceans within the Convention Area excluding:

(i) sedentary species over which coastal States may exercise sovereign rights consistent with Article 77 of the 1982 Convention; and

(ii) in so far as they are managed under other international treaties, anadromous and catadromous stocks and highly migratory species listed in Annex I of the 1982 Convention;

The Convention applies to all fish, molluscs and crustaceans. The only exclusions are sedentary species over which coastal States may exercise sovereign rights and anadromous and
catadromous stocks and highly migratory species. The latter exclusion is only in effect “in so far as they are managed under other international treaties”.

**Conclusion:** NAFO is not limited to straddling and highly migratory fish stocks. No relevant fisheries resource in the NAFO convention area is outside the legal mandate of NAFO.

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**The South East Atlantic Fisheries Organisation (SEAFO)**

SEAFO Convention ([http://www.seafo.org/About/Convention-Text](http://www.seafo.org/About/Convention-Text))

Article 1 (l)

“Fishery resources” means resources of fish, molluscs, crustaceans and other sedentary species within the Convention Area, excluding:

i. sedentary species subject to the fishery jurisdiction of coastal States pursuant to article 77 paragraph 4 of the 1982 Convention; and

ii. highly migratory species listed in Annex I of the 1982 Convention;

The Convention applies to all fish, molluscs, crustaceans and other sedentary species. The only exclusions are sedentary species subject to the fishery jurisdiction of coastal States and highly migratory species.

**Conclusion:** SEAFO is not limited to straddling and highly migratory fish stocks. No relevant fisheries resource in the SEAFO convention area is outside the legal mandate of SEAFO.

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**The South Indian Ocean Fisheries Agreement (SIOFA)**


Article 1 (f)

“fishery resources” means resources of fish, molluscs, crustaceans, and other sedentary species within the Area, but excluding:

(i) sedentary species subject to the fishery jurisdiction of coastal States pursuant to article 77(4) of the 1982 Convention; and

(ii) highly migratory species listed in Annex I of the 1982 Convention;

The Agreement applies to all fish, molluscs, crustaceans, and other sedentary species. The only exclusions are sedentary species subject to the fishery jurisdiction of coastal States and highly migratory species.

**Conclusion:** SIOFA is not limited to straddling and highly migratory fish stocks. No relevant fisheries resource in the SIOFA convention area is outside the legal mandate of SIOFA.

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**The South Pacific Regional Fisheries Management Organisation (SPRFMO)**

SPRFMO Convention ([https://www.sprfmo.int/assets/Basic-Documents/Convention-web-12-Feb-2018.pdf](https://www.sprfmo.int/assets/Basic-Documents/Convention-web-12-Feb-2018.pdf))

Article 1 (f)

‘fishery resources’ means all fish within the Convention Area, including: molluscs; crustaceans; and other living marine resources as may be decided by the Commission; but excluding:

(i) sedentary species in so far as they are subject to the national jurisdiction of coastal States pursuant to Article 77 paragraph 4 of the 1982 Convention;
(ii) highly migratory species listed in Annex I of the 1982 Convention;
(iii) anadromous and catadromous species; and
(iv) marine mammals, marine reptiles and sea birds;

The Convention applies to all fish within the Convention Area, including: molluscs; crustaceans; and other living marine resources as may be decided by the Commission. The only exclusions are sedentary species in so far as they are subject to the national jurisdiction of coastal States, highly migratory species, anadromous species, catadromous species, marine mammals, marine reptiles and sea birds.

Conclusion: SPRFMO is not limited to straddling and highly migratory fish stocks. No relevant fisheries resource in the SPRFMO convention area is outside the legal mandate of SPRFMO.