



## RESEARCH ARTICLE

## The Comparison of High Seas Fisheries Management Regulations in Several Countries

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ARTICLE INFO	ABSTRACT
Received: Sep 17, 2024	<p>Recently, fisheries problems have become increasingly important, especially for coastal countries highly dependent on the fishing industry. The high seas are common property, but fishery activities on the high seas must be regulated because this will not meet the best interests of the world community, including fishery industrial countries and coastal countries. The United Nations on the Law of the Sea (UNCLOS) in 1982, formulated this issue in its provisions on the conservation of marine biological resources. The countries have an implementation agreement called UNIA 1995, which has been ratified to address fisheries conservation issues and sustainable use of fisheries, especially migratory and long-distance migratory species, such as tuna and tuna-like fish. FAO played a major role in achieving this goal by initiating the 1993 FAO Compliance Agreement. Regional organizations were also formed, such as IOTC and CCSBT. The study aims at identifying and analyzing fisheries management on the high seas and Indonesia's intention to increase its role in managing and utilizing high-seas fisheries. In addition, this present study aimed at comparing its international regulations with several countries. This is empirical juridical research where the juridical approach was carried out through a conceptual approach, a statutory approach, and a case approach. Meanwhile, the empirical approach was carried out to the actual situation or real situation to know and find the facts and data needed. The results of the study showed that countries in the world are serious about utilizing and managing high-seas fisheries by regulating them in their national laws. Some countries only regulate utilization, such as Mauritius but some regulate by heeding sustainability and cooperation with international organizations, such as Australia.</p>
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### INTRODUCTION

One of the maritime zones is the high seas. The freedom on the high seas as an embodiment of the doctrine of *mare liberum* has long been recognized and accommodated by international law governing the sea in general, such as the 1982 United Nations on the Law of the Sea (UNCLOS 1982). All countries, both coastal states and landlocked states as well as geographically disadvantaged states, have the right to utilize the high seas and have universally recognized freedoms as stipulated in Article 87 of the 1982 UNCLOS which includes freedom of navigation, freedom of overflight, freedom to lay submarine cables and pipelines, freedom to construct artificial islands and other installations permitted under international law, freedom of fishing and freedom of scientific research.

Specifically for the right to fishing, the right of a country to send its national fishing vessels to the high seas has been strengthened (Article 116 of UNCLOS 1982). However, the implementation of this freedom must be accompanied by considering the provisions regarding conservation measures of the high seas' biological resources. The encouragement of cooperation between countries that utilize biological resources in the same high seas area is emphasized in Article 118 of the 1982 UNCLOS where countries must regulate such management and conservation, if possible, by forming a regional or subregional fisheries organization.

The provisions of the 1982 UNCLOS and the awareness of vulnerable fish resources have led to the adoption of various provisions of international law that specifically regulate the management and conservation of fisheries, especially in the high seas and concerning the straddling and highly migratory fish stocks, as well as the emergence of various sub-regional and regional fisheries management organizations. Among the provisions of such special international law are:

- a. Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessel on the High Seas (FAO Compliance Agreement 1993);
- b. Agreement for the Implementation of the Provision of the 1982 UNCLOS, Relating to the Conservation and Management of Straddling Stocks and Highly Migratory Fish Stocks 1995 (UNIA 1995);
- c. The Code of Conduct for Responsible Fisheries (CCRF 1995); and
- d. International Plan of Action of FAO, namely:
  1. International Plan of Action for the Management of Fishing Capacity;
  2. International Plan of Action for the Conservation and Management of Sharks;
  3. International Plan of Action for Reducing Incidental Catch of Seabird in Long-line Fisheries;
  4. International Plan of Action for Illegal, Unreported and Unregulated Fishing.

Currently, there are regional fisheries organizations including the Pacific States Marine Fisheries Commission (PSMFC), Inter-American Tropical Tuna Commission (IATTC), International Commission for the Conservation of Atlantic Tuna (IC-CAT), North-East Atlantic Fisheries Commission (NEAFC), Asia Pacific Fisheries Commission (APFIC), ASEAN Fisheries Federation (AFF), and International Whaling Commission (IWC).

Similarly, the identification results showed that various sub-regional fisheries organizations were formed in the high seas area adjacent to other Indonesian waters including the Commission for the Conservation of Southern Bluefin Tuna (CCSBT), Indian Ocean Tuna Commission (IOTC), Western Indian Ocean Tuna Commission (WIOTO), Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC).

For Indonesia, fisheries have an important role in national development. This is due to several factors, namely: many fishermen's livelihood depend on fishing business activities; There is a significant amount of foreign exchange contribution which tends to increase from year to year; it meets the needs of animal protein sources for some people; it opens jobs for the new workforce, so it is expected to be able to reduce the unemployment rate and; The existence of fisheries potential owned by Indonesia.

## **RESEARCH METHODOLOGY**

This research was conducted using an empirical juridical approach. Juridical deliberations are carried out through a conceptual approach, a statutory approach, and a case approach (Marzuki, 2011), while an empirical approach is carried out to the actual situation or real situation to know and find the facts and data needed (Waluyo, 2002). Primary data sources were obtained through field research and secondary data was obtained through the collection of primary legal materials, secondary legal materials, and tertiary legal materials. The collected data was analyzed qualitatively

and descriptively, namely described and explained linguistically, and non-statistically, according to its category to obtain conclusions.

## **RESULTS AND DISCUSSION**

### **Maritime Zones According to the 1982 UNCLOS**

The 1982 UN Convention on Law of the Sea (UNCLOS 1982) regulates the provisions of the Law of the Sea, namely:

#### **Internal Waters**

The internal waters are located on the land side of the Territorial Sea baseline, which is part of the country's internal waters. In these Internal Waters, coastal states have full sovereignty and other countries cannot exercise the right of innocent passage in this territory (Adolf, 2002).

#### ***Territorial Sea***

The Territorial Sea is a national body of water in the form of a sea route located along the coast from the baseline and bounded by the outer limit of the Territorial Sea (Kusumaatmadja, 2018). In the International Convention on the Law of the Sea (UNCLOS 1982), it is affirmed that every State has the right to determine the width of its territorial sea up to a limit not exceeding 12 nautical miles, measured from the predetermined baseline. The baseline can be determined using the normal baseline, straight baselines, and/or bay closing baseline. All these measurements are parts of the territory of the coastal states and therefore, subject to the sovereignty of the coastal states including its territory, sovereignty, and waters.

#### **Contiguous Zone**

A contiguous zone is a zone of waters bordering the territorial sea. The Contiguous Zone is used by coastal states to control to prevent violations of laws and regulations related to customs, fiscal, immigration, and sanitation and punish perpetrators of violations of these laws and regulations committed within their territory or territorial sea. The Contiguous Zone cannot exceed 24 nautical miles measured from the baseline. In this Contiguous Zone, a country does not have full sovereignty but sovereign rights because this contiguous zone does not increase the the sea area, only adds the rights to coastal states.

#### **Exclusive Economic Zone**

An Exclusive Economic Zone (EEZ) is an area located outside and also adjacent to the Territorial Sea that is subject to a special legal regime under which there are jurisdiction and rights of coastal States and the freedoms and rights of other States regulated in the Convention on the Law of the Sea. The EEZ must not exceed 200 nautical miles from the baseline which is the line used to measure the Territorial Sea. Therefore, when measured from the outer limit of the Territorial Sea, the width of the EEZ is 188 miles.

The 1982 UNCLOS in Article 56 paragraph 1 letter (a) states that coastal states have sovereign rights in the Exclusive Economic Zone for purposes such as (Priyanto, 2020): Exploration and exploitation, conservation, and management of both biological and non-biological natural resources; Other activities for the expansion of exploration and exploitation aimed at the economy in the Exclusive Economic Zone such as producing energy from seawater, ocean currents, and wind.

The jurisdictions (rights, powers, or authority) of coastal states in the Exclusive Economic Zone are explained in Article 56 paragraph 1 letter (b) including (Sefrani, 2018) Jurisdiction over the creation and utilization of artificial islands, installations, and buildings; Jurisdiction in the field of marine scientific research; Jurisdiction in the field of protection and preservation of the marine environment.

In addition to having sovereign rights and jurisdiction over its Exclusive Economic Zone, coastal states also have an obligation to protect and respect the rights of other states. The rights and obligations of other states in the Exclusive Economic Zone are regulated in Article 58 paragraph (1) of the 1982 UNCLOS, namely: Freedom of navigation and flight; Freedom to install submarine cables and pipelines; Other lawful uses of the sea under international law relating to freedoms such as the operation of ships, aircraft, and submarine cables and pipelines.

Other authorities of coastal states are contained in Article 60 paragraph (1) which gives exclusive rights to coastal states to regulate the creation, licensing, operation, and operation and utilization of artificial islands, installations, and buildings for economic purposes as well as the installations and buildings that may interfere the implementation of the sovereign rights of coastal states in their Exclusive Economic Zones. These exclusive rights are derivatives of the sovereign rights of coastal states for the exploration, exploitation, management, and conservation of natural resources from the Exclusive Economic Zone as specified in Article 56 paragraph 1 letter (a). In addition to exclusive rights, coastal states also have exclusive jurisdiction over the islands. The installations and buildings are included in jurisdictions related to customs, fiscal, health, safety, and immigration laws and regulations.

Other provisions concerning the authority of coastal states are regulated in Article 60 paragraph 4, namely, if necessary, coastal states can establish safety zones around artificial islands, installations, and buildings (Sodik, 2014).

### **Continental Shelf**

The Continental Shelf is the seabed and natural resources that lie beneath the ocean area that is an addition to its Territorial Sea which includes the entire extension of the baseline where the width of the Territorial Sea is measured. The Continental Shelf of a coastal State includes the seabed and the land below it measured from the baseline for 200 miles and the State can explore and exploit non-living resources such as oil, gas, and nickel.

### **High Seas**

The high seas are areas beyond national jurisdiction defined by the 1982 United Nations Convention on the Law of the Sea and represent nearly two-thirds of sea level. The area of the ocean adjacent to the coast – 200 nautical miles from the coastline – is a country's exclusive economic zone (EEZ). While pelagic environments have lower biological productivity compared to near-shore areas, the high seas are habitats for migratory and high-trophic fish species, such as tuna and some sharks, and long-lived species, such as orange roughy and toothfish. Thus, high-seas fisheries can provide a high level of top-down control in the high sea at both the species level and the community level (Crespo & Dunn, 2017).

The principle of "freedom of the sea" on the high seas does not apply to the sovereignty, sovereign rights, or jurisdiction of a country. The high seas are "res communis" which is an open and free sea for all countries (Thontowi, *et.al.*, 2006).

The High Seas are seas that are not included in the Territorial Sea, Contiguous Zones, and Exclusive Economic Zones. The High Seas are open to all states, whether monitoring or non-coastal states. All these states have the same right to utilize the High Sea area and are not allowed to claim or exercise their sovereignty or sovereign rights over all parts of the area. Freedom in the High Seas includes freedom of navigation, freedom of flight, freedom to install submarine cables and pipelines, freedom to build artificial islands and other installations permitted under international law, freedom to fish subject to applicable requirements, and freedom to conduct scientific research. These freedoms will be exercised by all countries concerning the interests of other countries.

### **The Area**

The area is a new regime in the 1982 Law of the Sea, which was not previously regulated in the 1958 UNCLOS. The areas are the seabed and ocean floor and the land below which are located beyond the national jurisdiction of countries for peaceful purposes and the use of their natural resources for the common benefit of humanity as a whole (Parthiana, 1990).

### **The Global Fisheries Conditions**

Fish with high sea characteristics are highly migratory species and straddling stocks. When associated with the high sea, the potential for large pelagic fish dominated by Tuna and skipjack species are: Natuna Sea and South China Sea which accommodate around 1,252,400 tons/year, Indian Ocean around 917,500 tons/year, Arafuru Sea around 792,100 tons/year, Sulawesi Sea and Pacific Ocean around 691,400 tons/year and Malacca Strait with a potential of 239,200 tons/year (Republic of Indonesia, 2004). Based on the Digital Surface Model, it can be seen that the potential of fisheries in the high seas, especially pelagic fish that borders Indonesian waters, is quite large. However, when looking at the condition of the world's fisheries, several things need to be observed, because there are indications of a reduction in fisheries capacity, especially capture fisheries.

### **International Regulations on the High Seas Fisheries.**

The provisions of international law and regional organizations that regulate high sea fisheries mentioned in this study will be limited to the 1995 UNIA, the 1993 FAO Compliance Agreement, and the IOTC. This is because the 1995 UNIA is the implementing regulation of the 1982 UNCLOS, and Indonesia is a participant in UNCLOS after ratifying the 1982 UNCLOS with Law No. 17 of 1985.

### **Agreement for the Implementation of the Provisions of the 1982 UNCLOS Relating to the Conservation and Management of Straddling Stocks and Highly Migratory Fish Stocks 1995 (UNIA 1995)**

The 1995 UNIA is one of the significant regulatory frameworks for marine fisheries. As an implementing regulation of the 1982 UNCLOS, the provisions of the 1995 UNIA refer to the provisions of the 1982 UNCLOS and are a further elaboration of the provisions for the conservation of fish resources regulated in the 1982 UNCLOS. The conference on UNIA is a follow-up to UN General Assembly Resolution No. 47/192 of 22 December 1992 and was first held in April 1993. It was divided into 6 sessions and was based on the recommendation of the UN General Assembly to conduct the UN Conference on Environment and Development. The 1995 UNIA contains provisions and standards for the management and conservation of Highly Migratory Fish Stocks and Straddling Fish Stocks which has been ratified by 75 countries. The 1995 UNIA has been effective since December 11, 2001.

Coastal states concerned about the impact of fishing in the high seas on domestic fish catches include Argentina, Australia, Canada, Chile, Iceland, Indonesia, New Zealand, Norway, and Peru. Meanwhile, the states that carry out the most fishing on the high seas are Japan, Spain, Poland, Korea, and Russia. Then in the UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, the 6<sup>th</sup> session, December 4, 1995, UNIA 1995 was adopted. This is the first agreement requiring the parties to protect and manage fisheries in the open sea and resolve disputes peacefully.

### **Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (1993 FAO Compliance Agreement)**

The agreement was made based on concerns about the decrease of fish stocks in the high seas due to the increase in IUU fishing. In particular, this agreement tries to address the problem of reflagging and flag of convenience related to fishing vessels that engage in IUU fishing. The FAO Council, at its 102<sup>nd</sup> session in November 1992, expressed several opinions on the reflagging fishing vessels that evade regulations on conservation and management. This problem must be addressed by FAO so that it can be implemented immediately. The proposed Flagging Agreement later evolved into the

Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (1993 FAO Compliance Agreement) and was adopted at the 27<sup>th</sup> session of the FAO Conference on 24 November 1993 and entry into force on 24 April 2003. The 1993 FAO Compliance Agreement will be an integral part of the International Code of Conduct for Responsible Fisheries (CCRF).

### **Indian Ocean Tuna Commission (IOTC)**

IOTC is a regional fisheries management organization, which has a management area bordering Indonesian waters. The agreement establishing the IOTC was adopted by FAO on 25 November 1993 and entry into force on 27 March 1996. The regulation of financial matters was adopted by the IOTC at the 1<sup>st</sup> special session in Rome 21-24 March 1997 and the Rules of Procedure was adopted at the 2<sup>nd</sup> session in Victoria 21-24 September 1997.

Before the existence of IOTC, a body was first created, namely The Indo-Pacific Tuna Development and Management Programme (IPTP). IPTP was established in 1982 in Colombo, Sri Lanka, with funding from UNDP and run by FAO but since 1986, IPTP has been funded by its members. The IPTP program covers the Indian Ocean and the area around the Western Pacific. Then in the previous stage, the area of competence was only the Indian Ocean, but IPTP did not have the authority to carry out management. This is what distinguishes it from IOTC.

For more than 15 years, IPTP has carried out various activities such as building a database of tuna fishing in the Indian Ocean, scientific research, workshops, and also providing advice to Parties fishing tuna in the high seas regarding the status of stocks. IOTC is the direct heir to all activities carried out by IPTP.

### **The Comparison of regulations in several countries.**

To get a more complete picture of the regulation of high seas fisheries, it is necessary to present a discussion of the provisions of fisheries laws in other countries, especially those related to fisheries activities in the high seas. Below will be presented the fisheries regulations in Mauritius, the Philippines, Australia (the founder of the CCSBT and developed countries) related to high seas fisheries, and Indonesia.

#### **Mauritius**

Mauritius is a country with significant income from tuna exports, the majority of which go to Japan. The country has legal provisions regarding fisheries stipulated in the Fisheries and Marine Resources Act 1998. In the regulation, there are several provisions related to high seas fisheries, including Article 39 on Licensing for Mauritius-flagged vessels requires every vessel whose flag has a permit to fish not only in its maritime territory but also in the high seas, even in the fishing zones of other countries; Article 45 on Fishing Landings Mauritius fishing vessels and foreign vessels licensed to fish in Mauritius territory shall land their catch in Port Louis Harbour or at any other place designated in the license; Article 49 concerning the Arrival of Mauritius Fishing Vessels upon arrival at the port, Mauritius fishing vessels shall report their catch and the area of origin of the catch.

#### **The Philippines**

The Philippines is not very prominent from the catch data, but its status as an archipelagic country and its vast sea area are the reasons why it is necessary to look at fisheries regulation in this country. Philippine fisheries regulations are outlined in the Philippine Fisheries Code of 1998, specifically in the provisions of:

The Philippines has taken a policy to encourage the utilization of high sea fisheries by its fishing vessels by providing incentive support to vessels fishing in the EEZ and the high seas. Among the incentives are long-term loans, tax exemptions and customs on importing fishing vessels that are less than 5 years, and tax breaks for fishing vessel fuel.

#### Section 65

The Bureau of Fisheries and Aquatic Resources has the tasks, among other things, to control and inspect cooperation agreements between Filipino citizens and foreign parties to fish on the high seas, to ensure that there is no violation of the Philippines' obligations under the international provisions to which it is followed. This includes making a competitive high seas fisheries industry.

### **Australia**

Australia is one of the countries that is very concerned about the preservation of the environment and marine biological resources. In its fisheries regulation, the 1991 Fisheries Management Act, there are many provisions regulating high seas fisheries comprehensively, including:

Article 8: The Australian Fisheries Management Authority (AFMA) must heed the provisions applicable to the high seas concerning the implementation of the 1995 UNIA and existing regional fisheries management.

Article 16A: The Australian Fisheries Management Authority (AFMA) must heed the provisions applicable to the high seas concerning the implementation of the 1995 UNIA and existing regional fisheries management.

Article 16B: AFMA may not authorize Australian vessels that were originally registered in another country and have breached marine conservation provisions to operate in the open seas to prevent IUU Fishing).

Article 32 (IBA): Regulating licenses for fishing on the high seas

Section 4A, Article 57A: AFMA must create a separate list of Australian vessels that fish in the high seas, called "the High Seas Register".

Article 57C: AFMA must notify FAO of the contents of the High Seas Register whenever there is a change in data on vessels operating in the high seas.

Article 57D: The High Seas Register is open to the public.

### **Indonesia**

Indonesia has realized and utilized the potential of the high-sea fisheries and should make vessels more use of the existing opportunities by increasing the potential of the high-sea fisheries vs. Indonesian ships have been operating on the high seas, but many do not obey the provisions for conserving the high seas. Indonesia as a member of the international community cannot escape from this provision, considering that Indonesia's fisheries catch is involved in world trade, and consumer countries strongly support resource conservation efforts to ensure the sustainability of the resource itself. Indonesia's participation in UNIA 1995 obtains technical assistance and cooperation in collecting fisheries data; development of a system of management, supervision, and law enforcement; is more flexible in developing responsible high-sea fishing vessels; facilitates and strengthens Indonesia's position in international trade in fishery products; and assists fisheries management in Indonesian waters due to cooperation with other countries that are also the 1995 UNIA participants and IOTC participants.

The regulations owned by Indonesia that regulate high seas fisheries both directly and indirectly, are as follows: Law No. 6 of 2023 concerning Job Creation, Government Regulation No. 5 of 2021 concerning the Implementation of Risk-Based Business Licensing, Government Regulation No. 27 of

2021 concerning the Implementation of the Marine and Fisheries Sector, Government Regulation No. 11 of 2023 concerning Measured Fishing, Presidential Regulation Ratifying RFMOs, the Regulation of the Minister of Marine Affairs and Fisheries No. 10 of 2021 concerning Standards for Business Activities and Products in the Implementation of Risk-Based Business Licensing in the Fisheries and Marine Sector, the Regulation of the Minister of Marine Affairs and Fisheries No. 33 of 2021 concerning Fishing LogBook, Monitoring on Fishing Vessels and Fish Transport Vessels, Inspection, Testing and Marking of Fishing Vessels, and Management of Fishing Vessel Manning, the Regulation of Minister of Marine Affairs and Fisheries No. 28 of 2023 concerning Implementing Regulations of Government Regulation No. 11/2023 concerning Measured Fishing, and the Regulation of the Minsiter of Marine Affairs and Fisheries No. 36 of 2023 concerning Fishing Gear and Auxiliary Gear Deployment in Indonesia's Quota-Based Fisheries Management Areas.

Based on the comparative description of the regulations above, it can be seen that countries in the world show their seriousness in utilizing and managing high-seas fisheries by regulating them in their national laws. Some only regulate utilization, such as Mauritius while others regulate them by heeding sustainability and cooperation with international organizations, such as Australia.

## CONCLUSION

The high seas are common property for the interests of the world community, so the conservation of marine biological resources needs to be regulated in the United Nations Convention on the Law of the Sea (UNCLOS) 1982. Countries that have binding implementation agreements to address fisheries conservation issues and sustainable use of fisheries, especially migratory and long-distance migratory species such as tuna and tuna-like fish, are required to implement the 1995 UNIA, which has been ratified

The ocean agreement on the conservation and sustainable use of Marine Biodiversity Beyond National Jurisdiction (BBNJ) is the starting point of the world's awakening in better care of the ocean with a very wide scope. Indonesia is one of 83 countries that signed the BBNJ document for further ratification. This will be a long process because it is estimated that adoption can only be carried out in 2025.

Countries in the world show their seriousness in utilizing and managing high seas fisheries by establishing regulations in their respective national laws.

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