



## International organizations and deep-sea fisheries: Current status and future prospects



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### ABSTRACT

This article addresses the role played by various international organizations such as the United Nations Organization, the Food and Agriculture Organization, various regional fisheries management organizations and the European Union in relation to the conservation and management of deep-sea fisheries. The activities performed by these organizations especially over the last fifteen years as well as the legal scope of the different documents adopted by them have revealed the existence of serious and complex problems in this field. This moreover allows us to identify, on the one hand, the main challenges the field currently poses to these same subjects of international law, and, on the other hand, to understand why the conservation and management of deep-sea fisheries are highly topical issues on the current agenda of these universal and regional organizations.

### 1. Introduction

Over the last fifteen years, the conservation and management of deep-sea fisheries resources has established itself on the global agenda for governance of the seas and oceans and taken on increasing importance. Since 2004, the United Nations (UN) – especially through the work of its General Assembly (UNGA) – has been dealing intensively with the various issues related to protecting marine biodiversity in areas beyond the national jurisdiction of states [27,35]. This issue has moreover been taken up by other international bodies, in particular, the UN Food and Agriculture Organization (FAO).

The various soft law instruments – resolutions, guidelines and reports – adopted by these two universal international organizations have revealed the existence of serious and complex problems in the field of deep-sea fisheries, such as over-exploitation, trawling, illegal, unreported and unregulated fishing, and marine research, amongst others. These issues also make it difficult to calculate the annual data on deep-sea fishing accurately. In addition, deep-sea fish species are slow-growing, long-lived fish species with very low reproductive capacity that live in VMEs – such as coral reefs and beds of sea sponges – that degrade easily and appear to be especially vulnerable to unregulated fisheries activities [34,49,55,56,59].

This complex framework is reflected, on the one hand, in the activity of various regional fisheries management organizations or arrangements (RFMO/As) concerning the conservation and management of certain deep-sea fish species; and, on the other hand, in the policy pursued by the European Union (EU) with regard to the conservation and management of deep-sea fisheries. This is an issue towards which

the Union can hardly turn a blind eye given its status as one of the most important subjects of international law in the current global fisheries context [12,44,55,64,68]. For the last 30 years, the EU has taken part in different international fora, defending its fisheries interests at the global level. Moreover, it has concluded more than 30 public access fisheries agreements with third countries and currently it is a member of 17 RFMOs/As. In addition, the EU fish market is the largest in the world and, at the same time, depends on both fishing imports and fishing captures in waters that are not under the sovereignty or jurisdiction of its Member States [20,50].

The work done to date by the various international fisheries actors regarding the effects of deep-sea fishing on vulnerable marine ecosystems (VMEs), as well as on the long-term sustainability of the stocks of these waters, was reviewed on 1 and 2 August 2016 as part of the workshop held at the UNGA headquarters in New York [86]. The workshop acknowledged the great importance of this UN organ's work in this field, as well as the significant role played in this regard by the FAO, RFMOs/As and states [70].

In light of the above, this paper will primarily seek to analyse the role played to date by various international organizations in the conservation and management of deep-sea fisheries resources, whilst at the same time identifying the main challenges the field currently poses to these same international fisheries actors. To this end, it will first examine the issue of the scope of the concept of deep-sea fisheries (2), so as then to focus on the contribution of universal international organizations – i.e. the UN (3) and the FAO (4) – to the conservation and management of deep-sea fisheries, and finally on the role of regional international organizations with competence in the field of

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conservation and management of deep-sea fisheries (5) and on EU policy on these issues (6).

## 2. Scope of the concept of deep-sea fisheries: difficulties and challenges

One of the main difficulties in analysing the issue of deep-sea fisheries is the lack of a unanimously accepted opinion regarding the scope of the concept of *deep-sea fisheries* and, thus, of *deep-sea fish species*.

With regard to the scope of deep-sea fisheries, the various subjects of international law in the field of fisheries often place different limits on the depth at which this economic activity can be carried out based on the specific criteria and scientific information available to them. Furthermore, this perspective changes from one sea or ocean to another, depending on the characteristics of the fish species and their respective habitats.

For instance, some FAO documents define deep-sea fishing as fishing conducted at depths of five hundred metres or more [22]. In contrast, some RFMOs, such as the North East Atlantic Fisheries Commission (NEAFC), use an upper limit of a depth of four hundred metres, in keeping with the opinions of the International Council for the Exploration of the Sea (ICES) [2], whilst still others, such as the Northwest Atlantic Fisheries Organization (NAFO), neither use nor define the concept of *deep-sea fish* [19]. In the context of the EU, European lawmakers seem to have chosen to identify certain species that they consider to be targets of deep-sea fisheries activities – such as, amongst others, alfonosinos, gulper sharks, black dogfish, mouse catshark, velvet belly, deep-water red crab, large-eyed rabbitfish, roundnose grenadier, orange roughy, blue ling, common mora, Greenland halibut, Arctic skate, greater eelpout, etc. [57] – and then to agree to ban deep-sea fishing at depths of more than eight hundred metres, an approach that will be discussed in greater detail further on.

In our view, the definition used by the UN Secretary-General in the various reports published on this matter, mostly in the last decade, is the most comprehensive and, thus, the one that this paper will use. According to this definition, deep-sea fish stocks ‘are generally defined as the diverse assemblage of fish species living beyond marginal seas and continental shelves, and/or at depths greater than 200 m [...]. Major habitats are upper continental slopes, ridges, deep island and seamount slopes and summits and deep bank areas, but deep fjords and shelf troughs/canyons are also included. [...] Most deep-sea fish stocks are exploited in waters shallower than 1000 m, although some are exploited to 2000 m’ [61].

Deep-sea fishing thus refers either to fishing carried out in areas where it is difficult for states to exercise effective, continuous control because it is an activity carried out at depths of up to two thousands metres or, more often, fishing in marine areas beyond states’ jurisdiction [45,47,48]. Consequently, this type of fishing mainly takes place outside the national jurisdiction of states and at depths of up to two thousands metres, in vast areas that, in fact, account for more than ninety per cent of the ocean seabed [13].

The earliest data on deep-sea fisheries date back to the late 19th century in the area near the island of Madeira (Portugal). The activity has undergone considerable growth since the 1970s, when Australia, New Zealand and the former USSR began to engage in deep-sea fishing on a larger scale. According to data from the FAO, in 2014, fishing involving bottom-contact gear was carried out by vessels from eleven flag states and resulted in a catch of around 150,000 t comprising just over fifty species. Nevertheless, according to the data from one-decade, earlier, annual landings of deep-sea species from areas beyond national jurisdiction amounted to some 250,000 t and were made by 285 fishing vessels [23].

Sea and ocean bottoms are currently thought to be home to many known fish species, as well as other little-known fish species and species that have yet to be discovered. Scientists estimate that, in general, some 100 million species (not only of fish) live in the deep sea [13]. Most of

the fish stocks that can be included in this category are demersal species or species that live on the seabed their whole life or for a significant part of their life cycle; very few are pelagic species. The fish species considered to be of greatest economic value for deep-sea fisheries are the orange roughy, the ling, the Greenland halibut, the roundnose grenadier, the black scabbardfish, certain deep-sea shark species, certain deep-sea crab species, etc. [24,57].

Although deep-sea fishing in marine areas under the sovereignty or national jurisdiction of states has been indirectly regulated in the national fisheries legislation of each state or, for EU Member States, within the framework of the Common Fisheries Policy (CFP), the status of deep-sea fishing conducted in marine areas beyond the sovereignty and national jurisdiction of states is quite another matter. To this end, it is worth noting that marine spaces beyond the national jurisdiction of states cover forty per cent of the planet, accounting for sixty four per cent of the surface of the seas and oceans and ninety five per cent of their volume [25,85], making them one of the least regulated issues under current international law of the seas.

Specifically, the provisions of the UN Convention on the Law of the Seas (UNCLOS) [69] do generally apply in this area, along with a large number of global, regional and bilateral treaties [11,46]. Articles 87.2, 117, 118, 119 and 194.5 are considered to be the most relevant provisions of the UNCLOS in the area of deep-sea fisheries [36,41,43,66]. Likewise in relation to conventional international law, attention should be called to the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (1993), the UN Agreement for the Implementation of the Provisions of the UNCLOS relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (1995), the Convention on Biological Diversity (1992), the FAO Code of Conduct for Responsible Fisheries (1995), the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (2009), the FAO’s International Guidelines for the Management of Deep-sea Fisheries in the High Seas (2008), the Voluntary Guidelines for Flag State Performance to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (2012), as well as many other international instruments on the conservation and management of deep-sea fisheries resources of varying legal scope, adopted, especially in the last decade, in the context of the UN, various RFMO/As, and the EU [1].

However, these legal provisions are of limited scope regarding deep-sea fisheries at the universal level. All these legal instruments, excepting the FAO’s International Guidelines for the Management of Deep-sea Fisheries in the High Seas (2008) do not deal specifically with deep-sea fisheries. In addition, these FAO’s Guidelines are not legally binding. Consequently, there is not yet a specific international treaty on deep-sea fisheries, nor has it yet been possible to create universal, regional or subregional institutions or mechanisms to ensure coordination and cooperation between the various international fisheries actors or to provide the necessary information for the sustainable use of all marine and ocean resources. As this paper will show, amongst other things, this situation poses many legal challenges and underscores the existence of true legal vacuums [15,29,31,54,83,84]. Reaching a solution requires the international cooperation of all subjects of international law with competence in the area of fisheries and interests in them. If such cooperation can be achieved, then perhaps in a not too distant future the international community will be able to make an about-face with regard to the regulation and international governance of deep-sea fisheries. That would enable work to begin on the adoption of a specific international treaty on deep-sea fisheries in marine areas beyond the national jurisdiction of states, in line with the future legally binding international instrument to be adopted under the UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction [3].

In relation to this, it has to be mentioned that the UNGA’s resolution of 19 June 2015, on the development of an international legally binding

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