



‘Rational use’ in Antarctic waters



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ABSTRACT

The Convention for the Conservation of Antarctic Marine Living Resources (CAMLR Convention) is the legal doctrine presiding over the exploitation of marine life in the Southern Ocean. At recent Commission (CCAMLR) meetings, some member states have interpreted the term ‘rational use’ in the Convention text as ‘the unrestricted right to fish’ and, most recently, the term has been evoked in opposition to the establishment of marine protected areas. Tensions over interpretation of the term at CCAMLR are tracked and presented. The term’s meaning and original intent are also explored in the publicly available record of treaty negotiations. According to negotiation documents as well as the CAMLR Convention, the term ‘rational use’ does not imply an unconditional right to exploit marine life in the Southern Ocean. Like ‘scientific uncertainty,’ which has also been evoked in ways that reflect social values, ‘rational use’ should be seen as a value-laden term, rather than as an explicit mandate to fish.

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1. Introduction

The Southern Ocean (waters south of the Antarctic Polar Front) surrounds the continent of Antarctica and supports more than 8200 species [1]. It is among the most remote and least perturbed areas of the world [2] and represents 10% of the world’s ocean. There is no single dominant national power in the region, but rather many stakeholders exhibiting highly divergent and changing interests over time. The sense that the Antarctic is special has guided policy for more than a century. In 1959, the Antarctic Treaty was signed (today there are 52 signatory parties), and subsequent amendments (e.g., 1964 Agreed Measures for the Conservation of Antarctic Flora and Fauna, 1991 Protocol for Environmental Protection) promoted the preservation and conservation of living resources, and helped prevent “harmful interference” and “taking” of species that spend some or all of their time on land.

However, all Antarctic life was not afforded the same protection. The Antarctic Treaty explicitly stated it would not prejudice high seas rights and, in so doing, largely disavowed management of the marine environment, which became active hunting grounds. Following the overexploitation of marine animals closer to market

centers, foreign industries expanded into deeper and more distant waters, including into the Southern Ocean [3]. Today, the coastal Antarctic Peninsula shows a ‘fishing down the food web’ trend: marine mammal populations (whales and seals) collapsed by the 1970s, groundfish by the early 1980s, and now economically viable fishing is confined to the invertebrate, Antarctic krill [4]. Elsewhere in the Southern Ocean, the same scenario occurred, with the added issue that another species group, the especially lucrative Patagonian and Antarctic toothfish, became globally marketed and heavily fished after krill fishing was initiated (Fig. 1) [4].

Protections for certain Antarctic marine animals eventually transpired. The International Whaling Commission protected whales and established the Southern Ocean Whale Sanctuary in 1994 with the support of 23 states. The Convention for the Conservation of Antarctic Seals, developed to manage the exploitation of seals, was signed in 1972. But fin fisheries remained unregulated. These became managed as of 1982 by the Convention for the Conservation of Antarctic Marine Living Resources (CAMLR Convention), originally signed by 14 states (Table 1). Article II states: “The objective of this Convention is the conservation of Antarctic marine living resources. For the purposes of this Convention, the term ‘conservation’ includes rational use.” (Table 2).

Today, the CAMLR Commission (CCAMLR) includes 24 states as well as the European Union (Table 1), and some of these members – particularly fishing states – interpret ‘rational use’ as ‘the right to fish’ during decision-making processes (Table 3). Some states have

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Fig. 1. Not all species in Antarctica experience the same levels of protection. Active fisheries in the region include those for Patagonian and Antarctic toothfish (*Dissostichus* spp.). Photo credit: Rob Robbins (left) and Darci Lombard (right).

Table 1

Current CCAMLR members (and for fishing states, percentage of reported fish catch by tonnes from 1982 to 2012; data from CCAMLR Statistical Reports (volumes 2, 12, 15, 25).

Argentina* (< 1%)	India	Russia (52%)*
Australia* (< 1%)	Italy	South Africa* (< 1%)
Belgium*	Japan (21%)*	Spain (< 1%)
Brazil	Korea, Republic of (5%)	Sweden
Chile (1%)*	Namibia	Ukraine (4%)
China, People's Republic of (< 1%)	New Zealand* (< 1%)	United Kingdom* (< 1%)
EU	Norway (6%)*	United States of America* (< 1%)
France (2%)*	Poland (4%)*	Uruguay (< 1%)*
Germany (< 1%)*		

* Denotes original signatory to CCAMLR.

Table 2

Text of CAMLR Convention Article II:

- “1. The objective of this Convention is the conservation of Antarctic marine living resources.
2. For the purposes of this Convention, the term ‘conservation’ includes rational use.
3. Any harvesting and associated activities in the area to which this Convention applies shall be conducted in accordance with the provisions of this Convention and with the following principles of conservation:
 - (a) prevention of decrease in the size of any harvested population to levels below those which ensure its stable recruitment. For this purpose its size should not be allowed to fall below a level close to that which ensures the greatest net annual increment;
 - (b) maintenance of the ecological relationships between harvested, dependent and related populations of Antarctic marine living resources and the restoration of depleted populations to the levels defined in sub-paragraph (a) above; and
 - (c) prevention of changes or minimization of the risk of changes in the marine ecosystem which are not potentially reversible over two or three decades, taking into account the state of available knowledge of the direct and indirect impact of harvesting, the effect of the introduction of alien species, the effects of associated activities on the marine ecosystem and of the effects of environmental changes, with the aim of making possible the sustained conservation of Antarctic marine living resources.”

evoked ‘rational use’ in opposition of various conservation measures, including the regulation of gill nets, which have high levels of bycatch, the proposed listing of toothfish on the Convention for International Trade in Endangered Species (CITES), and, most recently, the establishment of marine protected areas (MPAs) within the Convention Area. At a special 2013 intercessional meeting dedicated to discussing CCAMLR MPAs, for instance, China (CCAMLR’s newest member, joining in 2007) opposed a proposed Ross Sea MPA and noted: “...since the term ‘conservation’ has a special meaning in Article II of the Convention which includes ‘rational use’ all State parties have legitimate right to conduct [a] fishery in the Convention Area in accordance with the objective

and principles of the Convention.”¹ The Chinese delegation’s statement indicates a clear interpretation of ‘rational use’ as meaning an unrestricted right to fish.

Given recent and increasing disagreements at CCAMLR meetings over the interpretation of ‘rational use’ (Table 3), the origins and intention of the term are explored here. The term ‘rational use’ is first examined in a historical context, then according to the intended meaning by a reading of the publicly available record of treaty negotiations, as well as how the term has been more recently interpreted and debated at Commission meetings.

2. Pre-CCAMLR uses of ‘rational use’

Late nineteenth and early twentieth century scholars promoted the ‘rational use’ of forestry resources (e.g., [5]), and early uses were associated both with maximizing long-term economic gains (e.g., [6]) as well as goals of the nascent conservation movement to preserve natural resources and beauty for future generations. In this same period, the term was also used in the economic planning in Soviet states (e.g., [7]) and in constraining the rights of individuals, namely peasants, with regard to use of state-owned land [8].

In the second half of the twentieth century, ‘rational use’ was featured in international diplomacy. The 1959 European Free Trade Association included among its objectives the “rational use of resources.” By the late 1960s, a new wave of environmental concerns with ideas of preservation in addition to conservation emerged. In 1968, UNESCO sponsored a conference and its report was titled “Conservation and Rational Use of the Environment” [9]. Of the seven objectives promoted, two features would become core to the CAMLR Convention. First, the report endorsed an environment-based approach to measuring the best use of natural resources and, second, it indicated the firm conviction that environmental management should be based on sound scientific research [9].

Not long after the UNESCO report, the principle of rational, scientific management of natural resources appeared prominently in meetings about managing Antarctic marine living resources. At the seventh Antarctic Treaty Consultative Meeting (ATCM, 1972), this principle appears in the negotiations and speeches from state delegates. The Soviet speech, the longest among the delegates, voiced serious concern for the welfare of the Antarctic Environment and used the term “rational use” in the same paragraph that called for ensuring “future generations should have the opportunity to enjoy the riches which our planet provides.”²

The 1972 Antarctic Seals treaty included protections for the six

¹ CCAMLR SM-II (2013), para 3.34.

² Speech by his Excellency Mr. A. I. Ivantsov, Representative of USSR” at ATCM VII, 41–42 (1972), available at <http://www.ats.aq/documents/ATCM7/fr/ATCM7_fr001_e.pdf>

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