The European Union's Potential Contribution to the Governance of High Sea Fisheries in the Central Arctic Ocean

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1 Introduction

Fisheries¹ have always been an essential part of the EU's Arctic policy. The EU in its first Arctic policy published in 2008 (COM (2008) 763) noted that: "in spite of harsh conditions, melting of ice and new technologies will gradually increase access to Arctic living and non-living resources".² Section 3.2 of the COM (2008) 763 was devoted to fisheries. It is stated that the EU's policy objective is to ensure exploitation of Arctic fisheries resources at sustainable levels whilst respecting the rights of local coastal communities.³ This was reaffirmed in the EU's 2012 Arctic policy (JOIN (2012) 19)⁴ and 2016 Arctic policy (JOIN (2016) 21).⁵

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1 In this chapter the focus is on marine capture fisheries rather than aquaculture.

2 European Commission Communication of 20 November 2008 on the European Union and the Arctic Region, COM (2008) 763, 2 <eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0763:FIN:EN:PDF> accessed 26 October 2015.

3 COM (2008) 763, 7.

4 "The EU supports the exploitation of Arctic fisheries resources at sustainable levels based on sound scientific advice, while respecting the rights of local coastal communities." Joint Communication of the European Commission and High Representative of the European Union for Foreign Affairs and Security Policy of 26 June 2012 on Developing a European Union Policy towards the Arctic Region: Progress since 2008 and Next Steps, JOIN (2012) 19, 10 <eeas.europa.eu/arctic_region/docs/join_2012_19.pdf> accessed 26 October 2015.

5 "It will be necessary..... to establish the appropriate international measures..... to ensure the long-term conservation and sustainable use of resources in the Arctic high seas." Joint Communication of the European Commission and High Representative of the European Union for Foreign Affairs and Security Policy of 27 April 2016 on An Integrated

Arctic sea ice is melting at an alarming rate. A recent report from NASA has found that the Arctic has lost almost 95% of its older ice cover since 1984.⁶ Due to this loss and other impacts of climate change, the marine ecosystems of the Arctic Ocean⁷ are experiencing unprecedented change.⁸ It is now widely recognized that fish stocks in the Arctic Ocean may occur both within areas under current fisheries' jurisdiction of the coastal States, and in the high seas portion of the central Arctic Ocean.^{9,10} The coastal States of the Arctic Ocean, the so-called Arctic Five—United States, Russia, Canada, Norway and Denmark—believe they have a stewardship role in the conservation and management of Arctic marine living resources.¹¹ However, freedom of fishing in the high seas is enshrined in the United Nations Convention on the Law of Sea (UNCLOS),¹² which is applicable in the Arctic Ocean. To achieve sustainable management of fisheries in the high seas portion of the central Arctic Ocean, key high sea fishing States, such as the EU, must also be involved in any regulatory efforts.

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- European Union Policy for the Arctic, JOIN (2016) 21, 16 <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016JC0021&from=EN>> accessed 6 September 2016.
- 6 'See How Arctic Sea Ice is Losing its Bulwark Against Warming Summers' (NASA, 29 October 2016) <<http://www.bbc.com/news/science-environment-36587253>> accessed 18 December 2016.
 - 7 There is no accepted definition of the Arctic Ocean. A widely used definition is adopted by the Arctic Monitoring and Assessment Programme (AMAP) of the Arctic Council, which uses the working definition of marine areas north of the Arctic Circle (66°32'N), and north of 62°N in Asia and 60°N in North America (as modified to include the marine areas north of the Aleutian chain, Hudson Bay, and parts of the North Atlantic Ocean, including the Labrador Sea). See Timo Koivurova and Nengye Liu, 'Protection of the Arctic Marine Environment' in Daud Hassan and Saiful Karim (eds), *International Marine Environmental Law and Policy* (Routledge 2017) (forthcoming).
 - 8 Arctic Biodiversity Assessment, Arctic Council Working Group Conservation of Arctic Flora and Fauna, 2013 <<https://www.arcticbiodiversity.is/index.php/the-report/chapters/introduction>> accessed 10 April 2017.
 - 9 Central Arctic Ocean is defined based on IBRU's Arctic Maps: Status of Arctic waters beyond 200 nautical miles from shore <<https://www.dur.ac.uk/resources/ibru/resources/ArcticmapStatusofArcticWatersbeyond200NM.pdf>> accessed 27 March 2017.
 - 10 Declaration Concerning the Prevention of Unregulated High Sea Fishing in the Central Arctic Ocean, Oslo, 16 July 2015 <www.regjeringen.no/globalassets/departementene/ud/vedlegg/folkerett/declaration-on-arctic-fisheries-16-july-2015.pdf> accessed 27 October 2015.
 - 11 The Ilulissat Declaration, Ilulissat, Greenland, 28 May 2008 <http://www.oceanlaw.org/downloads/arctic/Ilulissat_Declaration.pdf> accessed 15 March 2017.
 - 12 United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3 (UNCLOS).

In the context of the rise of the EU as a global actor (both as a multilateral player and a bilateral actor),¹³ this chapter aims to discuss what roles the EU, as a non-Arctic entity, could play in the governance¹⁴ of potential high sea fisheries in the central Arctic Ocean. This chapter combines doctrinal analysis and field research.¹⁵ It first briefly describes the current international and regional regime for the regulation of fisheries in the Arctic. Then the paper focuses on the EU's potential internal and external actions that could help achieve sustainable management of potential fisheries in the high sea part of the central Arctic Ocean. The EU, as a global regulatory power, a key high sea fishing entity and an important market for fish products, could possibly make its unique contribution to enhance governance of high sea fisheries in the central Arctic Ocean.

2 Current Regime

Most of the Arctic Ocean is under national jurisdiction of coastal States (the Arctic Five).¹⁶ There are four high seas pockets in the marine Arctic, namely the “Banana Hole” in the Norwegian Sea, the “Loophole” in the Barents Sea, the “Donut Hole” in the central Bering Sea and the “central Arctic Ocean” around the North Pole. So far, large-scale commercial fisheries are only taking place

13 In details, see for example, A Global Actor in Search of a Strategy: European Union Foreign Policy between Multilateralism and Bilateralism, Directorate-General for Research and Innovation, European Commission, 2014.

14 The Commission on Global Governance in its publication *Our Global Neighbourhood* defines Governance as: “Governance is the sum of many ways individuals and institutions, public and private, manage their common affairs. It is a continuing process through which conflicting or diverse interests may be accommodated and co-operative action taken. It includes formal institutions and regimes empowered to enforce compliance, as well as informal arrangements that people and institutions either have agreed to or perceived to be in their interest”. See also C. Peladeix, ‘What is “Arctic Governance”? A Critical Assessment of the Diverse Meanings of “Arctic Governance”’ (2014) 6 *Yearbook of Polar Law* 398–426.

15 Between 9 and 18 February 2015, the author was funded by the Marie Curie Fellowship and conducted a series of semi-structured interviews with representatives from the Secretariat of the NEAFC (London), the Directorate-General for Maritime Affairs and Fisheries of the European Commission (Brussels) and the EU's Delegation to the Food and Agriculture Organization of the United Nations (FAO) (Rome). Interviews were analyzed, regarding the EU's role in the governance of Arctic fisheries.

16 Maritime jurisdiction and boundaries in the Arctic region, Arctic Maps, IBRU <<https://www.dur.ac.uk/resources/ibru/resources/Arcticmap04-08-15.pdf>> accessed 27 March 2017.

in the Sub-Arctic,¹⁷ which represents more than 10% of the global marine fish catch by weight and 5.3% of the crustacean catch.¹⁸ To date, no commercial fishing has occurred central Arctic Ocean. Nevertheless, one of the key impacts of climate change in Arctic marine ecosystem is the northward expansion of various subarctic as well as temperate species, while the abundance and reproductive outcome of indigenous species are in decline.¹⁹ It is therefore a question whether current governance regime of Arctic fisheries is ready for this change.

The international legal framework²⁰ which applies to fisheries in the Arctic is complemented by regional fora and instruments. The UNCLOS deals broadly with the conservation and management of marine living resources in the high seas in Articles 116–120. The Convention on Biological Diversity (CBD)²¹ is another framework convention that provides obligations of its contracting parties for the protection of marine biodiversity. Moreover, in order to sustainably manage straddling²² and highly migratory fish stock,²³

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- 17 Marine ecosystems and the shelf areas off the coasts of Labrador, Newfoundland, Greenland and Iceland, and the Bering and Barents Seas, are often referred to as sub-Arctic systems. See Factsheet, Changing Nature of Arctic Fisheries? EU Arctic Impact Assessment 2014; <http://www.arcticinfo.eu/images/Facksheet/Factsheets_Final/fishing_regular.pdf> accessed 18 November 2015.
 - 18 S. Arnarsson and D. Justus, 'Changing Nature of Arctic Fisheries' in Adam Stepien, Timo Koivurova and Paula Kankaanpää (eds) *Strategic Assessment of Development of the Arctic* (Arctic Centre, University of Lapland, 2014) 57.
 - 19 N. Wegge, 'The Emerging Politics of the Arctic Ocean, Future Management of the Living Marine Resources' (2015) 51 *Marine Policy* 333; J.S. Christiansen, C.W. Mecklenburg and L.V. Karamushko, 'Arctic Marine Fishes and Their Fisheries in Light of Global Change' (2014) 20 *Global Change Biology* 352.
 - 20 See L. Weidemann, *International Governance of the Arctic Marine Environment, with Particular Emphasis on High Sea Fisheries* (Springer 2013) 142–159; E.J. Molenaar, 'International Law on Arctic Fisheries' in N. Loukacheva (ed.) *Polar Law and Resources* (Nordic Council of Ministers, 2015) 79–90.
 - 21 Convention on Biological Diversity (adopted 5 June 1992, entered into force 29 December 1993), (1992) 31 *ILM* 842–847.
 - 22 Stocks occurring both within and in an area beyond and adjacent to the Exclusive Economic Zone, see E. Meltzer, 'Global Overview of Straddling and Highly Migratory Fish Stocks: The Nonsustainable Nature of High Seas Fisheries' (1994) 25 (3) *Ocean Development and International Law* 255.
 - 23 Highly migratory species are defined as those species listed in Annex 1 of the 1982 Convention. This list includes tuna, tuna-like species (billfish, dolphins, and sharks), and certain cetaceans. These species were categorized and so labeled because they move considerable distances over vast expanses of ocean areas. See Meltzer n. 22 above.

the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UN Fish Stocks Agreement)²⁴ was adopted in 1995. The Food and Agriculture Organization of the United Nations (FAO) has been actively managing global fisheries by adopting a series of legally binding and non-binding instruments. For example, the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (FAO Compliance Agreement)²⁵ was adopted to cope with the problem of reflagging.²⁶ Part of the FAO Compliance Agreement were reproduced in the Code of Conduct for Responsible Fisheries²⁷ in 1995. Furthermore, for combating illegal, unreported and unregulated (IUU) fishing, the FAO has produced instruments such as the 2001 International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU)²⁸ and the 2009 Agreement on Port State Measures to Prevent IUU Fishing.²⁹

International fisheries law however has generally failed to achieve sustainable management of fisheries globally. Churchill argues that it is difficult to escape the conclusion that the UNCLOS has proved virtually useless in preventing the adverse impacts of fisheries on the marine environment.³⁰ The impact of current and future fisheries on the marine environment and

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- 24 United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (adopted 4 August 1995, entered into force 11 December 2001) (1995) 34(6) *ILM* 1542–1580.
 - 25 The Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (adopted 24 November 1993) (1993) 33 *ILM* 968.
 - 26 The practice of vessel operators reflagging their vessels with flags of convenience, those from other countries or countries not party to fisheries agreements or arrangements to avoid obligation to comply with conservation and management measures. See Weidemann, n. 20 above, 148.
 - 27 Code of Conduct for Responsible Fisheries <<http://www.fao.org/docrep/005/v9878e/v9878e00.HTM>> accessed 19 November 2015.
 - 28 International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing <www.fao.org/docrep/003/y1224e/y1224e00.htm> accessed 19 November 2015.
 - 29 Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing (adopted 22 November 2009, not yet in force) <http://www.fao.org/fileadmin/user_upload/legal/docs/2_037t-e.pdf> accessed 19 November 2015.
 - 30 R.R. Churchill, 'Fisheries and Their Impact on the Marine Environment: UNCLOS and Beyond' in Marta Chantal Ribeiro (ed), *30 Years After the Signature of the United Nations*

marine biodiversity in the Arctic is not likely to be fundamentally different from impacts on the marine environment and biodiversity in other parts of the globe.³¹ The physical harm caused by the often highly destructive methods used for fishing, have, in many parts of the world, had a severe impact on the marine ecosystem and it is likely that they will have the same types of impacts in the Arctic.³² Fishery collapse already happened in the Arctic. For example, the “Donut Hole” stock of Pollock in the Aleutian Basin of the central Bering Sea during the 1980s is the most spectacular fishery collapse in North American history.³³ The key issue therefore is how to develop the current regime so as to achieve sustainable fisheries in the Arctic. Because the central Arctic Ocean has not been disturbed by fisheries so far, a regulatory regime should be in place before commercial fishing occurs. On the other hand, the central Arctic Ocean might be used as a testing ground for the development of international fisheries law that could provide lessons for other parts of the globe.

Many fora and instruments apply to parts of the marine Arctic at regional and bilateral level.³⁴ Moreover, the North East Atlantic Fisheries Commission (NEAFC) covers part of the Arctic Ocean. The NEAFC Convention Area covers the Atlantic and Arctic Oceans east of a line south of Cape Farewell—the southern tip of Greenland (42° W), north of a line to the west of Cape Hatteras—the southern tip of Spain (36° N) and west of a line touching the western tip of Novya Semlya (51°E).³⁵ Nevertheless, a gap remains for the regulation of potential fisheries in the central Arctic Ocean.

Sponsored by Alaska Senator Ted Stevens, the United States Congress adopted the S.J. Res.17 in 2008, directing the United States to initiate international discussions and take necessary steps with other Nations to negotiate an agreement for managing migratory and transboundary fish stocks in the

Convention on the Law of the Sea: The Protection of the Environment and the Future of the Law of the Sea (Coimbra Editora 2014) 31.

- 31 E.J. Molenaar, ‘Arctic Fisheries Conservation and Management: Initial Steps of Reform of the International Legal Framework’ (2009) 1 *Yearbook of Polar Law* 433.
- 32 N. Liu and E.A. Kirk, ‘The European Union’s Potential Contribution to Protect Marine Biodiversity in the Changing Arctic: a Roadmap’ (2015) 30 (2) *International Journal of Marine and Coastal Law* 268.
- 33 K.M. Bailey, ‘An Empty Donut Hole: the Great Collapse of a North American Fishery’ (2011) 16 (2) *Ecology and Society* [online] <<http://www.ecologyandsociety.org/vol16/iss2/art28/>> accessed 25 November 2015.
- 34 E.J. Molenaar, ‘International Law on Arctic Fisheries’ in N. Loukacheva (ed.) *Polar Law and Resources* (Nordic Council of Ministers, 2015) 84–85.
- 35 ‘Where is the NEAFC Regulatory Area?’ <<http://www.neafc.org/what-neafc/117>> accessed 19 November 2015; See also ‘Map of the NEAFC Regulatory Area’ <<http://www.neafc.org/page/27>> accessed 19 November 2015.

Arctic Ocean.³⁶ It is proposed that the United States should support international efforts to halt the expansion of commercial fishing activities in the high seas of the Arctic Ocean before the agreement comes into force.³⁷ On July 16 2015, the Arctic Five adopted the Declaration Concerning the Prevention of Unregulated High Sea Fishing in the Central Arctic Ocean (Oslo Declaration).³⁸ The Declaration acknowledges the interest of other States in preventing unregulated high seas fisheries in the central Arctic Ocean and has therefore initiated a so-called “broader process” of developing fisheries management measures for the central Arctic Ocean with non-Arctic States. As a result, China, the EU, Iceland, Japan and the Republic of Korea—the five leading non-Arctic high sea fishing States—have been invited to help develop a regional fisheries organisation or arrangement for the central Arctic Ocean. Known as the Arctic 5+5, the group held its first meeting on fisheries in Washington in December 2015. A series of follow-up meetings has been held since in Washington, Iqaluit in Canada and Torshavn, in the Faroe Islands. The Arctic 5+5 negotiations have made significant progress. Held in Reykjavik, Iceland (15–18 March 2017), the group issued a statement emphasising that consensus had been reached on most issues and that there was a general commitment to conclude the negotiations with a legally binding arrangement soon.³⁹ The EU has committed to support a multilateral agreement that prevents unregulated high sea fisheries in the central Arctic Ocean until a Regional Fisheries Management Organization/Arrangement (RFMO/A) is in place.⁴⁰ The EU’s potential actions to contribute to the establishment of the central Arctic RFMO/A will be further elaborated in section 3.4.

36 S.J.Res.17—110th Congress (2007–2008), Public Law No: 110–243 (06/03/2008) <<https://www.congress.gov/bill/110th-congress/senate-joint-resolution/17>> accessed 16 December 2015.

37 *Ibid.*

38 Declaration Concerning the Prevention of Unregulated High Sea Fishing in the Central Arctic Ocean, Oslo, 16 July 2015.

39 Chairman’s Statement, Meeting on High Seas Fisheries in the Central Arctic Ocean, Reykjavik, Iceland, 15–18 March 2017 <http://naalakkersuisut.gl/~media/Nanoq/Files/Attached%20Files/Fiskeri_Fangst_Landbrug/Eng/Chairmans%20Statement%20from%20Reykjavik%20Meeting%202017.pdf> accessed 29 March 2017.

40 Joint Communication of the European Commission and High Representative of the Union for Foreign Affairs and Security Policy of 10 November 2016 on International ocean governance: an agenda for the future of our oceans, JOIN (2016) 49, 7.

3 The EU and Arctic Fisheries

3.1 *The EU's Current Role in the Governance of Arctic Fisheries*

The EU has no coast line in the Arctic. This subsequently limits the EU's position on receiving fishing rights: the EU receives rights either by grants from Arctic countries' to fish within their EEZs or by being allocated rights within a RFMO area regarding the high seas.⁴¹ For example, the EU has entered into a mixed sustainable fisheries agreement with Greenland, which provides access to a wide range of fish stocks in Greenland's EEZ. It is reaffirmed in the 2015 Joint Declaration between the EU and Greenland that "sustainably managing fish stocks and the marine environment as well as providing fishing opportunities for the vessels of EU Member States should remain an essential pillar of the partnership between the EU and Greenland and continue to be based on the EU Greenland Fisheries Partnership Agreement and its Protocols".⁴²

The EU accounts for over 5% of total fisheries production worldwide, which is 4,889,188 tonnes live weight in 2011.⁴³ 79% of EU catches are taken in EU waters; 8% are made in countries' waters outside the EU; 13% are taken on the high seas.⁴⁴ It is noted that Northeast Atlantic (FAO Fishing area code 27) is the most important fishing area for the EU. 69.62% of total EU catches in 2011 were taken from that area.⁴⁵ In terms of value, the EU is the leading importer of fishery products in the world. The EU is the largest fish market in the world, which is about 26% of global fish import with a value about EUR 36 billion in 2011.⁴⁶ Main suppliers for the EU include Norway (20%), China (8%), Iceland (5%), Ecuador (5%) and United States (5%).⁴⁷

41 B. Rudloff, 'The EU as Fishing Actor in the Arctic' (2010) SWP Berlin Working Paper <https://www.swp-berlin.org/fileadmin/contents/products/arbeitspapiere/Rff_WP_2010_02_ks.pdf> accessed 23 December 2015.

42 Joint Declaration by the European Union, on the one hand, and the Government of Greenland and the Government of Denmark, on the other, on relations between the European Union and Greenland <https://ec.europa.eu/europeaid/sites/devco/files/signed-joint-declaration-eu-greenland-denmark_en.pdf> accessed 13 January 2016.

43 5.1, Catches, Facts and Figures on the Common Fisheries Policy, Basic Statistical Data, 2014, European Union <http://ec.europa.eu/fisheries/documentation/publications/pcp_en.pdf> accessed 13 January 2016.

44 EU SFPAS: Sustainable Fisheries Partnership Agreements <http://ec.europa.eu/fisheries/documentation/publications/2015-sfpa_en.pdf> accessed 12 January 2016.

45 Facts and Figures on the Common Fisheries Policy, n. 43 above, 20.

46 Arnarsson and Justus, n. 17 above, 66.

47 Facts and Figures on the Common Fisheries Policy, n. 43 above, 35.

One-third of fish caught in the sub-Arctic are sold on the European market.⁴⁸ From the perspective of the Arctic States, the EU often represents the dominate export destination.⁴⁹ For example, fisheries generated more than 90% of export earnings in Greenland and the Faroe Islands, around 40% in Iceland and about 6% in Norway in 2010.⁵⁰

The EU however is not a State. A clear picture about the EU's competences and institutional matrix must be drawn so as to better understand how the EU could contribute to governance of high sea fisheries in the central Arctic Ocean.

3.2 Competences

The EU has international legal personality⁵¹ and is an international actor. Van Vooren and Wessel define the EU as:

an entity that interacts with third countries and international organizations, in ways which are legally and politically distinguishable from its constitutive Member States. In the global context, this entity has a stand-alone identity composed of values, interests and policies which it seeks to define and promote internationally as its own.⁵²

The EU shall act based on the principle of conferral.⁵³ This means the EU can act only within the limits of the competences, conferred upon it by the Member States in the Treaties to attain the objectives set out therein. The existence of competences could be either expressed or implied.⁵⁴

The EU has strong legal competence in fields of policy, such as trade, shipping and high sea fisheries, that will figure prominently when sea ice on the Arctic Ocean further recedes and becomes predominantly first year ice.⁵⁵ In particular, the Treaty on the Functioning of the European Union (TFEU) confers on the EU's exclusive competence in the conservation of marine biological

⁴⁸ JOIN (2012) 19, 10.

⁴⁹ Rudloff, n. 41 above, 12.

⁵⁰ Arnarsson and Justus, n. 18 above, 57.

⁵¹ Article 47, the Treaty on European Union (TEU) [2008] OJ C115/15.

⁵² B. Van Vooren and R.A. Wessel, *EU External Relations Law, Text, Cases and Materials* (CUP, Cambridge 2014) 1.

⁵³ Article 5, TEU.

⁵⁴ Further discussions see Van Vooren and Wessel, n. 52 above, 76–91.

⁵⁵ T. Koivurova, K. Kokko, S. Duyck, N. Sellheim and A. Stepien, 'The Present and Future Competence of the European Union in the Arctic' (2012) 48 (4) *Polar Record* 362.

resources under the Common Fisheries Policy.⁵⁶ The EU shares competence with Member States in the area of agriculture and fisheries, excluding the conservation of marine biological resources.⁵⁷ In general, based on the famous *Commission v. Council* (AETR case) [1971] of the Court of Justice the European Union (CJEU),⁵⁸ the material scope of the EU's external competence/treaty-making powers corresponds to the scope of the internal powers from which those treaty-making powers flow.⁵⁹ The CJEU, first in the *Kramer Case*, has specifically held that the EU has implied treaty-making powers in relation to fisheries.⁶⁰ It is provided that "it follows from the very duties and powers which Community law has established and assigned to the institutions of the Community on the internal level that the Community has authority to enter into international commitments for the conservation of the resources of the sea".⁶¹ Moreover, it is clearly stated by the TFEU that "The Union shall also have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope".⁶² Therefore, when it comes to issues regarding the conservation of marine living resources in high sea portion of the central Arctic Ocean, the EU has exclusive competence to act, both internally and externally. This explains why the EU, rather than Member States, such as Spain or Germany, was invited by the Arctic 5 to participate in the negotiations of regulating potential fisheries in the central Arctic Ocean.

56 Article 3 (1) (d), The Treaty on the Functioning of the European Union (TFEU) [2012] OJ C326/47.

57 Article 4 (2) (d), TFEU.

58 *Commission v. Council* (Case C-22/70) [1971] ECR 263, Para. 19: "With regard to the implementation of the provisions of the Treaty the system of internal Community measures may not therefore be separated from that of external relations" <eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61970CJ0022&from=FR> accessed 9 December 2015.

59 Robin Churchill and Daniel Owen, *The EC Community Fisheries Policy* (Oxford University Press 2010) 305.

60 For detailed analysis of the *Kramer Case*, see *ibid.*, 304–305.

61 *Officier van Justitie v Kramer* (Joined Cases 3,4, and 6/76) [1976] ECR 1279, Para. 33 <http://www.cvce.eu/content/publication/2006/6/13/44f87937-c661-45e5-904c-58bdda2323ca/publishable_en.pdf> accessed 9 December 2015.

62 Article 3 (2), TFEU.

3.3 *Institutional Matrix*

One of the ten priorities for the European Commission, set out by its President, Jean-Claude Juncker, is to strengthen the role of the EU as a global actor.⁶³ To further this goal, The European Commission has been keen to “speak with one voice in global affairs”.⁶⁴ This is reflected in the development of the EU’s 2016 Arctic policy, which is named “An Integrated European Union Policy for the Arctic”. The European Commission is the driving force for the development of the EU’s Arctic policy. The Arctic is too complex for any single Directorate General (DG) of the European Commission to deal with. The European Commission has therefore established an inter-service group on the development of Arctic policy, which involves staff from several DGs to make the policy draft. These mainly include DG for Maritime Affairs and Fisheries (MARE), DG for Mobility and Transport (MOVE), DG for Energy (ENER), DG for Environment, DG for Research and Innovation as well as DG for Regional and Urban Policy. The DG MARE, which is the Commission department responsible for the implementation of the Common Fisheries Policy and of the Integrated Maritime Policy, is playing a coordinating role in the inter-service group. The C1 Unit (Maritime policy, Atlantic, outermost regions and the Arctic) of the DG MARE is the specific unit that is working on the Arctic issues. Together with the European External Action Service (EEAS), the European Commission organized a series of stakeholder consultation workshops in Rovaniemi, Brussels and Reykjavik in 2015 for the development of the EU’s latest Arctic policy, which was adopted in April 2016.

The European External Action Service (EEAS) is an institutional structure set up in 2010 against a decades-old struggle of the Union seeking to project a strong, coherent voice on the international scene, counterbalanced by the Member States’ wish to retain control over various aspects of international relations.⁶⁵ It is placed under the authority of the High Representative to help fulfill his/her mandate to conduct the Common Foreign and Security Policy (CFSP) of the EU.⁶⁶ As clearly mentioned in its name, it is an institution that provides service. The EEAS is not playing the role as policy makers, such as the European Commission and the High Representative, but rather assists policy

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- 63 President Juncker’s Political Guidelines <http://ec.europa.eu/priorities/docs/pg_en.pdf#page=11> accessed 11 December 2015.
 - 64 A Stronger Global Actor—One Year on <http://ec.europa.eu/priorities/global-actor/docs/stronger-foreign-policy-actor-1-year_en.pdf> accessed 11 December 2015.
 - 65 Van Vooren and Wessel, n. 52 above, 20.
 - 66 Article 1 (3) and Article 2 (1), Council Decision 2010/427/EU of 26 July 2010 establishing the organization and functioning of the European External Action Service [2010] OJ L201/30.

makers⁶⁷ and ensures consistency between the different areas of the Union's external action and between those areas and its other policies.⁶⁸ The Council Decision 2010/427 establishing the EEAS states that "the EEAS and the services of the European Commission shall consult each other on all matters relating to the external action of the Union in the exercise of their respective functions, except on matters covered by the Common Security and Defence Policy (CSDP). The EEAS shall take part in the preparatory work and procedures relating to acts to be prepared by the Commission in this area."⁶⁹ The EEAS therefore has been actively involved in developing the EU's Arctic policy over the past years. For example, as mentioned, the EEAS worked with the European Commission to organize a series of stakeholder consultation meetings for the development of the EU's 2016 Arctic policy.

The European Council sets the EU's policy agenda, traditionally by adopting 'conclusions' during European Council meetings which identify issues of concern and actions to take.⁷⁰ It has adopted three Conclusions regarding the Arctic in 2009, 2014 and 2016. Although these Conclusions are not legally-binding, they are politically important because the European Council is the EU institution that identifies the strategic interests and objectives of the Union.⁷¹ The Council Conclusions on Arctic Issues in 2009 not only echoed the European Commission's proposal in COM (2008) 763 to extend the NEAFC to the high sea area of central Arctic Ocean, but also moved further by suggesting a temporary ban in those waters before a legal framework is in place.⁷² The European Council is in the same line with the United States Congress. However, in the 2014 Council Conclusions on Developing a EU Policy towards the Arctic Region, fisheries was not an issue that was emphasized. The 2014 Council Conclusions only briefly mentioned that the EU should seek to strengthen its support for the protection of the Arctic environment through its policies regarding for example climate change, air pollutants including black

67 "The EEAS shall assist the President of the European Council, the President of the Commission, and the Commission in the exercise of their respective functions in the area of external relations." Article 2 (2), Council Decision 2010/427/EU.

68 Article 3 (1), Council Decision 2010/42/EU.

69 Article 3 (2), Council Decision 2010/42/EU.

70 The European Council <<http://www.consilium.europa.eu/en/european-council/>> accessed 11 April 2017.

71 Article 22 (1), TEU.

72 Para. 10, Council conclusions on Arctic issues, 2985th Foreign Affairs Council meeting, Brussels, 8 December 2009 <http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/111814.pdf> accessed 15 December 2015.

carbon, biodiversity and fisheries.⁷³ This might reflect the fact that the EU's proposal in establishing a legal framework for commercial fishing in the high sea portion of the central Arctic Ocean did not make any progress between 2008 and 2014. The European Council became even less ambitious in its latest Council Conclusions on the Arctic. It merely states "the Council welcomes EU participation in the negotiations on an international agreement to prevent unregulated fisheries in the Central Arctic Ocean, in a field which falls under the EU's exclusive external competence."⁷⁴

The European Parliament is proactive in commissioning studies, adopting non-binding resolutions, organizing hearings, carrying out fact finding missions and so on, to place a parliamentary stamp on EU external relations.⁷⁵ The European Parliament was a strong supporter of establishing a comprehensive Arctic Treaty for the protection of the Arctic, as modelled by the Antarctic Treaty.⁷⁶ The initiative of an Arctic Treaty is clearly not favoured by any Arctic State.⁷⁷ The European Parliament has gradually become more pragmatic, by stating that the formulation of an EU policy on the Arctic should be based on the recognition of the existing international, multilateral and bilateral legal frameworks such as the comprehensive set of rules laid down in UNCLOS.⁷⁸ The European Parliament had no specific interest in fisheries

73 Para. 2, Council conclusions on developing a European Union Policy towards the Arctic Region, Foreign Affairs Council meeting, Brussels, 12 May 2014 <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/142554.pdf> accessed 16 December 2015.

74 Para. 9, Council conclusions on the Arctic, Foreign Affairs Council meeting, Brussels, 20 June 2016 <<http://data.consilium.europa.eu/doc/document/ST-10400-2016-INIT/en/pdf>> accessed 6 September 2016.

75 Van Vooren and Wessel, n. 52 above, 28.

76 Para. 15, P6_TA (2008) 0474, European Parliament resolution of 9 October 2008 on Arctic governance <<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2008-474>> accessed 18 December 2015.

77 "The law of the sea provides a solid foundation for responsible management by the five coastal States and other users of Arctic Ocean through national implementation and application of relevant provisions. We therefore see no need to develop a new comprehensive international legal regime to govern the Arctic Ocean." The Ilulissat Declaration, Arctic Ocean Conference, Ilulissat, Greenland, 27–29 May 2008 <https://www.regjeringen.no/globalassets/upload/ud/080525_arctic_ocean_conference_outcome.pdf> accessed 19 December 2015.

78 Para. G, P7_TA (2011) 0024, European Parliament resolution of 20 January 2011 on a sustainable EU policy for the High North (2009/2214 (INI)) <<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2014-0236>> accessed 19 December 2015.

in its 2008 Resolution.⁷⁹ The Parliament however pays much attention to Arctic fisheries in its 2011 Resolution. Internally, the European Parliament requests the European Commission to ensure a coherent, coordinated and integrated Arctic policy across key policy areas, including fisheries.⁸⁰ Moreover, it is recommended by the European Parliament that DG MARE should be acting as a cross-sectoral coordinator of the Inter-Service Group within the European Commission.⁸¹ The European Commission followed the Parliament's recommendation. Externally, the European Parliament not only supports regulating fishing in the high seas portion of the Arctic by a RFMO that respects scientific advice and has robust control and surveillance programme to ensure compliance, but also believes that fishing within Exclusive Economic Zones (EEZs) of Arctic coastal States must meet same standards.⁸² This might be seen by Arctic States as political intrusion. In its 2014 Arctic Resolution, the European Parliament focused on external actions. It once again shows support for the regulation of potential fishing in the high sea parts of the central Arctic Ocean. The European Parliament has however made another political statement, calling for the protection of the international sea areas around the North Pole outside the EEZs of Arctic coastal States by establishing a network of Arctic conservation areas.⁸³ In March 2017, the European Parliament adopted resolution "An Integrated EU Policy for the Arctic",⁸⁴ which echoed the JOIN (2016) 21 published by the European Commission and High Representative. The Parliament reaffirmed its statement in 2014 resolution that fishing on the high seas and within EEZs must be regulated by a RFMO, which respects scientific advice and has a robust control and surveillance programme to ensure compliance with management measures.⁸⁵ The European Parliament is supportive

79 P6_TA (2008) 0474, European Parliament resolution of 9 October 2008 on Arctic governance.

80 Para. 56, P7_TA (2011) 0024, European Parliament resolution of 20 January 2011 on a sustainable EU policy for the High North.

81 *Ibid.*

82 Para. 22, P7_TA (2011) 0024, European Parliament resolution of 20 January 2011 on a sustainable EU policy for the High North.

83 Para. 38, P7_TA (2014) 0236, European Parliament resolution of 12 March 2014 on the EU strategy for the Arctic (2013/2595 (RSP)) <<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2014-0236>> accessed 22 December 2015.

84 P8_TA-PROV (2017) 0093, European Parliament resolution of 16 March 2017 on an integrated European Union policy for the Arctic (2016/2228 (INI)) <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0093+0+DOC+XML+Vo//EN&language=EN>> accessed 31 March 2017.

85 Para. 7, P8_TA-PROV (2017) 0093.

of a moratorium on industrial-scale fishing, including bottom-trawling, in the previously unfished waters of the Arctic.⁸⁶

In general, the EU institutions are well coordinated and share the same view that a RFMO/A shall be in place for the high seas of central Arctic Ocean so as to achieve sustainable fisheries in the future when commercial fishing occurs. The following section will discuss concrete contributions that the EU might make to achieve this objective.

3.4 *The EU's Potential Contributions to Governance of High Sea Fisheries in the Central Arctic Ocean*

3.4.1 Internal Actions

As an important flag State and market State for Arctic fisheries, the EU could potentially play a significant part in regulating future high sea fisheries of the central Arctic Ocean directly and indirectly by its internal measures.

It was admitted by the European Commission in 2009 that the Common Fisheries Policy (CFP) then has not worked well enough to prevent problems in European fishing sector, including overfishing, fleet overcapacity, heavy subsidies, low economic resilience and decline in the volume of fish caught by European fishermen.⁸⁷ While the EU is eager to promote good maritime governance and responsible fishing in the outside world, bad management of fisheries within the EU⁸⁸ might make the EU's effort less convincing for third countries. This is exactly the case, for example, between the EU and Iceland. For example, Gunnar Tomasson, Director of a major Icelandic fishing company Thorfish said, "Today the fishing stocks (in Icelandic waters) are sustainable and we are controlling them very well. But inside the European Union, it is totally the other way around. They are not controlling it; they are overfishing their stocks and they are even paying subsidies to their industry. We do not want to go into the European Union."⁸⁹

86 *Ibid.*

87 European Commission Communication of 22 April 2009 Green Paper Reform of the Common Fisheries Policy, COM (2009) 163, 4–5 <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0163:FIN:EN:PDF>> accessed 27 September 2016.

88 The European Commission identified five structural failings for the CFP in 2009: 1) a deep-rooted problem of fleet overcapacity; 2) imprecise policy objectives resulting in insufficient guidance for decisions and implementations; 3) a decision-making system that encourages a short-term focus; 4) a framework that does not give sufficient responsibility to the industry; 5) lack of political will to ensure compliance and poor compliance by the industry. See COM (2009) 163, 8.

89 Claire Marshall, 'Iceland's Fishing Industry Better Off Outside EU' (*BBC*, 21 June 2016) <<http://www.bbc.com/news/science-environment-36587253>> accessed 27 September 2016.

The EU's CFP has been reformed and a new CFP is effective from 1 January 2014. The European Commission believes that a whole-scale and fundamental reform of the CFP and remobilization of the fisheries sector can bring about the dramatic change that is needed.⁹⁰ The reformed CFP, consisting of Regulation (EU) 1380/2013 on the Common Fisheries Policy and Regulation (EU) 2015/812 as regards the landing obligation, introduces a number of measures and instruments to achieve sustainability.⁹¹ These include, for example, 1) Fish stocks should be exploited at maximum sustainable yield (MSY) levels;⁹² 2) Discarding of fish is no longer acceptable;⁹³ 3) Multi-annual management plans that will replace the single-stock-based approach, bringing the vast majority of stocks under multi-stock management plans;⁹⁴ 4) Regionalisation;⁹⁵ 5) Transferable fishing concessions⁹⁶ aiming at eliminating overcapacity of fishing fleet and improving the economic result of the fishing industry as a whole.⁹⁷ In particular, multi-annual management plans to manage resources at levels that are capable of producing MSY, together with the conservation proposal that is ending the practice of discards and reducing unwanted catches, are considered by

90 COM (2009) 163, 4–5.

91 Sustainability is at the heart of the proposed reform. See European Commission Communication of 13 July 2011 Reform of the Common Fisheries Policy, COM (2011) 417, 2 <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0417&from=EN>> accessed 28 September 2016.

92 These levels can be defined as the highest catch that can be safely taken year after year and which maintains the fish population size at maximum productivity. COM (2011) 417, 3.

93 *Ibid.*, 4. In 2015 the pelagic and industrial fisheries, and in the Baltic the salmon fisheries and fisheries for cod fall under the landing obligation. For all other fisheries, there is no change in 2015. In the fisheries that are not under the landing obligation from 1 January 2015, all catches of undersized fish, not covered by quota, or in excess of catch composition and by-catch rules, must continue to be returned to the sea. See 1 January 2015: the Landing Obligation <http://ec.europa.eu/fisheries/cfp/fishing_rules/landing-obligation/index_en.htm> accessed 28 September 2016.

94 *Ibid.*

95 EU fisheries legislation adopted centrally should focus on objectives, targets, minimum common standards and results, and delivery timeframes. While key decisions remain at EU level, Member States will have the flexibility to decide on other measures for fisheries management, under the supervision of the Commission, in full compliance with the provisions of EU law. COM (2011) 417, 7.

96 Transferability of fishing rights that would make it possible for the fishermen to adjust their quota holdings to fit their catch by buying or leasing fishing rights retroactively. See M. Salomon, T. Markus and M. Dross 'Masterstroke or Paper Tiger—The Reform of the EU's Common Fisheries Policy' (2014) 47 *Marine Policy* 79.

97 Council Regulation (EU) 1380/2013 on the Common Fisheries Policy [2013] OJ L354/22, art 21. See also COM (2011) 417, 5.

the EU as two core elements for conservation of marine living resources.⁹⁸ It might be too early to assess the effectiveness of the reformed CFP three years after its adoption. There are concerns and criticisms about the reformed CFP.⁹⁹ Nevertheless, both the introduction of the MSY-concept for fixing fishing opportunity and the landing obligation are quite positive steps towards better management of European stocks and the protection of marine biodiversity.¹⁰⁰ The CFP will be applicable to EU-flagged fishing vessels in the central Arctic Ocean. A successful CFP would give the EU more credibility and enhance the EU's role as a normative power to promote sustainable fisheries internationally (including the Arctic).¹⁰¹

While the EU regulates only its internal market, multinational corporations often have an incentive to standardize their production globally and adhere to a single rule.¹⁰² The EU has succeeded in using market access as a tool to leverage the 'migration' of its frequently demanding norms abroad.¹⁰³ One particularly example that may also have an impact on Arctic fisheries in the future could be the EU Regulation to prevent, deter and eliminate illegal, unreported and unregulated fishing (IUU).¹⁰⁴ The Regulation establishes various EU-wide mechanisms to prevent, deter, and eliminate IUU fishing,¹⁰⁵ and to prevent the continued import of IUU fish into the EU market. These include

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- 98 European Commission Communication of 13 July 2011 Proposal for a Regulation of the European Parliament and of the Council on the Common Fisheries Policy, COM (2011) 425, 7 <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011PC0425&from=EN>> accessed 28 September 2016.
 - 99 P. Ørebech "Getting It Right": The Birth of a New EU Common Fishery Policy?—Legislative and Legal Perspectives on the Annuling of the "Five Structural Failings" (2015) 6(2) *Arctic Review on Law and Politics* 111–131.
 - 100 Salomon, Markus and Dross, n. 96 above, 83.
 - 101 I. Manners 'Normative Power Europe: A Contradiction in Terms?' (2002) 40(2) *Journal of Common Market Studies* 235–58.
 - 102 A. Bradford, 'The Brussels Effect' (2012) 107 (1) *Northwestern University Law Review* 5.
 - 103 J. Scott, 'Extraterritorial and Territorial Extension in EU Law' (2014) 62 (1) *American Journal of Comparative Law* 87.
 - 104 Council Regulation (EC) 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing [2008] OJ L286; Council Regulation (EC) 1010/2009 laying down a detailed rules for the implementation of Council Regulation (EC) No 1005/2008 [2009] OJ L280.
 - 105 For a latest overview of the EU IUU Regulation, see E. van der Marel, 'An Opaque Blacklist: the Lack of Transparency in Identifying Non-Cooperating Countries under the EU IUU Regulation' in Lawrence Martin, Constantinos Salonidis and Christina Hioureas (eds.), *Natural Resources and the Law of the Sea: Exploration, Allocation, Exploitation of Natural Resources in Areas under National Jurisdiction and Beyond* (Juris 2017) 237–256.

the prior notification of and authorization to enter EU ports for third country fishing vessels;¹⁰⁶ increased inspections in EU ports;¹⁰⁷ an EU-wide alert system;¹⁰⁸ an obligation for fishery products coming into the EU to be accompanied by a validated catch certificate;¹⁰⁹ increased control over EU nationals' support of and engagement in IUU fishing;¹¹⁰ the blacklisting of fishing vessels known to have engaged in IUU fishing and a prohibition for blacklisted vessels to enter EU ports;¹¹¹ and the possibility to blacklist third countries.¹¹² The EU IUU Regulation establishes a system of conditional access, using potential sanctions attached to their trade agreements as an incentive to ensure that States with vested interests in trading their fish on the EU market are compliant.¹¹³ In the future, when commercially viable fisheries occur in the central Arctic Ocean, the EU IUU Regulation may play as an effective tool to combat IUU fishing there as well. It will apply to any fishing taking place before any regime has been established (unregulated fishing). The EU IUU Regulation will also apply to any fishing after a regime has been developed in the central Arctic Ocean if that is not consistent with it (illegal fishing). Though the potential impact of the EU IUU Regulation may depend in part on how far States fishing in the central Arctic Ocean export to the EU.

3.4.2 External Actions

The EU has emerged as a power that endeavors to extend its regulatory scope beyond EU Member States. This is conceived by scholars as a form of external governance in which internal and foreign policy goals come together.¹¹⁴ The EU's Common Fisheries Policy has an external dimension as well. As argued by the European Commission, "The EU is one of the very few major players with a strong presence in all of the world's oceans through its fleets and investments, bilateral agreements with third countries and participation in most relevant RFMOs. It is also a main market for fishery products in terms of consumption

106 IUU Regulation arts. 6, 7.

107 *Id.* arts. 9–11.

108 *Id.* art. 23.

109 *Id.* art. 12.

110 *Id.* art. 39.

111 *Id.* arts. 27, 37.

112 *Id.* arts. 31, 38.

113 A.M.M. Miller, S.R. Bush, A.P.J. Mol, 'Power Europe: EU and the Illegal, Unreported and Unregulated Tuna Fisheries Regulation in the West and Central Pacific Ocean' (2014) 45 *Marine Policy* 141.

114 S. Lavenex, "EU External Governance in 'Wider Europe'" (2004) 11 (4) *Journal of European Public Policy* 680–700.

and imports. The EU consumes 11% of the world fishery resources in terms of volume and imports 24% of fishery products in terms of value. This confers a heavy responsibility on the EU to further engage in the tasks of conservation and sustainable management of international fish stocks.”¹¹⁵ As mentioned above, a successful CFP within the EU would enhance the EU’s credibility to promote good fisheries governance externally.

There are international (FAO) and regional (NEAFC, Arctic Council) bodies for the EU to exert influence on management of high sea fisheries in the central Arctic Ocean. As discussed above, the EU (along with Iceland, Japan, Korea and China) has been invited by the Arctic Five to participate in the so-called ‘Broader Process’ on international regulation of high sea fishing in the Central Arctic Ocean since the Washington Meeting in December 2015.¹¹⁶ Apart from being a key high sea fishing entities, the EU could also make substantial contributions (funding and expertise) to scientific research with the aim of improving understanding of marine ecosystem of this area. The EU welcomes the broadening of negotiations to involve major fishing nations.¹¹⁷ Moreover, the EU recognizes the need to obtain more information on ecosystems in the Arctic Ocean before opening up this region to commercial fishing and is keen to ensure the long-term conservation and sustainable use of resources in the Arctic high seas.¹¹⁸ However, it would be much better for the EU to be involved from the very beginning. Instead, the Arctic Five had reached a position by the Oslo Declaration in July 2015 before extending invitations to those key high sea entities. Furthermore, the EU could potentially play a more influential role if the negotiation would have been conducted in the Arctic Council, where Finland and Sweden, as members of both the Arctic Council and the EU, have voting rights. The Arctic Council is the primary forum for Arctic cooperation. The Arctic Council has not explicitly involved itself in fisheries management issues yet, though there is no jurisdictional obstacle for this.¹¹⁹ The Arctic

115 European Commission Communication of 13 July 2011 on External Dimension of the Common Fisheries Policy, COM (2011) 424 <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0424&from=EN>> accessed 10 October 2016.

116 For an overview of the Washington Meeting, see E.J. Molenaar, The December 2015 Washington Meeting on High Seas Fishing in the Central Arctic Ocean, The JCLOS Blog <<http://site.uit.no/jclos/2016/02/05/the-december-2015-washington-meeting-on-high-seas-fishing-in-the-central-arctic-ocean/>> accessed 10 October 2016.

117 JOIN (2016) 21, 16.

118 *Ibid.*

119 E.J. Molenaar, ‘Status and Reform of International Arctic Fisheries Law’ in Elizabeth Tedsen, Sandra Cavalieri and R. Andreas Kraemer (eds), *Arctic Marine Governance, Opportunities for Transatlantic Cooperation* (Springer 2014) 113.

Council is established as a high level forum to provide a means for promoting cooperation, coordination and interaction among the Arctic States, with the involvement of the Arctic indigenous communities and other Arctic inhabitants on common Arctic issues, in particular issues of sustainable development and environmental protection in the Arctic.¹²⁰ The Arctic Council has already sponsored numerous scientific studies that have been instrumental in alerting the world to the transboundary pollution and climate change challenges facing the Arctic.¹²¹ The capacity of the Arctic Council was further strengthened by the official opening of its permanent secretariat in Tromsø, Norway in 2013.¹²² After welcoming China, India, Italy, Japan, the Republic of Korea and Singapore as new Observer States in the Eighth Ministerial Meeting,¹²³ it is anticipated that the Arctic Council could play more important role in the future Arctic governance.¹²⁴ This might be of particular importance for the development of future governance of high sea fisheries in the central Arctic Ocean.

Although the EU has given up its idea on the extension of the NEAFC to cover the Central Arctic Ocean,¹²⁵ the NEAFC is still an important platform for the EU to promote its objectives and principles to achieve sustainable fisheries in the Arctic. As mentioned above, the NEAFC, of which the EU is a contracting party, covers a significant part of the Arctic Ocean. Moreover, the NEAFC is now trying to cooperate and coordinate with the OSPAR Commission to establish and manage high sea marine protected areas (MPAs) in the Northeast

120 Article 1 (a), Declaration on the Establishment of the Arctic Council (Ottawa, Canada, 1996) <<http://www.international.gc.ca/arctic-arctique/ottdec-decott.aspx?lang=eng>> accessed 26 November 2015.

121 T. Koivurova and D. VanderZwaag, 'The Arctic Council at 10 Years: Retrospect and Prospects' (2007) 40 (1) *University of British Columbia Law Review* 121.

122 'Decide to strengthen the capacity of the Arctic Council to respond to the challenges and opportunities facing the Arctic by establishing a standing Arctic Council secretariat, hereinafter the Secretariat, in Tromsø, Norway to be operational no later than at the beginning of the Canadian Chairmanship of the Arctic Council in 2013', Nuuk Declaration On the occasion of the Seventh Ministerial Meeting of the Arctic Council (12 May 2011, Nuuk, Greenland) <http://arctic-council.npolar.no/accms/export/sites/default/en/meetings/2011-nuuk-ministerial/docs/Nuuk_Declaration_FINAL.pdf> accessed 26 November 2015.

123 Kiruna Declaration On the occasion of the Eighth Ministerial Meeting of the Arctic Council (15 May 2013, Kiruna, Sweden) <https://oaarchive.arctic-council.org/bitstream/handle/11374/93/MMo8_Final_Kiruna_declaration_w_signature.pdf?sequence=1&isAllowed=y> accessed 26 November 2015.

124 N. Liu, 'The European Union's Potential Contribution to Enhanced Governance of Arctic Shipping' (2013) 73 (4) *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 716.

125 The EU never brought this proposal into discussions within the NEAFC. It was a policy suggestion published in the EU's 2008 Arctic Policy.

Atlantic. The NEAFC and the OSPAR are relying on the same scientific advice from the International Council for Exploitation of the Sea (ICES). The NEAFC has established areas closed for fishing to protect Vulnerable Marine Ecosystems (VMEs),¹²⁶ which share almost the same boundaries with high sea MPAs designated by the OSPAR. Therefore, the NEAFC plays a key role in the management of cross-sectoral high sea MPAs. Although none of OSPAR high sea MPAs is in the sub-Arctic, they might provide lessons to central Arctic Ocean fisheries management regarding how to operationalize ecosystem approach in high seas.

Finally, the FAO is another forum where the EU may exert influence on governance of high sea fisheries in general, which might be applicable in the Arctic as well. The EU became a member of the FAO in 1991, after the FAO constitution was amended to permit regional economic integration organizations to become members. The EU concluded a Framework Co-operation Agreement with the FAO in order to “step up their co-operation in the food and agriculture sectors including fisheries and forestry”.¹²⁷ Because fisheries is under exclusive competence of the EU, the EU could vote on behalf of its 28 Member States in the FAO. When it speaks in one voice, the EU has significant power to play an important role in international decision making processes. This is evidenced by the EU’s influence within the International Maritime Organization to accelerate the process of phasing out single hull tankers globally after the *Erika* and *Prestige* oil spill disasters.¹²⁸ The EU has already planned to reinforce support for the development of international instruments for the conservation and management of fish stocks in the context of the FAO, especially on the role of port States and flag States in combating IUU activities.¹²⁹

126 Map of NEAFC Regulatory Area Showing Existing Fishing Areas and All Closures < <http://www.neafc.org/page/closures>> accessed 10 October 2016.

127 Working Document, Strategic Partnership between the Commission of the European Communities and the Food and Agriculture Organization in the Field of Development and Humanitarian Affairs <https://eeas.europa.eu/sites/eeas/files/fao_ec_working_doc_final_en_o.pdf> accessed 11 October 2016.

128 For details, see Nengye Liu, Frank Maes, ‘The European Union and the International Maritime Organization: EU’s External Influence on the Prevention of Vessel-Source Pollution’ (2010) 41 (4) *Journal of Maritime Law and Commerce* 581–594.

129 COM (2011) 424, 7.

4 Concluding Remarks

From 2008 to 2016, the EU's Arctic ambition has appeared to diminish each year. The EU's 2008 Arctic policy emphasised the importance of contributing to multi-level governance in the Arctic. The EU's tone was softened in 2012 to 'constructive engagement' with Arctic States. The EU's latest Arctic policy merely addresses broad issues, such as climate change and sustainable development, with a focus on the European Arctic. Nevertheless, as revealed by this paper, the EU could play a significant role in Arctic governance regarding fisheries. The EU is an important flag State and market State for fisheries in the Arctic. The EU is also a normative power and a market power. The EU's internal actions, such as regulation of IUU fishing, could generate positive impacts on Arctic fisheries. Moreover, although the EU was only invited at a later stage to join the negotiation on the regulation of fisheries in the Central Arctic Ocean, the EU shares same value with Arctic Five for conservation and management of marine living resources in the Arctic. Whatever agreement or arrangement that might be achieved by the negotiation, the EU would be an essential partner to ensure compliance of such a deal.