

Reforming European Union Participation in Fisheries Management and Conservation on the High Seas†

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Introduction

The European Union (EU) holds exclusive competence on matters of fishery conservation and management in European waters and in this role has participated actively in the international conventions and agreements that shape modern fishery management on the high seas. As the world’s fifth largest fish producer in 2012¹ and a formidable political entity, the EU is well-positioned to influence further development in this regulatory network, as well as to address key weaknesses in the performance of regional fishery management organizations (RFMOs). The EU has shown its willingness to play a positive role within the external dimension of its Common Fisheries Policy (CFP), in which it proposes to ‘strengthen and enhance’ international compliance with RFMOs.² However, in the past the EU itself has been criticized heavily for its conduct in such organizations and has seemed to contribute to their overarching problems. To assess the potential legitimacy of the CFP claim to strengthen and enhance RFMO performance, this article explores the legal background for EU participation in international marine living resource management and the

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development of its role in the field, and evaluates two case studies of past EU conduct in two major RFMOs: the Northwest Atlantic Fisheries Organization (NAFO) and the International Commission for the Conservation of Atlantic Tunas (ICCAT).

Legal Overview

Legal Framework for EU Participation in International Fisheries Organizations

As the EU’s CFP approached a new round of reform in 2012, its significance transcended EU waters by far. The Union’s power to affect the world’s marine fisheries is enforced by sheer volume of production: collectively, the EU was the world’s fifth largest harvester of fish in 2012 and it accounted for over five percent of world marine capture in 2011, while 20 percent of its landings were caught on the high seas. The majority of this catch was extracted from the eastern Atlantic and Mediterranean, but EU fleets also operate globally and have been increasingly present on the high seas and in other countries’ exclusive economic zones (EEZs) over the last few decades. Additionally, the EU has the world’s largest single market for fisheries products. Given the breadth of its activity alone, therefore, the EU is an essential player in the realm of international fisheries management.

Within the context of international law, the role of the EU in fisheries is equally important, albeit more complex. Since the EU is a supranational organization, its degree of participation in any international institution (or treaty regime) is different from that of a sovereign state, and is determined both externally and internally. Externally, the EU’s involvement depends on whether the international institution in question allows for the participation of supranational organizations, and if it does, to what degree such participation is allowed, which is usually outlined in relevant provisions of the institution’s constitutional treaty.

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3 Id.
4 European Commission, n. 1 above; FAO for data on worldwide capture; Eurostat for capture by 27 Member States; European Commission, Directorate-General for Maritime Affairs and Fisheries, “Fishing Outside the EU,” <http://ec.europa.eu/fisheries/cfp/international/index_en.htm> [DGMAF].
6 DGMAF, n. 4 above.