

L20 & International Fisheries Governance Conference Summary

Context and purpose of conference

The premise is that the world needs a more flexible and informal vehicle of effective international governance. The organizing questions for the conference, presuming that there was to be a forum of Leaders larger than the G8 were:

- What could they aspire to do? Which shared problems have staying power to interest leaders?
- Where do leaders have unique competence, leverage and desire to act?
- What could be the value-added outcome of such a leaders forum?
- What initiatives could the L20 pursue?(bearing in mind that forums such as this are not institutions for elaborate action but rather exist in order for leaders to make prominent commitments for their own countries, instruct their ministers to pursue initiatives, and agree to work together in international organizations to attain particular results)
- What are the opportunities for collaboration and elements of a package deal?

The benefit of a Leaders' process is peer review and scrutiny; the opportunity for informal face-to-face interactions builds trust. The multilateral context provides ability to mobilize pressure. A smaller forum allows for discussion of sensitive issues with less political posturing. At the same time, high-level scrutiny encourages good staff work and can generate package deals that would be difficult to craft in other fora. That same scrutiny can encourage leaders to adopt policies that provide collective benefits but would have been difficult if the only lines of accountability were domestic politics. Indeed, in a few key areas such as trade, leaders have been able to achieve incremental progress through such forums by focusing on areas of joint gains while avoiding other "no go" topics.

Introduction

The conference in Victoria examined the prospects for the L20, if it existed, to address the issues surrounding global over fishing. The main governance problem is the emergence of Illegal, Unreported and Unregulated (IUU) fishing. There are many international fisheries declarations, agreements, and rules, but they lack verifiability and enforcement. The problem is lack of implementation. There is inadequate political will to enforce the existing rules. The way forward on national domestic fronts include better management, enforcement, surveillance and control, and programs that effectively and permanently cut capacity and get fishers into other occupations.

Political will is constrained by the over capacity in many fleets (not only limited to OECD countries), the lack of domestic incentives to restrain capacity, the failure of

national management systems, and the existence of subsidies. In brief, governments are faced with short term political pain in confronting the issue of too many fishers chasing too few fish.

The conference revealed a tension between two somewhat competing prisms. One view is that fisheries management should be viewed as a problem of fisheries governance, and that we should simply get on with better implementation. The competing view is that it is fruitless to push for implementation within the framework of existing regimes and declarations; instead catalytic action will be provided only by widening the frame and pursuing over arching environmental regulation - that bold action is required to impose a new standard on rights and ethical obligations to the oceans and their resources.

In sum, an L20 Leaders forum could make significant headway by committing to:

- pursue implementation of existing commitments;
- promote the use of trade and market measures to improve enforcement and promote compliance;
- improve the effectiveness of RFMOs;
- reduce domestic over-capacity in fishing fleets and technologies;
- engage developing countries;
- mandate a series of further studies.

Elements of the discussion

A solid decade of implementation is required to bring several agreed high-level instruments into effect. The challenge is to catalyze concrete action on the seas, in ports, and by the general public. Action and achievement hinge on mobilizing political will and public pressure in the face of the wide range of differing perceptions and conflicting interests that characterize all societies, but perhaps particularly in fisheries systems. Social change will require education and outreach.

There was discussion of the merit of reframing governance of high seas fishing within the broader context of international oceans governance, taking into account current political preoccupations with shipping, terrorism and port security. Piracy, flags of convenience, smuggling, and the exploitation of crew members are other dimensions¹.

Some argued that fisheries must be seen within the whole complex of oceans governance issues that deals with multiple uses of ocean resources. There are competing claims to be recognized in the application of scientifically viable ecosystem-based approaches. One claim is that of intergenerational equity arising in terms of the stewardship of marine resources and conservation of marine ecosystems. This reframing of the issue is consistent with the most recent international declarations and agreements on the subject of high seas fisheries management and oceans governance².

¹ The rationale is that effective monitoring of fishing vessels involves initiatives congruent with security initiatives, and that broadening the debate to include a security dimension may be attractive to several Leaders.

² This list includes the 1992 Rio Declaration and Agenda 21, the 1995 UN Fish Stocks Agreement, the 1995 FAO Code of Conduct for Responsible Fisheries, the Compliance Agreement, the 1999 FAO

Some argue that we should build a framework around the Regional Fisheries Management Organizations (RFMOs) that would enable them to take on the role of comprehensive ROMOs (Regional Oceans Management Organizations) or perhaps even ROGOs (regional oceans governance organizations). Some argue that in light of distance from the negotiating setting of the 1970s in which UNCLOS was born, a revisiting and updating of this fundamental foundation would now be appropriate. Others argue that renegotiating UNCLOS would drag on for years, or even decades, postponing critical action achievable in the immediate future. They suggest the emphasis should be on implementing existing legislation and commitments rather than creating new legislation. It was noted that there might be opportunities to do both, in so far as short-term measures may pave the way for longer term reforms.

L20 leaders may have the capacity to ensure more effective markets through more symmetrical flow of information to all those markets. “Market democracy” can assist in implementation and compliance. Consumers, when presented with adequate information, may make purchasing decisions based on personal preferences to support international obligations. Information might be provided by eco-labeling, certification, accreditation and training schemes and campaigns. Improved tracking of catches from vessel to retailer would also assist in ensuring safety and compliance with agreed regulatory measures. Fleets and firms respond to such market pressures.

The allocation practices presently in place, mainly based on historical catches and claims, have difficulty accommodating new fishing interests. Current allocation practices are based on the false presumption of an unlimited supply; these allocation practices were initiated when technology capable of depleting that supply did not exist and could not be imagined.

Rights structures for access to high seas fisheries do not exist. High seas fisheries are open access. Rights-based management has proved effective in a number of countries. Holders of continuing rights may be more disposed to abide by regulations than those with only temporary access. For the high seas, a very wide range of possible rights-based structure can be envisaged, ranging from “place-based access”, management, or use rights, (which could be defined on the basis of specific coastal zones and/or communities, through to a larger scale of the nations located in a given region), to individual transferable quotas. These options may entail significant wealth redistribution impacts, both in the introduction and initial assignment (or recognition) of such rights, and in subsequent operations.

Managing fisheries in the high seas presents similar problems to management within national jurisdictions in regard to scientific capacity, although the geographical scale of the challenges are greater in the high seas and complicated by the multi-national make up of regional management arrangements. There is a scarcity of scientific capacity to

International Plans of Action on Shark Management, Seabird Bycatch, Overcapacity, and IUU Fishing, the 2002 WSSD Joint Plan of Implementation and the 2005 St. John’s Ministerial Declaration on the Governance of High Seas Fisheries.

adequately implement single species management, let alone the ambitions of multi-species and ecosystem-based fisheries management, or the overall challenge of ensuring ecosystem integrity and preservation of biodiversity. It is essential to promote further study of options for improving and rationalizing scientific capacity and the use of scientific advice.

There is a need to avoid, remedy or mitigate the impacts of fishing on vulnerable areas. Seamounts, corals, and sponge reefs are of particular concern. Effective measures are required to identify vulnerable areas and ecosystems. Measures could include limiting or prohibiting fishing spatially and/or temporally. This is an area in which the leadership of L20 leaders may be essential.

The list of preceding challenges is daunting, and therefore needs to be addressed through a multi sectoral commitment. It is recognized that implementation and compliance occurs through the actions of fishing companies—(those that are on board vessels, servicing them, or investing in them), whereas international treaties are directed at states. State obligations might be more effectively implemented if they are placed within a structure of economic incentives sufficiently aligned with private sector economic goals, so that economic agents pursuing their own interests are led to compliance. But implementation initiatives must also recognize the important, often overarching need for social and environmental goals, as well the role of social pressures, personal aspirations, ethical contexts and altruism in shaping the decisions of people working in concert with others.

L20 Options

Various ideas for possible L20 action were suggested. Most of these ideas have been/are being discussed and addressed in various ways in a number of international and regional fora, including the UNGA, UNICPOLOS, FAO, OECD, WTO, and many regional fishery management organizations. Suggested solutions, such as high seas ITQs and no take zones, and international enforcement authorities, face major legal, institutional, and political obstacles, and do not have unanimous support. The potential solutions mentioned below represent suggestions, rather than firm recommendations, supported by most of the conference participants.

1. L20 commits to actively pursue implementation of existing commitments through:
 - Increased ratification of UNFSA, particularly by the dozen or so parties critical to its effective functioning [especially Argentina, China, Indonesia, Japan, South Korea, and Mexico, among L20 potential members; Chile and Taiwan are significant];
 - L20 could encourage and support processes that enable Taiwan to participate fully in RFMOs (applying approaches accepted by China in other contexts, such as APEC and the WTO and several tuna RFMOs);
 - Increased participation of states in relevant RFMOs;
 - Commitment to upgrading RFMOs to enable them to implement fully the provisions of international fishery instruments;
 - Strengthened compliance (via enhanced monitoring and transparency) with international fishery instruments.

2. L20 commits to promote the use of trade and market measures to improve enforcement and promote compliance. There is a high degree of concentration in the major international fish markets, distant water fishing is done by a small number of countries, and fish is imported by a small number of countries. Obtaining and enforcing agreements need not be world-wide, but effort focused at these pressure points would be the most effective:

- The capacity to monitor the location, path, and conduct of any vessel on the high seas already exists and is widely used, but there needs to be better coordination between such systems as well as real-time sharing of data.
- The increasing technical ability to trace products from vessel to retailer could be applied in the fisheries sector to improve monitoring and compliance. Strengthening the obligations and capacity of port states to take action on the basis of such information (e.g. to prohibit import or transshipment of products of IUU fishing or other non-compliant conduct) is an obvious possibility;
- ‘Black lists’ of irresponsible ships and ‘white lists’ of ships in good standing, certification, product traceability, eco-labeling and other information measures can improve the information underlying consumer and market decisions. Some countries are implementing mechanisms that deter import of fish caught by IUU vessels. [The analogy of successful action in the “blood” diamond trade was noted];
- L20 could reduce the attractiveness of “flags of convenience” by demanding active oversight, control and accountability by flag states, as well as transparency of vessel ownership, and by removing the incentives for flag States that do not meet minimum international standards;
- L20 leaders could ask the WTO to authorize import restrictions on irresponsible flag states and trade restrictions responding to concerns about process features (‘product of sustainable fisheries’, ‘certified product of white-listed vessel’ ...).

3. L20 commits to make RFMOs work more effectively, and fill in the governance gaps on the high seas. L20 could mandate an overall review of RFMO and member states performance, demanding more explicit and effective standard setting. L20 could:

- Propose the general application of the principles of international fishery instruments as the minimum standards for unregulated high seas fisheries
- Mandate an overall baseline review of RFMO and member states; performance and explore the utility of establishing a mechanism that would review ongoing performance with a view to demanding more explicit and effective standard setting;
- Encourage regular meetings of the states parties of the UNFSA, with a secretariat capacity to report regularly on national performance in achievement of mandates, objectives and commitments undertaken to increase the effectiveness of RFMOs.

4. To reduce domestic over-capacity in fishing fleets and technologies in States involved in international fisheries, and strengthen management and governance capacities:

- Leaders could commit to reducing and eliminating subsidies that promote fishing or the creation of fishing capacity.

5. L20 Leaders could engage developing countries, especially South East Asia and East Asia (given the likelihood of future demands due to their growth), much more extensively. L20 could:

- Commit to focus aid and technical assistance measures on institutional reform to build domestic capacity in management and governance, and not on creating fishing capacity. This will reduce the domestic political problems of adjustment and the international tasks of reducing overcapacity, bycatch and eliminating IUU fishing;
- Encourage the donor community to emphasize the importance of policy coherence within developing countries, and within the international portfolios of assistance programs.

6. L20 leaders could mandate further studies:

- L20 could mobilize expertise in existing international organizations to report on the desirability and feasibility of various options of phasing in rights-based management approaches to access;
- Leaders might commission a study to design an appropriate structure for international ocean science and ocean monitoring, along the lines of the Intergovernmental Panel on Climate Change;
This would give impetus to national and international efforts to arrive at more fundamental measures as part of ongoing commitments to accountability, reporting on the state of the oceans environment rather than simply some changes (pressures, responses) within it;
- If the science agrees, L20 could agree to establish many more Marine Protected Areas.

Conclusion

The challenge is to give concrete meaning to the objectives of long-term conservation and sustainable use of high seas living resources in the highly uncertain world of ocean dynamics and marine ecosystems. There is agreement among many of the conference participants that this topic would be an important explicit theme in the continuing efforts to apply the general principles of adaptive management to specific practical settings.

The critical question remains: “How might the implementation gap be addressed?” L20 leaders might give a critical push by mandating of some of the specific actions enumerated above. In particular, the capacity of governments and fisheries management institutions can be applied to empower consumers and civil society organizations by mobilizing appropriate knowledge mobilization and targeted research programs. Specific actions might flow through support of more extensive national certification measures, broader application of codes of conduct with audit of performance, and similar measures.

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