

THE ROLE OF NATIONALITY JURISDICTION IN CCAMLR & BEYOND

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(Any slide errors are Arron's)

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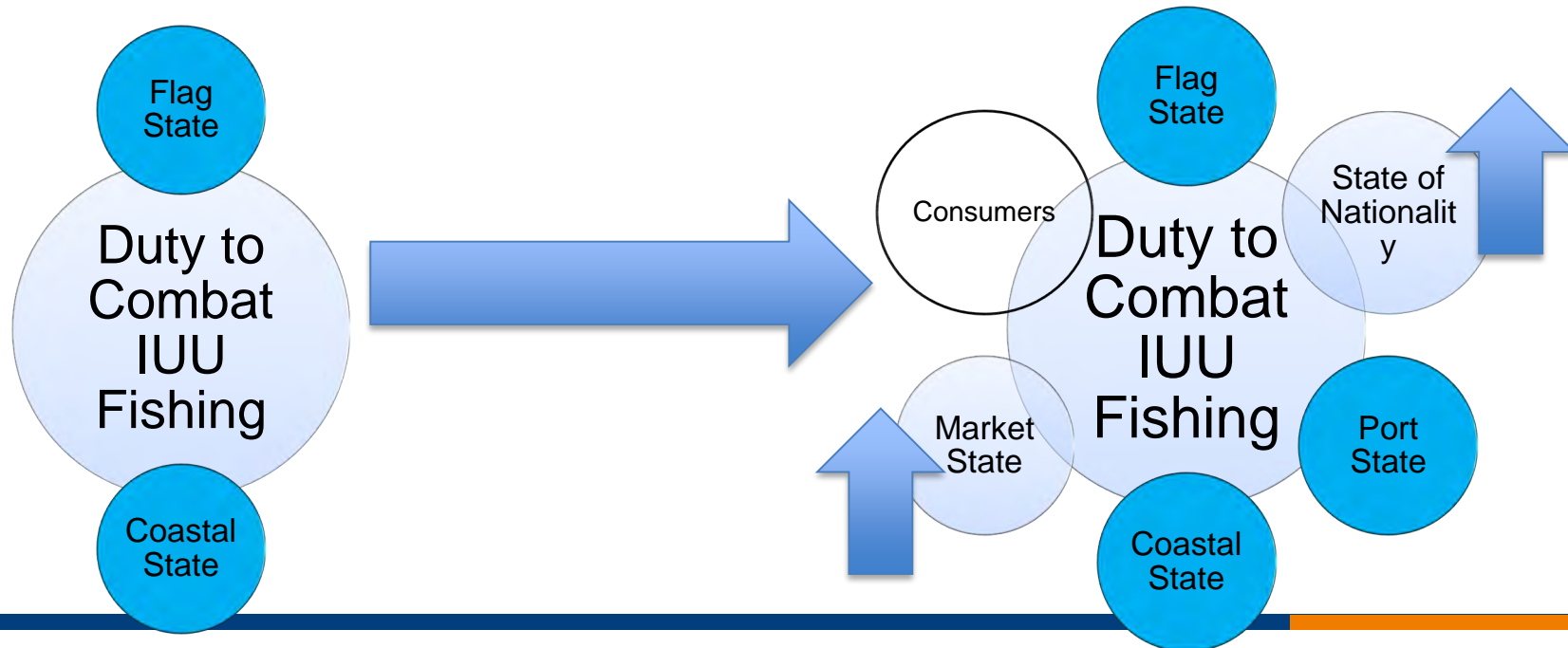
OUTLINE OF TODAY'S TALK & FUTURE PAPER

- State of Nationality: Recognized potential in web of actors.
- Global Instruments – Broadly interpreted.
- International Jurisprudence – Broadly interpreting.
- Regional Instruments – Treaty-based obligations and further evidence.
- Implementation of CCAMLR CMM's.

For the purposes of the paper and presentation a broad scope of IUU fishing is taken: description in the IPOA-IUU and 'related activities' in the PSMA. These largely look at conduct of fishers, but for nationals the interest lays in conduct, but also ownership and investment in a vessel undertaking said conduct.

STATE OF NATIONALITY

- Active Personality-Based Jurisdiction.
- Long recognised potential in academia (Erceg (2006), Rose & Tsamenyi (2013)) and actors (FAO 'failures' (2002), NZ 'obligations' (2013)).
- Numerous benefits of overlapping jurisdictions.



Snippets in the Usual Suspects: UNCLOS, Compliance Agreement, UNFSA, PSMA.

Soft Law: Code of Conduct, IPOA-IUU, Rome Declaration, Deep-Sea Fisheries Guidelines, UNGA Res.

UNCLOS art. 117

All States have the duty to take, or to cooperate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas.

UNFSA art. 7

Cooperation in conservation and management among 'states whose nationals fish for such stocks' – Restrictive interpretative declarations.

GLOBAL INSTRUMENTS II

- *SRFC Advisory Opinion:*
 - Numerous supportive statements submitted, albeit with differences on if Tribunal should elaborate the content of the duty to regulate nationals.
 - Nonetheless clear states should take necessary measures for both vessels and *nationals* [arts. 58, 62 EEZ; 192 potential HS obligation].
 - Language (*IPOA-IUU*) and precedent (*Seabed AO*) used to find a flag states due diligence also explicitly cover nationals.
- *South China Sea Award:*
 - Philippines' submission on Chinese nationals based on *SRFC AO*.
 - Confirmed UNCLOS imposes obligations on state of nationality.
 - Perhaps went to far in suggesting UNCLOS art. 62(4) imposes obligations directly on persons. Only Japan SRFC Statement supports.

- **Necessity recognised** – frequently nationals ‘supporting noncompliant vessels’. CCAMLR broadest, identified:
 - *“international corporate structures, insurance providers and other financial arrangements are often employed by IUU operators to limit their liability and avoid legitimate acceptable codes of behaviour”*
- Reiterate the IPOA-IUU **toolbox** – with possible compliance monitoring scheme. **Notification schemes** for non-CNCP states concerning nationals.
- Members need to deter nationals **reflagging vessels** so as to avoid compliance, IOTC go as far as to ‘name and shame’ state of nationality.
- Many RFMO/A Conventions include provision on **ensuring compliance** ‘to the greatest extent possible’ of nationals, owners, operators or controllers. CCAMLR found in subsequent Res 19/XXI and CM 10-08.
- **Non-exhaustive definition** of natural and legal persons:
 - *‘operators, effective beneficiaries, owners, logistics and service providers, including insurance providers and financial service providers’*

REGIONAL PRACTICE II & NATIONAL IMPLEMENTATION

- Due diligence obligations require a degree of enforcement, not just prescription.
- RFMO CMMs and constituent treaties again refer to **taking** measures to control nationals.
- Specific cases: Must verify or **investigate** allegations or reports of a non-exhaustive list of conduct by their nationals. If verified, should undertake **appropriate** actions. CCAMLR *may* deprive offenders of any benefits accrued and dissuade further violations – However, see WCPFC *shall*.
- CCAMLR Cases:
 - STS-50 vessel – requests on Russia to locate and prosecute master in accordance with obligations under CM10-08.
 - Spain reports on **enforcement taken** (2011/12), Chile **new law** (2011/12), but Spain reports on **insufficient evidence** (2010/11 and 2009/10) – France – emphasis of **dissemination of information**.

THANK YOU

Questions?

Questions to make use of audience's expertise:

- (1) Whether to include EEZ discussion? Recent interpretations of UNCLOS arts. 58, 62 are rather expansive.
- (2) Own national practice and case law that stands out?

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