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STRENGTHENING INTERNATIONAL LAW AS A GUARANTEE FOR HIGH SEAS FISHERIES CONSERVATION

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ABSTRACT

High seas is one of the ocean areas beyond of national jurisdiction. The implication of that definition made high seas turn into a free access to all states. One of freedom of high seas had known of yore is freedom of fishing, as if high seas fishery is inexhaustible. However, technological advances in fishing gear and people demand towards ocean fish causing overfishing and Illegal, Unreported, and Unregulated (IUU) Fishing are unavoided. Living resources and the environment of the high seas are more susceptible due to weak regulation on the UNCLOS 1982 which are cooperation for conservation and no restriction on exploitation. With that regard, international law-making concerning management and conservation concept based on the high seas fisheries sustainability need to be done. This article was written by normative research conducted with library studies by maximizing data in any journals and books. The concept of Marine Protected Areas (MPAs) and the establishment of Conservation Zone in the high seas is considered to have potential for fisheries management development that guarantee the sustainability of diversity high seas fisheries.

Keywords: conservation; fish; high seas; UNCLOS.

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INTRODUCTION

The total area of the high seas is predicted to cover more than 50% of the total surface of this planet or 2/3 part of the sea surface as well as being home for 90% of sea creatures.[1] It's apparent that in the last thirty years, human activity has risen and its impact has widen in the ocean, especially in the high seas. The high seas also have other wealth that is no less valuable, such as the deep cold-water corals, that has longer growth process compared to the shallow tropical water corals even though they share the same features in term of color and variety, but this type of coral is very sensitive towards fishing equipment in the bottom of the ocean.[2]

Seeing the freedoms given to every state in the high seas, the natural potential that is ready to be exploited appear to be counterproductive. Until now, according to Article 87 paragraph 1 of UNCLOS, there are six freedoms of the high seas that have been approved by the international law, and those freedoms are:

a. Freedom of navigation;
b. Freedom of overflight;
c. Freedom to lay submarine cables and pipelines, subject to Part VI;
d. Freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;
e. Freedom of fishing, subject to the conditions laid down in section 2;
f. Freedom of scientific research, subject to Parts VI and XIII.

This custom also signifies that there is restriction for any state to subdue the activities of another state in the high seas. Every state has the same right in utilizing the high seas, even if it's only for peaceful purpose. Those same rights can increase the probability of disputes between states caused by the high amount of activities in the high seas.[3] Other things that can be affected by the freedoms include the conservation of the ecosystem in the high seas.

Traditionally, ocean is considered to be endless, unlimited, and capable in supporting human activity or use. It is now clear that marine resources are limited, which is proven by the

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[1] Zhang Chun, *Challenges Facing the UN High Seas Treaty*, https://www.maritime-executive.com/editorials/challenges-facing-the-un-high-seas-treaty, accessed on 15.10, date 7, 02. 2019.
[2] David Freestone, Problems of High Seas Governance, *UNSW Law Research*, No. 2009-42, pg. 2.
[3] Dina Sunyowati dan Enny Narwati, *Buku Ajar Hukum Laut*, Surabaya: Pusat Penerbitan dan Percetakan Universitas Airlangga, 2013, pg. 104.

decline in fish stock. More than 75 percent of the world fish stock are reported to have been fully exploited or have been exploited excessively (or ran out and recovered from thinning) and more marine resources are endangered. Ineffective and inadequate management, destructive fishing practices, and illegal, unregulated, and unreported fishing activity (IUU fishing) are a series of causes for various adverse effects on fish stocks and species along with the related ecosystem.[4]

Fish stocks in the high seas are also a valuable source to human protein need, however, there is also an evidence of serious decline in stock for the larger pelagic species, such as tuna and billfishes.[5] Bluefin tuna is one of the biggest and fastest fishes in the ocean. Its weight can reach up to 500 pounds, and even this giant fish has once dominated the Atlantic, Pacific, and Indian Ocean. Unfortunately, human has hunted bluefish tune for thousands of years. So that its stock in the last decade is declining, and currently its population in the Pacific Ocean only reaches up to 2,6% from its original amount. Aside from that, the high seas are also home to some of the most charismatic marine creatures in this planet, such as dolphins, whale, shark, and turtle.[6] The condition mentioned proves that the international law, especially UNCLOS, has not been able to provide mechanism in management and protection of fisheries in the high seas.

Judging from the illustration mentioned, the development of fisheries protection mechanism in the high seas has grown to be more important than ever. Other than that, scientists have also announced that at least 30% of the ocean have to be closed in order to prevent mass extinction on marine life. As for the high seas themselves, around 0.5% restricted from commercial activities.[7] Ocean is the life support system for this planet, so it is important to keep it healthy and productive. However, on the contrary, excessive fisheries as well as rapidly evolving pollution cause severe damage to the ocean. Therefore, it shows that new arrangement and regulation in creating conservation area by limiting activities in the high seas has become crucial.

This article focusses in finding answer relating to issues regarding the need for renewal

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[4] Rayfuse, R. & Warner, R. M. (2008). Securing a sustainable future for the oceans beyond national jurisdiction: the legal basis for an integrated cross-sectoral regime for high seas governance for the 21st century. International Journal of Marine and Coastal Law, 23 (3), 399-421. pg 2.

[5] David Freestone, *Op. Cit*, pg 2.

[6] Olive Heffernan, *U.N. Makes a Bold Move to Protect Marine Life on the High Seas*, https://www.scientificamerican.com/article/u-n-makes-a-bold-move-to-protect-marine-life-on-the-high-seas/, accessed on 08.20, date 8 Februari 2019

[7] Andreas Velasco, *Why Our High Seas Need the Rule of Law*, https://www.weforum.org/agenda/2014/07/high-seas-international-waters-lawless-fishing/, accessed on 00.30, date 10, 02, 2019.

of the international law concerning the conservation of marine resources in the high seas. This article is written with an aim on finding the sustainable form of marine resources conservation management in the high seas by constructing international law that's able to complete UNCLOS.

RESEARCH METHOD

The research will be conducted using normative research, meaning that library research method is used as the main source of data. Data are collected through studies using books, articles, research results, and laws and regulations. This writing analyzes the condition for the use of freedoms of the high seas as well as analyzes the impact it has on the high seas and the life of the international community. Finally, this article will end with giving the conclusion and recommendations needed to be taken in the future.

DISCUSSION

High Seas Legal Regime

High seas refer to all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State. The implication of the mentioned definition has caused high seas to become free region for all states and there is no state that can claim the region as a part of their jurisdiction.[8] In their book, Jawahir Thontowi and Pranoto Iskandar stated that in principle, high seas hold the characteristic of *res communis*, which is a water region that can be used freely and openly by any states. This is the consequences of its own characteristic that high seas can't be bound by any sovereign rights nor jurisdiction.[9] The inherent regime makes high seas open for use by every state in the world.

The United Nations Convention on the Law of the Sea (UNCLOS) I dated on February 24th – April 27th, 1958 had produced high seas regulation on Geneva Conventions. Article 1 of the Geneva Convention 1958 defines high seas as all parts of the sea that are not included in the territorial sea or in the internal waters of a State. The Geneva Convention 1958 has been replaced by the Convention on the Law of the Sea 1982. In article 86, Convention on the Law of the Sea 1982 defines high seas as all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic

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[8] R.R. Churchill and A.V. Lowe, *The Law of The Sea*, Manchester: Manchester University Press, 1983, pg 204.
[9] Jawahir Thontowi dan Pranoto Iskandar, *Hukum Internasional Kontemporer*, Bandung: PT. Refika Aditama, 2006, pg 189.

waters of an archipelagic State.

According to UNCLOS 1982, coastal state has full sovereignty in the territorial sea that reaches up to 12 nm, while the *sui generic* status attached to the exclusive economic zone is not part of State sovereignty, nor does it become subject to the international regime. In exclusive economic zone, every state has its own sovereign rights and jurisdiction as mentioned before.[10] High seas is a *res nullius*, a concept proposed by the Netherlands from Grotius doctrine that means it's a no man's region, allowing anyone to sail it without objection from any party. This concept was used by the Netherlands sailor in crossing the ocean, going along and finding what's important for them. As the result, they found Tasmania, Ambon, Maluku, and more. The condition is different when there are exclusion rules and boundaries set for the sake of states' interest, high seas doesn't belong to any state. The freedom of the sea doctrine means that those activities can be done freely, however, it's also important to pay attention to the utilization of the sea for other purposes.[11]

Those freedoms consist of, *inter alia,* freedoms stated under the Article 87 (1). However, every activity done in the high seas is subject to certain conditions and more specified rules, those activities are in the very least in line with the general obligation of states, which is to perform freedom of the high seas without negating other states' freedom as well.[12] These freedoms are very closely related to the status of the high seas themselves, namely that high seas are not part of the territory of any state, so that no state can claim a national sovereignty over the high seas. Even so, according to Article 88 of UNCLOS, the high seas shall be reserved for peaceful purposes. But, the elucidation of the term "peaceful" can't be found anywhere in the Convention. This opens up the possibility for all states to make policies based on good faith.[13] J.G. Starke put forward some provisions appropriate to the nature of the high seas, which are:[14]

1. That the sovereignty of certain states cannot be applied in the high seas. Thus, ships from all states, whether it be commercial ships or warships, hold the absolute freedom on fisheries activity in the high seas.
2. That no state jurisdiction is applied on ships with no state flag.

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[10] Muhammad Insan Tarigan, Upaya Konservasi Indonesia atas Sumber daya Ikan di Laut Lepas, *Fiat Justisia Jurnal Ilmu Hukum*, Volume 9 No. 4, October-December 2015, pg 551.
[11] Chairul Anwar, *Hukum Internasional Horizon Baru Hukum Laut Internasional Konvensi Hukum Laut 1982,* Jakarta, Jakarta: Penerbit Djambatan, 1989, pg 62.
[12] Ringbom H. and Henriksen, *Governance Challenges, Gaps and Management Opportunities in Areas Beyond National Jurisdiction*, Washington, D.C.: Global Environment Facility – Scientific and Technical Advisory Panel, 2017, pg 22
[13] I Wayan Parthiana, *Op. Cit,* pg. 87.
[14] J.G. Starke, *An Introduction to International law*. London: Butterworths, 1988, pg. 57.

3. That state jurisdiction can only be applied to certain ships that use its flag.
4. That every state and its citizens have the right to make use of the high seas, for example to install wire or cable and pipes on the seabed (freedom of immersion).
5. That all aircraft flying over the high seas holds absolute freedom.

The Convention on the Law of the Sea (UNCLOS) 1982 did not automatically make the high seas legal regime as an unfinished agenda. Even though Article 87 of UNCLOS 1982 talks about freedom of the high seas, there's also a need of detailed affirmation in other provisions that the freedoms can only be carried out under the provisions that have been decided in this Convention and other provisions of international law. In other word, the six freedoms of the high seas are governed by important requirements.[15] The term "freedom" doesn't refer to the issue of the absence of law, but to the free access for every state, whether it be states that open or closed to area of the high seas to participate in marine activities and remain subject to applicable restrictions and rules including the development of international law in the future.[16]

Marine Resources Conservation in the High Seas

State parties of UNCLOS 1982 are given responsibilities to protect and maintain marine ecosystem as mandated in this Convention. To make it easier for State parties to follow up on the obligations given, states are given the right to manage and maintain the marine environment in accordance to policies of each state. Aside from national policies, UNCLOS is also open to possibilities in performing regional and universal international cooperation in guarding and maintaining marine ecosystem, including in the high seas. Even if special activities are needed to carry out these obligations, such as technical assistance, monitoring and conducting assessment of environmental conditions and the creation of international legal instruments and national legislation to prevent, reduce, and supervise sea pollution.[17]

A number of sectoral activities are regulated by international treaty regimes that have been made by International Maritime Organization, such as the 1972 London Convention and its 1996 Protocol on ocean dumping and other treaties or agreements related to cruise safety, security, and pollution, even though cannot be referred as comprehensive treaties, for example it includes species and regional fisheries treaties and their arrangements that are similar regional sea conventions. Scholars have worked systematically through various regional and

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[15] David Freestone, The Frontier: The Law of the Sea Convention and Areas beyond National Jurisdiction, *LOSI Conference Paper*, 2012, pg. 3.
[16] Ringbom H. and Henriksen, *Op. Cit,* page. 23.
[17] Dina Sunyowati dan Enny Narwati, *Op. Cit*, pg. 142.

sectoral regime to pay attention to further discrepancies between "regulatory and governance".[18]

One of the freedoms of the high seas that has been present since age-old until now is freedom of fishing. At the beginning of its emergence and development, the nature of freedom of fishing is absolute. But over time, slowly and surely, this freedom gradually began to diminish through some restrictions. It happens because of the significant change in human population and their needs as well as the rapid development of technology, therefore strict restriction must be implemented in order to maintain and manage the sustainability of fish lives as renewable natural resources. This restriction is formed through the ratification of international law instrument in the field of fisheries that provide obligations that must be carried out by states in implementing freedom of fishing in the high seas.[19]

UNCLOS 1982 is a multilateral agreement that regulate rights and obligations of each state in performing every activity in various sea zone. UNCLOS 1982 is also a legally binding international law instrument. UNCLOS 1982 contains several provisions regarding the supervision of fisheries resources, which are as follows:[20]

1. Article 117 stated that 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.
2. Article 118 stated that States shall cooperate with each other in the conservation and management of living resources in the areas of the high seas. States whose nationals exploit identical living resources, or different living resources in the same area, shall enter into negotiations with a view to taking the measures necessary for the conservation of the living resources concerned. They shall, as appropriate, cooperate to establish subregional or regional fisheries organizations to this end.

Article 117 and 118 of UNCLOS 1982 mandate the implementation of cooperation between states in terms of conservation and management of biological resources in the high seas. Said cooperation includes citizens of each states to take action in supervising and managing biological resources in the high seas.[21] Such steps are formulated in the form of

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[18] David Freestone, The Frontier: The Law of the Sea Convention and Areas beyond National Jurisdiction, *LOSI Conference Paper*, 2012, pg. 4.
[19] I Wayan Parthiana, *Op. Cit,* pg. 213.
[20] Pandapotan Sianipar, *Aspek Legal Instrumen Hukum Internasional Implementasi Pengawasan Sumber daya Perikanan*, http://djpsdkp.kkp.go.id/index.php/arsip/file/137/aspek-legal-instrumen-hukum-internasional-implementasi-pengawasan-Sumber daya-perikanan.pdf/, accessed on 13.43 WIB, date 11 Februari 2019
[21] Muhammad Insan Tarigan, *Op. Cit*, pg. 555.

bilateral or multilateral-regional cooperation agreements. The same thing is also regulated in Article 118 that every state should cooperate in conserving and managing natural resources in the high seas. It is even recommended for those states to form an international organization in the fisheries field, whether it be in the form of international or sub-regional organization.[22] The United Nations Environment Programme (UNEP) Governing Council pushes for a regional cooperation approach in the early 1970s. In the year 1974, UNEP Regional Seas Programme (RSP) was formed.[23]

There are 10 regional fisheries management organizations (RFMOs), with 5 of them responsible in protecting and managing straddling stocks in high seas, which is the Commission for the Conservation of Antartic Marine Living Resources (CCAMLR), General Fisheries Commission for the Mediterranean (GFCM), North Atlantic Fisheries Organization (NAFO), North-East Atlantic Fisheries Commission (NEAFC), the South-East Atlantic Fisheries Organization (SEAFO). There are also regional organizations responsible in tuna species, which are Inter-American Tropical Tuna Commission (IATTC); International Commission for the Conservation of Atlantic Tunas (ICCAT); Indian Ocean Tuna Commission (IOTC); Commission for the Conservation of Southern Bluefin Tuna (CCSBT); and the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC). However, the organizations mentioned above cannot comprehensively cover all fish stocks that can be exploited in the high seas, even these conditions increase the risk of illegal activities in the high seas, what is now known by the international community as the Illegal Unreported and Unregulated Fishing (IUU Fishing) activity. For example, an important negotiation had been conducted by South Pacific Ocean Regional Fisheries Management Organization, but the meeting missed fishing in this vast territory to be regulated more, such as the North-West Pacific Ocean Agreement. Other than that, a treaty about deep sea fisheries in Southern India Ocean had been negotiated, although it hadn't been ratified by some State parties to come into force.[24]

More than 140 states participate in 13 Regional Seas Programmes that was formed under USP and consists of Black Sea, Wider Caribbean, East Asian Seas, Eastern Africa, South Asia Seas, ROPME Sea Area, Mediterranean, North-East Pacific, North-West Pacific, Red Sea and

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[22] I Wayan Parthiana, *Op. Cit*, pg. 214.
[23] Raphaël Billé, Lucien Chabason, Petra Drankier, Erik J. Molenaar, J. R. (2016). Regional Oceans Governance Making Regional Seas Programmes, Regional Fishery Bodies and Large Marine Ecosystem Mechanisms Work Better Together. *UNEP Regional Seas Report and Studies No. 196*. pg. 3.
[24] David Freestone, Problems of High Seas Governance, *Op. Cit*, pg. 5.

Gulft of Aden, South-East Pacific, and Western Africa. Six of those programmes is managed directly by UNEP. All of those regional seas programs have produced an Action Plan, but must have also developed specific legal frameworks through Conventions and Protocols. Even so, there is no convention born from East Asian Seas, South Asian Seas, North West Pacific, North-East Pacific, or Arctic.[25]

In addition, there are a number of "partner programmes" through seas treaties that are not under UNEP. The regional treaty regime is included for Antarctica through Convention on the Conservation of Antarctic Marine Living Resources that came into force in 1982, then Baltic through Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention) that was adopted in 1974 and came into force in 1980, revised in 1992, until it came back into force in 2000, the Caspian also regulates through Framework Convention for the Protection of the Marine Environment of the Caspian Sea that was adopted in 2003, as well as the last the North-East Atlantic through The Convention for the Protection of the Marine Environment of the North-East Atlantic – Oslo and Paris Conventions that was adopted in 1974, revised for the first time and compiled into OSPAR Convention 1992 until later become a law in 1998.[26]

The Renewal of International Law regarding Marine Resources Protection in High Seas

When UNCLOS was negotiated, high seas protection was discussed, but it didn't become a priority due to the difficult access. However, in this era, the massive technology advances have helped open possibilities in finding wider and deeper natural resources than before. Fishing vessels now have a long cruising range to the high seas, and the proportion of deep-sea drilling for oil and gas continues to increase.[27] UNCLOS has not yet been able to balance the current development due to the static nature of written law.

Ocean is a support system of this planet, keeping it healthy and productive. However, excessive fishing activity as well as pollution may cause severe damage. Weak law enforcement, transparency, and accountability become additional threat for the sustainability of living natural resources in the high seas. In addition to that, authority has limited power to intercept ships suspected of carrying out illegal activities.[28] This has certainly become an

[25] Virginie Hart, UN Environment (2018). Regional Seas Follow Up and Review of the Sustainable Development Goals (SDGS). *UN Environment Regional Seas Reports and Studies No. 208*, pg. 67-72.
[26] *Ibid*, pg. 7.
[27] Andre Velasco, *Loc. Cit.*
[28] *Ibid.*

obstacle for the international community in fighting illegal fishing.

The development of international law in protecting the high seas is needed due to the uncontrolled exploitation of natural resources and increasing risk that threatens this vast ecosystem.

Fish population, for instance, has decreased for up to 50% during the last 50 years as a result of excessive fishing activities and Illegal, unreported, and unregulated (IUU) fishing.[29] To prevent bigger threat from happening, States have conducted meeting in the United Nations headquarter in September 2018 as a sign of process in agreeing on an international treaty in protecting the high seas.[30]

Legal development carried out as efforts in renewing legal institutions must be carried out periodically so that the law can balance the development of social order among the society and allowing its function as an imperative and effective guide for behavior (function of order) in living together to function.[31] The law must be responsive towards every need citizens have in order to resolve risks of chaos. The slow development of law can also reduce the quality of public trust in the actual function of law.

Change is inevitable, however, needed change is one that is ordered and controllable. It is certain that development that results in regular changes requires support from law. Order is the first and foremost goal of every law. The need for this order is a fundamental requirement on realizing orderly society. Apart from the longing of any other things that become the goal of law, order as a goal, is an objective fact applies to all societies in all its forms.[32] The development of technology has changed the order of activities in the international community as well as the quality of the high seas ecosystem. Therefore, law must be able to adjust to the changes happening in society, while at the end society must also adjust to the change happening in the rule of law. The role of law in development is to ensure that changes occur in an orderly manner.

Law has the power to change order in every aspects of life. Law can function in relation to living natural resources, determining the holder of full rights or access to natural resources, prohibition for conservation reasons, ethics and morals along with exploitation of natural recourses carried out by certain methods.[33] The regulation of natural resources can also be done

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[29] Zhang Chun, *Loc. Cit.*
[30] *Ibid.*
[31] Mahfud MD, *Membangunan Politik Hukum Menegakkan Konstitusi*. Pustaka LP3ES, Jakarta, 2006, pg. 63.
[32] Ellya Rosana, Hukum dan Perkembangan Masyarakat, *Jurnal TAPIs*, Vol. 9, No. 1, Januari-Juni 2013, pg. 77.
[33] Birnie, P. And Boyle, A., *International Law and the Environment*, Second Edition, Oxford, 2002, pg. 554.

at certain levels, whether it be on the international or national level, depending on the maker and the scope. International law is formed in order to regulate states in behaving towards natural resources, while national law made by national legislation body is made in order to maintain its citizens' activities towards natural resources.

One of the priorities in regulation of natural resources lies on issue regarding conservation means. Conservation of fisheries diversity presents enormous regulatory challenges for international law. Threat toward fisheries diversity comes from many grassroots, which requires comprehensive approach for regulation of various human activities and accommodation of various interests and priorities. Some states will certainly feel disturbed by certain restrictions, but on the other hand, there must be those who support the restrictions for the sake of environment and conflict minimization. Other than that, fisheries diversity conservation also clearly illustrates the various difficulties that exist in developing and applying international legal rules for resources that often do not respect national boundaries or are found in areas outside national jurisdiction, and which require full consideration to be given to social, cultural, and economic values that are placed by different people in different species, habitats, and ecosystems.

Law and its implementation relating to water area under national jurisdiction has moved forward at consolidation stage with better harmonization with UNCLOS 1982, but this doesn't seem to apply to the current situation that occurs in fisheries in the high seas. In fact, since UNCLOS was open for signature, a number of problems began to emerge in relation with the conservation and utilization of natural resources in the high seas.[34] High seas can be referred as area that receive increased threat over time. Even so, international society must have the ability in giving solution toward threat and problem that arise.

10 December 2019 was the 37th birthday for UNCLOS since the conference of the law of the sea in 1982 at Montego Bay, Jamaica, that had been done through 9 years of negotiation (making it the longest in UN history). Nowadays, after years had passed, there are still many vacancies or unfinished agenda in the convention that become concern. This concern refers especially to regulation regarding regime in areas beyond national jurisdiction / ABNJ.[35] Since UNCLOS 1982 finalization, human activities in the sea and ABNJ have developed, as well as

[34] Francisco Orrego Vicuna (1993) Toward an Effective Management of High Seas Fisheries and the Settlement of the Pending Issues of the Law of the Sea, *Ocean Development & International Law*, 24:1, 81-92, DOI: 10.1080/00908329309545998, pg. 85.

[35] David Freestone (ed.), *The Law of the Sea Convention at 30: Successes, Challenges and New Agendas*, Martinus Nijhoff, Leiden and Boston, 2013, pg. 98.

their impact.[36] These impacts are not always the result of recent activities, but rather the result of an increase in pre-existing activities such as fishing – where efforts have consistently increased in order to compensate the declining amount of catch. Fisheries activity has also been expanded to the deeper part of the sea, further and less environmentally friendly. This condition aligns with continuous "illegal, unregulated, and unreported" (IUU) fisheries incident. These uncommon practices are a different and inseparable problem. However, the three have significant impact of around 2/3 of all fishes catch globally.[37]

All states should hold responsibility in protecting fish conservation in the high seas. However, what becomes a conflict is the fact that not every state has ratified UNCLOS 1982. One of the biggest states who has not become state party is the United States of America. Other states include Turkey, Colombia, and North Korea.[38] Therefore, it's clear that the rules written in UNCLOS are not applicable towards those states. Whereas, states have the obligation in taking useful effort to conserve and manage fish resources in the high seas. These actions shouldn't have discriminate in any way towards fishermen from any state. To avoid that, states are obligated to work together with one another. Although in reality, the explanation of cooperation in UNCLOS is rather vague and is not cleared on how to confirm this obligation concretely.[39]

Freedom of fishing has been summarized in Article 116 of UNCLOS 1982 that stated the all states have the right for their nationals to engage in fishing on the high seas.[40] The contents of the article, if examined, can cause injustice. In reality, there are certain states that are not able to implement the article. Freedom of fishing in the high seas is in fact more advantageous for states with technological advantages and most capable asset. Areas where fishing is not restricted will definitely receive excess in fishing catch.[41] For that reason, there are no other choice but to construct a visionary regulation for the sake of the future of natural resources in the high seas.

Law can function in relation to living natural resources, determining the holder of full rights or access to natural resources, prohibition for conservation reasons, ethics and morals

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[36] B. Halpern et al., "A Global Map of Human Impact on Marine Ecosystems." (2008) Vol. 319, no. 5865, *Science*, pp. 948-952 (15 February 2008), pg. 951.
[37] M.A. Palma, M. Tsamenyi and W.R. Edeson, *Promoting Sustainable Fisheries: The International Legal and Policy Framework to Combat Illegal, Unreported and Unregulated Fishing*, Martinus Nijhoff, 2010, pg. 56.
[38] Nikki Vercruyssen, *Freedom of the high seas: Limitations, Problems and Evolutions*, 2013, pg. 40.
[39] S. ODA, "Fisheries under the United Nations Convention on the Law of the Sea", *American Journal of International Law*, vol. 77, issue 4, 1983, pp. 739-755, pg. 749.
[40] R.R. Churchill and A.V. Lowe, *Op. Cit*, pg. 296.
[41] *Ibid*, pg. 285.

along with exploitation of natural recourses carried out by certain methods.[42] Conservation of diversity in the high seas is a challenge for international law to present its regulation. This regulation can be presented through international treaty, international custom, doctrine, or international court decisions. Matters that need to be discussed and institutionalized through international law are actions that are considered good in maintaining the sustainability of natural resources in the high seas. This matter will be explained further in the next elucidation.

Marine Protected Areas (MPAs)

The endeavor to develop sustainable high seas fisheries management by creating binding international law can be done by considering the Marine Protected Areas (MPAs) concept in institutionalizing international treaty. MPAs have been widely recognized as important means in conserving diversity and productivity in marine natural resources, including ecological life support systems. MPAs hold the potential in contributing significantly towards the development of modern fisheries management, which recognizes the need to protect biodiversity in preserving the structure of the ecosystems, the function and process that form the basis of fisheries and every marine life.[43] MPAs are usually created by coastal states in order to protect certain areas in their sea.[44] One of the most frequently quoted definition of MPAs can be read in the Resolution of the 17th General Assembly of 1988 on the International Union for the Conservation of Nature (IUCN):[45]

> "Any area of intertidal or subtidal terrain, together with its overwhelming waters and associated flora, fauna, historical and cultural features, which has been reserved by legislation to protect part or all of the enclosed environment"

There are no explicit explanation regarding MPAs in UNCLOS, but it can be found implicitly. The basis for a coastal state in applying the MPAs model in its own maritime area can be found in several provisions in UNCLOS. MPAs are mentioned using different names, such as specially protected areas, marine reserves, preserves, sanctuaries, wilderness areas, specially managed areas and parks. All those terms have diverting goals, from strict protection from all human use until zoned multiple use areas. The World Conservation Union (IUCN) has created a categorical system in differentiating management level that can be implemented in

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[42] Birnie, P. And Boyle, A, *Op.Cit*, pg. 554.
[43] K. M. Gjerde, et al. (2006), *High Seas Marine Protected Areas and Deep-Sea Fishing*, the Expert Consultation on Deep-sea Fisheries in the High Seas which took place in Bangkok, Thailand, pg. 32.
[44] Donald R. Rothwell & Tim Stephens, *The International Law of the Sea*, Hart Publishing, 2010, pg. 82.
[45] Ikeshima, Taisaku. "Is the Freedom of the High Seas under Threat from Marine Protected Areas?: Environmental Protection versus Security Interests under International Law" *Waseda Global Forum* No. 8, 2011, 5–30. pg. 11.

that area, which are as follows:

1. Strict nature reserve/wilderness area (science/research): protection areas (PAs) managed for scientist and research purposes (category I.A);
2. Strict nature reserve/wilderness area (protection): PAs manages for wilderness protection purposes (category I.B);
3. National park: PAs managed for ecosystem protection and recreation (category II);
4. Natural Monument: PAs managed for conservation of specific natural features (category III);
5. Habitat/Species Management Area: PAs managed for species/habitat/ecosystem conservation through management intervention (category IV);
6. Protected Landscape/Seascape: PAs managed for landscape/seascape protection and recreation (category V); and
7. Managed Resource Area: PAs managed for sustainable use of natural ecosystems (category VI).

MPAs can be regulated using various ways, for example MPAs are determined in a protected water column, whether in a vertical or horizontal way.[46] In order to conserve natural resources, this approach must occur in an effective ecosystem management program that covers the marine ecosystem and the area that affects it, for example land area including islands.[47] Protection can be done in several forms, usually but not necessarily through law. For example, in Pacific lays numerous MPAs that was formed by indigenous tradition.[48]

The research done by US National Research Council and other institutions shows that effectively managed MPAs can contribute on conservation effort and sustainable use of biodiversity in coastal waters, which are as follow:[49]

1. vital to maintaining viable populations of threatened or endangered species;
2. important for species and genetic diversity;
3. critical breeding, nursery and feeding habitats such as seagrass beds, mangroves and coral reefs;
4. of adequate size to encompass representative examples of marine life and ecosystems to ensure their long-term viability;

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[46] Patricia, Monica, and Martinez Alfaro. "Do We Need Marine Protected Areas on the High Seas? Analysis of the Legal Implications of the Establishment of Protected Areas on the High Seas" (2013), pg. 5
[47] *Ibid*, pg. 5-6.
[48] Kristina M. Gjerde, *Op. Cit*, pg. 145.
[49] *Ibid.*

5. unique, rare or have other outstanding values or features;
6. spatially complex and slow to recover, such as benthic habitats like maerl beds, corals reefs, and sponge beds;
7. spawning sites for species, for example groupers, subject to commercial fishing pressure when the animals congregate in large numbers to spawn;
8. offshore nursery areas, migratory corridors or other vulnerable population bottlenecks; and
9. reference sites for long-term research and monitoring.

MPAs can also serve as an important tool in restoring damaged seascapes and enhancing the recovery of excessively captured fish stocks. In reality, this effort has been done by fisheries management bodies around the world to create MPAs with the aim of rebuilding lost biodiversity.

The Establishment of a Conservation Zone in the High Seas under Coastal State Management

This concept clearly goes against the principle of freedom of the high seas as well as the international law. The principle of freedom of the high seas that has been admitted since the birth of law of the sea even before UNCLOS can be ruled out by the reason of high seas fisheries conservation. According to the history of fisheries conservation rationale, the United States of America has once claimed the high seas adjacent to its territorial sea as a conservation area. Nowadays, human activities that directly cause damage to natural resources in the high seas have become more and more concerning. The search for new patterns to become a solution for this problem has already been discussed on an international scale. The discovery of legal solutions on the grounds of conservation of fisheries resources in the high seas that can affect the fisheries ecosystem in the EEZ of coastal states. It based on common knowledge that the sea ecosystem is integrated and inseparable from its habitat. Therefore, the decline in the amount of fish in the high seas will also affect the fish stock in maritime zone under the coastal state jurisdiction. On the other hand, it is clear that UNCLOS 1982 requires conservation of the living natural resources in EEZ for coastal states.[50] Therefore, participation and intervention from coastal state in the endeavor of saving the environment in the high seas is necessary.

The practice that has been done in some states, in Chile by building Presential Sea concept. This concept was forced to be formed when pressure on fisheries in the high seas

[50] Francisco Orrego Vicuna. *Op. Cit*, pg. 84.

increased gravely in the Southeast Pacific and threatened the fisheries productivity in EEZ as well as the increase of violation committed by foreign fishing vessels. Presential Sea zone is not a sign of claims for the latest maritime zones, as what's commonly misinterpreted, but in fact the area is still identified as the high seas where Chile holds direct interests.[51]

A model similar to the practice done by Chile can be seen in the Argentina's maritime zone. The Law of Maritime Area was formed by Argentina's legislative body in 1991. This law regulates Argentina maritime zone as well as its connection with fisheries in the high seas, with affirmation as follows: "National regulations on conservation of resources shall apply beyond 200 miles to migratory species and to those associated with the tropic chain of species found in the Argentine exclusive economic zone."[52] The approaches done by Chile and Argentina are different, but they hold the same goal which is to protect their EEZ from the effect of activities done in the high seas.

Concept practiced by Chile relates to specific geographical areas, all the while Argentina intervenes in the high seas as far as EEZ is concerned regarding species interactions or migration patterns of marine resources. According to the Argentina's national law, intervention of supervision in the high seas can't be done freely, as it must wait for the destruction of species in the high seas and migration in its EEZ, as can be concluded from the use of the expression "shall". However, these two concepts can both become a problem in the face of international law as it can be seen as restriction in the high seas. Even so, it can become a solution in answering the absence of international law regarding conservation in the high seas, as it is negotiated, then it can become effective.

However, such national practices must be done through national law as a form of boost for international law in accommodating the legal needs in the high seas. Recalling this has been done by President Trauman who set the high seas adjacent to his territorial sea as conservation zone through his speech. Consequently, the United States has the authority to conduct surveillance of fishing activities in the high seas.[53]

Those models can be implemented by coastal states both individually or by collaborating with states whose EEZ adjacent directly with the high seas. The United Nations and the international community must respond quickly towards the problems occurring in the high

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[51] Francisco Orrego Vicuna, *Coastal State's Competences over High Seas Fisheries*, Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, 1995, pg. 523.
[52] *Ibid*, pg. 526.
[53] Marhaeni Ria Siombo, *Hukum Perikanan Nasional dan Internassional*, Jakarta: Gramedia Pustaka Utama, 2010, pg. 122.

seas by forming regulations regarding protection of ecosystem in the high seas, especially regarding the natural resources. United Nations can mandate coastal states directly adjacent to the high seas to supervise fishing activities.

CLOSING

Conclusion

Strengthening international law to ensure the conservation of free marine fisheries is needed given the decline in fishery stocks by 50% over 50 years as a result of overfishing and IUU fishing. Marine Protected Areas (MPAs) concept along with the establishment of the Conservation Zone in the high seas are considered to have the potential for the development of modern fisheries management to ensure the sustainability of fisheries diversity in the high seas. These two concepts can be institutionalized as regulations at the international level through international agreements (universal or regional). The fact is that protection of the free marine environment remains an unresolved agenda at UNCLOS 1982.

Recommendation

The United Nations and the international community must immediately agree on an international law regarding the conservation of fish resources in the high seas. However, before that international law can come into force, then it is better for coastal states adjacent with the high seas to conduct surveillance through their national law or to cooperate with states that are adjacent to the high seas.

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