

INTRODUCTION

1.1 Background and context

Although the primary source of supply of fisheries products still resides in the exploitation of exclusive economic zones (EEZs), technological development, increased demand for fish products, and the associated pressure on stocks have heightened the interest of nations in high seas fisheries.

Since this area does not fall under the sovereignty of any individual state, it has historically been governed by the jurisdiction of the flag State. However, the expansion of EEZs, granting coastal States rights over their fisheries resources, has created a longstanding tension between these States and distant-water fleets. Over time, the traditional dominance of these States' roles (flag and coastal) has been supported by the growing influence of port and market States (and trade measures in general), which increasingly shape the future of global fisheries to promote sustainable use and combat illegal activities.

But which kind of sustainability?

Today, more than ever, there is a heightened focus on social sustainability, including the rights of Indigenous Peoples, as well as the economic aspects of fishing that many communities depend on. In light of these trends, numerous studies have examined the impact of fishing on the marine environment and the reproductive capacity of fish stocks.

This research approaches the subject from the perspective of international law and, where relevant, fisheries management, to explore how the concept of sustainability has shaped the development of international fisheries regulations, including those governing the high seas. New management tools and systems are influencing the traditional powers of flag States and affecting market operations, with the goal of making high seas fishing sustainable from multiple perspectives and ensuring fairer stock management. Furthermore, the idea of sustainability has significantly influenced recent developments in the global legal framework concerning areas beyond national jurisdiction (ABNJ), through the adoption of two agreements dedicated to protecting biodiversity in these areas and eliminating harmful subsidies that threaten sustainable fisheries. These agreements can also be viewed as an additional effort by the international community to promote global cooperation and support effective multilateralism, aiming to close loopholes that could undermine both the economic and environmental sustainability of fisheries in the high seas.

Such a complex framework is currently facing a critical challenge related to climate change. As a result, the distribution and reproductive capacity of stocks are under pressure, exacerbating already challenging governance issues that require adaptation and resilience from systems that often struggle

to respond due to the complexity of global fisheries management. Therefore, the management and conservation of what are considered common goods in the international sea are prompting involved actors, especially the regional fisheries management organizations (RFMOs), to modify at least some of the models previously adopted. This highlights not only the need for regional management but also underscores the importance of greater coordination among regional models to ensure the effective and sustainable use of high seas fishery resources. Although this process is still ongoing, some trends can be identified.

1.2 Research question and scope

Based on the above scenario, the main research question of this thesis is as follows:

How is the concept of sustainability further influencing the principle of freedom of the high seas concerning fisheries, and what are the implications for the roles of states and of global ocean governance in light of recent international regulatory developments?

The purpose of this research is to highlight how the concept of sustainability is increasingly shaping various aspects related to the exploitation of fisheries resources in the high seas. It is significantly affecting both recently adopted international legal instruments and global ocean governance. The concept of sustainability is also further reducing the already regulated autonomy of the flag State on the high seas, favouring a greater role for states in their other functions, and for the different actors involved.

Furthermore, given the widespread focus on fishing restriction measures as tools to manage resource sustainability, this study aims to highlight not only potential reward mechanisms for environmentally sustainable fishing (especially in light of climate change) but also the economic and social aspects of sustainability, where possible. The goal is to promote a positive approach that supports best practices and virtues, which can be fostered through proper resource management. It also emphasizes the importance of shared resource management for the benefit of the international community, including all stakeholders involved. It is argued that only a global approach, based on a long-term vision and supported by the necessary flexibility tailored to regional characteristics, while ensuring a level playing field worldwide, can truly contribute to the sustainability of fishing activities in the high seas.

Ultimately, the present research examines how international fisheries law and governance might adapt (or seek to adapt) to changing ocean conditions and related human activities. However,

key issues remain, particularly at the regional cooperation level, and are discussed in relation to the customary principle of the freedom of the high seas. Of course, having a legal framework does not necessarily mean that rules are effectively enforced, as political will, economic development, and international coordination challenges can influence outcomes. Therefore, this study will adopt a multidisciplinary approach in which different disciplines inform one another.

Finally, this thesis, supported by a year of research conducted in the Fisheries and Aquaculture Division of the FAO as part of a fellowship, also aims to highlight in several sections the role played by this Organization in both regulatory and non-regulatory production and the management of fishery resources, with a focus on the high seas.

To better reply to the research question, the author has attempted to answer the following sub-questions:

- *What is the current legal framework of high seas fisheries law?*
- *How are all three pillars of sustainability changing the role of the flag State and those of the port and market States?*
- *What is the current ocean fisheries governance, and what are the evolving cooperation schemas to face the challenges for the high seas fisheries?*
- *How is this governance facing the consequences of the climate change effects on fisheries, and how is it evolving to ensure a better global coordination?*
- *How is the need to coordinate biodiversity conservation in areas beyond national jurisdiction in the light of the BBNJ Agreement and the current roles of RFMOs governance addressed?*
- *What trade measures have been recently adopted to contribute to the sustainability of the high seas fishing activities?*

1.3 Methodology

The search for sources cited in this study was conducted at both the author's university library and, more importantly, at the *David Lubin Memorial Library* of the FAO in Rome during the author's fellowship there in 2024. The articles and monographs (grey literature) used for the bibliography have been obtained starting with the identification of publications by using keywords such as “high seas fisheries”, “fishery sustainability”, “flag state”, “IUU fishing”, “RFMO”, “fishing subsidies”, “BBNJ Agreement and fisheries”, “WTO Agreement on fisheries subsidies”.

Although it is necessary to introduce basic concepts regarding their temporal evolution, this study mainly focuses on the period from 2020 to December 2024, as the previous timeframe has been thoroughly analysed by many other authors, who are also cited in this work. Nevertheless, some crucial publications and authors who wrote before this period have been consulted to properly ‘set the scene’. In addition, recent developments in the two key treaties central to the analysis in the final chapter of this thesis have led to some rapid integrations beyond the specified period.

Extensive use was also made of official documents and publications on various websites of the international and regional organizations most involved in the subject matter, particularly those of the FAO, the WTO, and the relevant RFBs.

Many insights also emerged from interviews and discussions with individuals met during the fellowship period, although all references used were from public sources. Several fisheries and ocean governance conferences were attended, both in person and remotely. In addition, some insights were stimulated by participation in e-learning courses organized by the FAO, such as the one entitled “Strengthening deep-sea fisheries management in areas beyond national jurisdiction” or that of the *International Ocean Institute* (IOI) of Canada on “Ocean Governance: SDG 14 and the UN Summit of the future” in April-June 2023.

To focus on best practices and incentives for sustainable fisheries, the author has not analysed existing private certification schemes, as she wishes to limit her research scope to the roles of states and international organizations (public actors under international law). Indeed, the author aims to provide a descriptive and normative analysis of the current situation, the reasons behind it, and the likely near-future scenario.

1.4 Structure of the thesis

This thesis is divided into three chapters (besides this introduction) to answer the main research question and its sub-questions. After a brief overview of the study’s aim, background, and methodology in the introduction, Chapter I offers a description of the high seas and ABNJ from the perspective of international law of the sea, the concept of sustainability in fisheries, and some related critical issues. It also presents an overview of key binding and non-binding legal instruments related to high seas fisheries, establishing a solid foundation for further discussion. The chapter concludes with a section highlighting global achievements to support international sustainability efforts, along with ongoing challenges.

Chapter II focuses on the global governance of high seas fisheries, starting with the role of the flag State and the evolving interactions between international waters and the EEZ. Reflecting the different perspective this study aims to reveal, part of this chapter examines the role of the port and market States. A comprehensive overview of regional fishery bodies (RFBs) is included, drawing from the author's experience with the FAO Fisheries Division as a fellow student. Emphasis is placed on the importance of cooperation and coordination among these bodies, supported by current concrete examples. To be as comprehensive as possible regarding the key players in global fisheries management, a dedicated paragraph highlights the importance of including Indigenous Peoples' knowledge in global resource management, with particular reference to the Arctic.

The final chapter (Chapter III) discusses recent developments in high seas fisheries management by exploring the BBNJ Agreement and the WTO Agreement on fisheries subsidies, and their possible interactions with RFMOs, including the potential roles and evolution of advisory bodies in implementing these treaties.

The thesis concludes with a summary of findings and the bibliography.

Several parts of this research have been used by the author in her contribution as a panelist in the FAO Fish Price Index of 23-24 September 2024 (Italy). The occasion was to introduce the fellows' research, with a focus on the international legal framework for high seas fisheries and the role of RFBs in implementing the WTO Agreement on Fisheries Subsidies. Other parts have been sent by the candidate to specialist journals for publication.