The Nuuk Meeting on Central Arctic Ocean Fisheries

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As reported in the New York Times the potential development of unregulated fisheries in the central Arctic Ocean has secured the attention of all five Arctic Ocean coastal states - Canada, Denmark/Greenland, Norway, Russia and the United States (the Arctic Five). Government officials from these states met most recently in Nuuk, Greenland from 24-26 February 2014 to discuss the development of interim measures to prevent unregulated fishing in the central Arctic Ocean and related scientific matters. However, despite a mutual understanding among the Arctic Five on the substance of interim measures as well as on the need to adopt an agreement on central Arctic Ocean fisheries, no such interim measures or agreements have been formalized. Relations among the Arctic Five have recently become strained because of recent events in Ukraine. As a result, at least for the time being, the outcome of the Nuuk meeting might be the closest we will get to a regional agreement on central Arctic Ocean fisheries management. As such, it warrants closer investigation.

The term ‘central Arctic Ocean’ denotes the single high seas portion of the Arctic Ocean that is entirely surrounded by waters under the fisheries jurisdiction of Canada, the Kingdom of Denmark in respect of Greenland, the Kingdom of Norway, the Russian Federation and the United States of America. The general legal and policy framework for central Arctic Ocean fisheries management has been thoroughly sketched out and considered in other commentaries, (see eg., R. Barnes, ‘International Regulation of Fisheries Management in Arctic Waters’ (2011), 54 German Yearbook of International Law 193-230, at pp. 204-224 and E. J. Molenaar “Arctic Fisheries Management”, in E. J. Molenaar, A. G. Oude Elferink and D. R. Rothwell (eds) The Law of the Sea and the Polar Regions: Interactions between Global and Regional Regimes (Martinus Nijhoff Publishers, Leiden/Boston, 2013) 243-266, at pp. 245-260). This post starts with the proposition that there is a gap in the coverage of the central Arctic Ocean by regional fisheries management organizations or arrangements (RFMO/As). This gap, combined with the effects of climate change, could lead to unregulated fishing if, for example, receding sea-ice allows commercial fishing fleets into the area, or sub-Arctic fish stocks move or extend into this more northerly area. This is because for some parts of the central Arctic Ocean, there are no applicable substantive fisheries standards beyond the general provisions on marine capture fisheries set out in the United Nations Convention on the Law of the Sea (UNCLOS), the 1995 UN Fish Stocks Agreement (UNFSA) and other global instruments. The development of regulatory responses to address this gap is the primary focus of this post, with particular attention to the outcome of the February 2014 Nuuk meeting.

This post begins with a short history of the events and discussions leading towards the development of a regional agreement for fisheries management in the central Arctic Ocean. This development has thus far been confined to an ‘Arctic Ocean coastal state process’. The post next examines the main outcome of the Nuuk meeting which was a call for interim measures to deter unregulated fishing in the central Arctic Ocean. It should be noted at the...
outset that the “agreements” reached at Nuuk are not legally binding. However, these agreements clearly represent political commitments or agreements “in principle”. Finally the post explores how a regional agreement for fisheries management in the central Arctic Ocean might continue to develop, taking into consideration, among other things, that a planned Ministerial Declaration based on the agreements made at the Nuuk meeting never materialized, presumably because of strained diplomatic relations among the Arctic Five.

Towards a regional agreement on central Arctic Ocean fisheries

In 2007, the northward expansion of fish species in parts of the United States’ Arctic waters triggered the Senate joint resolution No. 17 of 2007 (S.J.Res. 17 2007), “directing the United States to initiate international discussions and take necessary steps with other Nations to negotiate an agreement for managing migratory and transboundary fish stocks in the Arctic Ocean”. Despite the willingness of the United States to engage on a multilateral level, it became clear that the Arctic Council was not interested in having any involvement in the international regulation of marine capture fisheries, or becoming a forum for the negotiation of a regional agreement on central Arctic Ocean fisheries. At the November 2007 Meeting of Senior Arctic Officials (SAOs), the Arctic Council decided not to become involved with fisheries management issues. Instead, “[t]here was strong support for building on and considering this issue within the context of existing mechanisms”.

The United States did not abandon its precautionary and proactive position, however and in 2009 adopted more stringent domestic regulation which prohibited commercial fishing in the exclusive economic zone (EEZ) off Alaska in the Arctic Ocean “until information improves so that fishing can be conducted sustainably and with due concern to other ecosystem components”. The United States must have hoped, and must continue to hope, that other states and entities would follow suit with similar actions or actions with similar effectiveness, both for the maritime zones of Arctic Ocean coastal states as well as for the central Arctic Ocean (on this point, see E. J. Molenaar, “Status and Reform of International Arctic Fisheries Law” in E. Tedsen, S. Cavalieri, and R. A. Kraemer (eds), Arctic Marine Governance: Opportunities for Transatlantic Cooperation (Springer, Berlin/Heidelberg, 2014) 103-125, at p. 117).

A multilateral approach would be the best way to ensure such actions are coordinated and compatible – compatibility being an implied legal requirement under the UNCLOS and a specific obligation under the UNFSA – but as the Arctic Council was not interested in becoming the forum for negotiations, where could they take place? The European Union (EU) proposed to include a call for regional Arctic fisheries regulations in the 2009 United Nations General Assembly (UNGA) Sustainable Fisheries Resolution. Most of the Arctic Ocean coastal states – except possibly the United States in view of its own action on Arctic fisheries – strongly opposed the EU proposal, and in doing so, took the view that the UNGA had no role in relation to Arctic fisheries. They also perceived no role for the Food and Agriculture Organization (FAO) (see Molenaar (2013) above at p. 248).

Although the Arctic Five have been reluctant to bring Arctic Ocean fisheries management issues into wider fora, they have discussed such issues in a series of coastal states-only meetings, which can be described as an ‘Arctic Ocean coastal state process’. In addition to two ministerial meetings held in Ilulissat, Greenland in May 2008, and Chelsea, Canada in March 2010, dedicated fisheries meetings took place at the level of senior officials in Oslo in June 2010, Washington D.C. in April and May 2013, with the most recent meeting held in
Nuuk, in February 2014. There have also been at least two meetings of scientific experts from the Arctic Ocean coastal states on Arctic Ocean fish stocks, the first in Anchorage, the United States in June 2011, and the second in Tromsø, Norway, in October 2013, with plans to hold a third no later than the end of 2015.

Interim measures

The Arctic Ocean coastal state process culminated at the Nuuk meeting in February 2014 with political agreement, according to the chairman’s statement, “on the desirability of developing appropriate interim measures to deter unregulated fishing in the future in the […] central Arctic Ocean”. Although the Arctic Five reaffirmed that they perceived no need at present to develop any additional RFMO/As for the area, they agreed that at least one RFMO – namely, the North-East Atlantic Fisheries Commission (NEAFC) – has the competence to adopt fisheries conservation and management measures in specific portions of the central Arctic Ocean, should fisheries take place there in future. It was further agreed that any “interim measures will neither undermine nor conflict with the role and mandate of any existing international mechanism relating to fisheries, including NEAFC”.

The interim measures will commit participating states “to authorize their vessels to conduct commercial fishing in this high seas area only pursuant to one or more regional or subregional fisheries management organizations or arrangements that are or may be established to manage such fishing in accordance with modern international standards”. Those participating must also:

- establish a joint program of scientific research with the aim of improving understanding of the ecosystems of the central Arctic Ocean;
- coordinate their monitoring, control and surveillance activities in this area; and
- ensure that any non-commercial fishing in this area does not undermine the purpose of the interim measures, is based on scientific advice and is monitored, and that data obtained through any such fishing is shared;
- encourage other States to take measures in respect of vessels entitled to fly their flags that are consistent with the interim measures.

It was also agreed that the interim measures will “not prejudice the rights, jurisdiction and duties of States under relevant provisions of international law as reflected in the 1982 United Nations Convention on the Law of the Sea, or the 1995 UN Fish Stocks Agreement, nor alter the rights and obligations of States that arise from relevant international agreements.”

In relation to scientific matters, the Arctic Five agreed to continue to promote scientific research, and to integrate scientific knowledge with traditional and local knowledge, with the aim of improving understanding of the living marine resources of the Arctic Ocean and the ecosystems in which they occur; to promote cooperation with relevant scientific bodies, including but not limited to the International Council for the Exploration of the Sea (ICES) and the North Pacific Marine Science Organization (PICES); and, as previously mentioned, to hold a third Scientific Meeting no later than the end of 2015 and to finalize the terms of reference for that meeting.
The way forward?

At the same February 2014 Nuuk meeting, the Arctic Five agreed to develop a Ministerial Declaration for signature or adoption by the five Arctic Ocean coastal states based on the provisions described above. The meeting expressed the desire to finalize the Ministerial Declaration for signature or adoption in June 2014. As mentioned at the outset, this never materialized – presumably due to developments in Ukraine, which have led to a near breakdown in diplomatic relations between Russia, on the one hand, and the other Arctic Ocean coastal states, on the other. It is thus unclear when the Ministerial Declaration will be finalized, or even whether such a declaration is still planned.

Leaving that political issue aside, it is necessary to consider a broader process involving actors beyond the Arctic Five. Although the Arctic Five agreed at the Nuuk meeting “that it is appropriate for the States whose exclusive economic zones border the high seas area in question to take the initiative on this matter”, “they also continued to recognize the interests of Arctic residents, particularly the Arctic indigenous peoples, in these matters and to engage with them as appropriate”. They also “reaffirmed that other States may have an interest in this topic and looked forward to a broader process involving additional States beginning before the end of 2014. The purpose would be to develop a set of interim measures, compatible with the Ministerial Declaration that would include commitments by additional States. The final outcome could be a binding international agreement.” This suggests that the Arctic Five acknowledge that the legitimacy and effectiveness of a future international instrument related to the central Arctic Ocean – where the high seas freedom of fishing applies – would benefit from the support of key non-Arctic states and entities. Accordingly, they anticipate that ultimately a broader process will emerge in the context of which the current Arctic Ocean coastal state process is perhaps best regarded as a preparatory process.

This preparatory process continues at the time of writing, with a future meeting planned to take place at some time in Canada in 2015. China, the EU, Japan, Iceland and South Korea are expected to be among those actors welcome to the invitation-only discussions. The choice of invitees may be informed by the concept of ‘real interest’ – a necessary prerequisite for membership and participation in RFMO/As under international law (see eg. UNFSA, Article 8(3)). However, there is still very much unknown about the broader process, and it too may be derailed as a result of the political tensions surrounding Ukraine and other emerging conflicts.

Conclusions

The marine Arctic is experiencing unprecedented and rapid changes. As a result, new challenges and opportunities are emerging in relation to fisheries in the central Arctic Ocean. New or improved regional regulatory responses appear to be increasingly necessary. Fortunately, in recent years we have witnessed the relatively rapid development of a regional policy framework for central Arctic Ocean fisheries conservation and management, with Arctic Ocean coastal states assuming the lead role. The Arctic Five’s meeting in Nuuk, in February 2014, contributed to this development.

The outcome of the Nuuk meeting should be viewed as a precautionary and proactive step towards a regional agreement for central Arctic Ocean fisheries. The agreements in principle on interim measures appear to recognize the significant lack of science and data that is
required for ecosystem-based fisheries management, and seek to remedy this knowledge gap before fisheries are established. This demonstrates commitment to fundamental principles of international fisheries management. Further, the agreements appear to be largely consistent with the global elements of the international legal framework, although the legitimacy and effectiveness of a future international instrument on central Arctic Ocean fisheries would benefit from the support of key non-Arctic Ocean coastal states and entities as anticipated by the Nuuk meeting.

As stated at the outset, the agreements made at Nuuk are not legally binding even if eventually endorsed by a Ministerial Declaration. However, the agreements clearly represent a political commitment on the part of all the governments concerned to work together to address the challenges surrounding the future conservation and management of marine capture fisheries in the central Arctic Ocean, at least at the time the agreements were reached in February 2014. It may be unclear whether or not this political commitment still remains, in light of the continued delay of a Ministerial Declaration which reinforces the agreements made on the substance of interim measures and the desirability of a broader process on central Arctic Ocean fisheries. Nonetheless, a great deal of progress has been made towards the development of a regional agreement for fisheries management in the central Arctic Ocean. The international community must build on this progress and should not allow it to be derailed by disagreements on issues far removed from Arctic Ocean fisheries.

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