

The December 2015 Washington Meeting on High Seas Fishing in the Central Arctic Ocean

By: Erik J. Molenaar

Matter commented on: The first meeting of the so-called ‘Broader Process’ on international regulation of high seas fishing in the central Arctic Ocean, held in Washington, D.C. between 1-3 December 2015.

Between 1-3 December 2015, delegations from the five Arctic Ocean coastal States - namely Canada, Denmark, Norway, the Russian Federation and the United States (the so-called ‘Arctic Five’) - as well as delegations from five other States and entities - namely China, the European Union (EU), Iceland, Japan and South Korea - met in Washington, D.C. for a meeting on high seas fishing in the central Arctic Ocean. The meeting was initiated, hosted and chaired by the United States. A Chairman’s Statement on the meeting ([2015 Washington Chairman’s Statement](#)) was released on 3 December.

The 2015 Washington Meeting was the first meeting of the so-called ‘Broader Process’ on international regulation of high seas fishing in the central Arctic Ocean that was envisaged in the [‘Declaration Concerning the Prevention of Unregulated High Seas Fishing in the Central Arctic Ocean’](#) signed by the Arctic Five in Oslo on 16 July 2015 (2015 Oslo Declaration). The 2015 Oslo Declaration marked the conclusion of the Arctic Ocean coastal States process on Arctic Ocean fisheries, which could be regarded as a preparatory phase of the Broader Process (for some discussion see E.J. Molenaar, “The Oslo Declaration on High Seas Fishing in the Central Arctic Ocean”, *Arctic Yearbook 2015* (available at www.arcticyearbook.com), pp. 427-431; S. Ryder, “The Declaration Concerning the Prevention of Unregulated High Seas Fishing in the Central Arctic Ocean”, post of 11 August 2015 on [The JCLOS Blog](#); and E.J. Molenaar, “International Regulation of Central Arctic Ocean Fisheries” in M.H. Nordquist, E. Nordtveit and T.H. Heidar (eds) *Challenges of the Changing Arctic: Continental Shelf, Navigation, and Fisheries* (Martinus Nijhoff Publishers: forthcoming in 2016), pp. 429-463).

This post offers a commentary on the 2015 Washington Meeting based on the Chairman’s Statement as well as the Provisional Agenda, the draft ‘Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean’ of 2 November 2015 submitted by the United States (both on file with author), and interviews with participants of the 2015 Washington Meeting. The subsequent sections deal with ‘Participation’, ‘Geographical Scope’, ‘Provisional Agenda and Main Purpose’, ‘Scientific Matters’, ‘The Roadmap of the Broader Process’, ‘Observations in Light of the Fish Stocks Agreement’s Definition of an RFMA’ and ‘Final Remarks’.

Participation

Participation in the 2015 Washington Meeting was by invitation of the United States - presumably on behalf of the Arctic Five - and consisted of ‘Five-plus-Five’; namely the Arctic Five and the four other States and the EU mentioned above. The Arctic Five already informally agreed that participation in the Broader Process would be limited to Five-plus-Five at their 2014 Nuuk Meeting. In line with this, scientists from China, Iceland, Japan and South Korea participated in the [‘3rd Meeting of Scientific Experts on Fish Stocks in the Central Arctic Ocean’](#), held in April 2015, Seattle. The 2015 Oslo Declaration’s more inclusive phrase “all

interested States” compared to the phrase “additional States” included in the [Chairman’s Statement of the 2014 Nuuk Meeting](#), may therefore not have been intended to foreshadow broader participation than Five-plus-Five.

The rationale for limiting participation to Five-plus-Five is the Arctic Five’s belief or position - which may well be shared by the EU and the four other States - that only the Five-plus-Five have a ‘real interest’ within the meaning of Articles 8(3), 8(5) and 9(2) of the [1995 Fish Stocks Agreement](#). These provisions relate, among other things, to intergovernmental cooperation on the establishment of new RFMOs or RFMAs. However, as the Broader Process has not yet decided whether or not to establish a new RFMO or RFMA, and in light of the absence of commercially viable fisheries in the high seas of the central Arctic Ocean at present as well as in the near future, these provisions are not fully tailored to the scenario at hand.

The inclusion of the EU and Iceland ensures representation of all Arctic States, as Finland and Sweden are Members of the EU. All EU Member States are bound to the EU’s exclusive competence on the conservation and management of marine capture fisheries. Denmark therefore participates only on behalf of Greenland and the Faroe Islands, and not also on behalf of ‘mainland’ Denmark. The significant distant-water fleets and interests of China, the EU, Japan and South Korea are likely to have played a role in their invitation. The selection moreover ensures the inclusion of all members of the adjacent - and, in fact, partly overlapping (see next section) - North-East Atlantic Fisheries Commission ([NEAFC](#)), as well as the inclusion or representation of all parties to the ‘nearby’ Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea ([CBS Convention](#)).

There may well be other States or entities that take the view that they also have a real interest to participate in the broader process, for instance Taiwan and Ukraine. Limiting participation to Five-plus-Five is nevertheless largely consistent with the overall practice in membership and participation in RFMOs and RFMAs (see Molenaar 2016, at pp. 459-460). A critical issue will be how the Broader Process will deal with new entrants. Article 7bis(1) of the draft Agreement proposed by the United States entitles “any State having an interest in this Agreement” to accede, without giving the participants in the Broader Process any competence in this regard.

The significance of the fact that all envisaged participants actually attended at the 2015 Washington Meeting should not be underestimated either. The participation of the four other States and the EU reflects their support for the principal purpose of the Broader Process, namely to prevent unregulated commercial fishing in the high seas area of the central Arctic Ocean (cf. paragraphs 1 and 6 of the Chairman’s Statement of the 2015 Washington Meeting, as numbered by the author). At least as significant is the Russian Federation’s decision to participate, in light of rumors of its reluctance to involve non-Arctic Ocean coastal States and entities in fisheries regulation in an area that the Russian Federation regards as its ‘backyard’.

Participation in the 2015 Washington Meeting was thus limited to States and the EU. All of these had the same participatory status, and no other participatory category - for instance Observer - was used either. While paragraph 9 of the Chairman’s Statement (as numbered by the author) notes that “The meeting recognized the interests of Arctic residents, particularly Arctic indigenous peoples, in this topic and expressed the intention to continue to engage with them”, Arctic indigenous peoples were not directly represented by one or more independent delegations. It should be acknowledged, however, that while such direct representation has existed for some time in the Arctic Council, it would be new in the domain of international fisheries law. Independent representation of intergovernmental organizations - for instance

regional fisheries management organizations (RFMOs) such as NEAFC - did not occur at the 2015 Washington Meeting either. The delegations from Canada, Denmark and the United States nevertheless included members from the Arctic indigenous communities in those respective States. In addition, the United States delegation included a representative of the United States fishing industry and the United States environmental community. It is also interesting to note that Article 5(2) of the draft Agreement provides for the possibility of inclusion of “representatives of Arctic indigenous peoples” in committees or similar bodies established by the Parties within the framework of the Agreement.

Geographical Scope

As indicated by the 2015 Oslo Declaration and Article 2 of the draft Agreement proposed by the United States, the geographical scope of the Broader Process is limited to the ‘high seas of the central Arctic Ocean’, at least so far. This area is defined as

the single high seas portion of the central 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

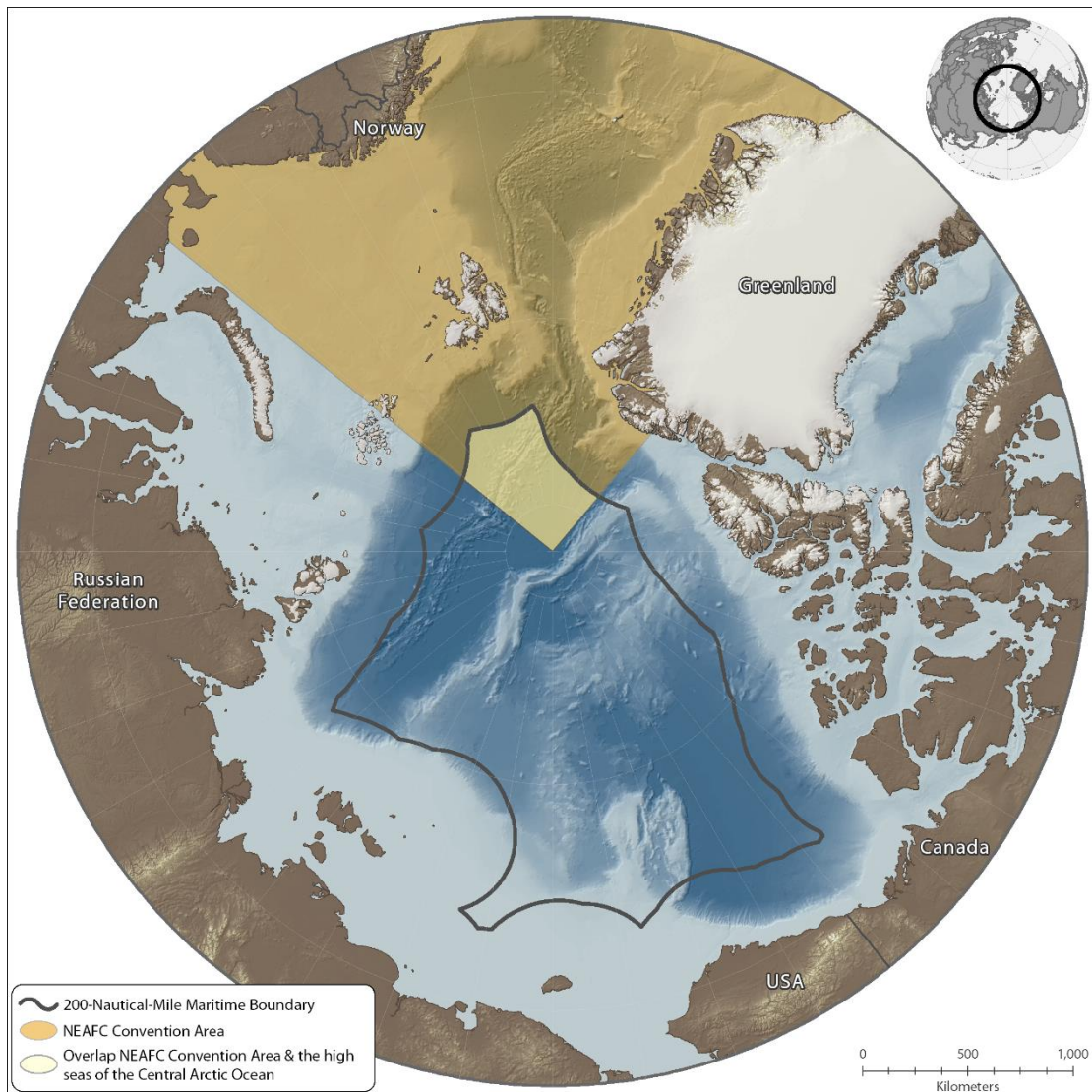
This is the area enclosed by the red line in Map 1 below. The wording was specifically chosen to make absolutely clear that other high seas areas in the Arctic - namely the ‘Banana Hole’ in the Norwegian Sea, the ‘Loophole’ in the Barents Sea, and the ‘Donut Hole’ in the central Bering Sea - were not included.

The wording also implies two other things. First, the central Arctic Ocean consists of high seas as well as coastal State maritime zones. Second, the Arctic Ocean consists of the central Arctic Ocean as well as some adjacent waters. Even though clear definitions of the Arctic Ocean and the central Arctic Ocean are thus lacking, the prevailing view is that only the Arctic Five are Arctic Ocean coastal States. The Arctic Five have consistently expressed this position, including at their ministerial meetings in [May 2008 in Ilulissat, Greenland](#), and in [March 2010 in Chelsea, Canada](#).

Iceland is widely understood to be an Arctic coastal State, even though a generally accepted definition for the marine Arctic does not exist either. Moreover, as Iceland repeatedly requested to join the Arctic Five in the preparatory phase of the Broader Process (see Molenaar 2016, at p. 447), it may rely on the lack of an agreed definition for the Arctic Ocean to position itself as a potential Arctic Ocean coastal State.

Map 1 below shows the high seas of the central Arctic Ocean, the NEAFC Convention Area and their overlap. Given that (1) NEAFC’s competence in its own Convention Area is not contested, (2) all Members of NEAFC participate in the Broader Process, and (3) NEAFC and the Broader Process are both non species-specific and thereby overlap, the question should be raised why the geographical scope of the Broader Process has not (yet) been confined to the portion of the high seas area of the central Arctic Ocean that is outside the NEAFC Convention Area. The main - if not only - reason why the Arctic Five’s preparatory process included the segment of the NEAFC Convention Area seems to have been to ensure that Norway’s maritime zones would be directly adjacent to the high seas, just like the maritime zones of the other four Arctic Ocean coastal States. The adjustment of the geographical scope of the Broader Process may therefore perhaps be opposed by Norway for the same or similar reasons.

Map 1: The high seas of the central Arctic Ocean and the NEAFC Convention Area



Map used with permission of the Pew Charitable Trusts.

Provisional Agenda and Main Purpose

The Provisional Agenda indicates that the Meeting lasted for two and a half days. The morning of 1 December was reserved for four substantive items, namely (1) a presentation on Arctic Ocean high seas fisheries discussions so far, (2) opening statements, (3) a presentation on the Arctic fisheries science track so far, and (4) a discussion on science issues. The afternoon was reserved for three substantive items, namely (1) a general “discussion of possible approaches for preventing unregulated commercial fishing in the high seas area of the central Arctic Ocean”, (2) introduction of the draft Agreement proposed by the United States, and (3) discussion of this proposal. The entire second day was reserved for “[c]ontinued discussion of possible agreement text”. The Meeting was adjourned before lunch on the third day, after having considered meeting outcomes, the Chairman’s Statement and next steps.

Given the amount of time reserved for discussion of the draft Agreement proposed by the United States and of “possible agreement text” in general, it is clear that the 2015 Washington Meeting was to a significant extent designed to facilitate working toward a legally binding instrument as the preferred outcome of the Broader Process, rather than exploring a range of possible outcomes and determining which of these enjoyed the broadest support. It is established practice that initiators/hosts of intergovernmental meetings have considerable influence on a meeting’s agenda, and there is nothing to indicate that the 2015 Washington Meeting was an exception in this regard. This is underlined further by the fact that the draft Agreement was proposed by the United States on its own, rather than jointly with one, more, or all other Arctic Ocean coastal States.

While the United States is likely to have ascertained in advance that there would be sufficient support for the Provisional Agenda, it cannot be assumed that all Arctic Five have a preference for a legally binding instrument. Reference should here be made to the fact that the paragraph relating to the Broader Process in the Chairman’s Statement of the 2014 Nuuk Meeting contained the phrase “The final outcome could be a binding international agreement”, which was eventually not included in the 2015 Oslo Declaration. The positions of the four non-Arctic Ocean coastal States and the EU on their preferred outcome(s) are not clear either.

The debate on these issues at the 2015 Washington Meeting is reflected in the following paragraphs of the Chairman’s Statement (as numbered by the author):

3. The meeting was exploratory in nature. A number of delegations made clear that they did not at present have a mandate to negotiate any particular instrument relating to the topic.

[...]

10. The meeting considered various approaches to prevent unregulated commercial fishing in the high seas portion of the central Arctic Ocean. Not all of these approaches are mutually exclusive. Indeed, a number of these approaches could be combined in a step-by-step or evolutionary fashion. Suggested approaches include:

- (a) adjusting the Declaration signed by five of the participating States with input from the other participants such that a new, broader non-binding statement could be adopted;
- (b) negotiating a binding international agreement of the kind proposed by the United States, discussed in more detail below; and
- (c) negotiating in the foreseeable future an agreement or agreements to establish one or more additional regional fisheries management organizations or arrangements for the area.

11. The United States presented a proposal for an international agreement that would, among other things, commit parties to:

- (a) 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;
- (b) establish a joint program of scientific research with the aim of informing future fisheries management decisions and improving understanding of the ecosystems of this area; and
- (c) ensure that any non-commercial fishing in this area follows scientific advice and is well-monitored.

12. Although the U.S. proposal was not subject to negotiation at this meeting, some delegations provided preliminary reactions to it and suggested ways in which the proposal could be

strengthened or clarified. The United States will circulate an updated proposal to all participants in advance of the next meeting on this topic.

Paragraph 3 records that several delegations indicated - probably at an early stage of the meeting - that they did not have a mandate to negotiate an international instrument, whether legally binding or not. Their mandate was thus limited to engaging in informal discussions. It is likely that this concerned at any rate the delegations of all four non-Arctic Ocean coastal States and the EU. This position could be interpreted as a signal that, notwithstanding their commitment to prevent unregulated commercial fishing in the high seas of the central Arctic Ocean and their willingness to engage in international cooperation to ensure this, they will participate in the Broader Process on an equal footing with the Arctic Ocean coastal States. Moreover, based on their rights under international law - in particular the right to fish on the high seas pursuant to Article 116 of the United Nations Convention on the Law of the Sea ([UNCLOS](#)) - they are entitled to participate in a meaningful way in the Broader Process. Participation would not be meaningful if they would have no say whatsoever in the 'scoping phase' of the Broader Process and were confronted with a *fait accompli*.

While the four non-Arctic Ocean coastal States and the EU are likely to have felt compelled to signal this as a matter of principle, it does not necessarily mean that they are opposed to a legally binding outcome as such, or that they have a preferred outcome as a block. As alluded to above, the Arctic Five also do not necessarily have a common preferred outcome, and one or more of them may not have had a negotiation mandate for that reason either. Paragraph 11 of the Chairman's Statement indicates that, notwithstanding several delegations lacking a negotiation mandate, the draft Agreement was in fact discussed. The wording of the paragraph even suggests that this was a substantive discussion and that, in advance of the next meeting, the United States will circulate a revised draft Agreement that takes this discussion into account. A legally binding outcome is therefore still very much alive and it could well be that the United States' design of the 2015 Washington Meeting increased the likelihood of its adoption. All this says nothing about the substance of such an instrument, however.

Scientific Matters

The section entitled 'Scientific Matters' in the Chairman's Statement consists of two paragraphs. These mention that the meeting reviewed the outcomes of the already mentioned 3rd Science Meeting held in April 2015, Seattle; that the delegations confirmed their commitment to continue their cooperation in this domain; and that specific consideration was given to "the key questions of whether and when there might exist a stock or stocks of fish sufficient to support a sustainable commercial fishery in the high seas area of the central Arctic Ocean and the effects of any such fishery on the ecosystems."

It is difficult to deny that these are key questions, but it is certainly also possible to argue that there are more than just these. Arctic indigenous peoples might for instance argue that the potential effects of high seas fishing on their subsistence fishing is also a key question. And the four non-Arctic Ocean coastal States and the EU might be interested in the potential effects of fishing within coastal State maritime zones in the central Arctic Ocean on the emergence of a sustainable commercial fishery in the high seas of the central Arctic Ocean. It is not clear if such questions are covered by the 4th Science Meeting's preliminary Terms of Reference (ToR) developed in Washington or if they will be covered by the final ToR that was to be agreed by correspondence afterwards.

As reflected in paragraphs 5 and 13 of the Chairman's Statement (as numbered by the author), the meeting accepted Norway's offer to host the 4th Science Meeting, which was expected to occur in September or October of 2016, at a location that was still to be decided.

Paragraph 7 of the Chairman's Statement, in the section entitled 'Policy Matters', refers to the outcomes of the science track so far as the basis for the meeting's "belief that it is unlikely that there will be a stock or stocks of fish in the high seas area of the central Arctic Ocean sufficient to support a sustainable commercial fishery in that area in the near future." The term 'sustainable' is here presumably intended to reflect consistency with the ecosystem approach to fisheries management, which focuses not just on target species but, for instance, also on the impacts of fishing on non-target species and the broader marine ecosystem. Article 3(2) of the draft Agreement proposed by the United States embraces a similar position.

The Chairman's Statement then continues with the following sentence: "But the meeting also noted that the rapid changes occurring in the Arctic region make such predictions uncertain and therefore recognized the need for a precautionary approach." It is appropriate to include these sentences in the section on 'Policy Matters', as their key component is the precautionary approach, which is part of the policy domain. The 2015 Oslo Declaration was the first instance in which the Arctic Five explicitly referred to the precautionary approach as the rationale and international legal basis for their efforts on high seas fishing in the central Arctic Ocean. Its inclusion in the Chairman's Statement of the 2015 Washington Meeting reflects the support of the expanded group of participants for the precautionary approach. Mention should here nevertheless be made of the footnote to the Chairman's Statement, which stipulates that it "attempts to capture the basic elements of the meeting but does not necessarily reflect the views of any individual delegation". The inclusion of the precautionary approach in the Chairman's Statement can therefore not necessarily be seen as acceptance that it constitutes the rationale and international legal basis of the Broader Process.

The Roadmap of the Broader Process

As highlighted in the chapeau of paragraph 10 of the Chairman's Statement - cited in full above - the roadmap of the Broader Process could pursue various negotiation processes, not all of which are mutually exclusive and some of which could be combined in a step-by-step or evolutionary fashion. Paragraph 10 then distinguishes three negotiation processes, namely negotiating (1) a Declaration based on the 2015 Oslo Declaration, (2) an Agreement "of the kind" proposed by the United States, or (3) one or more RFMOs or regional fisheries management arrangements (RFMAs).

The distinguishing feature of the first two negotiation processes is their outcome's juridical status under international law, namely non-legally binding for the first process and legally binding for the second. As regards regulatory substance, the outcomes are nevertheless likely to be quite similar. Reference should here be made to the key commitment of the 2015 Oslo Declaration, by which the signatory States

will 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 recognized international standards.

Article 3(1) of the draft Agreement proposed by the United States is largely identical; as is also reflected in paragraph 11(a) of the Chairman's Statement of the 2015 Washington Meeting (even though the latter's use of "modern" instead of "recognized" is likely to be a mistake). Of the three negotiation processes mentioned above, only the third will therefore be able to culminate in the authorization of commercial high seas fishing. Choosing one of the first two negotiation processes means that, if authorization of commercial high seas fishing is eventually deemed desirable, the third negotiation process will have to be pursued at a later stage.

The context of these choices is quite unique as there are presently no commercially viable fisheries in the high seas of the central Arctic Ocean. Just as in other parts of the world, however, coastal States are inclined to oppose, or even discourage, fishing in high seas areas adjacent to their maritime zones if such fishing targets or impacts fish stocks or other species that also occur in the coastal States' maritime zones. High seas fishing States and entities are presumably willing not to fish in the high seas of the central Arctic Ocean as long as this would not be commercially viable. However, they will not be prepared to accept mechanisms and associated decision-making procedures that give Arctic Ocean coastal States a decisive role in determining whether or not to commence negotiations to establish an RFMO or RFMA, or whether or not a commercially viable fishery would also be sustainable. The Arctic Ocean coastal States would likewise not be prepared to accept a decisive role of high seas fishing States and entities in such mechanisms and associated decision-making procedures either.

While such mechanisms and associated decision-making procedures were not included in the 2015 Oslo Declaration, they are likely to be a critical component of the Broader Process. Article 5(1) of the draft Agreement envisages Meetings of the Parties to review implementation of the Agreement and to determine whether or not negotiations to establish one or more RFMOs or RFMAs are warranted. As no decision-making procedures are specified, decision-making could in certain scenarios be based on the lowest common denominator and therefore approximate decision-making by consensus or unanimity. One single - but important - Party would thereby have a *de facto* veto over a proposal to commence such negotiations, and thereby preclude authorization of commercial high seas fishing. As explained above, this solution would be favorable to coastal State interests. Abuse of this implicit decision-making power is, to some extent, avoided by each Party's right to withdraw from the Agreement pursuant to draft Article 7(2). Actually exercising this right and subsequently starting commercial high seas fishing may not be an attractive option from a political perspective, however, in particular when undertaken by a single State or entity.

The concerns of such a State or entity are to some extent also addressed by draft Articles 3(1) and 8(2), which allow Parties to engage in commercial fishing pursuant to existing RFMOs and RFMAs. The principal candidate in this regard is clearly NEAFC. Paragraph 8 of the Chairman's Statement of the 2015 Washington Meeting (as numbered by the author), nevertheless takes one step further by noting that:

at present, there is no international mechanism to regulate commercial fishing in the high seas area of the central Arctic Ocean, except for the portion of this area that is within the Convention Area of the North-East Atlantic Fisheries Commission.

The 2015 Oslo Declaration and the (Preamble to) the draft Agreement proposed by the United States nevertheless mention NEAFC merely as an example of an existing mechanism (cf. the words "including" and "at least one", respectively). The wording in the Chairman's Statement is therefore perhaps best interpreted as an informal, common understanding that neither the

North Atlantic Salmon Conservation Organization ([NASCO](#)), nor the International Commission for the Conservation of Atlantic Tunas ([ICCAT](#)), or the Joint Norwegian Russian Fisheries Commission ([Joint Commission](#)), have a role in the regulation of commercial high seas fishing in the central Arctic Ocean at present. There may even be a common understanding among the Five-plus-Five that these bodies are not likely to have such a role in any foreseeable future either.

In addition to the ‘safety-valves’ provided by the ability to withdraw from a legally binding agreement or to fish pursuant to an existing RFMO or RFMA, it is worth noting that the 2015 Oslo Declaration and Article 3(4) of the draft Agreement both ‘soften’ the commitment or obligation not to engage in commercial fishing by allowing “non-commercial fishing”. Such fishing is nevertheless subject to various restrictions, including that it is science-based and monitored (see also paragraph 11(c) of the Chairman’s Statement of the 2015 Washington Meeting). In the absence of a definition of the notion of ‘non-commercial fishing’, however, it is uncertain what it covers. It would certainly cover subsistence fishing - which would nevertheless also benefit from being defined - as well as recreational fishing; but this is likely to be either non-existent or negligible. Fishing for strictly scientific purposes would also qualify as non-commercial fishing, at least in principle. The meaning and coverage of ‘non-commercial fishing’ apparently led to significant discussion at the 2015 Washington Meeting, with some delegations taking the view that exploratory fishing should also be regarded as non-commercial fishing, and therefore allowed. In support of this view, reference was apparently made to the practice of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). It is nevertheless worth noting that CCAMLR discussed the various inconsistencies in, and other shortcomings of, its regulatory framework relating to exploratory and research fishing at its 2015 Annual Meeting ([Report of the 2015 Annual CCAMLR Meeting](#), at paras 9.11-9.21). Such inconsistencies and other shortcomings should be avoided in the Arctic.

Quite understandably, the 2015 Oslo Declaration and the draft Agreement proposed by the United States do not contain a mechanism and associated decision-making procedure for opening the high seas of the central Arctic Ocean to commercial fishing. Such a multilateral authorization mechanism is nevertheless expected to be key component of a future negotiation process to establish an RFMO or RFMA. Experiences with the CBS Convention’s procedure for establishing the annual harvest level (AHL) of pollock in the CBS Convention Area - based on the Aleutian Basin pollock biomass, with the AHL set at zero if the biomass is below a certain amount - are likely to have a significant influence in this regard.

Observations in Light of the Fish Stocks Agreement’s Definition of an RFMA

Of the three negotiation processes mentioned at the beginning of the previous section, the key distinction between the first two, on the one hand, and the third, on the other, is that only the third is described as seeking to establish one or more RFMOs or RFMAs. The question is if this is necessarily correct. While it is clear that neither the 2015 Oslo Declaration nor the draft Agreement of the kind proposed by the United States establish or seek to establish a fully-fledged RFMO - meaning an intergovernmental organization supported by a secretariat - they may still qualify as RFMAs within the meaning of the 1995 Fish Stocks Agreement. Its Article 1(1)(d) defines ‘arrangement’ as

a cooperative mechanism established in accordance with the [UNCLOS] and this Agreement by two or more States for the purpose, *inter alia*, of establishing conservation and management measures in a subregion or region for one or more straddling fish stocks or highly migratory fish stocks.

As this definition does not require establishment by a legally binding instrument, the 2015 Oslo Declaration is not *a priori* excluded. The restrictions imposed on non-commercial fishing by the 2015 Oslo Declaration and the draft Agreement would seem to qualify as ‘conservation and management measures’ pursuant to the definition in Article 1(1)(b) of the 1995 Fish Stocks Agreement. In addition, it could be argued that - based on their key purpose of preventing unregulated commercial high seas fishing, their associated commitment/ obligation not to authorize their vessels to engage in such fishing ‘yet’, and their commitment to engage in (joint) scientific research to inform future fisheries management - both the 2015 Oslo Declaration and the draft Agreement qualify as “cautious conservation and management measures” in the context of the obligations on new and exploratory fisheries included in Article 6(6) of the 1995 Fish Stocks Agreement. Accordingly, both would arguably qualify as RFMAs within the meaning of the 1995 Fish Stocks Agreement.

Neither the Arctic Five nor the Five-plus-Five seem to have considered this definitional aspect so far, and may have operated on the understanding that an RFMA is something similar to the CBS Convention, the [2006 Southern Indian Ocean Fisheries Agreement](#) or the Joint Commission. This does not invalidate the argumentation just provided, however.

Final Remarks

With the 2015 Washington Meeting, the Broader Process on international regulation of high seas fishing in the central Arctic Ocean has had a very successful start. One indicator of its success is the actual participation by all invited non-Arctic Ocean coastal States and the EU as well as the Russian Federation, as the latter was allegedly not entirely convinced about the need to also involve non-Arctic Ocean coastal States or entities. The United States’ leadership in the Meeting, as among other things reflected in its design and consideration of the draft Agreement proposed by the United States, have arguably also contributed to its success.

Whereas optimism seems warranted, it should be emphasized that the Broader Process has really just begun. No agreement has yet been reached on the roadmap of the Broader Process or on sensitive issues such as to whether or not its outcomes should include a provision modeled or inspired by the notion of compatibility laid down in Article 7 of the Fish Stocks Agreement. High seas fishing States and entities are likely to have serious concerns with outcomes that would pose no restraint whatsoever on fishing in coastal State maritime zones for stocks that also occur in the high seas or that could eventually occur there.

Further consideration of these and other issues will be given at the 2nd meeting of the Broader Process, which is scheduled to take place between 19-21 April 2016, in Washington, D.C.

The author would like to acknowledge that a number of people provided extremely useful comments on earlier versions of this post. As some of these prefer not to be explicitly mentioned, the author has decided not to mention any by name.