

Sustaining American Eels: Navigating the International Law and Policy Seascape

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Introduction

- Summarizing the international law and policy seascape relevant to American eel management is not easy!



- + A tangled array of global agreements and soft law documents has emerged to govern fisheries
- + The FAO alone has produced over 20 technical guidelines for fisheries
- However, the descriptive task has been made easier in this Symposium
- + Two global agreements have already been discussed

– CMS



– CITES



- + Relevance of the Sargasso Sea Commission has been flagged
- + A key bilateral cooperative institution, the Great Lakes Fishery Commission, will be highlighted by our next speaker, John Dettmers

- A two-part “speed cruise” follows



1. Selected Survey of Global Law and Policy Coordinates

- + UN Law of the Sea Convention (UNCLOS)
- + Convention on Biological Diversity (CBD)
- + FAO Code of Conduct for Responsible Fisheries and subsidiary guidelines
- + UN Declaration on the Rights of Indigenous Peoples



2. Glimpses of Limited Bilateral Cooperation

- + Gulf of Maine Council on the Marine Environment
- + Canada-U.S. Transboundary Resources Steering Committee

1. Global Law and Policy Coordinates

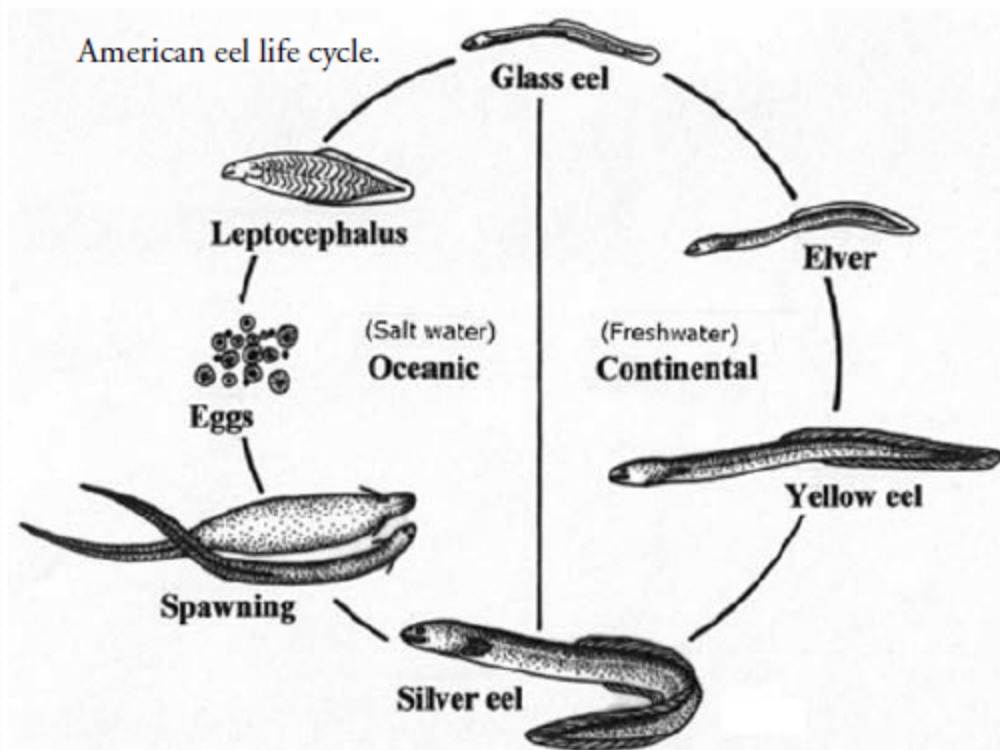


• UNCLOS

+ Relevant in two main ways

- Setting out general marine conservation responsibilities, e.g.
 - * States must protect and preserve the marine environment (Art. 192)
 - * States must take necessary measures to protect and preserve fragile ecosystems and the habitat of depleted, threatened or endangered species and other forms of marine life (Art. 194(5))
- Establishing specific obligations in relation to catadromous species (Art. 67)
 - * Coastal State in whose waters the catadromous species spends the greater part of its life cycle has management responsibility and must ensure ingress and egress of migrating fish
 - * High seas harvesting is prohibited
 - * Exclusive economic zone fisheries would be subject to other fisheries conservation obligations set out in the Convention
 - * Where catadromous fish migrate through the EEZ of another State, the coastal State and other State concerned are required to manage such fish by agreement (such agreement must ensure the species' rational management)

- + American eel might be described as “slipping through the cracks” of LOSC
 - Drafters did not have in mind the possibility of a single, panmictic breeding population requiring broad inter-regional cooperation
 - Art. 67 merely requires management cooperation between the coastal State where the catadromous species spends the greater part of its life cycle and the State through which the species migrates in the EEZ



<http://www.thefishsite.com/articles/contents/12-7-3Fish2.gif>



● CBD

Two “course setting” developments stand out

+ Adoption of 20 Aichi Biodiversity Targets in 2010 (Decision X/2) with two particularly important for fisheries

– Target 6

By 2020 all fish and invertebrates are managed and harvested sustainably, legally and applying ecosystem-based approaches so that

- * Overfishing is avoided
- * Recovery plans and measures are in place for all depleted species
- * Fisheries have no significant adverse impacts on threatened species and vulnerable ecosystems
- * Impacts of fisheries on species and ecosystems are within safe ecological limits

– Target 12 – By 2020 the extinction of human threatened species has been prevented and their conservation status has been improved and sustained



- + Under CBD auspices, a Wider Caribbean and Western Mid-Atlantic Regional Workshop was held in Brazil in 2012 to facilitate the identification of ecologically or biologically significant marine areas (EBSAs)
 - Participants identified the Sargasso Sea as an EBSA
 - Participants noted the importance of the Sargasso Sea as a spawning ground for the American and European eels





- FAO Code of Conduct and subsidiary guidelines

The FAO Code adds a “principled overlay” of fisheries management responsibilities with four principles especially important

- + Precautionary approach

- Absence of adequate scientific information should not be used as a reason to postpone or failing to take conservation and management measures (Art. 7.5.1)
- Precautionary reference points should be established based upon the best scientific evidence available (Art. 7.5.3)
 - * Target reference points
 - * Limit reference points
- For new or exploratory fisheries, States should adopt cautious conservation and management measures including catch and effort limits (Art. 7.5.4)

+ Ecosystem approach

- Management measures should not only ensure the conservation of target species but also species belonging to the same ecosystem or associated with or dependent upon the target species (Art. 6.2)
- Selective and environmentally safe fishing gear and practices should be developed and applied to maintain biodiversity and conserve aquatic ecosystems (Art. 6.6)
- All critical fisheries habitats in marine and freshwater ecosystems, such as wetlands, mangroves, nursery and spawning areas, should be protected and rehabilitated (Art. 6.8)
- Management measures should ensure the protection of endangered species (Art. 7.2.2(d))
- Fisheries should be managed as a biological unity over entire areas of distribution (Art. 7.3.1)
- In light of the transboundary nature of many aquatic ecosystems, States should encourage bilateral and multilateral scientific research cooperation (Art. 6.4)



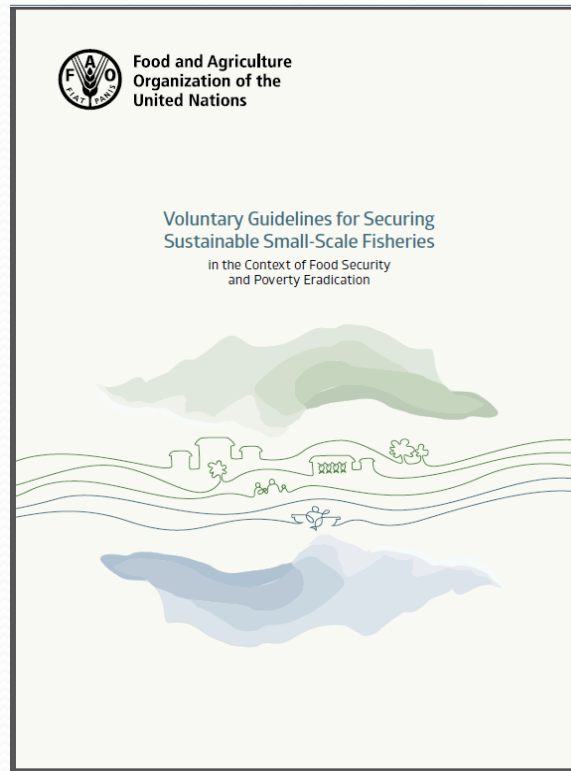
+ Code also urges integrated coastal area management

States should ensure that their fisheries interests ... are taken into account in the multiple use of the coastal zone and are integrated into coastal area management, planning and development (Art. 6.9)

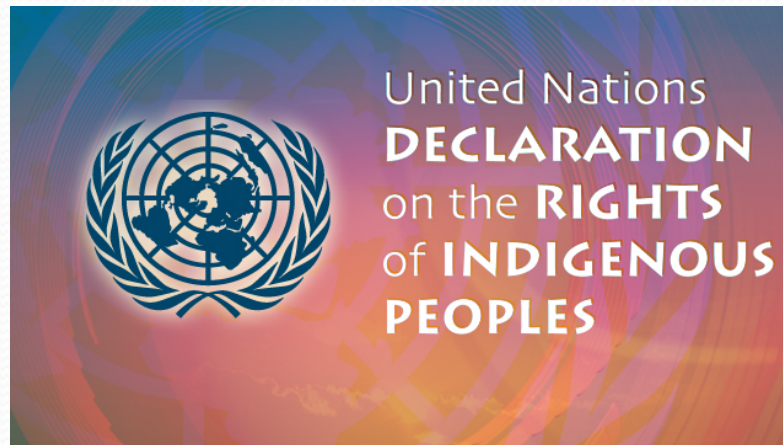


+ Social equity

- Due recognition should be given in fisheries management to the traditional practices and interests of indigenous people and local fishing communities (Art. 7.6.6)
- The need to ensure socially and culturally appropriate tenure rights to fishing resources is further emphasized in the FAO Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries (2015)



- UN Declaration on the Rights of Indigenous Peoples
Various rights relevant to fisheries are recognized including



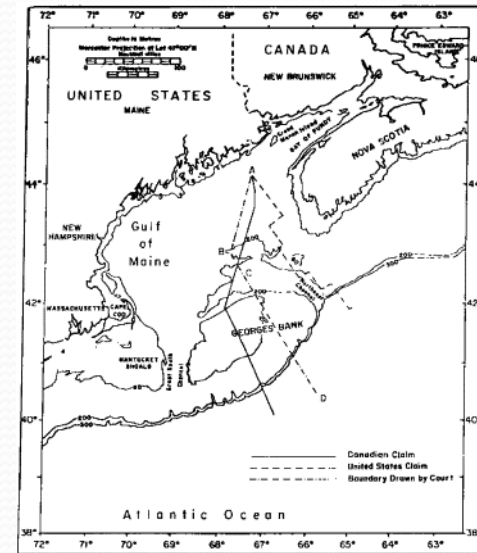
- + Right to be consulted before adoption and implementation of legislative or administrative measures that may affect an indigenous community (Art. 19)
- + Right to be secure in the enjoyment of their own means of subsistence and development (Art. 20)
- + Right to own, use and control the lands, territories and resources possessed by reason of traditional ownership or other traditional occupation or use (Art. 26(2)).

2. Glimpses of Limited Bilateral Cooperation

- Gulf of Maine Council on the Marine Environment
 - + Established by the Premiers of New Brunswick and Nova Scotia and the Governors of Massachusetts, Maine and New Hampshire in 1989
 - + Has raised public awareness of the plight of American eels
 - + Issued a 2007 report, *American Eels: Restoring a Vanishing Resource in the Gulf of Maine*
 - + Has included restoration of coastal and ocean habitats as one of its main goals
 - Pursuant to the Council's Action Plan 2007-2012, 49 new habitat restoration projects were funded with an estimated 145 miles of streams opened to fish passage
 - Action Plan 2012-2017 pledges continuation of habitat restoration grants and technical assistance for restoring coastal ecosystems
 - + Council does not address fisheries management issues



- Canada - U.S. Transboundary Resources Steering Committee
 - + Established in 1995 as an informal arrangement to facilitate federal coordination of scientific research and fisheries management in the Gulf of Maine region
 - + Has focused most of its energies on developing scientific advice and allocating quotas for three important commercial fish stocks on Georges Bank (cod, haddock, yellowtail flounder)
 - + A Species at Risk Working Group has developed a Canada-U.S. transboundary species at risk matrix which tracks listing and recovery efforts for marine species at risk in the two countries
 - American eel is listed on the matrix
 - However, no discussions on cooperative recovery have occurred to date (as neither country has proceeded with formal listing under species at risk legislation)



<http://ars.els-cdn.com/content/image/1-s2.0-S0308597X04000582-gr1.gif>

Conclusion

- Lots of international law and policy guidance for American eel fisheries has been placed on paper
- The following presentations should shed further light on the extent to which “principled governance” is being put into practice
- **Merci pour votre attention!**



<http://www.mnr.gov.on.ca>