

Sustaining American Eels: 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 Workshop
- + Two relevant global agreements have already been discussed by Matthew Gollock



– CITES



– CMS



- + Relevance of the Sargasso Sea Commission has been flagged by David Freestone

- A broader survey of global law and policy coordinates follows through a five-part “speed cruise”



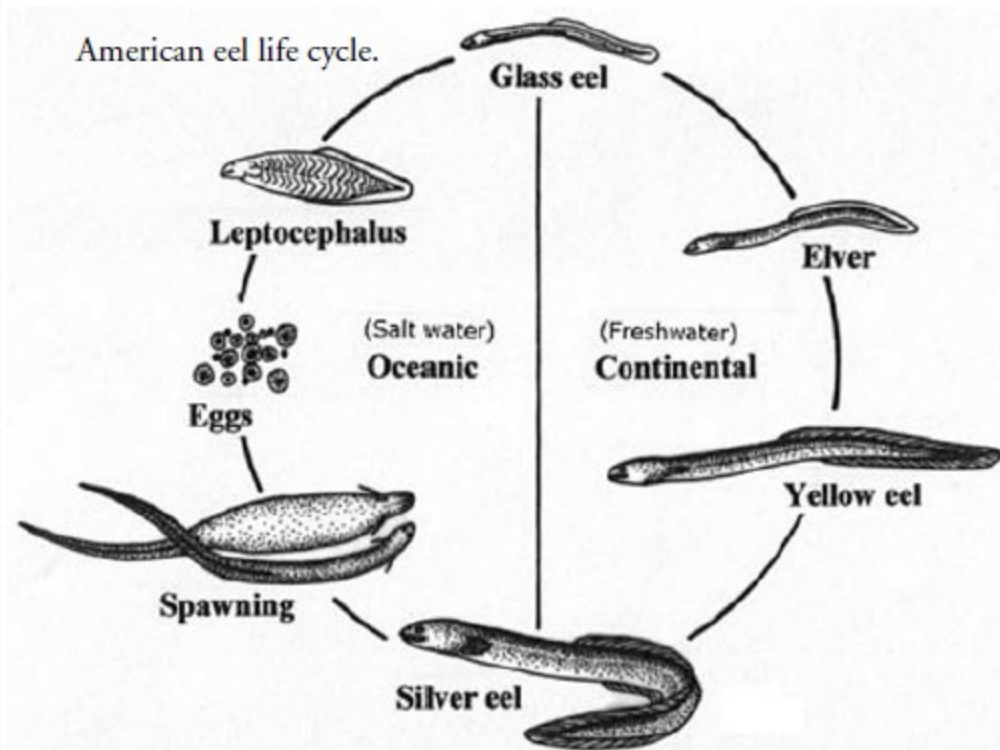
1. UN Law of the Sea Convention (UNCLOS)
2. Convention on Biological Diversity (CBD)
3. FAO Code of Conduct for Responsible Fisheries
4. UN Declaration on the Rights of Indigenous Peoples
5. UN Sustainable Development Goals (SDGs)



1. 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 UNCLOS
- + 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>

2. CBD



Four “course setting” aspects stand out

- Text of the Convention itself
- + Sets out key obligations potentially relevant to American eels as part of biodiversity conservation
- + For example, Parties required to
 - Cooperate for the conservation and sustainable use of marine biodiversity in respect of areas beyond national jurisdiction and other matters of mutual interest (Art. 5)
 - Establish a system of protected areas (Art. 8(a))
 - Respect and preserve indigenous and local knowledge and practices relevant to biological diversity (Art. 8(j))
 - Develop or maintain legislation and/or regulatory provisions for the protection of threatened species and populations (Art. 8(k))
 - Cooperate in providing financial and other support for biodiversity conservation, especially to developing countries (Art. 8(m))

- 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



- Post-2020 Global Biodiversity Framework

- + Parties still working towards finalizing a new set of biodiversity goals and targets
- + An updated Zero Draft of a Post-2020 Global Biodiversity Framework, published in August 2020, suggests 20 action-oriented targets for 2030 with potential relevance to American eel conservation, e.g.

- Target 1. By 2030, (50%) of land and sea areas globally are under spatial planning
- Target 2. By 2030, protect and conserve at least 30 percent of the planet
- Target 4. By 2030, ensure the harvesting, trade and use of wild species of fauna and flora is legal, at sustainable levels and safe
- Target 20. By 2030, ensure equitable participation in decision-making related to biodiversity and ensure rights over relevant resources of indigenous peoples and local communities, women and girls as well as youth



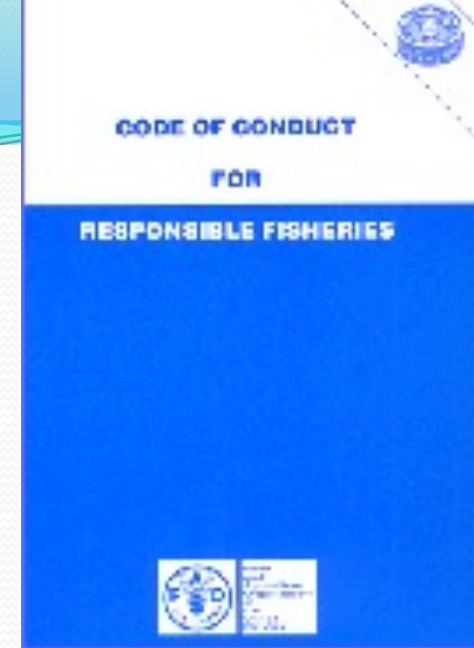
- + The 15th COP, scheduled for 11-24 October in Kunming, China, is expected to adopt a new post-2020 action agenda



3. FAO Code of Conduct

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)

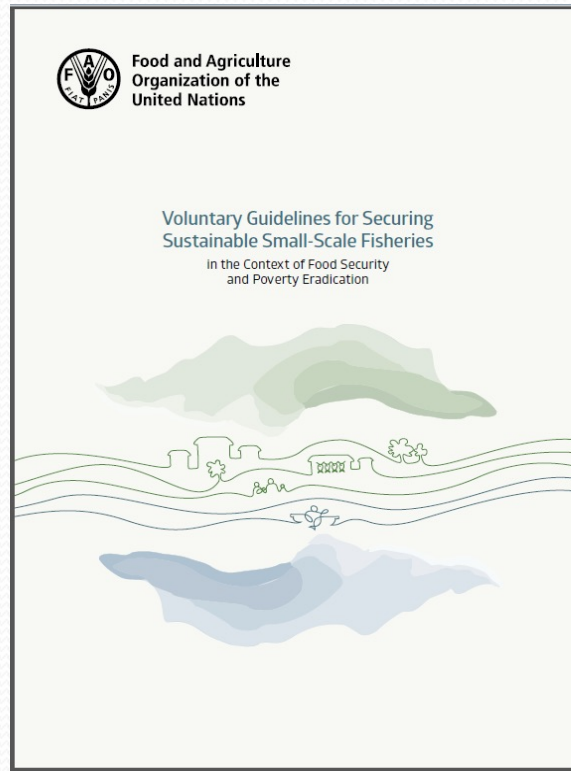


- Code also urges integrated coastal area management

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)

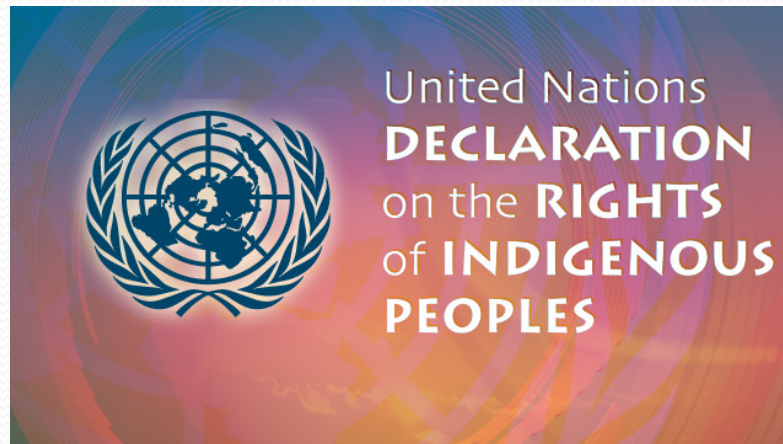


- Social equity
- + Due recognition should be given in fisheries management to the traditional practices and interests of indigenous people and local fishing communities (Art. 7.6.6)
- + The need to ensure socially and culturally appropriate tenure rights to fishing resources is further emphasized in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



4. 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)).

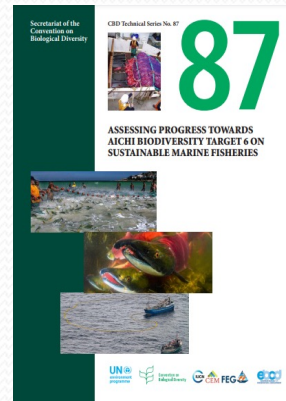


5. UN Sustainable Development Goals

- SDG 14 on conserving and sustainably using the oceans and marine resources has 10 targets with four targets providing aspirations especially relevant to the American eel
 - + Target 14.4 By 2020,
 - Effectively regulate harvesting
 - End overfishing, IUU fishing and destructive fishing practices
 - Implement science-based management plans
 - + Target 14.a
 - Increase scientific knowledge, develop research capacity and transfer marine technology to enhance the development of developing countries, in particular small island developing states and least developed countries
 - + Target 14.b
 - Provide access for small-scale artisanal fishers to marine resources and markets
 - + Target 14.c
 - Enhance the conservation and sustainable use of oceans and their resources by implementing international law as reflected in UNCLOS

Conclusion

- A plethora of international law and policy guidance for sustaining the American eel has been placed on paper
- No time to review the numerous implementation gaps and challenges!
 - + Such as, constraints in operationalizing the FAO Code of Conduct
 - Insufficient financing
 - Limited human resources
 - Incomplete legal and/or policy frameworks
 - Inadequate scientific data, research and understanding
 - + Such as, general and vague international responsibilities exemplified in CBD Aichi Target 6 on sustainable fisheries
 - Text calls for managing fisheries so that
 - * There are “no significant adverse impacts” on threatened species and vulnerable ecosystems
 - * Impacts of fisheries on stocks, species and ecosystems are “within safe ecological limits”
 - No agreed definitions and indicators for the terms “no significant adverse impacts” and “safe ecological limits”



- This Workshop provides a timely opportunity to discuss how “principled governance” is faring in practice and how practices might be enhanced in the future

- **Merci pour votre attention!**



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