

JF Pulvenis: RFMOs and the ABNJ: some brief remarks.

I would like to offer some brief and general remarks on the Regional Fisheries Management Organizations (RFMOs), their mandate and performance, in the light of the new developments related to the areas beyond national jurisdiction (ABNJ). Most important in this respect is the incipient process of developing an international legally binding instrument under the 1982 UN Convention on the Law of the Sea.

As of now, RFMOs are an essential component of international governance of fisheries. Within the ABNJ, there is no single sovereign or supranational entity with the competence to regulate fishing. RFMOs are thus, at the regional level, the only institutional framework that coordinates the activities of all sovereign entities with a real interest in fishing in these areas. The role and status of RFMOs in this regard are further strengthened by the fact that several provisions of the 1982 UN Convention on the Law of the Sea expressly call for their establishment as the preferred mechanism for compliance with the duty of cooperation for the conservation and management of specific stocks as well as of the living resources of the high seas. In this respect, it should be mentioned that focusing mainly or exclusively on the ABNJ would not reflect however the mandate and scope of many RFMOs whose area of competence covers not only the high seas but also areas under national sovereignty or jurisdiction. Such is, for instance, the case of IATTC, whose area of competence extends up to the coastline of the Americas itself, as an expression of the need for a holistic approach for the conservation and management of the target stocks and associated species and their ecosystems in the region.

In these circumstances and in spite of the new developments mentioned above, it is hard and probably not very realistic to conceive a future scenario without RFMOs in the ABNJ, either because they would have been deprived of their *raison d'être* (as a consequence for instance of a prohibition of all fishing activities in the high seas) or because they would have been substituted with a totally different and new mechanism

established at the regional or global level. Significantly, the Ad Hoc Open Ended Informal Working Group on the ABNJ recently recommended to the General Assembly that it "*Recognize that the process*" of negotiation of a new instrument "*should not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies*". The UNGA for its part has repeatedly highlighted the importance and relevance of RFMOs, as reflected in the numerous references to these bodies in the successive resolutions on sustainable fisheries that it has adopted.

The more probable future that may be visualized would be characterized by the presence, at the regional level and alongside RFMOs, of a constellation of other bodies or arrangements competent for dealing with matters and activities in the ABNJ other than fisheries. From this perspective, a first challenge would be to ensure that these bodies and arrangements, as well as RFMOs, would cover the whole area and the whole range of activities without any gaps in that coverage.

In such a scenario, the new developments related to the ABNJ would not lead to a situation very different from which that RFMOs have already faced in the past in reiterated opportunities, when they were prompted to evolve and adapt in response to the change of circumstances and the introduction of new concepts such as "sustainable" fisheries, "responsible" fishing or an "ecosystem approach to fisheries management".

Rather it might be expected that the new developments related to the ABNJ that we referred to above would result in the expansion of the mandate and activities of RFMOs, either within the framework of their constitutive agreement or through the adoption of additional instruments (an interesting precedent an example of the latter is the Agreement on the International Dolphin Conservation Program (AIDCP) in the case of IATTC).

Nevertheless, even in the hypothesis of such an expansion, it would not be realistic to expect that RFMOs could go much beyond what is fisheries specific. In particular, RFMOs should not be expected to compensate for the absence of regional bodies or

arrangements endowed with the competences and responsibilities needed to deal with other aspects of governance of the ABNJ.

We should witness also an increased urge to strengthen RFMOs and their performance through addressing the various factors that hamper that performance such as decision-making, enforcement, settlement of disputes, particularly when such factors are identified through performance reviews.

In addition, there are two were general areas in which progress is strongly needed, both of which are quite relevant to the many challenges related to the ABNJ: coordination and cooperation, and participation.

First, there is a need to strengthen the coordination and cooperation among RFMOs that share similar mandates (e.g. tuna RFMOs), as well as those that share complementary mandates and areas of competence. This cooperation and coordination may involve the respective "bodies politic" of these RFMOs (such as in the Kobe process involving the five tuna RFMOs) or their secretariats (for instance, the Regional Fishery Body Secretariats Network (RSN)). Additionally, there is a need for enhanced coordination and cooperation between RFMOs and NGOs with a special interest in the field of fisheries, both the so-called "environmental NGOs" as well as NGOs representing the fisheries sector. There is also a need for coordination and cooperation between RFMOs and the other bodies or arrangements competent for matters and activities related to the ABNJ other than fisheries, primarily regional intergovernmental bodies or arrangements but also non-governmental ones. Finally, we should not forget the importance of coordination and cooperation between RFMOs and the relevant institutions at the global level, in two directions: from the global to the regional, in order to integrate and materialize the commitments that have been adopted globally, and from the regional to the global to ensure that the concerns of RFMOs and their contribution are appropriately taken into account in the global debate.

Progress is also strongly needed towards ensuring and strengthening the full and effective participation of all RFMO members in work of the bodies to which they belong.

Whatever the strength of the RFMOs secretariats, or the degree of confidence that they may enjoy, the fate of RFMOs and the efficiency of their performance is conditional primarily on all their members participating fully and in a meaningful manner in the processes and activities of these RFMOs and particularly in the preparation, adoption and implementation of appropriate conservation and management measures. Merely formal participation (for instance, limited to attending meetings including with support eventually provided through a special fund) is not sufficient. To ensure the kind of participation that is required, capacity building at the national level is essential as well as building political awareness and commitment. The goal should be to improve governance at the national and local level not only in the fisheries sector but also beyond that sector. Without good governance at the national and local level, international governance, including through RFMOs, would become largely irrelevant in the longer-term and sustainable fisheries, particularly in the ABNJ, a goal impossible to reach.