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REVIEW OF INDONESIAN LEGAL ARRANGEMENT ON TUNA FISHERIES

Melda Kamil Ariadno*

High seas fishery is very strategic to Indonesia mostly because of tuna fisheries in which Indonesia plays a quite substantive role as the major tuna exporting country in the world. International law provides comprehensive high seas management system through the adoption of various treaties and the establishment of regional fisheries management organizations (RFMOs). Challenge to Indonesian Government thus whether Indonesia could apply genuinely the high seas fishing management measures and comply with RFMOs of which Indonesia is member. Substantial rules and regulations have been adopted by Indonesia and yet the major question remains whether Indonesia is ready to exercise its obligations under high seas fisheries regime.

Keywords: *high seas fisheries, tuna fisheries, 1995 UNFSA, RFMOs*

I. INTRODUCTION

Increasing Indonesia's ability to utilize high seas fisheries has forced Indonesian stakeholders of the tuna fishing industry (viz., the Ministry of Marine Affairs and Fisheries/MMAF, privately owned fishing companies, and the organization that represents them) to join the management of sustainable high seas fisheries. Asosiasi Tuna Indonesia (ASTUIN), for instance, became a member of OPRT on May 14, 2002 and decided to join the movement to combat Illegal, Unregulated and Unreported (IUU) fishing and Flag of Convenience (FOC) vessels practices¹. The government (represented by the MMAF) has built a common

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¹ The Indonesian government and fishing industry have realized that IUU practices and FOC vessels have impaired Indonesian interests in the market, because it is strongly suspected that many tuna landings in Japan have been made by FOC vessels that are flagged by Indonesian and are likely conducting IUU fishing in the high seas. Consequently, their catch will be recorded as Indonesian export volume, while the revenue is never enjoyed by Indonesia. See MMAF Press Release, 11/15/06, at

understanding with many developed countries, such as Australia and Japan, as well as with Regional Fisheries Management Organizations (RFMOs), to sustainably manage the tuna fishing industry in Indonesia.

The MMAF has been successful in making Indonesia become a member of certain RFMOs, namely the Indian Ocean Tuna Commission (IOTC) and The Convention for the Conservation of Southern Bluefin Tuna (CCSBT) and soon Indonesia will also become a member of The Western and Central Pacific Fisheries Commission (WCPFC). MMAF preparations to accede to the United Nations Fish Stock Agreement 1995 (1995 UNFSA) were underway from 2001 until Indonesia eventually ratified that Agreement in 2009. Even though it has to be acknowledged that those actions were initially driven by the economic interest to preserve the viability of Indonesian fleets on the high seas. The other reason that actually needs to be realized in adopting high seas management measures is to sustain the resources. Tuna fishermen have to go from the Indonesian Exclusive Economic Zone (EEZ) further out to the high seas, such as the Indian Ocean, and land their catches in Mauritius, SriLanka and the Maldives². The fishing journey has become much longer than it used to be, namely from only 15 days at sea it has now become 25-40 days at sea. This has increased the risks faced by the ship and ship's crew, not to mention the condition of the ship in terms of seaworthiness.

The current situation needs to be rectified in a due course. Fishing activities are not viable if there is a decline in tuna resources, either in the Indonesian EEZ or in the high seas. The global decrease in tuna catch has shown that something is wrong in tuna management, especially in the high seas where each country has the right to go out and fish. Sustainability has become a must in preserving tuna fishing, especially for Indonesia, that has obtained quite high income from tuna export³.

However, the question remains: will the Indonesian government address existing problems faced by tuna fishermen and the industry merely by ratifying the 1995 UNFSA and becoming a member of certain RFMOs? Or will it ensure that all relevant national policy and regula-

<http://www.MMAF.go.id/content.php?c=3519> download at 2/24/2007.

² As explained by ASTUIN.

³ See the export figures of the Ministry of Trade Report during 2005-2008.

tions are compatible with international rules and agreements and secure their implementation?

II. BASIC PRINCIPLES ON TUNA FISHERY

There are at least two parts in 1982 UNCLOS which touch the affairs of tuna fishery - those are the part of EEZ water and the high seas. By ratifying 1982 UNCLOS alone, a State is actually bound by the obligations to manage tuna fishery in regional level, especially those in EEZ waters and high seas. Nevertheless tuna fishing within national jurisdiction including those in territorial seas and archipelagic waters is supposedly compatible with the management action taken in the EEZ and high seas.

1. THE EXCLUSIVE ECONOMIC ZONE

1982 UNCLOS has stipulated under the Part VI of EEZ particularly in article 63 and 64, the obligations of a State to cooperate at regional level in regards to highly migratory species, such as tuna. This cooperation is strongly suggested to be developed within regional organization. The country that actually involves in tuna fishing is called to manage this resource in a sustainable manner including to adopt both national and regional measures in conserving tuna.

Even though the EEZ falls under the sovereign right of the coastal state, a tuna fishery is however a highly migratory stock in nature since it is moving widely in a continuous manner. The management of tuna in EEZ is therefore related to the availability of tuna beyond EEZ in which it is subject to the high seas regime that is freedom of fishing. The management of tuna in the jurisdiction of coastal state whether in territorial sea or archipelagic water therefore should be compatible with the sustainable fisheries principle. The conservation measures shall also be applied in the EEZ as well as national waters so that the tuna fishery as highly migratory species would be well managed in a sustainable manner.

2. THE HIGH SEAS

The doctrine of freedom the high sea is actually almost could not be recognized in present day. 1982 UNCLOS remains stating that in article 87, which acknowledges the right of every state to navigate, overflight, lay submarine cable and pipelines, construct any artificial islands and other installations, fish and carry out scientific research. These rights nonetheless have to be exercised according to other stipulations recorded in the Convention. It means that any states who fish on the high seas should have regard of any other stipulations spelled out in the Convention including those regarding highly migratory species and straddling stocks⁴.

1982 UNCLOS has specifically mentioned certain kind of species as shared resources, those are:

- a. Highly migratory species
- b. Straddling stocks

⁴ During the negotiation of the Third United Nations Conference on the Law of the Sea there was a hectic debate about the doctrine of freedom of fishing. Many develop countries who had built organization to manage fisheries that counted as shared stocks such salmon and tuna, wanted to abolish the freedom of fishing on the high seas. They had experienced the declining of the fish resources in their own water and they had realized that fisheries on the high seas would be considered as the global commons that meant have to be cooperatively utilized and managed. This proposition was however denied by the majority developing states since the freedom of the high seas regime was still spelled out in the Convention. The challenge was however persisted that is how to encourage states to cooperate in managing high seas fisheries so the resources would not be depleted or overexploited. That is the reason of stipulations in the article 116-120, 1982 UNCLOS.

By the time of The III United Nations Conference on the Law Sea started in early 1970s the application of freedom of fishing on the high seas is no longer a genuine freedom, the concept has been moved out from its original meaning to the regime that would be more accepted by all nations, that is "highly regulated freedom of fishing". It means that freedom of fishing shall be regarded as responsible freedom of fishing that is to utilize high seas fisheries in sustainable manner. Thus there is shifting from the regime of freedom of fishing to the sustainable utilization of high seas fisheries, which is actually undertaken for the continuous utilization and viability of the states' interest in engaging high seas fishing. Further reference, see Melda Kamil Ariadno, *Indonesian Responsibility for High Seas Fisheries: A Legal Analysis*, Lambert Academic Publishing, Germany, 2012.

- c. Marine mammals
- d. Anadromous species
- d. Catadromous species

At least there are two major obligations of states, which should be performed if engaging fishing activities on tuna - those are duty to adopt national measures and duty to cooperate:

a. duty to adopt national measures

Any states that engage fishing on the high seas have to adopt national measures to their nationals who are dealing with that activity. Those measures could be in form of issuance of license to fish on the high seas, maintaining the data of catches on the high seas, issuance of certificate of seaworthiness and manning of fishing vessels, including the monitoring, control and surveillance (MCS) of activities held by their nationals on the high seas. Many states have govern in their national laws all fishing activities engaged by their national regardless the area of fishing; it means that the laws will apply wherever their nationals go fishing, and their states could impose such legal enforcement if those laws are ever violated.

b. duty to cooperate

This kind of duty could be performed in several manners. There is no obligation of states to enter into any organizations if they determine to do that. They also could not be enforced to come into any agreement with any other states. They could cooperate in any manner, such as exchange of information of activities that have been carried out by their nationals or develop the appropriate technology that is safe and sound to the sustainability of fisheries resources on the high seas. Many states have been performing their duty to cooperate through Food and Agriculture Organization (FAO), as also has been done by Indonesia as a member of FAO. This cooperation nonetheless would be regarded as non-specific cooperation since the spirit would be more through inventing policy instead of implementing them. FAO has initiated/sponsored many some major conventions on fisheries such as 1993 FAO Compliance Agreement, the establishment of IOTC, and the adoption of 1995 UN Fish Stocks Agreement, not to mention the launching of IPOA as the implementation of Code of Conduct for Responsible Fishing (CCRF).

1982 UNCLOS stipulates that there is no jurisdiction of whomever on the high seas except those from the state whose flag have been used by such vessels. It means that only flag state which could exercise jurisdiction in any case for vessel navigating on the high seas. Unfortunately not every state is willing to supervise and to impose their laws upon their vessels. Some states even do not maintain their relationship with their vessel once they are finish with the registration process to obtain the state's flag. This kind of states would be regarded as "flag of convenience" (FOC) states, which only have a considerably little and simple requirements for any vessel to obtain their nationality. The motive is merely to take economic advantages from the registration process that is the registration fee, but those states have no intention to maintain a close relationship with the vessels once they are granted the nationality. This explains why 1982 UNCLOS maintains the principle of "genuine link" between the state and the vessel (article 91 paragraph 1). This principle requests there should be a true connection between the state that granted the nationality and the vessel flying its flag. The relationship could be proven by certain requirements that have to be met by vessels which applies nationality to that particular state, such as they shall have office in that states, that the manning should be recruited from its nationals, and that the reports should be given on regular basis to the state regarding the activities of the vessels.

This situation has been acknowledged by many states including by international organization such as FAO, 1993 FAO Compliance Agreement is actually adopted to implement the regime of flag state jurisdiction. States are expected to exercise their jurisdiction on the high seas upon their fishing vessels, so the vessel would not violate the laws including international law that is applied to that particular area.

III. THE INTERNATIONAL RULE RELATING TO TUNA FISHERY

1. THE 1995 UN FISH STOCKS AGREEMENT

a. Background of Adoption

Nearly ten years after the adoption of the 1982 UNCLOS, fishing on the high seas became a major international problem. The 1982 UNCLOS gave all states the freedom to fish on the high seas, but coastal states began to complain that fleets fishing on the high seas were reduc-

ing catches in their waters.⁵ The main problem is the fish populations that “straddle” the boundaries of countries’ 200-mile EEZs, like cod off Canada’s eastern coast and pollack in the Bering Sea, and highly migratory species like tuna and swordfish, which move between EEZs and the high seas.

In the early 1990s, most stocks of commercially valued fish were running low, according to the FAO⁶. Many coastal states argued that the industrial-scale fishing operations of the so-called “distant-water” states on the high seas were undermining their efforts to conserve and revitalize fish stocks within the EEZs. Governments then addressed this issue at the Earth Summit – the UN Conference on Environment and Development (UNCED), held in Rio de Janeiro in June 1992. They called on the United Nations to find ways to conserve fish stocks and prevent international conflicts over fishing on the high seas.

According to the Conference, there are three main problems regarding the conservation and management of straddling and fish stocks: environmental, economic and political. The environmental problem is that commercial fishing operations are exceeding the ocean’s ecological limits, unraveling an intricate web of marine life that makes the sea a vital part of the earth’s life support system. Almost 70 per cent of all fish stocks are either fully to heavily exploited (44 percent), over-exploited (16 percent), depleted (6 percent) or very slowly recovering from overfishing (3 percent), according to the FAO⁷. In a third of the world’s major fishing regions, the annual catch is down 20 per cent or more from peak years. Without significant changes in current fishing practices and remedial action to allow endangered fish stocks to regenerate, the world’s fisheries face possible collapse.

Two main factors endanger the sustainability of straddling and highly migratory fish stocks: overfishing and the impact of human activities⁸.

⁵ Evelyn Meltzer, ‘Global Overview of Straddling and Highly Migratory Fish Stocks: The Nonsustainable Nature of High Seas Fisheries’, *Ocean Development and International Law* :1994, 25, PP.226. Viewed on 15 March 2010.

⁶ The 1995 UN Fish Stocks Agreement elaborates general principles concerning conservation and management of straddling fish stocks and highly migratory fish stocks. Viewed at www.fao.org on 15 March 2010.

⁷ <http://www.un.org/ecosocdev/geninfo/sustdev/fishery>.

⁸ Gordon Munro, et.al. “The Conservation and Management of Shared Fish Stocks: Legal and Economic Aspects”, FAO Fisheries Technical Paper, Food and Agriculture

Efforts were taken to conserve and manage the long-term sustainability of fish stocks. Human activities that imperil fish include oil spills; destruction of mangrove swamps and estuaries; industrial air pollution; and production of nutrients, pesticides and other materials that run off the land and pollute the oceans⁹. Some fishing practices, such as using dynamite on coral reefs to kill fish will destroy critical habitats; likewise introduction of exotic species either accidentally or deliberately into a marine environment can harm other species in the ecosystem.

Governments have called on the United Nations to negotiate an agreement to reduce land-based sources of marine pollution. Under a program of action adopted by the UN General Assembly in December 1995, states agreed to reduce ocean pollution caused by sewage, heavy metals, oil, pesticides, nutrients and litter, and to stop activities that physically alter and destroy marine habitats.¹⁰

The economic problem is the fisheries industry. According to the FAO, the size of the world's fishing fleet increased at twice the rate of the increase in the global marine catch between 1970 and 1990¹¹. This increasing fishing capacity has undermined the sustainability of fisheries and the viability of the fishing industry itself. Furthermore, the fishing industry is overcapitalized. Worldwide, government subsidies to the fishing industry total some US\$ 54 billion annually¹². Usually, fleets on the high seas use non-selective fishing equipment, which indiscriminately sweeps up everything in their path – e.g., undersize target species, non-target species and other marine life, such as mollusks, jellyfish, turtles and porpoises. This “by-catch”, currently estimated at 27 million tons annually, is thrown back into the ocean, but the species are usually too damaged to survive¹³.

The political issue concerns conflicts between coastal and distant-water fishing states. For example, in mid-1993, Canada declared a mor-

Organization, 2004.

⁹ Lawrence Juda, ‘The United Nations Fish Stocks Agreement’, in Olav Schram Stokke and Øystein B. Thommessen (eds.), *Yearbook of International Co-operation on Environment and Development*, 2001, London: Earthscan Publications), 56. See also <http://www.un.org/ecosocdev/geninfo/sustdev/fishery.htm>

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*

¹³ <http://www.un.org/ecosocdev/geninfo/sustdev/fishery.htm>

atorium on cod fishing off its Atlantic coast until stocks were able to regenerate, putting between 20,000 and 30,000 fishermen out of work¹⁴. This also happened in the USA, where fisheries for Atlantic haddock, cod and flounder and for Pacific salmon virtually collapsed. Iceland also cut back its domestic fishing by 50 percent because of depleted stocks¹⁵. Meanwhile, unregulated foreign fleets continued to fish just off these countries' boundaries.

Coastal states argued that the high social and economic cost at home of fishermen out of work in order to preserve fish stocks could not be supported if foreign fleets continued to fish without restrictions on the high seas¹⁶. Based on the situation described above, a draft resolution was proposed by several countries.¹⁷ The UN Conference on Straddling and Highly Migratory Fish Stocks held its first full meeting in July 1993. After six negotiating sessions, a legally binding Agreement, that is, The United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, was opened for signing on 4 December 1995.

The Agreement was adopted on 4 August 1995 by the United Nations Conference on Straddling Stocks and Highly Migratory Fish Stocks and opened for signature on 4 December 1995. It remained open for signature until 4 December 1996 and was signed by 59 States and entities,¹⁸ entering into force on 11 December 2001, 30 days after the date of deposit of the thirtieth instrument of ratification or accession, in

¹⁴ Brad M. Caldwell, *United Nations fishing Agreement in Force 11 December 2001: an Incremental Step Towards Enforcements on the High Seas*, 2002. Viewed at www.admiraltylaw.com on 14 March 2010.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ Those were: Argentina, Australia, Belize, Brazil, Canada, Cape Verde, Fiji, Gabon, Guinea-Bissau, Iceland, Indonesia, Israel, Malaysia, Marshall Islands, Mauritania, Namibia, New Zealand, Norway, Samoa, Senegal, Singapore, Trinidad and Tobago, Ukraine, the US and Uruguay.

¹⁸ The requirements for the entry into force of the Agreement were met on 11 November 2001, when the Minister for Foreign Affairs of Malta deposited an instrument of accession to the Agreement with the Secretary-General. Viewed at www.fao.org/aquaculture on 14 March 2010.

accordance with article 40 (1) of the Agreement¹⁹.

b. Concept

The 1995 UN Fish Stocks Agreement establishes significant principles for the conservation and management of those fish stocks and emphasizes that all related management must be based on the precautionary approach and the best available scientific information²⁰. It restates the fundamental principle of the 1982 UNCLOS: states should cooperate to ensure conservation and promote the objective of optimum utilization of fishery resources both within and beyond the exclusive economic zone. It also provides means to give effect to this new goal, stressing the role and responsibility of regional fishery bodies to ensure protection of stocks in areas beyond the jurisdiction of coastal states.

The Agreement provides a framework for cooperation among member states and also encourages third parties to respect such cooperation. It establishes minimum international standards for the conservation and management of straddling fish stocks and highly migratory fish stocks; ensures that measures taken for the conservation and management of those stocks in areas under national jurisdiction and in the adjacent high seas are compatible and coherent; ensures that there are effective

¹⁹ *Ibid.*

²⁰ The concept of this Agreement shown as follow:

- (1) The unity of stocks and the need for management of stocks over their entire range;
- (2) The imperative for compatibility of EEZ and high-seas fisheries regimes;
- (3) A concern with the catch of non-targeted species and the interdependence of stocks;
- (4) The need for a precautionary approach to fisheries management;
- (5) The transparency in the decision making and activities of regional fisheries management organizations and arrangements.
- (6) Establishes the basis for the sustainable management and conservation of the world's fisheries;
- (7) Provides for the establishment of quotas;
- (8) Calls for the setting up of regional fishing organizations where none exist;
- (9) Tackles problems caused by the persistence of unauthorized fishing;
- (10) Sets out procedures for ensuring compliance with its provisions, including the right to board and inspect vessels belonging to other States; and
- (11) Prescribes options for the compulsory and binding peaceful settlement of disputes between States.

mechanisms for compliance and enforcement of those measures on the high seas; and recognizes the special requirements of developing states in relation to conservation and management and to the development and participation in fisheries for the two types of stocks²¹.

c. General Principles

Based on Article 5, the general principles are as follows:

1. Long-term sustainability of straddling fish stocks and highly migratory fish stocks and promotion of the objective of their optimum utilization²².
2. The application of a precautionary approach²³.

²¹ See at http://www.un.org/Depts/los/convention_agreements/convention_overview_fish_stocks.htm

²² Such measures shall be based on the best scientific evidence available and are designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards.

²³ Moreover, article 6 stipulates the application of the precautionary approach. States are obliged to apply the precautionary approach widely to conservation, management and exploitation of straddling fish stocks and highly migratory fish stocks in order to protect the living marine resources and preserve the marine environment. In implementing the precautionary approach, States shall:

- (1) Improve decision-making for fishery resource conservation and management by obtaining and sharing the best scientific information available and implementing improved techniques for dealing with risk and uncertainty;
- (2) Apply the guidelines set out in Annex II and determine, on the basis of the best scientific information available, stock-specific reference points and the action to be taken if they are exceeded;
- (3) take into account, inter alia, uncertainties relating to the size and productivity of the stocks, reference points, stock condition in relation to such reference points, levels and distribution of fishing mortality and the impact of fishing activities on non-target and associated or dependent species, as well as existing and predicted oceanic, environmental and socio-economic conditions; and develop data collection and research programs to assess the impact of fishing on non-target and associated or dependent species and their environment, and adopt plans which are necessary to ensure the conservation of such species and to protect habitats of special concern.
- (4) Where the status of target stocks or non-target or associated or dependent species is of concern, States shall subject such stocks and species to enhanced monitoring

3. Reduction of pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species, and impacts on associated or dependent species, in particular endangered species, through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques.
4. Protection of biodiversity in the marine environment.
5. Sustainable use of marine resources.
6. Taking into regard the interests of artisanal and subsistence fishers.
7. The use of technology to promote and conduct scientific research and develop appropriate technologies in support of fishery conservation and management.
8. Effective monitoring, control and surveillance.

d. Main Features

This Agreement consists of 50 articles and one annex. Among its main features are: (1) The relationship between this Agreement and the United Nations Convention on the Law of the Sea. According to Article 4, this Agreement shall be interpreted as a part of UNCLOS. (2) Compatibility of conservation and management measures (Article 7). With respect to highly migratory fish stocks, the relevant coastal and other states whose nationals fish for such stocks in the region shall cooperate, either directly or through the appropriate mechanisms for cooperation, with a view to ensuring conservation and promoting the objective of optimum utilization of such stocks throughout the region, both within and beyond the areas under national jurisdiction²⁴. Conservation and management measures established for the high seas and

in order to review their status and the efficacy of conservation and management measures. They shall update those measures regularly.

- (5) If a natural phenomenon has a significant adverse impact on the status of straddling fish stocks or highly migratory fish stocks, States shall adopt conservation and management measures on an emergency basis to ensure that fishing activity does not exacerbate such adverse impact. States has to adopt such measures on an emergency basis where fishing activity presents a serious threat to the sustainability of stocks. That emergency measures shall be temporary and shall be based on the best scientific evidence available.

²⁴ See http://www.un.org/Depts/los/convention_agreements/texts/fish_stocks_agreement/CONF164_37/htm

those adopted for areas under national jurisdiction shall be compatible in order to ensure conservation and management of the straddling fish stocks and highly migratory fish stocks in their entirety²⁵. To this end, coastal states and states fishing on the high seas have a duty to cooperate for the purpose of achieving compatible measures in respect of such stocks. (3) Cooperation for Conservations and Management (Article 8). Coastal states and states fishing on the high seas shall manage to ensure effective conservation and management of such stocks. Moreover, states could do consultations in good faith and without delay, particularly where there is evidence that the straddling fish stocks and highly migratory fish stocks concerned may be under threat of over-exploitation or where a new fishery is being developed for such stocks. In case there is a subregional or regional fisheries management organization or arrangement that has the competence to establish conservation and management measures for particular straddling fish stocks or highly migratory fish stocks, states fishing for the stocks on the high seas and relevant coastal states shall give effect to their duty to cooperate by becoming members of such organization or participants in such arrangement, or by agreeing to apply the conservation and management measures established by such organization or arrangement²⁶. (4) This

²⁵ See http://www.un.org/Depts/los/convention_agreements/texts/fish_stocks_agreement/CONF164_37/htm

²⁶ The functions of subregional and regional fisheries management are governed in article 10, they are :

- a. to ensure the long-term sustainability of straddling fish stocks and highly migratory fish stocks;
- b. to regulate the participatory rights such as allocations of allowable catch or levels of fishing effort;
- c. to recommend international minimum standards for the responsible conduct of fishing operations;
- d. to obtain and evaluate scientific advice, review the status of the stocks and assess the impact of fishing on non-target and associated or dependent species;
- e. to facilitate on standards for collection, reporting, verification and exchange of data on fisheries for the stocks;
- f. to compile and disseminate accurate and complete statistical data, as described in Annex I, to ensure that the best scientific evidence is available, while maintaining confidentiality where appropriate;
- g. to promote and conduct scientific assessments of the stocks and relevant research and disseminate the results thereof;
- h. to establish appropriate cooperative mechanisms for effective monitoring, con-

Agreement also stipulates that only those states that are members of such an organization or participants in such an arrangement, or which agree to apply the conservation and management measures established by such organization or arrangement, shall have access to the fishery resources to which those measures apply. Where there is no subregional or regional fisheries management organization or arrangement to establish conservation and management measures for a particular straddling fish stock or highly migratory fish stock, relevant coastal states and states fishing on the high seas for such stock in the subregion or region shall cooperate to establish such an organization or enter into other appropriate arrangements to ensure conservation and management of such stock and shall participate in the work of the organization or arrangement²⁷. Any state intending to propose that action is taken by an intergovernmental organization having competence with respect to living resources should, where such action would have a significant effect on conservation and management measures already established by a competent subregional or regional fisheries management organization or arrangement, consult through that organization or arrangement with its members or participants²⁸. Such consultation should take place prior to the submission of the proposal to the intergovernmental organization, sub-regional and regional fisheries management organizations and arrangements. (5) There are several issues the states shall consider when they enter or propose to establish a sub-regional or regional fisheries management organizations for straddling fish stocks and highly migratory fish stocks²⁹. (6) States fishing for straddling fish stocks and

trol, surveillance and enforcement;

- i. to facilitate decision-making procedures which facilitate the adoption of conservation and management measures in a timely and effective manner;
- j. to promote the peaceful settlement of disputes in accordance with Part VIII of this Agreement;
- k. to ensure the full cooperation of their relevant national agencies and industries in implementing the recommendations and decisions of the organization or arrangement; and
- l. to give due publicity to the conservation and management measures established by the organization or arrangement.

²⁷ *Ibid*

²⁸ *Ibid*

²⁹ Those aspects include the following:

- a. The stocks to which conservation and management measures apply;

highly migratory fish stocks in an area of the high seas surrounded entirely by an area under the national jurisdiction of a single state and the latter state shall cooperate to establish conservation and management measures in respect of those stocks in the high seas area. Taking into account the natural characteristics of the area, states shall pay special attention to the establishment of compatible conservation and management measures for such stocks pursuant to Article 7 of this Agreement. Measures taken shall take into account the rights, duties and interests of the coastal state under the 1982 UNCLOS, shall be based on the best scientific evidence available and shall also take into account any conservation and management measures adopted and applied with respect to the same stocks in accordance with Article 61 of the 1982 UNCLOS by the coastal state in the area under national jurisdiction. There should be also measures for MCS and enforcement to ensure compliance with the conservation and management measures in respect of the high seas. (7) States shall act in good faith and make every effort to agree without delay on conservation and management measures to be applied in the carrying out of fishing operations in the area. The Agreement also stipulates the duties of the flag state³⁰. (8) Compliance and enforcement

-
- b. The area of application;
 - c. The relationship between the work of the new organization or arrangement and the role, objectives and operations of any relevant existing fisheries management organizations or arrangements; and
 - d. The mechanisms by which the organization or arrangement will obtain scientific advice and review the status of the stocks, including, where appropriate, the establishment of a scientific advisory body.

³⁰ Pursuant to article 18, the duties are as follows:

- a. ... take such measures as may be necessary to ensure that vessels flying its flag comply with subregional and regional conservation and management measures and those vessels do not engage in any activity which undermines the effectiveness of such measures. It also shall authorize the use of vessels flying its flag for fishing on the high seas only where it is able to exercise effectively its responsibilities in respect of such vessels under the Convention and this Agreement. This measures are: control of such vessels on the high seas by means of fishing licenses, authorizations or permits, in accordance with any applicable procedures agreed at the sub regional, regional or global level; to apply terms and conditions to the license, authorization or permit sufficient to fulfill any sub regional, regional or global obligations of the flag State; to prohibit fishing on the high seas by vessels which are not duly licensed or authorized to fish, or fishing on the high seas by vessels otherwise than in accordance with the terms and conditions of a

of this Agreement can be done by flag states; international cooperation, or sub-regional or regional cooperation of port states (Articles 19-23). (9) There are special requirements for developing states (Articles 24-26)³¹. These requirements were given to developing states due to differ-

license, authorization or permit;

- b. to oblige vessels fishing on the high seas to carry the license, authorization or permit on board at all times and to produce it on demand for inspection by a duly authorized person; and to ensure that vessels flying its flag do not conduct unauthorized fishing within areas under the national jurisdiction of other States;
- c. to establish a national record of fishing vessels authorized to fish on the high seas and provision of access to the information contained in that record on request by directly interested States, taking into account and national laws of the flag State regarding the release of such information;
- d. to require for marking of fishing vessels and fishing gear for identification in accordance with uniform and internationally recognizable vessel and gear marking systems, such as the Food and Agriculture Organization of the United Nations Standard Specifications for the Marking and Identification of Fishing Vessels;
- e. to require for recording and timely reporting of vessel position, catch of target and non-target species, fishing effort and other relevant fisheries data in accordance with sub regional, regional and global standards for collection of such data;
- f. to require for verifying the catch of target and non-target species through such means as observer programmes, inspection schemes, unloading reports, supervision of transshipment and monitoring of landed catches and market statistics;
- g. to undertake monitoring, control and surveillance of such vessels, their fishing operations and related activities by, inter alia: the implementation of national inspection schemes and subregional and regional schemes for cooperation in enforcement pursuant to articles 21 and 22, including requirements for such vessels to permit access by duly authorized inspectors from other States; the implementation of national observer programs and subregional and regional observer programs in which the flag State is a participant, including requirements for such vessels to permit access by observers from other States to carry out the functions agreed under the programs; and the development and implementation of vessel monitoring systems, including, as appropriate, satellite transmitter systems, in accordance with any national programs and those which have been subregionally, regionally or globally agreed among the States concerned; regulation of transshipment on the high seas to ensure that the effectiveness of conservation and management measures is not undermined; an regulation of fishing activities to ensure compliance with subregional, regional or global measures, including those aimed at minimizing catches of non-target species. Where there is a subregionally, regionally or globally agreed system of monitoring, control and surveillance in effect, States shall ensure that the measures they impose on vessels flying their flag are compatible with that system.

³¹ The Agreement also mentions some aspects that need to be consider regarding the

ences regarding technology, resources, and interests. This Agreement noted that the least developed countries and small island countries shall have more privileges. It stated that there is a need for assistance (which also includes funding assistance for the implementation of the Agreement) and facilitation from developed states. (10) The Annex contains Standard Requirements for the Collection and Sharing of Data, which consists of seven articles. The states' parties should verify data through an appropriate system³².

2. THE 1993 FAO COMPLIANCE AGREEMENT

The 1993 FAO Compliance Agreement arose from concerns over the reduction of fish stocks on the high seas as a result of the increase in IUU fishing. In particular, the agreement was to try to overcome the problem of reflagging and flag of convenience associated with fishing vessels conducting IUU fishing³³.

cooperation with the developing states, namely as follows:

- a. The vulnerability of developing States which are dependent on the exploitation of living marine resources, including for meeting the nutritional requirements of their populations or parts thereof;
- b. The need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and women fishworkers, as well as indigenous people in developing States, particularly small island developing States; and
- c. The need to ensure that such measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing States.

³² The data that should be provided by states parties to manage the conservation of straddling fish stocks and highly migratory fish stock are:

- a. Time series of catch and effort statistics by fishery and fleet;
- b. Total catch in number, nominal weight, or both, by species (both target and non-target) as is appropriate to each fishery. [Nominal weight is defined by the Food and Agriculture Organization of the United Nations as the live-weight equivalent of the landings];
- c. Discard statistics, including estimates where necessary, reported as number or nominal weight by species, as is appropriate to each fishery;
- d. Effort statistics appropriate to each fishing method; and fishing location, date and time fished and other statistics on fishing operations as appropriate.

³³ Indonesia however has not yet ratified this Agreement, even though the fisheries officials in MMAF have campaigned on the necessity to ratify this Agreement. An academic draft has been prepared to convince the Indonesian Government to consider this ratification.

At its November 1992, the FAO Council put forward some opinions on the actions of reflagging fishing vessels in order to avoid the setting of conservation and management measures. This problem must be addressed by the FAO so that it can be immediately implemented. The Flagging Agreement proposal evolved into the Agreement to promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas and was adopted at the 27th session of the FAO Conference on 24 November 1993, with an entry into force on 24 April 2003. The 1993 FAO Compliance Agreement will become an integral part of the International CCRF.

IV. REGIONAL FISHERIES MANAGEMENT ORGANIZATION (RFMO)

The fact that tuna fisheries are profitable will increase the intensification of tuna fishing unless it is effectively restrained by fisheries management measures. As mentioned above, among the measures that could be taken is to establish regional fisheries management organizations. The FAO publishes the world map for existing RFMOs, as follows³⁴:

Indonesia has become a member of several RFMOs, including the IOTC and the CCSBT, while it is also considering joining the WCPFC. These RFMOs are now discussed.

³⁴ FAO has published various books and guidelines on fisheries. Erik Franckx has written *Fisheries Enforcement, Related Legal and Institutional Issues: National, Sub-regional or Regional Perspectives*, Food and Agriculture Organization, 2001. Franckx analyzed various existing RFMOs in implementing 1995 UN Fish Stocks Agreement and 1993 FAO Compliance. FAO has induced many activities in managing sustainable fisheries, see *Report of the KMI/APRACA/FAO Regional Workshop on the Effects of Globalization and Deregulation on Marine Capture Fisheries in Asia and the Pacific (Pusan, Republic of Korea, 11-15 October 1999)*. FAO also tries to maintain high seas fishery statistic by enhancing the role of regional fisheries agency, see *Report of the Adhoc Consultation on the Role of Regional Fishery Agencies in Relation to High Seas Fishery Statistic (La Jolla, CA, USA, 13-16 December 1993)*.

Figure: FAO World Map of RFMOs

1. INDIAN OCEAN TUNA COMMISSION (IOTC)

The IOTC, a regional fisheries management organization, has a management region bordering the waters of Indonesia. The rule on Financial Aspects was adopted by the IOTC in its first special session in Rome on March 21 to 24, 1997, and the Rules of Procedure were adopted at the second session in Victoria on September 21 to 24, 1997³⁵.

Prior to the IOTC, there was a body called the Indo-Pacific Tuna Development and Management Programme (IPTP). IPTP was created in 1982 in Colombo, Sri Lanka, with funding from the UNDP and initiated by the FAO. However, since 1986, the IPTP has been funded by its members. It covered areas around the Indian Ocean and Western Pacific, but it lacked the authority to manage fisheries. This is what distinguishes it from the IOTC³⁶.

For more than 15 years, the IPTP conducted various activities; it created a database of tuna fishing in the Indian Ocean, conducted scientific research, organized workshops, and provided advice on the status of the stock of tuna fisheries to the parties. IOTC is the direct successor

³⁵ <http://www.fao.org/docrep>

³⁶ *Ibid.*

of all activities undertaken by IPTP³⁷.

The Agreement for the Establishment of the Indian Ocean Tuna Commission, elements of which are summarized below, was adopted by the FAO Council at its Hundred and Fifth Session in Rome on 25 November 1993. The Agreement entered into force on the accession of the tenth Member on 27 March 1996. The IOTC is an intergovernmental organization established under Article XIV of the FAO Constitution. It is mandated to manage tuna and tuna-like species in the Indian Ocean and adjacent seas³⁸.

The objective of the Commission is to promote cooperation among its members with a view to ensuring, through appropriate management, the conservation and optimum utilization of stocks covered by this Agreement and encouraging sustainable development of fisheries based on such stocks³⁹.

In order to achieve these objectives, the Commission has the following functions and responsibilities, in accordance with the principles expressed in the relevant provisions of the UNCLOS⁴⁰:

1. To keep under review the conditions and trends of the stocks and to gather, analyze and disseminate scientific information, catch and effort statistics and other data relevant to the conservation and management of the stocks and to fisheries based on the stocks covered by this Agreement⁴¹.
2. To encourage, recommend, and coordinate research and development activities with respect to the stocks and fisheries covered by this Agreement, and such other activities as the Commission may decide appropriate, including activities connected with transfer of

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ Trott, Lara Manarangi. *Fisheries Data Requirements under the International Law: Achieving Long-Term Conservation and Sustainable Use of Tuna Fisheries in the Western Central Pacific Ocean*, Unpublished Dissertation, Australian National Centre for Ocean Resources & Security, Faculty of Law, University of Wollongong, Australia, 2008. In her dissertation, Trott emphasized the importance of data collection in managing tuna fisheries.

technology, training and enhancement, having due regard to the need to ensure the equitable participation of members of the Commission in the fisheries and the special interests and needs of members in the region that are developing countries.

3. To adopt, on the basis of scientific evidence, conservation and management measures to ensure the conservation of the stocks covered by this Agreement and to promote the objective of their optimum utilization throughout the area.
4. To keep under review the economic and social aspects of the fisheries based on the stocks covered by this Agreement bearing in mind, in particular, the interests of developing coastal states.

Conservation and management measures binding on members of the Commission must be adopted by a two-thirds majority of members present and voting. Individual members objecting to a decision are not bound by it. If objections to a measure are made by more than one-third of the members of the Commission, the other members are not bound by that measure; but this does not preclude any or all of them from giving effect.

Recommendations concerning conservation and management of the stocks for furthering the objectives of this Agreement need be adopted only by a simple majority of its members present and voting. It is under the responsibility of members to ensure that action is taken under their national legislation to implement conservation and management measures that become binding on it. Members of the Commission are also expected to cooperate in the exchange of information regarding any fishing for stocks covered by this Agreement by nationals of any state or entity that is not a member of the Commission. The IOTC launched an "Indian Ocean Tropical Tuna Tagging Programme" (IOTTP) and issued an IOTC IUU Vessels List in its effort to manage tuna in its area of competence⁴².

2. THE CONVENTION FOR THE CONSERVATION OF SOUTHERN BLUEFIN TUNA (CCSBT)

In 1973, the third United Nations Conference on the Law of the Sea

⁴² <http://www.iotc.org/English/index.php>

met in New York. It concluded its work in 1982 with a new treaty -- the UNCLOS. This treaty went into force in 1994, with the signature of the seventieth state. Article 64 of the UNCLOS provides that the coastal states and other states whose nationals fish in the region for the highly migratory species listed in Annex I shall cooperate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region, both within and beyond the EEZ.

Articles 116 through 119 contain other provisions on the conservation of marine resources. The Southern Bluefin Tuna is included on the list in Annex I. In 1985, Australia, Japan, and New Zealand -- countries that do the most fishing for this type of tuna -- stipulated voluntary agreements on tuna fishing. These agreements proved to be inadequate because they were non-binding, so in 1993, these three nations signed the Convention for the Conservation of Southern Bluefin Tuna, which went into force in 1994. Other countries later acceded to this treaty⁴³.

The 1994 Convention establishes a Commission for the Conservation of Southern Bluefin Tuna (CCSBT). The Commission has legal personality, a budget and rules governing accounting and employment relations, a Secretariat with its own staff, and headquarters in Canberra. Within it, separate bodies carry out oversight and consultation tasks. In 2001, the Commission established an Extended Commission, made up not only of the Commission's member states, but also of other "entities or fishing entities" whose flagships fish for tuna⁴⁴.

With authority from the CCSBT treaty and the acts subsequently adopted, the Commission is in charge of gathering statistical and scientific information on tuna and similar species, adopting binding decisions establishing quotas of tuna that may be fished annually by each treaty adherent, monitoring respect for fixed trade limitations (for example, the Commission has established that the importation of tuna by party states must be accompanied by statistical information on its provenance), adopting, "if necessary, additional measures," controlling illegal fishing on the basis of the FAO's International Plan of Action for Illegal, Unregulated and Unreported Fishing, and inviting non-party states to

⁴³ <http://www.ccsbt.org/docs/about.html>

⁴⁴ *Ibid.* See also Rayfuse, Note 182.

respect the treaty's objectives.

The treaty binds the parties, but it also requires them to cooperate in deterring tuna fishing by "nationals, residents or vessels of any state or entity not party to this Convention, where such activity could affect adversely the attainment of the objective of this Convention."

The Commission fixed national quotas in 1994. CCSBT continues fixing quotas based on the best scientific data available through the Extended Scientific Committee. It forms the Action Plan, the Trade Information Scheme, Scientific Observer Program, Vessel Monitoring System, CCSBT Catch Documentation Scheme, the Program for Transshipment by Large-Scale Fishing Vessel, the Total Allowable Catch, Data Protection, and Compliance Measures⁴⁵.

3. THE WESTERN AND CENTRAL PACIFIC FISHERIES COMMISSION (WCPFC)

The Western and Central Pacific Fisheries Commission (WCPFC) was established by the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC Convention) which entered into force on 19 June 2004. The Convention was concluded after six years of negotiation, which commenced in 1994⁴⁶.

The WCPFC Convention draws on many of the provisions of the UN Fish Stocks Agreement while, at the same time, reflecting the special political, socio-economic, geographical and environmental characteristics of the western and central Pacific Ocean (WCPO) region. This Convention seeks to address problems in the management of high seas fisheries resulting from unregulated fishing, over-capitalization, excessive fleet capacity, vessel re-flagging to escape controls, insufficiently selective gear, unreliable databases and insufficient multilateral cooperation with respect to conservation and management of highly migratory fish stocks. A framework for the participation of fishing entities in the Commission legally binds fishing entities to the provisions of the Convention, participation by territories and possessions in the work of the Commission, recognition of special requirements of developing

⁴⁵ *Ibid.*

⁴⁶ See <http://www.wcpfc.int/>

states, and cooperation with other RFMOs whose respective areas of competence overlap with the WCPFC.

WCPFC is more advanced than other RFMOs. Its many resolutions, guidelines, procedures and regulations include: the Resolution on the Reduction of Overcapacity, Specification for the Marking and Identification of Fishing Vessels, Resolution on Conservation and Management Measures, Regional Observer Programme, Vessel Monitoring System, a List of Vessels presumed to have carried out IUU Fishing Activity, WCPFC Record of Fishing Vessels and Authorization to Fish, and Regulation of Trans-shipment and Measures for Vessels without Nationality. It even has its own inspection flag and pennant for executing its management measures, as shown below⁴⁷:

IV. INDONESIAN OBLIGATION FOR TUNA FISHERY

Indonesia has become a member of 1982 UNCLOS since 1985 by Law No 17 of 1985 and has been trying to comply with rules stipulated in 1982 UNCLOS ever since. In 2009 Indonesia has eventually ratified the UNFSA 1995 after quite long debate in national forum among stakeholders. Those two major conventions relating to tuna fishery have then adopted certain rights and obligations which are principally to emphasize the significance of adoption of national measures in line with international and regional measures as well as actively involving in the regional fisheries management organization (RFMO) as applicable.

Indonesia has adopted not only 1982 UNCLOS but also 1995 UNFSA. It also has become a member of IOTC and CCSBT and co-operating non-member (CNM) to WCPFC. There are many obligations arising from the adoption of 1995 UNFSA and adherence to IOTC and CCSBT including WCPFC, which include:

- a. Adopt specific standards to ensure long-term balance of straddling fish stocks and highly migratory fish stocks
- b. Apply the precautionary principle
- c. Minimize pollution
- d. Protect marine biodiversity
- e. Perform an action to prevent illegal fishing
- f. Conducting research to find new technologies to support conservation

⁴⁷ *Ibid.*

and fisheries management.

- g. Indonesia should cooperate with other countries to undertake the actions required to conserve and manage; standards formed must be compatible
- h. Indonesia must undertake cooperation relating to straddling fish stocks and highly migratory fish stocks to ensure the effectiveness of conservation and management. As a result, Indonesia can have access to catch fish in places governed by the agreement.
Indonesia must also agree to:
 - 1). stock to be regulated and be in the conservation of biological stocks considering characteristics and the origin of the relevant fish
 - 2). area to be set
 - 3). working relationship between the new organization with the role, objectives and operations of the organization or management of existing fish
 - 4). mechanism by which the management or regulation shall receive scientific advice and evaluation of stock status, including if necessary, will nurture a scientific advisory body
- j. Indonesia must:
 - 1). approve and be subject to standards of applicable conservation and management
 - 2). agreed to limit the rights that have been established, such as the allocation of fishing that is determined, or specified level of fishing
 - 3). Adopt and implement all international minimum standards for responsible fishing operations
 - 4). Receive and evaluate scientific opinion, evaluate the status of existing stock and fishing impact on other fish species
 - 5). Approve the standards of data collection, reporting, verification and exchange of data concerning fishing stocks
 - 6). Collect and publish accurate and complete data
 - 7). Reproduce and publish the results of scientific research
 - 8). Creating a mechanism of cooperation, especially regarding the monitoring, control, surveillance and enforcement
- k. Indonesia must be transparent in the decision making processes and other activities involving other organizations

- l. Indonesia must cooperate with other countries to strengthen the organization and management of existing agreements in order to improve the effectiveness of creating measures and implementing standards for the conservation and management of straddling fish stocks and highly migratory fish stocks
- m. Indonesia should ensure that fishing vessels that use the country flag, provide the information needed to fulfill its obligations as set forth in this agreement
- n. Indonesia must cooperate either directly or through regional or sub-regional organizations to:
 - 1). approve specifications and data formats to be presented to the organization
 - 2). enhance and share technical stock analysis and evaluation methodology
- o. Indonesia's obligations to the Indonesian-flagged vessels are:
 - 1). must ensure that the vessels are to follow the rules of conservation and management standards that apply and do not have a negative impact on the effectiveness of existing regulations
 - 2). only allow a ship to use its flag for fishing activities on the high seas when the vessel can be responsible and obey all applicable laws in the conventions and agreements
 - 3). Indonesian actions in regulating fishing vessels flying its flag, shall include:
 - a) controlling the vessel through fishing license, authorization, in accordance with applicable regulations
 - b). issuance of regulations, such as certain terms and conditions to get a license, prohibit fishing when the boat did not have permission, and the necessity of a vessel to always carry license
 - c). Recording data on fishing activities nationwide and provide access to such information
 - d). Requirements contrary to the standard of fishing vessel and fishing equipment in accordance with applicable international standards
 - e). Requirements for recording and reporting regularly position, catches, and fishing activity
 - f). verification of target catches

- p. Indonesia must ensure that vessels flying its flag, obey the high seas management measures.
- q. Indonesia must cooperate with the other countries to ensure compliance with and enforcement of regulation on the conservation and management standards
- r. As a party, Indonesia has the right to conduct inspections when violations occur in areas of Indonesia.
- s. While performing inspections, Indonesia must ensure that officers who conduct the inspection:
 - a. show the duty letter to the captain of the ship
 - b. give warning to the country of the ship at the time he go up to the ship
 - c. do not interfere the communication of the captain
 - d. make a copy of the report of inspection results
 - e. leave the ship if it does not find evidence of violations
 - f. avoid the use of violence
 - g. things that can be checked by the inspector is licensed, equipment, records, facilities, fish and all related documents
- t. While Indonesian vessel is inspected, Indonesia shall ensure that the captain of the ship:
 - 1). accept and facilitate the inspector
 - 2). cooperate and assist in the inspection activities
 - 3). not interfere, intervene or interfere with the inspection activities
 - 4). allow the inspectors to communicate with the state board
 - 5). guarantee safety of the inspector

V. INDONESIA EXISTING LEGAL FRAMEWORK RELATING TO TUNA FISHERY

There are several laws in Indonesia which relate to the tuna fishery namely:

- 1. Law No. 17 of 1985 on Ratification of UNCLOS 1982
- 2. Law No. 31 of 2004 as amended by Law No. 45 of 2009
- 3. Presidential Regulation No. 9 of 2007 on the Ratification of Agreement for the Establishment of the Indian Ocean Tuna Commission

4. Presidential Regulation No. 109 of 2007 on the Ratification of Convention for the Conservation of Southern Bluefin Tuna
5. Law No. 21 of 2009 on Ratification of Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks
6. Ministerial Regulation No. Per.13/Men/2005 on Coordinating Forum On Handling Criminal Offences Relating To Fisheries As Amended By Ministerial Regulation No. Per.11/Men/2006 And No. Per.18/Men/2011
7. Ministerial Regulation No. Per. 01/Men/2009 on Indonesian Fishing Management Area
8. Ministerial Regulation No. Per. 27/Men/2009 on Registration and Marking of Fishing Vessel
9. Ministerial Regulation No. Per. 07/Men/2010 on Certifying Letter of Fishing Vessel Operation.
10. Ministerial Regulation No. Per. 18/Men/2010 on Fishing Logbook
11. Ministerial Regulation No. Per. 19/Men/2010 on Control of Quality Guarantee System and Catch Security which replaced Ministerial Regulation No. Per. 01/Men/2007 as amended by Ministerial Regulation No. Per. 04/Men/2008.
12. Ministerial Regulation No. Per.02/Men/2011 on Fishing Line, Placement of Fishing Gear And Fishing Supporting Tools in Indonesian Fisheries Management Area as amended by Ministerial Regulation No. Per. 08/Men/2011, Ministerial Regulation No. Per. 05/Men/2012. And Ministerial Regulation No. 18/PERMEN_KP/2013
13. Ministerial Regulation No. Per. 08/Men/2012 on Fishing Port
14. Ministerial Regulation No. Per.12/Men/2012 on Capture Fisheries Business On The High Seas which replaced Ministerial Regulation No. Per. 03/Men/2009 on Fishing Catch and Transportation on the High Seas
15. Ministerial Regulation No. Per.13/Men/2012 on Certification of Fish Catch which replaced Ministerial Regulation No. Per. 28/Men/2009 on Certification of Fish Catch.
16. Ministerial Regulation No. Per. 16/Men/2012 on National

Commission on Fisheries Resources Assessment which replaced Ministerial Regulation No. Per. 13/Men/2009 as amended by Ministerial Regulation No. Per. 13/Men/2009.

17. Ministerial Regulation No. Per. 30/Men/2012 on Capture Fisheries Business in the Fisheries Management Area of Indonesia
18. Ministerial Regulation No. 1/PERMEN-KP/2013 on Observer of Fishing Vessel and Transportation Vessel
19. Ministerial Regulation No. 10/PERMEN-KP/2013 on Fishing Vessel Observation System

1. FISHERIES LAW

Indonesia enacted the Law on Fisheries (Law No. 31 of 2004) to create a new paradigm in managing its marine resources which was subsequently amended by Law No. 45 of 2009. As a member of the FAO, Indonesia had adopted the CCRF and ratified the 1982 UNCLOS by Law No. 17 of 1985. Thus, the old fisheries law was seen as insufficient and incompatible with the current issues of fisheries management, particularly the principle of a sustainable fishery.

Law No. 31 of 2004 was signed by President Megawati Sukarnoputri on October 6, 2004. It was formulated to adopt the global approach to fishery management. Among the improvements addressed by that law and preserved under Law No. 45 Year 2009 are the following:

1. Rectification of law enforcement problems by establishing the Fishery Court, which is a special chamber in the general court. This court is expected to handle criminal case concerning fisheries and fishers
2. Designation of fishery investigators that consist of civil servant investigators, Indonesian naval officers, and Indonesian police officers.
3. Recognition of Indonesian responsibility under international law to cooperate in managing "shared stocks" and to join with the relevant regional fisheries organizations concerning high seas fisheries.
4. Creation of a much clearer licensing system that requires both the Indonesian and foreign fishing industry to obtain licenses to operate within Indonesian waters. The Indonesian fishing vessels that operate on the high seas are also subject to licensing requirements.

(This has not been regulated previously.)

5. Creation of a strong enforcement mechanism on fishery management, introducing the possibility of punishing the owner/operator of fishing vessels proven to have conducted unsustainable fishing methods forbidden by laws and regulations.
6. Adoption of precautionary principles to maintain fishing efforts and fishery products so they will not be harmful to human beings or the environment. (The government will undertake certain obligations in order to supervise the distribution and management of fish.)
7. Empowerment of small/subsistence fishermen by giving them financial assistance as well as education and training.
8. Enhancement of human resources through better education and training as well as public awareness of fishery management.

In terms of implementation, many previous regulations made under the old law and institutions are still in force. These are usually ministerial decrees or director general decisions. A change in laws and regulations does not automatically revoke all previous laws and regulations unless specifically mentioned.

The principle under Law No. 31 of 2004 as maintained by Law No. 45 of 2009 on Fisheries has created a solid base for Indonesian high seas fishing activities relating to the tuna fishery. The Preamble of the Law states that the high seas resources are available, and international rules will apply to them. It also states the need for the sustainability of the resources while utilizing them. It goes on to further explain in the elucidation of that Law that Indonesia acknowledges that the ratification of the 1982 UNCLOS has given the right to Indonesia to exploit, conserve and manage fishing resources in both the Indonesian EEZ as well as on the high seas based on the applied international law/standard. The definition of high seas then is defined in article 1 paragraph 22.

“Management of fisheries” is then defined as including the sustainability of resources (article 1 paragraph 7). Article 2 also states that fishery management is to be carried out based on the principles of benefit, fairness, partnership, equitable distribution, integration, transparency, efficiency and sustainable conservation. Article 3 sets out the objectives of fishery management to include guaranteeing the sustainability of fishery resources. This Law is also applicable to every Indonesian

fishing vessel, including those that catch fish (and other species) outside Indonesian fishing management areas (Article 4c). The Indonesian fishing management areas include the following (Article 5):

1. Indonesian territorial sea
2. Indonesian EEZ
3. Rivers, lakes, reservoirs, swamps, and other wetlands

This Law is aware of the applicability of international law outside Indonesian waters, for example, see Article 5, paragraph 2, which emphasizes that fishery management outside the Indonesian fishing management area should be conducted based on generally accepted international law/regulations and any requirements/standards. The elucidation in the law explains that “outside the Indonesian fishing management area” means on the high seas.

The Minister of Fisheries is responsible for the country’s fishery management, which includes highly migratory species and straddling stocks (Article 7). The government is also required by the Law, for the benefit of international cooperation, to publish regularly a report on conservation measures and fishery management (Article 10 paragraph 1a) and to cooperate with neighboring countries and other countries in conservation measures and fishery management on the high seas, semi-enclosed seas and enclosed seas (Article 10 paragraph 1b). The same article then stipulates that the Indonesian government shall inform flag states of any evidence of foreign vessels conducting activities that impair conservation and management measures (Article 10 paragraph 1b). Under paragraph 2 of Article 10, the government is also to be actively involved in international (and regional) organizations (and institutions) in order to assist international/regional management cooperation. The elucidation of this article specifically mentions that the government is expected to proactively sponsor the foundation/establishment of a regional/international institution for the benefit of Indonesian fishery development.

The Law also requires the government to manage high seas fishing. Every Indonesian vessel that operates on the high seas shall obtain a fishing license, which shall be issued by the Minister (Article 27). The practice of “reflagging” or double nationality has also received at-

tention in the new law, by requiring that any foreign ship that wishes to be registered in Indonesia should obtain a "deletion certificate" issued by the country of origin (Article 36). This effort will also be furthered by the stipulation under Article 47 that requires the government to establish a fishery information network with other institutions, either national or international. By having such a network, any fraudulent activities involving either Indonesian or foreign vessels can be tracked and rectified more efficiently. Article 36 of the Law No. 45 Year 2009 specifically mentions that every fishing vessels owned by Indonesia, which operates on the high seas, shall obtain fishing license, while article 48 requires that everyone taking advantage from fisheries either from Indonesian water or outside Indonesian water shall pay a fisheries fee. The punishment against the law violations are quite severe as stipulated in the article 93 paragraph 1 of the Law No. 31 of 2004, which states that everyone who owns and operates fishing vessels on the high seas without obtaining license shall be imprisoned up to 6 years and fined up to 2 billion rupiah. The Law no 45 of 2009 also gives mandate to civil servant investigator/fishery surveillance officer to enforce law on the Indonesian EEZ as previously was not the case. This new rule then gives a wider competency to the MMAF to empower and build its force in combating IUU fishing not only in Indonesian waters but also in Indonesian EEZ and in the future hopefully in the high seas as mandated both by 1982 UNCLOS and 1995 UNFSA.

It is clear that Indonesian policy on tuna fishing is actually in line with the principle spelled out in the 1982 UNCLOS and in the 1995 UN Fish Stock Agreement. The new law has rectified weaknesses under the old law of fisheries (Law No. 9 of 1985), which had not addressed the possibility of having activities on the high seas which is mainly tuna fishing. It is apparent that the drafters of the new law have acknowledged that the activities carried out by Indonesian fishing vessels beyond Indonesia water especially dealing with tuna fishery require the government's attention. The only problem now is that Law No 31 of 2004 as amended by Law No 45 of 2009 requires a substantial amount of implementing regulations specifically dealing with duty under international law which until recently, have been virtually nonexistent. The transitional article stipulates that all existing regulations based on the former law will continue to be applicable to the extent that they do not

contradict the new law.

The action taken by Indonesia, that is, to adopt 1995 UNFSA and become a member of IOTC and CCSBT is quite risky. Indonesia is now bearing many international obligation to manage high seas fisheries including to make its national rules compatible with the international regulations, as made by 1995 UNFSA and RFMO's measures.

2. FISHERIES REGULATIONS

In 2012, the Indonesian Government stipulated Ministerial Regulation No. PER.12/MEN/2012 on Capture Fisheries Business in the High Seas that replaced Ministerial Regulation No. PER.03/MEN/ 2009 on Fishing and Transporting Fish on the High Seas. This regulation made clear that every fishing vessel engaged in high seas fishing needs to obtain a license and fulfill certain obligations, including maintaining a logbook, installing a VMS, and accepting an on-board observer. Even though it is far from complete, this regulation has nonetheless demonstrated Indonesia's good intention to undertake its duty under the high seas regulatory framework. However, it could not establish the argument that Indonesian practices could be regarded as adequate in meeting the state's obligations since the enforcement mechanism has not been adopted under the Fisheries Law.

Below are some analyses on those applicable regulations:

A. Ministerial Regulation No. Per.13/Men/2005 on Coordinating Forum on Handling Criminal Offences Relating To Fisheries As Amended By Ministerial Regulation No. Per.11/Men/2006 And Ministerial Decree No. Per.18/Men/2011

Some key points in this regulation are:

- 1). There shall be cooperation between several institutions in enforcing the law relating to fisheries. There is a coordinating forum consist of Minister of Marine Affairs and Fisheries (MMAF), Chief of Indonesian Police, Chief of Indonesian Navy and relevant key officers from several institutions.
- 2). All expenses relating to the activity of this forum shall be borne by MMAF, and in the regional level will be borne by Regional Government

This regulation has given a strong basis for cooperation among ministries and institution to enforce the law in fisheries law infringement, unfortunately has not yet given the guidance for enforcing the law infringement on the high seas by Indonesian vessels, it only gives the guidance to handle law infringement in Indonesian Fishing Management Area (WPP), yet could be deemed as advanced step to place a smooth coordination among legal enforcers in fisheries infringements.

B. Ministerial Regulation No. Per.12/Men/2012 on Capture Fisheries Business in The High Seas

Some key points of this regulation are:

- 1). The Ministry of Marine Affairs and Fisheries Regulation No. Per.12/Men/2012 regarding Fishing Activities on the High Sea (“**Ministry Regulation**”) was made to regulate fishing activities in the high sea conducted by Indonesia persons, business entities, and/or Indonesian flagged fishing vessels or fish transport vessels.
- 2). This regulation replaces the previous Ministry Regulation on fishing activities in the High Seas, Ministry Regulation No. Per.03/Men/2009
- 3). Pursuant to Article 3 of the Ministry Regulation, Fishing Activities on the High Sea includes:
 - a. Fishing Activities
 - b. Fish Transport ActivitiesThe fishing activities mentioned above must use Indonesian flagged vessels, with the size of more than 30 gross tonnage (GT), or length overall (LOA) of 15 meter.
- 4). Every person who conducts fishing activities on the high seas must have fishing license issued by the Directorate General of Capture Fisheries (“**Directorate General**”), which consists of:
 - a. Fishing Business License issued in the form of *Surat Izin Usaha Perikanan* (“**SIUP**”)
→ Pursuant to Article 5(1), every person that fishes and/or

transports fishes in the High Sea must own a SIUP. The requirements to file a request for the issuance of SIUP is stipulated in Article 5(3), and the procedure will further be regulated in the Directorate General decision.

→ Pursuant to Article 15 to 18, a SIUP may be amended and replaced. Amendment takes place when there are changes in the administrative data of the business entity/the persons and/or changes of business plans, Replacement takes place when the original SIUP is lost or destroyed.

b. Fishing license issued in the form of *Surat Izin Penangkapan Ikan* ("SIPI")

→ Pursuant to Article 8(1), every person that owns and/or operates fishing vessels that are used to fish in the high seas must own a SIPI. The requirements to file a request for the issuance of SIPI is stipulated in Article 8(3) of the Ministry Regulation.

→ Pursuant to Article 19 to 24, a SIPI may be amended, extended, or replaced. Amendment takes place when there are changes in the SIUP and/or changes of base ports, Replacement takes place when the original SIUP is lost or destroyed.

c. Fish transport license issued in the form of *Surat Izin Kapal Pengangkut Ikan* ("SIKPI")

→ Pursuant to Article 10(1), every person that owns and/or operates fish transport vessels that is used to transport fish in the High Sea must own a SIKPI. The requirements to file a request for the issuance of SIKPI is stipulated in Article 8(3) of the Ministry Regulation.

→ Pursuant to Article 25 to 29, SIKPI may be amended, extended, or replaced. Amendment takes place when there are changes in the SIUP and/or changes of base ports, Replacement takes place when the original SIUP is lost or destroyed.

5). Every fishing vessel or fish transport vessel operating in the high seas could land their fish catches in Indonesia or in other countries that are members of the same Regional Fishing Man-

agement Organization (“RMFO”). Each fishing vessels of fish transport vessels landing their catches in Indonesia is assigned with one fishing port. Each fishing vessels of fish transport vessels landing their catches in other countries that are members of the same RMFO must give report to the head of the assigned fishing port in accordance to Article 13 paragraph (3), (4), (5) and its annex.

- 6). Fishing vessels that already own a SIPI or fish transport vessels that already own a SIKPI will be registered to the Secretariat of the listed RMFOs by the Directorate General. The format requirements for the registration of vessels to the RMFOs refers to the standards of each RMFO. If the registration is approved by the RMFO, the vessels will be entered on the Record of Vessels as an authorized vessel, and given a Vessel Identity Number, which consists of:
 - a. Western and Central Pacific Fisheries Commission (WCP-FC) identification number
→ Allows the vessel to conduct fishing/fish transport/accept transshipment of tunas or other tuna-like species in the Pacific Ocean.
 - b. Indian Ocean Tuna Commission (IOTC) number
→ Allows the vessel to conduct fishing/fish transport/accept transshipment of tunas or other tuna-like species in the Indian Ocean.
 - c. Convention for the Conservation of Southern Bluefin Tuna (CCSBT) number
→ Allows the vessel to conduct fishing/fish transport/accept transshipment of Southern Bluefin tunas in the Indian Ocean.
- 7). Every vessel that conducts activities in the high seas must comply the requirements and/or international standards set out by the RFMOs. Vessels that fail to comply will be regarded as vessels that have conducted Illegal, Unreported, Unregulated (“IUU”) fishing, and such vessel will be listed as in the IUU vessel list. There are 3 classifications of IUU Vessel List:

- a. Draft IUU Vessel List, the initial stage of being listed as an IUU vessel. Upon vessels that are classified as Draft IUU Vessel List, pursuant to article 33(2), the Directorate General gives an administrative sanction in the form of warnings. Directorate General must also take effort to dispute the vessel from being listed by the RMFO, by proving that the suspicion that the vessel has been conducting IUU Fishing is not true.
 - b. Provisional IUU Vessel List, the second stage if the vessel cannot be discarded from being listed as Draft IUU Vessel List classification. Pursuant to article 34(2), the Directorate General imposes an administrative sanction in the form of SIPI or SIKPI freeze for 2 months. Directorate General must also make efforts to dispute the vessel from being listed by the RMFO by handing in Authentic Evidences of the SIPI or SIKPI freeze.
 - c. IUU Vessel List, the last stage. After the vessel attained the Provisional IUU Vessel List, but fails to be disputed from being listed as such, then the vessel will be classified in the IUU Vessel List. For vessels classified in the IUU Vessel List, the Directorate General imposes an administrative sanction in the form of SIPI or SIKPI freeze for 3 months. Directorate General must also take effort to dispute the vessel from being listed by the RMFO by handing in Authentic Evidences of the SIPI or SIKPI freeze. If all the above attempts has been pursued, but the vessel cannot be disputed from being listed in the IUU Vessel List, then the Directorate General revokes the SIPI or SIKPI. Those vessels whose SIPI or SIKPI is revoked cannot be given a SIPI or SIKPI again.
In all stages, if the attempts to discard the vessel from being classified succeeded, then the vessel will return to be listed in the Record of Vessels. Pursuant to article 48, Fish vessels proven to have conducted IUU fishing will be erased from the RMFO Record of Vessels.
- 8). Every fishing vessels fishing in the high sea that catches *bycatch* or incidental catches that is an ecologically related species with

tuna, such as, sharks, seabirds, sea turtles, sea mammals, including whales, must implement conservation measures.

- a. According to Article 40 for bycatches of sharks, the captain of the vessel must report such catch to the head of the assigned port base. The report uses and takes the form of a fish catch log book.
 - b. According to Article 41 for bycatches of seabirds in an area south of 25 degrees latitude south, effective mitigation to prevent such catches must be conducted by the vessel. The mitigation attempts is further specified in article 41(2) Ministry Regulation.
 - c. Every unintentional catch of seabirds, sea turtles, sea mammals, including whales and/or thresher sharks must be followed by the release of such catch. In cases where those bycatches are dead, the captain of the vessel must report this to their port base, which will then be informed to the Directorate General through letter. Especially, fishing vessels that catches, transports, land, keeps, and/or sells thresher sharks from the family Alopiidae will be sanctioned. The sanctions elevate the vessel to be classified in the IUU Vessel Lists.
 - d. According to Article 46, every other fish species for which the RMFO applies special conservation measures, may not be caught by fishing vessels. Those who catch such fish species will be sanctioned, elevating the vessel to be classified on the IUU Vessel List.
- 9). Pursuant to Article 47, fishing vessels and fish transport vessels are not allowed to conduct any fishing activities within 1 mile from the location of data buoys, to remove data buoys when the vessel is fishing, and to disturb the presence and position of data buoys. Data buoy is a floating tool installed by the government or other authorities for the purpose of collecting electronic data and take environment calculation measures, and is not intended for fishing activities.
- 10) Every person that wants to procure fishing vessels or fish transport vessels to be used in the high sea, must first obtain a written

approval from the Directorate General. The attachment required to request the written approval is described in Article 50(2). Below are the vessel requirements for the procurement of fishing vessels, elaborated in Article 51

- a. Domestic fishing vessels and/or fish transport vessels must have the size of above 30 gross tonnage (GT)
- b. Foreign fishing vessels must have the size of above 100 GT
Foreign fish transport vessels must have the size of above 500 GT until 1500 GT

11) Head of port bases must give a monthly report to the Directorate General regarding the

- a. Amount of vessels
- b. Amount of transshipment
- c. Amount of fish docking,
- d. Result of bycatch that constitutes an ecologically related species to tuna fishes.

12) Based on these information, the Directorate General must give an annual report to the RFMO Secretariat

13) Pursuant to Article 57, documents that a fishing vessel and/or a fish transport must carry all the time:

- a. Original SIPI or SIKPI
- b. Sailing Approval Letter (*Surat Persetujuan Berlayar*)
- c. Fish catch log book
- d. Operation Acceptance Letter (*Surat Laik Operasi*)

The regulation is only intended to apply to Indonesian fishing vessel that is operating on the high seas under the management of an RFMO in the Indian Ocean and Pacific Ocean. This regulation then limits the chance of Indonesian fishing vessel operating in any other high seas as a distant fishing vessel. The general application to include all high seas and therefore will be more effective and efficient (article 3 paragraph 2) to make the flexible regulation which applicable in various geographical regions of high seas. It could be rectified in future regulation nevertheless this regulation is very comprehensive in regulating high seas

fishing.

Article 35 (6) is actually quite effective in creating a deterrent effect by revoking the license without any possibility to obtain the license again in the future. Those who incur the suspension could also be punished by the placement of observer in their future operation for a certain period of time.

C. Ministerial Regulation No. Per.13/Men/2012 on Certification of Fish Catch

Some key points of this regulation are:

General

- 1) The Ministry Regulation was basically made in response to European Council Regulation No. 1005/2008 of 29 September 2009, which sets a criterion for fisheries trade in the EU, and in addition was made to banish IUU fishing, by issuing a Fish Catch Certification or referred to as SHTI.
- 2) Pursuant to Article 2 of the Ministry Regulation, SHTI is purposed to:
 - a. Expedite sea fisheries trade activities of Indonesian or Foreign Fishing Vessels directly or indirectly in the EU;
 - b. Assist national and international effort to prevent, fight and deter IUU fishing
 - c. Assure the traceability of fish catch at catch, manufacture, transport, and marketing stages (chain of custody)
 - d. Conduct the provision of creating a sustainable conservation and resource management of fisheries.
- 3) The Ministry Regulation encompasses all the procedures and requirements of SHTI issuance, including in it the authorities involved in the process (Article 3).
- 4) There are several types of SHTI;
 - a. SHTI-Initial Sheet, alongside with SHTI Derivative sheet is issued for fish catch result from fishing vessels sizing more then 20 gross tonnage (Article 5(1))
 - b. SHTI-Derivative Sheet, alongside with SHTI Initial Sheet is

- issued for fish catch result from fishing vessels sizing more than 20 gross tonnage (Article 5(1))
- c. SHTI-Simplified Derivative Sheet, which is issued for fish catch result coming from fishing vessels sizing below or until 20 gross tonnage (Article 5(2))
 - d. SHTI-Import, which is issued for fish catch results that enter the Fish Manufacturing Unit
- 5) In accordance to article 21 SHTI is not a license (*surat jalan*).

Authorities related to SHTI issuance

- 6) The delegation of authorities for SHTI issuance are as follows
- a. The Ministry of Marine affairs and Fisheries delegates the authority to The Directorate General of Fish Catches (Article 6(1))
 - b. The Directorate General of Fish Catches delegates the authority to Competent Local Authorities (Article 6(2)), which is appointed by the Directorate General itself and includes (Article 6(3) and (4)):
 - 1). Head of Fishing Ports that is the Ministerial Technical Executive Unit (UPT/Unit Pelaksana Teknis Kementrian)
 - 2). Head of Fishing Ports that is the Regional Technical Executive Unit (UPT/Unit Pelaksana Teknis Daerah)
- 7) In cases where the Competent Local Authorities are unable to issue SHTI, alternate officials, which the Directorate General of Capture Fisheries (DGCF) also appoints, handles such task (Article 8).
- 8) In the Issuance of SHTI, the Competent Local Authorities coordinates with the Directorate General of Processing and Marketing of Fishing Catch and Directorate General of Marine Resources Surveillance.

SHTI Issuance Procedure

- 9). SHTI Initial Sheet
- a. Make a request to the Competent Local Authorities by attaching the requirements that are set out in Article 10 of the

Ministry Regulation and its Annex

- b. In a maximum time of 2 days after the acceptance of the request, the Competent Local Authorities checks the completeness and appropriateness of the request, taking into account the (i) fishing vessel supervision result, and (ii) for those vessels fishing in the high sea, the register of vessel at the competent RMFO.
- c. An approval or a declination of SHTI Initial Sheet is then issued as the result of the checking.

10) SHTI Derivative Sheet

- a. Make a request to the Competent Local Authorities by attaching the requirements that are set out in Article 14 of the Ministry Regulation and its Annex
- b. Within a maximum of 2 days after the acceptance of the request, the Competent Local Authorities checks the completeness and appropriateness of the request, taking into account the (i) fishing vessel supervision result, and (ii) for those vessels fishing in the high sea, the register of vessel at the competent RMFO.
- c. An approval or a declination of SHTI Derivative Sheet is then issued as the result of the checking.

11) SHTI Simplified Derivative Sheet

- a. Make a request to the Competent Local Authorities by attaching the requirements that are set out in Article 15 of the Ministry Regulation and its Annex
- b. Within a maximum time of 2 days after the acceptance of the request, the Competent Local Authorities checks the completeness and appropriateness of the request, taking into account the (i) fishing vessel supervision result, and (ii) for those vessels fishing in the high sea, the register of vessel at the competent RMFO.
- c. An approval or a declination of SHTI Simplified Derivative Sheet is then issued as the result of the checking.

12) SHTI Import

- a. Make a request to the Competent Local Authorities by attaching the requirements that are set out in Article 16 of the Ministry Regulation and its Annex
- b. In a maximum time of 2 days after the acceptance of the request, the Competent Local Authorities checks the completeness and appropriateness of the request, taking into account the (i) fishing vessel supervision result, and (ii) for those vessels fishing in the high sea, the register of fishing vessel at the competent RMFO.
- c. An approval or a declination of SHTI Import is then issued as the result of the checking.

Guidance and Report

13) The Directorate General of Capture Fisheries, Directorate General of Manufacture and Marketing of Fishing Results and Directorate General of Marine and Fisheries Resources Control give guidance to the issuance of SHTI (Article 19)

- a. The Directorate General of Fish Catches provides guidance to Head of Fishing Ports Ministerial and Regional UPT, and Alternate Officials as the authorities that issues SHTI
- b. The Directorate General of Manufacture and Marketing of Fishing Results provides guidance towards the Fisheries Manufacturing Unit, exporters, importers, and vessel owners that uses SHTI
- c. The Directorate General of Marine and Fisheries Resources Control provides guidance to the Fisheries Supervisors in conducting the issuance of Fish Landing Verification Results

14) Competent Local Authority gives monthly reports regarding the conducts of SHTI issuance to the Directorate General of Capture Fisheries.

15) With the collected report, the Directorate General of Capture Fisheries conducts an SHTI evaluation every 6 months

16) Such evaluation is used as a material to review and consider further determination of Competent Local Authority.

This regulation should actually be made for the benefit of implementing sustainable and responsible fisheries in Indonesia. It is therefore it is not necessary to mention that this regulation has been adopted to fulfill the demand of European Union in the first place (see the Preamble)

The rule is quite good to prevent importation from IUU catch to be used as raw material of export items.

The issuance of Clarifying Letter of Fish Landing (SKPI) is necessary to avoid the landing of IUU catch.

It is necessary to impose that every fish landing shall obtain SKPI not only those catches that will be exported but also those for local consumption, thus the IUU fishing will not have any market at least not in the formal market.

The use of terminology "pejabat alternate" is suggested to be replaced by "pejabat pengganti"

VI. CONCLUSION

Based on those above explanations and analysis, Indonesia is actually ready to participate in managing high seas fisheries. The laws and regulations are quite compatible even though many further adjustments shall be made into the law, especially the adoption of regulations

The enforcement by law for infringements which are committed by Indonesian fishing vessel on the high seas is not yet effective since the only stipulations available is regarding license infringement whereas the other infringements are not yet touched. This loophole shall be rectified through law, since under the Law No. 12 of 2011 on Legislative Drafting the criminal sanction can only be made through law. The Ministerial Regulation No. PER.12/MEN/2012 is not enough to answer the potential problems of IUU fishing in the high seas as well as other adopted ministerial regulations. The effective law enforcement will be the best answer to rectify existing problems.

In performing Indonesian obligation under high seas fisheries regime, Indonesia will need some technical assistance to enhance the capacity and the capability of the Indonesian government in fulfilling its obligation especially those relates to the use of high technology equipment.

The high seas fisheries rules are actually international law in nature that only will bind Indonesia should Indonesia agree to be bound by it. It is therefore very important to justify that performing high seas fisheries management is beneficial for national interest and many disadvantages will be arising should Indonesia stay away from it or decline to join the movement. The implementing regulations are very much available to implement high seas fisheries measures as can be seen in previous discussions. The Indonesian Government will need to make some adjustments and to complete existing regulations with any future rules made by RFMOs as well as to secure the implementation of those existing rules.

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