



Illegal, unreported and unregulated (IUU) fishing

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5 – IUU Fishing

One of the key impacts of the Law of the Sea Convention is ocean enclosure, which has driven fishers further and further afield as they search for uncompromised fish stocks. Illegal, unreported and unregulated (IUU) fishers have been a significant force in the Southern Ocean as well, even though it is far from home. This seminar focuses on a case study of IUU fishing and the case of the *Viarsa 1* hot pursuit in 2003 to highlight the strengths and weaknesses of the legal system.

Recommended Reading

Stuart Kaye (2007) “IUU Fishing in the Southern Ocean: Challenge and Response”, Chapter 3 in Triggs G and A Riddell (eds) Antarctica: Legal and Environmental Challenges for the Future, London: British Institute of International and Comparative Law, pp39–59.

Grotian Principles

High seas common to all
(*res communis*)

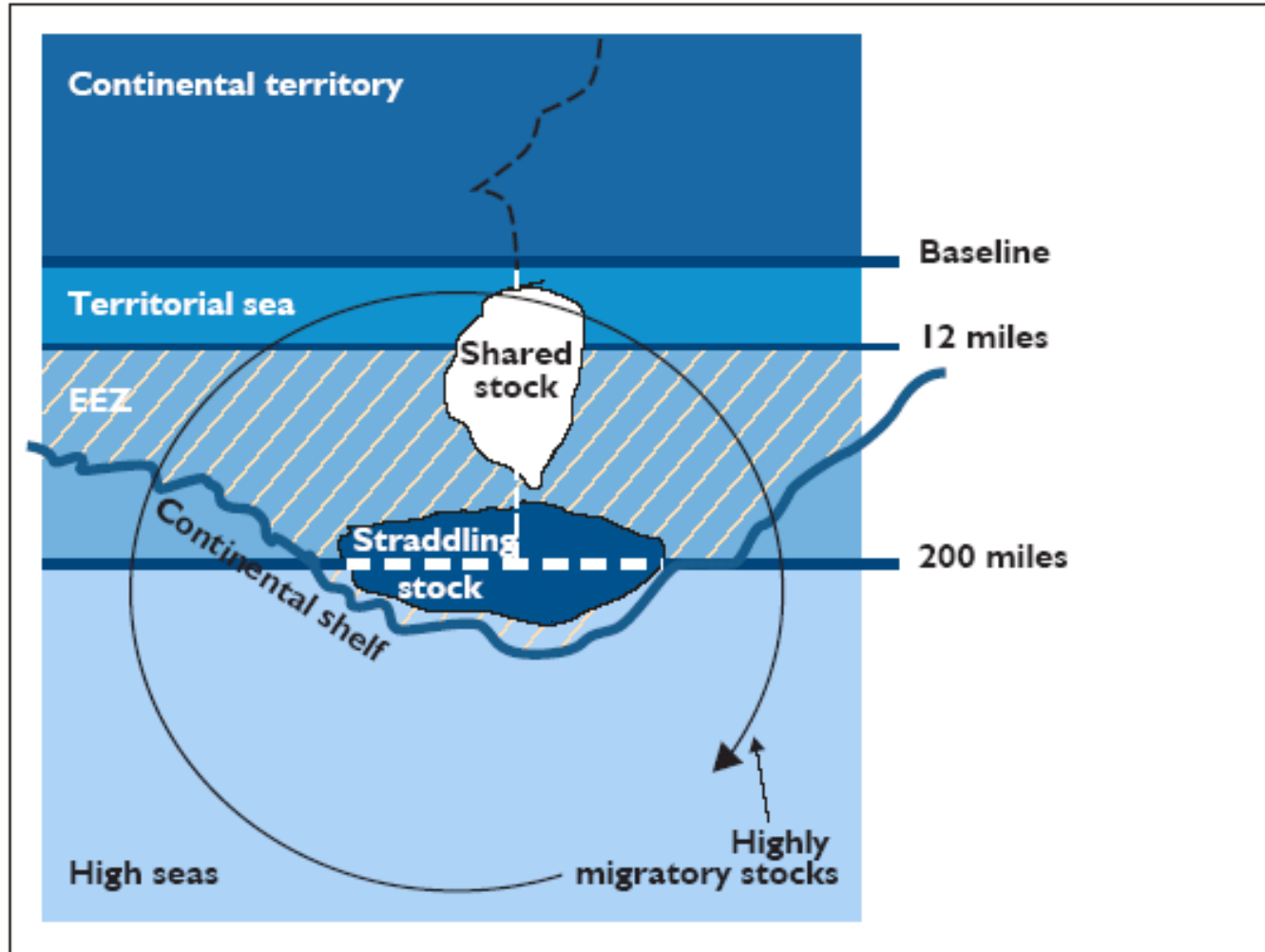
Ocean resources thought to be
inexhaustible

Ocean sovereignty limited to
adjacent (territorial) sea

Freedom to fish, navigate and trade
on high seas



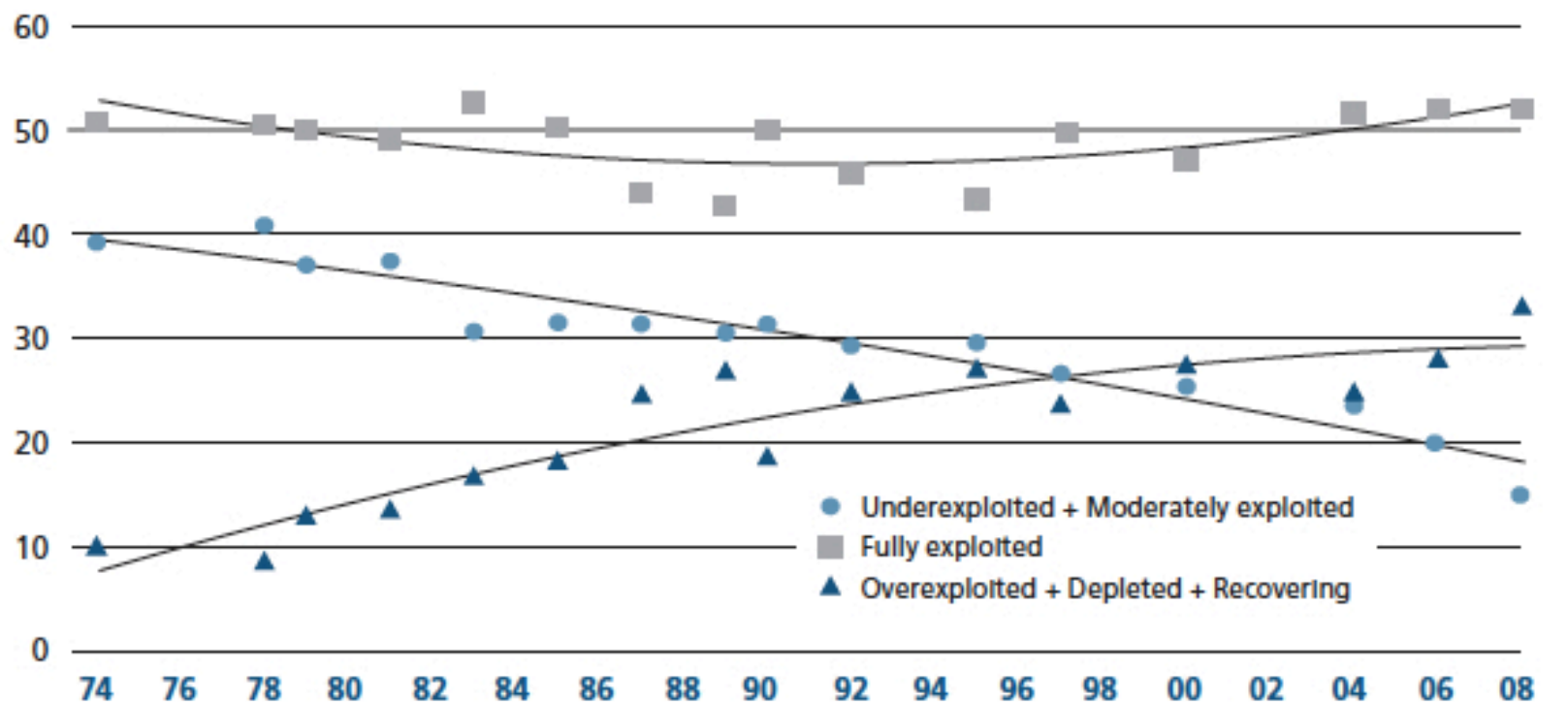
LOSC 1982



Status of world fisheries

Global trends in the state of world marine stocks since 1974

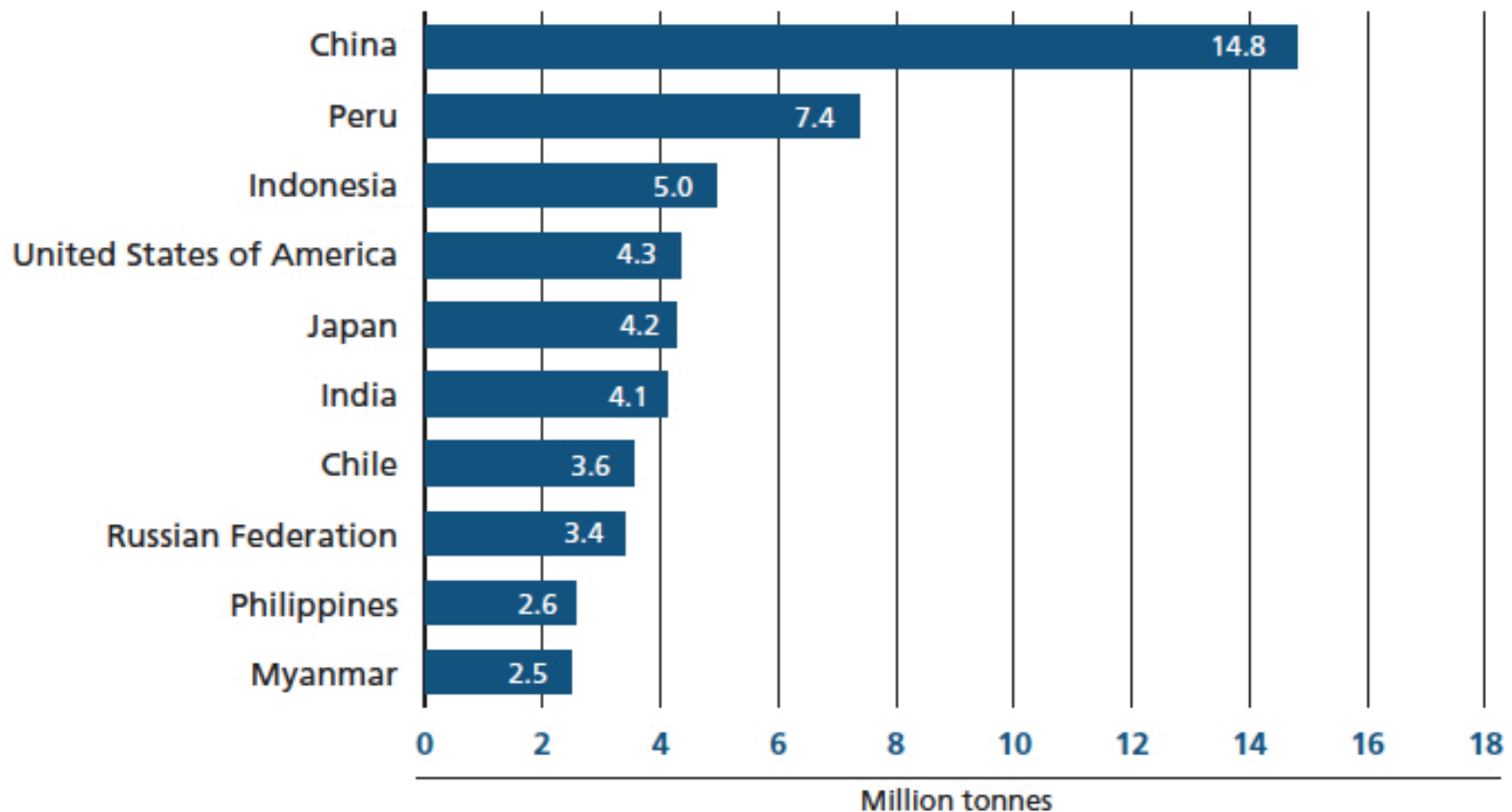
Percentage of stocks assessed



From FAO

Top 10 producers

Marine and inland capture fisheries: top ten producer countries in 2008



From FAO

FAO Committee on Fisheries

COFI established 1965

- specialized global forum for examining major international fisheries and aquaculture problems and issues
- monitors development of world fisheries and makes recommendations to governments, RFMOs, non-governmental organisations (NGOs), fishers, FAO Secretariat and international community
- focus is on
 - the needs and economic agendas of developing States (esp. post LOSC adoption);
 - food security (ocean enclosure excluding traditional fishers); and
 - increasing pressure on global fish stocks (esp. through large scale pelagic driftnet fishing on high seas, now banned in many places)

COFI Instruments

1. Code of Conduct for Responsible Fisheries (1995)
 - International Plans of Action (IPoAs)
2. Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (Compliance Agreement, 1993)
3. 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 (UN Fish Stocks Agreement, 1995)

Code of Conduct

- Soft law instrument, voluntary compliance
- Provides principles and standards applicable to conservation, management and development of all fisheries
- Six themes:
 - (a) Capture, processing and trade of fish and fisheries products,
 - (b) management practices,
 - (c) fair trade,
 - (d) aquaculture,
 - (e) coastal area management, and
 - (f) research

Code of Conduct objectives

- establish principles for responsible fishing
- establish principles and criteria for responsible conservation of fisheries resources
- serve as a capacity-building instrument for developing states

All members to collaborate in the fulfillment and implementation of the objectives

FAO to oversee and modify as necessary

International Plans of Action

Voluntary – originating from the Code

Apply to all states and entities and to all fishers

- IPoA to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing
- IPoA for reducing incidental catch of seabirds in longline fisheries
- IPoA for the conservation and management of Sharks
- IPoA for the management of fishing capacity

Compliance Agreement

Preamble includes –

- **Recognizing** that all States have the right for their nationals to engage in fishing on the high seas, subject to the relevant rules of international law, as reflected in the United Nations Convention on the Law of the Sea,
- **Further recognizing** that, under international law as reflected in the United Nations Convention on the Law of the Sea, all States have the duty to take, or to cooperate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas...

Compliance Agreement

- Intended to improve regulation of fishing vessels on high seas by strengthening ‘flag-state responsibility’
- Parties must maintain an authorisation and recording system for high seas fishing vessels
- Ensure that their vessels do not undermine international conservation and management measures
- Aims to deter the practice of ‘re-flagging’ vessels with the flags of States that are unable or unwilling to enforce such measures (‘flags of convenience’)
- Provisions are made for international cooperation and exchange of information through FAO

UN Fish Stocks Agreement

Preamble includes –

- **Seeking** to address in particular the problems identified in chapter 17, programme area C, of Agenda 21 adopted by the United Nations Conference on Environment and Development, namely, that the management of high seas fisheries is inadequate in many areas and that some resources are over-utilized; noting that there are problems of unregulated fishing, over-capitalization, excessive fleet size, vessel reflagging to escape controls, insufficiently selective gear, unreliable databases and lack of sufficient cooperation between States...

UN FSA Objective

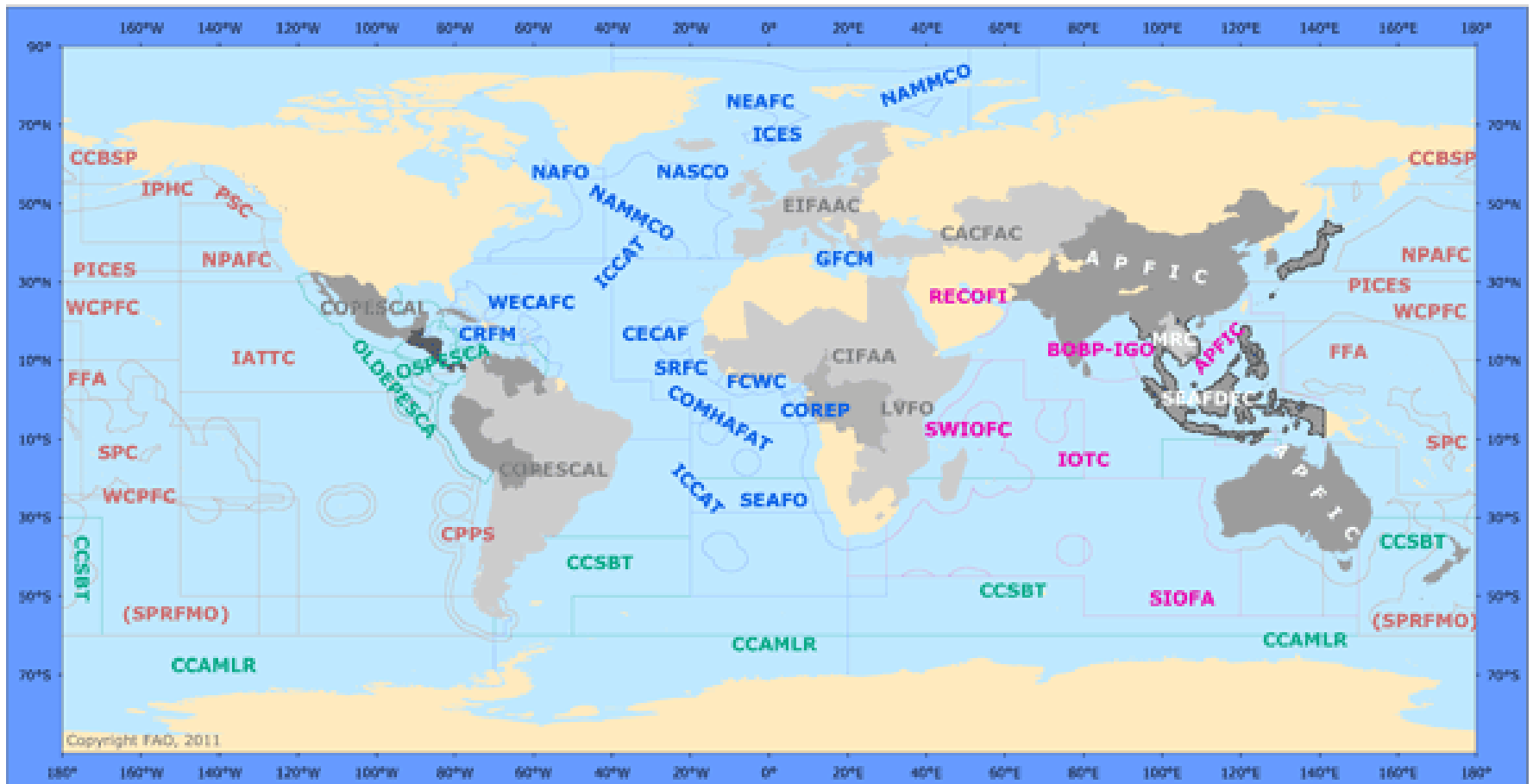
- to ensure the long-term conservation and sustainable use of straddling and highly migratory fish stocks
- elaborates on provisions of LOSC and aims to greatly improve the international management of fishing on the high seas
- strengthens the legal regime for conservation and management of highly migratory and straddling fish stocks implemented through global, regional and sub-regional RFMOs

Regional Fisheries Management Organisations



RFMOs and ocean enclosure

Regional fisheries management organisations RFMOs, also
regional fisheries bodies RFBs



<http://www.fao.org/fishery/rfb/en>

How RFMOs work

Generally RFMOs cover

- species (eg. tuna)
- areas (eg. Asia Pacific Fishery Commission)
- both (eg. CCAMLR)

The link below will take you to an interactive map produced by the FAO on which you can select a particular RFMO. Choose a couple for yourself and read about how, where and why they operate.

<http://www.fao.org/figis/geoserver/factsheets/rfbs.html>

Summary

Most global stocks are overfished

Global fishing fleet is over-capacity

Fishing governance is traditionally poor

Species biodiversity, food security, and needs and economic agendas of developing states all compromised by unsustainable fishing practices

RFMOs established to take decisive action in the management of the world's fisheries



**Case study of CCAMLR and the
Patagonian toothfish,
*Dissostichus eleginoides***

IUU = Resource theft

- Fishing outside national authority (Illegal, eg. in Australian EEZ without permission)
- Fishing outside international authority (Unregulated, eg. in CCAMLR waters without a permit from CCAMLR and national authority)
- Fishing in violation of national and/or international measures (Illegal, Unreported, Unregulated)
- Unreported fishing (not always but usually Illegal, Unregulated)
- Fishing without adequate flag state control (I, U, U)

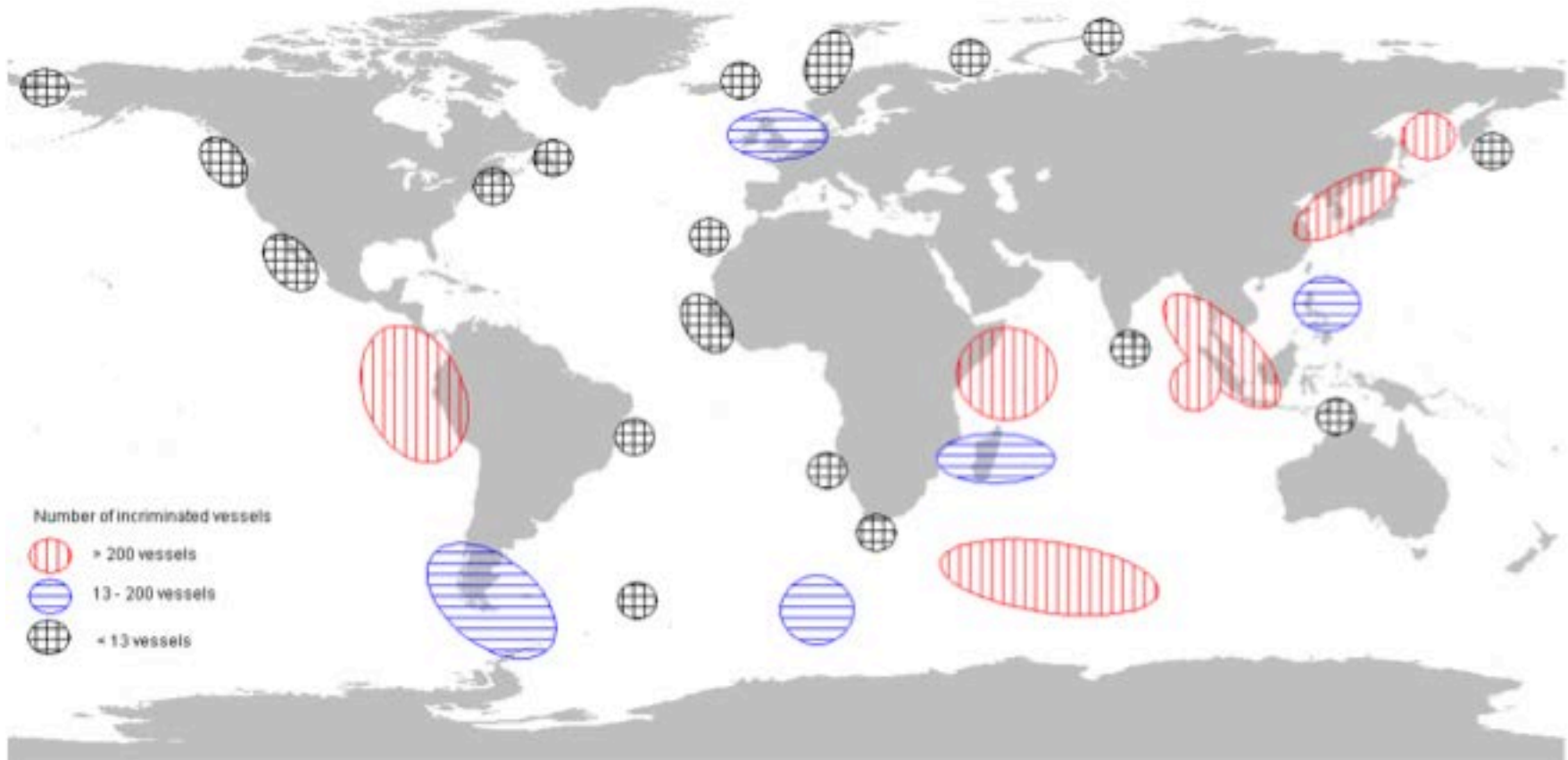
Why is there resource theft?

- Profits outweigh risks of detection/sanction (toothfish aka “white gold”)
- Opportunity
- Necessity (displaced Somali fishers— piracy link; traditional fishers closed out by EEZs)

What are its effects?

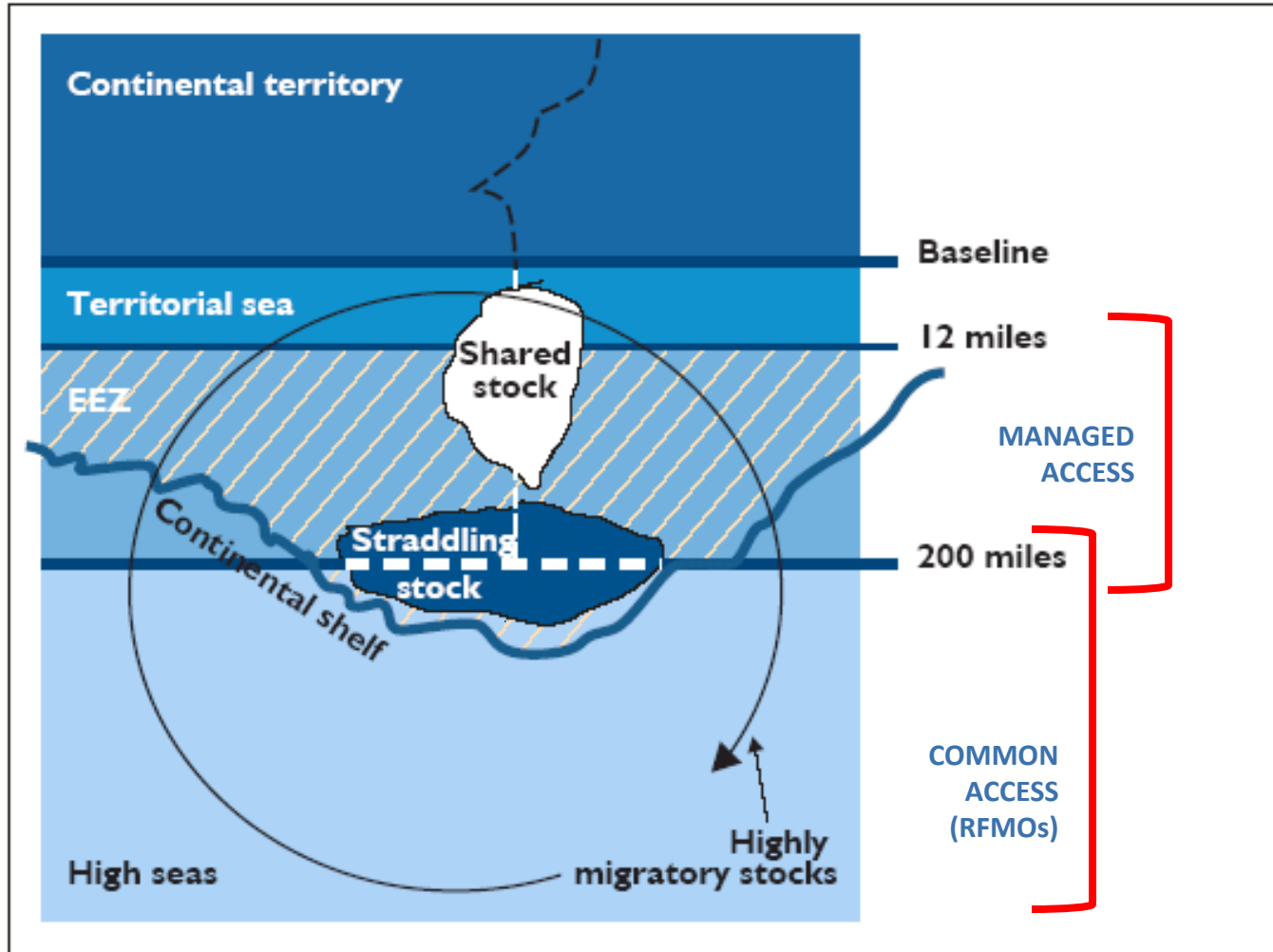
- Over-fishing (compromises sustainability)
- Unfair (discriminates, disadvantages legal fishers; economic greed; hidden beneficiaries – organised crime)
- Unsafe (often poorly paid crew working in unsafe conditions with sub-optimal operating equipment; risk-taking)
- By-catch (incidental mortality, esp. seabirds such as albatrosses and petrels)
- Uncertainty (lack of information leads to lower quotas for legal fishers; keeps legal fishers out of the industry, thus no oversight on fishing grounds)

IUU is a global problem



Source: After Sumaila et al 2006

Resource jurisdictions



Convention on the Conservation of Antarctic Marine Living Resources

CCAMLR – the krill convention



Other critters...



Convention's Main Features

- Area of application includes sovereign sub-Antarctic islands
- Commission (RFMO) oversees Convention
- Although decisions taken by consensus, Members can opt out (nobody does)
- Ecological decisions based on best scientific advice in Scientific Committee but high political input in Commission Meeting, where decisions are made
- Observation and inspection procedures next to useless

Participation in CCAMLR

25 Members of the Commission

Argentina, Australia, Belgium, Brazil, Chile, China,
*European Union, France, Germany, India, Italy, Japan,
Republic of Korea, Namibia, New Zealand, Norway,
Poland, Russian Federation, South Africa, Spain, Sweden,
Ukraine, United Kingdom, United States, and Uruguay

9 Acceding States

Bulgaria, Canada, Cook Islands, Finland, Greece,
Mauritius, Netherlands, Peru and Vanuatu.

* One rare case in international law when an organisation (the EU)
which is not a state can become a party to a treaty

Objective and Species

Objective:

Conservation of Antarctic marine living resources;
including rational use
ecosystem approach; bird by-catch; predator-prey
relationships

Species coverage:

Antarctic marine living resources:

Fin fish, molluscs, crustaceans

All other species of living organisms, including birds

Not whales (ICRW) or seals (CCAS)



CCAMLR

Boundaries of the
Statistical Reporting
Areas in the
Southern Ocean

LEGEND

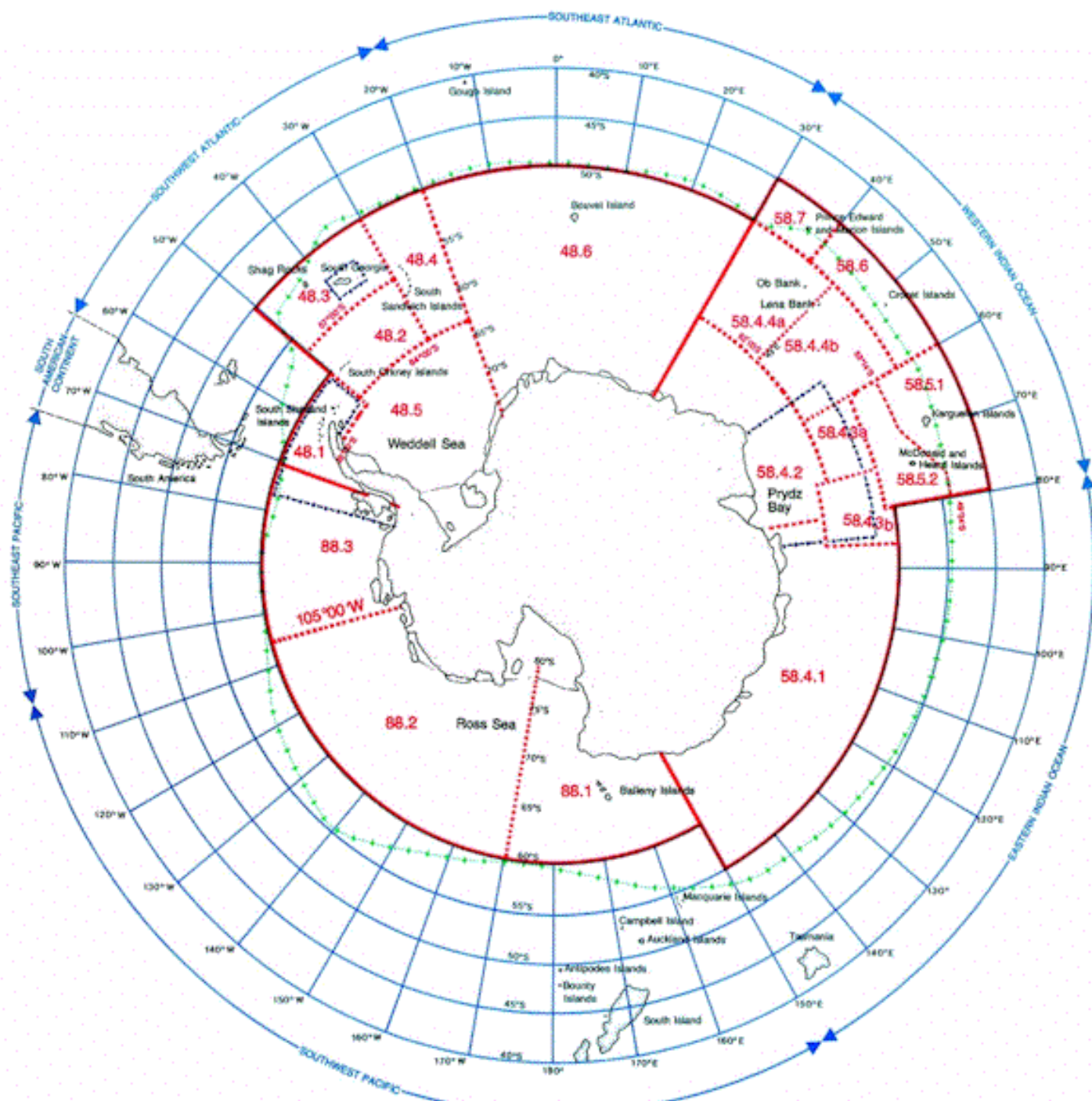
— STATISTICAL AREA
ZONE STATISTIQUE
СТАТИСТИЧЕСКИЙ РАЙОН
AREA ESTADISTICA

.... STATISTICAL SUBAREA
SOUS-ZONE STATISTIQUE
СТАТИСТИЧЕСКИЙ ПОДРАЙОН
SUBAREA ESTADISTICA

— ANTARCTIC CONVERGENCE
CONVERGENCE ANTAIRIQUE
АНТАРКТИЧЕСКАЯ КОНВЕРГЕНЦИЯ
CONVERGENCIA ANTARTICA

— CONTINENT, ISLAND
CONTINENT, ÎLE
МАТЕРИК, ОСТРОВ
CONTINENTE, ISLA

— INTEGRATED STUDY REGION
ZONE D'ETUDE INTEGREE
РАЙОН КОМПЛЕКСНЫХ ИССЛЕДОВАНИЙ
REGION DE ESTUDIO INTEGRADO



Sub-Antarctic Islands

Within CCAMLR Area

Heard and McDonald Islands (Australia) ✗

Kerguelen and Crozet Islands (France) ✓

Bouvetøya (Norway) ✗

Prince Edward & Marion Islands (South Africa) ✓

South Georgia and the South Sandwich Islands and Shag Rocks
(Argentina/UK – in dispute) ?

Chairman's Statement (appended to CCAMLR)

Sovereignty over these islands, when not in dispute, can be maintained and the sovereign can enforce its own fisheries laws at least equal to CCAMLR's (✗ ✓)

Australian/French EEZs

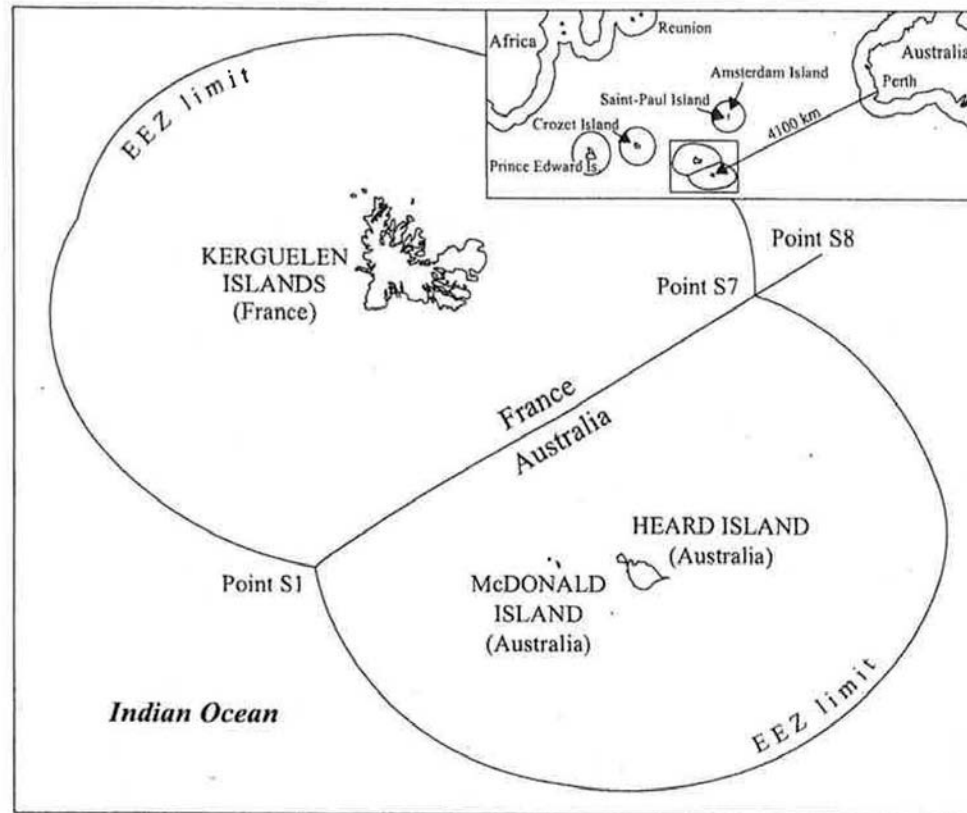
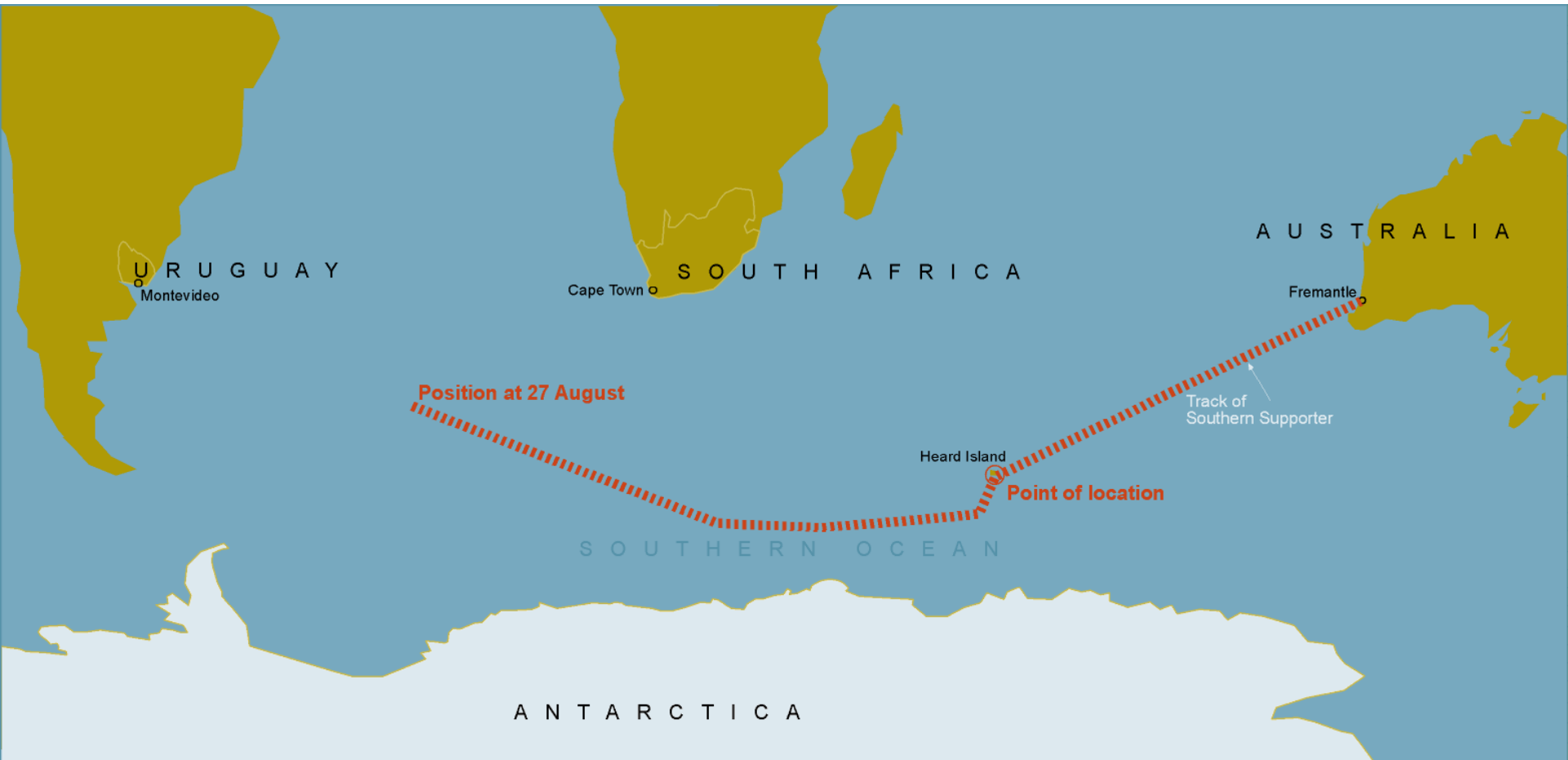


Figure 1. Location of HIMI and the Kerguelen Islands

Source: Gullett & Schofield (2007) p.548, Fig.1

Multilateral Hot Pursuit *Viarsa 1*



Viarsa 1 registered in Uruguay
(CCAMLR Commission Member)

Multilateral Hot Pursuit *Viarsa 1*



In 2003, *Viarsa 1* discovered fishing in HIMI EEZ.
Pursuit lasted 21 days; 3,900 nm

Multilateral Hot Pursuit *Viarsa 1*

Australia, UK, South Africa all participated in the hot pursuit, which began from the Australian EEZ off Heard Island but ended up in the ice



Multilateral Hot Pursuit *Viarsa 1*



Vessel eventually intercepted, arrested and returned to Australian port of Fremantle, Western Australia. Captain and 4 crew charged. In Dec 04 the jury was dismissed after failing to reach a verdict. In Nov 2005 a Perth District Court jury found all 5 accused persons not guilty (lack of evidence that they had been “fishing”).

Could CCAMLR Commission expel or
censure Uruguay?

If so, how?

If not, why not?



Why was this a CCAMLR issue?

- Illegal: fishing from a vessel flagged to a CCAMLR Party (Uruguay) contrary to CCAMLR Conservation Measures
 - (eg. CM10-06 re Compliance + possibly host of others - international observer, licensed by CCAMLR, using by-catch mitigation, requirements re catch & data reporting, etc.)
- Illegal: fishing in waters subject to coastal state jurisdiction within the Convention Area without the state's permission

Why was this an Australian issue?

- Fishing in Australia's HIMI Exclusive Economic Zone (undisputed sovereignty)
 - CCAMLR XXI 2002 Final Report - para.11.78 - General Statement by Australia:
 - Notified Parties that any fishing in HIMI EEZ must have prior approval of Australia
 - Notified Parties that all fishing concessions were fully subscribed for 2002/2003

Should Uruguay have been censured?

- YES! Breached CCAMLR by fishing illegally (also in Aus EEZ) -- this is not the first time! Doing nothing is NOT an option!
- BUT
- No formal mechanism to expel a party
If dues are paid, would need Uruguay's agreement
- So what can be done?
 - Articles 9 (Commission's Function), 12 (Decisions of Commission) and 25 (Dispute Settlement) + Rules of Procedure most relevant

CCAMLR Article 12 - Decisions

- Decisions on matters of substance are made by consensus
- Consensus usually means negotiating an outcome (eg. a Conservation Measure or Resolution) until all agree (or no-one disagrees)
- However, in CCAMLR voting may also be by show of hands or secret ballot (RoP #5)

Article 9 - Conservation Measures

- Many CMs relating directly or indirectly to IUU
 - technical/scientific
 - Prohibition of directed fishing for *Dissostichus spp.* except in accordance with specific conservation measures in the 2010/11 season – CM 32-09 (2010)
 - political
 - Scheme to Promote Compliance by Contracting Party Vessels with CCAMLR Conservation Measures – CM 10-08 (2009)
- Opt-out available Art.9.6(c-d)

Censure options

1. Conservation Measure prohibiting Uruguayan-flagged vessels from fishing in CCAMLR waters
 - but all CMs are agreed to by consensus (Art.9) ∴ unlikely that Uruguay would have agreed, even though opt-out available
2. Resolution naming Uruguay explicitly
 - but also made by consensus ∴ also unlikely

Article 25 - Disputes

1. Consult (peacefully) among parties involved
2. Unresolved disputes \Rightarrow ICJ or arbitration
Uruguay & Aus both accept ICJ jurisdiction in this context

Other (unlikely) mechanisms...

- CCAMLR Article 4 linked to Article VI of Antarctic Treaty re preservation of high seas freedoms (includes fishing)
- ∴ if Aus wanted compensation, eg. ? ITLOS matter because of breach of Compliance Agreement
 - FAO “Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas” (1993/2003)

Compliance Agreement

- Uruguay breached its obligations re Art. III.1(a)
 - Each party shall take such measures as may be necessary to ensure that fishing vessels entitled to fly its flag do not engage in any activity that undermines the effectiveness of international conservation and management measures.
- Dispute settlement (Article IX) includes ITLOS

What should Australia have done in CCAMLR?

- Behave consistently: doing nothing is NOT an option
 - However, voters heard about ~\$8-10m chase bill but did not protest the cost
- Move for formal censure: unilaterally or at least with South Africa & UK (hot pursuit allies/business deal)
- Offer to assist Uruguay: (capacity-building)

Why Australia did nothing...

- Concerned that CCAMLR Parties will be upset
 - Might argue that case against *Viarsa* will be won in domestic legal system anyway so not worth the risk
- Still wounded (but recovering) from 2002 CCAMLR meeting's rejection of CITES proposal to list Patagonian Toothfish
 - High probability that censure motion will be rejected (consensus)

What Uruguay could have done

- Invoke 'prompt release' procedure?
- Challenge legality of hot pursuit?
- Continue to flag "pirate vessels"?

Australian/French fisheries laws

- \$825,000 fine + 3 years imprisonment max penalty for illegal fishing
- Vessels forfeited (ownership transferred to Commonwealth at time of offence)
- Costs of 'hot pursuit' can be recouped
- France has max €300,000 fine (about AU\$400,000)
- French often confiscate and scuttle vessels

Joint Aus/French efforts

2003 joint treaty on cooperation

2007 joint treaty on cooperative enforcement
(in force Jan 2011)

- Joint patrols
- Boarding, apprehension, inspection, hot pursuit, seizure and investigation
- But both possibly conflict with LOSC

Tutorial Topic

No tutorial paper for this topic.