

Odd Gunnar Skagestad:

Management of Marine Living Resources: Fishery Negotiations between States (Bi- and Multilateral)

FIGURE I - HEADING

The topic of this lecture is "Fishery Negotiations between States (Bilateral & Multilateral)", but as you can see – I have started out with the heading "Management of Marine Living Resources".

This is to put our topic in perspective: When talking of Marine Living Resources, we include fisheries in the narrow sense as well as the harvesting of crustaceans, marine mammals and other harvestable marine organisms. The world oceans cover 70 % of the surface of the planet Earth, and represent roughly 50 % of our planet's total biomass production. But seafood constitute only a tiny fraction of mankind's food consumption. There is a huge potential for increasing the share of seafood for feeding the world population, esp. with regard to proteins. But to turn this potential into a reality depends on sensible resource management.

Sensible, responsible and sustainable management of the marine living resources is a global issue – it is a task that must be carried out at the national level as well as on the appropriate international levels. In this broader picture, fishery negotiations between states is an important element.

NB! I am going to present this subject from a **Norwegian perspective**, taking into account my own experience as a negotiator.

Marine resources – such as specific fish stocks – do not recognize national boundaries, whether we talk about territorial waters or exclusive economic zones (EEZ). Some fish stocks occur only within the EEZ of one particular country – in that case we talk about an *exclusive stock*, which is managed by that particular coastal state. More often, a fish stock occurs in the EEZ's of two or more coastal states. In that case we talk about a *shared stock*, which according to international law should be managed by the coastal states through cooperation – on a bilateral basis or on a broader regional level. Some fish stocks tend to move between the various EEZ's and the open seas beyond those EEZ's. Those so-called straddling stocks and highly migratory species call for extended management measures, involving the coastal states as well as other interested parties (i.e. other countries with fishing interests in the region).

FIGURE 2 - INTERNATIONAL LAW

I mentioned *international law* . As far as fishery management and fishery negotiations are concerned, the main and basic legal instrument is the **1982 UN Convention on the Law of the Sea** (UNCLOS).

According to the UNCLOS, coastal states have the right to establish EEZ's (200 n. miles, or up to the equidistance line bordering neighbouring, adjacent or opposite states).

The coastal state has the sovereign right to exploit the resources within its EEZ.

Coastal states which share one or more fish stocks, shall cooperate on the management (the regulation, conservation and harvesting) of those stocks.

The coastal states have the obligation to promote responsible resource management while at the same time take account of the needs of the coastal populations.

In **1995** parties to the UNCLOS concluded a protocol – the so-called **UN Fish Stocks Agreement** – whereby they undertook the obligation to cooperate on the responsible management of straddling stocks and highly migratory species, - also outside the EEZs.

In addition, I would also like to mention that in 2009 a global agreement was concluded under the auspices of the FAO about port state control measures in order to combat illegal, unregulated and unreported fisheries (IUU fisheries) – but this agreement has not yet entered into force.

Norway and a number of other coastal states and fishing nations take the UNCLOS and the 1995 protocol into account in their fishery policies and in their fishery negotiations.

Norway conducts, on a yearly basis, bilateral and multilateral negotiations with a number of other coastal states:

- on the management and conservation of fish stocks,
- on the establishing of total allowable catches (TAC) and allocation of catch quotas,
- on mutual or reciprocal access to conduct fishing operations in each others' EEZs, and
- on unilateral access for the fishermen of certain states to fish in the Norwegian 200 n. miles zones.
- Such negotiations may also include cooperation on marine research, cooperation on control measures, harmonizing of technical regulations (mesh size, minimum size, fishing gear specifications) etc.

This kind of annual agreements are negotiated and concluded on the basis of broader, and less specific but more long-term *framework agreements*.

Some of our fishery agreements pre-date the introduction of the concept of EEZs or the 1982 UNCLOS. Thus, already in 1966 Norway concluded a trilateral agreement with Denmark and Sweden on fishery regulations in Skagerrak and Kattegat (recently replaced by an updated agreement between Norway and the EU, - on behalf of Denmark and Sweden).

The two most important of Norway's current bilateral framework agreements are:

- Our agreements with Russia (originally the Soviet Union) of viz. 11 April 1975 and 15 October 1976 (on establishing a Joint Fishery Commission); and
- Our framework agreement with the EU from 27 February 1980.

Subsequent to the introduction in 1977 of a Norwegian EEZ, we also concluded a number of agreements with countries whose fishermen previously had been fishing in the waters which became part of our EEZ: Poland, GDR, Sweden, Portugal and Spain. Except for our "neighbourhood agreement" with Sweden, these agreements were all phased out as those countries became part of the EU. Furthermore, Norway has also bilateral fishery agreements with the Faroe Islands, Iceland and Greenland, and a trilateral agreement (since 15 May 1999) with Iceland and Russia ("The Loophole Agreement").

Since the late 1990's, Norway has also been party to a series of regional coastal states agreements – mostly including the EU, Iceland and the Faroe Islands and Russia - on specific fish stocks in the Northeast Atlantic (Mackerel, Norwegian Spring-Spawning Herring, Blue Whiting). In recent years, these have been the subject of protracted rounds of negotiations and great difficulties in reaching yearly agreements comprising all relevant coastal state parties.

In fishery negotiations, highly valuable resources are at stake, and temperatures may run high. Thus, negotiations may sometimes be compared to a boxing match, as in the following illustration: The cover picture of the 2010 annual report of the Norwegian Fishing Vessels Owners' Association - a drawing by the artist Roar Hagen depicting the Norwegian and the EU HoDs exchanging blows. (Should not be taken too literally – fishery negotiations are in fact conducted in a polite and professional way).

FIGURE 3 - FISHERY NEGOTIATIONS AS A BOXING MATCH

Norway also participates actively in a broader international cooperation in regional organizations – so-called "Regional Fishery Management Organizations" or RFMO's. These include the following, known especially by their acronyms:

FIGURE 4 - RFMOs

- NAFO (North-West Atlantic Fisheries Organization), from 1977
- NEAFC (Northeast Atlantic Fisheries Commission), from 1980
- CCAMLR (The Commission for the Conservation of Antarctic Marine Living Resources), from 1982
- SEAFO (South East Atlantic Fisheries Organisation), from 2003
- ICCAT (The International Commission on the Conservation of the Atlantic Tuna), from 2004

Marine living resources are not only fish. Unlike certain people who apparently consider whales and seals as pets, we Norwegians consider marine mammals as a natural resource, which should be harvested sustainably as with other marine resources. That is why Norway since the signing in 1946 of the International Convention on the Regulation of Whaling (ICRW) has been a member of the International Whaling Commission (IWC) – even though this organization has for a long time has been dominated by forces with an agenda quite different from its original mandate.

FIGURE 5 - OTHER FORUMS

The deviation of the IWC from its stated purpose is also why Norway in 1992 was a co-founder of the North Atlantic Marine Mammal Commission (NAMMCO) – an organization established to provide for regional management cooperation in terms of the principles and objectives of the UNCLOS (unlike the IWC).

Other important arenas for international negotiations with an impact on marine resources are the periodic CoP's (Conferences of the Parties) to viz. the 1973 Convention on International Trade in Endangered Species (CITES); and the 1992 Convention on Biological Diversity (CBD).

Going back to the subject of fishery negotiations:

A main objective of the various fishing agreements – esp. insofar as the subject matter concerns reciprocal access to fish in each others' waters – is to strike a reasonable *balance* between the rights and the obligations of the two parties (between the "gives" and the "takes"). To achieve this, it is necessary to establish a shared (joint) understanding of the ownership to the resources - including whether or not we are talking of *exclusive* or *shared stocks*. In the latter case – when a stock migrates or stays across zonal boundaries, it may be necessary to establish its relative **zonal attachment**. This is something that may be difficult to agree on (even after extensive research efforts), and certain divergent practices have developed between some of our fishery agreements. This can be exemplified with two of the main components in our fishery agreement with the EU – viz. the mackerel and the North Sea herring. For many years and after lengthy negotiations up until just a few years ago, the parties could not agree on a permanent allocation of shares, and had to resort to so-called *ad hoc* allocations for one year at a time. At the same time, the Norway-EU agreement is a good example of an agreement where the two parties take – as a point of departure – a joint understanding of ownership based on the zonal attachment of the relevant stocks, and make an effort to reach annual agreements which are *balanced* with regard to mutual quota allocations. Because this agreement comprises such a large number of different components (fish stocks), the parties have to use such tools as calculation tables based on so-called cod equivalents (for example: One ton of cod is worth three tons of mackerel, and so on).

FIGURE 6 - "COD EQUIVALENTS" (CONVERSION RATES)

In actual fact, the final result (the annual quota agreement) is seldom or never perfectly balanced. At least from a Norwegian point of view, there has generally been a clear bias in favour of the EU. My point here, however, is that the annual negotiations between Norway and the EU at least has had as a stated aim to achieve the objectives and principles of *balanced* contributions, gains and sacrifices on the basis of *zonal attachment*.

On the other hand, the agreements which are negotiated within the Joint Norwegian-Russian Fishery Commission have no formal balance-structure, and they are **not** based on any clearly defined relative zonal attachment. With regard to the most important components – cod and haddock – the parties have traditionally agreed on an even 50/50 sharing of quotas. Other stocks are agreed upon more or less on the basis of joint considerations of what seems to be fair or reasonable.

The differences between the various fishery agreements are also evident in the different negotiation patterns and traditions which have evolved. Again, we may use our agreements with the EU and with Russia as opposite examples.

In our negotiations with **Russia**, we have one single counterpart, which (we must assume) is operating with a clear mandate.

In the **Norway-EU** negotiations our counterpart is the representative of the EU Commission, who also should be assumed to operate with a mandate which has been accepted and approved by all the member states – but it is not always quite that easy. In fact the Commission and the EU Head of Delegation (the EU HoD, i.e. its chief negotiator) may sometimes find himself in the middle of the rivalry that take place between the main EU fishing nations – and their priorities are not always the same. To complicate matters for the EU HoD, his delegation includes representatives from the fishery authorities of the various EU countries. These people may sit and watch their HoD's moves as well as watching each other, something which may create tension within the EU delegation. Furthermore, the decision-making structure and the needs of the EU fishermen tends to put them under a certain time pressure – simply put, they are more in a hurry than Norway with regard to reaching an negotiated agreement.

The negotiations with Russia usually takes place by the end of October, and normally result in a signed agreement after a Commission Meeting of one week's duration (from Monday to Saturday). Our negotiations with the EU (which also usually start by the end of October) takes place in the course of several shorter sessions, where the parties will take one or more breaks in order to make preparations for new rounds of talk (and possibly receive fresh instructions) until an agreement can be signed. Usually, the parties manage to do this before the end of the year, but sometimes the negotiations have dragged out until January or even February next year before they have succeeded in reaching an agreement.

Although there are differences between the various negotiation processes, there are also similarities. The normal pattern for the preparations for the annual fisheries negotiations will be as follows:

Early on, the responsible ministry (i.e. the Ministry of Industry and Fisheries – known by its Norwegian abbreviation NFD) begins the preparatory work which include the following:

FIGURE 7 - NEGOTIATION PREPARATIONS

- Making an appointment with the other party concerning the date and place for the upcoming negotiations
- Obtaining relevant biological advice, mainly including reports from the Advisory Committee (ACOM) of the International Council for the Exploration of the Seas (ICES)
- Obtaining catch data and other relevant information from the Norwegian Directorate for Fisheries
- Obtaining information (such as intelligence reports from our diplomatic missions abroad) about matters of interest concerning our counterparts

- Take note of previously agreed obligations or other relevant decisions that may impact on our negotiation position
- Organize one or more preparatory meetings with representatives from the Ministry of Foreign Affairs (MFA), the Directorate for Fisheries, the Institute of Marine Research (IMR) and the fishing industry, to present the biological advice, discuss the industry's requirements and priorities etc.
- On the background of these preparations, the Norwegian HoD (i.e. the chief negotiator) prepares a draft mandate for the negotiations, which is submitted to the Minister of Fisheries for approval.
- At this stage it is time to appoint a negotiation team (delegation) and get started.

The composition of the Norwegian delegation to the Norway-EU negotiations would normally consist of participants (delegation members) as follows:

- The HoD plus one adviser (executive officer) from the NFD
- One or two representatives from the MFA
- The Fishery Counsellor from the Norwegian Mission to the EU in Brussels
- One to three participants from the Directorate for Fisheries
- One to three participants from the Institute of Marine Research (IMR)
- Three or four participants from the fishing industry, including one from the Secretariat of the Association of Norwegian Fishermen, two elected office-holders from the relevant sectors of the Association of Norwegian Fishermen, and one representative of the processing industry
- One representative for the Norwegian Seamen's Union

Likewise, the Norwegian delegations to the meetings of the Norwegian-Russian Fishery Commission would have a more or less similar composition (although it would include the Fishery Counsellor from our Embassy in Moscow, rather than Brussels).

In other fisheries negotiations, and with regard to the Norwegian delegations to the various RFMOs, we'll find a similar picture. This will also be the case with regard to such to annual meetings /commission meetings or CoP's where other ministries than the NFD are in charge of the delegations – like the MFA (CCAMLR, previously also IWC) or the Environment (CITES, CBD).

Looking at the *patterns* of the various negotiation processes, we'll find a main difference between on the one hand fishery negotiations in the narrow sense ("pure" fishery negotiations), which are first and foremost of a bilateral character and which deal with concrete distributional issues, and on the other hand participation in meetings in international or regional resource management organizations. The latter category includes such organizations as IWC, NAMMCO, CCAMLR and CITES, whereas such RFMOs as NAFO, NEAFC, ICCAT and SEAFO may be said to occupy a kind of middle ground in this broader picture.

FIGURE 8 - PATTERN OF NEGOTIATION STRUCTURE

The former category – what we could call "pure" fisheries negotiations – will usually follow a pattern with a chronological structure with the following elements:

- Agree on the agenda
- Presentation and discussion of the biological advice
- Exchange and scrutiny of catch data and other relevant information
- Mutual presentations of own side's requirements, priorities and demands
- Negotiations, first of all on establishing TACs for joint stocks, but most important, concrete distributional questions – including ownership or zonal attachment of fish stocks (in case these questions have not already been settled beforehand), furthermore reciprocal allocations of quotas (incl. questions of payment), inter-zonal access, etc. These central stages of negotiations will sometimes contain elements of confrontational argumentation, haggling, high temperature, tough rhetorics and cunning moves and tactical dispositions (see again **FIGURE 3 - FISHERY NEGOTIATIONS AS A BOXING MATCH**)
- And finally, when parties have succeeded in putting the most important elements in place, to make the necessary adjustments so that an agreed text can be finalized.

Meetings in international (or regional) organizations will usually have a different structure, where the negotiations (or discussions) will be linked to various agenda items, which will not necessarily follow a continuous track aimed at one concrete single goal (such as arriving at a quota agreement). The purely distributional questions may sometimes only constitute a minor part of the whole exercise. Much of the discussions could here concern principles and identifying common objectives (and to agree on how to achieve such objectives and goals. To the extent that this is the case, we would expect to see negotiations characterized by the so-called co-operative approach – as in this table:

FIGURE 9 - CO-OPERATIVE APPROACH

Nevertheless, also in these kinds of meetings there may be plenty of confrontational argumentation, haggling, high temperature, tough rhetorics and cunning moves and underhanded tactical dispositions. An additional characteristic of these forums and arenas is that meetings are often open for participation by observers. Thus, at meetings in IWC, CITES and CCAMLR in particular, one can witness the presence of activist NGOs which – in their observer capacity – manage to exert a considerable pressure on the negotiation behavior of the official delegates of a number of countries.

In my previous lecture I discussed various aspects of how – in what way – negotiations may be conducted. This is something which I will not elaborate on in the present discussion.

It may, however, be useful to take a look at another question: **What does it take to succeed?** What are the main requirements that should be in place so that our negotiations may bring satisfactory results?

This is actually the most important, but also the most difficult question to answer.

All experience shows that no matter how good or just a cause we may have, regardless of the validity of our arguments, it is not enough to believe in our own righteousness, we must also make our arguments come across in a way that makes us win the day. In fishery negotiations there is no such thing as a free lunch, one has to make the best possible effort and sometimes one is forced to put up a tough fight.

Success may not be guaranteed, but in order to make the best possible effort, it is important that the following considerations are properly dealt with:

FIGURE 10 - IMPORTANT CONSIDERATIONS

- **Goal-orientation, to work with a clear purpose:** We must know what we want to achieve, we must have a clear strategy, and – very important: We must have clear instructions (a clear mandate) from our principals (i.e. our home authorities).
- **Expert knowledge:** We must have done our homework. That also means making sure that our negotiating team consists of people with the necessary knowledge and competencies.
- **Confidence (trust), authority, loyalty and teamwork:** It is important that the HoD can act with a sufficient degree of authority and confidence. This requires loyalty, trust and support from the other members of the negotiating team. It is important that both the HoD and the rest of his team understand clearly that negotiation work is teamwork, that all team members pull in the same direction, and that the HoD is capable of listening to all his teammates and make active use of the skills and resources that the individual team member represents.

Finally I'd like to point out a few characteristics that may be typical of the Norwegian approach to fishery negotiations, but may also be useful for other countries to observe:

FIGURE 11 - THE NORWEGIAN APPROACH

- **Cooperation-based solutions:** As a small country in a big world we depend on constructive cooperation with other countries to achieve results which take care of our national interests. Our fishery policies are based on the principle of sober and level-headed safeguarding of our own national interests. And these are interests which also includes a commitment to international cooperation based on shared values and transboundary tasks and challenges.
- **Sustainable use:** The principle of sustainable harvesting of renewable resources, based on the best available scientific advice is the very mainstay (foundation) of our fishery management. This is a principle which also is embodied in the instructions to our negotiation teams.
- **Stakeholder participation:** The principle of democratic participation and professionally relevant participation in important decision-making processes has been a long-standing practice in Norwegian public life – long before it became fashionable in the international context to talk about "stakeholder participation". And because we are talking about negotiation processes which have an impact on the very livelihood of the people who make their living harvesting the marine resources, it is our practice not

only to listen to the advice from the fishing industry, but also that the industry is included in the very negotiation processes.

FIGURE 12 - PRACTICAL ADVICE

Thank you for your attention!

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**MANAGEMENT OF MARINE
LIVING RESOURCES:**

**FISHERY
NEGOTIATIONS
BETWEEN STATES**

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INTERNATIONAL LAW

- **1982 U.N. CONVENTION ON
THE LAW OF THE SEA
(UNCLOS)**
- **1995 FISH STOCK
AGREEMENT**



REGIONAL FISHERY MANAGEMENT ORGANIZATIONS (RFMOS)

- NEAFC (NORTHEAST ATLANTIC FISHERIES COMMISSION)
- NAFO (NORTH-WEST ATLANTIC FISHERIES ORGANIZATION)
- CCAMLR (COMMISSION FOR THE CONSERVATION OF ANTARCTIC MARINE LIVING RESOURCES)
- SEAFO (SOUTH EAST ATLANTIC FISHERIES ORGANISATION)
- ICCAT (INTERNATIONAL COMMISSION ON THE CONSERVATION OF THE ATLANTIC TUNA)

OTHER INTERNATIONAL AND REGIONAL FORUMS FOR MARINE RESOURCES MANAGEMENT

- ICES (INTERNATIONAL COUNCIL FOR THE EXPLORATION OF THE SEA)
- IWC (INTERNATIONAL WHALING COMMISSION)
- NAMMCO (NORTH ATLANTIC MARINE MAMMAL COMMISSION)
- CITES (CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES)
- CBD (CONVENTION ON BIOLOGICAL DIVERSITY)

COD EQUIVALENTS

• COD	(Torsk)	1
• HADDOCK	(Hyse)	1
• SAITHE	(Sei)	0,77
• WHITING	(Hvitting)	0,86
• PLAICE	(Rødspette)	1
• MACKEREL	(Makrell)	0,3
• HERRING	(Sild)	0,8
• HALIBUT	(Kveite)	3,8
• SPRAT	(Brisling)	0,125
• BLUE WHITING	(Kolmule)	0,125
• SHRIMPS	(Reker)	3,0

NEGOTIATION PREPARATIONS

- **FIX DATE**
- **OBTAIN BIOLOGICAL ADVICE**
- **OBTAIN CATCH DATA (STATISTICS)**
- **COMPILE OTHER RELEVANT INFO**
- **TAKE NOTE OF PREVIOUS COMMITMENTS**
- **PREPATORY MEETINGS**
- **PREPARE DRAFT MANDATE FOR APPROVAL**
- **APPOINT NEGOTIATION TEAM - GET STARTED**

NEGOTIATION PATTERN – CHRONOLOGICAL STRUCTURE

- **AGREE ON AGENDA**
- **BIOLOGICAL ADVICE**
- **EXCHANGE OF CATCH DATA**
- **MUTUAL PRESENTATION OF REQUIREMENTS,
PRIORITIES & DEMANDS**
- **ACTUAL NEGOTIATIONS (HAGGLING)**
- **TOPICS: ESTABLISH TAC'S FOR JOINT STOCKS;
DISTRIBUTIONAL QUESTIONS; OWNERSHIP/ZONAL
ATTACHMENTS; QUOTA ALLOCATIONS; PAYMENTS
(GIVES & TAKES); ETC.**
- **FINALIZING AGREED TEXT**

CO-OPERATIVE APPROACH

3 BASIC TASKS:

- 1. DEVELOP A COMMON AND ACCURATE UNDERSTANDING OF THE PROBLEM(S) TO BE SOLVED**
- 2. LOOK FOR POSSIBLE SOLUTIONS; I.E. DISCUSSING TENTATIVE IDEAS, NOT PROPOSALS**
- 3. EVALUATION AND CHOICE**

IMPORTANT CONSIDERATIONS:

- GOAL-ORIENTATION, PURPOSE, CLEAR STRATEGY**
- EXPERT KNOWLEDGE**
- CONFIDENCE, TRUST, AUTHORITY, LOYALTY, TEAMWORK**

FISHERY NEGOTIATIONS THE NORWEGIAN APPROACH

- **CO-OPERATION-BASED SOLUTIONS**
- **SUSTAINABLE USE**
- **STAKEHOLDER PARTICIPATION**

PRACTICAL ADVICE

- 1. KNOW THE SUBJECT
MATTER**
- 2. KNOW YOUR OWN
POSITION**
- 3. KNOW YOUR
OPPONENT**

ABBREVIATIONS & ACRONYMS

ACOM	Advisory Committee (of the ICES)
CBD	Convention on Biological Diversity
CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
CITES	Convention on International Trade in Endangered Species
COFI	Committee on Fisheries (of FAO)
CoP	Conference of the Parties
EEZ	Exclusive Economic Zone
EU	European Union
FAO	Food and Agriculture Organization of the UN
HoD	Head of Delegation (i.e. Chief Negotiator)
ICCAT	International Commission for the Conservation of Atlantic Tunas
ICES	International Council for the Exploration of the Sea
IUU	Illegal, Un-reported and Un-regulated Fisheries
IWC	International Whaling Commission
MFA	Ministry of Foreign Affairs
NAFO	North-West Atlantic Fisheries Organization
NAMMCO	North Atlantic Marine Mammals Commission
NEAFC	North-East Atlantic Fisheries Commission
NGO	Non-Governmental Organization
OSPAR	Oslo and Paris Conventions
RFMO	Regional Fisheries Management Organization
SEAFO	South East Atlantic Fisheries Organization
TAC	Total Allowable Catch
UN	United Nations Organization
UNCLOS	The 1982 UN Convention on the Law of the Sea