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**THE SUSTAINABLE USE OF MARINE RESOURCES AS  
A PRINCIPLE OF INTERNATIONAL LAW**

**Abstract.** This article is devoted to the examination of one of the most important measures designed in order to protect marine living resources population, which is the principle of sustainable use of marine resources. The concept of sustainable development is especially relevant for the marine living resources conservation, as at the present moment the international community is faced with the problem of their gradual depletion. Despite this fact, there is no unanimity in the scientific community on the issue of whether the sustainable use should be considered as an independent principle of international environmental law or not. Author comes to the conclusion that the sustainable use of marine resources should not be reduced to the method of fisheries management, since only the status of international legal principle may ensure the achievement of sustainable development.

**Key words:** fisheries, international law, environmental law, sustainable development.

**JEL classification:** K32, K33

**Introduction**

The term ‘sustainability’ in relation to fisheries is relatively recent. It is derived from the earlier definition of ‘sustainable development’, which was given in 1987 by the World Commission on Environment and Development under the leadership of the Prime Minister of Norway, Gro Harlem Brundtland, in the report “Our Common Future” (Brundtland 1987). Thus, sustainable development refers to development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

There are four main components of the sustainable development concept: environmental, economic, social, and cultural. These

components complement and condition each other. Natural resources and the environment in general are the basis of social and economic development (Zhang, Chen 2022). Therefore, in order to carry out such development, it is necessary to protect the environment and rationally use natural resources. In this regard, the legal methods of international regulation are of great importance, since every effort to bring sustainability should be reinforced by legal basis. Thus, the subject of this article is the international legal regulations and norms that enshrine sustainable use of marine resources as a principle.

### **1. The origin of ‘sustainable use’ concept and the UN general legislation**

The definition of the term ‘sustainable use’ is contained in the Convention on Biological Diversity, adopted as a result of the 1992 UN Conference on Environment and Development. Thus, sustainable use refers to the use of the components of biological diversity in a manner and at such a rate that does not lead to the depletion of biological diversity in the long term, thereby maintaining its ability to meet the needs of present and future generations and meet their aspirations (CBD 1992, p. 4).

The general rules governing the need to conserve marine living resources are established by the UN Convention on the Law of the Sea. In particular, art. Article 61 of the Convention imposes on the coastal State the obligation, on the basis of sound scientific evidence, to determine the maximum allowable catch of living resources in its exclusive economic zone, in order to ensure “maintenance or restoration of populations of harvested species at levels ... at which the maximum sustainable yield can be achieved determined taking into account relevant environmental and economic factors, including the economic needs of coastal fishing communities” (UNCLOS 1982, p. 46). Also, according to paragraph 1 of Art. 62 of the Convention, coastal states are entitled to promote the optimal use of the living resources of the exclusive economic zone. The convention also encourages states to make certain efforts to ensure

cooperation in order to ensure the conservation of aquaculture resources (UNCLOS 1982, p. 65).

The mentioned provisions of the Convention have been further consolidated in the 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. The agreement aims to ensure the conservation and sustainable use of aquaculture resources (SFS and HMFS Agreement 1995, s. 4), and states commit to take steps to ensure the long-term sustainability of these stocks. In addition, States shall take measures to prevent or eliminate overexploitation and excess fishing capacity and to ensure that the intensity of fishing effort does not exceed levels commensurate with the sustainable use of fish resources. According to Satya Nandan, Chairman of the UN Conference on Straddling and Highly Migratory Fish Stocks (where this Agreement was developed), the collective interest of the international community is to take into account and ensure the sustainable use of the living resources of the high seas. (Birne et al. 2009).

In addition to the Convention on Biological Diversity, in 1992 the UN Conference in Rio de Janeiro adopted the Declaration on Environment and Development and Agenda 21. These documents reflect the concept of sustainable development at the multilateral level. Several principles enshrined in the Declaration are devoted to it at once. In accordance with the first principle, concern for people is at the center of efforts to achieve sustainable development. They have the right to a healthy and fruitful life in harmony with nature.

The second principle establishes that, in accordance with the UN Charter and the principles of international law, states have the sovereign right to develop their own resources in accordance with their environmental and development policies and are responsible for ensuring that activities within their jurisdiction or control do not harm the environment of other states or areas beyond the limits of national jurisdiction (Rio Declaration 1992, p. 1). According to the third principle, the right to development must be realized in order to ensure that the needs

of present and future generations in the areas of development and the environment are met equitably (Rio Declaration 1992, p. 2). Finally, the fourth principle states that in order to achieve sustainable development, environmental protection must be an integral part of the development process and cannot be considered in isolation from it (Rio Declaration 1992, p. 2).

In addition to international treaties, the principle of sustainable fishing is also reflected in documents of voluntary nature. The document already mentioned above - Agenda 21 - is a plan of action to implement the idea of sustainable development, taking into account four components: environmental, social, economic and cultural. It is not a binding document and contains recommendations for UN member states. This document can be considered as a kind of foundation and guideline for the implementation of international management in specific areas of the environment.

Several paragraphs of chapter 17 of Agenda 21, entitled “Protection of the oceans, all kinds of seas, including enclosed and semi-enclosed seas, and coastal areas and the protection, rational use and development of their living resources”, are devoted to sustainable fisheries (Agenda 21 1992, p. 167).

In accordance with paragraph 17.1, the marine environment, including the oceans and all seas and adjacent coastal areas, is an integral whole, which in turn is an important component of the global life support system and is seen as a positive factor that opens up opportunities for sustainable development (Agenda 21 1992, p. 168). The norms of international law, reflected in the provisions of UNCLOS, define the rights and obligations of states and provide an international legal framework for the protection and sustainable development of marine and coastal areas and their resources.

Among the program areas listed in paragraph 17.1 that require action to comply with UNCLOS standards are, among others, the sustainable use and conservation of high seas marine living resources and the sustainable use and conservation of living marine resources under national jurisdiction. Paragraph 17.46 of Agenda 21 deals with the objectives of

the sustainable use and conservation of marine living resources of the high seas. In particular, States undertake to ensure the conservation and sustainable use of the living marine resources of the high seas. To this end, it is necessary (Agenda 21 1992, p. 178):

- a) to harvest and increase living marine resource stocks to meet human nutritional needs and to achieve social, economic and development goals;
- b) to maintain or restore populations of marine species at levels that can provide the maximum sustainable yield, determined taking into account relevant environmental and economic factors, taking into account the interdependence of species;
- c) to promote the development and use of selective fishing gear and techniques to minimize the loss of catch of targeted species and by-catch of non-target species;
- d) to provide effective monitoring and action to ensure compliance with fisheries regulations;
- e) to protect and restore endangered marine resources;
- f) to conserve habitats and other ecologically important areas;
- g) to increase scientific research on living marine resources of the high seas.

Obviously, this paragraph implies the concept of the high seas as a common property (*res communis*), while many fishing vessels continue to perceive the high seas as ‘no man’s’ (*res nullius*) and, accordingly, seek to maximize the catch of fish and seafood without regard to the problem of their sustainable reproduction (Churchill, Lowe 2010, pp. 294-295).

Paragraph 17.74 of Agenda 21 deals with the objectives of the sustainable use and conservation of living marine resources under national jurisdiction. According to the document, states undertake to protect and rationally use the living marine resources under their national jurisdiction. For these purposes it is necessary (Agenda 21 1992, p. 182):

- a) to develop and increase marine living resource stocks to meet food requirements and to achieve socio-economic and development goals;
- b) to take into account traditional knowledge and the interests of local communities, small-scale individual fishers and indigenous peoples in development and management programs;

c) to maintain or restore populations of marine species at or to levels at which the maximum sustainable yield can be achieved, determined on the basis of relevant environmental and economic factors and taking into account species relationships;

d) to promote the development and use of selective fishing gear and methods to minimize the loss of catch of targeted species and the by-catch of non-target species;

e) to protect and restore populations of endangered marine species;

f) to protect rare or vulnerable ecosystems, as well as habitats and other ecologically sensitive areas.

Thus, the goals in both cases are almost identical. In addition to them, the document also defines the principles and directions for the activities of states to ensure the management of fisheries on the high seas and in waters under national jurisdiction, as well as the means of achieving these goals. The 2002 Johannesburg Declaration on Sustainable Development does not contain any substantive provisions regarding the sustainable use of marine living resources. The only thing noted is the ongoing loss of biodiversity and the depletion of fish stocks (Johannesburg Declaration 2002, art. 13).

In turn, the Johannesburg Plan of Implementation of the World Summit, adopted at the World Summit on Sustainable Development in 2002, contains quite detailed provisions that provide for actions to implement the sustainable use of marine living resources. Article 31 of the document is devoted to sustainable fisheries, which provides for a number of measures that must be taken to achieve this goal. Thus, among them are demands for the conservation or restoration of stocks of marine living resources to levels that could provide the maximum sustainable catch, the elimination of subsidies that promote illegal, unreported and unregulated fishing and the creation of excessive fishing capacity, ratification and implementation of UN agreements, as well as regional agreements on fisheries (Johannesburg Plan 2002, p. 17).

## **2. The FAO regulation of sustainable use: Code of Conduct for Responsible Fisheries**

Special attention in the Johannesburg Plan is paid to the need to implement the provisions of the Code of Conduct for Responsible Fisheries. This act was developed and adopted by the UN Food and Agriculture Organization in 1995. The Code has a global scope and is addressed to almost all subjects of international fishery relations - states, regardless of whether they are FAO members or not, fishers, international organizations (global, regional, subregional, regardless of whether they are intergovernmental or non-governmental), as well as other persons engaged in the use of water resources (FAO Code 1995, p. 1). Despite the fact that the Code is a voluntary document and essentially represents a measure of the so-called 'soft law', it has a significant impact on the practice of fishery relations. Thus, the FAO Committee on Fisheries periodically publishes progress reports on the implementation of the provisions of the Code, from which it follows that most of the states and regional fishery bodies have brought their legislative acts in line with its provisions (Committee Highlights 2022).

One of the purposes of the Code is to establish principles for ensuring responsible fisheries and fisheries management (FAO Code 1995, p. 2). Thus, article 7.1.1 of the document states that all subjects of fisheries law must take measures for the long-term conservation and sustainable use of fish resources. The very concept of sustainable use is revealed in the same article: it should be understood as maintaining resources at a level that contributes to their optimal use and allows them to be kept available for the present and future generations (FAO Code 1995, p. 8). Separate attention is focused on the fact that short-term considerations should not jeopardize the implementation of this principle. This emphasis seems to be justified, since for developing and least developed countries the goal of ensuring food security is much more relevant than the goal of ensuring the sustainable use of fish resources. That is why Article 5 of the Code provides for special requirements adopted in favor of developing countries. First, FAO points to the need to give due consideration to their

ability to implement the provisions of the act. Secondly, FAO calls on international organizations and developed countries to provide the necessary assistance to developing and least developed countries in order to facilitate their implementation of the provisions of the Code. (FAO Code 1995, p. 4). At the same time, special attention is paid to the food needs of local communities. The Code aims to encourage and facilitate the restructuring of the fisheries industry so that fish resources are used in a long-term sustainable and responsible manner for the benefit of present and future generations.

The Declaration and Plan of Action, adopted at the FAO International Conference on the Sustainable Contribution of Fisheries to Food Security in 1996, noted that the international community should base policy, strategy, management and resource use for the sustainable development of the fisheries sector on the application of specific principles such as support for ecological systems, use of the best available data, improvement in economic and social well-being and others (Rome Declaration 1996). Also of note is the 2015 FAO Voluntary Guidelines for Securing Sustainable Small-scale Fisheries in the Context of Food Security and Poverty Eradication. They are developed as a supplement to the 1995 Code of Conduct for Responsible Fisheries. One of the objectives of the document is to ensure the sustainable use, prudent and responsible management and conservation of fish resources.

The Part 2 of Voluntary Guidelines, “Responsible Fisheries and Sustainable Development” provide that this document recognizes the need for the responsible and sustainable use of aquatic biodiversity and natural resources in order to meet the development and environmental needs of present and future generations (FAO Guidelines 2015, p. 5). In the Final Document “The Future We Want”, adopted at the UN Conference on Sustainable Development in Rio de Janeiro in 2012, states raised the issue of sustainable development of fisheries. Conference participants recognized the essential contribution of fisheries to all components of sustainable development and stressed the vital role of healthy marine ecosystems, sustainable fisheries and sustainable



aquaculture in ensuring food security and nutrition, and supporting the livelihoods of millions of people (Rio Outcome 2012, pp. 31-32).

### **3. Sustainable development goals and Agenda 2030 within the context of marine living resources**

At the 70th session of the UN General Assembly on September 25, 2015, Resolution No. 70/1 “Transforming our world: the 2030 Agenda for Sustainable Development” was adopted, which includes 17 sustainable development goals. Goal 14 (paragraphs 14.4 - 14.7) of the Agenda, entitled “Conserve and sustainably use the oceans, seas and marine resources for sustainable development”, is dedicated to sustainable fisheries. First of all, attention should be paid to the fact that the 2030 Agenda, compared to Agenda 21, regulates the steps that need to be taken to achieve the sustainable development goals much more specifically and in detail. It can be said that the 2030 Agenda is a kind of method for clarifying the provisions of Agenda 21 (Bailey, Hopkins 2023). Thus, in order to achieve the conservation and rational use of the oceans, seas and marine resources for sustainable development, it is proposed to take the following actions (Agenda 2030 2015, p. 23-24):

a) By 2020, effectively manage harvests and end overfishing, illegal, unreported and unregulated fishing and destructive fishing practices, and implement science-based management plans to restore fish stocks as soon as possible, bringing them to at least up to levels that are capable of producing the maximum sustainable yield, taking into account the biological characteristics of those stocks;

b) By 2020, conserve at least 10 per cent of coastal and marine areas, consistent with national and international law and based on the best available scientific information;

c) By 2020, prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated fishing and refrain from introducing new such subsidies, recognizing that appropriate and effective special and differential treatment for developing and least developed

countries should be an integral part of the World Trade Organization fisheries subsidies negotiation;

d) By 2030, increase the economic benefits to Small Island developing States and least developed countries from the sustainable use of marine resources, including through sustainable management of fisheries, aquaculture and tourism.

Thus, most of the tasks set correlate with the tasks set in other international legal acts dedicated to the goals of sustainable development. In particular, prohibition of harmful fishing subsidies was addressed by one of the provisions of the Johannesburg Plan, while the increase in economic benefits for developing and least developed countries, as well as the cessation of overfishing, IUU fishing and the creation of excessive fishing capacity were indicated both in the FAO Code of Conduct for Responsible Fisheries and in Agenda 21. From this we can conclude that despite the existence of many acts relating to sustainable fisheries, in the global context, it is still not possible to achieve full compliance with this principle of world fishing practices.

In addition, the very definition of sustainable use as a principle of fisheries management raises questions in the scientific community. Some researchers believe that ‘sustainability’ in relation to fisheries should not be singled out as an independent concept. It already exists within the generally recognized concept of sustainable development as one of its elements. At the same time, there are experts who single out sustainable fishing as an independent concept (Yanagi 2008). Some of them reduce this concept to the principles of management of marine living resources (Roberts, Brink 2010). In any case, sustainable fisheries are regarded as one of the fundamental international legal principles (Markowski 2009).

## **Conclusion**

It seems that the most scientifically substantiated position is the allocation of the sustainable use of marine living resources as an independent principle of fisheries management. Considering sustainable

use as an independent concept is not justified because, conceptually, this principle still stems from the more fundamental idea of sustainable development. As a result, the implementation of sustainable use is possible only in conjunction with other goals and objectives of the sustainable development concept. At the same time, it is incorrect to reduce sustainable use to an ordinary element of sustainable development due to the specifics of the relations under consideration. The sustainable use of marine living resources is unthinkable without its operationalization and the development of specific implementation measures, which cannot be achieved within the framework of a single concept of sustainable development. In addition, international fisheries actors need to rely on other fisheries management principles, such as the precautionary and ecosystem approach, to achieve sustainable use. Therefore, the sustainable use of marine living resources is a complex principle, for the implementation of which it is necessary to involve the mechanisms and processes inherent in various international legal concepts.

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