

Regulation and Governance of Marine Resources in Latin America

Spring 2016

May 16-21, 2016

Mon-Thurs: 4pm-6pm; Fri:2pm-4pm; Sat:9am-1pm

The world's seas are used extensively for seafood harvesting, energy production, mineral extraction, transportation, recreation, or national security. The law of ocean management has developed rapidly in the last sixty years. Nations have expanded the body of laws that govern the management of ocean resources, with hundreds of new statutes giving rise to new fields of legal scholarship.

Putting an order on the human uses of ocean spaces in a sustainable manner has proved a challenging task. For example, regulatory decisions aimed at reducing the number of large fishing vessels have ended up subsidizing an increase in the number of small fishing boats. Laws enacted for the protection of the marine environment have failed to avoid an unprecedented environmental crisis: at the present time, about 85% of global fisheries are either fully exploited or over exploited. We are transforming the seas as a consequence of our management decisions. We must take responsibility on the world that we are shaping, and that includes the decisions we make on the management of ocean spaces.

What should be the role of ocean management regulation? Social groups, such as fishing communities, are not designed per se; they are produced through history and by complex webs of interaction among individuals and institutions. Regulatory frameworks must be flexible enough to adapt to this diversity of circumstances, while at the same time ensuring the necessary degree of sustainability and legal certainty.

This seminar addresses regulatory governance – the rules, institutions and mechanisms of regulation – for the management of fisheries resources. The syllabus focuses on case studies of ocean resources management that have rendered promising results. The course analyzes small-scale fisheries and Marine Protected Areas, and ends with a review of the regulatory implications of international law of the sea.

The class will meet 5 times for 2 hours each. Students will participate in class discussion; write one group policy memo to be discussed in class, and a final individual memo.

Final Observation: to be successful, this short and intense seminar class will depend upon the informed participation of every person. Please come prepared by having read the assignments for the class and be ready to participate in the discussion.

1. Introduction to the course – Too much regulation? Monday, May 16th

Readings:

- Federación de Sociedades Cooperativas de Producción Pesquera Ribereña del Puerto de San Felipe. Letter from Alonso Garcia Lucero to the President of Mexico, August 20, 2013 (in Spanish).
- Josh Eagle et al., *Ocean Zoning and Spatial Access Privileges: Rewriting the Tragedy of the Regulated Ocean*, 17 N.Y.U. Envtl. L.J. 646 2008-2009
- Skim James E. Salzman & J. B. Ruhl, *Climate Change, Dead Zones, and Massive Problems in the Administrative State: Strategies for Whittling Away* 98 CAL. L. REV. 59, 61 (2010).
- Skim J. R. Beddington et al., *Current Problems in the Management of Marine Fisheries*, Science 22 June 2007: Vol. 316 no. 5832 pp. 1713-1716

2. Reliance on self-regulation. Small-scale fisheries management. The FEDECOOP case. Tuesday May 17th

Readings:

- Bonnie J. McCay et al., Cooperatives, concessions, and co-management on the Pacific coast of Mexico, 2013, <http://micheli.stanford.edu/pdf/cooperatives%20concessions%20and%20comanagement.pdf>
- *Skim* Robert Percival, Environmental Legislation and the Problem of Collective Action, 9 DUKE ENVTL. L. & POL'Y F. 99 (1998-1999), Pages 20 to 27, *skim* the rest
- *On the concept of cultural legitimacy*, *skim* Thoko Kaime, Cultural Legitimacy and Regulatory Transitions for Climate Change, 3 CARBON & CLIMATE L. REV. 321 (2011).
- *On peer pressure*, *skim* Gioia de Melo & Matias Piaggio. The perils of peer punishment: evidence from a common pool resource framed field experiment. (Pages 3 to 11)

Guest speakers: Enrique Sanjurjo, Public Policy Officer at WWF – Mexico, and Victor Hernandez Trejo, Autonomous University of Baja California, Mexico.

3. International law of the sea. Areas of jurisdiction, IMB treaties and marine conservation. Wednesday 18

Readings:

- Read art. 38.1 of the Statute of the International Court of Justice (sources of Intl. law)
- ICJ Fisheries case (U.K. v. Norway) Judgement of 18 December 1951. Read the case summary, <http://www.icj-cij.org/docket/files/5/1811.pdf>
- UNCLOS art. 2,3,4 & 5, Part V, Part VII
- Dunoff, Ratner, Wippman, International Law Norms, Actors, Process A Problem-Oriented Approach, 669-674
- *Skim* William T. Burke, Unregulated High Seas Fishing and Ocean Governance at (John VanDyke, Durwood Zaelke & Grant Hewison Eds.), FREEDOM FOR THE SEAS IN THE 21ST CENTURY, 235-271

4. Group memo and discussion. UN Straddling Stocks Agreement. Thursday 19

Collaborative memo on straddling fish stocks. Assessing the review of the 1995 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 (UNFSA). The students will take the position of a small island developing nation and prepare a short policy memo to provide key negotiation points to participants to the UNFSA Review Conference (New York, 23-27 May, 2016).

- *Skim*, Global Ocean Commission, From Decline to Recovery, A Rescue Package for the Global Ocean, https://missionocean_www_uploads.s3.amazonaws.com/goc-summary-report-53a8fb89b8cb7.pdf
- *Skim* FAO, Marine Protected Areas in the High Seas, <http://www.fao.org/fishery/topic/16204/en>

- Fish Stocks review conference resumes May 2016. <http://foreignaffairs.co.nz/2016/01/28/event-resumed-review-conference-on-the-un-fish-stocks-agreement/>
- SUMMARY OF THE RESUMED REVIEW CONFERENCE OF THE UN FISH STOCKS AGREEMENT (IISD). 24-28 MAY 2010 <http://www.iisd.ca/vol07/enb0765e.html>
- UNGA report on the review of the Fish Stocks Agreement (2010) <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/465/87/PDF/N1046587.pdf?OpenElement>

5. Bottom-up regulatory design. Creating (and keeping) an MPA. The Cabo Pulmo Story Friday, May 20th

Readings:

- Environmental Law Institute. Legal Frameworks for MPA enforcement in the Caribbean: challenges and opportunities, <http://eli-ocean.org/wp-content/uploads/2015/06/Legal-Frameworks-for-MPA-Enforcement-in-the-Caribbean.pdf>
- Josephine Woronoff. Ocean Optimism Project. Cabo Pulmo: A Marine Protected Area enables biodiversity and the local economy to rebound, <https://ocean.si.edu/sites/default/files/Cabo%20Pulmo%20Earth%20Justice%20Law%20Summary.pdf>
- Lucas N. Joppa et al., On the Protection of “Protected Areas”, Proceedings of the National Academy of Sciences of the United States of America May 6, 2008 vol. 105 no. 18
- C. Carey et al., SQUANDERING PARADISE? The importance and vulnerability of the world’s protected area, assets.panda.org/downloads/squandering_paradise.pdf 28-37

Guest speaker: David Roche. Staff Attorney. ELI

6. Top-down regulatory design. Regulating area-based ocean management. Saturday May 21th

Readings:

- *Recall* Eagle et al. *Ocean Zoning and Spatial Access Privileges: Rewriting the Tragedy of the Regulated Ocean*, 17 N.Y.U. Envtl. L.J. 646 2008-2009
- Ehler & Douvère, Marine Spatial Planning: a Step-by-Step Approach towards Ecosystem-based Management, <https://www.openchannels.org/sites/default/files/literature/Marine%20Spatial%20Planning%20C%20A%20Step-by-Step%20Approach%20toward%20Ecosystem-based%20Management.pdf>
- Skim F. Douvère, The role of marine spatial planning in sea use management: the Belgian Case, <http://www.unesco-ioc-marinesp.be/uploads/documentenbank/4196c93f0934d5d1decb5b1cdbf9bf87.pdf>
- Xiao Recio-Blanco. Protecting Marine Biodiversity in Latin America Through Area-Based Fisheries Regulation. 28 Georgetown Environmental Law Review (2015), 94-101
- Online Debate: Does marine spatial planning need to involve ocean zoning to be effective? With Bud Ehler and Tundi Agardy (blog post), <https://www.openchannels.org/chat/online-debate-does-marine-spatial-planning-need-involve-ocean-zoning-be-effective-bud-ehler-and>

Final Assignment: Students will choose one topic to write a short memo on fisheries regulation. The memo must concern a case study on fisheries management, suggest the use of a specific regulatory tool, and provide arguments to support its use. Students are free to choose the topic. Memos will be due at the end of the semester.