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### **An Introduction to the Central Arctic Ocean Fisheries Agreement**

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Climate change is having a dramatic impact on the Arctic and is expected to lead to further profound changes. These include a severe reduction in sea-ice cover as well as shifts in the distribution of fish stocks towards the region. While many uncertainties remain, such changes could bring new fishing opportunities in the Arctic Ocean. Concerns about the management of potential future commercial fisheries have resulted in the negotiation of the Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean (also known as the 'Central Arctic Ocean Fisheries Agreement' or 'CAOFA'). Following over a decade of preparations, this Agreement was signed in 2018 by Canada, the People's Republic of China, the Kingdom of Denmark (in respect of the Faroe Islands and Greenland), Iceland, Japan, the Republic of Korea, Norway, the Russian Federation, the United States of America, and the European Union, and entered into force in June 2021. This article provides an introduction to this new Arctic fisheries Agreement, including its content and implementation.

#### *The Agreement in a nutshell*

Prior to the CAOFA's entry into force, no specific regime existed to regulate fisheries in the high seas' portion of the Central Arctic Ocean, contrary to many other parts of the world where such regimes do exist. There was in fact no real need for such a regime until recently because the extensive sea-ice coverage made commercial fishing impossible. While commercial fishing is currently not taking place in the area, nor is it expected to become viable in the near future, this could change due to the impact of climate change. The Parties to the CAOFA considered it important to prepare for such a scenario, also considering the fragile nature of the Arctic's marine ecosystems. CAOFA accordingly establishes a fisheries management regime for the region for the short to medium term, thereby filling a gap in the regulation of international fisheries.

The CAOFA's aim is to protect the Arctic high seas from unregulated commercial fishing before such fishing has commenced, while also ensuring that additional scientific knowledge is obtained to take informed decisions in

the future about potential fishing. The agreement accordingly applies a strong precautionary approach to fisheries management. This is driven by the fact that relatively little scientific knowledge currently exists about the ecosystems that exist underneath the ice in the Arctic high seas, let alone whether any fish stocks exist that could be fished sustainably. A greater understanding of the marine environment is therefore needed before any informed decisions about future fishing can be made.

To achieve this objective, CAOFA has introduced a ban on unregulated commercial fishing for its entire duration. In practice, this amounts to a moratorium on commercial fishing until 2037, which the Parties can extend by five years at a time. While in force, the Agreement requires the Parties to increase and share their knowledge about the living marine resources and ecosystems of the Central Arctic Ocean. This will primarily be done through a Joint Program of Scientific Research and Monitoring ('Joint Program'), which must also take into account indigenous and local knowledge. The results of the Parties' scientific research and cooperation should ultimately enable the Parties to determine whether or not any fish stocks exist in the area that could be fished sustainably. The Parties may then decide to begin talks on the establishment of a specific organisation to manage fishing in the Arctic high seas, including a new regional fisheries management organisation (RFMO) or other arrangement.

#### *Implementing the Agreement*

The CAOFA requires the Parties to meet several deadlines to ensure that the necessary structures are put in place to meet the Agreement's overall objective.

A first set of deadlines relates to scientific cooperation and must be met within two years of entry into force, notably by mid-2023. The Parties are specifically required to establish the Joint Program, including the adoption of a data sharing protocol, and they must adopt the terms of reference for the functioning of the joint scientific meetings. One year later, by mid-2024, the Parties must have established conservation and management measures for exploratory fishing. Such fishing enables the collection of further scientific data that will contribute to determining whether any future commercial fisheries can be conducted sustainably. However, exploratory fishing can also

negatively impact the ecosystems and fish stocks that the Agreement aims to protect and therefore needs to be carefully regulated by the Parties.

Apart from the need to meet these deadlines in the Agreement itself, the Parties have also had to make the two main CAOFA bodies operational, namely the Conference of the Parties and the joint scientific meetings. Both bodies are key to implementing the new regime of the CAOFA and require a range of decisions to be up and running, including on rules of procedure and the election of Chairpersons.

### *Outlook*

The CAOFA establishes an important new regime for international fisheries in the Arctic. Whether it will be able to meet its objective depends on the Parties' readiness to meet their obligations through international cooperation. It is tempting to believe that the Agreement's implementation will be relatively uncontroversial in the short to medium term, since the primary focus will be on scientific cooperation while any actual commercial fishing in the Central Arctic Ocean remains unfeasible. The real test for the CAOFA will in that regard come only once the Parties find themselves in a position to decide whether or not the scientific data that they have collected under the Joint Program points to the existence of fish stocks that can be fished sustainably, and whether this would require the establishment of a RFMO. Overall, the state of cooperation between the ten Parties under the CAOFA might very well turn out to be a good indicator of the state of international cooperation in the Arctic as a whole. This alone warrants close attention to the Agreement's performance in the coming years.

### **For more on this, read...**

Molenaar E J, 'Participation in the Central Arctic Ocean Fisheries Agreement' in A Shibata and Others (Eds.), *Emerging Legal Orders in the Arctic: The Role of Non-Arctic Actors* (Routledge 2019), pages 132-170