Index

alien species, measures to prevent introduction of 103
anadromous and catadromous species access and benefit-sharing, best practices for 144–5
CBD (Convention on Biological Diversity) 108, 144–5
and customary international law 142–3, 177
definition 52
Donut Hole Convention, report of takings 230
economic dislocations, minimizing 143–4
exceptions to regulations 143
international agreements 141–2
international customary law 142–3
marine environment conservation 144
scientific data, importance of objective 142
sovereignty and sovereign rights 145
specialized conservation measures for particular species 140–45
total allowable catch (TAC), establishing following consultation 141
Antarctic see CCAMLR
Arico, S. 91
Atlantic, international agreements and organizations 17, 141–2, 143, 185–6, 187
ICAAT see ICCAT
NEAFC see NEAFC
Attard, D. 123
Australia
bluefin tuna dispute 251
jurisdiction over marine mammals 60–61
nuclear test cases 38–9
Balton, D. 121, 159, 189, 216
Barcelona Convention (1976) 44, 186
Bierzaneek, R. 83
biodiversity
CBD see CBD
cold water reefs, NEAFC 186
erga omnes obligations 38–9
FSA protection 133
see also ecosystem approach;
environmental concerns
bioprospecting 35, 64, 65, 151–2
genetic resources 154
Birnie, P. 22, 23, 80, 82, 83, 85, 86, 90, 91, 93, 120, 121, 122, 126, 163, 188, 189, 190, 191, 254, 255, 256, 257, 281, 282
bluefin tuna 48, 138, 251, 272–3
CCSBT 173, 251, 253–4, 270, 272
purse-seine fleets, EU ban 138
see also tuna
boarding and inspection measures 237–42
flag state responsibilities 240
flag states not parties to agreements 238–9
IUU vessels 238, 242, 243
NAFO 237, 238, 241–2
non-party fishing vessels 242
port state control 248
vessels without nationality 242
Bonn Convention on Migratory Species 49, 269, 273
bottom trawling 152–3, 182–3
see also drift net fishing ban; purse-seine fishing
Boyle, A. 22, 23, 24, 80, 82, 83, 85, 86, 90, 91, 93, 120, 121, 122, 126, 189, 190, 191, 254, 255, 256, 257, 281, 282
Brownlie, I. 21, 22, 23, 25, 80, 82, 89, 120, 124, 163, 190, 216, 281
Burke, W. 23, 83, 88, 89, 92, 122, 123–4, 124–5, 158, 161, 163, 164, 190, 191, 211, 260–61, 283
bycatch
conservation guidelines 48–9, 168, 182–3
and fishing gear 130, 148, 182–3
see also catch limits
Byers, M. 123, 282
Caddy, J. 160
Canada
Canada–US Scallops dispute 154
North West Atlantic straddling stocks dispute 178
Cancun Conference on Responsible Fishing 95, 110, 113
Canfield, J. 258
catadromous species see anadromous and catadromous species
catch limits
and fishing gear 172, 185
Patagonian toothfish 70, 245
see also bycatch; individual species; overfishing
CBD (Convention on Biological Diversity)
anadromous and catadromous species 108, 144–5
biodiversity 29, 107–11
biodiversity in areas beyond jurisdiction 107–8, 153–4, 168, 179, 185, 201–2, 203
biodiversity as common concern of humankind 37–8
biodiversity definition 183
biodiversity within territory of state party 107–8, 171
coastal state parties, obligations of 108
Conference of the Parties 50, 107, 109, 144–5, 179
conservation and enforcement regime 201–2, 203
conservation measures, call for uniformity and cooperation in 49–50
control, monitoring and surveillance (CMS) incentives 233
ecosystem approach 78
environment impact assessments of proposed projects 174
genetic resources, access and benefit-sharing arrangements 154
harmonization strategies 269–70
IMO, influence on 110
integrated marine and coastal protected areas 171–2
Jakarta Mandate for Marine and Coastal Biodiversity 15
legal responsibility, lack of guidelines on 174
marine mammals jurisdiction 61, 150
market-related measures, enforcement of 244
national strategies requirement 108
sedentary species 108
sovereignty and sovereign rights 145, 154
specialized conservation regime 108
straddling stock and HMS 108
sustainable use, interpretation of 108–9, 179
and UNCLOS conservation regime, integration with 109
CCAMLR (Convention on the Conservation of Antarctic Marine Living Resources)
boarding and inspection measures 237
bottom trawls in demersal fisheries ban 182–3
bycatch conservation guidelines ban 48–9, 168, 182–3
catch limits and gear restrictions 172, 185
closed seasons and bycatches 168
conservation measures 70–71, 178–9, 184–5
control, monitoring and surveillance (CMS) 229, 234
dispute settlement 251
ecosystem approach 183, 184–5
human activities, regulation of 70 jurisdiction, limited powers of 195
membership 71
observer programmes 71, 172, 236
Patagonian toothfish catch limits 70, 245
port state control 248–9
precautionary approach to stock assessment 70–71, 181–2
regulated vessels 243
Scientific Observer Programme 71, 172, 232
special areas for protection and scientific study 71, 168–9, 172
vessel monitoring system (VMS) 68, 71, 234
CCSBT (Commission for the Conservation of Southern Bluefin Tuna) 173, 251, 253–4, 270, 272
Chopra, S. 89, 188
Churchill, R. 23, 85, 261
Cicin-Sain, B. 88, 190
coastal states
flag states, jurisdiction shift to 128–9
33–4
IUU fishing and extension of jurisdiction 99–100
joint authorization system 223
jurisdiction, extension of 27–8, 99
obligations of 108
port access 202, 208
sedentary species jurisdiction 63–6
see also flag states; national jurisdiction; port states
Commission for the Conservation of Southern Bluefin Tuna (CCSBT) 173, 251, 253–4, 270, 272
compliance and enforcement 217–61
authorization system 220–24
boarding and inspection measures see boarding and inspection measures
costal states, joint authorization system 223
competitiveness, effects on 222, 243
conservation regimes 173–5
control, monitoring and surveillance (CMS) see control, monitoring and surveillance (CMS)
cooperation and harmonization, need for 222, 225, 231
data submission, reporting and access to information 225–34
dispute settlement 249–51
eco-labelling 246
fishing vessels’ positive track records, use of 223
flag state jurisdiction 219–20
IUU fishing, discouragement of 243–4
market-related measures 243–7
national authorizations, conflict with flag state authorizations 221–2
negative listing of vessels 242–3
non-compliance and non-implementation, distinction between 224
observer programmes 235–6
port state control 247–9
prohibition measures, waiving of 222–3
reflagging safeguards 222–3
registration of fishing vessels and authorization to fish 218–24
registration of fishing vessels and authorization to fish, problems in distinction between 221–2
sanctions 201, 207, 220, 221
soft law instruments 232
vessel and gear marking systems 228
vessel monitoring system (VMS) 234–5
see also enforcement jurisdiction and conservation of living resources
conservation measures, obligation to take 94–128
CBD regime 107–11, 201–2, 203
CCAMLR 70–71, 178–9, 184–5
costal state jurisdiction and IUU fishing 99–100
conservation definitions 95–7, 98–9, 101, 105, 106
FSA regime 111–12
harmonization of norms 169, 265–6, 270–71
IUU fishing 99–100
marine mammals and fish stocks, differing conservation requirements 97, 145–6
maximum sustainable yield (MSY), calculation of 98, 101–2, 106–7
NAFO 43, 68–9, 168
new entrants and straddling stocks 117–18
optimum utilization of fishery resources 67–8, 71–2
post-UNCLOS treaties 104–12
pre-UNCLOS developments 96–101
selective fishing gear, promotion of 103
soft law effects 105–6, 112–18
sustainability, understanding of 98–9, 106, 108–9, 113–14
UNCLOS 101–4
conservation regimes, main constituent elements 166–92
access control 176–7
bycatch and fishing gear 182–3
compatibility between states, promotion of 170–72
compliance and enforcement measures 173–5
conservation measures applicable to all species 178–9
coopration duty 167–70
ecosystem approach 182–7
fragmented institutionalization problems 169–70
legal methodologies 167–75
management principles and concepts 175–87
maximum sustainable yield (MSY) setting 177–8
precautionary approach 179–82, 187
precautionary approach, restrictive interpretation of 180
RFMOs and international cooperation 168–9, 170
RFMOs and standardized authorization and licensing measures 173–4
risk assessment 180
science and technology linkages 172–3, 177, 179–80, 181
special areas for protection and scientific study, designation of 168–9
stalemate situations 168
sustainable use of marine living resources 175–9
total allowable catch (TAC) calculation 178
control, monitoring and surveillance (CMS) 221, 222, 224–43
CBD incentives 233
CCAMLR 229, 234
Donut Hole Convention 230
FSA 227–8, 231, 233–4
ICCAT 228, 234
implementation review 233–4
IOTC 229
NAFO 229, 231
NEAFC 68, 229, 234
non-parties’ adherence 230–32
observer programmes 71, 172, 235–6
UNEP 232–3
WCPFC 230, 234–5
see also vessel monitoring system (VMS)
Convention on Biological Diversity see CBD
Convention on the Conservation of Antarctic Marine Living Resources see CCAMLR
coopration agreements, FSA compliance 239, 276
duty, conservation regimes 167–70
harmonization of norms see harmonization of norms
see also harmonization of norms
Craig, A. 165
customary law see international customary law
D’Amato, A. 89, 188
De Ferion, O. 80, 122
De Klemm, C. 90, 122
De Reynier, Y. 161, 283
dependency of species on harvested species 148
dispute resolution bluefin tuna 251, 253–4, 270, 272
compliance and enforcement 249–51
harmonization of norms 268–71, 276
marine mammals jurisdiction 148
UNCLOS 175, 200, 249–50, 251
diversification and fragmentation under international law 5–6, 9, 10–11, 273–4
Donut Hole Convention
boarding and inspection measures 237
control, monitoring and surveillance (CMS) 230
dispute settlement 251
fallback measures for allowable harvests 137
jurisdiction, limited powers of 195
observer programmes 236
Scientific and Technical Committee 172, 229
drift net fishing ban 148–9, 180, 181, 182
see also bottom trawling; purse-seine fishing
Dupuys, R. 22, 80, 83, 120, 122
ECJ (European Court of Justice)
reflagging guidelines and ‘genuine link’ interpretation 206–7
see also Table of Cases
ecosystem approach
CBD 78
conservation regimes, main constituent elements 15, 182–7
eco-labelling 246
FAO encouragement 117
harmonization of norms 264, 265, 278–9
IUCN 104–5, 182
sedentary species 152–3
UNCED 15, 36, 38, 94
see also biodiversity; environmental concerns
Edrson, W. 158
Eichenberg, T. 165
Elias O. 282
Ellis, J. 92, 190
enforcement jurisdiction and conservation of living resources 193–216
active nationality principle 209
coastal states and port access 202, 208
flag hopping 199
flag state control over fishing vessels 196–7
flag state jurisdiction and its abuse 195–203
freedom of fishing authorization system 197–9
infringement investigation 200–201
legal obstacles 194–209
non-parties 197–8
open registries 209
pollution from ships 196
port states’ authority to intervene 198–9
reflagging 203–9
reflagging, ambiguity of enforcement 199–200
reflagging guidelines and ‘genuine link’ interpretation 204–9, 219
sanctions 201, 207
state activities outside national jurisdiction 201–2
see also compliance and enforcement environmental concerns
environment impact assessments, CBD 174
international environmental law see international environmental law
multilateral environmental agreements (MEAs) 13, 15, 29–30, 49, 50
pollution from ships 196
see also biodiversity; ecosystem approach
European Court of Justice see ECJ
exclusive economic zone (EEZ)
coastal state jurisdiction, extension of 99–100, 104
UNCLOS see UNCLOS, Part V
FAO (Food and Agriculture Organization)
access to species limitations 177
active nationality principle 209
boarding and inspection measures 239
Code of Conduct for Responsible Fisheries 14, 106, 114–18
Committee on Fisheries (COFI) 112–13
compatibility requirements with international law 110
Compliance Agreement 37, 109–10, 114, 177, 196–9, 205, 207, 221–3, 226–7, 239, 247–8
Compliance Agreement, criticism of 47–8, 111–12, 114
control, monitoring and surveillance (CMS) programmes 224–5, 232
ecosystem approach, encouragement of 117

Ecosystem-Based Management of Fisheries report 111
fishing gear, selective and environmentally safe 116
flag state data exchange, encouragement of 226–7
flag state responsibility over fishing vessels 110, 196–7
flag states’ abuse of rights, difficulty in challenging 36–7
IUU fishing 209, 224–5, 232, 247–8
market-related measures, enforcement of 244, 245–6
and maximum sustainable yield (MSY) 116–17
national and regional action plans, guidelines for 114, 116, 169
overfishing prevention 116
port state control 247–8
precautionary approach, application of 116
prohibition measures, waiving of and blanket provision 222–3
reflagging, discouragement of 222–3
reflagging guidelines and ‘genuine link’ interpretation 205–6, 207
regional fisheries agreements, support for 42
registration of fishing vessels and authorization to fish 221
stakeholders’ participation in sustainable development 117
sustainability requirements 66–7, 76, 116
UNCLOS conformity 115, 116, 117
unreported fishing, definition of 232

Faucille, P. 80

Fitzmaurice M. 282
flag hopping see reflagging
flag states
abuse of rights, difficulty in challenging 36–7
FAO 36–7
boarding and inspection measures 240
boarding and inspection measures, not parties to agreements 238–9
coastal states, jurisdiction shift 28–9, 33–4
data exchange, FAO encouragement of 226–7
fishing vessels, responsibility over 110, 196–7
FSA enforcement requirements 199, 274–5
jurisdiction, abuse of exclusivity of 200
jurisdiction, constituent elements 27, 219–20
jurisdiction and its abuse 195–203
see also coastal states; national jurisdiction; port states
flags of convenience see reflagging

Food and Agriculture Organization see FAO
fragmentation under international law 5–6, 9, 10–11, 273–4
France, nuclear test cases 38–9
Freestone, D. 85, 158, 256
FSA (Fish Stocks Agreement) 13, 15, 17
access to species limitations 177
biodiversity protection 133
boarding and inspection measures 239–41, 242
common resource status 76–7
conservation measures, obligation to take 111–12
control, monitoring and surveillance (CMS) 227–8, 231, 233–4
coopera9tion agreements, compliance with 239, 276
dispute settlement 250
fallback compliance and enforcement regime, proposal for 274–5

Simone Borg - 9780857935649
Downloaded from Elgar Online at 08/26/2019 02:34:16PM
via free access
flag state jurisdiction, abuse of exclusivity of 200
flag states, difficulty in challenging abuse of rights 36–7
flag states’ enforcement requirements 199, 274–5
infringement investigation 200–201
maintenance records of flag states 48
national records of fishing vessels 228
observer programmes 235
overfishing protection 133
port state control, limitations of 248
precautionary approach 112, 116, 133–5, 149, 180–81
reflagging guidelines and ‘genuine link’ interpretation 206, 207, 208
regional fisheries agreements (RFMOs), support for 42, 47–8
registration of fishing vessels and authorization to fish 220–21, 222, 225
sanctions 201, 207, 220, 221
specialized conservation measures for particular species 131–5
straddling stocks and highly migratory species (HMS), compatible conservation and management measures 118, 135–6, 139, 170–71
straddling stocks and highly migratory species (HMS), jurisdiction over 56–7, 58, 76, 131–5, 167–8, 180–81, 239, 250, 277
UNCLOS compatibility 112, 131–3
vessel and gear marking systems 228
vessel monitoring system (VMS) 234

conservation measures and training in cooperative projects 70
dispute settlement 251
ecosystem approach 187
IUU fishing 70, 243
listing of vessels 243
membership 70
observer programme, lack of 236
scientific advisory committee 173
total allowable catch (TAC) requirements 48

Gidel, G. 80, 122, 169
Gillespie, A. 126, 165, 211, 256, 257, 260, 281
Goldie, L. 165
Grehan, A. 165
Grotius, H. 26, 27
Grzybowski, D. 123, 127, 158, 159
harmonization of norms 4, 16–19, 44–5, 110–11
CBD 269–70
conservation measures 169, 265–6, 270–71
custom, application of 17, 264–5
dispute resolution 268–71, 276
ecosystem approach 264, 265, 278–9
fragmentation concerns 273–4
freedom of fishing problems 263
international customary law 32, 46–7
international law, hierarchical relationship, lack of 272–3
international laws, accretion of 266
international laws, conflict between 16–18, 278–9
marine mammals jurisdiction 150
onus of proof 17
port states and dispute settlement 275
precautionary approach 263–4
recommendations 266–80
scientific evidence, use of and research investment 277–8, 280
sedentary species, jurisdiction over 63–6

Garcia, S. 126
General Fisheries Commission for the Mediterranean see GFCM
genetic resources 154
bioprospecting 35, 64, 65, 151–2
GFCM (General Fisheries Commission for the Mediterranean)
boarding and inspection measures 237
specialized conservation measures for particular species 271–2
straddling stocks and highly migratory species (HMS) 54–8
sustainability 264
treaty and customary law, divisions between 264–5
unilateral measures 17, 276
see also cooperation
Harris, D. 80, 123, 165
harvested species, species dependant on 148
Hewison, G. 191
Hey, E. 83, 125
highly migratory species see straddling stocks and highly migratory species (HMS)
Hilborn, R. 283
Honneland, G. 256
IATTC (Inter-American Tropical Tuna Commission) 173, 187
ICCAT (International Convention for the Conservation of Atlantic Tuna) 15-Year Recovery Plan 138
boarding and inspection measures 237
bycatch guidelines 182
control, monitoring and surveillance (CMS) 228, 234
dispute settlement procedures, lack of 251
listing of vessels 242–3
market-related measures, enforcement of 244–5
observer programmes 235
port state control 248
quota control 168
Standing Committee on Research and Statistics 172–3
sustainability of tuna and tuna-like fisheries 69–70
total allowable catch (TAC) requirements 48
tuna as HMS 132, 137, 138
vessel monitoring system (VMS) 234
Iceland, whaling vessels, refusal to register 242
ICES (International Council for the Exploration of the Sea) 96, 142, 173
ICJ (International Court of Justice) dispute settlement 251
erga omnes obligations 39
plurality of norms 9
see also Table of Cases
illegal unregulated and unreported fishing see IUU fishing
IMO (International Maritime Organization) 110, 205, 249
Indian Ocean, IOTC see IOTC
Inter-American Tropical Tuna Commission (IATTC) 173, 187
International Convention for the Conservation of Atlantic Tuna see ICCAT
International Council for the Exploration of the Sea (ICES) 96, 142, 173
international customary law
anadromous and catadromous species 142–3
and anadromous and catadromous species 142–3, 177
application of 7, 17, 33
harmonization of norms 17, 264–5
harmonization problems 32, 46–7
non-parties and non adherence 46–7, 97
regulatory jurisdiction 33, 100
verifiable catch quotas 46
international environmental law
biodiversity and erga omnes obligations 38–9
multilateral environmental agreements (MEAs) 13
see also environmental concerns
international laws
accretion of 266
ambiguity and conflict in 8, 97, 278–9
hierarchical relationship, lack of 272–3
role of 7–8
sources overview 6–10
subspecialization, role of 9
Index

and treaty law, conflict between, sedentary species 155–6
see also regulatory jurisdiction
International Maritime Organization (IMO) 110, 205, 249
International Seabed Authority (ISBA) 64, 65, 151
international trade, CITES 49, 110, 150, 244–6
International Union for the Conservation of Nature (IUCN) 104–5, 182
International Whaling Commission (IWC) 60, 75, 150, 235, 242
IOTC (Indian Ocean Tuna Commission) conservation and optimum utilization of stocks 71–2
control, monitoring and surveillance (CMS) 229
dispute settlement procedures 251
ecosystem approach 187
observer programmes 235
precautionary approach 71
statistical documentation scheme controls 71
ISBA (International Seabed Authority) 64, 65, 151
IUCN (International Union for the Conservation of Nature) 104–5, 182
IUU (illegal unregulated and unreported) fishing
boarding and inspection measures 238, 242, 243
discouragement of 243–4
FAO 209, 224–5, 232, 247–8
GFCM 70, 243
lists, introduction of, NEAFC 68
NAFO 69, 74, 231, 238
IWC (International Whaling Commission) 60, 75, 150, 235, 242
Japan
bluefin tuna dispute 251
jurisdiction over marine mammals 60–61
salmon fishing 142, 143
whaling vessels, refusal to register 242
Jennings, R. 23
Joyner, C. 164, 190, 281
Juda, L. 87, 121
Kirgis, F. 84–5
Knecht, R. 88, 190
Koers, A. 189
Kuemlange, B. 254
Kwiatkowska, B. 122, 215
listing of vessels see registration of fishing vessels
Long, R. 165
Lowe, A. 23
McDorman, T. 89
McDougall, M. 23, 83
Mahon, R. 160
marine mammals jurisdiction
breeding stocks 147
bycatches and non-selective fishing gear 148
CBD 61, 150
dispute resolution 148
drift net fishing, prohibition of 148–9
and fish, distinction between 97, 145–6
harmonization of international regulations 150
international law and treaty law, discrepancies between 146–8
migratory behaviour information 147
precautionary approach 149
regulation conflict 146–7
scientific information, lack of 146–7, 148, 149
specialized conservation measures for particular species 145–50
species dependant on harvested species 148
market-related measures 243–7
maximum sustainable yield (MSY) calculation of 98, 101–2, 106–7, 114
conservation regime 177–8
and FAO 116–17
UNCLOS interpretation 101–3, 106–7, 116–17
MEAs see multilateral environmental agreements (MEAs)
Mediterranean
  Fishery Statistics Information System (MEDFISIS) 229
GFCM see GFCM
  Protocol for Specially Protected Areas and Biological Diversity 44–5
SPAMIs (specially protected areas) 44, 186
Meltzer, E. 22, 23, 80, 120, 122, 124, 126, 161, 170, 189, 191, 192, 281
Mexico, tuna–dolphin disputes 148
Meyers, H. 214
Miles, E. 89, 92, 158, 161, 266, 281
Molenaar, E. 87, 128, 190, 255, 257, 283
monitoring see control, monitoring and surveillance (CMS)
Moore, G. 87, 213–14, 216, 283
Morgera, E. 89
Mossop, J. 165
MSY setting see maximum sustainable yield (MSY)
multilateral environmental agreements (MEAs) 13, 15, 29–30, 49, 50
  see also environmental concerns
NAFO (North Atlantic Fisheries Organization)
  boarding and inspection measures 237, 238, 241–2
  conservation measures 43, 68–9, 168
  control, monitoring and surveillance (CMS) 229, 231
  IUU lists 69, 74, 231, 238
  moratoria guidelines 48
  observer programmes 235–6
  scientific committee 172, 234
  specialized conservation measures for particular species 136–7
  straddling stocks and RMS, conservation of 136–7
  TAC limits and quota allocations 172
  vessel monitoring system (VMS) 68–9, 71, 234
national jurisdiction
  action plans, FAO guidelines for 114, 116, 169
CBD strategies requirement 108
  flag state authorizations, conflict with 221–2
FSA records of fishing vessels 228
  non-parties see non-parties
  sovereignty and sovereign rights 27, 145, 151, 154
  vessels without nationality, boarding and inspection measures 242
  see also coastal states; flag states; port states; regional fisheries agreements
NEAFC (North East Atlantic Fisheries Commission)
  biodiversity of cold water reefs 186
  conservation and optimum utilization of fishery resources 67–8
  control, monitoring and surveillance (CMS) 68, 229, 234
  dispute settlement 68, 251
  ecosystem approach 187
  independent performance review 68
  IUU lists, introduction of 68
  North Atlantic Format 229
  observer programme, lack of 236
  port state control 248
  total allowable catch (TAC) requirements 48
New Zealand
  bluefin tuna dispute 251
  nuclear test cases 38–9
non-parties
  boarding and inspection measures 242
  enforcement jurisdiction 197–8
  and non adherence 41, 46–7, 97
  vessels without nationality, boarding and inspection measures 242
North Atlantic Fisheries Organization see NAFO
North East Atlantic Fisheries Commission see NEAFC
Norway, whaling vessels, refusal to register 242
Index

observer programmes, see under control, monitoring and surveillance (CMS)
O’Connell, D. 123
Oda, S. 83
Orrego Vicuna, F. 16, 22, 24, 31, 56, 82, 83, 85, 86, 88, 89, 90, 91, 121, 122, 189, 190, 257, 283
Oude Elferink, A. 213
overfishing
North Seas Overfishing Convention 96–8
prevention 116, 133
quota control 46, 155, 168
total allowable catch (TAC) calculation 48, 141, 172, 178
see also catch limits; fishing gear
Oxman, B. 81, 88, 124, 125
Pacific conventions 142, 143, 185, 237
Patagonian toothfish catch limits 70, 245
Pauwelyn, J. 21, 23, 25
Pelagos Sanctuary 44
pollock see Donut Hole Convention
port states
authority to intervene 198–9
boarding and inspection measures 248
compliance and enforcement 247–9
dispute resolution 275
see also coastal states; flag states; national jurisdiction
precautionary approach
CCAMLR 70–71, 181–2
conservation regimes, main constituent elements 179–82, 187
FAO application 116
FSA 112, 116, 133–5, 149, 180–81
harmonization of norms 263–4
IOTC 71
marine mammals jurisdiction 149
restrictive interpretation of 180
specialized conservation measures for particular species 133–5
purse-seine fishing 135, 138
see also bottom trawling; drift net fishing ban
quota control see overfishing
Rayfuse, R. 260
Redgwell, C. 22, 23, 24, 80, 82, 83, 85, 90, 91, 93, 120, 121, 122, 126, 189, 190, 191, 254, 255, 256, 257, 281, 282
reflagging 203–9
ambiguity of enforcement 199–200
enforcement jurisdiction 199
FAO discouragement of 222–3
guidelines and ‘genuine link’ interpretation 204–9, 219
IMO 205
Registration Convention 205–6
safeguards 222–3
regional fisheries agreements 11–12, 13, 45
FAO guidelines for 114, 116, 169
and international cooperation 168–9, 170
relationship between 49
specialized conservation measures for particular species 136–7
standardized authorization and licensing measures 173–4
support for 42, 47–8
see also national jurisdiction
registration of fishing vessels 218–24, 242–3
FSA 220–22, 225
regulatory jurisdiction 26–93
coastal state jurisdiction see coastal states
custodial international law 33
erga omnes obligations 38–9
exclusive economic zone (EEZ) 27–8, 42
flag states see flag states
plurality of norms 32
qualifications to the right of freedom of fishing 31–72
unilateral conservation measures, treatment of 30
vested interest of all states over living resources on the high seas 32–40
see also international laws
Riddle, K. 81, 212, 215, 256, 259, 283
Roach J. 165, 261
Romano, C. 261
Rothwell, D. 90
Conservation on the high seas

Rousseau, C. 80
Rubin Alana, R. 259

salmon 52, 141–2, 143, 144
sanctions 201, 207, 220, 221
Sapin, C. 91
Schacter, O. 25
Schurman, R. 283

science and technology linkages
advisory committees 109, 171–2, 173, 179, 234
conservation regimes 172–3, 177, 179–80, 181
data, importance of objective 142
evidence, use of and research investment 277–8, 280
information, lack of, marine mammals jurisdiction 146–7, 148, 149
research and bioprospecting 152
special areas for protection and scientific study 168–9

SEAFO (South East Atlantic Fisheries Organization) 172, 187

sedentary species
ambiguity of definition 151
beyond national jurisdiction 151–4
bioprospecting 151–2
bottom trawling and destruction of habitat 152–3
coastal states jurisdiction 63–6
commercially valuable species, exploitation of 152–3
Common Heritage regime 152
conflict of responsibility 151–2
conservation regulation and resource protection, distinction between 153–4
continental shelf regime 151, 152
ecosystem protection 152–3
harmonization of norms 63–6
harvestable age, assessing 152
international law and treaty law, conflict between 155–6

ISBA (International Seabed Authority) 151
marine protected areas, proposal for 153
quota allocation 155
sovereign rights of coastal states 151

Shapson, M. 165
Shaw, M. 21, 23, 80
Shearer, I. 212
Sohn, L. 162
South East Atlantic Fisheries Organization see SEAFO
sovereignty and sovereign rights 27, 145, 151, 154
Spain, Canada-Spain turbot dispute 43, 86, 131, 136–7, 160, 168, 241–2
specialized conservation measures for particular species 129–65
allowable catch calculation 138–9
anadromous and catadromous species 140–45
bycatch regulation and fishing gear 130
CBD 108
collective measures 139–40
FSA 131–5
harmonization of norms 271–2
marine mammals 145–50
NAFO 136–7
precautionary principle 133–5
regional agreements, reform of 136–7
sedentary species beyond national jurisdiction 151–4
straddling stocks and highly migratory species (HMS), regulation of 130–40
and UNCLOS 129–30
Staples, D. 126
Stephens, T. 261, 283
straddling stocks and highly migratory species (HMS) 56–7, 58, 76, 108
alleged discrimination 117–18
compatibility measures 118
compatible conservation and management measures, FSA 135–7, 139, 170–71
FSA jurisdiction over 56–7, 58, 76, 131–5, 167–8, 180–81, 239, 250, 277
harmonization of norms 54–8
and new entrants 117–18
North West Atlantic dispute 178
specialized conservation measures for particular species 130–40
Sullivan, M. 158, 254
surveillance see control, monitoring and surveillance (CMS)
sustainability
CBD interpretation 108–9, 179
conservation regimes, main constituent elements 175–9
FAO requirements 66–7, 76, 116
harmonization of norms 264
ICCAT, tuna and tuna-like fisheries 69–70
maximum sustainable yield see maximum sustainable yield (MSY)
multilateral environmental agreements (MEAs) 13, 15, 29–30, 49, 50
UNCED development requirements 113, 116, 117
understanding of 98–9, 106, 108–9, 113–14
WSSD (1992) 50, 113–14, 153
Sydnes, A. 190, 255, 257, 283
Tanaka, Y. 91
Taylor, Z. 164
total allowable catch (TAC) calculation 48, 141, 172, 178
tuna
bluefin tuna see bluefin tuna
IATTC 173, 187
ICAAT see ICAAT
IOTC see IOTC
TAC and MSY targets 137–8
tuna–dolphin disputes 148

UN
Convention on Biological Diversity see CBD
Driftnet Resolutions 134, 135
International Technical Conference on the Conservation of the Living Resources of the Sea (1955) 98

UNCED (Conference on Environment and Development)
Agenda 21 15, 36, 109, 110, 112, 116, 273
Agenda 21, Chapter 17 113, 131
ecosystem approach 15, 36, 38, 94
sustainable development requirements 113, 116, 117
UNCLOS (Convention on the law of the Sea)
access preclusion by groups of states 42–3
anadromous and catadromous species 52, 52–4, 75, 140, 141, 142–4
Annex I (highly migratory species) 54, 55, 108, 132, 133, 137, 230
bioprospecting 63–4, 65–6, 152
coastal states see coastal states
common heritage regime, similarities to 43
conflict over interpretation 17–18, 34–5, 41
conservation measures see conservation measures
continental shelf see UNCLOS, Part VI
dispute resolution 175, 200, 249–50, 251
drift net fishing ban 148–9, 180, 181, 182
‘due regard’ and ‘due diligence’ terminology 34, 35
ecosystem approach 35–6, 56, 57–8, 178, 180, 183, 265
exclusive economic zone see UNCLOS, Part V
FAO conformity 115, 116, 117
flag states see flag states
freedom of fishing 26, 29, 32–3, 35, 40, 44, 45–66, 104, 184, 195, 268
FSA compatibility 112, 131–3
harmonization of treaties 11, 267, 267–8, 268, 269–70
legal responsibility, lack of guidelines on 174
maximum sustainable yield (MSY) setting 177, 184, 277
Conservation on the high seas

natural resources as living and non-living 273
new or alien species, measures to prevent introduction of 103
non parties and non adherence, conflict surrounding 41, 46
port states see port states
reasonable use criterion 34
reflagging guidelines and ‘genuine link’ interpretation 204–5, 206, 219
sedentary species see sedentary species
specialized conservation measures for particular species 129–30
straddling stocks see straddling stocks and highly migratory species (HMS)
unilateral agreements 42, 43–4
UNCLOS, Part IV (archipelagic states), article 51 156
UNCLOS, Part V (exclusive economic zone)
article 56 (natural resources as living and non-living) 273
articles 61 and 62 (EEZ parameters) 28, 116, 1363
article 62 (marine mammals) 61
article 63 (cooperative practices) 277
article 63(2) and 64 (straddling stocks and highly migratory species (HMS)) 54–5, 56–7, 58, 75, 135, 138, 139
article 64 (flag state jurisdiction cooperation) 66
article 65 (marine mammals) 59, 61, 149–50
article 66 (conservation of anadromous and catadromous species) 52, 141, 142–4
article 67 (cooperative practices) 277
UNCLOS, Part VI (continental shelf)
article 77 (sedentary species) 63, 151
UNCLOS, Part VII (high seas) 14–16, 17, 29, 32, 34, 35, 36–7
article 87 (freedom of fishing) 26, 29, 32–3, 35, 56
article 87(1) (freedom of fishing) 40, 44, 268
article 87(f) (bioprospecting) 64
article 92 (flag state’s exclusive jurisdiction) 31
article 94 (flag state’s qualification requirements) 31–2, 195–7
article 94 (serious damage caused to marine environment) 196
UNCLOS, Part VII (high seas), section 2
article 116 (marine mammals) 59, 156
article 116 (freedom of fishing) 40, 46, 52, 56, 57–8, 104, 184, 195, 268
article 116(b) (coastal states, rights, duties and interests) 50–51, 156, 210
article 116(b) (straddling stocks and highly migratory species (HMS)) 54, 66, 75
article 117 (conservation obligations) 30–31, 37, 40, 41, 42, 56, 57–8, 276
article 117 (unilateral measures by flag states) 54, 61–2
article 118 (flag state jurisdiction cooperation) 37, 42, 47, 56, 57–8, 66, 73, 75, 242
article 119 (best available scientific evidence) 179
article 119 (conservation parameters for flag states) 41–2, 44–5, 57–8, 73, 78, 101–3, 104, 116, 182, 264
article 119 (ecosystem approach) 35–6, 56, 57–8, 178, 180, 265
article 119(1)(a) (conservation and management of straddling stocks and HMS) 132–3
article 119(1)(b) (harvested species, species dependant on) 148, 153
article 119(3) (conservation measures) 117, 239, 246–7, 276–7
article 120 (marine mammals) 59–60, 61–3, 149–50, 156
provisions of 40–45
UNCLOS, Part IX (enclosed or semi-enclosed seas), article 123 156
UNCLOS, Part XI (the area), regulation of seabed beyond the continental shelf regime 64, 65
UNCLOS, Part XII (protection and preservation of marine environment) 44, 103–4, 110, 152
article 196 (new or alien species, measures to prevent introduction of) 103
article 206 (state’s planned activities, assessing potential effects of) 103
article 218 (port states’ jurisdiction) 248
article 237 (harmonization of treaties) 11, 267, 268, 269–70
sanctions 201
UNCLOS, Part XV (dispute settlement) 249–50
UNCLOS, Part XVII (final provisions), article 311 (harmonization of treaties) 267–8, 269–70
UNEP (Environment Programme) 13, 29, 77, 232–3
United Nations Commission for Sustainable Development (UNCSD) 109, 113
US anadromous species, state of origin of 143
Canada-US Scallops dispute 154
IATTC (Inter-American Tropical Tuna Commission) 173, 187
IWC moratorium on whales 150
Magnuson Fishery Conservation and Management Act 130
tuna–dolphin disputes 148

Van Heijnsbergen, P. 122
vessel monitoring system (VMS) CCAMLR 68, 71, 234
compliance and enforcement 234–5 FSA 234
ICCAT 234
NAFO 68–9, 71, 234
NEAFC 68, 71, 234
WCPFC 234–5

see also control, monitoring and surveillance (CMS); fishing gear vessels without nationality, boarding and inspection measures 242
Vidas, D. 283
Vierdag, E. 24
Vignes, D. 80, 83, 120, 122
Von Zharen, M. 165, 190, 280
WCED (World Commission on Environment and Development) 105
WCPFC (Western and Central Pacific Fisheries Commission) 12, 132
boarding and inspection measures 237
control, monitoring and surveillance (CMS) 230, 234–5
dispute settlement 251
observer programmes 236
port state control 249
whaling commercial exploitation of 150
ICRW 60–61, 63, 150
IWC involvement 60, 75, 150, 235, 242
Winjstekers, W. 260
Wolfrum R. 282
World Commission on Environment and Development (WCED) 105
WSSD (World Summit on Sustainable Development) (1992) 50, 113–14, 153
WTO (World Trade Organization) eco-labelling 246
fisheries subsidies 114
GATT article XX(g), exhaustible natural resources 16
harvesting methods for imported fish products 10
market-related measures, enforcement of 244, 246, 273
tuna–dolphin disputes 148

Zoi Vafi s, C. 125