

Analysts see nations' misuse of 'rational use' when it comes to fishing rights

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The term “rational use,” as applied to fishing rights in Antarctic waters, has been misused by certain countries, an analysis by a team of researchers has concluded. Not all species in Antarctica experience the same levels of protection. Active fisheries in the region include those for Patagonian and Antarctic toothfish (*Dissostichus* spp.). Photo credit: Rob Robbins (left) and Darci Lombard (right).

The term "rational use," as applied to fishing rights in Antarctic waters, has been misused by certain countries, an analysis by a team of researchers has concluded. Its work, which comes ahead of the 34th international convention where these matters are negotiated, posits that some nations mistakenly see the term as a license for unrestricted fishing—an interpretation the study's authors say is not supported by language in international accords.

The term "rational use" comes out of the Convention for the Conservation of Antarctic Marine Living Resources (CAMLR Convention), which is the legal doctrine presiding over exploitation of

marine life in Antarctic waters. At recent CCAMLR meetings, some member states have interpreted the term "rational use" in the [convention](#) text as "the unrestricted right to [fish](#)." Moreover, it has recently been evoked in opposition to the establishment of [marine protected areas](#).

However, the authors of a legal analysis of the term, which appears in the journal *Marine Policy*, note these views are without foundation.

"The argument that 'rational use' was intended in the Convention to mean an unrestricted or unqualified 'right to fish' has no legal basis," they write. "Nowhere is there a statement that 'rational use' implies an implicit or unrestricted right to fish everywhere at all times, nor is there an endorsement of fishing at the cost of other objectives of the Convention. Furthermore, the term 'rational use' does not unambiguously limit the treaty's otherwise clear power to regulate fishing in the region."

Moreover, adds Jennifer Jacquet, an assistant professor in NYU's Environmental Studies Program and the lead author of the study, "our research into the treaty negotiation record shows that 'rational use' on its own did not have a clear, consistent, or objective meaning prior to its use in the Convention. In fact, there is a consistent and long record of key states to the negotiations using 'rational use' as a term in line with the broader goals of conservation. In the CAMLR Convention, in fact, the terms of 'rational use' are laid out, and they include several principles of conservation."

The work's other authors include: Eli Blood-Patterson, now a research fellow with NYU's US-Asia Law Institute, Cassandra Brooks, a doctoral candidate at Stanford University, and David Ainley, an Antarctic ecologist at H.T. Harvey and Associates.

"A plain reading suggests that if fisheries were in a state of overexploitation, limitations on fishing would not only be allowed, but

also warranted," they add.

The researchers specifically point to China and Ukraine as countries that see "rational use" as granting the removal of fishing restrictions and Argentina, Chile, Australia, and the United States, among others, as nations who believe the term offers the basis for sustainable fishing and protections for [marine life](#).

CCAMLR next meets Monday, October 19th until Friday, October 30th in Hobart, Australia.

More information: Paper: [jenniferjacquet.files.wordpress ... 015/10/jmpo_2213.pdf](#)

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