

Principled Ocean Governance in the Caribbean: **Living Marine Resources**

Milton Haughton
Deputy Executive Director
Caribbean Regional Fisheries Mechanism (CRFM)
Secretariat, Belize City

&

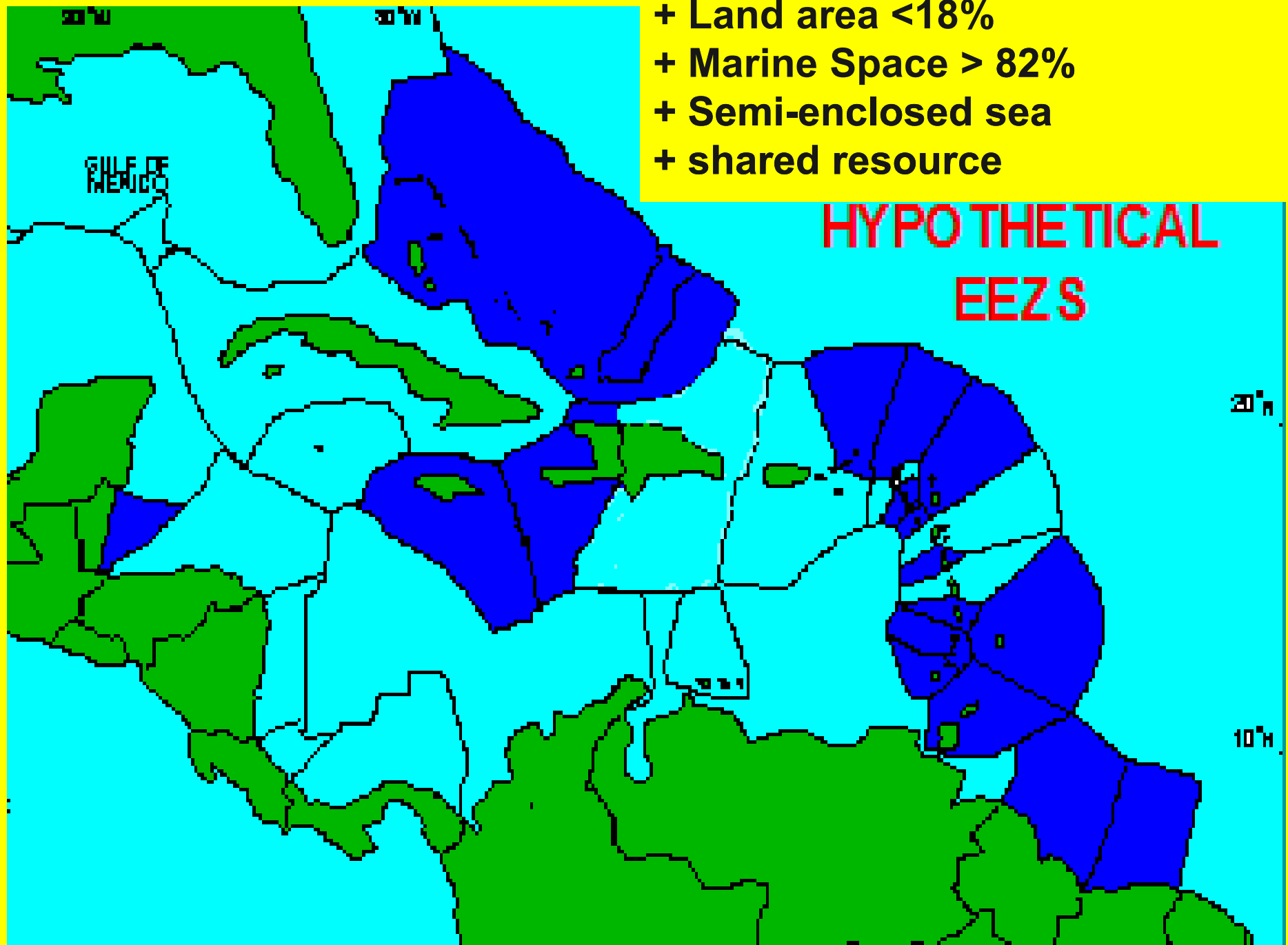
Professor Winston Anderson, PhD (Cantab)
Executive Director
Caribbean Law Institute Centre
University of the West Indies

Learning Objectives

- Challenges and issues re: living marine resource governance
- Review key principles
- Identify weaknesses in the legal and institutional frameworks
- Identify some Implementation issues re living marine resource governance

- + Land area <18%
- + Marine Space > 82%
- + Semi-enclosed sea
- + shared resource

HYPOTHETICAL EEZS

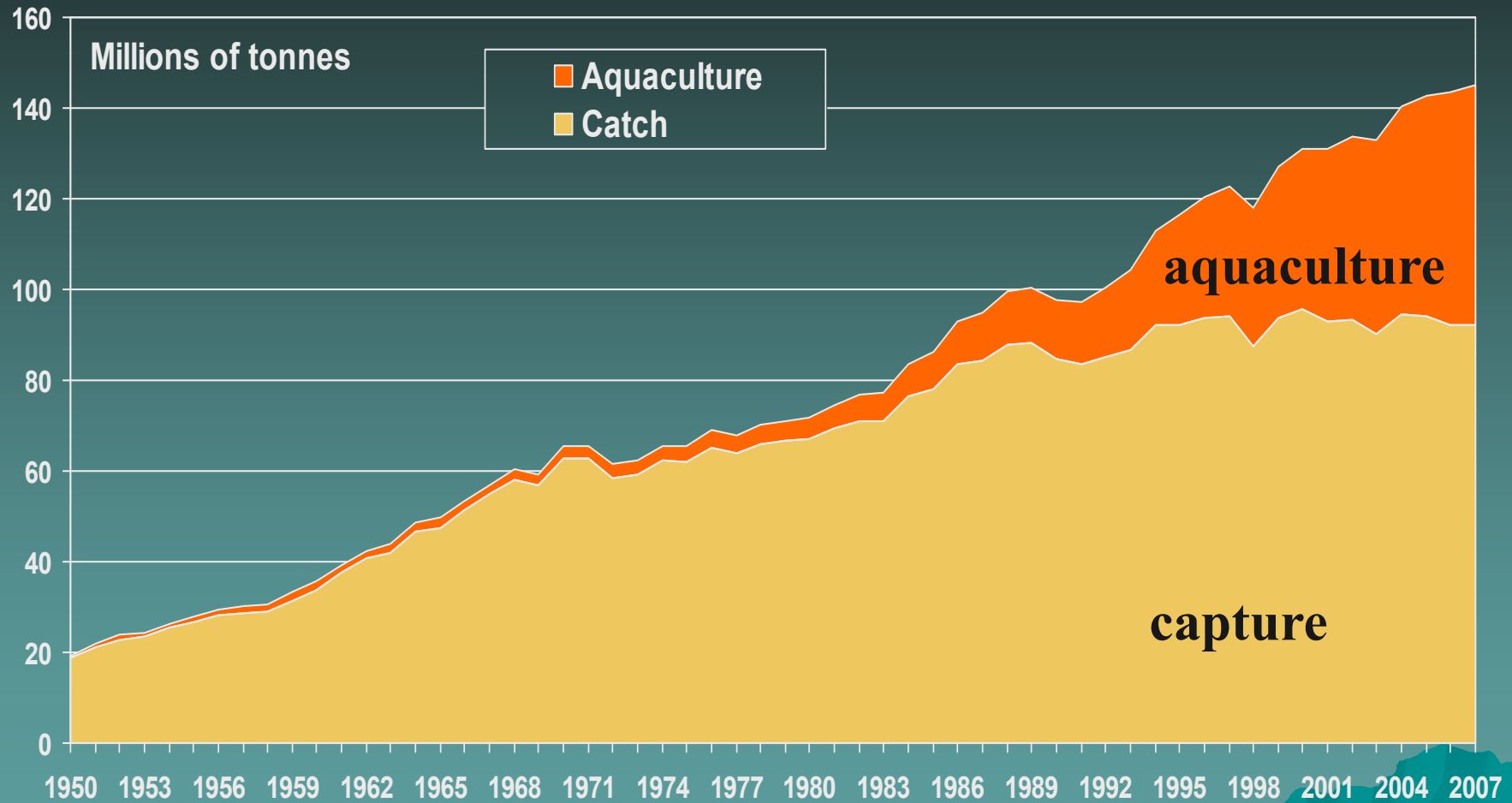


World fish production

Million t	2005	2006	2007
Capture	94	89.9	90.1
Farmed	49	47.3	50.3
Total	143	137.2	140.4

Source : Fishery and Aquaculture Statistics. 2007/FAO

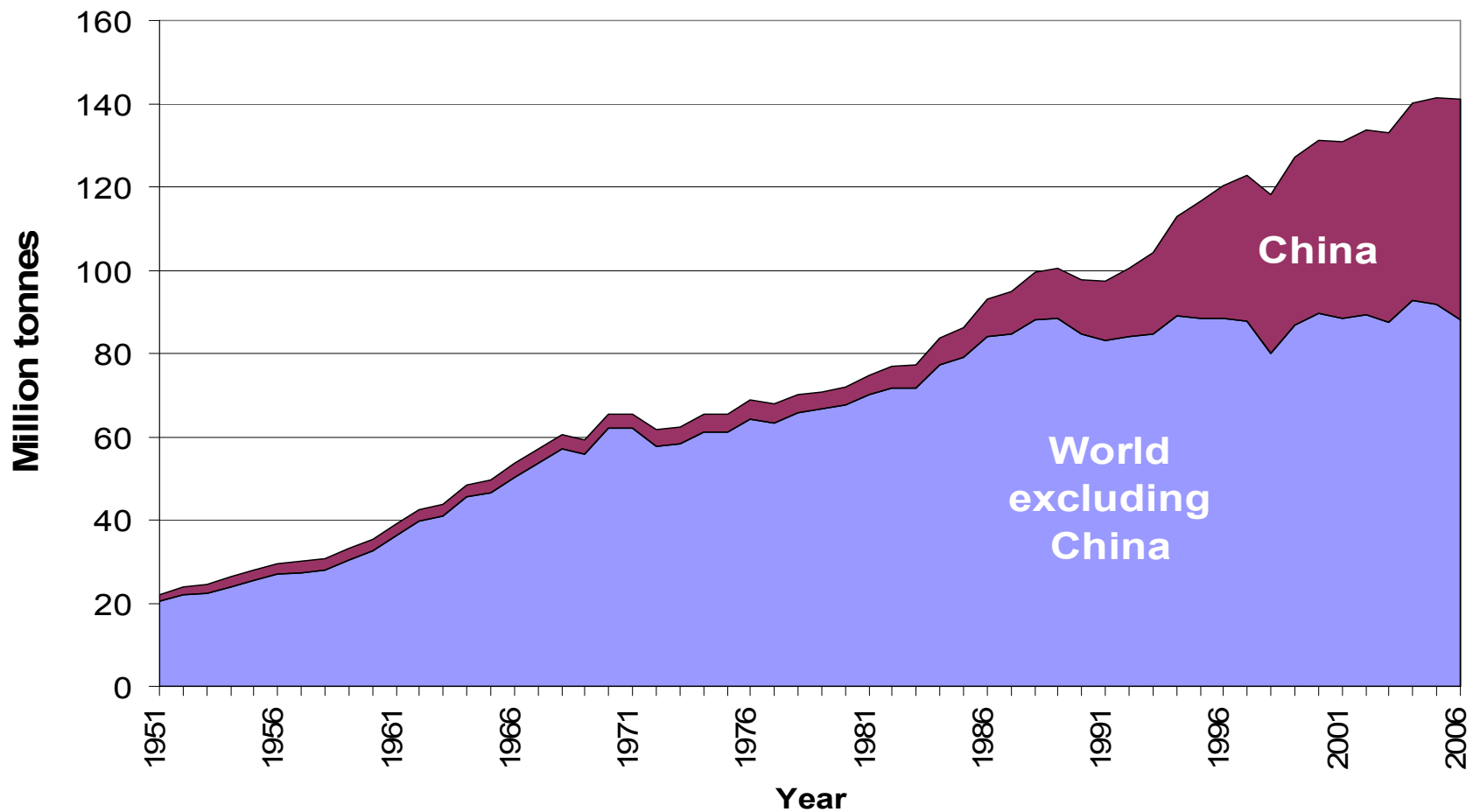
World Fish Production



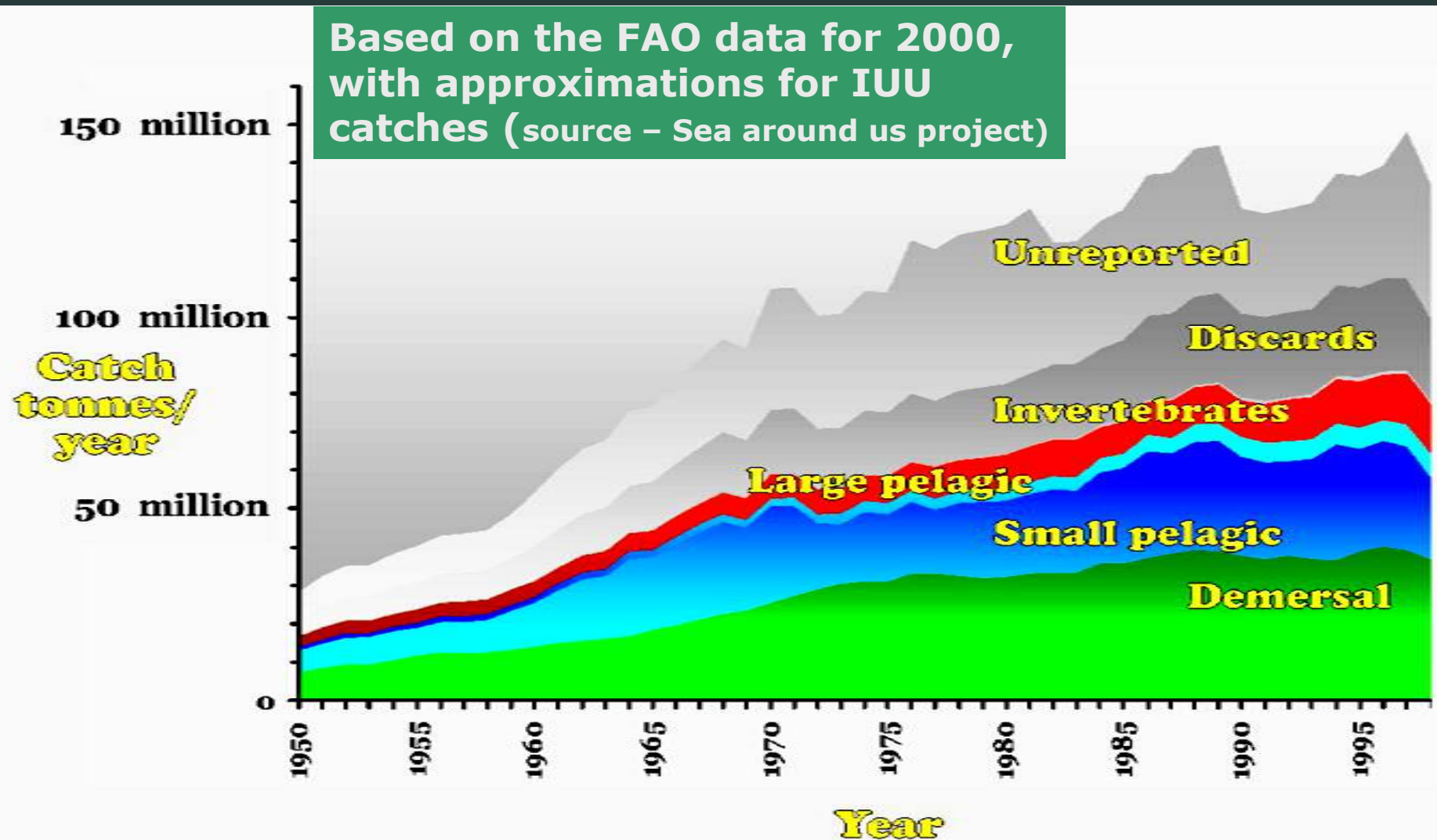
FISHSTAT 2007

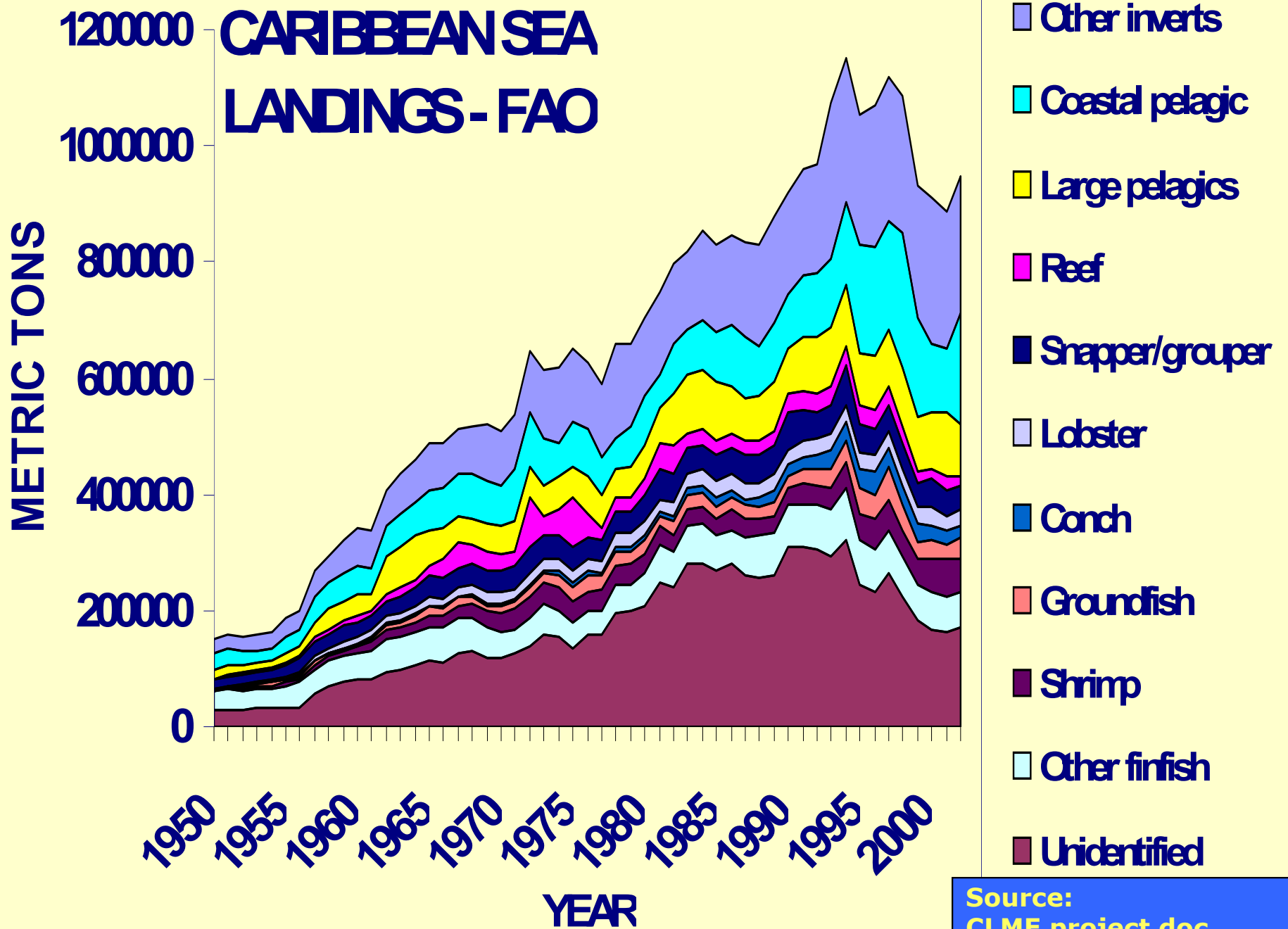
Role of China in production

World capture and aquaculture production



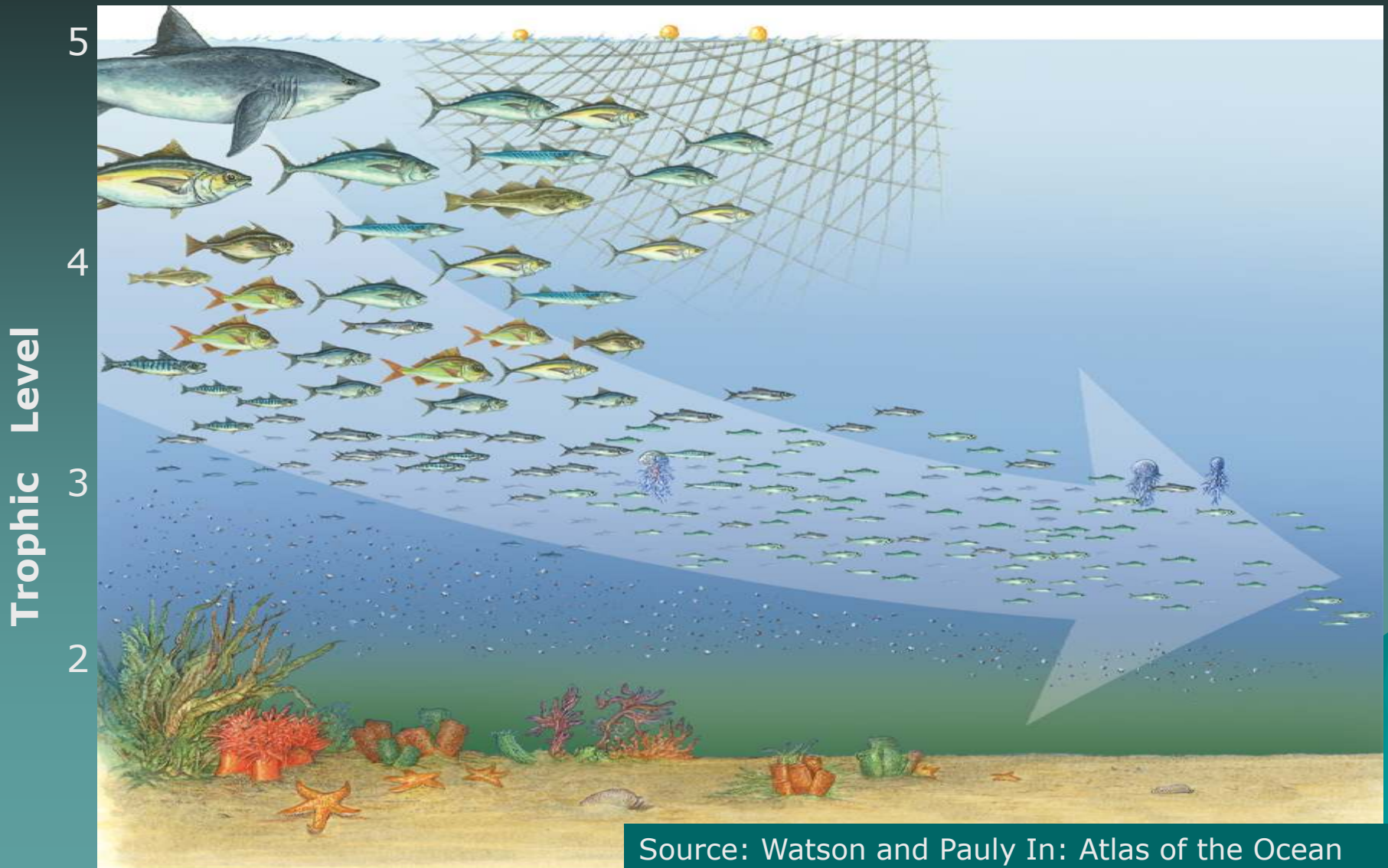
World Catch - corrected





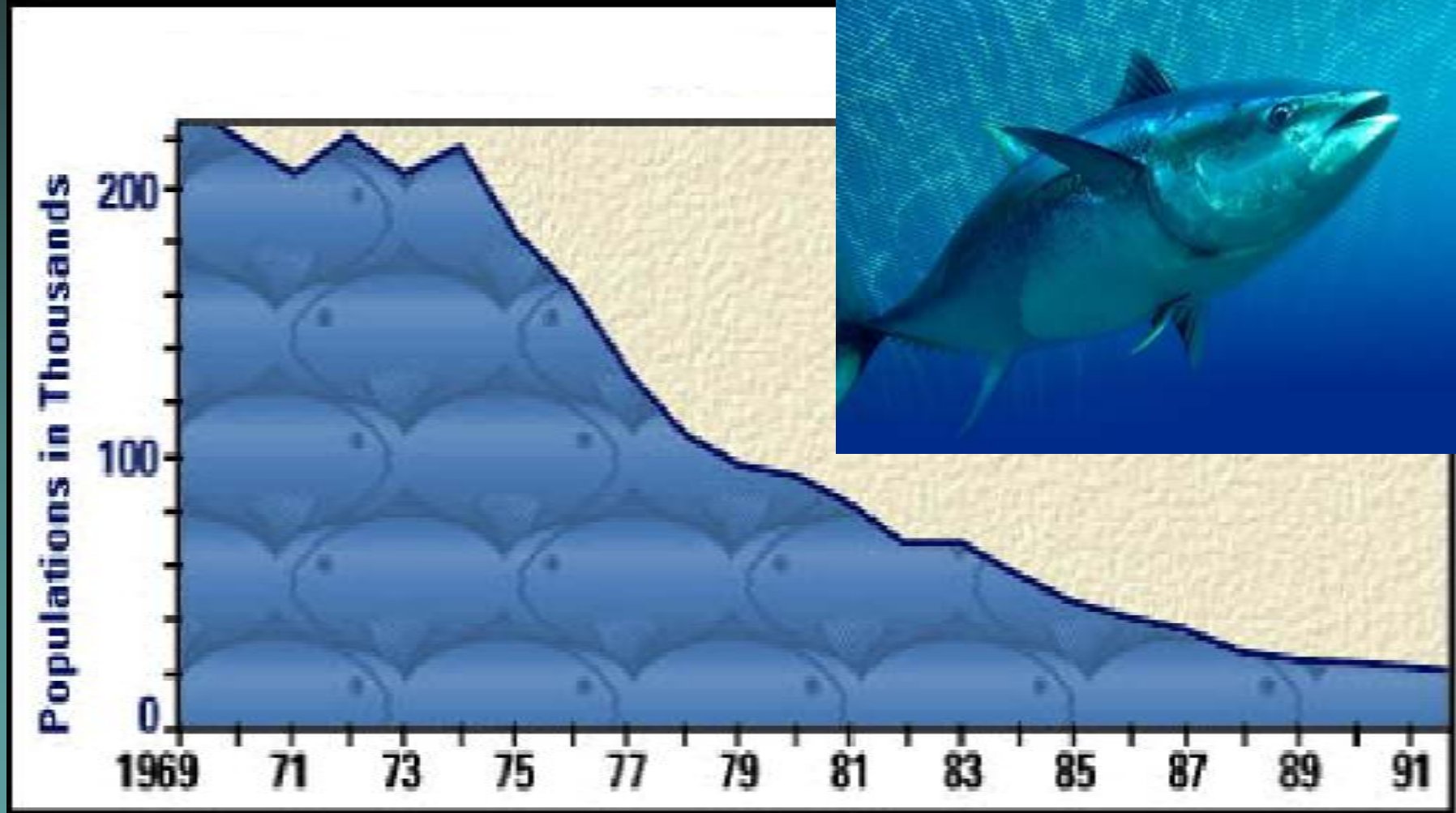
Source:
CLME project doc

Fishing Down Marine Food Webs



Source: Watson and Pauly In: Atlas of the Ocean

Bluefin tuna in the Atlantic



Some Issues and threats

- ◆ Climate change and sea level rise
- ◆ Habitat loss & degradation
- ◆ Endangered species
- ◆ Pollution – maritime and land-based
- ◆ Impact from growing tourism, agriculture
- ◆ Over-exploitation of marine resources
- ◆ Growing global demand and trade
- ◆ International maritime transportation
- ◆ Maritime boundary delimitation
- ◆ Weak legal & institutional frameworks & poor coordination

Why is Principled Ocean Governance important now ?


- ❑ Continued degradation dire consequences
- ❑ More effort is required to achieve sustainable and profitable
- ❑ Optimum sustainable social & economic benefits
 - **Protect and conserve fish stocks &** ecosystems from degradation arising from various threats (irresponsible fishing, pollution etc)
- ❑ WSSD set many specific targets & commitments

Principled Ocean Governance:

A number of principles have emerged to guide countries toward “good ocean governance”: avoidance of depleted resources and degraded environments, & achieve sustainable & profitable industries:

- + Sustainable Development
- + Precaution
- + Pollution Prevention
- + Ecosystem Approach
- + Public Participation
- + Intra and Inter-generational Equity
- + Community-based Management
- + Polluter Pays
- + Good governance
- + Integration

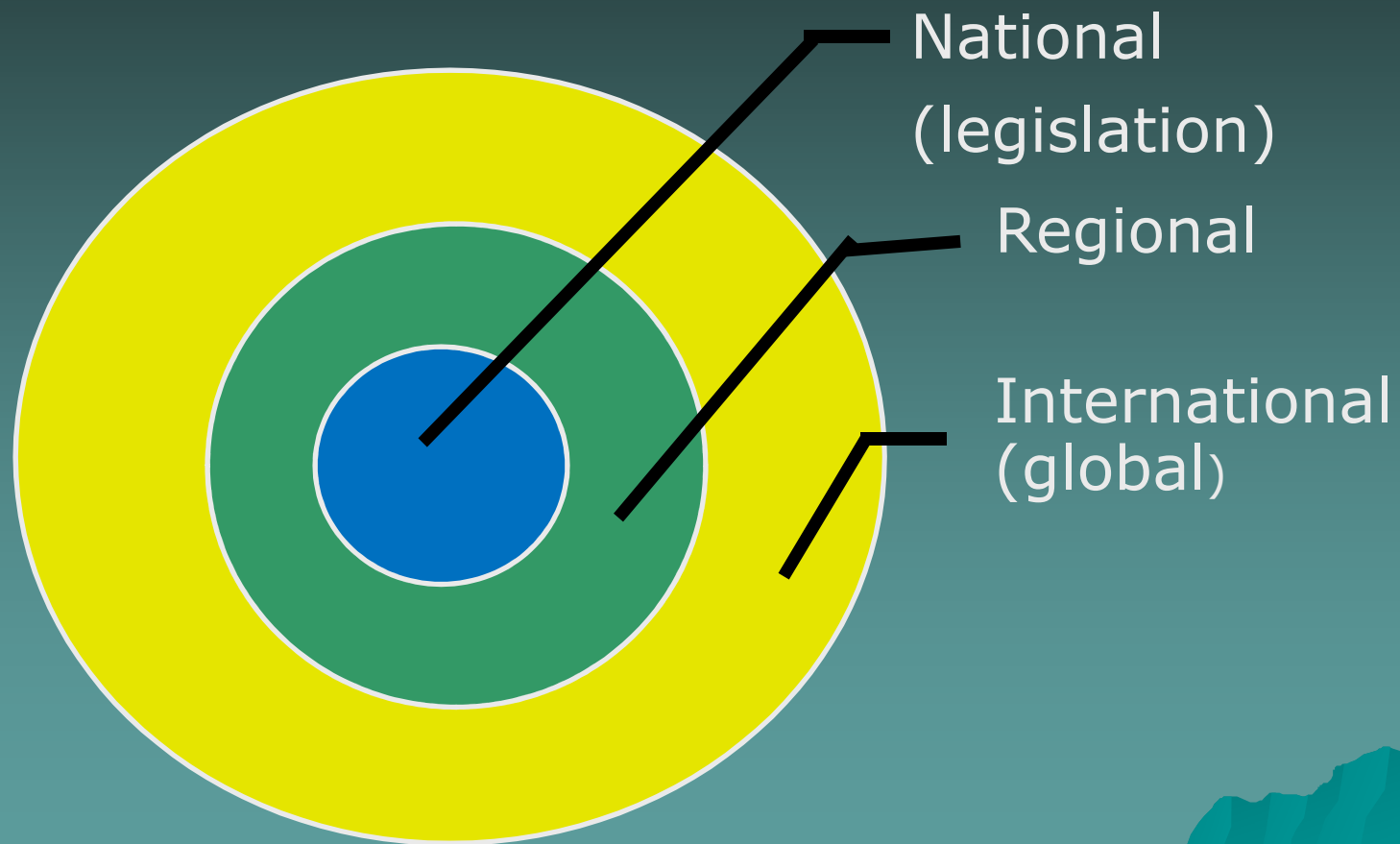
Focus on some relevant Principles: living marine resource Governance

1. Sustainable use
 2. Precaution
 3. Ecosystem approach
- 
- A stylized teal silhouette of a mountain range is located in the bottom right corner of the slide, extending from the right edge towards the center.

PERMANENT SOVEREIGNTY

- ◆ States have permanent sovereignty over natural wealth and resources
 - sovereign right to use natural resources within its territory
- ◆ Firmly established & dominant principle
- ◆ Consequence – state consent required
- ◆ Limitations:
 - General duty not to harm interest of other states
 - State responsibility - liability
 - difficult to apply for living resources

Governance Systems Applicable in the Caribbean



Nature of principles

- ◆ Principles are in the process of evolution and refinement
- ◆ Applicability dependent upon acceptance and implementation at international, regional and national levels

Some tools of Principled Ocean Governance

A number of tools are used to implement the principles of good ocean governance, including:

- ◆ Environmental Impact Assessment (EIA)
- ◆ Maximum sustainable yield (MSY)
- ◆ Total allowable catch (TAC)
- ◆ Harvesting Capacity (HC)
- ◆ Prior Informed Consent (PIC)
- ◆ Marine reserves
- ◆ Mechanisms for consultation, cooperation, exchange of information and notification

Application of global norms

- ◆ Wide acceptance of principles
- ◆ Treaty acceptance: uneven but recent improvement

Global treaties: ocean governance principles

COUNTRY	UNCLOS	Straddling Stocks	MARPOL 73/78	Civil Liability Convention
Antigua & B	2/02/1989		29/04/1988	14/06/2000
Bahamas	29/07/1983	16/01/1997	2/10/1983	1/04/1997
Barbados	12/10/1993	22/09/2000	6/08/1994	7/07/1998
Belize	13/08/1983	14/07/2005	26/08/1995	27/11/1998
Dominica	24/10/1991		21/09/2000	31/08/2001
Grenada	25/04/1991			7/01/1998
Guyana	16/11/1993		10/03/1998	10/12/1997*
Jamaica	21/03/1983		13/06/1991	6/06/1997
St Kitts & N	7/01/1993		24/03/1998	7/10/2004
St Lucia	27/03/1985	9/08/1996	12/10/2000	20/05/2004
St Vincent &	1/10/1993		28/01/1984	9/10/2001
Trinidad & T	25/4/1986	13/09/2006	6/06/2000	6/03/2000

Acceptance of Treaties on Pollution Regulation and Trans-boundary Movement of Waste

COUNTRY	1989 Basel Convention	2001 Stockholm POP Convention	1998 Rotterdam Convention on PIC
Antigua & B	05/04/1993 a	10/09/2003	
Bahamas	12/08/1992 a	03/10/2005	
Barbados	24/08/1995 a	07/06/2004 a	
Belize	23/05/1997 a		20/04/2005 a
Dominica	05/05/1998 a	08/08/2003 a	30/12/2005 a
Grenada			
Guyana	04/04/2001 a		
Jamaica	23/01/1994 a		20/08/2002 a
St Kitts & Nevis	07/09/1994 a	21/05/2004 a	
St Lucia	09/12/1996 a	04/10/2002 a	
St Vincent & G	02/12/1996 a	15/09/2005 a	
Trinidad & T	18/02/1994 a	13/12/2005 a	

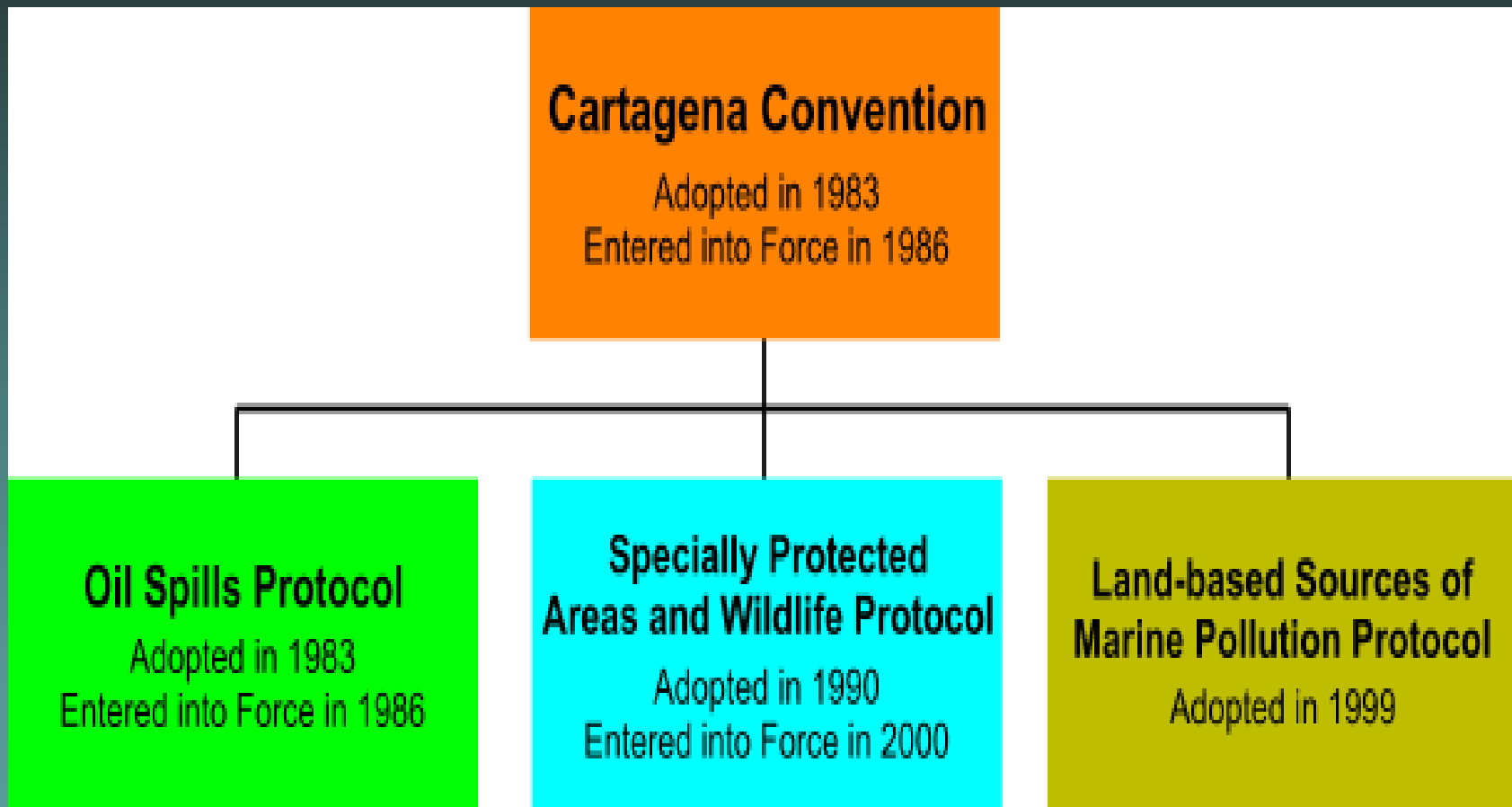
Biodiversity Treaties

COUNTRY	1992 CBD	Cartagena Protocol '00	CITES	World Heritage	Ramsar / Wetlands
Antigua	9/3/1993 r	10/9/2003 r	8/7/1997 a	1/11/'83 a	2/10/2005
Bahamas	2/9/1993 r	15/1/2004 r	20/6/'79 a		7/6/1997
Barbados	10/12/'93 r	6/9/2002 a	9/12/'92 a	9/4/'02 a	12/4/2006
Belize	30/12/'93 r	19/8/1986 s	19/8/'86 s	6/11/'90 a	22/8/1998
Dominica	6/4/1994 r	4/8/1995 a	4/8/1995 a	4/4/'95 r	
Grenada	11/8/1994 r	5/2/2004 r	30/8/'99 a	13/8/'98 r	
Guyana	29/8/1994 r		27/5/'77 a	20/6/'77 a	
Jamaica	6/1/1995 r		23/4/'97 a	14/6/'83 a	7/2/1989
St Kitts	7/1/1993 r	23/5/2001 a	14/2/'94 a	10/7/'86 a	
St Lucia	28/7/1993 a	16/6/2005 a	15/12/'82a	14/10/'91r	19/6/2002
St Vincent	3/6/1996 a	27/8/2003 a	30/11/'88a	3/2/'03 r	
Trinidad	1/8/1996 r	5/10/2000 a	19/1/'84 a	16/2/'05 r	21/4/1993

Caribbean Environment Programme (CEP)

- ◆ Cartagena Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region 1983, EIF 1986
- ◆ Supplemented by three Protocols:
 - ❖ Combating Oil Spills (1983, EIF 1986)
 - ❖ Protocol on SPAW (1990, EIF 2000)
 - ❖ Protocol on LBSMP (1999, not yet EIF)
- ◆ Conference of Contracting Parties

CEP Legal Structure



Acceptance of CEP agreements

COUNTRY	Cartagena Convention	OILSPILL Protocol	SPAW Protocol	LBSMP Protocol
Antigua & B	10/9/1986 r	11/9/1986		
Bahamas				
Barbados	28/5/1985 r	28/5/1984	14/10/2002	
Belize	22/9/1999 r	22/9/1999		4/01/08
Dominica	5/10/1990 r	5/10/1990		
Grenada	24/3/1983 r	17/8/1987		
Guyana				
Jamaica	24/3/1983 r	1/4/1987		
St Kitts & Nevis	15/6/1987	15/6/1987		
St Lucia	24/3/1983 r	30/11/1984	25/4/2000	30/01/08
St Vincent & G	11/7/1990 r	11/07/1990	26/7/1991	
Trinidad & T	24/1/1986 r	24/1/1986	10/8/1999	26/3/2003

Association of Caribbean States

- ◆ Convention establishing ACS - 1994
- ◆ Headquarters in Port of Spain, Trinidad
- ◆ Membership: 25 - most of countries of Wider Caribbean (not USA)
- ◆ Preamble :
 - speaks of importance of the Caribbean Sea.
 - Need to preserve its environmental integrity
 - Sustainable development
 - Intra and inter –generational equity

Caribbean Community (CARICOM)

- ◆ Revised Treaty of Chaguaramas 2001, establishing the Caribbean Community including the CARICOM Single Market and Economy
- ◆ Objective: regional economic integration
- ◆ Membership: 15 Commonwealth +
- ◆ Governance Institutions: Community Organs; Caribbean Court of Justice

THE CARIBBEAN REGIONAL FISHERIES MECHANISM (CRFM)

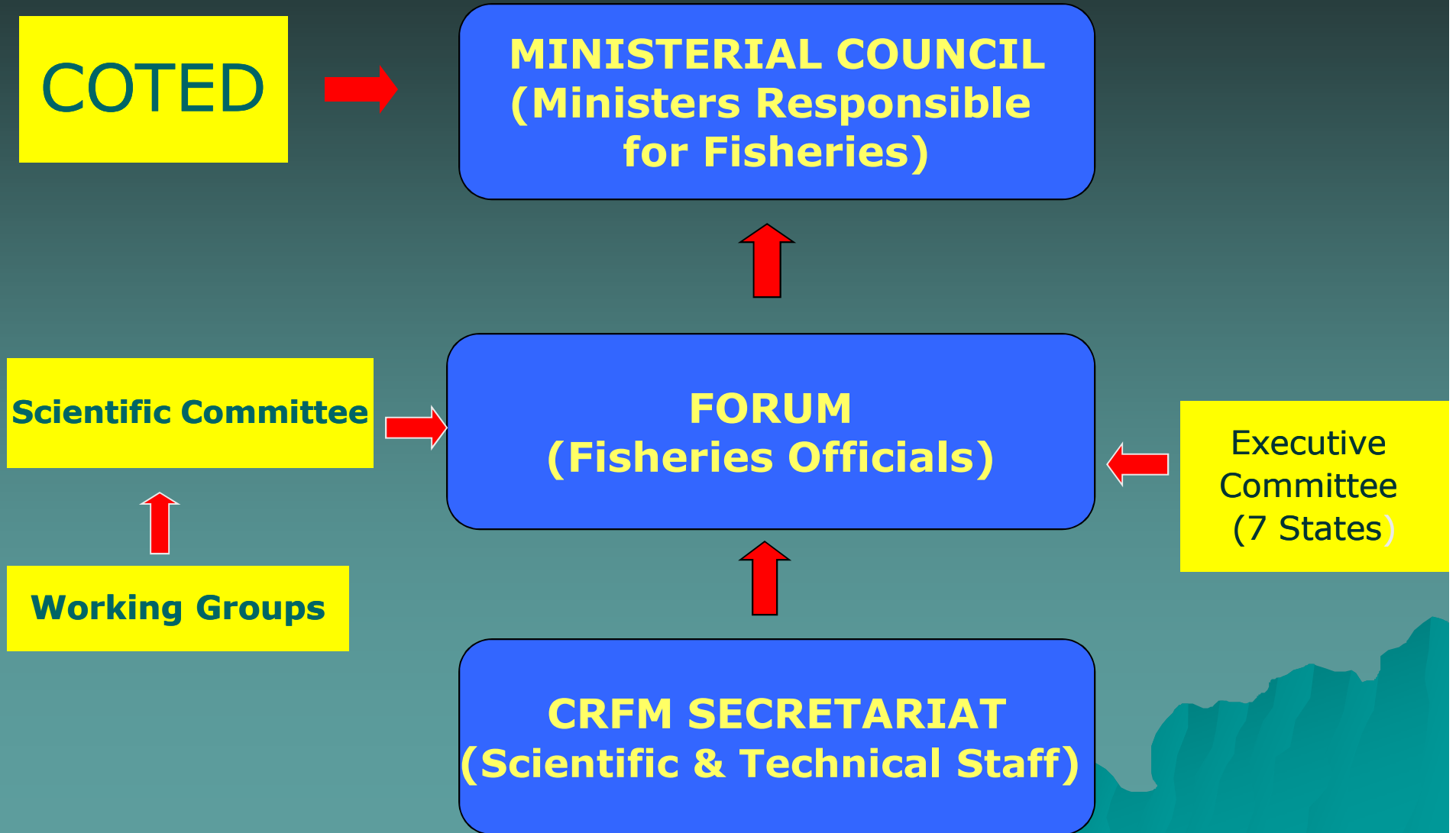
- ◆ Treaty signed in Feb 2002.
- ◆ Headquarters in Belize City
- ◆ 17 Member States (CARICOM Members + 2 Associate Members)

CFRAMP
1992



CRFM
2002

CARIBBEAN REGIONAL FISHERIES MECHANISM (CRFM)



Organisations/Institutions

- ◆ ACS
- ◆ OAS
- ◆ FAO
- ◆ UNEP
- ◆ IOCARIBE
- ◆ UNDP
- ◆ CARICOM
- ◆ CARIFORUM
- ◆ OECS

- ◆ CARUNFO
- ◆ CANARI
- ◆ SICA
- ◆ CCAD
- ◆ TNC
- ◆ GCFI
- ◆ CLME
project
- ◆ UWI +

FISHERIES


5 Main RFB

- ◆ ICCAT
- ◆ FAO/WECAFC
- ◆ OLDEPESCA
- ◆ CRFM
- ◆ OSPESCA


National Implementation

- ◆ Global and regional governance systems not self-executing in most Commonwealth Caribbean – mainly dualist systems – international law must be incorporated into domestic systems
- ◆ Reliance on national implementation
- ◆ Positive: Increasing acceptance of treaty obligations
- ◆ Negative: implementation less impressive (legislation often not enacted)
- ◆ *Sea-Food and Ting v Natural Resources* (1999)

Application of principles to COG: (1) Sustainable utilization & conservation

- ◆ Principles applicable: sources, nature
 - ◆ Role of regional governance
 - ◆ National implementation
- 
- A stylized silhouette of a mountain range in shades of teal, located at the bottom right of the slide.

Sustainable use - UNCLOS

- ◆ EEZ brought 90% fishing under exclusive coastal state authority
 - ◆ Intended to prevent over-exploitation
 - ◆ Exclusive rights to explore, exploit, conserve and manage
 - ◆ Subject to general conservation and utilization duties (Art 61-62)
- 

Conservation & Utilization Duties

- ◆ State must ensure species not endangered through overexploitation
 - + Target species – maintained at levels that can produce MSY
 - + Associated/dependent species – lower standard - Must ensure maintenance above levels at which reproduction is seriously threatened
 - + Must determine TAC & allow neighbouring states to take surplus

Weaknesses - UNCLOS

- ◆ Operate at a high level of generality
- ◆ Predate important conservation and management principles
- ◆ Was it the expectation that detailed rules should be developed?
- ◆ Detailed rules explicitly mandated for
 - (i) straddling stocks and
 - (ii) marine pollution
- ◆ States are left with a wide discretion

- ◆ Consider poor state of world's fish
- ◆ Weaknesses in the Convention:
 - Use of MSY – scientific
 - Decision making process re: TAC
 - Legal failings:
 - ◆ difficult to prove breach of general conservation obligations
 - ◆ lack of accountability
 - ◆ Exclusion of domestic fisheries from the compulsory dispute settlement regime
 - Other important threats to stocks not regulated e.g. habitat

Shared Resource Concept

- ◆ Does not fall wholly within the territorial jurisdiction of one state
- ◆ General obligation to use them equitably & harmoniously (ASEAN)
 - Requires cooperation, notification & consultation between states
- ◆ A State is considered the temporary host of a migratory species
- ◆ Required to apply conservation measures if necessary to protect stocks

SHARED RESOURCES

- ◆ 1974 Charter of Economic Rights & Duties of States – contains 1st explicit recognition of concept – State must cooperate, exchange info & consult
- ◆ UNEP elaborated on concept in Principles for Shared Natural Resources – but this has not received wide acceptance by States – only 1 Treaty embraced –ASEAN
- ◆ Concept is still in embryonic stage of development – could be important

Shared Resources Concept

- ◆ **Very very important concept**
 - **stocks & environment shared**
- ◆ Offers significant opportunities for protection of living marine resources
- ◆ oblige States to cooperate through consultations, notification and harmonisation of conservation and management measures
 - **Lionfish**



UNCLOS –Duty to cooperate

- ◆ LOSC, Part IX encourages cooperation among states bordering enclosed or semi-enclosed seas
- ◆ These states required to cooperate in sustainable utilization of resources; protection of the marine environment, scientific research policies...
- ◆ Caribbean sea classic illustration of semi-enclosed sea: some 90% of the circumference of the Caribbean Sea is enclosed by continental or island landmasses.

Straddling & Highly Migratory Stocks

- ◆ Derived from UNCLOS (Art 57 & 63)
- ◆ Defined – Stocks or associated stocks which occur within the EEZ of 2 or more coastal States or a coastal State and the high seas
- ◆ Stocks shared between States - must cooperate in development of harvest & conservation measures for management
- ◆ Stocks within EEZ/high seas – state has primary responsibility in area adjacent to EEZ but must cooperate with fishing states

Sustainable use of ocean resources

- ◆ 1995 Straddling and Highly Migratory Stocks Agreement
 - “ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks” (Art. 2)
 - Conservation and utilization measures to be based on best scientific evidence available and design to maintain or restore stocks at levels capable of producing MSY
 - Measures to employ the precautionary approach
 - **Limitation: only regulate “straddling and highly migratory fish stocks”**

Sustainable Use: Regional Governance

- ◆ ACS
- ◆ Caribbean Environmental Programme
- ◆ CARICOM
- ◆ CRFM

Sustainable use in CEP

- ◆ Cartagena Convention 1983
 - No explicit provision (focus on pollution)
 - General spirit (specially protected areas)
- ◆ SPAW Protocol 1990
 - Utilization of specified species on rational and sustainable basis (Art. 2)
 - General obligation to manage resources of Caribbean sea in sustainable way (Art. 3)

Sustainable Use in Revised Treaty of Charaguamas

Specific references to:

- + Sustainable use in several provisions,
 - Sustainable Tourism through conservation and maintaining healthy balance (Art 55)
 - Agriculture (Art 56)
 - Natural Resource Management (Art 58)
 - Fisheries dev & management (Art 60)
 - Environmental protection (Art 65)

REVISED TREATY OF CHAGUARAMAS

Art 60 on Fisheries says:

The Community shall:

- ◆ *promote development, management and conservation of fisheries resources on a sustainable basis.*
- ◆ *promote the establishment of a regime for the effective management, conservation and utilization of the living resources of the EEZ of the Member States.*

Sustainable Use: CRFM AGREEMENT

Art 4 – Objectives

- a) the efficient management and sustainable development of marine and other aquatic resources within the jurisdictions of Member States;*
- b) the promotion and establishment of co-operative arrangements among interested States for the efficient management of shared, straddling or highly migratory marine and other aquatic resources;*

CRFM AGREEMENT 2002

- ◆ **GENERAL PRINCIPLES (Art 5)**

- (a) *maintaining bio-diversity in the marine environment ;*

- (b) *managing fishing capacity and fishing methods so as to facilitate resource sustainability;*

- (c) *encouraging the use of precautionary approaches*

- ◆ *promote the protection and rehabilitation of fisheries habitats and the environment generally (Art 9(a));*

Scientific Working Group

- ◆ The CRFM has a number of fisheries resource working
- ◆ Annual Scientific Meetings – 2 weeks
- ◆ Compile and analyze available statistics
- ◆ Conduct assessment studies to determine the state of various fish stocks and provide management advice .
- ◆ The working groups:
 - (1) Large Pelagic Fisheries;
 - (2) Small Coastal Pelagic;
 - (3) Reef and Slope Fisheries Resources ;
 - (4) Conch and Lobster Resource Working Group;
 - (5) Shrimp and Groundfish Working Group

Sustainable Use in other Caribbean RFB

- ◆ Mandates - facilitating international/regional cooperation for the conservation and management of marine fish stocks and ecosystems:
 - ICCAT
 - FAO/WECAFC
 - OLDEPESCA and
 - OSPESCA

Caribbean RFB

Objectives:

- ◆ Collection, analysis, dissemination of statistics; Research, including stock assessment
- ◆ developing scientific-based management advice;
- ◆ providing a mechanism to agree management measures - catch quotas, minimum legal size; and closed season;
- ◆ monitoring to ensure compliance & imposition of sanctions where the rules breached
- ◆ Whether functions RFMO is ultimately a question of **political will** and priority attached to resource management and conservation.

Sustainable Use: National Systems

- ◆ Even though several treaties limit a State's rights over its resources, the fundamental legal status of fishery resources as property to be exploited by States remain unchanged – **State sovereignty principle**

Sustainable use in national regulation

- ◆ Town and Country Planning (implicit)
- ◆ Marine Areas Preservation Acts (implicit)
- ◆ Fisheries Act (generally not explicit)
- ◆ Coastal Zone Management Act
 - Act of 1998 of Belize: promote use and conservation (sect. 9)
- ◆ Comprehensive Environmental Statutes (Guyana, Trinidad)

National Fisheries Acts

- ◆ Jurisdiction over fisheries
- ◆ Promotion of Fisheries management and development
- ◆ Foreign fishing
- ◆ Local fishing (requires valid licence)
- ◆ Marine reserves and conservation measures
- ◆ Fish processing
- ◆ Prohibitions and penalties
- ◆ Enforcement
- ◆ Regulations (Minister responsible for fisheries)

General objective: Fisheries Laws

“The objective of fisheries management and development shall be to ensure the optimum utilization of the fisheries resources in the waters of Barbados for the benefit of the people of Barbados (section 3(3) Fisheries Act 1993)

to promote ..“**sustainable development** “of fisheriesand in so doing shall promote precautionary approaches, ..as well as the need to **conserve fisheries resources** for future generations. – Guyana 2002

Maritime Areas Acts 1980s

- ◆ Adoption of jurisdictional competence in UNCLOS
 - 12 mile territorial sea
 - 200 mile exclusive economic zone
 - 200 mile exclusive fishing zone
- ◆ Power in Minister (Foreign Affairs) to take substantive measures to protect marine environment and regulate resource exploitation
- ◆ Weakness:
 - little substantive regulation
 - Some inconsistency with UN Law of Sea Convention
 - Limited capacity to police areas under jurisdiction

National Environmental Agencies (1990s)

- ◆ Natural Resources Conservation Act 1991 (Jamaica)
- ◆ Environmental Protection Act 1992 (Belize)
- ◆ National Conservation Environmental Protection Act 1987 as amended 1996 (St. Kitts & Nevis)
- ◆ Environmental Protection Act 1996 (Guyana)
- ◆ Environmental Management Act 2000 (Trinidad and Tobago)

(2) Precautionary Principle

- Principles applicable: sources, nature
- Role of regional governance
- National implementation

Precaution in CEP

- ◆ Not explicitly mentioned in the Cartagena Convention or any of its 3 protocols
- ◆ However, possible to glean its intent from several provisions
- ◆ SPAW Protocol shows the most scope for implementation (Lancaster, 2008)

E.g. of precaution in CEP

- ◆ Cartagena Convention 1983
 - General obligations and intent
- ◆ Oil Spills Protocol 1983
 - More preventive in nature
- ◆ LBSMP Protocol 1999
 - General provisions, listing requirements and procedures
 - Not yet in force (6 of 9)

Precaution in SPAW

- ◆ General provisions to protect areas and species
- ◆ Establishment of protected areas
- ◆ Protection measures (regulation of pollution, prohibit non-indigenous species, in situ/ ex situ protection)
- ◆ Listing of protected areas and species
- ◆ Buffer zones
- ◆ Environmental Impact Assessment (EIA)

Weaknesses in Caribbean Environment Programme

- ◆ (1) Limited acceptance of CEP Agreements
- ◆ (2) Legal Nature of CEP arrangements – strong precise obligations
- ◆ (3) Limited Role of CARICOM

Precaution: CARICOM Treaty

- ◆ *The policies of the Community shall be implemented in a manner that ensures the prudent and rational management of the resources of the Member States (Art 65 (1))*
- ◆ *Shall promote measures to ensure:*
- ◆ *(a) preservation, protection and improvement environment;*
- ◆ *(b) protect life & health of humans, animals and plants;*

CARICOM Treaty

- ◆ *In formulating measures in relation to the environment, the Community shall take account of:*
 - *available and accessible scientific and technical data;*
 - *the precautionary principle and those principles relating to preventive action, rectification of environmental damage at source and the principle that the polluter pays;*

Ecosystem Approach in Caribbean Fisheries Policy: CRFM, May 2009

- ◆ 2009 Draft Caribbean Fisheries Policy:
 - Requires contracting parties to use and promote the precautionary approach to fisheries management, conservation and development


Precaution in National Legislation

- ◆ Relatively few mention expressly
- ◆ Guyana Fisheries Act 2002 s.3
In promoting management and sustainable use shall promote precautionary approaches to fisheries management, as well as the need to conserve fisheries resources for future generations

Precaution in National Legislation

- ◆ Draft fisheries law Jamaica, Antigua ss5(2) & 6(2), (Belize)
- ◆ Guyana, EPA sect. 4 (4) (b):
 - Agency to make use of current principles of environmental management, including the precautionary **principle** (note use of principle and not approach)

(3) Ecosystem Approach

- ◆ Principles applicable: sources, nature
 - ◆ Role of regional governance
 - ◆ National implementation
- 
- A stylized teal silhouette of a mountain range is positioned at the bottom right of the slide, extending from the right edge towards the center.

Ecosystem Approach in regional arrangements

- ◆ Cartagena Convention (Art. 10) obliges parties to take all measures to protect and preserve rare or fragile ecosystems
- ◆ SPAW Protocol
 - Combination of CBD, CITES, RAMSAR
 - Preceded other international agreements in utilizing the ecosystem approach

Ecosystem Approach in Caribbean Fisheries Policy: CRFM, May 2009

- ◆ 2009 Draft Caribbean Fisheries Policy:
 - Requires contracting parties to use and promote the ecosystem approach to management and conservation of fisheries resources
 - Defines the ecosystem approach mainly in terms of balancing the diverse societal objectives taking into account knowledge and uncertainties of the components of the ecosystems and their interactions


Eco Approach in National Law

- ◆ Few mention expressly
- ◆ Newer legislation beginning to incorporate
- ◆ Antigua Draft Fisheries Act (s4(1))
- ◆ “ Minister ... to ensure the conservation of the fish resources and the ecosystems to which they belong”
- ◆ Likewise Belize, Jamaica

Conclusion

- ◆ POG can help achieve peaceful, sustainable & equitable future
- ◆ Limited successes –
 - gradual acceptance and application
 - Overall principles not adequately incorporated in domestic legislation
 - established several institutions
- ◆ More needs to be done implement
 - Legislation
 - Education & Training
 - Public Awareness and involvement

Future

- ◆ Identify/clarify national priorities
 - ◆ Develop relevant laws & regulations
 - ◆ Develop national strategies & action plans
 - ◆ Partnerships with civil society
 - ◆ Institutional reform & good governance
 - ◆ Graduation is the key for achieving effective implementation
- 

Draft Agreement Establishing the Caribbean Common Fisheries Policy

Revision IV

**May 12, 2009: A case
Study**

A stylized silhouette of a mountain range in shades of teal, located at the bottom right of the slide.