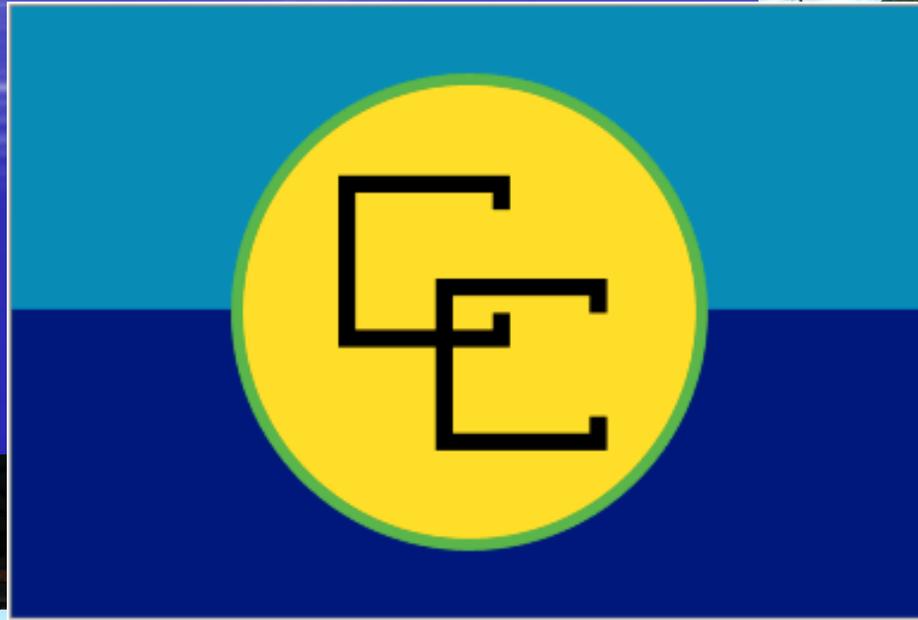


The Promise and Problems of a CARICOM Fisheries Agreement



Presented by Tricia Lovell

The United Nations-Nippon Foundation
Fellowship Programme 2007-2008

Introduction

In February, 2003 at the fourteenth intercessional meeting of the CARICOM Heads of government, fifteen member states of the Caribbean Community endorsed a proposal to develop a regional Fisheries Agreement for CARICOM. This was the latest move in a more than fifty year process of reaching regional integration within the Caribbean Commonwealth

The Caribbean Region



Source: www.acs.com

SECTION I

Relevant History of CARICOM
Member States

Profile of the Caribbean Region

- The Caribbean Sea is the second largest sea in the world
- Relatively low productivity region
 - Due to a narrow continental shelf and few upwelling areas
- Complex geology
 - Deep ocean basins separated by shallow zones
- Marine fisheries play an important role in food security
 - ~680 species of fish harvested by Caribbean fisheries operators
- Oil and gas are main mineral resources
 - Located in northern and southern part of the region
 - Main producers; Venezuela, Trinidad and Tobago, Cuba and Barbados

The CARICOM Integration Process

- Within the Caribbean basin several Caribbean countries (mainly of the British Commonwealth) have joined together to form an integrated community
- The Caribbean Community (CARICOM) was established through the Treaty of Chaguaramas for the purpose of facilitating the economic and social development of member states with an overall objective of economic integration and a single market and economy
- CARICOM and the CARICOM Single Market and Economy (CSME) were borne out of an almost fifty year struggle for achieving regional integration among countries of the Commonwealth (English speaking) Caribbean - which were later joined by Haiti and Suriname

The CARICOM Integration Process: Federation to a Single Market and Economy

- February 14, 1947 – Secretary of State for the British Colonies (Arthur Creech Jones) asked legislatures of the West Indian territories to debate the issue of Federation
- The suggestion met with unanimous support (except Bahamas) and a conference held in September of 1947 where representatives of nine British colonies adopted a resolution “recognizing the desirability of a political federation of the British Caribbean territories”
- The conference adopted "the principle of a federation in which each constituent unit retains complete control over all matters except those specifically assigned to the federal governments.”
- Standing Closer Association Committee appointed to plan the direction
- Next conference held April 1953 and formulated the “Plan for British Caribbean Federation
- Final agreement on the Federation reached at a London Conference in 1956 and a Standing Federation Committee was formulated to deal with logistical matters
- Constitution of the Federation took effect from January 3, 1958 The Federation collapsed after four years as first Jamaica and then Trinidad and Tobago pulled out and was officially dissolved on May 31, 1962

Federation to a Single Market and Economy

- Six years after the collapse of the Federation Caribbean governments began to negotiate the establishment of a Caribbean Free Trade Area (CARIFTA)
- In August 1967 the region's heads met and agreed to a phased freeing of trade in the Commonwealth Caribbean
- On May 1, 1968 governments passed a resolution to eliminate import duties and other restrictions on goods traded among the Commonwealth Caribbean countries
- In the next phase of CARIFTA governments began to discuss the issue of establishing a Common External Tariff (which became a very contentious issue)
- CARIFTA led the way for the establishment of the Caribbean Community (CARICOM)

Federation to a Single Market and Economy

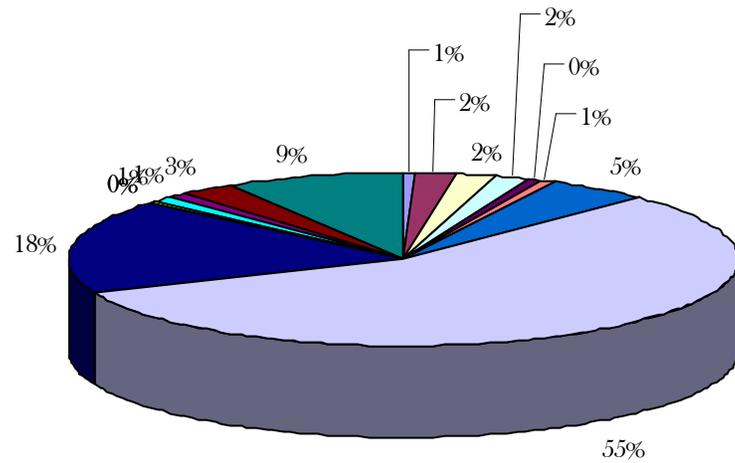
- July 4, 1973 Caribbean governments signed the Treaty of Chaguaramas, which established CARICOM
- In this new arrangement two distinct divisions were established; the Caribbean Community and the Caribbean Common market; both of which are controlled by the Heads of Government
- The Community was established to allow for greater functional cooperation between member governments and coordination in foreign policies
- Issues of economic integration particularly those related to trade were addressed in the Common Market Annex to the Treaty
- In 1989 the Heads of Governments decided to transform the Common Market to a Single Market and Economy
- Between 1993 and 2000 an Intergovernmental Task Force developed an amended Treaty; producing nine new protocols and was formally called “The Revised Treaty of Chaguaramas Establishing the Caribbean Community, Including the CARICOM Single Market and Economy
- The Revised Treaty was signed by CARICOM Heads on July 5, 2001 at their 22nd Meeting

Membership in the Community

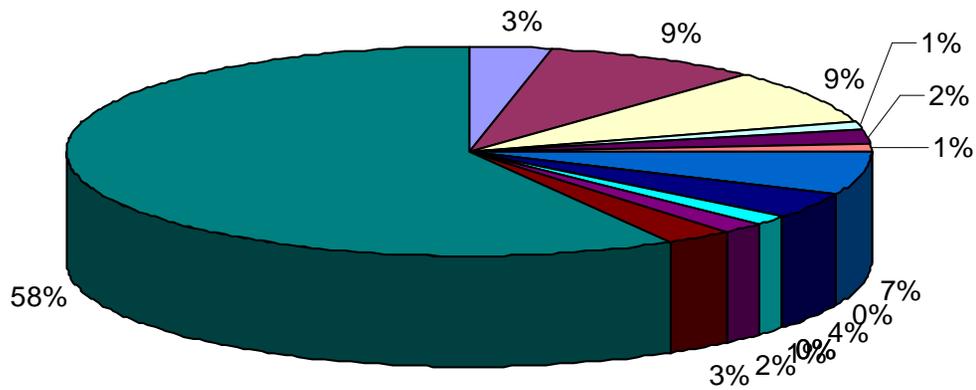
- Fifteen full members
 - Antigua and Barbuda
 - The Bahamas (not Member of the Single Market)
 - Barbados
 - Belize (formally British Honduras)
 - Dominica
 - Grenada
 - Guyana
 - Haiti
 - Jamaica
 - Montserrat
 - St. Kitts and Nevis
 - St. Lucia
 - St. Vincent and the Grenadines
 - Suriname
 - Trinidad and Tobago

- Five Associate Members
 - Anguilla
 - Bermuda
 - British Virgin Islands
 - Cayman Islands
 - Turks and Caicos

Economic Considerations



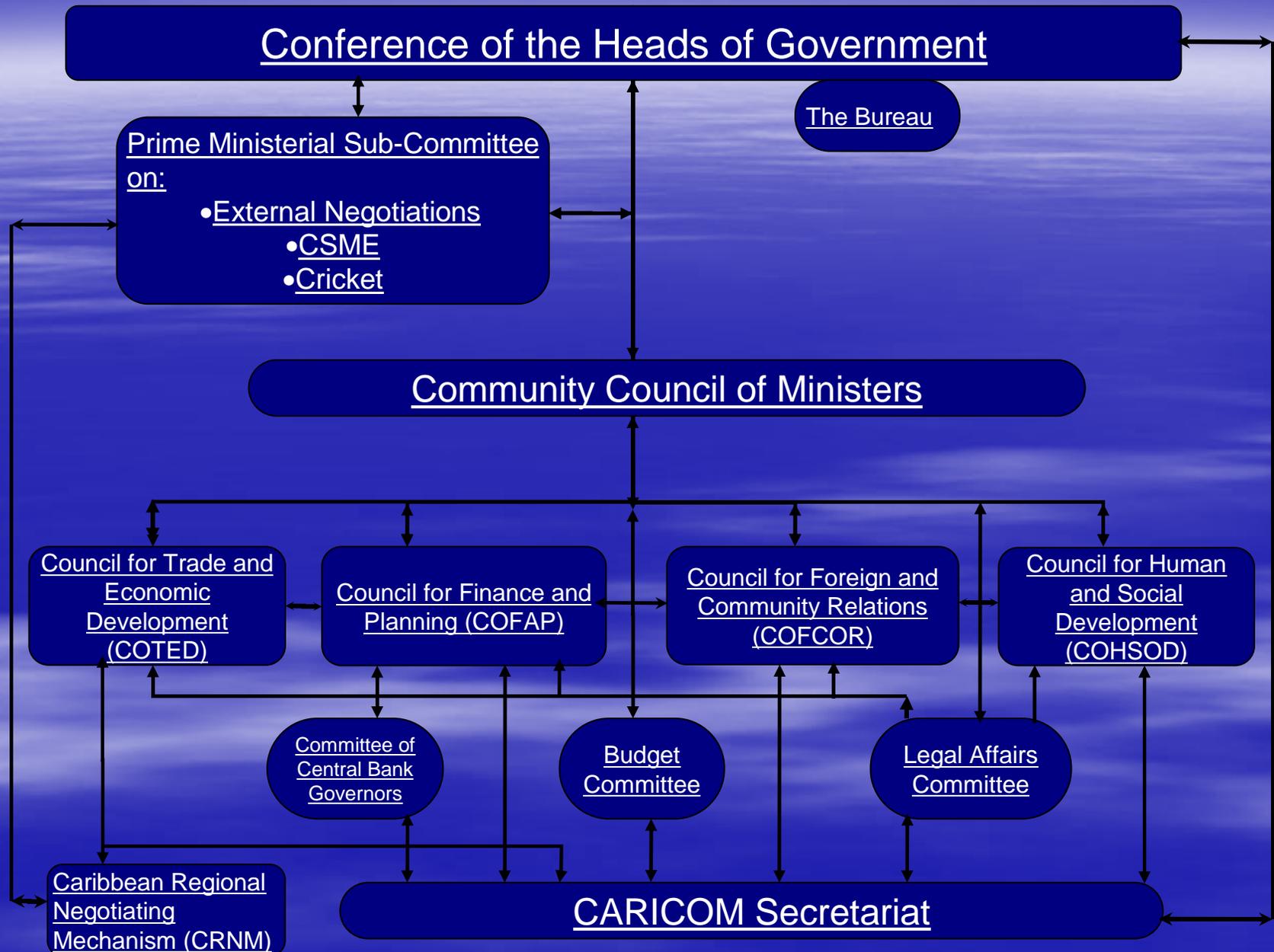
Population



Percentage of Intraregional exports

- | | | |
|--------------------------------|--------------------------|---------------------|
| Antigua and Barbuda | The Bahamas | Barbados |
| Belize | Commonwealth of Dominica | Grenada |
| Republic of Guyana | Republic of Haiti | Jamaica |
| Montserrat | St. Kitts and Nevis | St. Lucia |
| St. Vincent and the Grenadines | Suriname | Trinidad and Tobago |

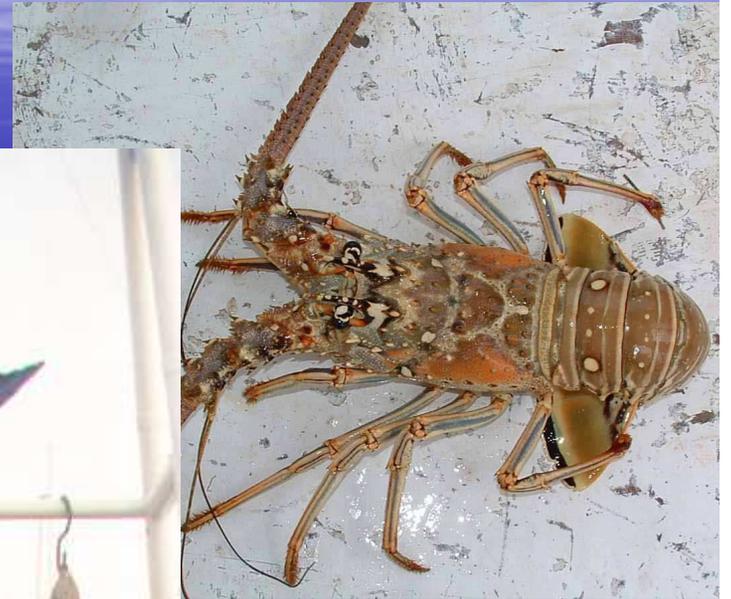
Organs of the Community



Profile of the Fisheries Sector within CARICOM States

- Small Scale/artisanal
 - Vessels range from 5 -12 m (artisanal fleets), 12 – 15 m (larger commercial vessels), 20 – 30 m (industrial fleet)
- Contributes relatively little to GDP of member states
- Important to food security and poverty alleviation
- Sector widely varied across the region
- Multi-species/multi-gear fisheries
- The majority are open access regime
- Fisheries sector in many CARICOM countries is often seen as an area of last resort for poorer members of society.

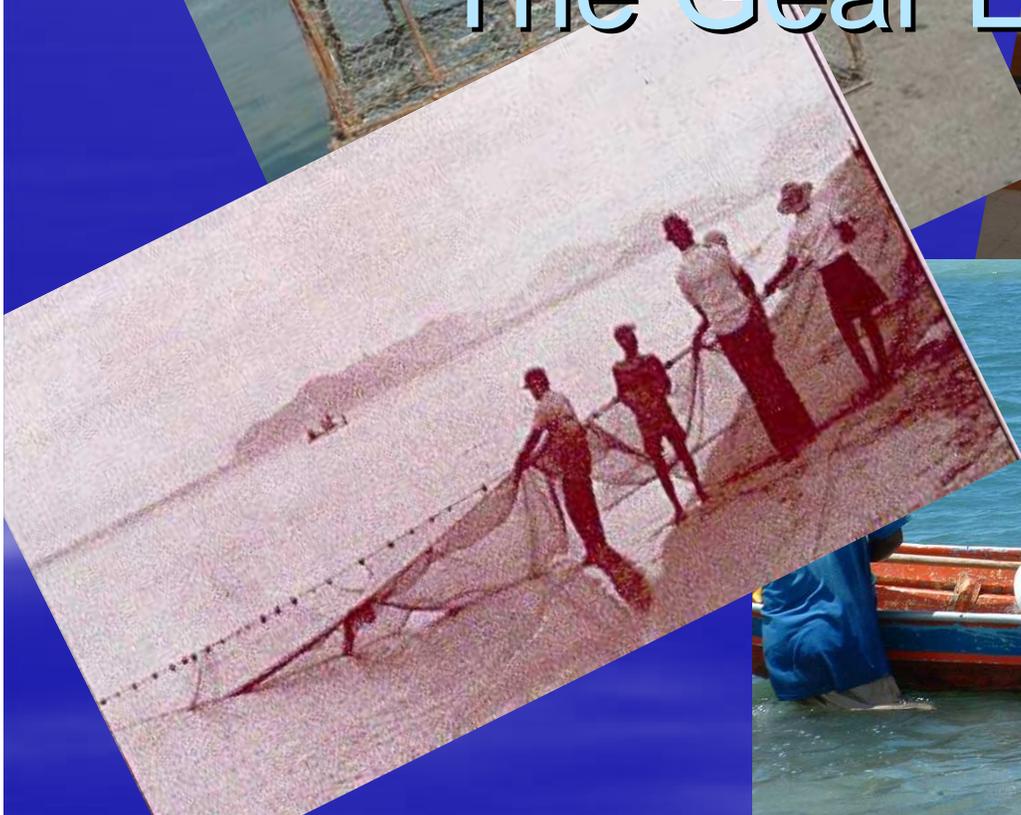
Targeted Species



Profile of the Fleet



The Gear Employed



SECTION II

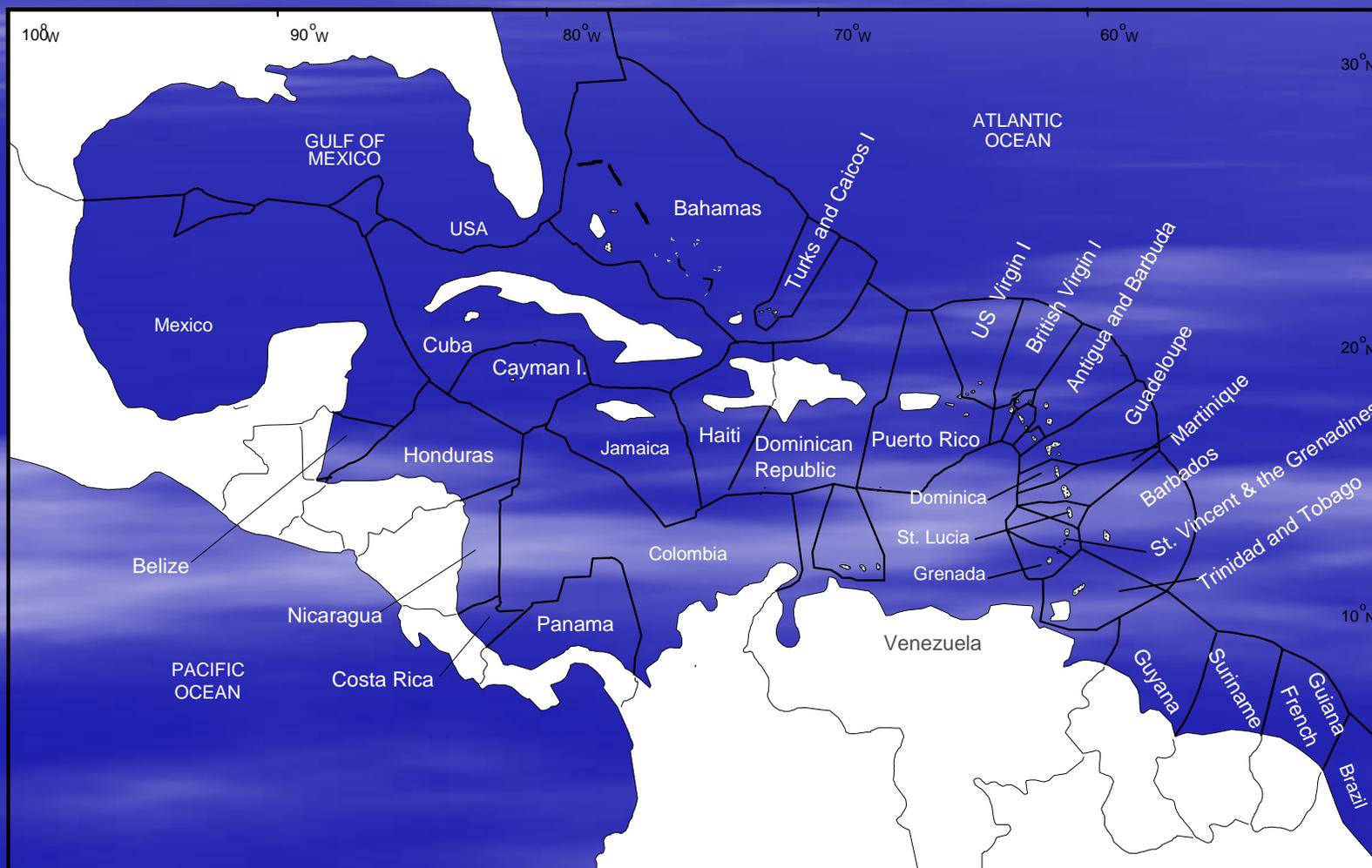
Developments in International
Law: Implications for CARICOM
States

The Law of the Sea: Implications for CARICOM States

- The entry into force of UNCLOS extended the jurisdiction of coastal states into marine areas that were previously high seas
 - Resulted in displacement of fishers from traditional fishing areas
 - Increased the management and enforcement responsibilities of coastal states
 - Border a sea of great strategic importance
 - CARICOM states are very small with extremely small populations
 - Many are multi-island states (e.g. the Bahamas, and St. Vincent and the Grenadines)
- By virtue of their size CARICOM states are unable to fully enforce the full boundaries of the EEZs

Delimitation of Maritime Boundaries in CARICOM

- Few CARICOM States are situated at distances from one another that would permit the maximum extension of national maritime zones under LOSC



Delimitation of Maritime Boundaries by CARICOM States

- 48 potential boundaries by CARICOM Members to be delimited
 - Only nine have been settled
 - 2 only after binding arbitration
 - 1 provisional agreement

- Associate Members have had five boundary treaties negotiated on their behalf by the UK

Delimited Boundaries and Negotiated Treaties

Bilateral treaties on boundary delimitation with other states	Date of Agreement	Entry into Force
Treaty between Haiti and the Republic of Colombia in respect of delimitation of marine and sub-marine areas	February 17, 1978	February 16, 1979
Treaty between St. Lucia and the Republic of France (in respect of delimitation between St. Lucia and Martinique)	March 4, 1981:	March 4, 1981
Treaty between Dominica and the Republic of France (in respect of delimitation of areas between Dominica and Martinique; and Dominica and Guadeloupe, Saintes and Marie Galante Islands)	September 7, 1987	December 23, 1998
Treaty between Trinidad & Tobago and the Republic of Venezuela in respect of delimitation of marine and sub-marine areas	April 18, 1990	July 23, 1991
Treaty between the United States and Great Britain (in respect of delimitation of area between US Virgin Islands and Anguilla)	November 5, 1993	June 1, 1995
Treaty between United States of America and Great Britain (in respect of delimitation of areas between Puerto Rico/US Virgin Islands and the British Virgin Islands)	November 5, 1993	June 1, 1995
Treaty between Jamaica and the Republic of Colombia in respect of delimitation of marine and sub-marine areas.	November 12, 1993	March 14, 1994
Treaty between Jamaica and the republic of Cuba in respect of delimitation of marine and sub-marine areas	February 18, 1994	
Agreement on delimitation between the French Republic and Great Britain (in respect of Saint Martin and Saint Barthelemy, and Anguilla)	June 27, 1996	January 15, 1997:
Agreement on delimitation between the French Republic and Great Britain (in respect of the area between Guadeloupe and Montserrat)	June 27, 1996 -	January 15, 1997
Treaty between Honduras and Great Britain (in respect of delimitation between of maritime areas between Cayman Islands and Honduras)	December 4, 2001	March 1, 2002
Treaty between Barbados and Guyana concerning the exercise of jurisdiction in their EEZs the area of bilateral overlap within each of their outer limits and beyond the outer limits of the EEZ's of other states	December 2, 2003	
Tribunal Award on dispute between Barbados and the Republic of Trinidad and Tobago	April 11, 2006	
Tribunal Award on dispute between Guyana and Suriname	September 17, 2007	

Managing Shared Resources: The UN Fish Stocks Agreement and FAO Code of Conduct

- The UN Fish Stocks Agreement represented a trend towards regionalism in international fisheries
- Strengthens the obligations of States to cooperate through competent Regional Fisheries Organisations
- Article 8(3) – (4) of Fish stocks agreement restricts access to fisheries resources governed by such organisations to States with a “real interest” in the fisheries or who are members of the regional body
- The 1995 FAO Code of Conduct for Responsible Fisheries urged states to cooperate at the sub-regional, regional and international levels

The Role of Regional Fisheries Organisations

- Regional Fisheries Organisations are “international organisations established to perform specific functions related to international fisheries at a regional level”
- Established by states that seek common gains in cooperation
- May be differentiated into three categories
 - Scientific research organisations
 - Regional coordination and development organisations
 - Regional management organisations

Regional Fisheries Cooperation in CARICOM

- Despite a relatively long history of economic integration CARICOM States have had a short tradition of cooperation in fisheries

- Initiatives in the region include
 - WECAFC
 - ICCAT
 - OECS Common Fisheries Zone and Harmonisation
 - CFRAMP and CRFM

SECTION III

The Emergence of a Common Fisheries
Policy for the CARICOM Region

Maritime sovereignty versus regional integration – the dilemma facing CARICOM states

- With the entry into force of UNCLOS Caribbean states have been prompted to exert sovereignty over extended areas of marine space within their EEZs
- This has resulted in some nations being pushed out of historical fishing areas
- The region must now struggle to reconcile the regional cooperation effort with the principle of national sovereignty over their EEZs

Cooperation in Fisheries Development within CARICOM

- The idea of cooperation in Fisheries development between CARICOM states is relatively short-lived.
- A major project was launched 1991 with the support of the Canadian International Development Agency (CIDA) – CARICOM Fisheries Resource and Assessment Programme (CFRAMP) with focus on:
 - Training of fisheries personnel
 - Establishment of fisheries data and information systems
 - Preparation of fisheries management plans
 - Establishment of fisheries advisory/decision making mechanisms
 - Improving community awareness and stakeholder participation
- All member states of CARICOM participated in the project which was due to end in December 1998 was extended for a further two years to December 2000
- As CFRAMP came to an end CARICOM governments began to negotiate a way to continue collaboration in fisheries management
- The Caribbean Regional Fisheries Mechanism was established in 2003

The Revised Treaty of Chaguaramas – Agriculture Policy

- The revised Treaty of Chaguaramas laid down the directive for cooperation in Fisheries Management among CARICOM states and for the development of an integrated fisheries regime

- Article 60 on Fisheries Management and Development notes that:
 - The Community shall collaborate with the Member States in:
 - *(a) the management of straddling and highly migratory fish stocks;*
 - *(b) ongoing surveillance of their exclusive economic zones;*
 - *(c) the delimitation of maritime boundaries...*

 - Without prejudice to the provisions of Article 56 (Agriculture Policy), COFCOR shall promote the establishment of a regime for the effective management, conservation and utilization of the living resources of the exclusive economic zones of the Member States.

Negotiating a Regional Fisheries Agreement

- 1992 the government of Barbados proposed a draft agreement on Cooperation in the Development and Management of the Living Resources of the Exclusive Economic Zone (i.e. CARICOM IGA)
- Eleven years later (2003) the Barbados government again presented to the CARICOM heads a proposal titled “The Imperative of Elaborating a Common Fisheries Regime (CFR)”
 - Arguing that the principles being advocated...within the CARICOM Single Market and Economy should not be limited in application to goods and services...in respect of the land mass of the Member States, but should also include the marine space of countries”
- The proposal was endorsed by the fifteen Heads of Government and their representatives at the meeting and the CARICOM Secretariat was charged with the responsibility of developing the Agreement
- The Caribbean Regional Fisheries Mechanism formulated a Working Group to develop a position on the formulation of a common Fisheries Policy for presentation to the Committee on Trade and Economic Development (COTED)

Negotiating a Regional Fisheries Agreement: Formulating the Provisions of the Agreement

- Following initial working group meetings focusing on formulating the concept of the Common Policy and Regime a Legal Working Group established to review and update the policy agreement that would establish the CFP&R
- The Legal Working Group held five meetings between February 2006 and February 2007
- Updates were made of the draft incorporating concerns raised by Member States
- Final findings presented to the CARICOM Fisheries Forum in May 2007
- Considered to be a work in progress

SECTION IV

Elements of the Common Fisheries Policy and
Regime – Analysis of the Most Recent Draft

Treaties of direct relevance to the CFP&R

- The Revised Treaty of Chaguaramas
- UN Convention on the Law of the Sea
- 1983 Cartagana Convention and its SPAW Protocol
- 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Vessels on the High Seas
- The 1995 UN Fish Stocks Agreement
- 1995 FAO Code of Conduct for Responsible Fisheries
- 2002 Johannesburg Declaration on Sustainable Development
- 2005 Mauritius strategy for the Implementation of the Barbabos Programme of Action

Guiding Principles of the Common Fisheries Policy and Regime

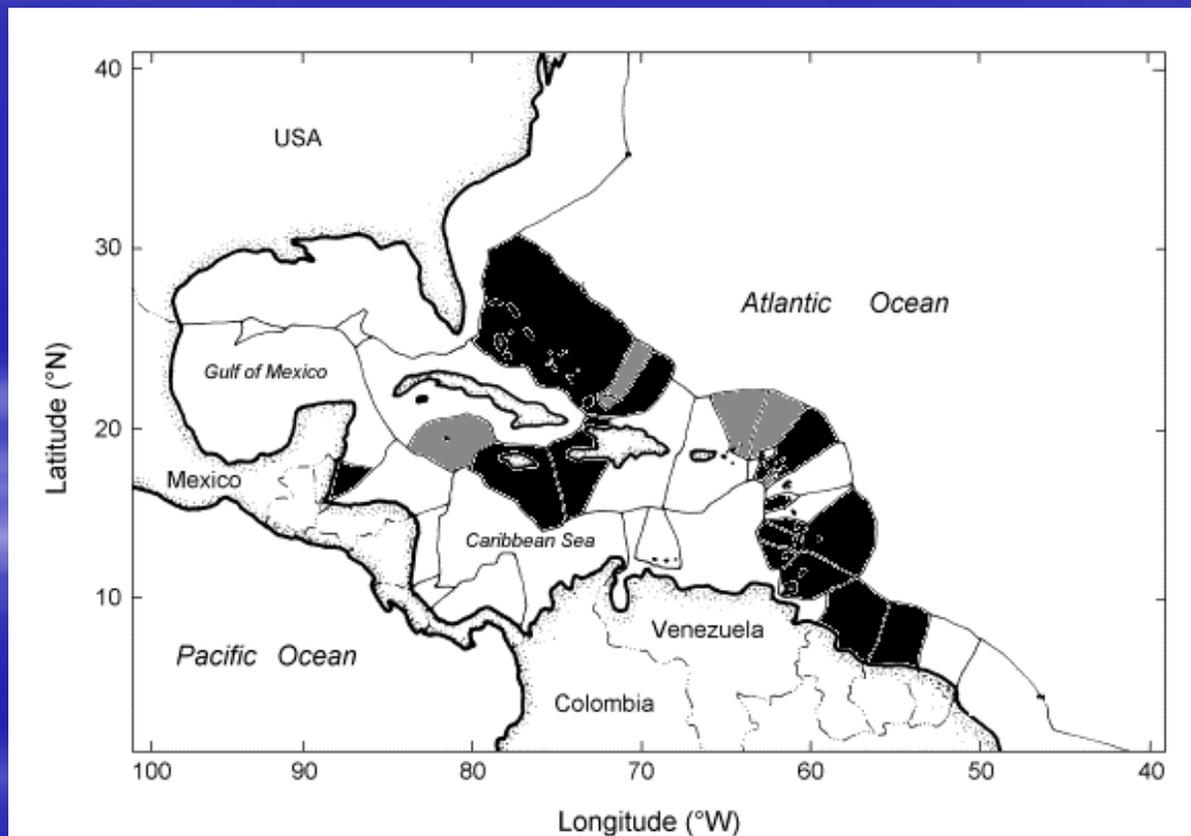
- Precautionary Approach
- Ecosystem Approach
- Use of best scientific information
- Consideration of the welfare of traditional fishing communities
- Cooperation and collaboration with national, regional and international bodies
- Equitable allocation of access rights
- Promotion of governance
- Integration of fisheries into coastal planning

Scope of the Common Fisheries Policy and Regime

- *“Extends to the conservation, management, development and use of all living aquatic resources within the Common Fisheries Zone; including the welfare of fishers and the production, processing, marketing and trade of fishery and aquaculture products, where such activities are practiced in the territory or waters of Participating States”*

The Common Zone

- Without prejudice to the delimitation of maritime boundaries a Common Zone is established to consist of the waters of Participating States beyond the limits of the territorial sea



Implementation of the Common Fisheries Policy

- Participating States are responsible for putting appropriate measures in place to ensure fulfillment of obligations under the Agreement
- An Implementing Agency is designated to manage the provisions of the Agreement within the Common Zone
 - The CRFM (consisting of the Ministerial Council, Fisheries Forum and Technical Unit) are designated the Implementing Agency; subject to amendments to the Agreement establishing the CRFM

Rights of Participating States

- In the Territorial Sea
 - Maintain sovereignty over resources

- In the Common Zone
 - Conditional fishing access subject to conservation or management measures
 - Authorised to fish for under-exploited or unexploited resources
 - Exclusive access to fisheries resources under their jurisdiction that are considered to be nearing full exploitation
 - Continued access to licensed fishers to fish within their jurisdiction

Responsibilities of Participating States

- Within Territorial Sea Participating States:
 - Should determine the status of fisheries stocks in territorial waters
 - May grant access to surplus resources to any other Participating State or Third State

- Within the Common Fisheries Zone
 - Collaborate with the Implementing Agency to determine access to fisheries resources
 - Collaborate with the Implementing agency to determine the status of resources
 - Comply with the conservation and management conditions established by the Implementing Agency

Responsibilities of the Implementing Agency

- Grant access to participating members or Third States to waters of the Common Zone
- Set catch and fishing limits
- Keep under review the state of resources in the Common Zone and socioeconomic aspects of the industry
- Set and adopt appropriate conservation measures
- Keep register of fishing fleet registered in participating states
- Establish mechanisms to reduce fishing capacity where excess capacity exists
- Encourage coordination measures for fisheries development (including the development of sport and recreational fisheries), data collection and research, and Monitoring, Control and Surveillance
- Promote the establishment of responsible aquaculture among participating states
- Set phyto-sanitary standards and adopt measures to promote the production of value-added products
- Develop protocols to aid the implementation of the CFP&R and adopt compliance measures to the provisions of the CFP&R

Rights of Third States

- Access to resources in the Common Zone may be granted for species for which a surplus exists
 - Received through a written access agreement with the Implementing Agency, containing conditions for operation
- Vessels must be 51% owned by Third State to whom access is granted
- This provision shall be deferred until such time as may be agreed to by Participating States

Conservation and Management Measures Set Out in the CFP&R

- The Implementing Agency in collaboration with Participating States shall:
 - Adopt and revise management and conservation measures and harmonised management provisions including:
 - Development and adoption of management, conservation and recovery plans for specific fisheries
 - Adoption of preventative measures in cases where fishing activities threaten species
 - Conduction monitoring, control and surveillance of all aspects of fisheries operations in the Common Zone

- Participating States shall:
 - Undertake enforcement activities within their maritime space
 - Establish appropriate Vessel Monitoring Systems
 - Adopt port and “at sea” inspection schemes
 - Undertake effective measures against violators of the Policy
 - Establish monitoring and research programmes and public education programmes dealing large scale environmental issues such as climate change

Data Collection Activities and Protocols

- Participating States in collaboration with the Implementing Agency shall facilitate the collection, compilation, and analysis of relevant fisheries data; and ensure the existence of national and regional capacity for addressing data needs
- Data collected within the context of the CFP&R shall be owned by the Implementing Agency
- Participating States retain ownership of any data they have collected and submitted to the Implementing Agency
- Data and information sources shall remain confidential
- Data will be disseminated through appropriate channels and reporting procedures

Registration of Fishing Vessels

- Participating States shall:
 - take into account the availability of fisheries resources when registering vessels
 - Keep an updated national register of fishing vessels
 - Make the information available to the Implementing Agency
 - In the case of open registry, ensure there is a genuine link between the State and the vessel and ensure compliance with the conservations measures of the Agreement

Marketing and Trade of Fisheries Resources

- Participating State in collaboration with the Implementing Agency shall:
 - Keep updated and enforce harmonised food quality assurance legislation and policy
 - Encourage market stability
 - Promote marketing policies that take into account the conservation needs of the resources
 - Encourage the development of common marketing standards for fish and fisheries products
 - Monitor developments in internal and external markets
 - Adopt programmes to strengthen human resource and institutional capacities through technology transfer

Dispute Settlement Provisions

- The Draft Agreement adopts the provisions outlined in Articles 188 to 192 of the Revised Treaty of Chaguaramas including mediation, consultation, arbitration and adjudication
- Additional adjudication procedure outlined:
 - The Secretary General appoints an adjudicator within 10 days of notification of a dispute
 - The Adjudicator gives written decision after 22 days
 - If Participating States disagree with the decision they may refer the matter to an Arbitral Tribunal
 - The Implementing Agency may act as the Adjudicator

Membership, Ratification and Accession to the Common Fisheries Policy and Regime

- Membership in the Regime is open to all signatories of the CRFM Agreement
 - All members and associate members of CARICOM are also members of the CRFM Agreement with full rights and privileges
- The Agreement shall be subject to ratification by Participating States
- States signatory to the CFRM Agreement may accede to the Policy Agreement after it has entered into force

Amendments to the Agreement

- Any Participating State or the Implementing Agency may propose in writing to the CARICOM Secretary General an amendment to the Agreement
- The proposal must be communicated to Participating States and requires the unanimous approval of the Ministerial Council of CARICOM
- States acceding to the Agreement after such amendments have entered into force shall be bound by such provisions

Reservations and Withdrawals from the Agreement

- Reservations to the Agreement may be entered with the consent of Participating States
- A Participating State may withdraw from the Agreement by giving one year notice to the CARICOM Secretary General
 - In so doing such state is obliged to honour any financial obligations to the Agreement

SECTION V

Comparative Analysis of the
CFP&R in Light of Other Regional
Fisheries Arrangements

The CFP&R

- As envisioned the CFP&R is a fisheries management agreement that will include fifteen independent members of CARICOM as well as five British dependent territories (Associate Members of CARICOM; full members of the CRP&R)
- While it is focused on the management and conservation of fisheries resources it is also seen as a measure of forwarding the CARICOM Integration policy.
 - In its proposal to CARICOM Heads the government of Barbados noted that “The Principles being advocated...within the CSME should not be limited in application to goods and services...in respect of the land mass of Member States, but should also include the marine space of countries.

Issues Regarding the CFP&R

- Throughout the discussions on the CFP&R many members raised opposition to the creation of the Common Zone
 - Some suggested that the zone not form part of the policy
 - Others requested that the creation of the zone be deferred
 - A few countries agreed with its creation
- Discussion also centered on the responsibilities of the Implementing Agency and the provisions regarding the granting of access to third parties within the Common Zone

Comparative Assessment of the CFP&R

RFO	Type of Organisation	Management Unit	Full Geographic Scope	Geographical Application (Access)
ASBAO	Coordination and development	All Stocks	EEZ	N/A
CCAMLR	Management	Marine Mammals	High Seas and EEZ	High Seas
ICCAT	Management	Tuna Species	High Seas and EEZ	High Seas
NEAFC	Management	Excludes stocks managed by other arrangements	High Seas and EEZ	High Seas
NAFO	Management	Excludes stocks managed by other arrangements	High Seas and EEZ	High Seas
<i>OSPESCA</i>	<i>Coordination and development</i>	<i>All Stocks</i>	<i>EEZ</i>	<i>N/A</i>
SEAFO	Management	Restricted stocks	High Seas and EEZ	High Seas
CFP&R	Management	All Stocks	EEZ	Common Zone (EEZs)

CFP&R versus the EU CFP

CFP&R	EU CFP
Being established to satisfy the Revised Treaty of Chaguaramas and to extend the principles of the CSME to marine activities	Established to manage a common resource and to meet obligations set out in the treaties of the EU
Overarching goal to manage, conserve, and sustainably use the living marine resources of the region for social and economic benefit of its people	Overarching goal to ensure exploitation of marine resources that provides sustainable economic, environmental and social conditions
Involves Member States of a Single Market and Economy	Involves member states of the Economic Union
Establishes a Common Zone and allows Member States to retain management of territorial sea	Coastal band established to allow small scale fishers to continue fishing in coastal areas
Geographical Application in the Common Zone	Geographical Application in the EEZs of Member States
Establishes an Implementing Agency which includes the Council of Ministers as primary decision making body	Council of Ministers is primary decision making body
Implementing Agency includes the Fisheries Forum (technical group of Chief Fisheries Officers)	Guided by recommendations from ICES

Observations on the EU Common Fisheries Policy

- 2007 Assessment of the EU Common Fisheries Policy by Michael Sissenwien and David Symes concluded that the EU CFP:
 - Falls short of the challenges of the 21st century
 - Failed to connect with the industry
 - Suffered from a lack of political will in implementing the policy
 - failed in overriding national interests for the conservation of the common resource leading to depletion of major stocks

While it was not a “Bad policy” the CFP fell short of delivering its objectives

Conclusions

- The negotiation of the CFP&R is happening at an important time as CARICOM governments move towards stronger integration, however it is important not to allow this to overshadow the fisheries management objective.
- Lessons can be learned from the EU process
- There are clearly a number of issues that remain to be addressed in the CFP&R Agreement;
 - While a regional arrangement is essential for effective management; implementation of the Policy and Regime must be equitable to all.
 - It's success hinges on all States accepting how the Regime will be implemented and specifically whether Common Zone is an essential component of the arrangement
 - If the Common Zone is accepted there must be considerable effort put into designing effective implementation protocols
 - The “open access” nature of most CARICOM fisheries is one area that will need particular attention to prevent similar failures as in the EU CFP

Thank You!!!

4/5/2007 10:10

