

NAVIGATING IN A CHANGING SEA

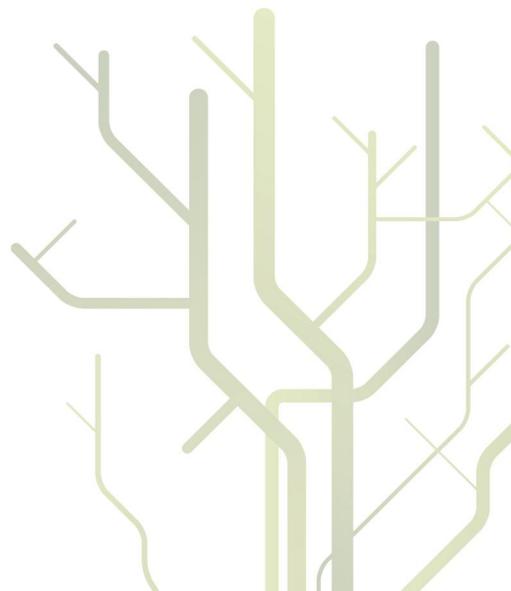
**INSTITUTIONAL INTERPLAY AND CHANGE IN THE HIGH SEAS FISHERIES REGIME,
THE CASE OF THE NORTH EAST ATLANTIC FISHERIES COMMISSION (NEAFC)**



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Forord

Det har tatt lang tid å skrive denne avhandlingen, og mange skal takkes for å ha bidratt og vært tilstede i hele eller deler av prosessen.

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NAVIGATING IN A CHANGING SEA
Institutional interplay and change in the high seas fisheries regime
The case of the North East Atlantic Fisheries Commission (NEAFC)

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Part 1

Chapter 1 Introduction

1.1 The high seas fisheries regime, institutional interaction and change

The high seas are the area beyond the jurisdiction of individual coastal states.¹ Fisheries in these areas only constitute a fraction of the world's fisheries, between 5 and 10 per cent of the global catch of fish (FAO 2009). Ineffective measures or lack of management arrangements altogether pose a big challenge for securing sustainable levels in such fisheries. Based on FAO² statistics (2009), it is estimated that about 50 percent of the world fish stocks are fully exploited and about 30 percent overexploited or depleted. The situation seems to be even more critical for some of the high seas fish stocks, where nearly two-thirds of the stocks for which the state of exploitation can be determined are considered overexploited or depleted (FAO 2009; 2007).

The dismal condition of many of the high seas fish stocks, combined with the growing awareness of the degradation of the marine environment caused by destructive fishing practices, marine pollution, climate change and biodiversity degradation, have motivated the initiation of a number of political processes to strengthen the regime for managing the world's living marine resources. Today we have a number of international agreements and organisations addressing the issue.

The topic of the present thesis is how these initiatives have changed the management of high seas fisheries in the North East Atlantic the last decade. The efforts to strengthen the regime for managing high seas fisheries take place at both the global, regional and national levels. In this thesis I will focus on the regional level, more precisely on the multilateral cooperation in the North East Atlantic Fisheries Commission, NEAFC.

According to the law of the sea, fishing on the high seas is to be managed by the states involved through cooperative arrangements such as regional fisheries management organisations (RFMOs).³ It is in these organisations that states⁴ cooperate to adopt management measures for fishing on the high seas. The parties to an RFMO are usually the

¹ Usually outside the 200 nautical miles exclusive economic zones (EEZ), in accordance with the United Nations Law of the Sea Convention of 1982 (UNCLOS), art 56.

² United Nations Food and Agricultural Organisation

³ UNCLOS art. 116 ó 118, and also the United Nations Fish Stocks Agreement (UNFA).

⁴ And other sovereign actors like the European Union and -entitiesøTaiwan.

coastal states bordering the high seas area in the region and relevant distant water fishing nations. The legal competence and performance of the RFMOs vary and their adoption of the new requirements is proceeding unevenly (UN 2006). The Northeast Atlantic is one of the richest fishing areas in the world and NEAFC stands out as a well-established and active RFMO at the forefront of regional fisheries management, which makes it an interesting case.

The performance of RFMOs cannot be analysed in isolation. RFMOs are nested within the broader institutional framework of agreements and organisations, mentioned above, and their development has to be examined in relation to changes in this broader institutional environment. I will therefore use the concept of institutional interplay to examine how NEAFC has changed. The concept is developed by regime theorists to explain how the activity in one institution influences on the activity in others (Young 1996). The aim is not to analyse how institutional interplay affects the effectiveness of the institution, in terms of whether it has eliminated or ameliorated the problem that led to its creation, or how it affects behaviour to improve efficiency, equity or sustainability (Young 2008b), but rather how institutional interplay causes change in the institution. Through four articles different aspects of how NEAFC has responded to the call for improved management and conservation of the fish stocks and marine environment are examined. By analysing *how interplay with institutions addressing high seas fishing has caused change in NEAFC, and also how NEAFC has influenced other institutions*, I seek to *identify conditions for intentionally changing one institution by way of another*. The research question will be further elaborated under point 1.5.

1.2 The case to be studied - NEAFC and the regime for managing high seas fisheries

High seas fisheries are addressed by national and international institutions from both the traditional fisheries regime as well as the environmental regime. So even though RFMOs are the institutions with the competence to establish fishery conservation and management measures for the high seas, they operate under a broader global regime and the developments that have taken place should be assessed with this in mind. Below is a short description of the main agreements and bodies addressing high seas fisheries and an outline of the interactions to be studied.

The third United Nations Conference on the Law of the Sea (1973-1982), led to a consensus that coastal states should be accorded 'sovereign rights' over the natural resources in a zone

stretching 200 nautical miles seawards, granting coastal states considerable discretion in how these resources are to be utilized (Burke 1994). A major rationale for the creation of EEZs was the perception that international fisheries management organizations such as NEAFC and the International Commission for the Northwest Atlantic Fisheries (ICNAF, now NAFO) were unable to prevent collapses in fish stocks. This shift in management responsibilities inside the 200 miles limit to coastal states was made on the assumption that those most dependent upon fisheries (i.e. the coastal states) would have a stronger interest than others in long-term conservation. The establishment of EEZs triggered a global redistribution of ocean resources. It did however not solve the problems of oceans governance, either in areas within or beyond the EEZ.

Beyond 200 nautical miles the freedom of the high seas doctrine prevailed. Unregulated high seas fishing therefore became a serious problem during the 1980s, resulting in overfishing and depletion of economic important fish stocks (Stokke 2001a; FAO 2007) and other signs of unsustainable harvesting (Pauly et al. 1998). The situation in the North Atlantic was no exception to this picture. This pointed to the need for better rules and better management, and during the last decades this regime has been substantially broadened and strengthened.

1.2.1 The main agreements and organisations

The 1982 Law of the Sea Convention (UNCLOS) and the subsequent 1995 Fish Stocks Agreement⁵, the latter dealing with the question of conservation and management of high seas fish stocks, are the basic legal framework for high seas fisheries management.⁶ UNCLOS requires states to cooperate with other countries to manage fisheries outside the jurisdiction of the coastal states, i.e. on the high seas.⁷ This obligation to regional cooperation is

⁵ The full title of the agreement is the "Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks."

⁶ High seas fish stocks can be divided into three different categories: A *straddling stock* is a stock that occur both within the EEZ of one or more states and in an area beyond the zone, on the high seas. A *highly migratory fish stock* is a stock that migrates extensively and can occur in both EEZs and high seas, mainly tuna and tuna-like species. The species defined as highly migratory are listed in an annex to the 1982 Law of the Sea Convention. In addition there are *discrete high seas stocks*, occurring only (at least from a stock assessment and management perspective) on the high seas. Only straddling and highly migratory fish stocks are covered by the Fish Stocks Agreement. It does not include discrete high seas stocks. However, some RFMOs, among them NEAFC, have begun managing deep sea species. It also seem to be the preference of the international community for a regional solution to this gap in the global international framework, expressed at the UN General Assembly Resolution on fisheries in 2005 and by the 2006 Fish Stocks Agreement Review Conference (Molenaar 2007). In addition there is exclusive fish stocks that are found in the waters of one state only, and shared (or transboundary) stocks that are found in the waters of two or more states. For such, the coastal states are obliged to attempt to agree on their conservation and development, according to article 63.1 of the Law of the Sea Convention.

⁷ Articles 61-63 of the Convention, as well as 1166119.

strengthened in the Fish Stocks Agreement. The Agreement establishes a range of principles RFMOs are to abide by when establishing regulatory measures, including the precautionary approach, the protection of biodiversity and ecosystems management approach.⁸ It therefore includes new standards of sustainability into fisheries management. The Agreement also calls for more effective and transparent decision-making, strengthens provisions on compliance and enforcement, and introduces mandatory dispute resolution (Balton 1996).⁹ The UN Fish Stocks Agreement therefore not only strengthens and enables RFMOs, it also puts pressure on them to adapt to new norms and standards (Sydnes 2005).

In addition to these main legal instruments, there are a number of non-binding and binding agreements addressing international fisheries and living marine resources in general, generated and overseen by global organizations such as the United Nations. The main global organisations are FAO and UN General Assembly. They have developed into the most important forums where new issues are debated and addressed.

The United Nations General Assembly every year adopts a resolution on the oceans and fisheries, based on the Secretary General report and the informal UN Open ended Informal Consultative Process on Oceans and the Law of the Sea (ICP). These forums give the opportunity to raise new questions and to discuss ideas and mechanisms to deal with them, and RFMOs and the high seas are given much attention.¹⁰

FAO has developed into the main forum for developing new rules. Encouraged by the UN General Assembly it is entrusted to convene negotiations to develop new instruments, resulting in mostly non binding but also binding agreements (Treves 2010). Important agreements are the 1995 Code of Conduct for responsible fisheries¹¹, also including the binding Compliance Agreement of 1993 and the subsequent International Plans of Action¹². FAO has also prepared different guidelines, for instance the Model Scheme on port state

⁸ Articles 5-6 of the Agreement.

⁹ Articles 18; 21-22; 23 of the Agreement.

¹⁰ Even though also this is clearly a state-run arena, International Governmental Organisations (IGOs) and Non-Governmental Organisations (NGOs) are given the opportunity to attend the seminars and official meeting and address the assembly. Particularly environmental NGOs have been active. They do not however participate in the negotiations on the Assembly resolution, which takes place throughout the fall.

¹¹ The full title is the 'FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas'.

¹² There are IPOAs on by-catch (seabirds, sharks), the overcapacity problem, and illegal, unregulated, and unreported (IUU) fishing. The IPOAs on seabirds, sharks and capacity were adopted in 1999, the IPOA on IUU in 2001. The strategy was adopted in 1997.

measures to regulate IUU fishing¹³ which in 2009 were negotiated into a binding agreement¹⁴, and the Guidelines for deep sea fishing¹⁵. All these agreements are intended to serve as the basis for decision to be taken by states and RFMOs, and RFMOs develop and give concrete contents to the rules and recommendations adopted at the global level through their practice (ibid.).

In addition, as a consequence of overfishing and management failures, as well as global change related problems such as climate change, pollution, biodiversity degradation (deFonteaubert et al 1998), the issue of marine conservation has found its way into global environmental forums, such as the 1992 UN Conference on Environment and Development (UNCED) and Agenda 21, the cooperation under the 1992 Biodiversity Convention¹⁶, the North Sea Conference, The Commission on Sustainable Development (CSD), and the 2002 World Summit on Sustainable Development (WWSN).¹⁷ They all represent an environmental charge to fisheries. This has brought a range of new actors and concerns into fisheries politics, domestically as well as at the international level.¹⁸ These new challenges require new responses, and it is becoming increasingly apparent that the regime for managing high seas fisheries operating under the law of the sea regime is developing under the influence from the traditional environmental regime (Treves 2010).

1.2.2 Regional fisheries management organisations

All the global agreements, resolutions, work plans and guidelines addressing high seas fisheries call for implementation at the regional level, and parallel with the global developments, there has been an increasing regional activity.

¹³ The Model Scheme on Port State Measures to Combat IUU Fishing of 2005.

¹⁴ *The Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. The agreement will enter into force once 25 countries have ratified it.*

¹⁵ International Guidelines for the Management of Deep-sea Fisheries in the High Seas of 2009.

¹⁶ The 1992 Convention on Biological Diversity (CBD), concluded at UNCED, does not explicitly refer to fisheries, but covers all biodiversity, including that of marine ecosystems. With the Jakarta Mandate on Coastal and Marine Biodiversity and subsequent work plan, with its emphasis on the need for sustainable use of living resources and conservation measures to protect the marine ecosystem, its relevance for fisheries are made even clearer.

¹⁷ In the Plan of Implementation adopted at the World Summit deadlines for achieving important targets were set, such as the application of the ecosystem approach by 2010 and the restoration of stocks to a sustainable level not later than 2015.

¹⁸ To an increasing extent, environmental NGOs, like the Deep Sea Coalition, WWF and Sea at Risk, have been engaged in questions relating to high seas fishing and what they see as the inability of RFMOs to manage fisheries in a sustainable way. These organizations are operating at all levels of governance.

Today there is RFMOs or bilateral arrangements in place or under establishment, covering nearly all major high seas fish stocks (FAO 2009). The number of RFMOs actually regulating fisheries today amounts to 19¹⁹, and several others are about to be adopted or are under negotiation.²⁰ Once these have been established, nearly all of the world's major fish stocks will be covered by RFMOs, the major exception being straddling stocks in the Southwest Atlantic Ocean (FAO 2009).

However, not only is the number of RFMOs rising, the scope of their activity is also widening, as will be shown in this study. This is the result of commitments taken on by the RFMO member states at the global level, and cooperation, coordination and learning among RFMOs. There is for instance a formal cooperation and quite extensive learning and copying of practices between NEAFC and the North West Atlantic Fisheries Organisation (NAFO) (Kvalvik 2010). To further learning and improve the work of RFMOs periodical meetings both at organizational and state levels are also established.²¹

In addition, there is an increase in the activities of regional environmental organisations, which have strengthened their engagement in environmental issues pertaining to the high seas. The equivalent to NEAFC in the marine environment protection sphere is the OSPAR Commission, established to monitor and ensure compliance with the 1992 Convention for the Protection of the Marine Environment of the North-East Atlantic. As shown in article 3 in this thesis (Kvalvik 2011), the OSPAR Commission has taken up the issue of protection of biological diversity in areas beyond national jurisdiction, on the high seas, and this has caused a degree of overlap and interplay between the two regional organisations.

¹⁹ This includes both RFMOs managing straddling fish stocks and highly migratory fish stocks (FAO web-site, www.fao.org/fishery/rfb/search/en). Other regional arrangements are operating on a bilateral basis without the formal and independent institutional apparatus

²⁰ Some regional fisheries organisations only have an advisory mandate, either scientific and/or management such as the International Council for the Exploration of the Sea (ICES). This is a purely scientific organisation giving advice on marine issues in the North East Atlantic. Others include some of the newly established RFMOs which do not act up on their mandate to manage, but focus on development and on coordinating the policies and positions of their member states (Henriksen et al. 2006).

²¹ For instance, the RFMOs in the North Atlantic have established the North Atlantic Regional Fisheries Management Organisations that has annual meetings as a forum for the secretariats of the RFMOs to raise issues of common concern, information-sharing, share in experiences etc. And the North Atlantic Fisheries Ministers Conference (NAFMC) is held each year to give ministers and officials an opportunity to discuss conservation and management issues common to fisheries across the North Atlantic Ocean.

The thesis will therefore address two clusters of challenges associated with the developments in the international policy areas discussed above. One cluster of challenges targets the distribution of rights to resources. At the core of this problem lies the question of how the international community has dealt with this issue of determining a sustainable harvest level, access to and distribution of the fish stocks, in both legal and practical terms. The other cluster deals with resource conservation and focuses on the development of new conservation principles and approaches. At the core of this problem lies the question of how the new management principles adopted in international agreements should be translated into management measures, as well as the trade-off between resource use and conservation. The project will therefore examine a particular regional management institution along two dimensions: that of distribution of ocean wealth and that of resource conservation. The two issues are closely related, as attempts to resolve distributive concerns may impact upon conservation policies, and vice versa.

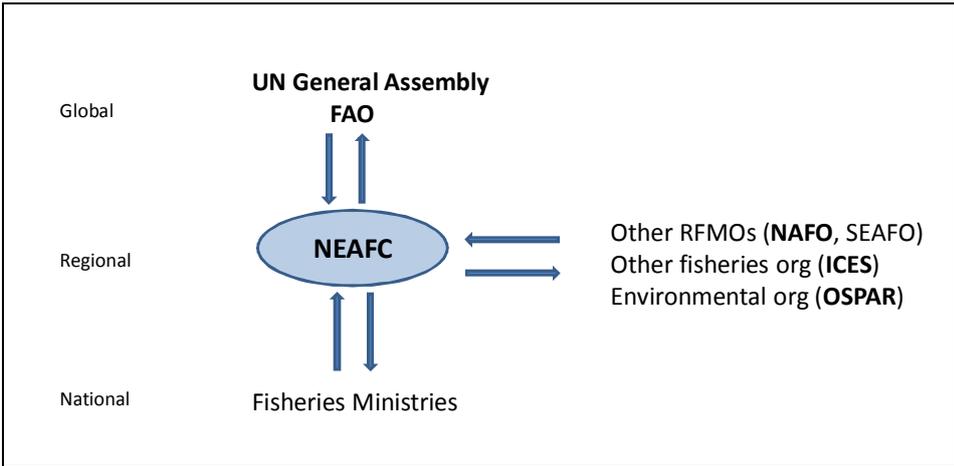


Figure 1. NEAFC and main interacting institutions²²

As this short presentation illustrates, high seas fisheries management is not conducted in isolation by RFMOs. Furthermore, the regime for managing high seas fisheries is not a static system. It is constantly evolving under pressure from a variety of sources. New issues are not only broadening the agenda of existing institutions, it has also created new interfaces between issue areas and hence new institutions to interact with. When examining the development in an institution, we therefore have to analyse how the measures adopted by, say, a particular RFMO, and affected by other actors. This process of change, understood as the dynamics of interplay between international institutions is analysed in this thesis.

²² Given the approach and focus on institutions at the international level the national level is left out.

1.2.3 NEAFC

NEAFC has five contracting parties: the EU, Denmark (in respect of Greenland and the Faroes Iceland)²³, Iceland, Norway and the Russian Federation. A main task is to set and allocate quotas, and to establish sufficient reporting, compliance control mechanisms to ensure compliance from the states involved. All the fish stocks managed by NEAFC on the high seas²⁴ to a great extent occur and are caught in waters under the jurisdiction of the coastal states and are therefore managed by the relevant group of coastal states.²⁵ The management of these fisheries is therefore dependent on two different but parallel international arrangements, coastal state cooperation and NEAFC. Whereas the coastal states manage the fisheries within their national jurisdictions, NEAFC regulates the fishing beyond the waters of national jurisdiction, in the NEAFC Regulatory Area (see figure 2). The coastal state agreements are a prerequisite for and the core of the management of the high seas area.

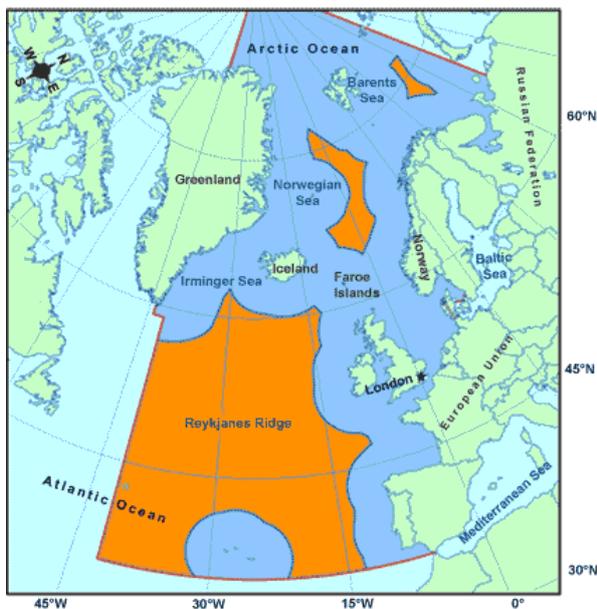


Figure 2. NEAFC Convention and Regulatory Area

Source: www.neafc.com

²³ The Faroes Islands and Greenland is under the Danish crown, but has a semi-independent status with regard to the management of living marine resources and can enter into international agreements relating to this.

²⁴ NEAFC is managing the high seas fisheries on mackerel, herring, blue whiting, redfish, and haddock, in addition to some deep-sea species. The stocks are fully exploited, and some stocks like the blue whiting and some deep sea species are considered overexploited (FAO 2009). Today, there are management measures in place and long term management plans for all the stocks, except mackerel where a dispute on coastal state status and the allocation between the parties last year led to a situation where all states sets unilateral quotas and so far no agreement has been reached.

²⁵ Except deep sea species, which as far as stock assessment and management are concerned, only occur on the high seas.

NEAFC has been through an extensive development since the late 1990ies. It has amended its convention to bring it in line with the new standards for the management of living marine resources, including the use of precautionary and ecosystem approaches, and it has closed several high seas areas to fishing in order to protect juvenile fish and vulnerable habitats. The parties have also seriously strengthened its compliance control measures, including adopting new tools for combating IUU-fishing (illegal, unreported, unregulated fishing).

1.3 Why the regional focus?

There are several, interconnected reasons for choosing an approach, focusing on institutions and the regional level. First, although the state remains the primary actor in international fisheries management, Rood and Schechter (2007:13) stress that one should acknowledge the increasing role of intergovernmental organisations in management regimes, not only of UN bodies but also RFMOs, as these have a role in the creation of norms, regulations, and in some cases also contribute to the making of international law. RFMOs are also the institutions through which states are supposed to cooperate in managing the high seas fisheries. Secondly, and as a consequence of that, the efforts to improve the regime and the criticism of management performance is commonly directed at the RFMOs as collective actors rather than at their individual members (FAO 2007:56).

Strictly speaking, NEAFC is not an actor in its own right. RFMOs are intergovernmental organisations, constituted of sovereign state members.²⁶ They have a legal personality and are based on a convention delimiting their mandates and decision making procedures. They are, however, operating with limited personnel, infrastructure and budget, and have very little to no independent decision making powers or authority. A RFMO is an arena for collective decision making whose management measures are to be implemented by the member states. The actual implementation (regulation, monitoring, control and enforcement) is therefore taking place at the national level. Consequently, RFMOs can only be as effective as States allow them to be (UN 2006 para. 89). The management of fisheries on the high seas is, however, a collective enterprise and it is the outcome of this collective (institutional) endeavour that is the focus of this study.²⁷

²⁶ Or other sovereign actors as the EU or entities like Taiwan.

²⁷ By this I am not dismissing the role of IOs in international politics (Kratowill and Ruggie 1986; Rittberger and Zangl 2006), neither denying the independent role bureaucracies in IOs can have (Barnett and Finnemore 2004).

Operating on an aggregate level excludes some actors from the analysis. For instance it is not possible to focus on the positions of the different states, and the internal negotiations of states. Even though it is the collective decisions of the RFMO that are analysed, the different contracting parties have different interests and roles in the cooperative arrangements. Some states are 'leaders' that push the development forward (Andresen and Agrawala 2002). But even though RFMO members may disagree, I am interested in the collectively decided decisions and changes undertaken and not the internal disagreements and negotiations. Further, national policy and coordination is an important factor, not usually covered in analyses of institutional interplay. States are party to and participate in a number of different agreements and organisations. These might overlap or contradict each other. For the individual states it represents a challenge to handle these different issue areas and their different demands in the most appropriate body (Raustiala and Victor 2004; Selin and VanDeever 2003). Further, as already mentioned, the measures adopted at the regional and global levels are to be implemented at the national level, a process which falls outside the remit of this study. Further, many changes in environment and resource regimes are found to be reflective of the concerns and pressure exerted by NGOs (Rood and Schechter 2007). An analysis could therefore have been conducted on the ways in which environmental NGOs operate in order to influence the development of the high seas regime. The actual change of the regime would be the same, but the interpretation of the development of the regime and achievements made would differ. Also the industry is an important actor, at least at the national and regional level. Finally, as noted by Andresen (2002), Underdal (1994), Young (1992) and others, individuals often play key roles in international environmental cooperation.²⁸

1.4 Scholarly relevance

International fisheries management is an interesting field to study as it makes it possible to address several classic theoretical issues in political science. At the core lies the situation known as the tragedy of the commons and the collective action problem ó how to manage a common good and avoid collective failures (Hardin 1968; Olson 1971; Axelrod 1984).

²⁸ Also Selin and VanDeever (2003) and Raustiala and Victor (2004) points to the importance of individuals and informal networks is visible in linkage politic, as individual state officials and representatives of International Organisations often participate in multiple international regimes and exercise leadership and participate in networking also in a linkage contextö.

International fisheries management also pertains to the role and significance of institutions in international politics, a much debated topic in IR (see for instance Krasner 1983; Strange 1983; Axelrod 1984; Keohane 1984; 2002a; March and Olsen 1998). International resource and environmental regimes are established to overcome collective action problems of overexploitation of living resources and degradation of the natural environment. However, effective and sustainable governance of common pool resources represents an ongoing challenge, and the development of the institutional arrangements for managing them are interesting to study.

The institutional approach allows for studying the role of social institutions in shaping the behaviour of individual members of international society as well as the collective behaviour resulting from their interactions (Young in Rosenau 1992:160). This study focuses on institutions as collective entities, rather than addressing how individual (member) states operate at the international level. In an issue area such as international fisheries management, states are cooperating at all levels: the bilateral, regional through RFMOs and at the global level, in organizations like FAO and the processes connected to the UN General Assembly Resolutions. Each institution, however, has different authority, its own agenda and dynamics, and also engages different constellations of participants, which affect the behavior in these institutions (Sebenius 1992 in Oberthür and Gehring 2003:10). This shift away from the traditional state centred model, where state policy and strategy are in focus, to the collective outcomes of the interactive processes involving two or more members of the international society, allows for studying an RFMO as part of a regime, whose principles, norms, rules, and decision-making procedures govern state action (Krasner 1983). The role of RFMOs in the regime for managing high seas fisheries is however not only limited to fisheries, as it addresses the general question of regional governance (Keating 2000; Fawcett and Hurrell 1995).

There is much to be learned from case study research on individual institutions. There is however also an evident need to study how an institution operates in relation to others. Institutions are often nested within broader or more comprehensive social institutions, the way RFMOs are nested within the international legal and political framework of the law of the sea with actors at global, regional and national levels of governance. Consequently, there is a multiplicity of institutional arrangements aimed at solving this collective action problem. In governance of international fisheries the increased linkages are amply demonstrated

(Hyvaninen 1999; Stokke 2001a; Stokke and Coffey 2004; Sydnes 2002; Henriksen et al. 2006). There is therefore a need for analytical studies of the role of these organisations, not only of how they implement global standards and norms, but how they operate as an integrated part of the regime for managing high seas fisheries. It would be of value for both practitioners and analysts to acquire more insights into how institutions affect each other and how the regime develops through institutional interaction.

The thesis is based on the growing body of literature which focus on the role of institutional interplay (among others Young 1996; Young et al. 2008; Stokke 2001b; Rosendal 2001; and Oberthür and Gehring 2003; 2006). Simply put, *institutional interplay* denotes a situation where the contents, operations, or consequences of one institution influence that of another (Stokke 2001b:2). The assumption is that the performance (the maintenance and change) of institutions cannot be treated as self-contained arrangements and analyzed in isolation from one another (Young et al. 1999:60), but that international institutions interact in shaping behaviour that influence problem-solving and that this interplay constitute interactive and mutually reinforcing trends (Young 2006), leading to institutional change.

In international politics the focus is often on national compliance with and implementation of international commitments. Studies of compliance examine why and to what degree states comply with international law and regulations (see for instance Simmons 2000; Abbot and Snidal 2000; Chayes and Chayes 1996; Downs, Rocke and Barsoom 1996). Similarly, studies of implementation examine how and how effective implementation of international law and regulations are (see for instance Helm and Sprinz 2000; Victor et al. 1998). The focus is here on lower level responses to action taken at a higher level of social organization.²⁹ Focusing on institutional interplay, however, the developments in the regime for managing the high seas fisheries are seen as a synthesis of top-down and bottom-up processes, where institutions, at all levels, drive as well as respond to change (Hoel 2003). In practical policy, we often see that global agreements are heavily influenced by action taken at a lower level of governance, for instance in the case of the UN Fish Stocks Agreements and measures adopted in several RFMOs (Stokke 2001a). Even though both compliance and implementation are addressed in the different articles of the thesis, the overall emphasis is on institutional interplay and change, rather than the traditional top-down approach to implementation and compliance.

²⁹ In implementation studies of public policy bottom-up perspectives are however applied (Hill and Hupe 2002: 51-56)

The topic of high seas fisheries management is also highly relevant as the issue of ocean governance has been put high on the international agenda³⁰, and more information is needed on both the legal and political basis for the management of these resources and the actual management processes and outcomes. It is therefore a need for analyses of experiences with this governance system, and case studies of the performance of regional fisheries management organisations can contribute in shedding light on this.

1.5 Research questions

Many factors can cause institutional change. In this thesis focus is on how institutional interplay generates change. Based on theories on institutional interplay the thesis aims at

identifying conditions for intentionally changing one institution by way of another.

To address this question I will, based on four articles about changes in the distribution and conservation, examine

how interplay with institutions addressing high seas fishing has caused change in NEAFC the last decade, and also how NEAFC has influenced other institutions.

The empirical studies in the four articles are used to address different aspects of institutional interplay and change:

Article 1. The allocation of scarce natural resources: The case of fisheries³¹ addresses the question of allocation of fisheries resources and investigates

how the distributive criteria laid down in global agreements are implemented in a regional context

³⁰ For instance by the reports to the Commission on Sustainable Development (CSD), the annual UN Secretary General's report on Oceans and the Law of the Sea and the establishment of the United Nations Informal Open-ended Consultative Process on Oceans and the Law of the Sea (ICP) and the resolutions adopted thereof. In addition, UN specialised agencies like the Food and Agriculture Organisation (FAO) and the United Nations Environmental Programme (UNEP) are important fora addressing the issue.

³¹ Alf Håkon Hoel and Ingrid Kvalvik, *Marine Policy* 2006 30(4).

The article gives a general examination of principles and practice regarding allocation of living marine resources. It examines the principles for distribution emanating from the global rules for ocean governance, review state practice, and consider some distributional effects of conservation measures. It argues that it is difficult to ascertain the influence of the distribution principles with any greater degree of precision. The principles vary with regard to their ease of operationalisation. Further, state practice shows that distributional principles serve to define the range of different distributional outcomes, but their relative importance remains elusive. Therefore, distributional outcomes cannot be explained in terms of these principles alone. A measure of politics is always at play. The article points at the limited ability of the international community to influence on how RFMOs handle distributive issues. Measures that more indirectly addresses distributions however seem easier to influence on, as is shown in the remaining articles. They address the question of how NEAFC is adapting to international norms and standards of sustainability and conservation of the ocean resources.

Article 2. The North East Atlantic Fisheries Commission and the Implementation of Sustainability Principles: Lessons to be Learned?³² examines how

how implementation of sustainability principles influence the content and operation of NEAFC

The article gives a general outline of the legal, structural and operational developments in NEAFC since the adoption of the UN Fish Stocks Agreement in 1995, and in particular assesses how NEAFC has implemented the new approaches to fisheries management. It examines how NEAFC has organized the work to implement sustainability principles like the precautionary approach and the ecosystem approach into its legal and procedural basis. Further, the article provides a review of practical measures adopted and discuss the effects thereof. In conclusion the question whether answering the call for implementing new approaches to the management of living marine resources has resulted in more sustainable high seas fisheries in the NEAFC Regulatory Area are discussed. The article shows that many of the changes undertaken as a response to external influence have only changed the content, but not the operation of NEAFC. This issue is also addressed in article 4.

³² Ingrid Kvalvik (2010), in Dawn Russell and David WanderZwaag (eds.) Recasting Transboundary Fisheries Management Arrangements in Light of Sustainability Principles. Leiden/Boston: Martinus Nijhoff Publishers.

Article 3. Managing institutional overlap in protection of marine ecosystems on the high seas. The case of NEAFC and the OSPAR Commission³³ moves from focusing on the influence of agreements and resolutions to the actual interaction between organisations at the regional level, and analyses

how NEAFC is handling institutional overlap with another institution at the regional level of governance

The article examines the overlap between the two regional organisations dealing with the use and conservation of the marine environment in the North East Atlantic. It discusses how the international call for protecting vulnerable marine ecosystems on the high seas has brought environmental and fisheries institutions into closer contact and how the functional scopes of the two regional institutions overlap and how this has been managed. It not only studies how the two organisations coordinate and cooperate, but also the conflict of interest and competition of legal competence between the two organisations. It argues that the integration of fisheries and environment at the global level necessitates strengthening of the coordination and cooperation not only at the regional level, but also between environmental and fisheries agencies at the national level. The article therefore addresses the question of how established institutions approach new issues and challenges and what kind of changes it causes, both in the organisations and in their interaction. This question is also addressed in article 2 and 4.

Finally, **article 4. Compliance and reputation in international fisheries management ó the case of the Northeast Atlantic Fisheries Commission**³⁴ move back into the organisation. It in many ways summarises the other articles and elaborates on

how institutional interplay are managed by NEAFC and what kind of change is the interplay causing

The article explores the importance of reputation in international politics by examining how NEAFC adjusts to meet the requirements and respond to the criticism facing them. It is argued that we should not only focus on the actors' concern for how they are perceived by

³³ Ingrid Kvalvik, resubmitted to Ocean and Coastal Management May 2011.

³⁴ Ingrid Kvalvik and Are Sydnes, resubmitted to Global Environmental Politics May 2011

others, but also on how they present themselves. Further, it is essential to examine to what degree changes undertaken actually involves a change in behaviour. By investigating some of the ways NEAFC have responded to criticism and new expectations, the article provides a broader framework for analysing how intergovernmental organisations interact with their institutional environment, both instrumentally and symbolic. The article therefore argues for a broader understanding of the relationship between actors and their institutional environment when analysing change.

Together the research questions raised in relation to each article shed light on different aspects of the overall research question. They can contribute to identify *how institutional interplay contributes to change, and how it does not*. This is done by analysing how the institution manages interplay and what kind of changes are undertaken, i.e. their effect on the conservation and distribution of fisheries resources. The research approach will be further elaborated on in the next chapter. The articles' contribution to understanding how institutional interaction causes change will be examined in the concluding discussion (chapter 4).

1.6 Outline of the thesis

The thesis is composed of three parts. The remaining of **part 1** outlines the theoretical framework of the thesis and some methodological considerations. In *chapter 2*, the theoretical foundation of the study will be presented, making up the basis for the discussion in part 3 of the thesis. Key analytical issues will be outlined and provide a framework for examining institutional interplay and change. Finally, in *chapter 3*, some methodological considerations that have prevailed throughout the work for the thesis are accounted for. As the data for the studies is comprised of documents, interviews and participations at meetings in NEAFC, the application of these methods and what challenges they have posed will be discussed.

Part 2 consists of the four articles.

*Article 1 The allocation of scarce natural resources: The case of fisheries*³⁵

*Article 2 The North East Atlantic Fisheries Commission and the Implementation of Sustainability Principles: Lessons to be Learned?*³⁶

³⁵ Alf Håkon Hoel and Ingrid Kvalvik, *Marine Policy* 2006 30(4).

*Article 3 Managing institutional overlap in protection of marine ecosystems on the high seas. The case of NEAFC and the OSPAR Commission*³⁷

*Article 4 Compliance and reputation in international fisheries management ó the case of the Northeast Atlantic Fisheries Commission*³⁸

All articles, explicitly or implicitly, describe how NEAFC interacts with its institutional environment, and they constitute the basis for the concluding analysis of the research questions outlined in part 1. The four articles are published in, accepted by or submitted to peer-reviewed international journals and publishers. The advantage of writing a series of articles is that it allows for addressing the same topic from different angles. While studying one case, the North East Atlantic Fisheries Commission, different aspects of its activity have been addressed, different research questions have been asked and different theories and concepts applied, though within the context of the overarching research question. Given their common theme and empirical basis, some degree of repetition and overlap between the articles are unavoidable. In particular, there is a certain amount of repetition on the international framework and the structure and functioning of NEAFC.

Finally, in **part 3** (*chapter 4*), the research questions raised in chapter 1 will be discussed. When examining how the changes taking place in regional fisheries management organisations can be explained by institutional interaction and also the more general question of how the concept of institutional interplay can contribute in understanding institutional change, insights from the four articles and the analytical questions raised in relation to them will be applied. The empirical studies of NEAFC and the regime for managing high seas fisheries will therefore be used to explore on my theoretical claim; that regime change must be analysed as a result of interacting institutions. In the concluding chapter I will summarise the four articles, their main findings and contribution to the overall analysis. Pondering the empirical and theoretical findings of the study, I discuss to what extent they have provided answers to the initial research questions and outline some areas for future research.

³⁶ Ingrid Kvalvik (2010), in Dawn Russell and David WanderZwaag (eds.) *Recasting Transboundary Fisheries Management Arrangements in Light of Sustainability Principles*. Leiden/Boston: Martinus Nijhoff Publishers.

³⁷ Ingrid Kvalvik, *Ocean and Coastal Management*, resubmitted May 2011.

³⁸ Ingrid Kvalvik and Are Sydnnes, *Global Environmental Politics*, resubmitted May 2011.

The literature list for both part 1 and 3 are to be found at the end of the thesis. Each of the articles has their own literature list, in line with the requirements of the different publishers.

Chapter 2 Theoretical framework

2.1 The study of institutional interplay

As the *number* of international institutions in various issue areas increased (Young 1996), the overlap and linkage between them became more evident and something policymakers had to relate to. This gave rise to studies of institutional interplay. Much of the studies have been motivated by the observation of institutional conflict and have focused on the *problems* arising from interacting institutions. Later studies however have showed that institutional interplay quite often can produce *supportive* outcomes (Rosendal 2001; Ebbin et al. 2005; Oberthür and Gehring 2006; Skjærseth 2006). This happens when institutions are pulling in the same direction (one institution pull another, or one issue area pull another) and are mutually reinforcing.

In real life interaction is a complex phenomenon. An increasing body of literature has demonstrated how institutions significantly influence each other's performance and sought to explain why this is taking place (for instance Oberthür 2009; Young et al. 2008; Young 2002; Oberthür and Gehring 2006; 2003; Raustiala and Victor 2004; Andersen 2002; Rosendal 2001). Several of the studies are done on international fisheries (for instance Ebbin et al. 2005; Stokke and Coeffey 2004; Stokke 2001a; Sydnes 2002; Hyvaninen 1999). However, as pointed out by several scholars (e.g. Chambers et al. 2008; Young 2008a; Oberthür and Gehring 2006; Rosendal 2001; Stokke 2001b), there is no coherent theoretical framework for studying institutional interplay. Theory development has been empirically driven, and researchers have developed their own terms and taxonomies.³⁹ The variety of approaches and categories of institutional interplay in many ways resembles the diversity of interactions observed, both structural and behavioural. In many cases the categories are neither exclusive nor exhaustive. An example is Young's distinction between functional and political linkages (Young et al. 1999), which he later abandoned (Young 2008b). Further, the different categories build on the achievements of others only to a limited degree, and individual scholars seem to constantly refine or further develop their own categories. A last point to be

³⁹ For instance Young's embedded, clustered, nested and overlap (1996), and political and functional and horizontal and vertical (1999; 2002), Stokke's diffusion, political spill-over, normative and operational interplay (2000) and utilitarian, normative and ideational interplay and also interplay management (2001), Oberthür and Gehring's interaction through commitment, cognitive, behavioural and impact level interaction (2006), and later cognitive interaction, interaction with a stick and interaction without consent, all with subcategories (2003), and Selin and VanDeveer's governance and actor linkage (2003).

made here is that there is a lack of clear cut links between many of our conceptual distinctions relating to institutional interplay and theoretical concerns that can help us to understand the origins and consequences of interplay (Young 2008a:134). It is therefore difficult to give a precise outline of the theoretical achievements of the research on institutional interplay. Also, it is a challenge to choose which analytical approach to rely on. Before going further into the approach used in this thesis, some conceptual clarifications are needed. I will start by defining some key concepts in regime analysis, followed by a short presentation of some traditional perspectives on regime formation and change.

2.2 Key concepts

In the so-called consensus definition, a *regime* is defined as 'implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given issue-area' (Krasner 1983:1). While the definition allows for defining a regime with no formal rules, so-called tacit regimes, it is in empirical analysis usually used to denote international interaction taking place under formal agreements, as will be done in this study. A regime is therefore constituted or defined - by the rules of the game (formal and informal) that govern the interaction of actors in specific issue-areas of international cooperation (Levy, Young and Zürn 1995:274).⁴⁰

The concept of *institution* is by some used synonymous with regime, while others see it as a broader or narrower concept (Young 2002; Lake 2001). Here it will be used in a narrower way. Whereas a regime is seen as the legal-institutional complexity of a governance system in an issue area, where 'the existence of different legal (and non-legal) and institutional forms makes up a regime as a whole' (Breitmeier 2006: 432), international institutions are seen as the subsystems of the regime. Therefore, the regime I am studying is the regime for managing high seas fisheries and the main institution is NEAFC, with its own negotiated rule system and procedural arrangement, operating under this broader regime. The distinction between an overarching regime and its institutions is made mainly to ease the presentation, as it makes it easier to differentiate between changes within an institution and in the broader regime, and also whether we are talking about interplay between regimes (i.e. issue areas) or within a regime (i.e. between agreements and institutions within an issue area).

⁴⁰ For a discussion of the different formal, behavioral and cognitive aspects of the regime concept, see Levy, Young and Zürn 1995 and Hasenclever, Mayer and Rittberger 1997).

Following the definition above, regimes possess two key characteristics; they are based on one or several international treaties or *agreements*, both hard and soft law, and encompass a *procedural arrangement* for communication and collective decision making (Levy, Young and Zürn 1995). It is in these procedural arrangements, taking place in international organisations like RFMOs or the UN General Assembly, that actors adapt to and develop international regimes dynamically (Oberthür and Gerhing 2003).

International organisations refer to the material entities, with offices, personnel, budgets, equipments and legal personality, responsible for administering the rights, rules and decision making procedures of international cooperative arrangements (Young 1994:3-4). International organization is here used interchangeably with *intergovernmental organizations*, denoting organisations with representatives from states that have a permanent secretariat to perform ongoing tasks related to a common purpose decided by the member states. International organisations are key players in many regimes, and are often the arenas where new policies and measures are adopted. In international organisations like WTO, states have transferred some authority to the organisation. In others, like RFMOs, the bureaucracies are small and do not possess any independent decision making authority. When talking about international organisations in this study I am referring to the collective decision making and policies of the members of the organisation, and not to the power and influence of the organisations' bureaucracies.⁴¹

In empirical analysis it can be hard to clearly define what constitutes a regime, especially as regimes are dynamic and their functional scopes can be contested (Young 2008b; Rosendal 2001; Lake 2001). It is therefore an analytical exercise to define and delimit the regime(s) to be studied in any given case. Further, even though institutions have a 'definite spatial remit' in terms of issue-area, functional scope, jurisdiction and membership, sometimes these spatial remits overlap or intersect with others, creating 'boundary problems' (Moss in Chambers et al. 2008:5). This is the core issue of interplay analysis – how different agreements and institutions affect each other.

Institutional interplay can be defined as a situation where 'the contents, operations, or consequences of one institution are significantly affected by another' (Stokke 2001b:2). But

⁴¹ For a clarification of this point see Barnett and Finnemore (2004).

the same way as the regime concept can be hard to clearly define and analyse, we are experiencing a difficulty with the concept and study of institutional interplay (Young 2008b). Further, different scholars use different concepts to denote (more or less) the same phenomenon. For instance, Oberthür and Gehring use the term interaction to emphasise the behavioural aspects of interplay, stressing that interplay is essentially relational and that "action triggers interaction" (Oberthür and Gehring 2006:4)⁴², whereas, Young, Stokke and others use institutional interplay to denote a broader category of phenomenon, for instance including structural linkages like institutional overlap. For the purpose of this study, both concepts are applied, but where interplay will be used more broadly and interaction is given a more behavioural connotation.⁴³

Functionally specific institutions like RFMOs are *nested* into broader or more general institutional arrangements in the sense that they assume the operation of the rules of the game associated with the broader regime (Young 1994:3; Ruggie 1983:195-231 in Krasner 1983). In this case the agreements like UNCLOS, UNFA and FAO CoC, and procedural arrangements like the FAO COFI meetings, the UN ICP and General Assembly resolutions constitute the regime for managing high seas fisheries. Studies of the interplay between these institutions and agreements have been done by for instance, Stokke (2001) and Sydnes (2002) and fall within the so-called "nested system approach" in that it refers to the interplay between institutions within the same regime or issue area.

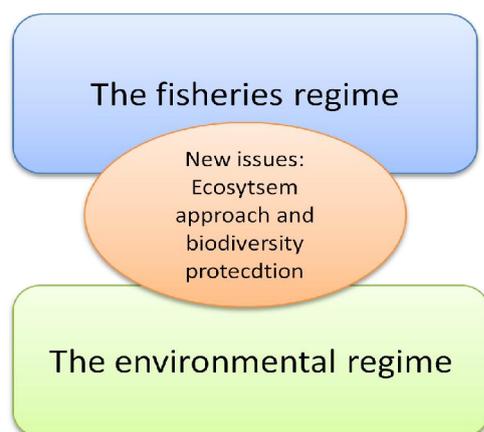


Figure 3. Regimes, issue areas and institutional overlap

⁴² This also raises the question if there is interaction if there is no influence, e.g. response.

⁴³ Other terms used are institutional linkage (Young 1996; Selin and VanDeveer 2003) and inter linkage (Chambers 2001).

While regimes are by definition issue specific, there is a high probability that important aspects of an issue will be addressed by other regimes, especially by those with a broader functional scope covering environmental conservation and biodiversity. An analytical implication of this observation is that it points out the inherent tension between the issue-specific definition of regimes and the notion of institutional interplay between traditional issue areas (Rosendal 2001:112). For instance, both the fisheries regime and the environmental regime are now addressing questions related to ecosystem management. The issue area is new, but it is addressed by institutions from two traditional different regimes.

An attempt to deal with this inherent contradiction between the regime and interplay concepts has been to analyse the interplay within regime complexes (Raustiala and Victor 2004), where a regime complex is denoting the existence of multiple, overlapping and non-hierarchical elemental regimes that are developed independent of each other. This approach however meets the same challenges when it comes to define and delimit its main concept - the regime complex, as in traditional regime analyses. And since I am studying interplay between institutions that are developed both with and without reference to each other, I have chosen to use the distinction regime and institution, and interplay between and within traditional issue-areas or regimes.

2.3 Traditional approaches in the study of institutional change

Traditional *explanations* of regime formation and change are based on power, interest and knowledge, thoroughly discussed by Hasenclever, Mayer and Rittberger (1997). However, Krasner (1983:358) has pointed out that "once a regime is actually in place, it may develop a dynamic of its own that can alter not only related behavior and outcomes but also basic causal variables". This implies that the processes causing change in a regime can be somewhat different from the processes establishing an institution, because institutions are both affected by and affect developments in the interests, knowledge and values of the actors in the regime. This point is important when analyzing change as resulting from institutional interaction. It is important to stress that these are not contending perspectives, but the focus of interest differs.

An important factor when studying institutional interplay and change is to identify *what* is changing. Krasner (1983) in his study of regime change made a distinction between principles and norms on the one hand, and rules and procedures on the other. Principles and norms provide the basic defining characteristics of a regime, while rules and procedures are more

specific prescriptions and practices for implementing the principles and norms. He maintained that changes in rules and decision-making procedures are changes within regimes, whereas changes in principles and norms are changes of the regime itself (Krasner 1983:3-4). This distinction might however be hard to make in empirical analysis.

A more manageable taxonomy of regime change is Young's (1999:134-138) distinction between changes in the constitutive attributes of regimes and changes in their operational elements. Constitutive attributes refer to the roles and scopes (membership, functional and geographical) of cooperation, whereas operational elements refer to the procedures, mechanisms and programmes. Constitutive change is regarded as a change of the regime itself, while changes in the operational elements of the regime are considered as changes within the regime. But even here, the distinctions may not be easily determined in empirical analysis and different actors may interpret the changes differently. Further, neither approach addresses the issue of how one institution may cause change in another.

A last point to be made regarding institutional change is that one should look into *how* the change is taking place. Young (1999:144-147), distinguishes between three processes of change. *Incremental* or self-generating change is the outcome of interactions without being intended by any party. An example is the evolution of customary international law. *Negotiated change* denotes the processes where states bargain over changes in the substantive and operational content of the agreements of the regime. This is the focus in most of the studies of regime change. The third category, *imposed change*, describes processes where members of regimes are unable to resist changes due to political pressure. Such pressure may be exerted by members of the institution (endogenously) or by actors not party to the institution (exogenously). It should be noted that endogenous and exogenous forces are not mutually exclusive. This latter process falls in line with the reasoning in the institutional interplay approach, looking into how institutions drive as well as respond to change and do so in interaction with other institutions.

2.4 An approach to study institutional interplay and change

In this study of institutional interplay and change I am interested in how one institution, NEAFC, is influenced by other institutions, how it interacts with these institutions and also what steps that are taken to influence others. As to the effects of interplay, I will focus on how

decisions made elsewhere are influencing the decision-making in NEAFC, causing different kinds of changes.⁴⁴

In the analysis I will divide the examination into four steps. *The first* is to identify the form of interplay we are observing. The aim is to reveal the causal pathway of influence - who is affecting who and in what way. *The second* step is to identify the causes of institutional interplay. *The third* is to analyse how the institution manages different forms of influence, to examine the politics of interplay. *Finally*, the last step is to look into the effect of institutional interplay by considering what has changed. The steps are intertwined, but the distinction is useful because it helps to clarify different aspects of institutional interplay that seem important in understanding why and how institutional interplay fosters change. Going through these four steps I borrow freely from the contributions of others as they have developed categories to map, identify causes and effects, and the management of different kinds of interplay.

2.4.1 Forms of interplay

As mentioned, interplay occurs both between **institutions *within* the same issue area** (e.g. fisheries) **and *between* issue areas** (e.g. fisheries and environment). Among the *nested* institutions in the regime for managing high seas fisheries there is obviously ó by definition, as it were ó some form of interplay, both between institutions operating at different levels of social organisation (the global, regional and national) and at the same level. This is termed vertical and horizontal interplay, respectively (Young et al. 1999). In cases of interplay taking place between institutions belonging to different issue areas, the concept of *overlapping institutions* is central. Rosendalø (2001b) define overlap as situations where the policy goals and regulations prescribed for problem solving of an issue intersect in two or more institutions.⁴⁵

⁴⁴ This is what Underdal (2004) has termed output level interplay. This is opposed to outcome and impact level interplay, where a change is caused by behaviour in another institution, therefore not involving any decision making within the target institution, and how solving or at least alleviating the problems that lead to their creation in one institution also affects positively or negatively that of another, respectively.

⁴⁵ Young (1996) referred to overlap as òindividual agreements that were formed for different purposes and largely without reference to one another intersect on a de facto basis, producing substantial impacts on each other in the processö. In real life situations however, regimes are often established with reference or knowledge of other related agreements, for instance in the negotiation of the Cartagena Protocol on Biosafety and the SPS Agreement under the WTO rules, or when the OSPAR Commission expands its mandate knowing that NEAFC had included the same issue into its mandate. It therefore seems more useful to apply Rosendalø definition which focus on two or more institutions addressing the same issue and do not stress the autonomous formation process of the different regimes.

Vertical interplay usually takes place between institutions within an issue area, and can take the form of both top-down and bottom-up influence (Young 2002; Sydnes 2002). Top-down interplay is typically when one institution implement measures agreed to at a higher level of social organization. Bottom-up interplay takes place when institutions at a lower level of organizations influence and "paves the way" for agreements at the global level. **Horizontal interplay** can take place between institutions both within and between issue areas, for instance between RFMOs addressing the same issue in different regions of the world (within an issue area) or between fisheries and environmental institutions (between issue areas). Young argues that the vertical linkages are usually much stronger, and the interaction therefore easier, than horizontal links between issue areas (Young 2002). Similarly, a study by Oberthür and Gehring (2006) shows that *disruption or conflict* prevails in interaction across issue areas, while *synergy* dominates within an issue-area. This is hardly surprising, as institutions belonging to different policy fields will frequently have considerably diverging objectives and may be supported by different constituencies. However, Rosendal (2001) maintains that diverging norms do not necessarily create a situation of conflict between two opposing institutions, because the actors often are interested in changing the "overlapped" norms or rules so as to correspond with the newest and most up to date. In this perspective, overlap can be seen as a question of how the process of change develops. As will be shown in this study, the adoption of ecosystem approaches and integrated management has made the horizontal interplay more important. The strength or ease of interaction cannot be established without looking into the content of the interaction and the actual changes undertaken as a consequence of them, a point I will return to below. Whether this should be considered positive or negative is also a question for discussion among the actors involved.

Many studies of interplay have focused on the **structural linkages** between agreements, i.e. overlap in mandates, memberships, regulations and the like. Others have been paid attention to **the behavioural interaction**, the actual coordination and cooperation, between institutions. An issue here is whether the influence of one institution on another is intended or not (Oberthür and Ghering 2004; 2006; Rosendal 2001). Another is how institutions handle the influence from other, what is termed *interplay management* (Stokke 2001b; Oberthür 2009).⁴⁶ Some studies do not distinguish between structural and behavioural interplay in the analysis.

⁴⁶ Other terms are actor linkage (Selin and VanDeveer 2003) and political interplay (Young 2002; Schroeder 2008).

I, however, claim that this is necessary to fully understand how institutional interplay is managed by the institutions involved and what kind of changes it causes. Therefore, when studying institutional change, both approaches are necessary.

Table 1. Forms of institutional interplay studied (interaction a.- d. in figure 4):

Forms of interplay	Articles addressing it
a. Top down vertical interplay within an issue area	1 and 2
b. Bottom up vertical interplay within an issue area	1, 2 and 4
c. Regional horizontal interplay within an issue area	1, 2 and 4
d. Regional horizontal interplay between issue areas	3, but also 2 and 4

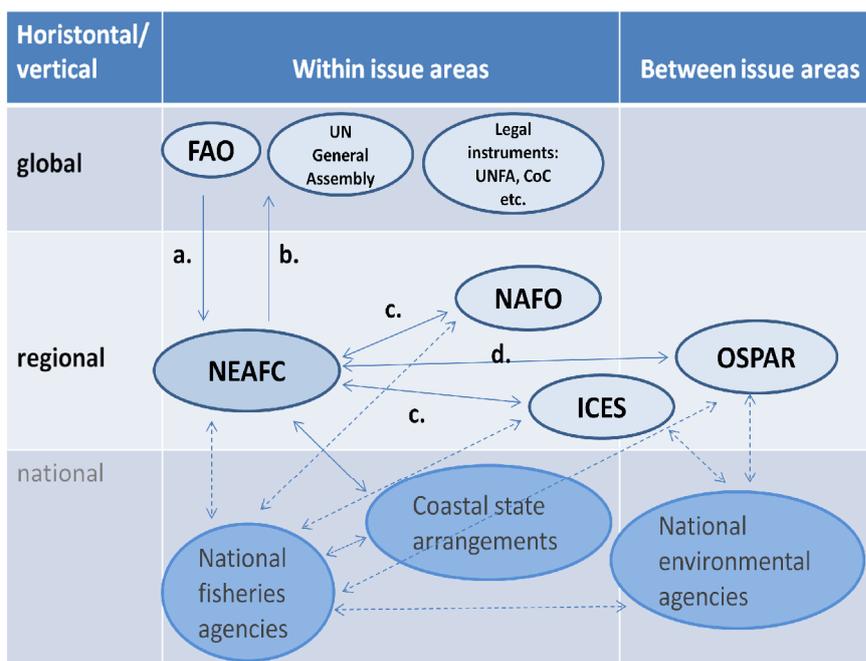


Figure 4. NEAFC and interplay studied (full line)⁴⁷

All articles address both the structural and behavioural aspects of institutional interplay. The national level is only indirectly addressed.

⁴⁷ Both the UN General Assembly and the legal instruments are also addressing issues outside the traditional fisheries regime, but are placed within the issue area because they are considered key elements in the regime for managing high seas fisheries.

The classification of different forms of interplay, all of which are observed in the analysis of NEAFC, is only the first step in the study of the causes and effects of interplay. The distinctions help structure the analysis and might point to some basic differences in the phenomenon of institutional interaction that are assumed to be central to the kinds of change taking place.

2.4.2 Causes of interplay

The categories used to identify the sources of change caused by institutional interaction are mainly taken from a study of Oberthür and Gehring from 2003: 'Investigating Institutional Interaction: Toward a Systematic Analysis'. Here they identify three basic causes of interplay, two of which I find relevant for studying institutional change, each with subcategories.⁴⁸

Cognitive interaction refers to situations where the transfer of knowledge is the cause of change. This is based on a constructivist approach, focusing on changes in perceptions of a problem or issue area of the members of the institution. This influence can be intended, as when one institution requests that the other one changes, or unintended or indirect, where one institution serves as a model for the other. Imitation (*servicing as a model*) takes place when an institution changes by copying the structures, rules or procedures of a 'neighboring' one. Oberthür and Gehring state that such inter-institutional learning are not always easy to detect and can also be difficult to prove (Oberthür and Gehring 2003:25). Nevertheless, in the case of NEAFC several instances of inter-institutional learning are identified (article 1, 2 and 4). *Request for change* takes place when one institution request another to draw attention to a particular aspect that they have not, at least in the eyes of the other institution, dealt with. These requests are relatively easy to identify, like the requests in the UNGA resolutions (article 2) or the request sent by OSPAR to NEAFC (article 3).

A similar category has been used by Stokke, who used the term diffusion or ideational interplay (2000; 2001). He states that such interplay can influence both general norms and operational components of the institution. The latter is of course easier to detect, for instance

⁴⁸ The third category, termed *interaction without consent*, denotes situations where the decisions in one institution cause a behavioral change that affects the performance of the target institution at the outcome level, i.e. it does not involve any decision making within the target institution. As I am studying institutional changes, this form of interplay will not be dealt with here.

when successful practices are copied by other RFMOs or by the architects of global agreements for fisheries management. However, according to Stokke striking instances of diffusion in the straddling stocks context is the rapid spread of management principles such as precaution, ecosystem management and compatibility, but it has also been important in the development of operational aspects of regional management regimes, including those relevant to systems for dispute settlement, compliance control, information requirements, and measures to strengthen flag-state responsibilities (Stokke 2000:222-224). He nevertheless observes that diffusion is not always a straightforward process as it appears to be sensitive to controversy and is likely to meet with resistance if the principle in question has distributional effects. Using the implementation of the precautionary approach and the principle of ecosystem management into the high seas fisheries regime as examples, he argues that general principles are rather benign to diffusion, even to the extent of crossing the issue boundaries between environmental and resource regimes... but that their impacts on the effectiveness of management regimes are typically indirect and time-lagged (Stokke *ibid.*:223). I will return to this point under section 2.4.4 on the effect of interplay.

The other kind of influence, termed **interaction with a stick**, is characterized by the ability of the source institution to influence the external preference structure of members of the target institution [by] using some stick so that failure to adapt will involve certain costs (Oberthür and Gehring 2003:19). It is based on a neoliberal or institutional approach, where interests and norms are key variables, and new preferences are filtered down through broader or nested institutional arrangements. It differs from cognitive interaction in that there has to be some kind of jurisdictional overlap which will impose some kind of costs on the members of the target institution if not adapted to. Basing their argument on both Keohane (1984) and Young (1992), this category relies on the interest of the actors to behave consistently in different organizations and keep their commitments, and therefore their wish to develop a reputation of keeping one's promises (*ibid.*:22). The premise is therefore that it affects the constellation of interests and the decision making process within the institution by influencing the payoffs of available options. We can distinguish between two types of interaction with a stick that seems to be particularly relevant for analyzing regime change. Demand for *jurisdictional delimitation* can arise in situations of (existent or potential) jurisdictional overlap where two institutions pursue different objectives and may adopt competing measures. This can happen unintentionally, but may also be used intentionally by one

institution to influence another (ibid. 2003:20). This will be analyzed in the study of the overlap between NEAFC and OSPAR (article 3).

The second type of interaction with a stick is *interaction between nested institutions* (Oberthür and Gehring 2003).⁴⁹ Nested institutions, like the institutions governing high seas fishing, by definition influence each other (Young 1996). Nested institutions differ in their scope of jurisdiction (geographical), membership and level of organisation. This opens up for different constellation of interests and concerns. When studying regime change, this influence is interesting to identify and disaggregate to reveal how influence flows from one institution to another. The characterisation of this type of interplay is that governance is advanced by extension of obligations to a broader membership (Oberthür and Gehring 2003:21), this can be both top-down and bottom-up. When lower level organisations adopt the requirements of higher level organisations, as a top-down process, we will have what is usually termed implementation. Oberthür and Gehring (ibid.) argue that this type of interaction does not contribute anything new to international governance. I will argue that it does, as the implementation of global policies is clearly something that should not be ignored, because problems of moving from words to action and dead letter resolutions are a common problem in international governance of the environment and natural resources. Further, when analysing both the performance of a regime and regime change, isolating interaction to focus on bottom up processes is too narrow. These kinds of influence are studied in article 1, 2 and 4.⁵⁰

The categories represented are not mutually exclusive, as cognitive interaction might operate together with interaction with a stick. I still find them useful, because they are founded on different theoretical perspectives with different assumptions about the nature of international cooperation and change. Whereas knowledge-based or cognitive perspectives would likely see institutional interplay as potential avenues for the diffusion of norms and ideas, interest based perspectives view institutional interplay either as means for the most powerful actors to

⁴⁹ This was later termed *interaction through commitments* (Oberthür and Gehring 2006).

⁵⁰ Oberthür and Gehring also operate with a subcategory termed *realising additional means*, where the focus is on the differences in means of different institutions. This takes place when states have agreed to place a topic high on the international agenda in an institution without the ability to impose a rule or regulation on another institution. The focus here is on means and points to the observation that actors want to be consistent and are concerned to develop a reputation of keeping one's promises (Oberthür and Gehring 2003:22). An example would be the UN General Assembly resolutions, which are not legally binding but influence the action in other institutions, in terms of setting new standards, norms and expectations on RFMOs and state performance. I however find that this category to a great extent overlaps with interaction between nested institutions, and also the categories under cognitive interaction, and have chosen not to treat it as an independent category.

impose their preferred outcomes across institutions or as potential pathways for strategic action and deliberations to forward specific interests (Hasenclever, Mayer and Rittberger 1996).

2.4.3 The politics of interplay ó interplay management

Whereas the steps discussed above revolve around the substantive features of international interaction, *interplay management* addresses the operative or political aspects. The concept is developed by Stokke (2001b) and denotes the political efforts to purposefully shape and improve institutional interaction and its effects (Stokke 2001b).⁵¹ The possibility for such management is inherent in the notion of institutional interaction (Oberthür 2009:373), and can be regarded as the institutional adaptation to the substantive features of interplay (Stokke 2000:230).

In studies of interplay management focus has largely been on how an institution manages the influence of others. Less attention has been paid to the other side of the equation: how institutions deliberately try to influence others. Schroeder (2008) uses political interplay as the starting point for analysing how actors intentionally seek to link or delink institutions to pursue certain objective, i.e. how interplay arises from the consequences of institutional design and lead to behavioural changes by the actors governed by these institutions.⁵² Drawing on this, and acknowledging that effective high seas governance is contingent on the operational interplay between instruments (Stokke 2000:205), interplay management is considered a dialectical process where the analysis must address both sides of the aforementioned equation: how an institution respond to the requirements from its institutional environment *and* how it seeks to influence other institutions.

Oberthür and Gehring (2004) make a distinction between inter- and intra institutional responses, where *inter institutional responses* involve coordination or cooperation with another institution. This can take place through joint meetings, sit-ins at each other's meetings, Memoranda of Understandings, or through more tangible forms of cooperation such as joint scientific projects, requests for advice, monitoring and control. *Intra institutional responses* occur within the recipient institution without direct communication with other

⁵¹ He first used the term operational interplay (2000). Other scholars have used concepts like political interplay (Young 1999) and actor linkage (Selin and VanDeever 2003).

⁵² Even though he is focusing on states as (primary) actors, the same argument or approach can be used on institutions, i.e. the collective outcome of state cooperation.

institutions, and therefore focuses on internal measures to comply with or counteract external influence.⁵³

In a later work Oberthür (2009) distinguishes between two principal modes of interplay management, *regulatory interplay management* and *enabling interplay management*. In case of the first, the institutions are addressing rules and procedures to follow in cases of conflict, in the latter there are learning and capacity building. However, these categories rather refer to the effects of the interplay than the management of it.

2.4.4 Effects of interplay

Several scholars have contributed in developing concepts and categories to analyse the effects of interplay. To a great extent these resemble the categories developed to analyse the causes. There is for instance a great deal of overlap in Oberthür's categories to analyse interplay management (2009) and the categories developed to analyse both its causes (Oberthür and Gehring 2003) and its effects (Oberthür and Gehring 2006).

The interesting question from an institutional change perspective is how interplay affects the content, operation and consequences of the institution studied. What is the institution doing in response to the demands of other institutions, what adaptations or changes are undertaken, if any. One could of course identify whether interaction causes changes in the constitutive attributes (rules and scopes) or in the operational elements (procedures), cf point 2.3. In her study of the impacts of overlapping regimes, Rosendal (2001) rely on Krasner (1983) and differentiate between norms and rules. She however makes a further distinction, between core and secondary aspects of the norms in an institution, and between programmatic and regulatory rules. The core aspects comprise the central focus of an institution. They constitute its fundamental principles and underlying normative orientation. Secondary aspects are rules and norms that do not touch upon these issues, at least not in the short run. Programmatic rules concern those aspects of a regime that deal with efforts to enhance knowledge about an issue area. Regulatory rules are the regime objectives spelled out as explicit rights and obligations (such as timetables, targets, and catch quotas) that member parties are expected to

⁵³ Later Oberthür (2009) termed it *unilateral management by individual institutions and joint interplay management* (and also interplay management within an *overarching institutional framework*). In situations of joint interplay management there are active targeted efforts to coordinate the activities of the interacting institutions, sometimes aiming at reaching joint rules governing the interaction. I however chooses to use the former, because inter institutional responses indicate less of a joint endeavour than joint interplay management.

comply with. These distinctions can help explain why some changes in an institution are easily undertaken and others not, because while diverging norms relating to secondary aspects and programmatic rules of the activities of an organisation can be associated with scientific uncertainty within an issue area, diverging norms relating to core elements and regulatory rules can be associated with political discord - that is, carrying (re)distributive implications if translated into obligations (Rosendal 2001:100). Based on this one can expect that norms relating to core aspects and regulatory rules are more resistant to change than secondary norms and programmatic rules, as the latter are thought to imply less extensive changes than the former.

Therefore, a crucial question when studying how institutions manage institutional interplay is to identify the changes caused by the influence of other institutions to see whether the responses are actually efforts to come to grips with diverging norms or rules, through *instrumental changes*, or whether efforts will stop short at the programmatic or *symbolic level*. By identifying what kinds of changes are undertaken, whether they only affect the content or also the operation of the institution, we can say something about the limits to external influence. The distinction between aspects that would have (re)distributive implication and those that would not, therefore both points to the fact that there are different kinds of change that affects the institution in different ways, and that the institution apparently can comply with international requirements and undertake changes without actually implying any change in the operation of the fishery of the members of the institution. By doing this we also demonstrate how institutions manages interplay.

Looking only at effects do not allow for analysis of how the institution also acts proactively with the intent of influencing the further development of the regime for managing high seas fisheries. For this purpose the analysis of interplay management is necessary.

2.5 Summary

The preceding presentation has attempted to develop a framework for exploring and explaining institutional interaction and change. The analysis is divided into four steps, each focusing on different aspects of institutional interplay and the changes taking place.

Identifying the different forms of change, its causes, and how an institution manages different kinds of influence, can tell us something about how institutional interaction contributes to

change, what kinds of change that are triggered by different forms of interplay, what changes that are easily accomplished and which ones that are not.

Table 2. The analytical approach

Forms of interplay	Causes of interplay	The politics of interplay – interplay management	Effects of interplay
Within and between issue areas	<i>Cognitive interaction</i> - Serving as a model	Inter institutional responses	Instrumental changes
Vertical and horizontal	- Request for change	Intra institutional responses	Symbolic changes
Structural and behavioural	<i>Interaction with a stick</i> - Jurisdictional delimitation - Interaction between nested institutions		

The approach therefore allows us to analyse actual changes, but also to say something about the conditions for intentionally changing one institution by way of another. No institution has the ability to impose new rules on another, but the analysis might reveal some conditions that generate change. Further, it can tell us something about the processes taking place inside an institution, how it works in order to adapt to new norms and standards adopted by other institutions. But it can also shed light on how actors strategically adjust to new requirements to protect their core activities, and how they seek to influence the further development of the regime. In short this approach can reveal whether and how an institution is both a source and a target of change, and as such it supplements other studies of institutional change, outlined above.

Chapter 3 Methodological considerations and the empirical material

3.1 Introduction

In textbooks, research is often described as a linear process that is carefully conceived, ordered and executed. But real world-research, and interpretive case studies in particular, rarely proceed in a linear fashion. As stated by Mitchell and Bernauer (2004:94), research is often an interactive process between the researcher and the field of research and takes the form of an iterative path through the different steps of the research process. Below I will give an account of the research process, the design chosen, the methods applied and the data collected in this study. First, I justify my choice of research design and discuss some challenges this poses for the conclusions to be drawn from the study. Second, I give an account of the empirical material employed. Finally, I offer some reflections on the research process.

3.2 The research question and the research design chosen

The objective of the study has been twofold. Empirically it has been to enhance our understanding of the development and changes in the regime for managing high seas fisheries, and how these changes can be observed in a particular RFMO, NEAFC. Theoretically it has been to investigate how institutional interplay contributes to change. The research questions were presented in chapter 1. They matured during the research process, because the focus of the study was adjusted after the first NEAFC meeting I attended. The original idea was to look into how the organization handled issues of distribution and conservation, and how these processes were affected by institutional interaction. However, attending the first meeting I was surprised that allocation issues achieved relatively little attention, at least in the plenary sessions. There was much more going on on the conservation side, in terms of NEAFC being influenced by external processes. I therefore found it more theoretically interesting to analyse these processes and decided to put more emphasis on this. The focus was therefore adjusted to what appeared to be more relevant and prominent, and in relation to the information that was most evident and available. Similarly, the focus of the different case studies has been worked out underway in the project, on the basis of increased insight into the issue area studied and actual developments in ömy caseö. For instance, the idea to study the importance of reputation (article 4) was conceived during my first NEAFC meeting in 2005 where the parties decided to undertake a performance review. The study of the interaction between NEAFC and the OSPAR Commission (article 3) came up as an idea parallel to the actual development of this

interaction. Methods, theory development and the refinement of the research project are therefore the outcome of parallel, interactive processes.

3.2.1 Case study research

Yin (1994) argues that when studying change, case studies are especially useful. Also, if the aim is to reveal the course of events and follow a process over time, and assess proceedings in a wider context, case studies are preferable. According to Eisenhardt (1989:534) case study is a research strategy which focuses on understanding the dynamics within single settings. This definition maintains that by doing case studies a phenomenon is studied in depth, taking into account the particularity of the case and its context. As my aim is to understand how an intergovernmental organisation is developing in interaction with other institutions, capturing the context is vital. Further, Creswell (2003) emphasises that case studies are a strategy where the researcher collects detailed information using several sources of data over a sustained period of time, something I have done in this study.

The aim of this thesis is to identify conditions for intentionally changing one institution by way of another, to analyse institutional interaction and change. Still, I am not isolating single variables and testing hypotheses on causal inferences in an explanatory and rationalist approach. I am rather offering a theoretically and empirically informative analysis by using explicitly stated theories to guide historical interpretations of a changing institution.

Following Lijpharts (1971) typology this is an interpretive case study. In contrast to King, Keohane and Verba and others with a positivist approach to qualitative methods which gives priority to identify causal effects rather than causal mechanisms, I lean on Bennett and Elman (2006:458) who argue that case study research usually are based on an assumption of the world as inherently complex, requiring an approach to causation based on mechanisms and capacities. They term this the 'causes-of-effects' approach rather than the 'effects-of-causes' approach (ibid.:457). In line with this, George and Bennett (2005) state that case study researchers are usually more interested in identifying the conditions under which specified outcomes occur and the mechanisms through which they occur than in assessing the frequency with which those conditions and their outcomes arise. They further argue that the aim is to examine how causes interact in the context of a particular case or a few cases to produce a certain outcome.⁵⁴

⁵⁴ In contrast to measuring the net effect of a cause over a large number of cases.

3.2.2 Case selection ó one case, four studies

The case chosen delimits the unit of analysis in line of 'what is your case?' and 'what is a case of?', thoroughly discussed by Ragin and Becker (1992). A case is an instance of some empirically or theoretically defined class of events or phenomena. Therefore, Ragin (1992a) states that cases are both found and created, as a case is often both an empirical unit and a theoretical construction. Becker (1992) stresses that cases are always analytical constructions, defined by the researcher for a certain analytical or theoretical purpose, and delineated by the researchers' theoretical preconceptions and focus. How well defined and theoretically refined the population of possible cases is will vary, but what is considered an interesting case is dependent on the questions we ask and the variables we consider relevant. Ragin (1992b:218) therefore argue that we should 'consider cases not as empirical units or theoretical categories, but as products of basic research operations.' 'Casing' as a part of the research process, clarifies the relationship between ideas and evidence, between theory and data (ibid.).

I have chosen to address the research question by studying the regime for managing high seas fisheries, focusing on the regional level and conducting an in depth analysis of one particular RFMO, NEAFC, through four articles. The question then arises whether the regime or the organisation should be defined as 'my case'? The unit of analysis is NEAFC, since it is the changes in NEAFC that are studied. The empirical universe of cases would then be the nineteen RFMOs existing today (FAO 2009).⁵⁵ RFMOs are, however, only one type of intergovernmental organisations for managing natural resources. Further, theoretically the study has a broader scope. It is based on an institutional tradition, applying theories of regime analysis and institutional interplay to shed light on how institutional interaction causes change, and more narrowly how regional organisations follow up on international requirements and institutional commitments.

The theoretically defined universe is therefore much bigger, and the study of NEAFC and the regime for managing high seas fisheries may shed light on similar processes in other types of regimes, especially environmental and resource management regimes. Both NEAFC and the regime for managing high seas fisheries can therefore be seen as a case of a much larger population and the findings from the study can be of relevance to other organisations and

⁵⁵ These include both RFMOs managing straddling fish stocks and RFMOs managing highly migratory fish stocks. In addition there are about 10 regional fishery organisations not actually managing fish stocks (Sydnes 2005).

policy areas than high seas fisheries management. I will return to this under the next section on generalisation. First, however, some notes on the choice of NEAFC.

NEAFC was chosen because it is a well-established and active RFMO. The area covered by the organisation is rich in resources and relatively well managed. Its members are among the richest countries in the world, and management capacity (economic, technical and scientific) should therefore to a lesser extent than elsewhere in the world be a limiting factor to policy. Some of the main international fishing nations are members of NEAFC and the organisation is in the forefront in developing practical solutions to problems of regional fisheries management. Studying a successful RFMO can tell us something about how such regimes develop, and help identify the challenges confronting other RFMOs, and the ways in which these can be met. Through four articles different aspects of how NEAFC interacts with other institutions is studied.

However, case selection does not only have a scientific basis as more practical and pragmatic considerations are often decisive. For instance, knowledge of the case, its historical importance, prior research, access to information and the costs involved in its acquisition may sometimes be crucial (George and Bennett 2005; Andresen and Wettestad 2001). This applies here as well, as NEAFC was chosen also out of practical considerations. The organization is a fairly transparent RMFO, making access to its files and policy documents easy. Further, Norway is a party to NEAFC giving easier access to interviews with participants and also access to the meetings. Finally, the meetings take place in London, making it not too costly to attend them (see below on data collection).

That said, the study also contains references to the other RFMOs. There are several reviews of RFMO performance (De Fontaubert and Lutchman 2003; Meltzer 2005; 2009; Lodge et al. 2006; Deep Sea Conservation Coalition 2007; OECD 2008; Rogers and Gianni 2010) which describe their rules, decisions and practices, assessing their score on different international requirements. Further, the Northwest Atlantic Fisheries Organisation (NAFO) was selected as a prime reference case, and I attended one meeting and followed the developments there from the sideline. NAFO was chosen because it is also a well-established and well-functioning RFMO, with the necessary resources - administrative, economic and technological - and as such quite similar to NEAFC. There is also a formal cooperation between them, and they are going through the same processes when it comes to responding to external criticism and

demands for action. I therefore have a firm basis for contending that the processes taking place in NEAFC are not unique. There are parallel and identical processes taking place in other RFMOs.

3.2.3 Case studies and analytical generalisations

A much discussed topic regarding case studies is whether insights achieved can be generalized across cases. Cases are at some level unique, and in-depth case studies are seldom aimed at identifying general characteristics. One should therefore be careful in generalizing findings from cases that may not be representative of the entire population (Bennet 2004).⁵⁶ But as stated by Bennet (*ibid.*:29), "even single case studies usually draw implicit comparisons to wider groups of cases." The findings from this study, based on the empirical analysis of NEAFC and the development in the regime for managing high seas fisheries, can therefore also be valid for empirical cases outside the remit of high seas fisheries management.

The generalisations that are possible would be theoretical rather than empirical (Yin 1994:10). As asserted by Mitchell and Bernauer (2004:96), case studies can contribute to cumulative knowledge when they are analysed as examples of larger classes of cases. The researcher will always have some preliminary knowledge of the universe of cases or at least of potential cases that offer some clues as to the representativity of the case chosen. As mentioned, when it comes to RFMOs the number of cases is limited and general information easily accessible. This makes it easier to justify one's case selection when generalising to other, similar cases is possible. However, a question I raised was whether the fact that all the members of NEAFC are coastal states to the area regulated and because the nature of the coastal coast cooperation, NEAFC might be an exceptional rather than a representative case. The reference case, NAFO, however shows that, at least for the most advanced RFMOs, parallel processes are taking place. A similar conclusion can be drawn from the overview provided by other studies, mentioned above. Even though these studies have not addressed questions of institutional interplay and change, they show that most RFMOs today are exposed and respond to the same external influence as NEAFC. Based on the findings from the articles I can therefore argue that studying institutional change, at least partially, as a result of institutional interplay is

⁵⁶ An important challenge in case studies is to guard against chance and selection bias. See for instance King, Keohane and Verba (1994:128-139) on the debate on selecting cases on the dependent or the independent variable, and the difference between statistical and case studies.

necessary. Further, I argue that it is possible to draw some analytical conclusions about the significance of institutional interplay for change from this study.

If the universe of cases is defined more broadly to include environmental organisations or international organisations in general, the justification for choosing NEAFC however is less obvious. Where the potential universe of cases is large, both across levels of social organisation and across issues areas, the challenge for the researcher is therefore to draw insights from the case study that can be of relevant for other cases.

Notwithstanding the possibility of theoretical generalisations, my approach falls in line with most studies of international environmental and resource management. Some scholars, like Mitchell (2003) and Breitmeier, Young and Zürn (2006) have conducted quantitative studies on international environmental agreements. Most studies of this kind are, however, qualitative, describing, prescribing, predicting, or explaining policy (Mitchell and Bernauer 2004). There are several edited books that are used to draw comparisons or develop larger theoretical arguments on the formation, effectiveness and interplay of institutions.⁵⁷ These are, however, based on more or less self contained case studies. Still, even though not systematically carried out, together these studies provide cumulative knowledge about the origins, operations and outcomes of various forms of institutionalised international cooperation. The present study can add to this literature and contribute to the academic study of institutional interplay and change. Furthermore, the studies mentioned above can provide empirical information, which is valuable in itself, and might also form the basis for policy. There are also a limited number of such studies, which in itself is a valid argument for adding to the total stock of case-studies of international regimes.

3.3 Data collection and the empirical material

Research on international political processes can easily suffer from a shortage of primary evidence. An important factor when selecting cases and formulating research questions is therefore access to information. Fisheries negotiations are not as sensitive as for instance security issues or disputes over jurisdiction or sovereignty. Much primary data are currently publicly accessible, and this study has not suffered from information shortage. The

⁵⁷ For instance Haas, Keohane and Levy 1993; Victor, Raustiala and Skolnikoff 1998; Young 1999; Stokke 2001; Miles et al 2002; Oberthür and Gehring 2006; Young et al.2008.

information I have needed have been available in the public domain or made available to me through my participation at NEAFC and NAFO meetings, through conversations with delegates to these meetings and through scrutiny of internal policy documents and minutes from meetings. In addition to re-evaluating existing research material, my project also offers new and original data and is therefore a piece of primary research.

3.3.1 Secondary sources of information

I have relied heavily on primary sources of information gathered through participation in NEAFC meetings. These are supplemented by information from secondary sources, mainly academic publications and publications from intergovernmental and environmental non-governmental organisations. Secondary sources were particularly important in developing the research questions. There is an extensive body of academic literature on the formation and effectiveness of fisheries and environmental institutions - and on the interplay between them, all of which has provided a basis for and informed the present study. Since I started work on the thesis several assessments of RFMO performance have been conducted, for instance Lodge et al. (2008), OECD (2009) and Meltzer (2009). Several scholarly works on RFMOs have also provided valuable insights, for instance Rood and Schechter 2007; Henriksen et al. (2006); Howard and Vince (2008). Some of these are also applying theories on institutional interplay, in particular Sydnes (2002) and Stokke (2001; 2000). I have therefore attempted to situate my study in the context of the theoretical debate on institutional change and interplay and within the scholarly discourse on the problems and pitfalls of international resource management and environmental conservation.

3.3.2 Primary sources of information

A substantial amount of primary data has been collected for the study. The main sources have been NEAFC documents and other basic texts and reports from relevant international institutions, interviews with official delegates and observations at NEAFC meetings.

Documents

NEAFC documents have been an invaluable source of information. The organization's website is very informative and all documents and minutes from meetings have been available, both from the plenary sessions and the working groups and permanent committees, as is the text of the Convention and those of the adopted measures.⁵⁸ The OSPAR Commission for the marine environment in the Northeast Atlantic makes some of its meeting-related documents

⁵⁸ <http://neafc.org/>; <http://archive.neafc.org/>; <http://nafo.int/>

publicly accessible.⁵⁹ A request (e-mail to the secretariat) for access to some additional documents was never responded to. However, sufficient information for the purpose of the study was available on their home page and in NEAFC documents. In addition, conventions, reports and resolutions from FAO and UN Division of Ocean Affairs and the Law of the Sea have been important sources of information.⁶⁰

Documents are often regarded as neutral presentations of social phenomena, which researchers aim at explaining or understanding (Silverman 2006). International conventions and adopted measures are, however, formal and public texts. They are "contracts" between the states which have formally adopted them. They contain provisions regarding the objectives, principles of cooperation, scope (in terms of membership, area of responsibility, geographical mandate), organisational structure, the authority of the decision making body, and all other matters pertaining to the substantive and operational elements the parties have agreed to. They must therefore be considered a way of gaining access to the "facts". As such they reveal the essence of formal events, argumentations and decisions. Such documents are, however, written by someone, for someone, they reflect certain interests and perspectives. They are interpretations or presentations, and the researcher has to be aware of what kind of information such documents provide, who wrote them and why this information has been produced.

In the thesis, meeting-related documents like reports, proposals, background papers and minutes, have been an important source of information. Minutes from meetings have been approved by all parties and are to be regarded as correct summaries of the meetings. They provide information about the different positions of the parties, the discussions that has taken place and the decisions made. This can be regarded as "facts". They are however also expressions of the actors' perspectives and interpretations. The documents reflect the actors' view on things, in this case the developments of regional fisheries management and the current international processes, as well as their different positions on internal management issues like the size and allocation of quotas. As such they give access to the actors' interpretations and to the ways in which they present themselves.

⁵⁹ <http://www.ospar.org/>

⁶⁰ <http://www.fao.org/fishery/en> ; <http://www.un.org/Depts/los/index.htm>

I have used these documents for fact finding, but also as a way of gaining access to the interpretations of the actors involved. The present thesis therefore combines fact finding (pure description) and interpretation. I aim at 'discovering and portraying facts that are true' by giving an accurate account of events, and offering interpretations through 'description and conceptually-mediated analysis of social experiences' - hopefully adding to our understanding of the processes under scrutiny (Golden-Biddle and Locke 1993:598). The use and interpretation of the documents have therefore posed different challenges, as they are used to illustrate different aspects of the implementation of international law by NEAFC as reported in the different case studies. I do, however, believe that it is quite clear from the text when the data should be considered as 'facts' and when they are used as representations of the actors' perspectives.

Observation, conversations and interviews

The information available from the documents has been supplemented by observations and interviews with the delegates to NEAFC and NAFO. I participated at five NEAFC meetings during the years 2005-2008.⁶¹ I also attended one meeting of NAFO.⁶² As a research method, observation and conversations with delegates to the meetings enable the researcher to collect data in situ. This is a unique way of getting access to 'raw data' that are collected for the purpose of the particular study, without information or meaning being added or subtracted from the rapporteur or other researchers (cf the point above).

The main challenge using this method is gaining access to the forums where the phenomenon to be studied actually takes place. International negotiations, like meetings in regional fisheries management organisations, are usually closed to the public. The original plan was to try to be granted status as an observer at the NEAFC annual meetings, because this would secure a 'neutral' perspective and avoid biases. NEAFC has guidelines regarding participations of observers.⁶³ These are, however, directed at international governmental organisations, non-contracting fishing states and non-governmental organisations. There is no mention of access for researchers. The secretariat therefore had no authority to grant me observer status, without getting approval of all the contracting parties. I was therefore advised to try to be included in the Norwegian delegation, a wish that was kindly granted.

⁶¹ I attended three annual meetings and two extraordinary meetings: The annual meetings in November 2005, 2007 and 2008, and extraordinary meetings in June 2007 and July 2008.

⁶² The annual meeting in Lisbon in September 2007.

⁶³ NEAFC Rules of Procedures, Chapter 8 as Rules Granting Observer Status, Amended at the 20th Annual Meeting, 2001.

At first I thought it might be problematic to be embedded in the Norwegian delegation, and that this would limit my access to information. As a member of the Norwegian delegation, I felt it problematic to address the members of the other delegations to question them on their position on different issues, as these were items for negotiation. However, as my focus was on the collective outcome of the processes in NEAFC and its relations to the international community engaged in managing high seas resources, it was critical for the study to have access to the different states' interests or negotiation strategies. This information would probably not have been revealed in interviews with the delegation members anyway. Further, it is far from certain that all the parties would let themselves be interviewed.

Actually, it proved a huge advantage to be a member of the Norwegian delegation. It not only gave me access to what happened in the plenary sessions. I was also informed about what took place in the closed and informal meetings. The annual meetings last one week, the extraordinary meetings 2-3 days. During these days I was attending the plenary sessions, as are most of the delegates. In addition to these sessions, where the entire delegations and the observers⁶⁴ are present, there are several smaller and closed meetings taking place during the week, the most important being the meeting of the Heads of national delegations. In addition there are negotiations on management measures for the different stocks, both between the coastal states (if this is not settled prior to the annual meeting) and with all relevant parties. These negotiations never take place in plenary and no official minutes are published. Further, there are meetings in the different working groups and permanent committees over the year and during the annual meeting. Here, only a limited number of delegates from the contracting parties participate. Minutes and other documents from these meetings are available on NEAFC's internet page.

Sitting with the Norwegian delegation, comprised of representatives from the Ministry of fisheries and coastal affairs, the Ministry of Foreign Affairs, the Directorate of Fisheries, the Institute of Marine Research and the industry, I could easily seek information and answers to questions on all relevant aspects of the ongoing processes. Also, the delegates explained events and statements that I would not easily have understood. Many of the delegates had

⁶⁴ Representatives from cooperating non-contracting parties, intergovernmental organisations and non-governmental organisations.

been attending these meetings for years, and therefore hold a lot of knowledge and experience on these processes.

Furthermore, being a member of the Norwegian delegation I obtained an insight into how the delegation worked, and I gained knowledge of the points of view of both the Norwegian and the other delegations, even though the presentation of the other parties' positions was not necessarily impartial. This has contributed to my understanding of how these processes proceed and how the regime develops. Attending the NEAFC meetings and having been able to discuss what is happening, when it is happening, with actors involved in this informal way has been crucial for my understanding of how NEAFC and the regime for managing high seas resources works and develops. It has also been an advantage to attend several meetings, as processes take time in these forums. My study is, however, not limited to the period when I was participating at the meetings. Information on what happened before 2005 was found in the meeting documents, and acquired through conversations with delegates and by reading secondary literature on the subject.

During the week of the meetings I had many informal conversations with the members of the Norwegian delegation and with some delegates from other member states. As with documents, interviews can be used both for the purpose of fact finding and for gathering information about the opinions and interpretations of the actors involved. Within different research traditions there are different ideas about the status of information acquired from interviews, and also the techniques employed to gather this information (Gray 2004; Blaikie 1993). While quantitative and more positivist oriented researchers tend to view interview data as a way of providing direct access to social facts, more interpretive researchers view the interviews as a way of gathering access to the experiences and reflections of actors. While the former tend to prefer standard interviews with standardised questions and even multiple choice or scaled answers based on a random selection of interview objects to acquire facts, the latter tend to prefer unstructured or semi-structured interviews. These should be open-ended so as to give the respondents the chance to respond freely, giving some leeway in how and what to reply and room for reflections and arguments (ibid.).

The aim of the present project has been to provide information and increase the understanding of the topics under scrutiny. The purpose of the interviews was both to gather facts and to test my understanding of the processes observed. I was, however, also interested in the

participants' reflections and interpretations of the processes they were taking part in. Before the meetings I prepared a list of questions and topics I wanted to discuss. This was both related to the meeting agenda and to the documents prepared for the meeting, developments outside NEAFC with relevance to the work of NEAFC, and also based on the progress in the work with the thesis. It therefore covered a wide range of topics, not limited to those on the meeting agenda. The list was then supplemented with new questions based on observations during the week of the meeting. The different questions were raised to those individuals I thought would be best positioned to answer them.

Following Gray's categories (2004:215.18), these conversations would be a mixture of semi-structured interviews and informal conversations. Despite the risk of these conversations being quite unpredictable and unfocused, they proved very useful and effective, as they also made it possible for me to discuss issues with various delegates over an extended period of time. Talking with participants during the process also gave the delegates the opportunity to comment on the events during the process, avoiding the danger of post-rationalisation. There is of course always the danger that the persons involved at the time are too close to the process to be able to give a balanced judgement. My task was therefore to distinguish between facts, positions and interpretations of these representations. Given the informal setting under which this information was acquired, I have not applied them directly in my thesis as sources of information for any statements. They have been used to confirm or correct my understanding of statements, discussions and outcomes, and, as already mentioned, to understand the perspectives of the actors involved. It was therefore an important way of validating my findings. This information would not have been so easily available to me had I been a mere observer. In that case, I might have ended up with another research question, focusing for instance on transparency and the role of NGOs in RFMOs, literally lending support to the well-known phrase of 'what you see depends on where you sit' (Allison 1969). The bias issue can therefore not be ignored.

In much of the literature on methodology (cf. Silverman 2006 and Creswell 2003), observation is considered a somewhat risky approach as there is always the danger the researcher may influence the process or persons studied, for instance by making the persons involved self-aware and therefore influence their behaviour. In my case, the influence I might have had on the process must be considered negligible. Conversely, there is also the risk of the observer being co-opted, adopting the views of those one is observing. Conscious of this

risk, both of having a Norwegian bias and taking an uncritical view of the efforts and progress of NEAFC and regional fisheries management in general, I have sought to handle the information gathered critically and as far as possible confront it with data from other sources. In my case, the access to both in situ interpretations and factual information far exceeded the danger of bias. Also, as the focus of the study has been the activities of NEAFC, not the different parties' positions, the risk of bias are reduced.

I also conducted several semi-structured interviews outside the setting of the official NEAFC meetings. Early in the research process I had an informal interview with a senior public official, who is a delegate to all RFMOs where Norway is a party and to other international fisheries meetings. The aim was to gather empirical information and a better understanding of the issues involved. This was instrumental for the focus of the study. Later in the research process I conducted a telephone interview with the secretary of NEAFC, both to acquire information about the ongoing processes and to confirm that the research questions I had formulated were seen as relevant and interesting to the actors involved.

3.4 Reflections on the research process and the material used

The discussion above is intended to make the research process transparent to the reader. By documenting and reflecting upon the methods applied and data collected I have tried to make it open for scrutiny by others.

Yin claims that the analysis of case study evidence is one of the least developed and most difficult aspects of doing case studies. Too many times investigators start case studies without having the foggiest notion about how the evidence is to be analyzed (Yin 1994:102). To this I have to plead partially guilty. A strategy to solve the problem was to base the data collection on theoretical propositions which helped to focus on certain data and ignore other, and contribute to a more systematic collection of information. Another strategy was to develop case descriptions in the different articles, focusing on particular characteristics or phases in the phenomenon analysed (Yin 1994:103-106), by dividing the analysis of interplay into four steps of the forms, causes, management and effects. Relying on these strategies, the research questions and the design chosen determined, or at least guided, what information that was relevant. When collecting data for the case studies, which were collected for all the articles together, the information gathered and the interpretations made were primarily organised around a few key concepts (allocation and conservation, institutional interplay and change)

and aimed at being analysed through my 'institutionalist' lenses. It did not however necessarily instruct me on how to handle the information gathered. Further, the final choice of both the overall research question and the different studies did not reach its final form until fairly late in the process. Nevertheless, I hope the non-linear approach has contributed to a more relevant and up to date thesis.

Golden-Biddle and Locke (1993) argue that because case studies cannot be used to make causal inferences, the challenge is to make convincing arguments through plausible interpretations.⁶⁵ Further, they argue that researchers applying an interpretive approach have to convince the reader that their findings are credible by insisting on the authenticity and plausibility of their work. This is especially important where multiple interpretations are possible (Golden-Biddle and Locke 1993:597). Plausibility is about making the reader accept that the findings are credible and relevant. Not only does the empirical material need to be accepted as credible, also the interpretations has to be regarded as such (Golden-Biddle and Locke 1993:600). Authenticity is a question of making the reader accept that the descriptions made are both adequate and accurate. This is achieved through 'thick description' (Geertz 1973). Providing enough detail and relying on and identifying the different sources of information will therefore add to the dimension of authenticity. By actually being there, in this case by attending the NEAFC meetings over several years, I was not only able to conduct a study of the case, but actually study it in its 'natural' setting.

⁶⁵ Generally accepted standards and practices based on a positivist and often more quantitative oriented methodology, emphasising reliability and different forms of validity, is not necessarily applicable to assess the convincingness of qualitative and more interpretive analysis (Golden-Biddle and Locke 1993:597). Contrary to more a positivist or traditional perspective, which focuses primarily on behaviour, interpretive research also focus on the importance of ideas, concepts and beliefs (Rainbow and Sullivan 1987).

Part 2

Article 1 The allocation of scarce natural resources: The case of fisheries⁶⁶

Article 2 The North East Atlantic Fisheries Commission and the Implementation of Sustainability Principles: Lessons to be Learned?⁶⁷

Article 3 Managing institutional overlap in the protection of marine ecosystems on the high seas. The case of NEAFC and the OSPAR Commission⁶⁸

Article 4 Compliance and reputation in international fisheries management ó the case of the Northeast Atlantic Fisheries Commission⁶⁹

⁶⁶ Alf Håkon Hoel and Ingrid Kvalvik, *Marine Policy* 2006 30(4).

⁶⁷ Ingrid Kvalvik (2010), in Dawn Russell and David WanderZwaag (eds.) *Recasting Transboundary Fisheries Management Arrangements in Light of Sustainability Principles*. Leiden/Boston: Martinus Nijhoff Publishers.

⁶⁸ Ingrid Kvalvik, *Ocean and Coastal Management*, resubmitted May 2011.

⁶⁹ Ingrid Kvalvik and Are Sydnnes, *Global Environmental Politics*, resubmitted May 2011.

Part 3

4.1 Introduction

The conventional approach to the study of institutional change has been to view institutions in isolation. However, the recognition that international institutions coexist and influence each other's development and performance (Oberthür and Gehring 2003:30), points to the need for analyzing institutional change as a possible outcome of institutional interplay. I have therefore examined *how interplay with institutions addressing high seas fishing has caused change in NEAFC the last decade, and also how NEAFC has influenced other institutions*. The question is examined along two dimensions: that of distribution of ocean wealth and that of resource conservation, where I try to *identify conditions for intentionally changing one institution by way of another*.

Examining how NEAFC is changing as a consequence of developments in other institutions requires that we take a closer look at how NEAFC actually interacts with these other institutions and how this interaction affects the content and operation of NEAFC. By doing this I have sought to identify *when institutional interplay contributes to change, and when it does not*. I have therefore analysed how NEAFC manages (different forms and causes of) interplay and what kind of changes are undertaken, i.e. their effect. The ultimate purpose of this endeavour, then, has been to enhance our understanding of the dynamics of international fisheries management and identify some of the mechanisms of institutional change. This is done through the more narrow questions raised in relation to the four articles. The issues addressed are:

- *How the distributive criteria laid down in global agreements are implemented in a regional context*
- *How implementation of sustainability principles influence the content, and operation of NEAFC*
- *How NEAFC is handling institutional overlap with another institution at the regional level of governance*

- *How institutional interplay are managed by NEAFC and what kind of changes the interplay cause*

4.2 NEAFC and institutional interaction

The 4 articles have demonstrated different aspects of NEAFC activity. Each, in its own way, explores my theoretically derived claim or hypothesis - that institutional interplay is a central factor in generating institutional change, but that there is also limits to this external influence. In the following paragraphs the main findings will be presented and their theoretical implications discussed. First, I summarize and discuss the findings reported in the different articles with reference to the research questions asked. Second, I return to the overall research question - asking whether and how the changes taking place in NEAFC can be interpreted as the outcome of institutional interaction.

4.2.1 How are the distributive criteria laid down in global agreements implemented in a regional context?

The question of distribution is raised article 1: *The allocation of scarce natural resources: The case of fisheries* (Hoel and Kvalvik 2006), but also in article 2 (Kvalvik 2010) and 4 (Kvalvik and Sydnes 2011), where we take a closer look at how NEAFC deals with allocation issues.

The interplay studied is *top-down vertical interplay within nested institutions* (within an issue area), where RFMOs (and other regional arrangements) are allocating quotas on the basis of the distributive criteria laid down in the 1995 UN Fish Stocks Agreement as well as implementing other instruments. Such activities can be regarded as intra-institutional responses to global level provisions. The question then is whether and how the distributive criteria actually influence the way in which NEAFC allocates fish quotas.

Article 1 showed that the adoption of the provisions of the Fish Stocks Agreement and the Code of Conduct in 1995, combined with the acknowledgement of the need to manage some straddling stocks in the NEAFC Regulatory Area, revitalized NEAFC or primarily through the negotiations on TAC and the allocation of stocks that followed. Further, the parties to NEAFC are referring to the distributive criteria established in the Fish Stocks Agreement in order to

strengthen their hand in quota negotiations. It is, however, difficult to ascertain their influence with any degree of precision. This is not only because of the parties' unwillingness to apply the principles. The principles vary with regard to their ease of operationalization. The different principles therefore primarily serve to define the scope of possible distributional outcomes in any given case and state actors can, and are in fact, using them strategically.

As resource distribution relates to the core activity of the organisation and has direct (re)distributive implications for the state actors involved, this is hardly surprising, as argued in article 4. However, as pointed out in article 1 the RFMOs are not only implementers of global provisions. They are also producers of practices and have *served as models* for solutions adopted in global instruments. The distributive criteria worked out by NAFO were, for example, among the regional initiatives that served as a model for the UN Fish Stocks Agreement (Stokke 2001a).⁷⁰ This represents a bottom-up form of interaction between nested institutions. Consequently, it is important to view the interaction between the regional and global institutions as a policy formation process where the influence goes both ways.

A point to be made about distributive agreements among states is that even if the parties manage to agree on the allocation of a fish stock at any given time, the prevailing criteria of distribution is not necessarily made in stone. Should patterns of fish stock migration change or latent or 'managed disagreements' escalate, allocation arrangements may break down, usually involving a redistribution of the quotas among the parties involved. In 2009, when article 2 was written, there were agreements in place for all stocks managed by NEAFC. This is no longer the case. Due to disagreement over zonal attachment and over the question of coastal state status, there is now a fierce debate about the distribution of the mackerel stock. To prevent open and unregulated fishing on this stock by vessels from non-NEAFC members NEAFC adopted a management arrangement for 2010 allowing the parties to set their own quotas. The negotiations on the 2011 quotas have been going on throughout the fall/winter, but there is still no agreement. It is doubtful that the parties to NEAFC manage to agree on a reallocation and set a new norm of distribution for this year's fishery, and a similar arrangement will probably be adopted. As discussed in article 1, the same happened with the management of the herring fishery in the early 2000, where a new norm of distribution was

⁷⁰ Another example of bottom up interaction that affects the core aspects of use and distribution of resources of RFMOs is how the compliance control mechanisms adopted by NAFO and in the regional Doughnut Hole regime was adopted by the UN Fish Stocks Agreement (Stokke 2000).

agreed after several years with no management arrangements in place. These examples illustrate the fragility of the negotiated allocative arrangements. At the same time they show that the parties, despite internal conflicts, manage to cooperate and use the institutional framework to exclude non-parties to NEAFC, thereby preventing access for others and an in fact reallocation of the resources.

Since allocation addresses regulatory issues with (re)distributional consequences for the state actors involved, the possibility for the international community to exercise any direct influence seems limited. As recalled, NEAFC is only allocating the high seas part of the fisheries of the stocks managed by the Commission.⁷¹ The NEAFC management is therefore dependent on agreement among the different coastal state groups, and only constitutes a small, but necessary, part of the managing of the high seas fisheries in the North East Atlantic. This is to a high degree a question of national competition and is quite 'resistant' to external influence. These examples also point to the difficulty in providing global distributive criteria that are precise, operational and flexible, and also to the difficulty in implementing them. The international instruments, however, provide guidance and an orderly basis from which to base the arguments on.

NEAFC therefore seems to have more success when joining forces to exclude others and on issues that more indirectly addresses distribution, like compliance control measures, dispute settlement procedures, criteria for newcomers and the like. In all of these issues NEAFC has adopted mechanisms in line with requirements of the global instruments, and also been in the forefront in adopting measures, for instance on developing instruments for black listing and port state control. In these cases NEAFC both influence and are influenced by others, and the changes undertaken seem to be supported by the external requirements rather than adopted as a response to them. On the issue of setting quotas in line with scientific advice and securing a sustainable harvest level, however, there might be more scope for external influence since the distributive effects are more indirect and do not involve any redistribution among the state parties. But again, if there is disagreement among the parties, quotas will easily be set higher than recommended. The implication is that distributional conflicts would hamper conservation efforts. All in all, the study finds that in cases of *interaction with a stick in nested institutions* addressing allocation issues, the possibility for influence is limited if having direct

⁷¹ Except for redfish in the Irminger Sea where the parties, in line with the Convention, have requested NEAFC to manage the entire stock (also in the EEZ).

redistributive affects among the state parties, but greater when having more indirect redistributive effects or aiming at excluding non-members.

4.2.2 How does the implementation of sustainability principles influence the content and operation of NEAFC?

This question addresses the other empirical issue of the thesis, that of conservation, and is examined in article 2: *The North East Atlantic Fisheries Commission and the Implementation of Sustainability Principles: Lessons to be Learned?* (Kvalvik 2010), but is also addressed in article 3 (Kvalvik 2011) and 4 (Kvalvik and Sydnes 2011).

This question pertains to processes of *top-down vertical interplay within nested institutions* (within an issue area), but also between institutions from different regimes (between issue areas). The articles examine how NEAFC is implementing the new approaches to the management of marine living marine resources laid down in the 1995 UN Fish Stocks Agreement, UN General Assembly resolutions and other instruments. In more general terms, we are looking at intra-institutional responses to global level provisions. The studies have, however, also identified initiatives from NEAFC to influence global developments (bottom up vertical interplay) and processes of horizontal interplay both within and between the traditional fisheries management regime, i.e. inter institutional responses. The inter-institutional horizontal interplay will be dealt with under the next research question. The interplay examined is caused both by *cognitive interaction* and *interaction with a stick*.

Article 2 raised the question of how NEAFC has developed during the last decades, especially how it has organized its efforts to implement sustainability principles. The main finding is that NEAFC has undergone substantial changes in its legal foundation to make it in line with developments in international law by amending its Convention. By this it widened its scope, which had been previously limited to the regulation of fisheries resources, to include economic, environmental, and social concerns, giving it a stronger mandate with respect to the ecosystem approach and biodiversity protection. Further, with the establishment of the Permanent Committee on Management and Science (PECMAS) it has made an institutional change to strengthen its ability to handle the more complicated management setup for the successful adoption of precautionary and ecosystem approaches to fisheries. The Commission has also adopted management measures in line with new management approaches and goal,

for instance by applying an precautionary approach, adopting long term management plans and, as a response to international calls for action to protect vulnerable marine ecosystems on the high seas, established areas closed for bottom trawling. We can therefore observe that both legal, procedural and practical changes have been undertaken as a response to international requirements and commitments.

However, the article also questions whether answering the call for new approaches to the management of living marine resources by amending its convention and adopting conservationist measures, actually has resulted in more sustainable high seas fisheries in the NEAFC Regulatory Area. It points to the discrepancy between changes in the content and the actual operation of NEAFC, which indicates that several of the changes may be *more symbolic than instrumental*, at least in the short run.

For instance, the performance review, the annual fishery status report, the closures of bottom fishing on the Mid Atlantic Ridge to protect vulnerable marine ecosystems and the procedures to handle closures and fisheries in these areas, are all responses to external requirements. The measures, however, do not affect the operation of the core activity of NEAFC - the pelagic fisheries in the Regulatory Area. Actually, it has not affected these activities at all. The exceptions are the closures of the coral areas in the Irminger Sea (on the Hatton Bank ó Rockall area) and the application of the precautionary approach in stock assessment and quotas advice. In case of the former, the OSPAR Commission had requested NEAFC to take action to protect these areas. In the latter, the approach was actually introduced by ICES, and then later adopted by NEAFC as a standard for requesting advice. In neither of the cases NEAFC acted proactively, like they did when closing the areas on the Mid Atlantic Ridge as a proactive response to the suggestions put forward for the UN General Assembly to ban bottom trawling on the high seas.

In these cases, then, it seems that horizontal cognitive interaction to a greater degree have influenced the operation of NEAFC, than the vertical interplay between nested institutions where one should expect ða stickö to increase influence.

A point to be made, however, is that when responding to the UN General Assembly resolutions, the responses of NEAFC and NAFO have followed parallel paths, and the organisations have undoubtedly benefitted from the work of each other and copied each

othersøolutions. Recalling that all the members of NEAFC are also members of NAFO, there is considerable overlap in membership. This makes it possible to avoid duplication of management efforts, an opportunity that has worked to the advantage of both organizations. There is another side to the interaction between the institutions within the same issue area. For instance, NEAFC and NAFO copy from each other, as shown in article 2. They also cooperate on the management of the redfish stock that straddles into the NAFO Regulatory Area and there is reciprocal recognition of their respective IUU-lists. This cooperation is of a practical nature. The measures are established to keep fishing within established quotas and securing the sustainability of the stocks. The initiatives to this cooperation came from the RFMOs themselves and address issues with a clear distributional dimension and are clearly instrumental in nature. It therefore seems to be a clear difference between the horizontal interaction with the institution addressing traditional fisheries issues and the institution addressing new conservation ideas. Conservation has, of course, also been relevant in the traditional fisheries regime, but then the aim has been to conserve to use, not so much conservation in its own right.

The learning and copying of õgood practicesö between the two regional fisheries organisations in the North Atlantic therefore illustrates how institutions can *serve as models* for, and learn from, each other, thereby contributing to the further improvement and development of the regime. This illustrated how an institution is not only influenced by, but also influences others. This is especially true in RFMOs with partially overlapping membership, but as mentioned in chapter 1, arenas for information exchange, discussion of common challenges and establishment of cooperative arrangement between RFMOs are established. Even though nested in the regime for managing high seas fisheries, the interaction between the RFMOs so far take the form of *cognitive interaction* rather than *interaction with a stick*. The latter being more relevant in top-down interaction.

What the study shows is that many of the measures adopted to address conservation issues are adopted, not because they were considered effective means to improve the management of high seas fisheries, but as a direct response to international requirements. NEAFC realized that to be seen as a relevant and effective RFMO it needed to address these issues. The measures adopted, however, stand out as merely symbolic. As such, it can be seen as successful *interplay management*. This will be further discussed below.

4.2.3 How is NEAFC handling institutional overlap with another institution at the regional level of governance?

This question is addressed in article 3: *Managing institutional overlap in the protection of marine ecosystems on the high seas. The case of NEAFC and the OSPAR Commission* (Kvalvik 2011), but is also touched upon in article 2 (Kvalvik 2010) and article 4 (Kvalvik and Sydnes 2011).

The interplay studied is *horizontal interplay between institutions from different issue areas*. The interplay is caused by a *request for change* and *jurisdictional delimitation*. Responses are both inter- and intra institutional responses, and effect both the content and operation of NEAFC, in that they are both instrumental and symbolic.

Article 3 focused on the (potential) institutional overlap between OSPAR and NEAFC and the efforts to clarify the jurisdiction of the two organisations and establish some kind of procedures for their interaction. The central theme was how the interaction between them has developed, but also how NEAFC has responded to the request from OSPAR to take action on specific issues. It therefore looks at the *interplay management and the effects* of this interaction.

The study shows that even though the initiatives from OSPAR were initially considered rather negatively and the requests were rejected, the interaction between the institutions in recent years has been strengthened and formalized through the signing of the Memorandum of Understanding (MoU). It further showed that NEAFC has managed this interaction with a clear aim of demarcating the authority of the institutions and reduce the influence from OSPAR on NEAFC. Even though the MoU were highlighted as a cooperative entrepreneurial endeavour between a regional fisheries and environmental organisation, the main goal of NEAFC seems to have been to clarify the jurisdictions of the two institutions and underline the authority of NEAFC to manage fisheries. In the same vein, by limiting of the participation of OSPAR to its plenary meetings, NEAFC clearly sought to reduce the influence of OSPAR. Another example is how NEAFC sought to delink the activities of the two institutions by closing the areas on the mid-Atlantic Ridge prior to the OSPAR discussion of the issue, despite a request from OSPAR, and also ICESø for coordination on the issue. This made OSPAR having to take into consideration and adjust to the NEAFC decision and not the other way around. The interaction between the two institutions therefore in many ways stands out as

a turf war, where they are coevolving in addressing the ðnewö issue area of ecosystem management and biodiversity protection. Both institutions acknowledge the need for cooperation and coordination, but both institutions also state their ambitions to take on a leadership role. So far it seems that initiatives from OSPAR have caused a compliance pull on behalf of NEAFC. The effect of this influence, however, is limited.

An exception is the request from OSPAR on protection of the coral reef areas in the Irminger Sea. This will contribute to preserve and re-establish the coral reefs, and it limits the area where fishing could take place. It has not, however, limited the total allowable catch (TAC) or caused any big challenge to the fishery. There is probably a time dimension that is relevant here, because as the institutions are getting more experienced in addressing issues of common concern they might get involved in more practical interaction like coordinating requests for scientific advice. This would also be a way of avoiding conflicts and duplication of work. So far however, the contact and cooperative arrangements established mainly stands out as symbolic. The question then is why these responses are undertaken. This leads us to the last research question.

4.2.4 How are institutional interplay managed by NEAFC and what kind of changes is the interplay causing

This question is raised in relation to article 4: *Compliance and reputation in international fisheries management ó the case of the Northeast Atlantic Fisheries Commission* (Kvalvik and Sydnes 2011), but also summarises the findings from all the studies.

The aim of the article 4 was to challenge the established perspective on reputation by looking into what kind of changes organisations undertake to restore a deteriorating reputation. A central question was how NEAFC interacts with its institutional environment and how it undertakes both *instrumental and symbolic* changes in response to different kinds of demands. It therefore sheds light on how institutions *manage institutional interplay*. The responses studied were both *inter- and intra-institutional*, and they were caused both by *cognitive interaction* and *interaction with a stick*. The interplay studied was both *vertical and horizontal*.

The study finds that for NEAFC a challenge seems to be how to convince the international community that they are credible and effective managers of the high seas resources. In an attempt to improve their reputation NEAFC therefore responded to the external criticism

facing them, and to the different calls for action from their institutional environment, through strategic self presentation. It undergoes changes to comply with the standards with which they want to be identified, in order to restore their reputation or legitimacy as managers. However, as is also shown in the other articles, there is a clear difference in whether the changes undertaken are instrumental or symbolic, and that this to a high degree depends on whether they involve a redistribution of costs or not. Distribution of costs and benefits has always been difficult in international resource and environment management, and the Achilles heel of RFMOs. Elaborating on the motivation for change we found that learning how to coexist with other institutions was vital, not only to avoid conflicts and duplication of work, but also to enhance the legitimacy of RFMOs. The changes, however, might not influence on the institutions to any degree.

4.2.5 To what degree has the interplay with institutions addressing high seas fishing caused change in NEAFC the last decade

The empirical question raised in the thesis was *to what degree the interplay with institutions addressing high seas fishing has caused change in NEAFC the last decade*. Through the different studies I have tried to identify under what conditions institutional interaction affect NEAFC, and especially to distinguish between changes in the content versus the operation of the institution, thereby pointing to the limits of exogenous influence. The issue was addressed along two dimensions: that of distribution of ocean wealth and that of resource conservation. The study finds that institutional interplay clearly affects NEAFC, but at the same time the institutions is quite resistant to change.

An empirical puzzle was why NEAFC complied with external requirements that at first glance seem not to be in the interest of the member states, like closing certain areas to fishing. The answer to this is threefold. First, these measures do not have any (re)distributive effects and create little controversy. Second, the parties to NEAFC are not ignorant of or unwilling to take environmental considerations, but it is harder to agree on measures involving costs in terms of limited access to fishing. The uncertainties about the effects of such measures, however, make some parties reluctant to adopt them. Third, NEAFC works actively to improve the reputation of RFMOs in the international community. The organization does this both by implementing new principles and measures adopted in other institutions, and by developing new practices to strengthen the performance of RFMOs. In this way it also tries to influence on the further development of the regime for managing high seas fishing.

Another puzzle, related to the former, was why NEAFC has implemented measures that have no or very limited effect on the management of the fisheries. So far the only effect of some of the measures seems to be the time and effort the organisation and its members have put down to develop them. The response of NEAFC however, indicates that there would be some reputational costs involved in not responding to calls for action from the international community. The positive response on the symbolic changes, therefore, seems to counterbalance the costs. This points to the power of legitimacy in contrast to enforcement as a source of compliance (Young 2008b:26). But in this case, we see a strategic management of reputation in that many of the responses to external requirements are merely symbolic, thereby calling for studies of the effect of the measures adopted.

The study showed that new approaches to conservation are easier to implement than those geared at allocation, because they have less direct distributional effects among the state members. Further, many of the conservation measures stand out as mainly symbolic, as they do not directly contribute to more sustainable fisheries or better conservation and have little practical impact on the operations of NEAFC. But still, they are direct responses to international calls, and therefore are considered successful compliance with international law and regulations.

A point to be made in that regard is that what the environment requires is not always what the members of the organization find the most important. Parallel with the introduction of more or less symbolic measures to address environmental concerns and demands for transparency, NEAFC and the coastal states are strengthening the regime through the employment of stronger compliance control mechanisms. These measures are first and foremost initiated by the relevant member states, as they directly affect the effectiveness of their management. Lack of effective compliance control mechanisms can undermine the regulations in place by increasing the risk of illegal fishing and non-compliance. To understand institutional change we therefore have to look at both exogenous factors, i.e. the influence of other institutions like copying of best practices, global demands, and competing arrangements; and endogenous factors, i.e. the institutions wish to improve and to policy entrepreneurs. It is worth mentioning that the NEAFC member states are among the actors who push for a strengthened global regime, and therefore are operating at all levels to achieve this.

A key question, however, is whether the changes identified in NEAFC indicate genuine regime change or rather lots of dynamic, not much change (Arts and Leroy 2006: 279).⁷² The analysis of how this regional institution interacts with its institutional environment and how this contributes to change, I find that the regime for managing high seas fisheries is constantly evolving under the influence from a variety of sources - both endogenous and exogenous. Also, as the regime for managing high seas fisheries has developed the scope for RFMO policy has broadened. The managing of high seas fisheries has therefore become more complex. In exploring how institutional interplay affect NEAFC and the development of the regime for managing high seas fisheries, I find that institutions both affect and are affected by both traditional and new actors in their institutional environment. In other words, NEAFC both responds to and inspires change. As such, the thesis has highlighted the dynamics of international fisheries management. I would argue that what we see is a combination of stability and change, where some of the changes undertaken as a response to external influence are merely symbolic adaptations to external requirements framed as dynamic adaptability, while other changes actually influence on the management of high seas fishing in the North East Atlantic.

4.3 Conditions for institutional change: the role of interplay

As will be recalled from chapter 2, many scholars have explored the causes, effects and management of institutional interplay. This study adds to these studies of institutional interplay with their focus on effects of interplay on single or target institutions, by addressing the more overall question of institutional interplay and change. Its aim has been to examine under what conditions institutional interplay contributes to change, and when it does not. Can we then, based on this study of NEAFC, identify certain characteristics that helps understand the dynamics of institutional interplay and change? An attempt to summarize the findings is presented in table 3.

Based on the theoretical framework outlined in chapter 2, interplay are assessed along two dimensions; vertical-horisontal and within-between issue areas. The main causes and effects of these different forms of interplay are then identified.

⁷² This would be in accordance with what Arts and Leroy (2006) found in their study of environmental institutions.

Table 3. Conditions for institutional change

Interplay	<i>Within an issue area</i>	<i>Between issue areas</i> Addressing the “new” conservation issues
<i>Vertical</i>	<p><i>Cause:</i> nested</p> <p><i>Effect:</i> Top-down – limited on allocation more on compliance control mainly symbolic on conservation</p> <p>Bottom up – serving as a model (both for instrumental and symbolic changes)</p>	<p><i>Cause:</i> request for change</p> <p><i>Effect:</i> symbolic</p> <p>(only briefly studied)</p>
<i>Horizontal</i>	<p><i>Cause:</i> serving as a model (nested)</p> <p><i>Effect:</i> instrumental – practical cooperation and copying of practices (both symbolic and instrumental “solutions”)</p>	<p><i>Cause:</i> request for change and jurisdictional delimitation</p> <p><i>Effect:</i> mostly symbolic, but development over time might give more practical effects</p>

The *causes of interplay* identified here do not seem to be decisive in contributing to change. Cognitive interaction, both within and between issue areas, seems to be just as influential as interaction with a stick between nested institutions. The exception is issues of *jurisdictional delimitation* between NEAFC and OSPAR. The decisive factor seems to be what issues are addressed (allocation, compliance control or conservation) and the (re) distributive costs involved, and how the institution can manage it so that the effects are acceptable for the member states, whether instrumental or symbolic. In cases of jurisdictional delimitation, the costs are related to the authority (and survival) of the institutions.

In his studies of interplay of global and regional institutions in the high seas fisheries regime Stokke (2000; 2001) found that the high degree of cognitive influence of the general principles related to implementing the precautionary approach and ecosystem management had little immediate impact on the institutions, and that the diffusion of more operational aspects, like dispute settlement and compliance control more directly affected the operation of the institution. These findings are supported in this study. The difference between the symbolic and instrumental changes clearly illustrates the relevance of distributional effects on

the institutions willingness or ability to adapt to global standards, most clearly demonstrated in relation allocation issues.

Oberthür and Gehring (2003) argued that when *cognitive interaction* causes interplay, request of change will imply an intended interaction, while serving as a model will be unintended or indirect. This study, however, show that to serve as a model can be intended, to improve or restore ones reputation, to counteract decisions made elsewhere and to influence on the course of events. Further, according to Oberthür and Gehring (2003), failure to adapt in cases of *interaction with a stick* is assumed to involve certain costs. This study clearly shows that NEAFC respond to external influence to safeguard or restore its legitimacy and that there would be some reputational costs involved in not responding. However, not all requirements from the institutional environment are responded to. The institution is managing interplay through strategic self presentation, often through symbolic measures, especially on issues addressing the new approaches to resource management.

It would be too simplistic to conclude that NEAFC is only influenced by other institutions on the önewö conservation issues and that these changes are merely symbolic (at least in the short run), and that instrumental changes, like improving compliance control, addressing the öoldö or traditional issues are driven by the institution themselves. However, it seems that instrumental changes to a greater degree are a result of horizontal interaction with institutions within the same issue area. Here, the institutions involved have the same objective and cover similar areas of expertise, while the management of interaction with institutions from other issue area to a greater degree results in symbolic changes, at least in the short run. Also, on practical issues the regional institutions often serves as a model for global level agreements.

Two, more general points, deserves mentioning here. First, scholars often point at the increasing *number* of international institutions as the cause of the overlaps and linkages which policymakers have to relate to. But, just as striking as the increasing density of international institution when studying institutional interplay, is the broadening of the *scope* of existing institutions. Institutional interplay is a product of the development of existing institutions, as well as the result of the increasing number of institutions and agreements. This has been clearly demonstrated in the study of the changes taking place in NEAFC and the regime for managing high seas fisheries and the evolving new area of ecosystem management and biodiversity protection. Second, much attention in analyses of institutional interplay has been

on overlap and conflict between regimes or issue areas; less attention has been paid to nested institutions and change. In the former, the distinction between synergy and conflict is central. In the latter, this distinction is more a matter for discussion between actors in the field rather than an empirical question to be sorted out by the researcher. The study showed that not all changes are welcomed by NEAFC, still they comply with them, even acting proactive to try to influence on other institutions. By navigating in the changing sea of the international fisheries regime the institution seek to limit external influence, but influence on the further development of the regime.

To conclude, problems are dynamic, and so are the (institutional) efforts to deal with them. The development of the regime for managing high seas fisheries is the result of complex processes where the outcome of institutional interaction in the form of both vertical and horizontal interplay, and top down and bottom up initiatives are important explanatory factors for changes undertaken. The critical point, however, is to look at the effect of the measures adopted as a response to influence from other institutions.

4.3.1 Unresolved issues and agenda for further research

The empirical findings and theoretical founded interpretations from the study can hopefully contribute to the future development of the research field. Some areas stand out as possibilities for future research.

The theoretical categories of the forms, causes, management and effects of institutional interplay have offered an opportunity to assess different aspects of institutional interplay and change in the regime for managing high seas fisheries. The analytical framework is, however, not exhaustive, and may well be extended and adjusted based on future research. Still, I believe that the interaction identified and the way it is analysed there are not relevant only to this particular case, but are general conceptual considerations.

The question of influence of institutional interplay addresses a general issue of multilevel governance and management of natural resources and the environment. It would therefore be useful to test the main findings that institutions are managing institutional interplay through strategic self presentation, both responding to and trying to influence on others, and that there is a clear difference between instrumental and symbolic adaptations and changes, in other

cases and policy fields, and thereby contributing to developing the theoretical foundation for analyzing institutional interplay and change.

In this study I have analysed one RFMO. A next step for research in this field could be to compare NEAFC and other RFMOs to see if the findings from this study are valid for other RFMOs. Further, other institutions like international environmental organisations could also be analysed and compared.

I have focused on the regional level. Future research should however also be concerned by the national level, and how state agencies work at the international level to affect RFMOs. An important factor when it comes to addressing the new issues of biodiversity and ecosystem approaches are whether the member states are able to sufficiently coordinate their activities at the domestic level. Another is whether and how states strategically work at different levels of social organisations (national, bilateral, regional and global) so as to influence the development of the global ocean governance regime. Changing the level of analysis might therefore strengthen or undermine the findings related to the collective enterprise and outcome at the regional level.

In this study I have focused on how external factors contribute to change. However, as shown in the different articles, there are also self-induced changes. When addressing issues of compliance control, NEAFC to a much higher degree is driven by the member states' wish to improve the regime, even though the external institutions support this effort often through the initiatives from the same members. The interaction between internal and external drivers for change is worth digging into. Another issue is to what degree there is a difference in how RFMOs comply with hard and soft law instruments (Skjærseth, Stokke and Wettestad 2006), this study indicates that it is not.

4.3.2 A final comment

The core question of this thesis has been how issues of fisheries governance are addressed at the regional level. I wanted to identify factors that can enhance our understanding of the dynamics of international fisheries management by analysing how the changes taking place in a regional fisheries management organisation can be understood as a result of its interplay with other institutions. I have argued that institutional interplay contributes to institutional change, where some changes can be directly ascribed interaction, others more indirectly. The

effect of the changes however varies. The studies reported in the articles also illustrate that high seas fisheries management, and ocean governance in general, has a multi-level character, in that policies are designed, discussed and implemented by different groups of actors at different levels and spheres of social organization simultaneously, i.e. the regime is developing and changing through institutional interplay.

Institutional interplay is a theoretical concept. It is however also an empirical phenomenon, to be dealt with by policy makers and studied by scholars. For instance, introducing the ecosystem approach poses a challenge to the existing institutional framework for decision making and implementation, both nationally and globally. While policies and institutions are well developed within the different sectors, the ecosystem approach addresses cross-sectoral concerns that require coordination among organisations or agencies regulating different types of uses of the oceans. The interplay between wider arenas of agencies has therefore given rise to the emergence of new forms of interaction and new practices. The latest development in NEAFC to address ecosystem considerations into fisheries management illustrates this point:

At the 2010 annual meeting of NEAFC in November the parties decided to invite the OSPAR Commission and other intergovernmental organization with a mandate to regulate other human activities in the oceans to a regional workshop to participate in a review of progress on ecosystem-based area management in international waters in the North Atlantic, with a particular emphasis on defining management objectives.⁷³ In that regard it was stressed that it seems to be possible to get over the fallacy that conservation and utilisation compete. For a number of good reasons they should cooperate and in most aspects have a common cause⁷⁴, cooperation is therefore considered both necessary and desirable. Another point, relating to institutional interplay, is that such a meeting were considered a response to a call from the meeting of the parties to the Convention on Biodiversity (CBD COP 10 Meeting in Nagoya in October 2010) to organize regional workshops to define ecologically or biologically significant marine areas, contributing to the report of the Secretary-General of the UN on actions taken in response to UNGA resolutions and be in line with the FAO guidelines for the

⁷³ Press release from NEAFC Annual Meeting 9-12 November 2010.

⁷⁴ Press release from NEAFC Annual Meeting 9-12 November 2010, statement by the Acting President.

management of deep-sea fisheries in the high seas.⁷⁵ Again, the interaction between both levels and issue areas are influencing on the actors and the development of the regimes.

To that end Young (2008b) has pointed to the need to pay more attention to the politics of the (re)formation and operation of regimes. This is however not a new argument, Stokke (2001; 2000), Young himself (2002) and Selin and VanDeveer (2003) early argued that a combination of analysis of the structural connections between components of particular international institutions (e.g. principles, norms, rules, decision-making procedures, and issues-areas) has to be supplemented by a focus on the behavioural aspects of interplay, in particular when studying the role of competition across institutional venues. öWith the growing number of international agreements and management processes in the resource management area, and the growing appreciation of interdependence between resource and environmental regimes, exploiting opportunities for operational interplay is likely to become increasingly significant for governments eager in order to avoid normative conflicts and address joint or similar challenges in a cost-efficient manner.ö (Stokke 2000:231). In the case of high seas fisheries, this has been amply demonstrated in this study.

⁷⁵ Press release from NEAFC Annual Meeting 9-12 November 2010.

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