Controversy over Russian vessel in Antarctica reveals CCAMLR shortcomings

At a recent meeting of the Commission for the Conservation of Antarctic Marine Living Resources, problems with its veto system were laid bare

Julian Chen  January 12, 2021
Zealand and Russia over alleged overfishing by a Russian-flagged vessel seized the spotlight.

The dispute demonstrates the limitations of high seas fisheries management mechanisms, and the challenges involved in ensuring compliance. As China paying more attention to the distant water fishery compliance issue, this case could provide useful lessons for its further participation in similar processes.

CCAMLR’s management of fisheries includes deciding which vessels can fish where, when and with what gear. A compliance committee carries out an annual assessment of how these rules are being followed and determines if breaches have occurred, how serious those breaches are and whether any further action is needed. This CCAMLR Compliance Procedure is designed to promote cooperation between national governments and encourage fishing vessels to follow the rules.

The *Palmer* controversy

On 1 January 2020, a patrol aircraft operated by the New Zealand Navy spotted a Russian vessel, the *Palmer*, fishing in waters closed for the season. The aircraft identified the vessel and took photographs. In line with CCAMLR’s compliance procedures, New Zealand then contacted Russia to request an investigation be opened. The Russian fishing authorities replied that checks of location data from the *Palmer*’s vessel monitoring system (VMS) showed it had been 800 nautical miles away from the site of the alleged activity, and that therefore no breach had occurred.

During this year’s discussions on compliance, New Zealand said it was clear that the *Palmer* had faked its VMS data, that this was “extremely clear, compelling and concerning”, and that the vessel should be added to the IUU (illegal, unregulated and unreported) list. A number of countries asked Russia to provide verifiable VMS data, “fishing effort” data (on how intensively the *Palmer* had been fishing) and the on-board...
As a CCAMLR signatory, Russia has leverage. It could have vetoed any opening of fisheries near the Ross Sea during 2020-2021, preventing any vessels from fishing there. So, on Russia’s insistence, the Palmer was not listed as an IUU vessel and will be able to continue fishing as normal in Antarctic waters this season.

Compliance conundrums

Russia may have got its desired result, but suspicions about the Palmer remain. First, faking VMS data can bring financial benefits. Second, in not making VMS and other data available, Russia is breaking with usual practice and displaying bad faith. And third, the Palmer has a record of compliance issues dating back several years.

So even if the case is not as cut and dried as New Zealand suggests, there is good cause for suspicion. Russia seems to have managed to use its veto to keep its record clean, but has caused itself reputational damage. The Antarctic and Southern Ocean Coalition, an environmental organisation, has publicly criticised CCAMLR for this.

The use of the veto to protect a nation’s own vessels is regarded as a major loophole in CCAMLR’s compliance system. In 2019, the Korean delegation expressed concerns about the process, complaining that too much time was spent on confirming breaches, leaving no time for discussions on how to improve the system itself.

But making improvements would be easier said than done. According to the convention’s dispute resolution system, disagreements over interpretation or applicability should first be discussed between the parties involved in a peaceful manner. If the problem remains unresolved, it can, with the consensus of all parties, be submitted to the International Court of Justice in the Netherlands, or arbitrated elsewhere.

But that possibility of referral to the International Court or arbitration applies only to disputes over “interpretation or application” of the convention. Disputes such as this one.

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More importantly, Article 4 of CCAMLR’s Rules of Procedure states: “Decisions of the Commission on matters of substance shall be taken by consensus,” and also that “the question of whether a matter is one of substance shall be treated as a matter of substance”. In other words, every issue can be vetoed by any country.

So even if a nation proposes changes to CCAMLR’s compliance processes – for example, by suggesting that nations accused of breaches should not be allowed to use their veto – it is very unlikely those changes would be implemented.

As such, there is no easy way to ensure compliance processes are made more effective, as this would require all participants to take part in compliance discussions in good faith. Of course, this is not to say that other nations have no options at all when one country protects its own fishing vessels. Measures can be taken outside of the CCAMLR framework – major purchaser nations could issue warnings or sanctions to force the offending state to act. Some years ago, the EU used this approach to force South Korea to change its distant-water fishing policy.

Bringing good faith back to the table

The reason Russia treated the discussions over the Palmer incident as a criminal court case is perhaps due to how the country feels about CCAMLR as a whole. Before the start of the convention’s annual meeting in October, Vasily Sokolov, head of the Russian delegation, told the country’s news agency RIA that CCAMLR meetings had become highly politicised. He said that Russia opposes the marine protected areas supported by Western nations, and that the complaint about the Palmer was a calculated attack in response to that opposition.

Fishing vessels are important for Russia’s economic, scientific and political presence in the Antarctic, and the country has long been wary of CCAMLR negotiations. The claim that New Zealand had forged evidence, and the refusal to provide VMS data, show that...
measures is needed if they are to be fully enforced.

China's Ministry of Agriculture recently published a **white paper** on compliance by the country's distant-water fishing fleet, demonstrating that the issue is taken seriously. An examination of the *Palmer* case can help us understand the assumptions and internal rationale of high seas fishing compliance mechanisms, and guide China's future compliance efforts.

Russia has managed to retain fishing rights for the *Palmer*, but it has damaged its own reputation and harmed the cooperative atmosphere of CCAMLR compliance processes. This will only make things more difficult for Russia in the future. The task for signatories now is to restore and protect good faith negotiations so CCAMLR can again focus on substantive issues.

**Julian Chen**

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