IUU Fishing and Measures to Improve Enforcement and Compliance

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Introduction to IUU Fishing

The term ‘illegal, unreported and unregulated (IUU) fishing’ was first used in 1997 in the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) to capture the scope of uncontrolled fishing in the Southern Ocean and the urgency for addressing it. Members agreed that the situation called for collective efforts within CCAMLR, measures by flag states and coastal states and steps vis-à-vis non-Contracting Parties to enhance enforcement and compliance with conservation and management measures (CMMs).

It ignited the determination of the international community to come to grips with IUU fishing, which spans activities under international, regional, and national governance. It involves practices such as unlicensed fishing, using forged licenses, illegal transshipment at sea, displaying fake names or call signs on a vessel, fishing in prohibited areas/with prohibited gear, use of flags or ports of non-compliance with little or no effective controls, and failure to comply with reporting or other information requirements.

Even worse, some IUU fishers are known to kidnap people to work as crew, then murder them or throw them overboard. Many are involved in transnational crimes including smuggling drugs, people, and arms. They engage in bribery and blackmail of government officials, document fraud, and money laundering. Fraud throughout the food supply chain is reflected by practices such as mislabeling.

In 2009, the total value of IUU fishing worldwide was reported to be between US$10 billion and US$23 billion annually, representing between 11.06 million and 25.91 million tonnes of fish.¹ By 2014, members of the Food and Agriculture Organization of the United Nations (FAO) recognized that the magnitude and characteristics of IUU fishing were likely to have changed significantly since

¹ D.J. Agnew et al., 2009. “Estimating the Worldwide Extent of Illegal Fishing,” PLoS 4, no. 2 (2009), doi.org/10.1371/journal.pone.0004570.
that study. To address this, a 2015 FAO Expert Workshop proposed, *inter alia*, that FAO develop technical guidelines to estimate IUU fishing.2

The changes in IUU fishing are driven by several key factors, in addition to the status and value of the stocks. One is the continuing developments in technology that benefit IUU fishers such as improvements in satellite fish finding, gear, and vessel capabilities.

To balance this, technologies for information systems that support compliance and enforcement are emerging or being strengthened. They include electronic tracking, electronic reporting, and electronic monitoring. It is expected that such analyses and trials will expand in future as technologies are further developed.

Another major factor that could affect the changing characteristics of IUU fishing relates to subsidies. In April 2017, most World Trade Organization (WTO) members expressed support for prohibiting subsidies for IUU fishing with no exceptions and many members identified as a ‘critical area for action’ at the December 2017 WTO Ministerial Conference an outcome on fisheries subsidies.

The role of markets is obvious; IUU fishers aim to profit, and where the markets dry up because of consumer preference for sustainably caught fish and increasing use of catch documentation schemes and traceability tools, the characteristics of IUU fishing will be impacted. Civil society is expanding its initiatives to partner with industry and foster consumer demand for sustainably caught seafood, as described below.

The above factors impact the characteristics of IUU fishing, and also serve as a basis upon which many compliance and enforcement measures are built. Such measures require a robust legal and procedural basis at all levels—international, regional, and national. This essay describes existing international instruments, trends in regional measures and—most important for implementation—forward-looking provisions to be considered for national legislation. The legislation, in turn, provides the foundation for operational procedures and technical/technological measures.

This essay elaborates the provisions in national legislation that must be considered to implement specific compliance and enforcement measures, and enable their implementation through supporting provisions, such as interpretation, institutions, evidence, and jurisdiction. Without such provisions, compliance and enforcement cannot exist and without regular review of such

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2 Food and Agriculture Organization of the United Nations (FAO), *Report of the Expert Workshop to Estimate the Magnitude of Illegal, Unreported and Unregulated Fishing Globally*, Rome, 2–4 February 2015, FAO Fisheries and Aquaculture Report No. 1106 (Rome: FAO, 2015), http://www.fao.org/3/a-i5028e.pdf.
provisions to adapt to changing characteristics of IUU fishing and means of addressing it, compliance and enforcement suffer.

In this essay, *compliance* generally refers to the level of conformity with the law; it can be voluntary and improved by deterrence. *Enforcement* refers to activities that compel conformity with the law, and may include inspection, surveillance/monitoring, investigation, arrest, prosecution, fines, suspensions, forfeitures, and other penalties or sanctions. *Monitoring, control, and surveillance* (MCS) activities support both. Reference in this essay to ‘IUU fishing’ includes ‘fishing related activities’\(^3\) because of their inclusion in many international instruments. This essay focuses on the larger scale IUU fishing, mindful that smaller-scale fishing is also adversely affected but that different, but not dissimilar, enforcement and compliance mechanisms are needed.

### International and Regional Framework

#### International Fisheries Instruments

The crusade against IUU fishing was taken to FAO, where in 2001 an International Plan of Action to Prevent, Deter and Eliminate IUU Fishing (IPOA-IUU) was adopted. A voluntary instrument, it defined IUU fishing\(^4\) and built upon the approach discussed in CCAMLR, describing actions and measures to be taken by all states, flag states, coastal states, and port states and internationally agreed market-related measures. It has served as a foundation for development of a wide range of regional and national plans of action to combat IUU fishing.

The international community intensified its efforts to develop additional international instruments to address various aspects of IUU fishing, including the legally-binding 2009 FAO Agreement on Port State Measures to Prevent, Deter and Eliminate IUU Fishing.\(^5\) Its aim was to provide for cost-effective enforcement through harmonized minimum standards, including for information and inspection, for denial of entry into, or use of, port for vessels where evidence shows IUU fishing activities. The IUU fishers suffer significant economic loss and may be subject to prosecution.

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\(^3\) ‘Fishing related activities’ means any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, transhipping or transporting of fish that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear and other supplies at sea.

\(^4\) Definitions are in Paragraph 3 and apply nationally and regionally. See [http://www.fao.org/fishery/ipoa-iuu/legal-text/en](http://www.fao.org/fishery/ipoa-iuu/legal-text/en).

\(^5\) Entered into force in 2016. See [http://www.fao.org/3/a-i644t.pdf](http://www.fao.org/3/a-i644t.pdf).
From 2009, several voluntary FAO international guidelines were adopted that would serve as useful tools in combating IUU fishing,\(^6\) importantly including the 2014 Voluntary Guidelines for Flag State Performance.\(^7\) They were all based on the 1982 United Nations Convention on the Law of the Sea and the 1995 United Nations Fish Stocks Agreement and contained strengthened and synergistic measures relating to fisheries monitoring, control, and surveillance.

**Regional Fisheries Management Organizations**

Regional fisheries management organizations (RFMOs) have mandates to adopt CMMS that are legally binding on their members and, in most cases, co-operating non-members. The measures may apply to areas within and beyond national jurisdiction, depending on the competence of the RFMO. They have adopted a wide range of CMMS establishing compliance tools, including establishment of IUU vessel and authorized vessel lists, observer schemes, requirements relating to vessel monitoring systems (VMS), reporting, transshipment, port state measures, flag state responsibilities, catch documentation schemes, unique vessel identifiers,\(^8\) and import–export requirements.\(^9\)

**Regional Economic Integration Organization**

The European Union (EU) has developed robust sanctions against IUU fishing. Measures against IUU fishing have been identified, and in respect of IUU fishers, the sanctions aim to reduce revenue and to increase operating and capital costs and the cost of the risk of doing business.\(^10\) The 2010 EU IUU Regulation

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6. These include the International Guidelines on Bycatch Management and Reduction of Discards and International Guidelines for the Management of Deep-sea Fisheries in the High Seas (http://www.fao.org/fishery/code/guidelines/en) and the Voluntary Guidelines for Catch Documentation Schemes, which were developed for adoption in 2017 (http://www.fao.org/fi/static-media/MeetingDocuments/CDS/TC2016/wpAnnex.pdf).

7. See http://www.fao.org/3/a-i4577t.pdf. See also K. Erikstein and J. Swan, “Voluntary Guidelines for Flag State Performance: A New Tool to Conquer IUU Fishing,” *International Journal of Marine and Coastal Law* 29, no. 1 (2014): 116–147.

8. The tuna RFMOs have adopted requirements for unique vessel identifiers.

9. Performance reviews of RFMOs continue to make recommendations on strengthening compliance and enforcement. See M. Ceo et al., *Performance Reviews by Regional Fishery Bodies: Introduction, Summaries, Synthesis and Best Practices*, Volume 1, FAO Fisheries and Aquaculture Circular. No. 1072 (Rome: FAO, 2012).

10. M. Beke and R. Blomeyer, *Illegal, Unreported and Unregulated Fishing: Sanctions in the EU* (Brussels: Directorate General for Internal Policies, European Parliament, 2014), http://www.europarl.europa.eu/RegData/etudes/STUD/2014/529069/IPOL_STU%282014%29529069_EN.pdf.
includes various tools to control fishing activities such as an IUU vessel list. Member States are to adopt appropriate measures, allocate adequate financial, human and technical resources, and set up all administrative and technical structures necessary for ensuring control, inspection, and enforcement.

**INTERPOL**

INTERPOL has intensified its activities to address IUU fishing through project **SCALE**, which was launched in 2013, mindful that the fishing industry is vulnerable to various types of international organized crime. It supports member countries in identifying, deterring, and disrupting transnational fisheries crime. It has contributed to discussions on fisheries crime in the United Nations Office on Drugs and Crime.

**Civil Society**

Civil society has played an important role in supporting the development and implementation of measures to combat IUU fishing, including as observers in international organizations and RFMOs.

Organizations that are using emerging technologies to identify IUU fishing by individual vessels include Global Fishing Watch (Google, Oceana, and Skytruth), which makes satellite-based VMS data available to the public, and Fish Spektrum, which uses automatic identification system (AIS) data from the Marine Traffic database.

**National Measures to Improve Compliance and Enforcement**

It is vital that national laws and procedures implement current and emerging international and regional obligations, including minimum standards for harmonization, and respond to the continuously changing characteristics of IUU fishing. This will strengthen governance at all levels, reward legitimate fishers, and tighten the net around the IUU fishers and their beneficiaries. Key legal and procedural recommendations for strengthening and supporting compliance and enforcement measures appear below.

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11 Based on Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate IUU fishing, OJ L 286/1 (29 October 2008).

12 See “Project Scale,” Interpol, https://www.interpol.int/Crime-areas/Environmental-crime/Projects/Project-Scale.

13 For example, the Marine Stewardship Council and World Wildlife Fund have supported traceability and certification of sustainable fisheries to underpin seafood marketability.
**Legal**

National legislation should aim to achieve the following objectives to implement, and support, compliance and enforcement measures.

(a) Ensure consistency in definition of terms with international/regional instruments, including for basic terms such as ‘IUU fishing’, ‘fishing’, and ‘related activities’.

(b) Ensure clarity in institutional responsibilities for compliance and enforcement, and where several government agencies are involved, provide a memorandum of understanding for seamless interagency co-operation. Conflict of interest should be prohibited and severely sanctioned.

(c) Ensure a process for taking conservation and management measures that is clear, inclusive, and well publicized to foster compliance. A mechanism that facilitates implementation of RFMO CMMs, which are usually agreed on an annual basis, should be integrated in the law.

(d) Provide a strong legal framework for requiring true, correct, and complete information and maintaining registers for purposes of compliance/enforcement.

(e) For vessel registration and control of national vessels in areas beyond national jurisdiction, apply the FAO Voluntary Guidelines on Flag State Performance and other instruments and relevant RFMO requirements.

(f) For licensing, require full information on the vessel as required in international and regional instruments.

(g) For entry into areas under national jurisdiction by all fishing vessels, including those in transit, require reports prior to or upon entry and electronic reporting through VMS or AIS consistent with international and regional standards and compatible with equipment in the coastal State.

(h) For operations in the fisheries waters, implement extensive reporting requirements consistent with regional and international requirements.

(i) Compliance requirements must be specified comprehensively, for unlicensed and licensed vessels. The ‘operator’ of a fishing vessel should always be responsible for compliance and enforcement.

(j) For strengthened MCS authority, ensure clear institutional functions and forge interagency agreements for co-ordinated compliance and enforcement. The officers authorized to inspect and arrest should be clearly designated and trained, and observers should be empowered for scientific, monitoring, and compliance functions.

(k) Technological advances for compliance and enforcement described in the introduction, including electronic tacking, reporting, and monitoring, must be underpinned by legislation.
(l) Jurisdiction of the courts must be specified and extend to nationals (vessels and persons) in areas beyond national jurisdiction. A ‘Lacey Act’ provision should prohibit the import, trade, and other dealings with IUU-caught fish in areas beyond national jurisdiction.\textsuperscript{14} Evidentiary provisions should govern fisheries-specific activities.\textsuperscript{15}

(m) Offences must be clearly set out. All too often legislation simply summarizes offences in a few sections, leaving unenforceable gaps.\textsuperscript{16}

(n) To address situations where judges do not realize the seriousness of fisheries offences, the legislation should include judicial guidelines for determining and penalizing offences and a range of liabilities, fines, and penalties.

\textit{Procedures, Institutions, and Capacity Development}

Procedures that assess risks of IUU fishing activity should be developed that target enforcement operations to the most significant risks. MCS procedures should be based on legislation and regional/international obligations and cooperation, and arrangements for interagency co-operation. They should be integrated as appropriate with regional/international organizations and partners. Human capacity development, including training for legal, compliance and enforcement personnel of all relevant agencies, and public awareness-raising, all support efforts to address IUU fishing.

\textit{Conclusion}

In two decades, the international community has made great strides in developing tools for the compliance and enforcement of IUU fishing. Among the challenges that still lie ahead are staying ahead of the changing characteristics of IUU fishing and ensuring that the innovative measures and tools to address them are activated at regional levels and entrenched in national laws and processes.

\textsuperscript{14} See “Lacey Act,” US Fish & Wildlife Service, International Affairs, https://www.fws.gov/international/laws-treaties-agreements/us-conservation-laws/lacey-act.html.

\textsuperscript{15} For example, they could include reversal of onus of proof as appropriate.

\textsuperscript{16} Many countries append a schedule to the act that sets fines for each relevant section and can be amended by regulation.