

HYPOCRISY ON THE HIGH SEAS: AN EXAMINATION OF THE CONFLICTING POLICY GOALS AND ACTIONS OF THE INTERNATIONAL COMMUNITY REGARDING ILLEGAL, UNREPORTED, AND UNREGULATED FISHING

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Fish and the fishing industry are one of the main sources of food protein and commerce in many areas of the world, whether it be from traditional and artisanal fishing practiced in Somalia and other undeveloped countries or large scale international commercial fishing from rich and industrialized nations. The world's oceans are currently being plagued by overfishing both from legally authorized activities and Illegal, Unreported, and Unregulated Fishing. The purpose of this paper is to examine the problems plaguing the world's fisheries with an eye towards the environmental damage and economic harm that stem from it. It is also to also examine the current systems in place working to combat Illegal, Unreported, and Unregulated Fishing on the international stage; and to attempt to form a comprehensive solution to the issues presented.

WHAT IS IUU FISHING?

IUU Fishing stands for Illegal, Unreported, and Unregulated Fishing according to the Food and Agriculture Organization (FAO) of the United Nations.¹ IUU Fishing

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¹ “3.1 Illegal fishing refers to activities: 3.1.1 conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations; 3.1.2 conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or 3.1.3 in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization. 3.2 Unreported fishing refers to fishing activities: 3.2.1 which have not been reported, or have been misrepresented, to the relevant national authority, in contravention of national laws and regulations; or 3.2.2 undertaken in the area of competence of a relevant regional fisheries management organization which have not been reported or have been misrepresented, in contravention of the reporting procedures of that organization. 3.3 Unregulated fishing refers to fishing activities: 3.3.1 in the area of application of a relevant regional fisheries management organization that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization; or 3.3.2 in areas or for fish stocks in relation to which there are no applicable conservation or

covers all manner of fishing and fishing related activities that are against a country or the international community's legislation, statutes, and/or customary law (Illegal); any fishing related activity that does not log and track all catch information and provide that data to relevant fishery authorities (unreported); and it also covers activities by vessels engaging in fishing out of season, or not operating under the authority of a sovereign nation (unregulated).² The impacts of IUU Fishing are far reaching and can have impacts on the environment, oceanic wildlife stocks, global economies, and public policy³.

WHY IS IUU FISHING A PROBLEM?

Fifty percent of the world's population lives near an ocean,⁴ and about ninety seven percent of the world's fishermen come from or live in developing countries⁵ where fishing accounts for a majority of the community's income and food source⁶. Fish is also one of the most popular animal proteins consumed around the world with seventeen percent of the world's animal protein coming from fish⁷; this number can rise as high as fifty percent of a developing country's animal protein consumption⁸. According to the United Nations, over eighty percent of the world's fish stocks⁹ are either fully exploited or over-exploited already and that is only accounting for the

management measures and where such 3 fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law. 3.4 Notwithstanding paragraph 3.3, certain unregulated fishing may take place in a manner which is not in violation of applicable international law, and may not require the application of measures envisaged under the International Plan of Action` (IPOA).” INTERNATIONAL PLAN OF ACTION TO PREVENT, DETER, AND ELIMINATE ILLEGAL, UNREPORTED, AND UNREGULATED FISHING, INTERNATIONAL PLAN OF ACTION TO PREVENT, DETER, AND ELIMINATE ILLEGAL, UNREPORTED, AND UNREGULATED FISHING 2–3 (2001).

² *Id.*

³ Leticia M. Diaz & Barry Hart Dubner, *Foreign Fishing Piracy vs. Somalia Piracy - Does Wrong Equal Wrong*, 14 *Barry L. Rev.* 73 (2010). “Illegal, unregulated, and unreported (IUU) fishing presents a serious problem globally, in that it does not respect the national boundaries of sovereigns; it puts an unsustainable pressure on stocks among marine life and habitats; and, it undermines labor standards and distorts markets.”(Referencing HIGH SEAS TASK FORCE, *CLOSING THE NET: STOPPING ILLEGAL FISHING ON THE HIGH SEAS 1* (2006), <http://www.high-seas.org>, then click on documents.)

⁴ THE OCEAN CONFERENCE FACT SHEET, UNITED NATIONS CONFERENCE ON THE OCEAN, 1–7 (2017). About 10% of the population live in coastal areas 10m or less above sea level and about 40% of the population live within 100m of a coastal area.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* The data on fish stock overconsumption is based on data available for fisheries and populations being tracked, leaving a hole in the analysis due to the fact that the numbers could be skewed if better information was available.

species and fisheries where data is already being collected¹⁰. It has also been estimated that IUU Fishing accounts for at least twenty percent of the world's fish yields¹¹. The issue of knowing how many fish are left in a certain fishery or ocean is an almost impossible task for a variety of reasons, such as climate change; ocean temperature; human activity; what forms of tracking is being done; who is collecting the information; and for what purpose.¹²

IUU Fishing equipment also accounts for about ten percent of the pollution dumped into the ocean,¹³ and much like pirates that are dumping oil and weapons to reduce weight and evade capture¹⁴ and prosecution¹⁵, IUU Fishing vessels routinely dump gear and catch overboard¹⁶ when they are noticed because many if not all IUU Fishing vessels are using illegal fishing gear¹⁷. This in turn damages the environment because of the direct pollution,¹⁸ but also because then the pursuit vessel must choose between continuing pursuit to maybe capture a vessel which has now dumped all

¹⁰ *Id.*

¹¹ *Id.*

¹² “Turning now to the use of statistics, your authors learned that any discussion of statistics regarding the amount of fish left in the ocean is misleading or incomplete at times. As an example, due to climate change, fish populations are moving to colder waters in certain areas of the world. The New York Times reported that due to fish migrating from normal feeding grounds, the regulations/rules regarding catches in specific regions are becoming obsolete.’⁷ In June 2016, there was a review of studies estimating IUU fishing and the methodologies utilized to achieve those ends.’⁸ This was a good example of acknowledging the IUU problem but proving such problems exist is proving difficult. Under this report, there are many methodologies being utilized to estimate/determine IUU catch,¹⁹ but many estimates are simply incorrect because the methodologies are inconsistent.” Barry Hart Dubner & Loany M. Vargas, On the Law of Pirate Fishing and Its Connection to Human Rights Violations and to Environmental Degradation - A Multi-National Disaster, 48 J. Mar. L. & Com. 103 (2017).

¹³ *Id.* at note 4.

¹⁴ Barry Hart Dubner, On the Interplay of International Law of the Sea and the Prevention of Maritime Pollution - How Far Can a State Proceed in Protecting Itself from Conflicting Norms in International Law, 11 Geo. Int'l Envtl. L. Rev. 137 (1998). Professor Barry Hart Dubner discusses the environmental problems associated with the pursuit and capture of pirate vessels.

¹⁵ *Id.*

¹⁶ *Id.* at note 12. “There is also grave environmental damage specially by vessels using prohibited gear such as drift nets that catch non-target species including sharks, turtles, dolphins or that injure coral reefs, sea mounts, and other aspects of the marine ecosystem. This is a reminder that these practices cost the global economy up to 23 billion dollars annually, which represents 20 percent of the global seafood catch.”

¹⁷ Hoegh-Guldberg et al., CORAL REEF ECOSYSTEMS UNDER CLIMATE CHANGE AND OCEAN ACIDIFICATION FRONTIERS (2017), <https://www.frontiersin.org/articles/10.3389/fmars.2017.00158/full>. “Key drivers of the destruction of cold-water reefs include commercial bottom trawling, hydrocarbon exploration and production, deep sea mining, cable and pipeline placement, pollution, waste disposal, coral exploitation, and trade, and destructive scientific sampling.”

¹⁸ *Id.* at note 4. “Abandoned, lost, or discarded gear accounts for 10% of the ocean's pollution.”

evidence of the crimes committed¹⁹; or ending the pursuit and collecting the dumped gear which allows evidence to be collected to build a case against the perpetrators²⁰. This solves the problem created in the first option, however, it allows IUU fisherman to evade capture and potentially change their ship's registration²¹, and continuing the IUU Fishing activities in another area. The dumping of equipment creates another problem in and of itself with the occurrence "Ghost Fishing" where gear that is either dumped or lost continues to capture and kill marine life²².

Other problems arising within the scope of IUU Fishing are defining what activities constitute IUU Fishing; who has authority and jurisdiction to capture an IUU Fishing vessel²³; what country has the authority to prosecute the vessel; and will the vessel be prosecuted even if captured?

WHAT AUTHORITIES REGULATE THE HIGH SEAS?

At the heart of any international treaty, law, policy, or activity related to the ocean²⁴ is the United Nations Convention on the Law of the Sea (UNCLOS)²⁵. UNCLOS is the highest authority regarding the law of the ocean and maritime policy and any instrument covering fishing, transportation, travel, or commerce on the high seas that is valid under the authority of the United Nations must do so in conformity

¹⁹ Ian Urbina, A RENEGADE TRAWLER, HUNTED FOR 10,000 MILES BY VIGILANTES THE NEW YORK TIMES (2015), https://www.nytimes.com/2015/07/28/world/a-renegade-trawler-hunted-for-10000-miles-by-vigilantes.html?WT.mc_id=2015-AUGUST-OUTBRAIN-EMAILED_AUD_DEV-0801-0831&WT.mc_ev=click&ad-keywords=AUDDEVREMARK&_r=0.

²⁰ *Id.*

²¹ *Id.*

²² US Department of Commerce & National Oceanic and Atmospheric Administration, WHAT IS GHOST FISHING? NOAA'S NATIONAL OCEAN SERVICE (2011), <https://oceanservice.noaa.gov/facts/ghostfishing.html>.

²³ *Id.* at note 3. Professors Dubner and Diaz' paper examines the issues regarding defining IUU fishing in regard to the conflicting interests of the parties at play.

²⁴ "Having regard to the relevant provisions of the 1982 United Nations Convention on the Law of the Sea and the 1995 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; Committed to promoting and conducting marine scientific research and to basing their respective management measures for the relevant stocks on the best scientific advice..." All treaties read in regard to maritime policy by this author have some variation on this language giving lip service to UNCLOS.

Protocol between the Government of Iceland and the Government of Norway under the Agreement between the Government of Iceland, the Government of Norway and the Government of the Russian Federation concerning Certain Aspects of Co-operation in the Area of Fisheries Treaty | Bilateral | St. Petersburg | May 15, 1999.

²⁵ UNCLOS, UNITED NATIONS, https://www.un.org/Depts/los/convention_agreements/texts/unclos/UNCLOS-TOC.htm.

UNCLOS. The aspirational goal of UNLCOS was to create a comprehensive framework to guide nations and provide a common set of goals and aspirations, specifically due to the fact that all nations depend on the ocean and the ocean connects all aspects Earth²⁶. The environmental damage caused by IUU Fishing is not strictly inherent to IUU Fishing however, as legitimate commercial fleets cause the same types of harm that IUU vessels create²⁷. UNCLOS, being regarded by some as the Constitution of the Oceans, was set forth to regulate the legally authorized activities since laws, by their very nature, cannot cover the lawbreaker. Issues concerning ballast water discharge, fouling of hulls, illegal or improper fishing gear, and over exploitation are endemic to seafaring vessels across the board and have been contemplated under the Authority of UNCLOS through instruments such as the Ballast Water Convention²⁸ and the International Convention on the Control of Harmful Anti-Fouling Systems on Ships²⁹.

The specific regulation of maritime fishing is controlled by a myriad of national laws, international laws and customs, regulatory agencies, policy development agencies, scientific organizations, and activist groups. These various levels of policymaking and regulation enforcement happen in different contexts within the zones set by international law which establish the jurisdictional authority of coastal states regarding the ocean.³⁰ The zones and their correspondent jurisdiction break down as

²⁶ Overview - Convention & Related Agreements, UNITED NATIONS, https://www.un.org/depts/los/convention_agreements/convention_overview_convention.htm.

²⁷ *Id.* at note 4.

²⁸ BWMConventionandGuidelines BWM Convention and Guidelines // , BWM CONVENTION AND GUIDELINES, <http://www.imo.org/en/OurWork/Environment/BallastWaterManagement/Pages/BWMConventionandGuidelines.aspx>.

²⁹ international-convention-on-the-control-of-harmful-anti-fouling-systems-on-ships-(afs) //, INTERNATIONAL CONVENTION ON THE CONTROL OF HARMFUL ANTI-FOULING SYSTEMS ON SHIPS (AFS), [http://www.imo.org/en/About/conventions/listofconventions/pages/international-convention-on-the-control-of-harmful-anti-fouling-systems-on-ships-\(afs\).aspx](http://www.imo.org/en/About/conventions/listofconventions/pages/international-convention-on-the-control-of-harmful-anti-fouling-systems-on-ships-(afs).aspx).

³⁰ According to Article 8(1) of UNCLOS internal waters of a State are the waters on the landward side of the baseline from which the breadth of the territorial sea is measured. According to Article 3 of UNCLOS, every State has the right to establish its territorial sea up to 12 nautical miles from its baselines. The sovereignty of a coastal State extends to the territorial sea. According to Article 33(2) of UNCLOS, the contiguous zone could extend up to 24 nautical miles from the baselines from which the breadth of the territorial sea is measured. Coastal States may exercise its jurisdiction over the contiguous zone with a view to preventing and punishing infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea. According to Article 57 of UNCLOS, the **exclusive** economic zone is a 200 nautical miles zone from the baselines. Coastal States have sovereign rights in this zone for exploring and exploiting, conserving and managing the living or non-living natural resources, and for the economic exploitation and exploration of the zone, such as, the production of energy, resources, etc. According to Article 86 of UNCLOS, **high seas** are parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State.

UNCLOS, UNITED NATIONS, https://www.un.org/Depts/los/convention_agreements/texts/unclos/UNCLOS-TOC.htm.

follows: internal waters and territorial sea, which constitute a part of the corresponding nation's sovereign territory and over which all national laws and regulations apply; the contiguous zone and the exclusive economic zone, where a coastal state has diminished sovereignty but can enforce certain aspects of national policy and regulation; and finally the high seas, where the concept of *Mare Liberum*, or, the Freedom of the High Seas³¹, sets the stage for most of the conflict³² regarding international regulation of the high seas.

The United Nations Food and Agriculture Organization (FAO)³³—the authoritative international body regarding international fisheries policy³⁴—published *The International Guidelines for the Management of Deep-Sea Fisheries in the High Seas*³⁵ which sets forth legal framework and reporting procedures to share scientific data³⁶; it also encourages States to establish or join Regional Fisheries Management Organizations (RFMO)³⁷ in an effort to encourage cooperation across nations and set up practical and workable solutions to the problem that overfishing of the oceans presents³⁸.

Regional Fisheries Management Organizations are organizations set up between sovereign nations with the goal to share scientific data and coordinate the policy and laws governing the fishery that it covers³⁹. The International Commission for the

³¹ According to Article 87 of UNCLOS

1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, *inter alia*, both for coastal and land-locked States: (a) freedom of navigation; (b) freedom of overflight; (c) freedom to lay submarine cables and pipelines, subject to Part VI; (d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI; (e) freedom of fishing, subject to the conditions laid down in section 2; (f) freedom of scientific research, subject to Parts VI and XIII.

2. These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.

UNCLOS, UNITED NATIONS,

https://www.un.org/Depts/los/convention_agreements/texts/unclos/UNCLOS-TOC.htm.

³² For a more thorough discussion into the interplay between national law/policy and international law/policy/custom see: *Id.* at note 12.

³³ Home, FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, <http://www.fao.org/home/en/>.

³⁴ FAO FISHERIES & AQUACULTURE - HOME, <http://www.fao.org/fishery/en>.

³⁵ INTERNATIONAL GUIDELINES FOR THE MANAGEMENT OF DEEP-SEA FISHERIES IN THE HIGH SEAS/DIRECTIVES INTERNATIONALES SUR LA GESTION DE LA PCHE PROFONDE EN HAUTE MER/DIRECTRICES INTERNACIONALES PARA LA ORDENACION DE LAS PESQUERAS DE AGUAS PROFUNDAS EN ALTA MAR, <http://www.fao.org/3/i0816t/i0816t00.htm>.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ FAO FISHERIES & AQUACULTURE - RFMOs, <http://www.fao.org/fishery/topic/166304/en>.

Conservation of Atlantic Tuna⁴⁰ is an RFMO with 53 signatory countries⁴¹ that was established to conserve the population of Atlantic Tuna species as well as other “Tuna-like” resources⁴². RFMOs generally follow the FAO guidelines and frameworks⁴³ but they also generally include some form of local treaty or instrument governing the specific details and duties of the nations involved in that specific treaty. For example, the Protocol between the Government of Iceland and the Government of Norway under the Agreement between the Government of Iceland, the Government of Norway and the Government of the Russian Federation concerning Certain Aspects of Co-operation in the Area of Fisheries⁴⁴ is an instrument that lays out an agreement between Norway, Iceland, and Russia whereby the parties agreed to mutual cooperation in the advancement of fisheries management practices. The text of the article gives each country the authority to set fishing limits within their exclusive economic zones⁴⁵ as well as lays out the framework for the sharing of quotas and information regarding how the limits are set⁴⁶. There are also enforcement provisions⁴⁷, mechanisms and goals to encourage the sharing of technological and scientific advancement⁴⁸; as well as jurisdictional delimitations⁴⁹ and provisions dealing with IUU Fishing.⁵⁰

Another recurring⁵¹ issue in the realm of maritime governance stems from a concept known as Flags of Convenience⁵². Flags of convenience stem from a loophole in international customary law that allows for the freedom of the high seas for all nations. Small nations without the ability to enforce their laws will charge fees for allowing a ship to fly that nation’s flag knowing that allowing registration provides recurring income⁵³. Most of these states have simple processes for changing a ship’s

40

⁴¹ [Iccat.int, ICCAT CONTRACTING PARTIES. 53 ICCAT·CICTA·CICAA,](https://www.iccat.int/en/contracting.html)
[https://www.iccat.int/en/contracting.html.](https://www.iccat.int/en/contracting.html)

⁴² [Iccat.int, COMMISSION ICCAT·CICTA·CICAA,](https://www.iccat.int/en/organization.html)
[https://www.iccat.int/en/organization.html.](https://www.iccat.int/en/organization.html)

⁴³ *Id.* at note 34.

⁴⁴ *Id.* at note 19.

⁴⁵ *Id.* note 19, at Article 3.

⁴⁶ *Id.* note 19, at Article 8.

⁴⁷ *Id.* note 19, at Article 10.

⁴⁸ *Id.* note 19, at Article 8.

⁴⁹ *Id.* note 19, at Article 2.

⁵⁰ *Id.* note 19, at Article 7.

⁵¹ The New York Times ran an article in 1977 outlining a United Nations study on the problems arising from flags of convenience. 'Flag of Convenience' Ships Evade Fiscal Curbs, U.N. Study Shows, THE NEW YORK TIMES (1977), <https://www.nytimes.com/1977/04/18/archives/flag-of-convenience-ships-evade-fiscal-curbs-un-study-shows.html> (last visited Apr 26, 2020).

⁵² *Id.* at note 12. "Flags of Convenience" are issued by many countries that should be responsible for monitoring the activity of their vessels but do not have the capacity to do so. Even if they wanted to monitor IUU activities, they do not have coast guards or navies to patrol their waters. These "flags of convenience" are issued by many countries (e.g., Panama, Liberia, Albania, to name just a few). Some of these countries do not want to join Regional Fisheries Management Organizations (RFMO). So, there is really no State policing these types of vessels."

⁵³ *Id.*

registration and many IUU Fishing vessels exploit the cheap registration fees, lack of governmental oversight, ease of changing registration to avoid capture and prosecution; as well as hiding the ownership of vessels, and avoiding taxes or labor standards from more developed nations⁵⁴. International law provides generally that a vessel flying the flag of a nation is subject to the jurisdiction of that nation's laws⁵⁵, but as mentioned above, the states offering these flags of convenience generally don't have the ability⁵⁶ or desire⁵⁷ to enforce the laws against those vessels. The flip side is that due to the jurisdictional conflicts, these ships that are not being regulated by their flag state are also not able to be captured or prosecuted by other nations due to the sovereign rights of a flag state⁵⁸.

The conflict between the goals of international law and actions taken by individual states is at the heart of all issues regarding international law because at the end of the day, there is little to no true enforcement ability in international law. The enforcement provisions in the international instruments governing the law of the sea are fairly loose⁵⁹, generally leaving plenty of room for nations to simply disagree and ignore enforcement, back out of the agreement, or make a timely and proper objection to a provision thereby removing jurisdiction to adjudicate the case before the international community. The RFMO instrument mentioned above⁶⁰ provides a good idea of the problems regarding international instruments. At the outset, the document makes note of the aspirational goals and guiding policy of the new instrument.⁶¹ This is a great notion, however, the rest of the text of the short document is riddled with limiting language and caveats to the true imposition of authority and duty⁶². So instead of setting

⁵⁴ *Id.* "It is difficult to find out the ownership of a vessel. Fishing vessel owners can conceal their activities and identity and evade compliance with officials. The main problem is that they are not required to have a unique vessel identification number, similar to the Vehicle Identification Number (VIN) on a car. But the most important problem is this: while the IMO requires a unique form of vessel identification system, fishing vessels are exempt from the requirement to use them! Owners use flags of convenience to avoid taxes, as well as health and safety regulations from the labor laws of a developed country."

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.* at note 19.

⁶⁰ *Id.*

⁶¹ *Id.* "Having regard to the relevant provisions of the 1982 United Nations Convention on the Law of the Sea and the 1995 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; Committed to promoting and conducting marine scientific research and to basing their respective management measures for the relevant stocks on the best scientific advice;"

⁶² *Id.* "Article 2 - The Parties may agree on a reciprocal basis to *exchange annual quotas in their respective exclusive economic zones*, and to grant vessels of the other Parties access to fish quotas in their respective exclusive economic zones, taking fully into account the biological situation and

one standard for catch and dividing it up between the nations in the agreement, each country sets their own quotas for their EEZ, all of which are supposed to be under one main quota for the RFMO, then share the information and figure out how much of each fish each nation can take in each EEZ. Then comes the fact that disagreements on enforcement or regulation state that the parties will settle through consultation⁶³, but there is no authoritative body with jurisdiction to enforce the agreement or even a means to encourage an objecting state to actually participate in these consultations. Most of the reason for the enforcement provisions being weak is out of respect for the sovereignty of individual nations and the need to provide leeway for specific legal challenges in each area as the individual country implements the goal of the international community in their own manner and custom⁶⁴.

Aside from the loose enforcement provisions, simply defining the problem under each state's authority and jurisdiction presents another set of problems entirely⁶⁵. In this paper your author has used the general definition of IUU Fishing as available in the IPOA⁶⁶, however, other definitions do exist⁶⁷ and these definitions can vary even

the development of the stocks concerned, as well as the interests of the national fisheries."(Emphasis added).

⁶³ *Id.* "Article 10 - Any disagreement concerning the interpretation and application of the present Agreement will be settled by the Parties through consultations."

⁶⁴ This is an ever-pervasive theme in the study of international law.

⁶⁵ *Id.* at note 12. "The definition of "Unreported Fishing," as opposed to IUU fishing, is where fishing activities have not been reported or have been misreported to the relevant national authority in contravention of national laws and regulations, or that such activities were undertaken in the area of competence of a relevant Regional Fisheries Management Organization which have not been reported or have been misreported, etc. Unregulated Fishing concerns: (a) fishing vessels without nationalities, and those flying the flag of a State not party to the Regional Fisheries Management Organization (RFMO), or; (b) by a fishing entity in the manner that is inconsistent with or contravenes the conservation and management measures of that organization; or (c) for fish stocks that are located where there are no applicable conservation or management measures, where such fishing activities are conducted in a manner inconsistent with a State's responsibilities for conservation under international law. It is the term called "Illegal Fishing," that has been associated with the term "Pirate Fishing." In other words, the fishing vessels are being used without proper licenses or no licensing at all; and, they are fishing in a closed area or during prohibited seasons with prohibited gear or catching over prescribed quotas. The FAO states that in these cases, noncompliance may result in the quantity of catch being known but the catch may also be unknown." (Internal Citations Omitted).

⁶⁶ *Id.* at note 1.

⁶⁷ *Id.* at note 42. "Before going any further into the jurisdictional problems regarding IUU fishing, your authors will set forth certain definitions of IUU fishing. First of all, as far as "Illegal Fishing" is concerned ... , according to the FAO, "Illegal Fishing" refers to: (1) fishing activities conducted by national or foreign vessels in waters under the jurisdiction of a state without the permission of that state, or in contravention of its laws and regulations; (2) fishing, conducted by vessels flying flags of States that are parties to a relevant Regional Fisheries Management Organization, who operate in contravention of conservation of management measurements adopted by the organization; (3) and finally, IUU fishing that is in violation of national laws or international

among the same source material depending on the purposes for which the definition is being used.⁶⁸ These definitional problems extend even beyond jurisdiction into the area of scientific knowledge.⁶⁹ The studies used to estimate the number of fish in any fishery around the world are subject to the same issues⁷⁰ and in doing so, run into the issues presented below in regard to the regulation of IUU Fishing, piracy, environmental protection policy.

CONFLICT OF REGULATION BETWEEN PIRACY CRIMES AND IUU FISHING

The conflict between the goals and aspirations of industrialized nations at the helm of organizations like the UN⁷¹ is readily apparent when analyzed through a narrow lens like what happened with Somalian fishing and piracy. When it comes to activities regulating and enforcing crimes of piracy and IUU Fishing, the industrialized nations tend to place their own developmental or economic interests above the protection and safety of the natural environment or the local fisherman.⁷² A great example of the conflicting issues surrounding regulation of the high seas can be seen by exploring what happened in West African waters in the 1990s. Africa is one of the poorest continents on the planet⁷³; it has also been estimated that IUU Fishing accounts for

obligations, including those undertaken by cooperating States that belong to a relevant Regional Fisheries Management Organization.”

⁶⁸ See notes 42 and 44. Both definitions come from: *Id.* at 12. (The authors are attempting to display the issues regarding definition and jurisdiction in regard IUU fishing therefore they walk through the issues of different definitions regarding IUU Fishing.)

⁶⁹ *Id.* (Speaking in regard to a chart found on page 115) “The reader can see that the diagrams are very inconsistent, because the studies concentrate on different areas or types of fish. Approximately 12 studies estimate IUU fishing specifically for yellow nets, long lines, pot/slash traps, or trawling. Seventeen of the 44 studies (39%), estimate IUU fishing as it pertains not just to commercial fishing, but also to recreational and/or subsistence fishing.^{3 7} The types of fishing fleet and fishing gears covered in the studies are given so as to estimate IUU Fishing. (See tables 1 and 2 below) You may ask, what is the purpose of having these studies? It is said that in order to get a truer picture of the impacts of catches on sustainability and the methodologies used, the analysts need to reconstruct catches, often adding recreational as subsistence catches to known commercial catch. Looking at the tables,³⁹ the quantity of unknown catch can be estimated, but the origin is often unknown - "...whether it is illegal or not illegal based on the definitions in the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU) (for instance discarding and reporting discarded quantities is rarely illegal, even though it's assumed by many to be IUU)." 4 0 The Report further goes into techniques showing that there is a use of stock assessment models in order to estimate total catch of a species; using trade data or another combination of high level statistics "(landings, catches, imports, exports, transshipments to estimate total catcher trading volumes.)"

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ AU-IBAR 2016. Economic, Social and Environmental impacts of Illegal, Unreported and Unregulated Fishing (IUU) in Africa. A Plan of Action; Advocacy Paper. AU-IBAR Reports.

around twenty percent of global marine stock capture⁷⁴ however, newer estimates place that number closer to fifty percent⁷⁵ and another estimate stated that IUU Fishing constituted nearly eighty percent of the fish captured from African waters⁷⁶. With the international community apparently concerned with fish stock and environmental damage in other waters, they overlook the resulting harm that their decisions cause⁷⁷.

A lack of strong central governance in Somalia⁷⁸ set the foundation for these issues which reinforced the problems because most of the large scale IUU Fishing did not come from Somalian or even African vessels⁷⁹. It was noted that nations such as China, Russia, Spain, Japan, and Poland⁸⁰ were the culprits of the overfishing. This brought to light the conflict previously noted; all of the abovementioned states purported to be engaged in IUU Fishing in Somalian waters are members of UNCLOS⁸¹. Remember that IUU Fishing in African waters accounted for as much as eighty percent of the local catch⁸² which was not only detrimental to Somalian fishers⁸³, but actually created the overexploitation problems seen in other oceans⁸⁴. Additionally, all members of UNLCOS are supposed to be committed to the conservation and preservation of the oceans and their stock⁸⁵; the development of best available or practical environmental practices⁸⁶, and safeguarding the right of developing nations to utilize the freedom of the high seas towards their own benefit and development⁸⁷.

The encroachment upon Somalian fishing waters by foreign vessels is actually what gave rise to the surge in piracy in Somalia through the 1990s⁸⁸. Due to the fact

⁷⁴ *Id.* at note 4.

⁷⁵ *Id.* at note 21.

⁷⁶ *Id.*

⁷⁷ *Id.* at note 3. "International demand for marine products has been increasing, but the Asian seas are overfished and the EU closed much of its fishing waters for up to 15 years in order to allow for fish regeneration. As a result, for the last nineteen years, "fishing piracy" has consisted of criminal poaching and wanton destruction of the Somali marine waters. This illegal fishing is economically and environmentally damaging to Somalia."

⁷⁸ *Id.* at note 3. Professor's Diaz and Dubner give an excellent summary of the history of Somalian Piracy and IUU fishing; for the purposes of this paper a complete review is unnecessary because it is meant to be an overview of the problems associated with IUU Fishing and analysis of the potential solutions being discussed.

⁷⁹ *Id.* at note 21.

⁸⁰ *Id.* at note 21.

⁸¹ Declarations or Statements upon UNCLOS ratification, UNITED NATIONS, https://www.un.org/depts/los/convention_agreements/convention_declarations.htm (last visited Apr 25, 2020).

⁸² *Id.* at note 21.

⁸³ *Id.*

⁸⁴ *Id.* at note 3.

⁸⁵ UNCLOS, UNITED NATIONS, https://www.un.org/Depts/los/convention_agreements/texts/unclos/UNCLOS-TOC.htm.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* at note 3.

that Somalian fishers could no longer make profits because of the large scale fishing occurring in their traditional waters, they turned to violence whereby they would capture ships and hold them for ransom⁸⁹. The point was not indiscriminate violence or even the theft of the vessels; the base rationale was survival. The hypocrisy of the international community's stated goals was not lost on the Somalian people, and from a certain point of view it has been argued that the U.N., NATO, and the EEU were passing resolutions to protect their own vessels from Somalian pirates vessel attacks⁹⁰; the activities they were protecting from piracy are the same activities that threatened Somalian and African waters⁹¹. Basically, the industrialized nations with lots of money and military strength were allowing their own ships to continue the same destructive behavior that caused depletions in stock in Asian and European waters⁹² and then labeling the Somalian people pirates for simply trying to eek out a living while large international fleets destroyed another ecosystem⁹³.

Another perfect example of the conflict between policy goals and actions comes from the issues faced by the International Convention for the Conservation of Atlantic Tuna, or ICCAT⁹⁴. In 2008 the scientists at ICCAT noted that the Atlantic Bluefin Tuna stocks had become critically overexploited⁹⁵ and severe limits needed to be imposed on the capture of Bluefin⁹⁶. The organization leaders set the policy above the limits recommended by science because the fishing industry was worried about lost profits⁹⁷. In 2009 the same scientists noted that the Bluefin population was at around 15% of its original size and that a moratorium must be placed on the capture to prevent disaster and allow the stock time to replenish⁹⁸. The policymakers at the top took note of this and reduced the catch limit to 13,500 pounds of tuna for the year⁹⁹ which prompted the

⁸⁹ *Id.*

⁹⁰ Hamza Mohamed, THE OTHER SIDE OF SOMALIA'S PIRATES POVERTY & DEVELOPMENT | AL JAZEERA (2015), <https://www.aljazeera.com/indepth/features/2015/02/side-somalia-pirates-150225112818517.html>.

⁹¹ *Id.* "This illegal fishing is economically and environmentally damaging to Somalia. So, from the Somali point of view, while the U.N. was passing resolutions, and NATO and the E.E.U. were issuing decrees and orders to invade Somali seas to attack pirates, why did the concerned states not protect the Somali marine resources from violations in the same waters?" From this viewpoint, the U.N., NATO forces, the European Union, Russia, Japan, India, Egypt, Yemen, and others are only concentrating on the safety of merchant ships, while at the same time covering up and protecting their own illegal fishing activities."

⁹² *Id.* at note 3.

⁹³ *Id.*

⁹⁴ *Id.* at note 39.

⁹⁵ Anjali Nayar, BAD NEWS FOR TUNA IS BAD NEWS FOR CITES NATURE NEWS (2010), <https://www.nature.com/articles/news.2010.139>.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

conservationist community to give ICCAT the nickname “The International Conspiracy to Catch All Tuna¹⁰⁰.”

HOW CAN THE FRAMEWORKS IN PLACE BE BETTER UTILIZED?

The international community has a specific document, treaty, or instrument, as well as teams dedicated to achieving their stated goals for almost every single issue mentioned in this paper, whether it be UNLCOS¹⁰¹, MARPOL¹⁰², the IPOA¹⁰³, or ICCAT¹⁰⁴, etc.. The world is not in need of another treaty; the world is in need of a plan of action that all countries can agree upon and will agree upon that not only lays out a framework for how the ecosystems are managed but how the international community will enforce those standards and protect the oceans for the benefit of all nations¹⁰⁵. It is not an easy task, but it is one that has already begun¹⁰⁶. 168 States¹⁰⁷ have agreed to UNCLOS¹⁰⁸, that means that 168 States have agreed to aspire to extremely lofty¹⁰⁹ goals and principles¹¹⁰ regarding mankind’s future relationship with the oceans¹¹¹. Based on the continuing need to update goals for actualization of these

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at note 25.

¹⁰² International-Convention-for-the-Prevention-of-Pollution-from-Ships-(MARPOL) International Convention for the Prevention of Pollution from Ships (MARPOL) // , INTERNATIONAL CONVENTION FOR THE PREVENTION OF POLLUTION FROM SHIPS (MARPOL), [http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-\(MARPOL\).aspx](http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-(MARPOL).aspx) (last visited Apr 26, 2020).

¹⁰³ *Id.* at note 1.

¹⁰⁴ *Id.* at note 33.

¹⁰⁵ *Id.* at note 14. “The framework necessary for the process is in place, but a boost is occasionally needed to maintain the evolution.”

¹⁰⁶ *Id.* at note 25.

¹⁰⁷ International Tribunal for the Law of the Sea Tribunal international du droit de la mer, WWW.ITLOS.ORG: STATES PARTIES, <https://www.itlos.org/the-tribunal/states-parties/>.

¹⁰⁸ *Id.* at note 25.

¹⁰⁹ *Id.* at note 25. “*Article 140 - Benefit of mankind* -1. Activities in the Area shall, as specifically provided for in this Part, be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, whether coastal or land-locked, and taking into particular consideration the interests and needs of developing States and of peoples who have not attained full independence or other self-governing status recognized by the United Nations in accordance with General Assembly resolution 1514 (XV) and other relevant General Assembly resolutions.” 2. The Authority shall provide for the equitable sharing of financial and other economic benefits derived from activities in the Area through any appropriate mechanism, on a non-discriminatory basis, in accordance with article 160, paragraph 2(f)(i).

¹¹⁰ *Id.* “*Article 141 - Use of the Area exclusively for peaceful purposes* - The Area shall be open to use exclusively for peaceful purposes by all States, whether coastal or land-locked, without discrimination and without prejudice to the other provisions of this Part.”

¹¹¹ *Id.* *Article 145 - Protection of the marine environment* - Necessary measures shall be taken in accordance with this Convention with respect to activities in the Area to ensure effective protection for the marine environment from harmful effects which may arise from such activities.

goals and policies¹¹² and the state of pollution in the oceans¹¹³, coupled with the fact that we have overfished almost all sources¹¹⁴, one could argue that there are 168 failures signed on; however, the continued fight to aspire for a better future is what shows us that these nations have not yet failed. The pause in current efforts to combat the destruction of our oceans will resume and when it does what is needed is a comprehensive framework that incorporates all aspects of UNCLOS¹¹⁵ and her progeny.

There is no system currently in place to track the movements of all ships on the ocean, and where ships can be tracked, there are extremely ineffective means of relaying that information to other states aligned with the cause¹¹⁶. This is indicative of the larger problems related to enforcement— as the adage states, there are too many cooks in the kitchen when it comes to policymaking regarding the oceans and there is not enough cooperation between nations regarding execution of those policies. The list of issues that arise when researching IUU Fishing are infinite¹¹⁷ and the policy and legislation is all intertwined making reading and understanding the issues difficult. The nations involved have established joint organizations that incorporate all aspects of the goals and legislation as an arm of the UN through the FAO, MARPOL, ICCAT, etc.; there is even already a framework for international jurisprudence and case law to arise from vis-a-vis the International Court of Justice¹¹⁸ and the International Tribunal on

To this end the Authority shall adopt appropriate rules, regulations and procedures for *inter alia*: (a) the prevention, reduction and control of pollution and other hazards to the marine environment, including the coastline, and of interference with the ecological balance of the marine environment, particular attention being paid to the need for protection from harmful effects of such activities as drilling, dredging, excavation, disposal of waste, construction and operation or maintenance of installations, pipelines and other devices related to such activities; (b) the protection and conservation of the natural resources of the Area and the prevention of damage to the flora and fauna of the marine environment.

¹¹² *Id.* at note 83.

¹¹³ *Id.* at note 4.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at note 25.

¹¹⁶ *Id.* at note 12. “There is no such thing as a uniform system for tracking fishing vessels today, and information sharing between States is almost nonexistent.”

¹¹⁷ Your author found 3 separate research guides regarding international law in regard to fishing, pollution, broad policy, all of which were so intertwined that they may as well have been one document broken into pieces but they were all written by different professors.

UPDATE: RESEARCHING INTERNATIONAL MARINE ENVIRONMENTAL LAW - GLOBALEX, https://www.nyulawglobal.org/globalex/International_Marine_Environmental_Law1.html

UPDATE: A Basic Guide to International Environmental Legal Research, UPDATE: A BASIC GUIDE TO INTERNATIONAL ENVIRONMENTAL LEGAL RESEARCH - GLOBALEX,

https://www.nyulawglobal.org/globalex/International_Environmental_Legal_Research1.html

An Introduction to International Fisheries Law Research, AN INTRODUCTION TO INTERNATIONAL FISHERIES LAW RESEARCH - GLOBALEX,

https://www.nyulawglobal.org/globalex/International_Fisheries_Law.html.

¹¹⁸ Home: International Court of Justice, HOME | INTERNATIONAL COURT OF JUSTICE, <https://www.icj-cij.org/en>.

the Law of the Sea¹¹⁹! As is always the case regarding international law, the question arises of who or what mechanisms will enforce the law? In this authors view, it should be much like every other democratic organization and be self-governed; the issue of enforcement will be ever present until the frameworks in place are utilized¹²⁰. Until the nations of the world agree to cooperate and create an international task force that enforces law, before which all nations cede some national sovereignty and agree to a single set of definitions and regulations that apply equally to all. The sovereign authority would most likely have to begin with mutual military patrols of the high seas and information sharing technology that all nations support monetarily. A joint organization that includes the ICJ or ITLOS as an adjudicative body, a mutually controlled and sponsored naval fleet to patrol strictly in the high seas¹²¹ and assist sovereign nations with local law enforcement as well as report back to the international community of violations. The most important piece, however, is the regulations themselves. All nations must be playing out of the same rulebook which would be geared as a floor beneath no country could sink. The enforcement violations against a nation should be aimed at cooperative efforts to fix the problem and not attempts to place blame and punishment against the violators. The United Nations was established in the wake of World War II to guide the world going forward and to ensure that the tragedies of that war never again occurred¹²², but the international community never did cede the sovereignty before the UN that would be required to actually foster a global community that could benefit from the amazing research and policy of such high minded organizations.

UNITED WE STAND, DIVIDED WE FALL

As of the time of writing this, the world is being wracked by a pandemic stemming from a Novel strain of Coronavirus, COVID-19¹²³. Many of the world's economies are

¹¹⁹ *Id.* at note 90.

¹²⁰ *Id.* at note 14.

¹²¹ The logistics would need to be worked out in regard to governance and control and your author is in no way advocating for a resurgence in privateering; I am simply interpreting the framework and policy in place in a manner that could potentially be modified to work as a larger governance body for nations.

¹²² Preamble, UNITED NATIONS, <https://www.un.org/en/sections/un-charter/preamble/index.html> (last visited Apr 27, 2020).

¹²³ Q&A on coronaviruses (COVID-19), World Health Organization, <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses>. "Coronaviruses are a large family of viruses which may cause illness in animals or humans. In humans, several coronaviruses are known to cause respiratory infections ranging from the common cold to more severe diseases such as Middle East Respiratory Syndrome (MERS) and Severe Acute Respiratory Syndrome (SARS). The most recently discovered coronavirus causes coronavirus disease COVID-19. COVID-19 is the infectious disease caused by the most recently discovered coronavirus. This new virus and disease were unknown before the outbreak began in Wuhan, China, in December 2019. COVID-19 is now a pandemic affecting many countries globally."

in recession¹²⁴ and international policy and regulation has ground to a halt regarding IUU Fishing¹²⁵. This can be seen as terrible or it can be seen—in this author’s view—as an opportunity for reflection and guidance. The issues arising from the COVID-19 virus are currently being framed as choosing between one of two options, but this is a fallacy¹²⁶. Much like the issue presented above, the issues facing the oceans of the world are not subject to a binary choice and the conflict between the goals stated by nations and the actions taken in advancement of their economic interests must be aligned, not separated. As the international community is currently learning, all nations must stand together if the human race is to continue living on this planet; too many people in this day and age have forgotten that economies are derivative functions of the human experience¹²⁷: without people to go visit the shops and restaurants those institutions will fail¹²⁸.

In much the same manner, if humans do not begin to work together to save the oceans and maintain the environment, we will not be able to survive on our planet. As mentioned above¹²⁹, eighty percent of the world’s fish stocks are either fully or over-exploited, that means that the seventeen to fifty per cent¹³⁰ of the world that rely on fish as a primary source of animal protein¹³¹ is in danger of a food source collapse. The web of life that connects the Earth is a fragile system and the effects of complete species extinction for even one species will be catastrophic for the rest of the ecosystem¹³². It

¹²⁴ Milton Ezrati, First Statistical Signs Of The COVID-19 Recession Forbes (2020), <https://www.forbes.com/sites/miltonezrati/2020/04/01/first-statistical-signs-of-the-covid-19-recession/#1f0ab2f6999e>. “As the statistical picture of March begins to take shape, there can be little doubt of what all already knew: the COVID-19 recession has arrived.”

¹²⁵ “By decision 74/543 of 11 March 2020, the General Assembly decided to postpone the fourth session of the conference to the earliest possible available date to be decided by the General Assembly.” Intergovernmental Conference on Marine Biodiversity of Areas Beyond National Jurisdiction |, UNITED NATIONS, <https://www.un.org/bbnj/> (last visited Apr 20, 2020).

¹²⁶ Aaron E. Carroll, THERE’S REALLY ONLY ONE WAY TO REOPEN THE ECONOMY THE NEW YORK TIMES (2020), <https://www.nytimes.com/2020/04/26/opinion/coronavirus-economy-reopen.html> (last visited Apr 26, 2020).

¹²⁷ *Id.* ““The economy is just us,” said Betsey Stevenson, an economics professor at the University of Michigan.”

¹²⁸ *Id.* “But businesses do not exist in a vacuum. They need employees, some of whom will not be able to come to work because they are in a high-risk population — they are older, have chronic health conditions or care for someone that does. Others are parents whose children are still at home because schools and child-care facilities are still shuttered. They won’t easily be able to get back to their jobs. More significantly, an economy depends on consumers just as much as producers. Businesses need customers.”

¹²⁹ *Supra* note 4.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² How would a species' extinction impact the food web, our ecosystems?, LOCAL WEATHER FROM ACCUWEATHER.COM - SUPERIOR ACCURACY™, <https://www.accuweather.com/en/weather-news/how-would-a-species-extinction-impact-the-food-web-our-ecosystems/349723>.

is imperative that in this time of international pause¹³³, the nations of the world do not descend into blame and chaos, but that they use this time to become more unified so that the beautiful and lofty goals of the United Nations Charter and Convention on the Law of the Sea may rise to their fullest potential and achieve true actualization within a harmonic international community.

¹³³ Anthony Faiola, MUCH OF LIFE COMES TO A STANDSTILL AS COUNTRIES SHUT THEMSELVES OFF FROM THE REST OF THE WORLD THE WASHINGTON POST (2020), https://www.washingtonpost.com/world/much-of-life-comes-to-a-standstill-as-countries-shut-themselves-off-from-the-rest-of-the-world/2020/03/20/4d0be71c-6a3e-11ea-b199-3a9799c54512_story.html.