

'END' IUU FISHING: EXPANDING IMPLEMENTATION TO ACHIEVE SDG TARGET 14.4

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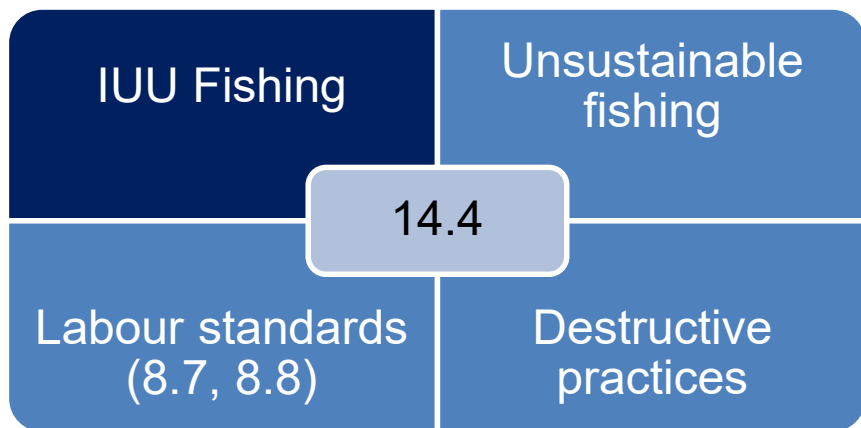
TODAY'S PRESENTATION

UN General Assembly Resolution 73/292 (9 May 2019):

- The 2020 Conference shall identify ways to implement goal 14; share experiences in implementation; and identify challenges and solutions for all goal 14 targets.
- The problem: IUU fishing.
- The (required) legal responses of all states:
 - Established: flag and coastal state duties.
 - Semi-Established (binding in treaties): port state duties.
 - Emerging (binding in treaties): state of nationality duties.
 - Expanding: market states.
- Conclusion: A net of overlapping and equipped jurisdictions.

THE PROBLEM – IUU FISHING

SDGs Target 14.4: By 2020, effectively regulate harvesting and end overfishing, illegal, unreported and unregulated fishing and destructive fishing practices and implement science-based management plans [...] (*UNGA Res. 70/1*).



IUU Fishing as broadly described:
2001 IPOA-IUU

FLAG STATES AND COASTAL STATES

Advisory Opinion – SRFC (ITLOS, 2015); *South China Sea Arbitration Award* (UNCLOS Annex VII Arbitral Tribunal, 2016).

Coastal States:

Primary responsibility for conservation and management of living resources in the EEZ.

- Adopt CMMs & enforcement procedures for all living resources.
- Take measures necessary to prevent, deter and eliminate IUU fishing in the EEZ.

Flag States:

General obligations for all maritime areas:

- Effective jurisdiction and control so as to not undermine flag state's responsibilities for conservation and management of marine living resources.
- Investigate reported cases, undertake necessary remedies, inform reporting state.

Specific obligations concerning foreign EEZs:

- Due diligence obligation ensure vessels do not conduct IUU fishing in foreign EEZs.
 - Evolves in light of new scientific knowledge or technology.
 - Prohibit fishing unless coastal state authorizes; proper vessel markings; enforcement mechanisms to monitor and secure compliance; adequate sanctions.
- Further Specificity: *Sep. Op Judge Paik* (Rule of Reference); *SCS Award* (prevent harvesting of endangered species & destruction of their habitats).

IMPLEMENTING STATES' RIGHTS & DUTIES TO COMBAT IUU FISHING

Duties

UN Fish Stocks Agreement:

port state “has the right and the **duty** to take measures, in accordance with international law, to promote the effectiveness of subregional, regional and global conservation and management measures”.

- Reiterated:
 - Numerous global instruments - soft and hard law - culminating in the *2009 Port State Measures Agreement*.
 - Regional practice – including both treaties and binding CMMs.
- EU Identification of Non-Cooperating Third States (‘yellow card’/‘red card’):
 - **Extensive** consideration of port state duties (1 red card: step I; 17 yellow cards).
 - What’s in a Duty? (2019) *IJMCL* <https://doi.org/10.1163/15718085-23341067>.

Rights

- Right to impose more extensive offences:
 - E.g. Thailand: Chotchainavee 35 and related vessels.

Foreign Flag States: Should apply pressure- *PSMA*; Prior Flag Notification- *EU 2020/21*.

STATES OF NATIONALITY AND MARKET STATES

Nationality: regulation of legal and natural persons.

Rights:

- “International law recognizes a state’s jurisdiction to prescribe law with respect to the conduct, interests, status, and relations of its nationals outside its territory”.

Obligations:

- Increasing inclusion in CMMs binding RFMO/A members.
- *Obiter dictum* by international courts and tribunals.
- EU Identification of Non-Cooperating Third States (‘yellow card’/‘red card’):
 - 7 Cases involving Asian States: 1 case general recognition, 5 cases issues raised with the sufficiency of control over nationals.

Market States

- Expansions on the Horizon:
 - USA, *NOAA Report to Congress 2019*, forthcoming expansion of foreign flag state practices reviewed concerning IUU fishing.

IMPLEMENTING STATES’ RIGHTS & DUTIES TO COMBAT IUU FISHING

THANK YOU

- Overarching theme of the 2020 Conference:
Scaling up ocean action to implement SDG 14



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