

Assessing the effectiveness of Regional Fisheries Management Organizations in combating IUU fishing

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ABSTRACT

This study provides an overview of Illegal, Unreported, and Unregulated (IUU) fishing, the relevant international legal framework, and the efforts of Ecuador, the Inter-American Tropical Tuna Commission (IATTC), and the South Pacific Regional Fisheries Management Organization (SPRFMO) in combating these practices. The primary objective is to identify areas for improvement and strengthening in the fight against IUU fishing. IUU fishing is a multifaceted challenge, spanning all maritime zones and intersecting with various issues. However, consolidating these diverse practices into a single concept ensures coherence and clarity regarding the duties and responsibilities of states and international organizations in addressing this persistent challenge in global fisheries management. The findings indicate significant interest among states in tackling IUU fishing, as evidenced by updates to regulatory frameworks, strengthened sanctions, and enhanced monitoring and control measures. However, the lack of standardization, resources, and a coherent compliance and enforcement system limits the effectiveness of these efforts. Consequently, debates and negotiations in international forums on ocean governance present significant opportunities, with existing and emerging international agreements, such as the BBNJ Agreement, offering potential to strengthen cooperation and coordination in addressing IUU fishing and other threats to the marine environment.

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LIST OF ACRONYMS

ABMTs: Area-based Management Tools

ACAP: Agreement on the Conservation of Albatrosses and Petrels

AIDCP: Agreement on the International Dolphin Conservation Program

Antigua Convention: Convention for the Strengthening of the Inter-American Tropical Tuna Commission Established by the 1949 Convention Between the United States of America and the Republic of Costa Rica

BBNJ: Biodiversity Beyond National Jurisdiction (Agreement)

CCAMLR: Commission for the Conservation of Antarctic Marine Living Resources

CCSBT: Commission for the Conservation of Southern Bluefin Tuna

CLCS: Commission on the Limits of the Continental Shelf

CMM: Conservation and Management Measures

CNCPs: Cooperating non-Contracting Parties

CNMs: Cooperating Non-Members

COFI: FAO Committee on Fisheries

COP: Conference of the Parties

CPPS: Permanent Commission for the South Pacific (Comisión Permanente del Pacífico Sur)

EAF: Ecosystem Approach to Fisheries

EIAs: Environmental Impact Assessments

EU: European Union

EEZ: Economic Exclusive Zone

FAD: Fish Aggregating Devices

FAO: Food and Agriculture Organization

FAO Compliance Agreement: Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas

GFCM: General Fisheries Commission for the Mediterranean

IAC: Inter-American Convention for the Protection and Conservation of Sea Turtles

IATTC: Inter-American Tropical Tuna Commission

ICCAT: International Commission for the Conservation of Atlantic Tunas

IFBs: Instruments and frameworks and relevant global, regional, subregional, and sectoral bodies

IMO: International Maritime Organization

IPOA-IUU: International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing

ISA: International Seabed Authority

ITLOS: International Tribunal for the Law of the Sea

IOGs: Intergovernmental Organisations

IUU fishing: Illegal, Unreported, and Unregulated fishing

IUU Regulation: Council Regulation (EC) No 1005/2008 to prevent, deter and eliminate illegal, unreported, and unregulated fishing.

LODAP: Ley Orgánica para el Desarrollo de la Acuicultura y Pesca

LSTFVs: Large-Scale Fishing Vessels

MCS: Monitoring, Control, and Surveillance

MGRs: Marine Genetic Resources

MPAs: Marine Protected Areas

NAFO: Northwest Atlantic Fisheries Organization

NEAFC: Northeast Atlantic Fisheries Commission

NGOs: Non-Governmental Organisations

NOAA: National Oceanic and Atmospheric Administration

NPFC: North Pacific Fisheries Commission

PC: The Pacific Community

PLAN PESCA INDNR-Ec: Plan de Acción Nacional para Prevenir, Desalentar y Eliminar la Pesca Ilegal No Declarada y No Reglamentada - Ecuador

PSMA: Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing

RED INDNR ALC: Red de Intercambio de Información y Experiencias Entre Países de América Latina y el Caribe para Prevenir, Desalentar y Eliminar la Pesca INDNR

RFMOs: Regional Fisheries Management Organizations

SAFE Act: Security and Fisheries Enforcement Act

SCM Agreement: Agreement on Subsidies and Countervailing Measures

SDG: Sustainable Development Goal

SEAFO: Southeast Atlantic Fisheries Organization

SPRFMO: South Pacific Regional Fisheries Management Organization

SPRFMO Convention: Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean

UN: United Nations

UNCLOS: United Nations Convention on the Law of the Sea

UNFSA: The United Nations 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/ United Nations Fish Stock Agreement

US: United States

VMS: Vessel Monitoring Systems

VGCDs: Voluntary Guidelines for Catch Documentation Schemes

VGFS: Voluntary Guidelines for Flag State Performance

VGT: Voluntary Guidelines for Transshipment

WCPFC: Western and Central Pacific Fisheries Commission

WTO: World Trade Organization

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INTRODUCTION: IMPORTANCE OF FISHERIES FOR ECUADOR, THE ISSUE OF IUU FISHING, AND THE RELEVANCE OF THIS RESEARCH

Ecuador has a long-standing tradition and historical connection to the ocean, dating back to the pre-Hispanic civilizations that inhabited the country's coastal regions¹ and during the Spanish colonization with the development of Guayaquil as one of the most important shipyards and ports on the Pacific. During the XX century the country was also a signatory to the 1952 Santiago Declaration on the delimitation of maritime zones and later acceded to the United Nations Convention on the Law of the Sea (UNCLOS) on September 24, 2012. Given the importance Ecuador places on its maritime projection as a coastal nation, as well as its role as the guardian of one of the world's most biodiverse areas and a UNESCO World Heritage site, the Galápagos Islands, Ecuador has made significant national efforts to strengthen and adapt its legislation, enhance scientific knowledge of its maritime resources, and contribute to international discussions on the future development of the Law of the Sea and related maritime issues.

Currently, the country is focused on three key areas: 1) presenting scientific information regarding the extension of its continental shelf to the Commission on the Limits of the Continental Shelf (CLCS); 2) the conservation and protection of large areas within its maritime zones through the establishment of marine reserves, which currently cover approximately 20% of all maritime zones under Ecuador's jurisdiction²; and 3) combating Illegal, Unreported, and Unregulated (IUU) fishing.

IUU fishing encompasses a range of activities that, in essence, are distinct but related problems. These activities can occur in various maritime zones and involve responsibilities for flag States, port States, coastal States, and market States. Additionally, IUU fishing can have cross-cutting impacts on areas beyond fisheries, such as labour conditions, commerce, and maritime security, among others.

Due to the profound complexity and breadth of issues addressed by this concept, it is essential to coordinate efforts across all sectors, involving all relevant actors and determining the

¹ Among the most notable pre-Columbian cultures of Ecuador were the Huancavilca, Puná, Manteño, Valdivia, Machalilla, and Chorrera, renowned for their maritime navigation, connections to fishing, and trade with other cultures, including those of Mesoamerica.

² UNEP-WCMC (2024). Protected Area Profile for Ecuador from the World Database on Protected Areas, December 2024. Available at: www.protectedplanet.net

responsibilities and obligations of States and their nationals involved in IUU fishing. This must be framed within the general principles established in the preamble of UNCLOS, which include cooperation, the interrelated problems of ocean space, the precautionary approach, and the conservation, protection, and preservation of the marine environment³.

According to Agnew et al (2009)⁴, IUU fishing represents an estimated loss of between USD 10 to 23 billion to the fisheries sector. Studies project that one in every five fish caught comes from IUU activities⁵. This makes IUU fishing one of the major threats to the sustainability of global fisheries and the conservation of the marine environment, given that its impacts span across the social, economic, and environmental sectors, making it a shared threat for all States.

For Ecuador, IUU fishing is one of the main challenges in shaping its maritime policy, considering the importance of the country's fishing sector, which employs over 250,000 people and represented 7% of the total value of non-oil exports in 2023, including canned fish products worth USD 1.33 billion and other fish and fish products worth USD 199.5 million⁶. Additionally, Ecuador has the largest tuna fleet in the Eastern Pacific, comprising 78 tuna vessels of 129 industrial vessels in total⁷, accounting for 40% of all tuna captures in 2023, with a total of 310,468 metric tons⁸.

Is also important to highlight Ecuador's tuna processing capacity, that reaches approximately 500,000 tons annually⁹, second only to Thailand, which processes over 630,000 tons annually.

³ United Nations. (1982). United Nations Convention on the Law of the Sea. Retrieved from https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

⁴ Agnew, D. J., Pearce, J., Pramod, G., Peatman, T., Watson, R., et al. (2009). Estimating the Worldwide Extent of Illegal Fishing. *PLoS ONE*, 4(2), e4570. <https://doi.org/10.1371/journal.pone.0004570>

⁵ United Nations. (n.d.). International Day for the Fight against Illegal, Unreported and Unregulated Fishing: 5 June. Retrieved from [https://www.un.org/en/observances/end-illegal-fishing-day#:~:text=The%20toll%20of%20illegal%2C%20unreported%20and%20unregulated%20fishing&text=According%20to%20the%20UN%20Food,of%20US\\$2410%E2%80%9323%20billion](https://www.un.org/en/observances/end-illegal-fishing-day#:~:text=The%20toll%20of%20illegal%2C%20unreported%20and%20unregulated%20fishing&text=According%20to%20the%20UN%20Food,of%20US$2410%E2%80%9323%20billion)

⁶ Ministerio de Producción, Comercio Exterior, Inversiones y Pesca. (2024). Boletín de cifras comercio exterior Febrero 2024. Retrieved from https://www.produccion.gob.ec/wp-content/uploads/2024/02/VFBoletinComercioExterior_Febrero24.pdf

⁷ Ministerio de Producción Comercio Exterior, Inversiones y Pesca. (n.d.). Registro Nacional de Embarcaciones: Registro de Embarcaciones Pesqueras Industriales. Retrieved from <https://srp.produccion.gob.ec/registro-nacional-de-embarcaciones/>

⁸ Inter-American Tropical Tuna Commission (IATTC). (n.d.). Public domain data. Retrieved from <https://www.iatcc.org/en-us/Data/Public-domain>

⁹ Ministerio de Producción, Comercio Exterior, Inversiones y Pesca. (2017). Informe sobre el sector atunero ecuatoriano. Retrieved from <https://www.produccion.gob.ec/wp-content/uploads/2019/06/Reporte-del-sector-atunero.pdf>

This positions Ecuador as the second-largest global exporter of canned tuna and tuna loins, with a market share of 14% of global exports in 2023¹⁰.

Given this importance, this research aims to identify, within the legal framework and ocean governance, the main provisions and initiatives that directly or indirectly address the issue of IUU fishing practices, and will explore ways in which Ecuador and other States can work in cooperation and coordination to address the threats posed by IUU fishing, in compliance with international regulations and their commitment to the sustainable development of the fisheries sector.

In this context, the general objectives of this research are as follows:

1. How Ecuador can strengthen its efforts to combat IUU fishing at both the national and international levels by collaborating with other nations and regional organizations.
2. How to enhance the control, effectiveness, and enforcement of laws and regulations concerning fishing on the high seas and the fight against IUU fishing.

To address these objectives, the first part of this study will analyse the scope of IUU fishing and the relevant international instruments that address this issue. It will also examine Ecuador's national legislation and the actions it has undertaken to combat IUU fishing within its areas of jurisdiction. Additionally, it will address the roles and governance structures of the two selected Regional Fisheries Management Organizations (RFMOs) for this study: the South Pacific Regional Fisheries Management Organisation (SPRFMO) and the Inter-American Tropical Tuna Commission (IATTC).

In the second part, the study will explore the regulations and Conservation Management Measures (CMMs) implemented by the selected RFMOs to combat IUU fishing, as well as best practices from other States and regions to address IUU fishing activities. Finally, a general discussion will be presented on the significance of this issue and its cross-cutting role in relation to a potential first Conference of the Parties for the Agreement on Marine Biodiversity of Areas Beyond National Jurisdiction (BBNJ), along with possible recommendations for strengthening efforts against IUU fishing.

¹⁰ Trade map. Retrieved from <https://www.trademap.org/Index.aspx>

PART ONE: STATE OF THE ART

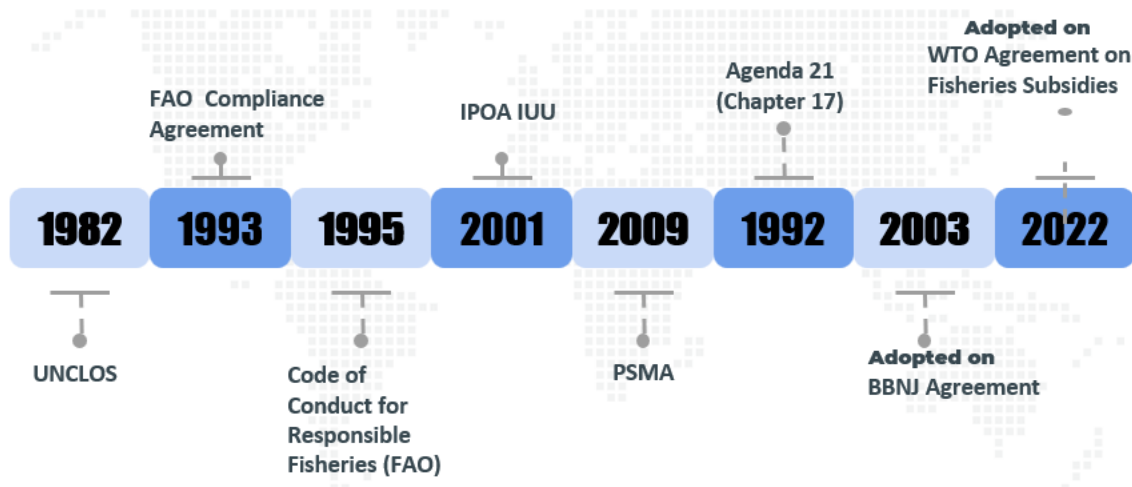
Chapter 1: International Legal Framework for Addressing IUU Fishing

Section A: IUU Fishing / Relevant International Instruments to Address IUU Fishing

The concept of Illegal, Unreported, and Unregulated (IUU) fishing encompasses a range of activities identified by states that could be contrary to the objectives of fisheries management, including the sustainability of fisheries ensuring the reproduction levels of fish stocks, and the conservation and protection of the marine environment. These activities, identified as IUU fishing, are practices regulated under the framework of several binding international instruments that set the regulations for fisheries management, such as UNCLOS, the United Nations Fish Stock Agreement (UNFSA), the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (also known as the Compliance Agreement), and the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported, and Unregulated Fishing (PSMA).

Similarly, several non-binding instruments have addressed the issue of practices identified as IUU fishing, such as: Agenda 21 (Chapter 17), the FAO Code of Conduct for Responsible Fisheries, the FAO International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing (IPOA-IUU), UN Resolutions on Sustainable Fisheries, FAO Guidelines, and the Rome Declaration on IUU Fishing, among others. (see Figure 1)

FIGURE 1.- TIME LINE OF THE RELEVANT INTERNATIONAL LEGAL FRAMEWORK TO ADDRESS IUU FISHING



However, the IPOA-IUU was the first document to popularize the term IUU Fishing internationally¹¹, providing a description that broadly encompasses and articulates the various activities that could be classified as IUU fishing. It attempts to outline, in a non-exhaustive manner, the nature and scope of this concept. This document defines IUU fishing as follows:

Illegal fishing refers to 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;
	Conducted by vessels flying the flag of States that are parties to a relevant RFMO 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
	In violation of national laws or international obligations, including those undertaken by cooperating States to a relevant RFMO.
Unreported fishing refers to fishing activities:	Which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or
	Undertaken in the area of competence of a relevant RFMO which have not been reported or have been misreported, in contravention of the reporting procedures of that organization.
Unregulated fishing refers to fishing activities:	In the area of application of a relevant RFMO 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
	In areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.

Source: IPOA-IUU

¹¹ It is important to highlight the work carried out prior to the issuance of this document within the framework of the FAO and the Committee on Fisheries (COFI), which included the establishment of working groups, technical and expert consultations, and the significant contributions of the Government of Australia in developing the initial paper that urged the FAO to create an International Plan of Action to prevent IUU fishing.

It is important to highlight that unregulated fishing could take place in a manner that is not in violation of international law.

This broad description has allowed, along with the provisions of binding international documents, the identification of activities that could be categorized as IUU fishing¹². In fact, the definition of activities provided in Article 3 of this instrument have been incorporated as binding in different agreements and instruments, such as the Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing (PSMA), which uses this definition to determine the scope of the obligations under this agreement¹³.

TABLE 1.- SCOPE OF THE CONCEPT OF ILLEGAL FISHING

Illegal Fishing		
Marine Areas involve	Vessels	What activities could be Illegal?
State jurisdiction (Territorial Sea/ Contiguous Zone/EEZ)	National and Foreign	Determined by national legislation
RFMOs area of competence	Parties and Cooperating non-Contracting Parties (CNCPS)	Determined by the Conservations and Management Measures and serious violations establish by the RFMO, that may give rise to an infringement.
High seas	All Vessels	UNCLOS: Conservation and Management Measures (Part VII: Articles 116, 117, 118 and 119)

¹² Palma, M. A. E., Tsamenyi, M., and Edeson, W. R. (2010). Promoting sustainable fisheries: The international legal and policy framework to combat illegal, unreported, and unregulated fishing. Leiden, The Netherlands: Martinus Nijhoff Publishers.

¹³ Food and Agriculture Organization of the United Nations. (2009). Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA). Article 1(e).

		UNFSA (Part VII: Articles 8 and 17)
		FAO Code of Conduct and Compliance Agreement

Source: IPOA-IUU, UNCLOS, UNFSA, FAO Code of Conduct and Compliance Agreement

TABLE 2.- SCOPE OF THE CONCEPT OF UNREPORTED FISHING

Unreported fishing		
Marine Areas involve	Vessels	What activities could be Unreported?
State jurisdiction (Territorial Sea/ Contiguous Zone/EEZ)	National and Foreign	Determined by national legislation
RFMOs area of competence	All Vessels (Parties, CNCPs, third States, no nationality)	Determined by RFMOs
High seas	No application	Only in cases that the flag State requires the reporting of the catch in high seas

Source: IPOA-IUU

TABLE 3.- SCOPE OF THE CONCEPT OF UNREGULATED FISHING

Unregulated fishing		
Marine Areas involve	Vessels	What activities could be Unregulated?
State jurisdiction (Territorial Sea/ Contiguous Zone/EEZ)	National and Foreign	Lack of regulation
RFMOs area of competence	Third parties non members	Lack of regulation and activities done not consistent with or contravene CMM <ul style="list-style-type: none"> • Species not covered by the RFMO • Type of vessel or gear used to do • Stock and quotas
High seas	All Vessels	

Source: IPOA-IUU

In Tables 1 to 3, one can observe a breakdown according to the description provided in the IPOA-IUU regarding the scope of each conceptual category of potential activities, the responsibilities, and the applicable jurisdiction, as well as the main components of what we understand by IUU fishing. Additionally, these tables help to highlight the transversal reach of IUU fishing, not only identifying its potential scope across all marine areas but also establishing shared yet differentiated responsibilities for Flag States, Coastal States, Port States, and Market States in combating these practices.

Within this research, and with the aim of providing a preliminary approach to the responsibilities of States in combating IUU fishing, maritime zones and boundaries have been grouped into three areas, specifically:

1. **Waters under Coastal State Jurisdiction**, which include internal waters, territorial seas, contiguous zones, and the Exclusive Economic Zone (EEZ).
2. **RFMOs Area of Competence**, usually detailed by their constitutive treaty and specifying the coordinates where the RFMO has the capacity to regulate and manage species under its responsibility. Worth noting that this area sometimes overlaps, as some RFMOs covers jurisdictional waters, so this may involve various maritime zones, including EEZs or High Seas.
3. **High Seas**, which in this research is identified as areas not covered by any RFMO and outside the scope of their competencies.

In the first identified area, it is important to highlight the provisions established in UNCLOS regarding maritime zones under the jurisdiction of Coastal States, especially Article 2, paragraphs 1 and 2, and Articles 56 and 62, paragraph 4 of the Convention. These articles establish that the primary responsibility for the conservation and management of living resources lies with the Coastal States. These States have the sovereign rights to establish the terms and conditions through laws and regulations governing the use of these resources, in accordance with UNCLOS.

In this regard, the International Tribunal for the Law of the Sea (ITLOS), in its advisory opinion on the request by The Sub-Regional Fisheries Commission (SRFC) on April 2, 2015, emphasized in paragraph 106 that "in light of the special rights and responsibilities granted to the coastal State in the exclusive economic zone under the Convention, the primary responsibility for taking the

necessary measures to prevent, deter, and eliminate IUU fishing rests with the coastal State."¹⁴ This responsibility includes the exercise of sovereignty concerning the enforcement of its rules and laws as stipulated in Article 73 of UNCLOS.

However, in paragraph 108 of ITLOS advisory opinion, the Tribunal stresses that this criterion does not relieve third States of their obligations, particularly the obligations of Flag States to take the necessary measures to ensure compliance of their vessels with the regulations established by Coastal States in the EEZ, as stipulated in Articles 58, paragraph 3, and Article 62, paragraph 4¹⁵. Similarly, these articles must be understood alongside Article 94, which outlines further responsibilities and obligations of Flag States regarding the need to exercise jurisdiction and control over vessels flying their flag.

Regarding the RFMO's area of competence, Articles 63, 64 (paragraph 1), and 118 establish the responsibility of States to cooperate through regional international organizations or arrangements, or bilaterally, to ensure the conservation and optimum use of highly migratory species, as outlined in Annex I of the Convention.

The UNFSA explicitly mentions RFMO's and expands on the cooperation and management obligations of States in UNCLOS regarding straddling stocks and highly migratory stocks and their ecosystems. Through this international agreement, and pursuant to Article 8, paragraphs 3 and 4, the RFMO is granted the competence to establish conservation and management measures (CMM) over the fishery resources under its responsibility. Furthermore, under Article 21 of this agreement, these international organizations have the authority to enforce their CMMs, including high seas boarding and inspections by authorised vessels of a member of the RFMO, and other actions established by the Parties.

It is important to highlight that the enforcement authority of RFMOs is quite limited, given that the primary obligation lies with the flag State. Additionally, non-members of an RFMO are obligated to cooperate and not undermine the conservation measures established by these international organizations, as specified in Article 17, paragraphs 1 and 2 of the UNFSA.

¹⁴ International Tribunal for the Law of the Sea. (2015). Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission: Advisory opinion, ITLOS Reports 2015, para 106.

¹⁵ Ibid, para 108.

It should be noted that the provisions of the CMMs established by RFMO's that determine illegal fishing practices can only be considered as applying to vessels of Parties and Cooperating Non-Contracting Parties (CNCs) who are legally bound by the convention of that international organization. According to paragraph 3.3.1 of the IPOA-IUU, vessels of non-members to that RFMO or non-Parties to the UNFSA that engage in these practices, while violating UNCLOS under Articles 63, 64 (paragraph 1), and 118, should be categorized as Unregulated fishing, as they are outside the legal framework and legal binding of the RFMO's.

This is a clear example of the complexity and overlap that exists between the practices that constitute IUU fishing and reflects the need to structure the concept broadly, including all three components (Illegal, Unregulated, Unreported), to ensure that all States and RFMOs fulfill their roles and responsibilities and establish the necessary governance measures over marine resources.

Regarding the High Seas in general, including the areas of competence of RFMOs, there are general obligations regulating the actions of all States, involving provisions that regulate the actions of vessels that may engage in IUU fishing. Therefore, Articles 116, 117, 118, and 119 establish the duties of States to act responsibly regarding the conservation and management of living resources on the high seas.

In this way, in the absence of specific regulation for High Seas areas not linked to a regional fisheries management organization, States must comply with the general obligations set out by UNCLOS, especially Part VII.

Despite these general responsibilities, on the High Seas, the primary responsibility to combat IUU fishing lies with Flag States, as they are responsible for exercising their jurisdiction in accordance with international law, including Article 94 of UNCLOS, Articles 18 and 19 of the UNFSA, and Article V of the Compliance Agreement. This includes granting permits to fish on the High Seas, maintaining records of fishing vessels, investigating alleged violations, requiring information, and imposing sanctions, among others.

Finally, it is necessary to consider transversally, alongside the conceptual division previously made with the maritime zones and jurisdictions, Articles 192 and 193 of the Convention, which establish the general obligation of all States to "protect and preserve the marine environment." These articles must be read and analysed in conjunction with all the previously mentioned articles.

It is worth noting as part of the relevant international legal framework for combating IUU fishing and developing sustainable fisheries, the work done by the Food and Agriculture Organization of the United Nations (FAO) to provide greater specificity and clarity regarding the obligations and responsibilities of States, all framed within the provisions of UNCLOS. This is reflected in non-binding instruments such as the International Code of Conduct for Responsible Fisheries, the IPOA-IUU and different Voluntary Guidelines¹⁶, as well as binding instruments like the Compliance Agreement. Through this latter agreement, emphasis is placed on cooperation among the Parties, particularly regarding the responsibilities of Flag States to prevent vessels entitled to fly their flag from undermining the effectiveness of international CMMs, as established in Article III.

Another relevant and binding instrument is the PSMA, negotiated under the FAO framework, which highlights and expands on the responsibility of Port States in controlling and managing ports to prevent and combat IUU fishing practices to "ensure the long-term conservation and sustainable use of living marine resources and marine ecosystems."¹⁷ This instrument is understood from the full sovereignty of States over their ports, as stipulated by Articles 25 and 218 of UNCLOS, and binds States Parties to implement standard measures to conduct inspections or prevent vessels that have engaged in IUU fishing from using their ports to offload their fishery resources¹⁸.

The PSMA also emphasizes in Article 20 the responsibility of Flag States to ensure cooperation and the application of corrective measures in cases where vessels flying their flag have engaged in IUU fishing practices.

Finally, it is important to highlight two additional instruments in the international legal framework relevant to IUU fishing, which are currently in the process of ratification and adhesion and have yet to come into force. The first is the Fisheries Subsidies Agreement, negotiated under the World Trade Organization (WTO), adopted by the Parties at the 12th Ministerial Conference on June 17, 2022, and now part of the Agreement on Subsidies and Countervailing Measures (SCM

¹⁶ FAO has developed a series of documents to guide the actions of states, such as: Voluntary Guidelines for Catch Documentation Schemes (VGCDs); Voluntary Guidelines for Flag State Performance (VGFSP); Checklists and Technical Guidelines to Combat IUU Fishing; Voluntary Guidelines for Transshipment

¹⁷ Food and Agriculture Organization of the United Nations. (2009). Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA). Article 2.

¹⁸ Ibid., Article 11, and Part IV

Agreement)¹⁹. This agreement aims to prevent subsidies from being granted to vessels identified as having engaged in IUU fishing practices, serving as a tool to support sustainable fisheries and achieve the objectives set out in Sustainable Development Goal (SDG) 14.4 and 14.6. Specifically, the Fisheries Subsidies Agreement directly focuses on target 14.6 aims to implement an instrument to prohibit "certain fisheries subsidies that contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated fishing..."

The second instrument is the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (BBNJ Agreement), which will be analysed in greater depth in Chapter 2, Section A of this research. It is important to highlight that the BBNJ is not a fisheries-centred agreement, but it could play a role in cooperation and in the coordination of RFMOs within a new governance framework for maritime spaces and their resources, as well as the conservation and preservation of the marine environment.

¹⁹ Ecuador has accepted the protocol of the agreement and is now one of the 60 WTO member countries that have submitted their instrument of acceptance. The agreement will enter into force once two-thirds of WTO members, or 111 out of 166 members, have formally accepted the Protocol. Retrieved from https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/fish_acceptances_e.htm

Section B: Role of Ecuador in Tackling IUU Fishing

Ecuador has had an active and positive role in the development of international maritime law, the exercise of its sovereignty, and the protection of its resources within its jurisdictional waters. This is reflected in the signing of the Declaration on the Maritime Zone of Santiago on August 18, 1952, as well as in Ecuador's actions since the 1960s, including the detention of foreign vessels engaged in fishing activities within the 200 nautical mile limit²⁰.

Equally important are the conservation efforts, such as the declaration of Marine Protected Areas, including the Galápagos Marine Reserve. The reserve has seen various protection advancements since 1974 but was officially established in 1998, covering an area of 143,000 square kilometers, extending 40 nautical miles from the baselines of the archipelago²¹. Additionally, the recent creation of the Hermandad Marine Reserve in 2022, covering 60,000 square kilometers in Ecuador's Exclusive Economic Zone, connects the Galápagos Marine Reserve with the Cocos Marine Conservation Area in Costa Rica²².

These sovereignty and conservation policies were enshrined in Ecuador's 2008 Constitution, Article 400, which states that "the State shall exercise sovereignty over biodiversity, whose administration and management will be carried out with intergenerational responsibility." Similarly, Article 395 ensures that the Ecuadorian State will guarantee a "sustainable development model, environmentally balanced, that conserves biodiversity and the natural regeneration capacity of ecosystems and ensures the satisfaction of present and future generations."

All of this is framed by the recognition of nature as a subject of rights. Article 71 of the Constitution guarantees the full respect for "its existence and the maintenance and regeneration of its vital cycles, structure, functions, and evolutionary processes." To this end, the Constitution, through Article 73, incorporates the precautionary approach, establishing that "the State shall apply

²⁰ From 1963 to 1975, there were economic, political, and diplomatic tensions between Ecuador and the United States, referred to as the 'Tuna War.' During this period, the Ecuadorian Navy detained dozens of U.S. tuna vessels and implemented deterrent measures within the 200 nautical miles from its baseline. For more information: <https://www.nytimes.com/1972/01/30/archives/-tuna-war-spreads-to-us-defense-and-state-agencies-disagree.html> <https://www.nytimes.com/1975/03/09/archives/tuna-fleet-asks-us-aid-off-ecuador.html>

²¹ Parque Nacional Galapagos. (n.d.). Reserva Marina. Retrieved from <https://galapagos.gob.ec/reserva-marina/>

²² Ministerio del Ambiente, Agua y Transición Ecológica del Ecuador. (2022). Acuerdo Ministerial Nro. MAATE-2022-019. Retrieved from <https://www.cmarpacifico.org/sites/default/files/content/files/Declaratoria%20AMP%20Hermandad.pdf>

precautionary and restrictive measures for activities that may lead to species extinction, ecosystem destruction, or permanent alteration of natural cycles."

Since Ecuador's accession to the UNCLOS on September 24, 2012, the country has created and reformed its national regulations to incorporate the provisions established by this Convention and other international instruments developed in recent decades. In the fishing sector, Ecuador has voluntarily adopted the principles of the FAO Code of Conduct and the IPOA-IUU, even incorporating their general provisions and definitions into national regulations and mandatory administrative acts issued by the national authority overseeing the fishing sector. This is reflected in the provisions of the Regulation of the Organic Law on Aquaculture and Fisheries Development²³, the National Action Plan to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing (PLAN PESCA INDNR-Ec)²⁴, and the National Control Plan—Risk Management System in Fisheries Control²⁵.

Ecuador has also been a Party to the UNFSA since December 7, 2016, and is a signatory of the BBNJ Agreement, since September 21, 2023²⁶. Additionally, Ecuador sent its acceptance for the Protocol on the Agreement on Fisheries Subsidies on October 9, 2024, making it one of the 60 countries that have accepted the document to date. It is worth noting that the BBNJ Agreement and the WTO Agreement on Fisheries Subsidies are not yet in force.

Other important international instruments incorporated into national regulations include port state measures agreements, such as the Latin American Agreement on the Control of Vessels by the Port State, known as the Viña del Mar Agreement of 1952, and the PSMA, to which Ecuador acceded in 2019.

²³ Ministerio del Ambiente, Agua y Transición Ecológica del Ecuador. (2022). Decreto Ejecutivo No. 362: Reglamento de la Ley Orgánica General a la Ley Orgánica para el Desarrollo de la Acuicultura y Pesca. Retrieved from <https://www.produccion.gob.ec/wp-content/uploads/2022/03/Decreto-Ejecutivo-No.-362-Reglamento-General-a-la-Ley-Organica-para-el-Desarrollo-de-la-Acuicultura-y-Pesca.pdf>

²⁴ Camara Nacional de Pesqueria. (2015). Plan de Acción Nacional para Prevenir, Desalentar y Eliminar la Pesca Ilegal, No Declarada y No Reglamentada (PAN PESCA INDNR - Ec). Retrieved from https://camaradepesqueria.ec/wp-content/uploads/2016/03/pan-indnr-ec_10092015_fm-va-1-2.pdf

²⁵ Ministerio del Ambiente, Agua y Transición Ecológica del Ecuador. (2023). Acuerdo Nro. MPCEIP-SRP-0142-A: Plan Nacional de Control - Sistema de Gestión de Riesgo en el Control Pesquero. Retrieved from <https://leap.unep.org/en/countries/ec/national-legislation/acuerdo-nro-mpceip-srp-2023-0142-plan-nacional-de-control-sistema>

²⁶ United Nations. (n.d.). Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA). Retrieved from https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXI-10&chapter=21&clang=en

In addition to these significant efforts related to the management and conservation of fishery resources beyond its national jurisdiction, Ecuador maintains important participation in international and regional organizations. It is a member of the Inter-American Tropical Tuna Commission (IATTC), the South Pacific Regional Fisheries Management Organisation (SPRFMO), the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), and a Cooperating Non-Member of the Western and Central Pacific Fisheries Commission (WCPFC) since 2009. It is important to highlight that Ecuador has expressed interest in full membership of the WCPFC since 2014 and formally submitted a request in 2016²⁷, although consensus for its full membership in this RFMO has not been reached.

Furthermore, Ecuador is a member of the Permanent Commission for the South Pacific (CPPS), where it has collaborated regionally on the proper management of marine resources in the Southeast Pacific, serving as a coordination space for the South American coastal countries. In this organization, Colombia, Chile, Ecuador, and Peru, through the Working Group on IUU Fishing, are working to achieve greater standardization of regulations and information exchange, which has led to the creation in 2022 of the first Regional Action Plan to address Illegal, Unreported, and Unregulated Fishing in the Southeast Pacific²⁸.

Ecuador has also been part of the Network for the Exchange of Information and Experiences between Latin American and Caribbean countries to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing (IUU), established within the framework of FAO as part of the FAO Regional Project TCP/RLA/3604 “Strengthening the Capacities and Measures to Prevent, Deter, and Eliminate IUU Fishing in Latin American Countries” since 2018. This regional dialogue platform aims to strengthen collaboration and information exchange in the fight against IUU fishing²⁹.

²⁷ Western and Central Pacific Fisheries Commission. (2017). Discussion paper on Membership Process in WCPFC: WCPFC14-2017-DP18. Retrieved from <https://meetings.wcpfc.int/node/10480>

²⁸ Comisión Permanente del Pacífico Sur. (2022). Plan de Acción Regional para enfrentar la Pesca Ilegal, No Declarada y No Reglamentada en el Pacífico Sudeste. Retrieved from <https://www.cpps-int.org/index.php/documentos/87-que-hacemos/recursos-vivos/pesca/pesca-indnr/706-par-pescaindnr>

²⁹ Ministerio de Producción, Comercio Exterior, Inversiones y Pesca. (2017.). Expression of interest to join the Network for the Exchange of Information and Experiences among Latin American and Caribbean Countries to prevent, deter, and eliminate illegal, unreported, and unregulated (IUU) fishing. Retrieved from <https://redpescaindnr.org/archivos/archivo/932e73c62fd97ff4cfd377cec13507aa.pdf>

Regarding the modernization, reform, and incorporation of key international provisions into Ecuador's fishing sector, it is noteworthy that, since 2019, the country has undertaken an expedited process of updating its laws. As a result, Ecuador now has laws and other legal instruments addressing major advancements in the fight to prevent, deter, and eliminate IUU fishing.

This process has taken into consideration Ecuador's role as a Flag State, Coastal State, Port State, and Market State, as well as its position as a party and cooperating non-member of RFMOs³⁰.

With the enactment of the Organic Law for the Development of Aquaculture and Fisheries (LODAP) on April 21, 2020, and its regulations on February 25, 2022, Ecuador updated its primary fishing regulatory framework, replacing the Fisheries Law adopted in 1974 and amended in 2016 by Decree 852³¹. Among the goals of this law, Article 3, literal (e), specifies that one of its objectives is to promote the "sustainable, responsible, and viable use of hydrobiological resources" and the "implementation of measures to prevent, deter, and eliminate illegal, unreported, and unregulated (IUU) fishing."

Among its main changes, the law strengthens the sanctioning framework for control, deterrence, and traceability³². It grants authorities the "power to implement complementary actions to prevent activities related to illegal fishing through precautionary measures, which include the detention of vessels, prohibition of departure, suspension of activities, retention of fishing gear and tackle, immobilization of catches, and prohibition on disposing of retained products."³³ Additionally, it legally incorporates the obligation to implement technological advancements that allow for the standardization of information, the monitoring and control of vessels, Ecuadorian nationals

³⁰ Ministerio de Producción, Comercio Exterior, Inversiones y Pesca. (2023). Acuerdo Nro. MPCEIP-SRP-0142-A: Expídesse el Plan Nacional de Control - Sistema de Gestión de Riesgo en el Control Pesquero. Registro Oficial - Suplemento N° 329, 12 de junio de 2023.

³¹ Presidencia de la Republica del Ecuador (2016). Decreto N° 852 - Modifica el Reglamento General a la Ley de Pesca y Desarrollo Pesquero. Retrieved from <https://faolex.fao.org/docs/pdf/ecu163710.pdf>

³² Corte Constitucional del Ecuador. (2020). Ley Orgánica para el Desarrollo de la Acuicultura y Pesca (LODAP). Art. 138; Título IV (Capítulo V – De la Pesca Ilegal e Incidental; Capítulo VI - Del Seguimiento, Control y Vigilancia Pesquera); Art. 197 (a); Art 201; Título VI (Capítulo IV - Infracciones y Sanciones Pesqueras); Disposición General Segunda. Retrieved from https://www.gob.ec/sites/default/files/regulations/2022-05/Documento_Ley-Org%C3%A1nica-para-Desarrollo-Acuicultura-y-Pesca.pdf

³³ Ministerio del Ambiente, Agua y Transición Ecológica del Ecuador. (2023). Acuerdo Nro. MPCEIP-SRP-0142-A: Plan Nacional de Control - Sistema de Gestión de Riesgo en el Control Pesquero. Retrieved from <https://leap.unep.org/en/countries/ec/national-legislation/acuerdo-nro-mpceip-srp-2023-0142-plan-nacional-de-control-sistema>

involved in the fisheries sector, factories, imports, and transportation throughout Ecuadorian territory, as well as all phases of the fishing industry.

For this research, Title IV, Chapter V – "On Illegal and Incidental Fishing," and Chapter VI – "On Monitoring, Control, and Fisheries Surveillance" of the LODAP, are particularly important. These sections address illegal fishing, including the incorporation of international regulations on the matter, such as the PSMA. Similarly, Articles 213, 214, and 215 of the General Regulation of the LODAP promote coordination between state institutions and incorporate important provisions, such as recognizing IUU Vessel lists created by RFMOs, requesting documentation that ensures traceability and including the requirement for technical regulations to guarantee that national fishing activities and imported fish products are not part of IUU fishing.

It is also important to highlight the inclusion of monitoring, control, and surveillance measures for all fishing activities, not only for fishing operations and their fleet, but also for related and connected activities, such as processing factories and the transportation of fish products within the national territory³⁴.

The European Union's Yellow Card and Ecuador³⁵

The update of Ecuador's regulatory framework for the fishing sector was significantly influenced by the decision made by the European Commission on October 30, 2019, to issue a yellow card to Ecuador's fisheries sector. This decision was part of the implementation of the European Union's Council Regulation (EC) No. 1005/2008, which establishes a community system to prevent, deter, and eliminate illegal, unreported, and unregulated (IUU) fishing.

Through this IUU Regulation, the EU concluded that Ecuador needed to "step up their efforts and implement the necessary reforms to fight against IUU fishing."³⁶ Among the main concerns of the EU were the updating and strengthening of the regulatory framework and enforcement and

³⁴ Ministerio de Producción, Comercio Exterior, Inversiones y Pesca. (2022). Decreto Ejecutivo No. 362: Reglamento General a la Ley Orgánica para el Desarrollo de la Acuicultura y Pesca, Art. 217. Retrieved from <https://www.produccion.gob.ec/wp-content/uploads/downloads/2022/03/Decreto-Ejecutivo-No.-362-Reglamento-General-a-la-Ley-Organica-para-el-Desarrollo-de-la-Acuicultura-y-Pesca.pdf>

³⁵ European Union. (2019). Commission Decision (2019/ C 373/ 04) notifying the Republic of Ecuador about the possibility of being considered a non-cooperating third country in the fight against illegal, unreported, and unregulated fishing. Retrieved from [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019D1105\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019D1105(01))

³⁶ European Union. (2019, October 30). Commission notifies the Republic of Ecuador over the need to step up action to fight illegal fishing. Retrieved from https://ec.europa.eu/commission/presscorner/detail/en/ip_19_6036

sanctioning systems to address IUU fishing activities, as well as adequate control of the operations of processing plants. The yellow card did not involve the imposition of trade measures on Ecuador's fish exports; however, if corrective measures were not implemented, a red card could be issued, which would lead to the application of trade-related measures, such as a ban on fish and fish products from entering the EU market. The deficiencies identified by the EU were as follows³⁷:

- The legal framework in place is outdated and not in line with the international and regional rules governing the conservation and management of fishing resources.
- Law enforcement is hindered by this outdated legal framework, inefficient administrative procedures, and a lenient approach to infringements. As a result, the sanctioning system neither deprives offenders of the benefits from IUU fishing nor acts as a deterrent.
- There are significant deficiencies in control, particularly regarding the tuna fishing and processing industries.
- These deficiencies undermine the reliability of the traceability system upon which the certification of the legality of catches is based.

In response, Ecuador has worked closely with the EU to update, reform, and modernize its legal framework, as detailed previously, as well as to strengthen enforcement through inspection systems and observer programs across the entire fisheries production chain. Furthermore, the provisions of international agreements on IUU fishing have been incorporated, and port regulations have been aligned with the PSMA. Despite this, as of December 2024, the EU has not lifted the yellow card issued to Ecuador.

Preliminary Conclusions

Ecuador has embarked on an in-depth reform process of its laws to incorporate advancements in the law of the sea and provisions of the international legal framework, which has led the country to establish one of the most updated legal frameworks in the region. Likewise, significant national efforts have been made to promote measures against IUU fishing in the international arena and to strengthen cooperation with international organizations such as RFMOs.

³⁷European Union. (2019, October 30). Questions and Answers – Illegal, Unreported and Unregulated (IUU) fishing and issues at stake in Ecuador. Retrieved from https://ec.europa.eu/commission/presscorner/detail/en/qanda_19_6037

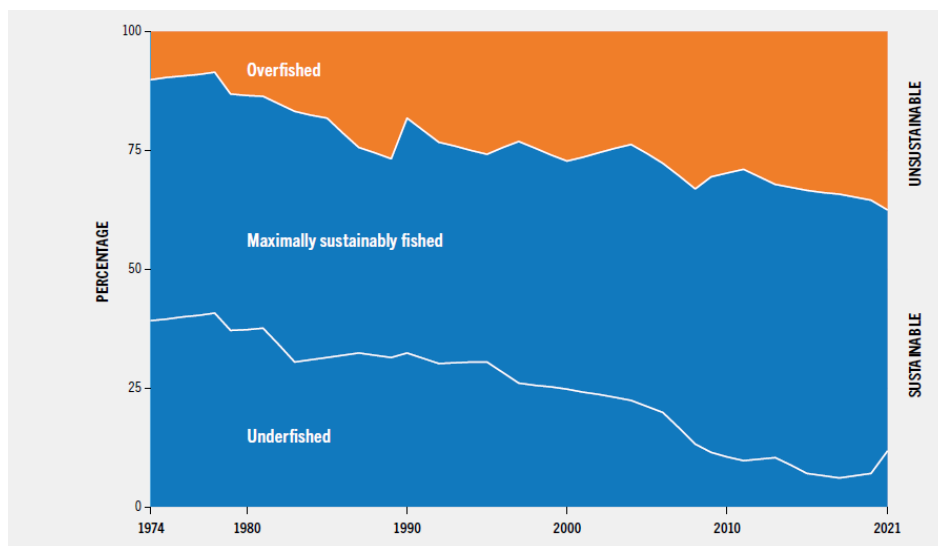
Despite these efforts, the country still faces several challenges regarding its institutional capacity to implement the legal changes, particularly in strengthening the enforcement of new regulations related to supervision, control, and enforcement, as well as the management of information and data concerning Ecuador's fisheries sector. It is crucial that Ecuador's regulatory advancements and its commitment to combating IUU fishing be further reinforced through the effective implementation of the legal framework. This requires resources for capacity-building, expansion of inspection programs, and the adoption of new technological tools, such as the establishment of video surveillance systems and systems for processing statistical data and early warning risk alerts.

Chapter 2: Regional Fisheries Governance

The global consumption of fishery resources continues to experience rapid growth, with an average annual growth rate of 3% since 1961. This growth has resulted in an increase in per capita consumption, from 9.1 kg per year in 1961 to 20.6 kg per year in 2021³⁸.

Regarding high seas fishing, the FAO estimates that catches have increased from a total of 1 million tons in 1950 to 11 million tons in 2022³⁹. This increase has been facilitated by technological advancements that have allowed vessels to travel greater distances and extend their fishing periods without the need to return to port. This trend has placed greater pressure on fishery resources, increasing the number of stocks considered overfished, which, by 2021, had reached 37.7%, a significant increase from the 10% recorded in 1974.⁴⁰ (See Figure 2)

FIGURE 2.- GLOBAL TRENDS IN THE STATE OF THE WORLDS MARINE FISHERY STOCKS 1974-2021



Source: FAO The State of World Fisheries 2024.

In this context, RFMOs play a crucial role as international bodies created with the purpose of managing fishery resources in various high seas areas. These organizations are the only supra

³⁸ Food and Agriculture Organization of the United Nations. (2024, August 26). The State of World Fisheries 2024. ISBN978-92-5-138763-4. Retrieved from <https://openknowledge.fao.org/items/ef79a6ba-d8df-41b9-9e87-2b6edd811511>

³⁹ Ibid

⁴⁰ Ibid., p. 42.

national entities with the authority to manage and create binding norms and regulations for the fishery resources within their area of competence, based on the best available scientific evidence.

These international organizations marked a significant change in international law of the sea, as, according to several authors⁴¹, the UNCLOS, UNFSA, and RFMOs have narrowed the scope of the principle of freedom of fishing on the high seas, establishing a restricted freedom considering commitments to conservation and the protection of the marine environment. Therefore, the provisions set forth in Part VII, Section 2 of UNCLOS⁴² clearly outline the obligations that states must adhere to concerning the right to fish on the high seas.

Furthermore, UNCLOS in Article 64 highlights the obligation of states to cooperate and encourage the establishment of international organizations for the proper management of resources, regarding to the highly migratory and straddling species listed in Annex 1 of the Convention. We can also highlight Article 118, where the mandate for cooperation is reiterated, specifying that states “shall, as appropriate, cooperate to establish subregional or regional fisheries organizations” to take measures for the conservation of living resources exploited by their nationals in the same area.

In turn, the UNFSA further elaborates on these provisions and strengthens the legal framework under which international cooperation in regional fisheries organizations is to be implemented. Articles 8, paragraphs 3 and 4 of the UNFSA establish the competence to impose conservation management measures (CMM) regarding the species covered and the obligation of all states—whether members or non-members—to comply with these measures if they wish to access these fishery resources. In Article 17, paragraph 1 of the UNFSA, it is specified that non-member states of RFMOs are obligated under international law to cooperate in the conservation of species listed in Annex 1 of UNCLOS and straddling stocks.

⁴¹ Palma, M., Tsamenyi, M., & Edeson, W. (2010). *Promoting Sustainable Fisheries: The International Legal and Policy Framework to Combat Illegal, Unreported and Unregulated Fishing*. Leiden, The Netherlands: Martinus Nijhoff Publishers. ISBN 9789004175754.

Cullis-Suzuki, S., & Pauly, D. (2010). *Failing the high seas: An evaluation of regional fisheries management organizations*. Marine Policy. Accessed on August 9, 2014.

⁴² United Nations. (1982). *United Nations Convention on the Law of the Sea*. Articles 116, 117, 118, 119, and 120.

In this regard, the United Nations and the FAO have continuously called on the international community to expand and strengthen RFMOs, as well as to foster bilateral and regional cooperation, and to ensure compliance with the CMMs imposed by these organizations⁴³.

Currently, there are 18 RFMOs⁴⁴ covering nearly all the high seas⁴⁵, which can be classified into two generic types: 1) those responsible for managing fishery resources in general, mainly pelagic, or demersal, within a specific area of competence; and 2) species-specific RFMOs, whose responsibility extends to specific species stocks, such as tuna and tuna-like species⁴⁶. (See Figure 5 in the annexes)

In this context, this chapter aims to tackle some general aspects of the two RFMOs selected for this research, the IATTC and SPRFMO, and address certain particulars regarding their history, structure, and functioning.

⁴³ Food and Agriculture Organization of the United Nations. (2018). Regional Fisheries Management Organizations and Advisory Bodies – Activities and Developments 2000-2017. p.8.

⁴⁴ The FAO maintains a registry of 22 RFMOs; however, 5 of them do not have the High Seas as part of their area of competence.

⁴⁵ Worth noting that some RFMOs also cover EEZs of coastal States adjacent to their area of competence.

⁴⁶ Food and Agriculture Organization of the United Nations. (2020). Regional Fisheries Management Organizations and Advisory Bodies – Activities and Developments 2000-2017. FAO Fisheries and Aquaculture Technical Paper No. 651. Rome, Italy: FAO.

Section A: General overview of the two relevant RFMOs in the South Pacific (SPRFMO and IATTC)

Inter-American Tropical Tuna Commission (IATTC)

In 1949, the United States and Costa Rica established a cooperation agreement that led to the creation of the Inter-American Tropical Tuna Commission (IATTC), and which was later joined by a number of additional States. The primary objective of the IATTC was to conduct scientific research on tuna and tuna-like species through "the gathering and interpretation of factual information."⁴⁷ Over time, this narrow focus prompted member countries to reconsider the need to adapt the IATTC to developments in maritime law, governance, and conservation, as reflected in international instruments.

In 2003, with the approval of the Convention for the Strengthening of the Inter-American Tropical Tuna Commission, also known as the Antigua Convention, culminated in transforming the IATTC. This transformation shifted the Commission's mandate from merely being a scientific institute to one focused on managing the fishery resources of tuna and tuna-like species in the Eastern Pacific Ocean (EPO). The Antigua Convention entered into force in August 2010 and currently has 21 members: 16 states that have ratified the Antigua Convention⁴⁸, one fishing entity (Chinese Taipei), one regional economic integration organization (European Union), and three States Party to the 1949 Convention but which have not ratified the Antigua Convention (Colombia, Vanuatu, and Venezuela)⁴⁹.

Ecuador has been party to the IATTC since 1963, withdrew in 1968, and rejoined in 1997. It is also a signatory of the Antigua Convention, which it ratified on May 7, 2021.

Additionally, the RFMO has five Cooperating Non-Members (CNMs)⁵⁰, who are interested in fishing within the IATTC's area of competence. CNMs must comply with the rules, principles, and CMMs implemented by the Commission. This category grants them the right to participate in the extraction of fishery resources covered by the Antigua Convention and register their vessels in

⁴⁷ United Nations Treaty Collection. (1949). Convention Between the United States of America and the Republic of Costa Rica for the Establishment of an Inter-American Tropical Tuna Commission. Retrieved from <https://treaties.un.org/doc/Publication/UNTS/Volume%2080/volume-80-I-1041-English.pdf>

⁴⁸ Among them are the Overseas Territories of France.

⁴⁹ They are members of the IATTC, but they are not bound by the changes instituted in the Antigua Convention.

⁵⁰ Bolivia, Chile, Honduras, Indonesia y Liberia

the IATTC Regional Vessel Register. However, CNMs do not have voting rights in the Commission's decisions and can only participate as observers in IATTC meetings and its subsidiary bodies. Their status as CNMs is subject to annual review.⁵¹

The main objective of the Antigua Convention is to "ensure the long-term conservation and sustainable use of the fish stocks covered by this Convention, in accordance with the relevant rules of international law."⁵² To achieve this, the Convention explicitly incorporates the precautionary approach, through Article IV, integrating provisions from Article 5(c), Article 6, and Annex II of the UNFSA⁵³. This incorporation requires member states to act prudently and base their decisions on the best available scientific information to develop sustainable fisheries and preserve fish stocks and fishing-dependent communities.

The Antigua Convention also grants the Commission the authority to implement conservation measures based on Article IV, paragraph 2, which states the need to obtain scientific information as soon as possible to justify or modify these measures.⁵⁴

Additionally, it can be argued that the IATTC incorporated the ecosystem approach through Article VII, paragraph 1(f), which states that the Commission should "adopt, as necessary, conservation and management measures and recommendations for species belonging to the same ecosystem and that are affected by fishing for, or dependent on, or associated with the fish stocks covered by this Convention, with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened." Furthermore, Article IV, paragraph 3 of the Antigua Convention recognizes non-target, associated,

⁵¹ Inter-American Tropical Tuna Commission (IATTC). (2007). Resolution C-07-02: Criteria for Attaining the Status of Cooperating Non-Party or Fishing Entity. Retrieved from <http://www.informea.org/en/legislation/resolution-criteria-attaining-status-cooperating-nonparty-or-fishing-entity-iattc-c-07>

⁵² Inter-American Tropical Tuna Commission (IATTC). (2003). Convention for the Strengthening of the Inter-American Tropical Tuna Commission Established by the 1949 Convention Between the United States of America and the Republic of Costa Rica ("Antigua Convention"). Article II. Retrieved from <https://www.iattc.org/en-US/About/Antigua-Convention>

⁵³ United Nations. (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 (UNFSA). Art. 5(c), Art. 6, and Annex II. Retrieved from https://www.un.org/Depts/los/convention_agreements/texts/fish_stocks_agreement/CONF164_37.htm

⁵⁴ Inter-American Tropical Tuna Commission (IATTC). (2003). Convention for the Strengthening of the Inter-American Tropical Tuna Commission Established by the 1949 Convention Between the United States of America and the Republic of Costa Rica ("Antigua Convention"). Art. VII, paragraph 1 (m). Retrieved from <https://www.iattc.org/en-US/About/Antigua-Convention>

or dependent species on the same level as target species, in relation to the need for continuous review of their stock status and the effectiveness of the CMMs.

Since 2005, the IATTC has identified 53 fish species related to tuna fishing within its area of competence. However, conservation and management measures (CMMs) have only been implemented for species like sharks⁵⁵, seabirds⁵⁶, rays⁵⁷, sea turtles⁵⁸, and dolphinfish (Dorado or mahi mahi)⁵⁹.

It is also important to highlight that the IATTC serves as the secretariat for the Agreement on the International Dolphin Conservation Program (AIDCP). This instrument, in force since 1999, aims to progressively reduce the incidental dolphin deaths caused by tuna fishing in the Eastern Pacific Ocean (EPO).

South Pacific Regional Fisheries Management Organization (SPRFMO)

On November 14, 2009, the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean (SPRFMO Convention)⁶⁰ was adopted, which established the South Pacific Regional Fisheries Management Organization (SPRFMO) through Article 6. This convention entered into force on August 24, 2012, and currently has 17 Commission members, 15 of which are contracting parties, including the European Union and Chinese Taipei as a fishing entity.⁶¹ Ecuador joined this organization on May 11, 2015.

Additionally, there are two Cooperating Non-Contracting Parties (CNCs): Curaçao and Liberia. According to Article 18, paragraph 4, CNCs, like intergovernmental organizations (IGOs) and

⁵⁵ Inter-American Tropical Tuna Commission (IATTC): C-05-03-Active_Sharks; C-11-10-Active_Conservation-of-Oceanic-whitetip-sharks; C-16-04-Active_Amendment-to-C-05-03-Sharks; C-16-05-Active_Management-of-sharks-species; C-19-06-Active_Whale-sharks; C-23-07_Sharks—consolidates-and-replaces-C-05-03,-C-16-04,-and-C-16-05; C-23-08_Silky-sharks—amends-and-replaces-C-21-06

⁵⁶ Inter-American Tropical Tuna Commission (IATTC). C-11-02-Active_Seabirds

⁵⁷ Inter-American Tropical Tuna Commission (IATTC). C-15-04-Active_Conservation-of-Mobulid-Rays

⁵⁸ Inter-American Tropical Tuna Commission (IATTC). C-19-04-Active_Sea-turtles

⁵⁹ Inter-American Tropical Tuna Commission (IATTC). C-23-09_Dolphinfish-(Dorado)

⁶⁰ In the 8th International Meeting, held in Auckland, New Zealand, on 14 November 2009, the participants, and Special Observer participant fueron: Australia, Belize, Chile, China, Cook Islands, European Union, France, Kingdom of Denmark in respect of the Faroe Islands, Korea, New Zealand, Peru, Russian Federation, United States of America, and Chinese Taipei Fishing Entity.

⁶¹ SPRFMO members: Australia, Belize, Republic of Chile, People's Republic of China, Cook Islands, Republic of Cuba, Republic of Ecuador, Kingdom of Denmark in respect of the Faroe Islands, Republic of Korea, New Zealand, Republic of Panama, Republic of Peru, Russian Federation, United States of America, Republic of Vanuatu, European Union, and Chinese Taipei Fishing Entity.

non-governmental organizations (NGOs), may participate in the meetings of the Commission and its subsidiary bodies as observers.

The SPRFMO is responsible for managing the fishery resources of the South Pacific Ocean beyond national jurisdiction⁶², excluding, according to Article 1(f) of its convention: sedentary species; highly migratory species listed in Annex I of UNCLOS; anadromous and catadromous species; and marine mammals, marine reptiles, and seabirds.

The main objective of the SPRFMO is "to ensure the long-term conservation and sustainable use of fishery resources and, in so doing, to safeguard the marine ecosystems in which these resources occur." ⁶³ To fulfill this objective, the convention's text incorporates the principles of the precautionary approach and the ecosystem approach to fisheries management in its preamble and various articles.⁶⁴ Thus, the international organization aims to complement in a holistic manner the management of marine resources in the South Pacific Ocean, covering most species not addressed by other RFMOs in overlapping areas of competence, such as the IATTC and the Western and Central Pacific Fisheries Commission (WCPFC).

In applying the Ecosystem Approach to Fisheries (EAF), the SPRFMO incorporates through its Conservation and Management Measures (CMMs) the 13 key elements identified by the FAO.⁶⁵

Each of these elements requires implementation by the RFMO through identification and risk assessment, a management system appropriate to the risks, and suitable monitoring and ongoing assessment appropriate to the risks⁶⁶.

⁶² South Pacific Regional Fisheries Management Organisation (SPRFMO). (2009). Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean. Article 5. Retrieved from <https://www.fao.org/fishery/docs/DOCUMENT/sprfmo/legal/SPRFMOConvention.pdf>

⁶³ Ibid. Article 2

⁶⁴ Ibid. Preamble; Article 2; Article 3; Article 10, paragraph 2 (b (i)); Article 20, paragraph 1 and 2 (a); Article 22, paragraph 2.

⁶⁵ Food and Agriculture Organization of the United Nations (FAO) (2020). A review of the application of the FAO ecosystem approach to fisheries (EAF) management within the areas beyond national jurisdiction (ABNJ): 1) Retained species; 2) Non-retained species; 3) Special species; 4) Direct fishing effects on the broader ecosystem; 5) Cumulative fishery effects on the broader ecosystem; 6) Environmental external drivers; 7) Social and economic well-being at the vessel/industry level; 8) Social and economic well-being at the community level; 9) Social and economic well-being at the national level; 10) Governance: legal and administrative; 11) Governance: management systems; 12) Governance: compliance, reporting, and review; 13) Governance: external drivers

⁶⁶ Food and Agriculture Organization of the United Nations (FAO) (2020). A review of the application of the FAO ecosystem approach to fisheries (EAF) management within the areas beyond national jurisdiction (ABNJ)

It is important to highlight that, unlike the WCPFC and IATTC, which are RFMOs focused on species-specific management of tuna and tuna-like species, the SPRFMO is an RFMO with a broader focus on fishery resources in general. As such, these types of organizations in the Pacific complement each other in the control and management of most of the fishery resources in the South Pacific.

Currently, the SPRFMO "assesses between one and ten fish stocks on a regular basis and manages between one and ten fisheries,"⁶⁷ with jack mackerel and jumbo flying squid being the principal commercial species, followed by deep-sea species such as orange roughy, Morwongs, Bluenose warehou, Alfonsino, and Toothfish, among others.⁶⁸

⁶⁷ Food and Agriculture Organization of the United Nations (FAO). (2024). Fisheries and Resources Monitoring System. Retrieved from <https://firms.fao.org/firms/fishery/1033/en#TargetSpecies>

⁶⁸ Ibid.

Section B: Governance Structures of Selected RFMOs

Inter-American Tropical Tuna Commission (IATTC)

In Part III of the Antigua Convention, the organizational structure of the IATTC is established, creating a Commission, a Review Committee, a Scientific Advisory Committee, and an Administration and Finance Committee, all of which work with the Director as the Secretariat.

The Commission is composed of each member of the IATTC and is the main decision-making body of the organization. According to Article VI, paragraph 3 of the Antigua Convention, the contracting parties endowed the Commission with legal personality and the capacity "to perform its functions and achieve its objectives." Among its main functions are⁶⁹: adopting CMMs; adopting standards, collecting and monitoring data; determining when a stock is fully fished or overfished; adopting measures to reduce bycatch or impacts on dependent and non-target species; promoting the application of international instruments, including the FAO Code of Conduct; and making administrative decisions such as approving its budget, appointing a Director, approving programs, and establishing subsidiary bodies, among others.

This institution holds at least one regular meeting per year, and its decision-making process is based on consensus. This includes the invitation of new States to join the organization and the adoption of the annual budget.⁷⁰

Regarding its subsidiary bodies, each Committee will provide reports and recommendations for the decision-making of the Commission. Among the functions of these subsidiary bodies, the Committee on Compliance Review is responsible for reviewing and monitoring the compliance with the CMMs⁷¹.

Meanwhile, the Scientific Advisory Committee is tasked with implementing research programs, suggesting priorities and objectives for data collection and monitoring, "developing and promoting

⁶⁹ Inter-American Tropical Tuna Commission (IATTC). (2003). Convention for the Strengthening of the Inter-American Tropical Tuna Commission Established by the 1949 Convention Between the United States of America and the Republic of Costa Rica ("Antigua Convention"). Art. VII. Retrieved from <https://www.iattc.org/en-US/About/Antigua-Convention>

⁷⁰ Ibid. Article IX

⁷¹ Ibid. Annex 3

cooperation between and among members of the Commission through their research," and "promoting and facilitating, as appropriate, the cooperation of the Commission with other national and international public or private organizations with similar objectives."⁷²

The administration of the RFMO is managed by a director appointed by the Commission for a term of four years. According to Article XII, paragraph 2 of the Antigua Convention, the Director's position holds significant autonomy, as their functions include the ability to establish cooperation with other organizations and individuals, authorize the disbursement of funds for the IATTC's programs, "appoint, remove, and direct the administrative, scientific, technical, and other staff," act as the legal representative of the Commission, and prepare budgets, plans, programs, and other reports for the Commission. To support the work of the Director, in 2012 the member States decided to create the Committee on Administration and Finance⁷³.

Additionally, there are currently six working groups established by the Commission that focus on specific areas of fisheries management, such as: 1) Permanent Working Group on Fleet Capacity; 2) Working Group on Ecosystem & Bycatch; 3) Ad Hoc Permanent Working Group on Fish Aggregating Devices (FADs)⁷⁴; 4) Ad Hoc Working Group on Electronic Monitoring; 5) Ad Hoc Working Group for reviewing the legal and operational coherence of IATTC Resolutions; and 6) Working Group to improve dialogue among fisheries scientists, managers, and other stakeholders.

The IATTC has over 30 agreements and MoUs with different organizations, countries, and institutions. In general, the focus of most of the other MoUs is on scientific research of target species, with a few addressing the protection of certain sensitive species related to bycatch in tuna fisheries. Only the MoU with the SPRFMO explicitly addresses cooperation related to the exchange of information on "vessels suspected of illegal, unreported, and unregulated (IUU) fishing activity and the IUU vessel list established by each organization."⁷⁵ Additionally, in this

⁷² Ibid. Annex 4

⁷³ Inter-American Tropical Tuna Commission (IATTC). (2012). Resolution C-12-02: Establishment of a Committee on Administration and Finance.

⁷⁴ Fish Aggregating Devices (FAD) is a fishing technique that uses man-made floating objects to attract fish.

⁷⁵ South Pacific Regional Fisheries Management Organization (SPRFMO) & Inter-American Tropical Tuna Commission (IATTC). (2022). Memorandum of Understanding between the South Pacific Regional Fisheries Management Organization (SPRFMO) and the Inter-American Tropical Tuna Commission (IATTC). Article 2, paragraph ii, literal b. Retrieved from <https://sprfmo.int/assets/Cooperation-with-others/MoU-SPRFMO-IATTC-27-Jan-2022.pdf>

instrument, both RFMOs emphasize the importance of compatibility, recognizing and supporting the CMMs implemented by both organizations. (See Table 4 in the annexes).

South Pacific Regional Fisheries Management Organization (SPRFMO)

The SPRFMO is composed of a Commission and its subsidiary bodies: the Scientific Committee; the Compliance and Technical Committee; an Eastern Sub-Regional Management Committee; a Western Sub-Regional Management Committee; a Finance and Administration Committee; and a Secretariat.⁷⁶

The Commission is the main decision-making body, in which all members of the organization are represented. As specified in Article 8 of the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean, the Commission meets annually and is responsible for adopting CMMs; determining participation and fishing extent in the resources; developing and adopting regulations, rules, and standards; developing and establishing effective monitoring, control, and surveillance systems; guiding the work of the subsidiary bodies; adopting budget and financial decisions; and adopting measures to prevent, deter, and eliminate IUU fishing, among other functions.

The decision-making process is generally based on consensus, except for issues specifically detailed in the SPRFMO Convention text, provided that the Chairperson has determined that all efforts to reach a consensus have been exhausted.⁷⁷ Article 16, paragraph 2, specifies that decisions on procedural matters may be subject to a majority vote for approval or rejection, while substantive decisions will require a majority of three-fourths of the members.

The subsidiary bodies are tasked with supporting the work of the Commission and must "report, advise, and make recommendations"⁷⁸ to the members to aid in decision-making.

One of the main organs is the Scientific Committee, which has established four working groups: the Jack Mackerel Working Group, the Deepwater Working Group, the Squid Working Group, and a Habitat Monitoring Working Group. This distribution of work focuses on the main

⁷⁶ South Pacific Regional Fisheries Management Organization (SPRFMO). (2009). Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean. Article 6. Retrieved from <https://www.fao.org/fishery/docs/DOCUMENT/sprfmo/legal/SPRFMOConvention.pdf>

⁷⁷ Ibid. Article 16

⁷⁸ Ibid. Article 9, paragraph 3

commercial fisheries of the organization, with the last group addressing the Ecosystem Approach to Fisheries (EAF)⁷⁹. According to Article 10 of the SPRFMO Convention, the Scientific Committee is responsible for monitoring the status of fishery resources, recommending reference points and management options, analysing the impact of fishing on marine ecosystems in the Convention area, and proposing measures to avoid significant adverse impacts.

Additionally, the Compliance Committee is tasked with "monitoring and reviewing the implementation and compliance"⁸⁰ of the measures, while the Eastern and Western Management Committees aim to provide the coastal States that are Contracting Parties or Parties concerned in their main areas of interest in the Pacific Ocean with the capacity to develop and make recommendations about CMMs. Within the two Management Committees, decisions should generally be reached by consensus. However, if consensus cannot be achieved, recommendations will be adopted by a two-thirds majority of the sub-regional committee members⁸¹.

Finally, the institution has a Finance and Administration Committee, which generates recommendations on the budget, and a Secretariat, which is responsible for the administration and effective functioning of the RFMO. Among the Secretariat's main functions, and those of its Executive Secretary, are to notify the Commission of its decisions, publicize the CMMs, receive information and data from the members—including any accusations and responses concerning potential IUU fishing acts by members, CNCPs, and non-members.

An important element explicitly included in the SPRFMO Convention through Article 31 is the provision for cooperation with other RFMOs, FAO, UN agencies, and other relevant organizations, including the establishment of arrangements for collaboration, consultation, and cooperation. Paragraph 3 of this article emphasizes cooperation "with the aim of reducing and eventually eliminating IUU fishing."⁸²

Similarly, paragraph 2 specifies that the Commission "shall take account of the conservation and management measures or recommendations adopted" by other RFMOs and Intergovernmental

⁷⁹ South Pacific Regional Fisheries Management Organization (SPRFMO). (2024). Scientific Committee Meetings. Reviewed on November 11, 2024. Retrieved from <https://sprfmo.int/meetings/scientific-committee/>

⁸⁰ South Pacific Regional Fisheries Management Organization (SPRFMO). (2009). Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean. Article 11. Retrieved from <https://www.fao.org/fishery/docs/DOCUMENT/sprfmo/legal/SPRFMOConvention.pdf>

⁸¹ Ibid. Article 12

⁸² Ibid. Article 31, paragraph 3

Organisations (IOGs) with competency in the SPRFMO Convention area or adjacent areas, or “in respect of particular living marine resources including non-target and associated or dependent species,” in line with the objectives of the SPRFMO.⁸³

Article 31 is particularly relevant to this research as it reflects the mandates of international instruments regarding the duty of States to cooperate⁸⁴. The principal provisions of this mandate are Articles 117 and 118 of UNCLOS. According to Article 117 of UNCLOS, “all States have the duty to take or cooperate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas,” while Article 118 requires States “whose nationals exploit identical living resources, or different living resources in the same area” to cooperate and take necessary measures for the conservation of those resources.

In compliance with this mandate, the SPRFMO currently has 11 Memoranda of Understanding (MoUs), four of which are with RFMOs⁸⁵, one with an IOG⁸⁶, three with FAO programs and networks⁸⁷, and three signed by the SPRFMO Secretariat⁸⁸.

Of these MoUs, seven (WCPFC, NPFC, CCAMLR, IATTC, CPPS, Red INDNR ALC, IMCS Network) include cooperation in the exchange of information about vessels identified as having engaged in IUU fishing. With the Red INDNR ALC, there is even a proposal to work on “joint actions to strengthen regional and national capacities to combat IUU fishing.”⁸⁹ (See Table 5 in the annexes)

⁸³ Ibid. Article 31, paragraph 2

⁸⁴ United Nations. (1982). United Nations Convention on the Law of the Sea (UNCLOS). Articles 63; 64; 117 and 118. Retrieved from https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

⁸⁵ WCPFC, North Pacific Fisheries Commission (NPFC), Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) and IATTC)

⁸⁶ Comision Permanente del Pacifico Sur (CPPS)

⁸⁷ Fisheries and Resources Monitoring System, IMCS Network and Red Contra la Pesca INDNR de ALC (Red INDNR ALC).

⁸⁸ Secretariat for the Agreement on the Conservation of Albatrosses and Petrels; National Oceanic and Atmospheric Administration U.S. Department of Commerce (NOAA); RMIT University.

⁸⁹ South Pacific Regional Fisheries Management Organization (SPRFMO). (2019). Memorandum of Understanding between the Secretariat of the South Pacific Regional Fisheries Management Organisation and the Technical Secretariat of The Network for the Exchange of Information and Shared Experiences between Latin American and Caribbean Countries to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. Retrieved from <https://sprfmo.int/assets/Cooperation-with-others/MoUs/ANNEX-9c-MoU-REDPESCA-INDNR-Eng-1.pdf>

PART TWO: INTERNATIONAL COOPERATION, NORMATIVE ARTICULATION AND CAPACITY BUILDING

Chapter 1: Taking action.

Section A: Regulations and enforcement of SPRFMO and IATTC against IUU fishing

To combat IUU fishing practices, States and RFMOs have develop regulations and the implementation of management measures as primary tools to deter and prohibit actions that threaten the conservation and sustainability of fish stocks. These efforts are accompanied by compliance, monitoring, and enforcement mechanisms to ensure the proper implementation of these regulations.

However, both regulations and enforcement present significant challenges in the fight against IUU fishing. These challenges range from the lack of resources and unequal capacities among States to the vast expanse of the oceans, the shortage of scientific research, the need for international consensus, the high economic returns associated with non-compliance with CMMs, the standardization of concepts and data, and more.

This analysis sought to identify the main measures and actions implemented to combat IUU fishing within the two RFMOs under review, focusing on CMMs that have direct or indirect impacts on these practices.

Regarding enforcement, the primary responsibility lies with the Contracting Parties of the RFMOs⁹⁰ and the Flag States of fishing nations. As noted in previous sections, these States are obligated to comply with all provisions of UNCLOS concerning their duties and cooperation on the conservation and management of living resources⁹¹ and the protection and preservation of the marine environment⁹². However, RFMOs have the authority to establish duties for Contracting Parties, as enforcement elements, especially under the obligation to report and collect data, as well as to implement monitoring mechanisms such as Vessel Monitoring Systems (VMS) or the establishment of observer programs.

⁹⁰ United Nations. (1982). United Nations Convention on the Law of the Sea (UNCLOS). Articles 56, 61(2), 63, 64, 7. Retrieved from https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

⁹¹ Ibid. Articles 58 (3), 62 (4), 63,64(1), 94, 117, 118, 119 and 120

⁹² Ibid. Articles 192, 193

Additionally, within the structure of the IATTC and SPRFMO, as identified in Section B of Chapter 2, review and compliance committees have been implemented. These committees are responsible for monitoring and evaluating the actions that Contracting Parties have taken to implement the CMMs established by the fishing organizations.

Inter-American Tropical Tuna Commission (IATTC)

As of December 2024, the IATTC has 77 active CMMs, of which seven directly address IUU fishing. These management measures include: the reporting, identification, and sighting of vessels operating in the Convention Area⁹³; the implementation of an IUU vessel list⁹⁴; the listing of longline fishing vessels⁹⁵; the Regional Vessel Register⁹⁶; the application of Port State Measures⁹⁷; the program for transshipment by large-scale fishing vessels⁹⁸; and the establishment of a Vessel Monitoring System (VMS)⁹⁹.

Six of these seven CMMs explicitly mention the concern and necessity to implement these measures to prevent, deter, and eliminate IUU fishing. The inclusion of VMS is mentioned due to its importance in ensuring the compliance of vessels in the Convention area for combating the IUU practices.

These CMMs can be grouped into four main categories: 1) identification, registration, and listing of vessels, including the creation of an IUU fishing list; 2) monitoring fishing activities within the RFMO's area of competence, which also includes IATTC's observer programs¹⁰⁰; 3) measures for

⁹³ Inter-American Tropical Tuna Commission (IATTC). (2004). Resolution C-04-03: Resolution on a System of Notification of Sighting and Identification of Vessels Operating in the Convention Area. In Proceedings of the 72nd Meeting, Lima, Peru, 14-18 June 2004.

⁹⁴ Implemented since 2004, but the latest amendment was made in 2019 with CMM: C-19-02.

⁹⁵ Inter-American Tropical Tuna Commission (IATTC). (2011). Resolution C-11-05 (Amended): Establishment of a List of Longline Fishing Vessels over 24 Meters (LSTLFVs) Authorized to Operate in the Eastern Pacific Ocean. In Proceedings of the 82nd Meeting, La Jolla, California, USA, 4-8 July 2011.

⁹⁶ Inter-American Tropical Tuna Commission (IATTC). (2024). Resolution C-24-07: On a Regional Vessel Register (Amends Res. C-18-06).

⁹⁷ Inter-American Tropical Tuna Commission (IATTC). (2021). Resolution C-21-07: Resolution for an IATTC Scheme for Minimum Standards for Inspection in Port. In Proceedings of the 98th Meeting (Resumed), Panama City, Panama, 18-22 October 2021.

⁹⁸ Inter-American Tropical Tuna Commission (IATTC). (2022). Resolution C-22-03: Amendment to Resolution C-12-07 on Establishing a Program for Transshipments by Large-Scale Fishing Vessels. In Proceedings of the 100th Meeting, Phoenix, Arizona, USA, 1-5 August 2022.

⁹⁹ Inter-American Tropical Tuna Commission (IATTC). (2023). Resolution C-23-11: Amendment to Resolution C-14-02 on the Establishment of a Vessel Monitoring System (VMS).

¹⁰⁰ The IATTC has observer programs for longline vessels, purse seine vessels, and carrier vessels involved in transshipment at sea.

regulating and controlling transshipment; and 4) the establishment of minimum Port State measures. These four areas of action represent the main tools of this RFMO to combat IUU fishing practices.

In addition, there are other measures that do not explicitly aim to prevent IUU fishing but have a significant complementary impact on the control of fish stocks and ecosystems. These measures align with the principles of the Ecosystem Approach to Fisheries (EAF) and the precautionary approach. One such measure is the inclusion of additional species to the target species list, which reduces the scope of unregulated fishing. Some of these measures include the adoption of several actions for mitigating bycatch and conserving non-target species, such as those focused on various species of sharks¹⁰¹, seabirds¹⁰², sea turtles¹⁰³, rays¹⁰⁴, dolphins¹⁰⁵, and dolphinfish (mahi-mahi)¹⁰⁶.

Finally, as a third central element for the management of these organizations in addressing IUU fishing, the CMMs aimed at information and data collection should be highlighted, especially those focused on gathering catch-and-effort, length-frequency, and observer data. (See Table 6 in the annexes)

South Pacific Regional Fisheries Management Organization (SPRFMO)

The SPRFMO has explicit mandates related to combating IUU fishing within its Convention, including the obligation for members to "take all necessary measures to support efforts to prevent,

¹⁰¹ Inter-American Tropical Tuna Commission (IATTC). Resolution C-11-10: Resolution on the Conservation of Oceanic Whitetip Sharks Caught in Association with Fisheries in the Antigua Convention Area; Inter-American Tropical Tuna Commission (IATTC). (2019). Resolution C-19-06: Conservation of Whale Sharks; Resolution C-23-08: Amendment to Resolution C-21-06 Conservation Measures for Shark Species, with Special Emphasis on the Silky Shark (*Carcharhinus falciformis*), for the Years 2024 and 2025; and Resolution C-24-051: Conservation Measures for the Protection and Sustainable Management of Sharks.

¹⁰² Inter-American Tropical Tuna Commission (IATTC). (2011). Resolution C-11-02: Resolution to Mitigate the Impact on Seabirds of Fishing for Species Covered by the IATTC. In Proceedings of the 82nd Meeting, La Jolla, California, USA, 4-8 July 2011.

¹⁰³ Inter-American Tropical Tuna Commission (IATTC). Resolution C-04-07: Resolution on a Three-Year Program to Mitigate the Impact of Tuna Fishing on Sea Turtles; and Resolution C-19-04: Resolution to Mitigate Impacts on Sea Turtles.

¹⁰⁴ Inter-American Tropical Tuna Commission (IATTC). (2015). Resolution C-15-04: Resolution on the Conservation of Mobulid Rays Caught in Association with Fisheries in the IATTC Convention Area. In Proceedings of the 89th Meeting, Guayaquil, Ecuador, 22 June-3 July 2015.

¹⁰⁵ Inter-American Tropical Tuna Commission (IATTC). (2009). Resolution C-09-04: Resolution on the International Dolphin Conservation Program. In Proceedings of the 80th Meeting, La Jolla, California, USA, 8-12 June 2009.

¹⁰⁶ Inter-American Tropical Tuna Commission (IATTC). (2023). Resolution C-23-09: Research for the Management of Dolphinfish (Dorado) (*Coryphaena hippurus*). In Proceedings of the 101st Meeting, Victoria, B.C., Canada, 7-11 August 2023.

deter and eliminate IUU fishing,"¹⁰⁷ to cooperate in ensuring compliance, and to investigate alleged violations of CMMs¹⁰⁸. Furthermore, Article 23, paragraph 1, establishes the need to strengthen information collection to "contribute to the elimination or reduction of IUU fishing and its negative impact on those resources," all with an EAF.

Finally, Articles 25 and 26 outline the obligations of Member States regarding their duties as Flag States and Port States, specifying and expanding upon the provisions of UNCLOS and UNFSA, particularly regarding compliance with CMMs, prohibiting unauthorized fishing; adhering to VMS standards; maintaining a register of fishing vessels; investigating and reporting any alleged violations by fishing vessels flying their flag; imposing sanctions for violations of the SPRFMO Convention or CMMs; ensuring the implementation of CMMs for the use of ports, landings, transshipment, inspections, documents, etc.

In addition to these provisions, the SPRFMO's regulatory framework consists of 24 CMMs, five of which directly address the issue of IUU fishing. These CMMs include establishing an IUU vessel list¹⁰⁹, marking and identification of fishing vessels¹¹⁰, measures for vessels without nationality¹¹¹, transshipment regulations¹¹², and minimum standards for port inspections¹¹³.

¹⁰⁷ South Pacific Regional Fisheries Management Organization (SPRFMO). (2009). Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean. Article 24, paragraph 1(c). Retrieved from <https://www.fao.org/fishery/docs/DOCUMENT/sprfmo/legal/SPRFMOConvention.pdf>

¹⁰⁸ Ibid. Article 24, paragraph 3.

¹⁰⁹ South Pacific Regional Fisheries Management Organisation (SPRFMO). (2020). Conservation and Management Measure (CMM) 04-2020: Establishing a List of Vessels Presumed to Have Carried Out Illegal, Unreported and Unregulated Fishing Activities in the SPRFMO Convention Area

¹¹⁰ South Pacific Regional Fisheries Management Organisation (SPRFMO). (2021). Conservation and Management Measure (CMM) 19-2021: Marking and Identification of Fishing Vessels.

¹¹¹ South Pacific Regional Fisheries Management Organisation (SPRFMO). (2016). Conservation and Management Measure (CMM) 15-2016: Vessels without Nationality in the SPRFMO Convention Area.

¹¹² South Pacific Regional Fisheries Management Organisation (SPRFMO). (2023). Conservation and Management Measure (CMM) 12-2023: Regulation of Transshipment and Other Transfer Activities

¹¹³ South Pacific Regional Fisheries Management Organisation (SPRFMO). (2022). Conservation and Management Measure (CMM) 07-2022: Minimum Standards of Inspection in Port.

Additionally, CMMs related to the list of vessels authorized to fish¹¹⁴, measures for implementing VMS¹¹⁵, and high seas boarding and inspection procedures¹¹⁶, while not explicitly focused on IUU fishing, are central to compliance, which in turn is essential for combating such practices.

It is important to note that the SPRFMO has made substantial progress regarding species that were previously outside of regulated frameworks, particularly considering the growing development of new fisheries within its area of competence. As a result, the RFMO has implemented eight CMMs focusing on species such as jumbo flying squid¹¹⁷, toothfish¹¹⁸, trapping¹¹⁹, and hapukka¹²⁰, as well as establishing general frameworks for bottom fishing¹²¹ and new and exploratory fisheries in the Convention area¹²².

Preliminary Conclusions

Based on the previous discussion, we have identified the primary measures implemented by the IATTC and SPRFMO in addressing IUU fishing practices, highlighting that both organizations have prioritized the following actions:

- IUU vessel lists.
- Transshipment regulations.
- Port measures.

¹¹⁴ South Pacific Regional Fisheries Management Organisation (SPRFMO). (2023). Conservation and Management Measure (CMM) 05-2023: Commission Record of Vessels Authorised to Fish in the SPRFMO Convention Area.

¹¹⁵ South Pacific Regional Fisheries Management Organisation (SPRFMO). (2023). Conservation and Management Measure (CMM) 06-2023: Vessel Monitoring System in the SPRFMO Convention Area.

¹¹⁶ South Pacific Regional Fisheries Management Organisation (SPRFMO). (2023). Conservation and Management Measure (CMM) 11-2023: High Seas Boarding and Inspection Procedures for the South Pacific Regional Fisheries Management Organisation

¹¹⁷ South Pacific Regional Fisheries Management Organisation (SPRFMO). (2024). Conservation and Management Measure (CMM) 18-2024: Management of the Jumbo Flying Squid Fishery.

¹¹⁸ South Pacific Regional Fisheries Management Organisation (SPRFMO). Conservation and Management Measure (CMM) 14a-2022: Exploratory Fishing for Toothfish by New Zealand-Flagged Vessels in the SPRFMO Convention Area; Conservation and Management Measure (CMM) 14e-2024: Exploratory Fishing for Toothfish by the European Union in the SPRFMO Convention Area; and Conservation and Management Measure (CMM) 14f-2024: Exploratory Fishing for Toothfish by Australia in the SPRFMO Convention Area.

¹¹⁹ South Pacific Regional Fisheries Management Organisation (SPRFMO). (2024). Conservation and Management Measure (CMM) 14b-2024: Exploratory Trap Fishery in the SPRFMO Convention Area

¹²⁰ South Pacific Regional Fisheries Management Organisation (SPRFMO). (2024). Conservation and Management Measure (CMM) 14g-2024: Exploratory Hapuka Fishery by the Cook Islands in the SPRFMO Convention Area.

¹²¹ South Pacific Regional Fisheries Management Organisation (SPRFMO). (2023). Conservation and Management Measure (CMM) 03-2023: Management of Bottom Fishing in the SPRFMO Convention Area.

¹²² South Pacific Regional Fisheries Management Organisation (SPRFMO). (2024). Conservation and Management Measure (CMM) 13-2024: Management of New and Exploratory Fisheries in the SPRFMO Convention Area

- Monitoring of fishing periods through VMS and observer programs.

Additionally, it is crucial to highlight the management measures implemented for non-target and dependent species, bycatch, and new fisheries, which help reduce the scope of unregulated fishing practices.

Both RFMOs have adopted CMMs aimed at enforcement, such as the SPRFMO resolution on high seas boarding and inspection procedures, and the obligation of Contracting Parties in both organizations to report relevant information and data to their respective Secretariats.

Lastly, it is important to note the global reach of the RFMOs' mandates. While they have defined areas of competence, they are responsible for managing all living resources regulated by these organizations within their convention area, regardless of where they are transported, landed, or transshipped around the world. This is particularly relevant in the context of Port State measures, transshipment, and the collection of relevant data on species and the origin of catches—central elements for establishing true traceability of fishery resources.

Despite these measures aimed at improving traceability and combating IUU fishing, there is a significant limitation. Both the IATTC and SPRFMO have CMMs¹²³ concerning the confidentiality of information, which restrict the scope of data that will be made public or shared with other States, relevant international organizations, and civil society. Confidential information includes data on the origin of catches, records of individual company operations, among other aspects. This limits the identification and enforcement of penalties, as well as the proper accountability of individuals and companies fishing in these areas.

¹²³ Inter-American Tropical Tuna Commission (IATTC). (1951). Resolution C-51-01: Resolution on Confidentiality. In Proceedings; Resolution C-15-07: Amendment to Resolution C-13-05 on Data Confidentiality Policy and Procedures, and South Pacific Regional Fisheries Management Organization (SPRFMO). (2022). Conservation and Management Measure (CMM) 02-2022: Standards for the Collection, Reporting, Verification and Exchange of Data.

Section B: Sharing best practices from other parts of the world.

In addition to the measures adopted by the IATTC and SPRFMO, identified in the previous section, the recognition of IUU fishing as one of the main factors threatening the sustainability of fish stocks and the conservation and preservation of the marine environment has prompted several countries and international organizations to implement measures to combat these practices.

This section aims to identify some of the best practices around the world that have been implemented to address IUU fishing.

European Union IUU Policy and Carding System

On September 29, 2008, the Council of the European Union (EU) adopted Council Regulation (EC) No. 1005/2008 to prevent, deter, and eliminate illegal, unreported, and unregulated fishing (the IUU Regulation), which came into force on January 1, 2010. This policy, framed within the competencies of the Common Fisheries Policy¹²⁴, establishes a system to address IUU fishing and prevent fishery products from entering the EU market that originate from such practices, as well as to combat the "involvement of EU nationals in IUU activities conducted under any flag."¹²⁵

Through this regulation, the EU Catch Certification Scheme was implemented, aiming to ensure the traceability of fishery products traded with the EU. This includes the entire production chain, from fishing, landing, and transshipment to processing factories and transportation.

The IUU Regulation is a market state measure, as it applies to all fishing activities in any maritime zone related to the "EU through trade flows, the flag of fishing vessels, or the nationality of operators"¹²⁶. The regulation incorporates, in Article 2 (paragraphs 2 to 4), the definition established by the IPOA-IUU, while Article 3 specifies the activities that will be considered in determining whether a vessel has engaged in IUU fishing.

In addition to incorporating port state measures standards, the main innovations of this policy include the Catch Certification Scheme for importation and exportation and the Carding System.

¹²⁴ Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy. (2002). Official Journal of the European Communities, L 358, 59-80.

¹²⁵ European Commission. (2024). Information notes on sustainable fisheries management. Retrieved from https://oceans-and-fisheries.ec.europa.eu/document/download/8d5b68a2-37d8-4f54-b4c4-01dac99e7c48_en?filename=information_note01_en.pdf

¹²⁶ Ibid. p.3

The former requires that all fishery products entering the EU must be accompanied by a document certifying that the catches "have been made in accordance with applicable laws, regulations, and international conservation and management measures."¹²⁷ This measure seeks to guarantee traceability and strengthen compliance by countries wishing to export their products to the EU.

The Carding System involves the establishment of an alert system¹²⁸ that monitors and alerts any potential violations of the regulation and identifies vessels engaged in IUU fishing¹²⁹ and states considered not to cooperate in fighting these practices¹³⁰. Regarding vessels, Article 27 of the IUU Regulation establishes a Community IUU Vessel List, while for non-cooperating third countries, the EU Commission identifies countries that "fail to discharge the duties incumbent upon them under international law as flag, port, coastal, or market states, to take action to prevent, deter, and eliminate IUU fishing."¹³¹

For a state to be identified as a non-cooperating third country, a dialogue process is first established to gather information and exchange criteria and positions with the EU Commission. If no progress is made in these dialogues, a formal warning, also known as a yellow card, is issued to improve and address the measures identified by the EU for combating IUU fishing. If the EU Commission deems there has been no progress in the requested reforms, the state may be identified as a non-cooperating third country (red card), leading to a ban on importing fishery products into the EU market, as well as prohibitions on exporting vessels to the non-cooperating State, establishing fisheries agreements, and other measures outlined in Article 38 of the IUU Regulation.

United States Maritime Security and Fisheries Enforcement (SAFE) Act

The United States (US) policy to combat IUU fishing has several distinctive features that make it particularly relevant, not only because of its role as one of the principal markets for fish, but also due to its technological capacity, fleet size, and international influence. In this regard, the US has

¹²⁷ Food and Agriculture Organization of the United Nations (FAO). (2024). Council Regulation (EC) No 1005/2008: Establishing a community system to prevent, deter and eliminate illegal, unreported, and unregulated fishing. Article 12, paragraph 3. Retrieved from <https://faolex.fao.org/docs/pdf/eur90889.pdf>

¹²⁸ Ibid, Chapter IV

¹²⁹ Ibid, Article 27

¹³⁰ Ibid, Article 31

¹³¹ Ibid, Article 31, paragraph 3

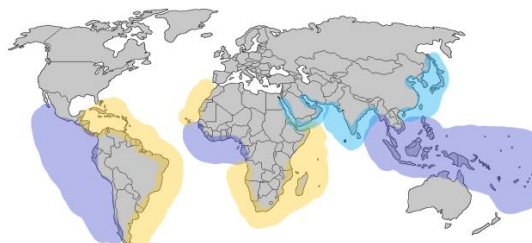
developed a series of rules and regulations addressing IUU fishing, including the Maritime Security and Fisheries Enforcement (SAFE) Act, enacted in 2019.

It is important to note the emphasis in the US policy on prioritizing IUU fishing as a threat to maritime security and its connection to transnational crime, particularly “smuggling migrants, trafficking arms, drugs, and other contraband.”¹³²

The SAFE Act establishes state coordination to combat IUU fishing and related threats to maritime security. This law organizes and establishes the creation of a 21-member Interagency Working Group on IUU Fishing to coordinate efforts to combat these practices.¹³³ In addition, it creates specific programs to address IUU fishing, setting forth specific actions with international organizations, states, and civil society.

A particular element is the provision in Title I, Section 102, regarding the engagement of the United States diplomatic missions as a policy for coordinated and cooperative work to address IUU fishing¹³⁴. All of this is carried out under the designation of "priority regions" and "priority flag states."¹³⁵

FIGURE 3.- US “PRIORITY REGIONS” FOR COMBATIN IUU FISHING



¹³² U.S. Department of State. (n.d.). Illegal, unreported, and unregulated fishing. Retrieved from <https://www.state.gov/key-topics-office-of-marine-conservation/illegal-unreported-and-unregulated-fishing/>

¹³³ The group's chair and deputy chair positions rotate among NOAA, the U.S. Department of State, and the U.S. Coast Guard.

¹³⁴ United States House of Representatives. (2019). The Maritime Security and Fisheries Enforcement (SAFE) Act (Public Law 116-92, codified in 16 U.S.C. § 8001 et seq). Retrieved from <https://uscode.house.gov/view.xhtml?path=/prelim@title16/chapter99&edition=prelim>

¹³⁵ Initially, the Working Group had selected five priority flag states and administrations with which to pursue new projects and initiatives to support ongoing counter-IUU fishing efforts: Ecuador, Panama, Senegal, Taiwan, and Vietnam.

Through this law and the Interagency Working Group, the US developed its first National 5-Year Strategy for Combating Illegal, Unreported, and Unregulated Fishing 2022-2026, based on three strategic objectives:

1. Promote Sustainable Fisheries Management and Governance
2. Enhance the Monitoring, Control, and Surveillance of Marine Fishing Operations
3. Ensure that Only Legal, Sustainable, and Responsibly Harvested Seafood Enters Trade.

Among the main measures that the SAFE Act applies are the construction of a cooperation framework with third countries to coordinate actions, engagement of diplomatic missions, assistance from U.S. federal agencies, information sharing, as well as training in enforcement application and joint actions such as inspections, investigations, and vessel boarding.

Complementing this law, on June 27, 2022, the White House issued a Memorandum on Combating Illegal, Unreported, and Unregulated Fishing and Associated Labor Abuses, which established the fight against IUU fishing as a priority and provided directives to federal government institutions to act against these practices. The instructions in the Memorandum align with the provisions of the SAFE Act; however, it emphasizes the enforcement actions that must be taken against fishing vessels and operators suspected of engaging in IUU fishing and other activities, such as forced labor.¹³⁷

Preliminary Conclusions

The examples of the EU and the US reflect two distinct yet complementary approaches in the fight against IUU fishing. On the one hand, the EU prioritizes the use of market measures, leveraging its position as one of the world's main seafood importers. While its regulations include provisions to act on nationals, owners, and operators, much of this framework aims to guide governments in

¹³⁶ National Oceanic and Atmospheric Administration (NOAA). (2021). MARITIME SAFE ACT PRIORITY REGIONS INFORMATION SHEET. Retrieved from <https://media.fisheries.noaa.gov/2021-07/Maritime%20SAFE%20Act%20Priority%20Regions%20Info%20Sheet.pdf?null>

¹³⁷ The White House. (2022, June 27). Memorandum on Combating Illegal, Unreported, and Unregulated Fishing and Associated Labor Abuses. Retrieved from <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/06/27/memorandum-on-combating-illegal-unreported-and-unregulated-fishing-and-associated-labor-abuses/>

strengthening their legal and institutional systems, should they wish to maintain access to the European market.

On the other hand, the US also employs market measures; however, its approach is more focused on sanctions against individuals or legal entities¹³⁸. Additionally, its policy emphasizes diplomacy to strengthen cooperation on this issue. It is also noteworthy how the internal structure of the US government coordinates and uses prioritization and targeting of efforts in specific regions or countries, to create champions in the fight against IUU fishing.

¹³⁸ U.S. Department of the Treasury. (2022). Treasury targets cartel-enabled illegal, unreported, and unregulated fishing operations. Retrieved from <https://home.treasury.gov/news/press-releases/jy2729#:~:text=On%20June%2027%2C%202022%2C%20President,are%20significant%20causes%20of%20global>

Chapter 2: Strengthen the integration and coordination between international instruments and RFMO's.

Section A: An initial approach to the first COP of BBNJ and the work with the RFMOs

On June 19, 2023, the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (BBNJ) was adopted. It was signed by Ecuador on September 21, 2023¹³⁹, and is currently awaiting internal processes for possible ratification.

As of December 2024, the BBNJ Agreement has 104 signatory states and 13 ratifications¹⁴⁰. According to Article 68, paragraph 1 of this agreement, this international instrument will enter into force “120 days after the date of deposit of the sixtieth instrument of ratification, approval, acceptance, or accession.”¹⁴¹

No later than one year after its entry into force, the first Conference of the Parties (COP) will be held, during which the state parties will regulate the implementation of this new international instrument¹⁴².

The BBNJ Agreement constitutes the third implementing agreement of the UNCLOS, alongside the 1994 Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea and the 1995 UNFSA. The objective of this new agreement is “to ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, for the present and in the long term, through effective implementation of the relevant

¹³⁹ Ministerio de Relaciones Exteriores y Movilidad Humana del Ecuador. (2023, September 21). Ecuador suscribió el acuerdo global sobre la conservación y uso sostenible de la biodiversidad de los océanos “Acuerdo BBNJ” en el marco de la 78ª Asamblea General de Naciones Unidas. Retrieved from <https://www.cancilleria.gob.ec/2023/09/21/ecuador-suscribio-el-acuerdo-global-sobre-la-conservacion-y-uso-sostenible-de-la-biodiversidad-de-los-oceanos-acuerdo-bbnj-en-el-marco-de-la-78a-asamblea-general-de-naciones-un/>

¹⁴⁰ Bangladesh (26 September 2024), Barbados (26 September 2024), Belize (8 April 2024), Chile (20 February 2024), Cuba (28 June 2024), Maldives (24 September 2024), Mauritius (30 May 2024), Monaco (9 May 2024), Palau (22 January 2024), Seychelles (13 April 2024), Singapore (24 September 2024), Timor-Leste (26 September 2024).

¹⁴¹ Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ), Article 68 (1)

¹⁴² Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ), Article 47 (2)

provisions of the Convention (UNCLOS) and further international cooperation and coordination.”¹⁴³

The adopted document includes four main themes: 1) Area-based Management Tools (ABMTs), including Marine Protected Areas (MPAs); 2) Environmental Impact Assessments (EIAs); 3) Marine Genetic Resources (MGRs); and 4) Capacity Building and Technology Transfer.

It is important to highlight that, under Article 10, paragraph 2, the provisions concerning MGRs exclude fisheries, fishing-related activities, as well as fish or other living marine resources linked to these activities. However, no similar provision exists regarding other parts of the agreement, such as ABMTs, EIAs, and Capacity Building.

Furthermore, the scope and objectives of the BBNJ, along with its link to the main international instruments and institutions of the Law of the Sea, position it as an agreement that will have a significant and cross-cutting impact on various ocean governance issues.¹⁴⁴ This is particularly relevant regarding how this new international instrument will interact within the broad institutional landscape, including all relevant regulations, competences, and international bodies focused on managing fishery resources.

How this impact and relation with relevant legal instruments and frameworks and relevant global, regional, subregional, and sectoral bodies (IFBs) will work was an important aspect of the negotiations among states during the five sessions of the Intergovernmental Conferences held between September 2018 and June 2023.¹⁴⁵ For this reason, the final adopted text clearly states that this agreement “shall be interpreted and applied in a manner that does not undermine relevant legal instruments and frameworks and relevant global, regional, subregional, and sectoral bodies (IFBs) and that promotes coherence and coordination with those instruments, frameworks, and bodies.”¹⁴⁶

¹⁴³ Ibid. Article 2

¹⁴⁴ Rakhyun E. Kim, The likely impact of the BBNJ Agreement on the architecture of ocean governance, *Marine Policy*, Volume 165, 2024, 106190, ISSN 0308-597X, <https://doi.org/10.1016/j.marpol.2024.106190>.

¹⁴⁵ Langlet, A., & Vadrot, A. B. M. (2023). Not ‘undermining’ who? Unpacking the emerging BBNJ regime complex. *Marine Policy*, 147, 105372.

¹⁴⁶ Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ), Article 5 (2)

These IFBs are mentioned 37 times throughout the text of the agreement and are consistently linked with the principles of "not undermine," "coherence," "coordination," and "cooperation," as expressed in Articles 2 and 5. It is through these principles that we can consider some of the possible lines of connection between this instrument and the work carried out by RFMOs to combat IUU fishing.

This brings us to one of the main challenges of this new international agreement, as it will require “harmonizing existing institutions, frameworks, and bodies (IFBs) while respecting their autonomy.”¹⁴⁷ This is because, while there exists a broad international legal framework on the law of the sea, where UNCLOS encompasses a wide range of provisions, ocean governance remains highly fragmented, with various institutions regulating different aspects and issues, such as the International Seabed Authority (ISA), ITLOS, International Maritime Organization (IMO), WTO, and RFMOs, among others. It is worth noting that the BBNJ Agreement does not establish a hierarchy over other international treaties, including the founding instruments of the RFMOs.

The first COP will be the venue for the state parties to define the scope of the concept of "not undermine," "cooperation," "coordination," and "coherence," in addition to constituting the institutional space for making key decisions, including the establishment of the main bodies outlined in the agreement.¹⁴⁸ Below I discuss each of these elements.

Not Undermine

The concept of "Not Undermine" is one of the main issues that states had to consider when negotiating the BBNJ Agreement and establishing its relationship with the IFBs.¹⁴⁹ It is essential to define the scope of this principle and its implications, as it can be understood to refer to decisions, effectiveness, mandates, competences, regulations, and CMMs, among others.

In Article 5, paragraph 2, of the BBNJ Agreement text, this principle is used in a general sense. However, in the same paragraph, it specifies that this Agreement shall promote “coherence and

¹⁴⁷ Rakhyun E. Kim, The likely impact of the BBNJ Agreement on the architecture of ocean governance, *Marine Policy*, Volume 165, 2024, 106190, ISSN 0308-597X, <https://doi.org/10.1016/j.marpol.2024.106190>.

¹⁴⁸ Secretariat, the Scientific and Technical Body, the CoP, the Implementation and Compliance Committee, Access and Benefit Sharing Committee, Capacity-Building and Transfer of Marine Technology Committee and funds for finance.

¹⁴⁹ Langlet, A., & Vadrot, A. B. M. (2023). Not ‘undermining’ who? Unpacking the emerging BBNJ regime complex. *Marine Policy*, 147, 105372. <https://www.sciencedirect.com/science/article/pii/S0308597X22004195>

coordination with those instruments, frameworks, and bodies,” which suggests that promoting coherence and coordination are concepts that could guide the relationship and avoid undermining the IFBs.

Furthermore, Article 22, paragraph 2, again uses the principle of not undermining IFBs, but in the context of ABMTs, including MPAs, specifying that decisions on this matter “shall respect the competences of, and not undermine,” the IFBs. In this case, the definition of the relationship between the BBNJ and the IFBs expands, including respect for their competences, which would have a significant impact on RFMOs and their mandate to manage fishing resources. However, it is also important to note that the provisions of Part III¹⁵⁰ establish an important role for the IFBs in the definition and approval of ABMTs, including their participation in the entire decision-making process and ensuring compatibility with previously established measures.

Cooperation and Coordination

The concepts of cooperation and coordination not only imply working with the IFBs but also include the mandate to promote cooperation among them, as stated in Article 8, paragraph 1 of the agreement text. This allows the agreement to potentially serve as a dialogue and coordination space for harmonizing policies and efforts across various IFBs.

For this purpose, through Article 47, paragraph 2 (c), the agreement also grants the COP the responsibility for “cooperation and coordination with and among” IFBs, meaning that various parts of the agreement will involve meetings¹⁵¹, consultations¹⁵², exchange of information¹⁵³, and other mechanisms, including the participation of IFBs in capacity-building and marine technology transfer¹⁵⁴.

This approach reflects a significant recognition by the states that adopted the BBNJ of the need for "objectives [that] can only be achieved through the concerted efforts of all relevant IFBs."¹⁵⁵

¹⁵⁰ Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ), Articles 19 (4-i); Article 21 (2-b); Art 22 (1-b), (2), (3), (4), (5) (7); Art 23 (10); Article 24 (2); Art 25 (4 and 6); Art 26 (2)

¹⁵¹ Ibid. Article 47 (2).

¹⁵² Ibid. Article 22 (3 and 4)

¹⁵³ Ibid. Article 15 (5)

¹⁵⁴ Ibid. Article 41 (2)

¹⁵⁵ Rakhyun E. Kim, The likely impact of the BBNJ Agreement on the architecture of ocean governance, *Marine Policy*, Volume 165, 2024, 106190, ISSN 0308-597X, <https://doi.org/10.1016/j.marpol.2024.106190>

Coherence

Finally, the mandate to promote coherence with the IFBs¹⁵⁶ is another concept that the COP will need to define in relation to the IFBs, as it may involve building coherence in principles, objectives, decisions, actions, measures, or even through the standardization of processes, policies, and information.

In principle, considering UNCLOS and UNFSA, the promotion of coherence will be framed within principles established by these instruments, such as sustainability, conservation of living resources, protection and preservation of the marine environment, the common heritage of humankind, and the precautionary approach, among others. However, it could also extend to the work that many IFBs, including RFMOs, have developed, implementing principles like the ecosystem approach, and deepening the understanding of the interrelationship of all dynamics within the maritime ecosystem.

This search for coherence will be a key element for the success of the agreement, which could even lead to the construction of comprehensive management if the states that are members of an RFMO and Parties to the BBNJ Agreement promote the objectives of the BBNJ Agreement within their respective international bodies, with the aim of acting consistently.

Preliminary Conclusions

The BBNJ Agreement has the potential to become a crucial instrument for better articulation and coordination within the international institutional framework of ocean governance.

Regarding RFMOs and with the aim of strengthening the fight against IUU fishing, the new international agreement could serve as a platform to better coordinate the individual efforts of each international organization, facilitating collaboration, exchange, and cooperation. This involves not only the relationship between the BBNJ Agreement and the IFBs but also the interaction between the IFBs themselves.

Key areas include the potential exchange of information on biodiversity assessments, conservation measures, and fishing activities, as well as strengthening the capacities of the scientific bodies

¹⁵⁶ Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ), Article 5 (2) and Article 47 (6-c)

associated with RFMOs. Within the ABMTs, including MPAs, RFMOs will play a central role, both in their definition and creation of the new protected areas, as well as in their subsequent establishment, monitoring, and surveillance for granting the compliance of the measures applied in the MPAs. This offers the potential to become a vital tool in combating IUU fishing.

To ensure this cooperation and articulation, the BBNJ Agreement itself establishes in Article 8, paragraphs 1 and 2, that State parties have the mandate to promote cooperation and the objectives of this Agreement in the decision-making of the IFBs. Therefore, State Parties that are members of RFMOs will be the primary actors in promoting this relationship. However, several institutions created by the BBNJ Agreement, including the COP and the Scientific and Technical Body, are also granted the responsibility to foster cooperation with the RFMOs.

Finally, the participation of States Parties in the first COP of the BBNJ Agreement is highly relevant and decisive, as the main lines of action and their relationship with the IFBs will be defined. It is in this forum where high-level policy could be established to influence the work of RFMOs. To achieve this, harmonization of objectives between the new agreement and the ongoing work of RFMOs will be necessary.

Section B: How to enhance the efforts and actions of RFMOs combating the IUU fishing.

In this section, we will delve into the analysis of the four main measures identified in Chapter 1 of Part Two, implemented by IATTC and SPRFMO to address the fight against IUU fishing. These measures are:

- IUU fishing list.
- Transshipment.
- Port State measures.
- Monitoring through VMS and Observer programs.

IUU Vessel List

IUU Vessel lists are recognized as one of the primary tools in combating IUU fishing practices¹⁵⁷. These lists follow a procedure that, in general terms, involves identifying a vessel that is presumed to have committed a violation of the CMM or acted against the rules of the RFMOs. Subsequently, a notification is made to the Secretariat of the RFMO, the flag state, and the relevant concerned states. Furthermore, there is an exchange of evidence and rebuttals to determine whether such a violation occurred.

Finally, if it is determined by the Secretariat of the RFMO that IUU fishing practices were carried out, the head of the RFMO Secretariat drafts a provisional list for consideration by the Commission, which will make the final decision to include or remove a vessel, all through consensus approval. In the case of SPRFMO, the Compliance and Technical Committee should draft the IUU Vessel List and examine the possibility of removing or adding vessels to the list for the Commission's decision.¹⁵⁸

The final lists are published on the websites of IATTC and SPRFMO.

These lists allow member states and CNMs of the RFMOs to identify and take measures within their jurisdiction to address any infringements or violations committed by their vessels or to ensure

¹⁵⁷ Palma, M; Tsamenyi, M; and Edeson, W (2010). Promoting Sustainable Fisheries: the international legal and policy framework to combat illegal, unreported, and unregulated fishing. Pag 210. Martinus Nijhoff Publishers. Leiden, The Netherlands. ISBN 9789004175754

¹⁵⁸ South Pacific Regional Fisheries Management Organisation (SPRFMO). (2020). Conservation and Management Measure (CMM) 04-2020: Establishing a List of Vessels Presumed to Have Carried Out Illegal, Unreported and Unregulated Fishing Activities in the SPRFMO Convention Area. Paragraph 11

they do not conduct any fishing-related business with vessels from other flag states listed by the RFMOs. Even with the PSMA and the port measures adopted by international fisheries organizations, the IUU Vessel lists will serve to take actions such as denying a vessel entry into port.¹⁵⁹

A particularly relevant provision is established in paragraph 19 of CMM 04-2020 of SPRFMO, where it is recognized “*mutatis mutandis*” for fishing vessels included in the final IUU list established by another RFMO and operating in the SPRFMO Convention Area. This implies an automatic recognition of the IUU vessel lists of IATTC and WCPFC. In turn, the IATTC has made significant progress by incorporating, in its CMM C-19-02, paragraphs 19 to 24, a special procedure for cross-listing IUU vessels with other RFMOs¹⁶⁰, always leaving the possibility for any member or CNM of the organization to formally object to the inclusion of a vessel.

Additionally, SPRFMO includes in paragraph 25 of CMM 04-2020 that members and CNMs should take actions against nationals under their jurisdiction. This deepens the responsibility of all states to act against these practices, including taking measures against natural or legal persons benefiting from IUU fishing.

To determine activities classified as IUU fishing, IATTC, through its CMM C-19-02, lists 10 actions by which vessels covered by this RFMO are presumed to have committed IUU fishing activities. Meanwhile, SPRFMO, through CMM 04-2020, has established 9 actions. (See Table 7 in the annexes)

An important difference between IATTC and several other RFMOs, including SPRFMO, is that this organization considers as part of IUU fishing activities all vessels belonging to the same owner or operator that has a vessel identified in the IATTC IUU list. This consideration remains a subject

¹⁵⁹ Food and Agriculture Organization of the United Nations (FAO). (2009). Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. Article 9, paragraph 4. Retrieved from <https://openknowledge.fao.org/server/api/core/bitstreams/515b81dc-ad65-41c9-ab02-6ff081103cc3/content>.

¹⁶⁰ The Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), the Commission for the Conservation of Southern Bluefin Tuna (CCSBT), the International Commission for the Conservation of Atlantic Tunas (ICCAT), the Indian Ocean Tuna Commission (IOTC), the General Fisheries Commission for the Mediterranean (GFCM), the Northwest Atlantic Fisheries Organization (NAFO), the North East Atlantic Fisheries Commission (NEAFC), the North Pacific Fisheries Commission (NPFC), the South East Atlantic Fisheries Organization (SEAFO), Southern Indian Ocean Fisheries Agreement (SIOFA), the South Pacific Regional Fisheries Management Organization (SPRFMO) and the Western and Central Pacific Fisheries Commission (WCPFC).

of ongoing debate within and between the RFMOs about the competence to establish a link through the owner or operator between a vessel identified by an RFMO as having committed IUU fishing and other vessels, which may not have engaged in such practices or might even operate in other parts of the world not regulated by that RFMO.

This is one of the main points of conflict regarding the recognition of IUU Vessel lists, as an RFMO with specific competencies and mandates concerning species and geographic areas would not have the authority to address violations beyond its mandate. This is reflected in the fact that the main successful cases of cross-listing or information exchange on IUU Vessel lists have occurred within RFMOs that regulate the same species, such as the tuna RFMOs, or those that share parts of the same Convention area, like SPRFMO with WCPFC and IATTC. Nevertheless, many RFMOs already recognize each other's IUU Vessel lists.

Transshipment

Transshipment is a common and widely used practice in the global fishing industry. However, states have recognized that this practice can pose a significant risk for IUU fishing if not properly monitored and controlled, especially when conducted on the high seas. This concern is acknowledged in the UNFSA, specifically in Article 18, paragraphs 3 (f) and (h), which establish the duty of the flag state to verify the catch of species, including through the supervision of transshipment, and the obligation to establish regulations for transshipment on the high seas.

As part of the effort to regulate and control this practice, the FAO developed the Voluntary Guidelines for Transshipment in 2022, which outline the minimum standards that must be incorporated into the transshipment process. These guidelines also specify the responsibilities of each state concerning transshipment activities. (See Figure 5 in the Annexes)

In general, RFMOs have adopted measures that require that transshipment at sea should only occur between vessels that are authorized and properly registered with the relevant international organization. Furthermore, these operations must be notified in advance, and information about the location and quantity of the catch to be transferred must be provided. Additionally, the presence of an observer during the entire process is required.

In the case of the IATTC, through its CMM C-22-03, a specific program for transshipment by Large-Scale Fishing Vessels (LSFVs) is established. In addition to the notification requirement,

the Secretariat must authorize the transshipment process. Similarly, this CMM stipulates that any transshipment at sea not covered by this program will be prohibited and must instead take place in port with the presence of an inspector.

Port Measures

Regarding the implementation of port measures, both the IATTC¹⁶¹ and SPRFMO¹⁶² have established minimum standards for inspections in ports. These measures do not imply adoption of the PSMA, as some member States or CNMs are not parties to this agreement. However, both CMMs adopted by the RFMOs incorporate principles, provisions, and key actions that are also reflected in the PSMA. This highlights the significant recognition of the role that port measures play in combating IUU fishing.

Among the implemented measures is the designation of authorized ports where foreign fishing vessels may request entry. These ports must have “sufficient capacity to conduct inspections,” and prior authorization is required for the vessel’s entry. The vessel will then be subject to documentation reviews, inspection of the catch, origin of the fish, and other checks by the relevant authorities. Both the IATTC and SPRFMO establish a minimum inspection rate of “at least 5% of landing and transshipment operations in their designated ports.” Additionally, procedures are in place for reporting any violations or infringements identified during port inspections.

It is important to highlight the provision established by the IATTC in paragraph 37 of CMM C-21-07, which stipulates that all member states and CNMs “shall consider and act on reports of infringements from inspectors of a port CPC on a similar basis as the reports from their own inspectors, in accordance with their domestic laws.” This provision emphasizes cooperation between member states and CNMs and the need to investigate and prosecute IUU fishing violations.

Other important provisions established for combating IUU fishing by these two RFMOs include information exchange, port usage, training for inspectors, and special requirements for developing states, among others.

¹⁶¹ Inter-American Tropical Tuna Commission (IATTC). (2021). Resolution C-21-07: Resolution for an IATTC Scheme for Minimum Standards for Inspection in Port.

¹⁶² South Pacific Regional Fisheries Management Organisation (SPRFMO). (2022). Conservation and Management Measure (CMM) 07-2022: Minimum Standards of Inspection in Port.

Monitoring through VMS and Observer Programs

Another central element in combating IUU fishing practices is monitoring and compliance, which is why RFMOs have established requirements regarding the use of technology, proper visual identification of fishing vessels, and the physical presence of observers. Both the IATTC¹⁶³ and SPRFMO¹⁶⁴ have recognized the importance of utilizing Vessel Monitoring Systems (VMS) as a means of ensuring compliance with fishing operations within their respective areas of competence. However, the RFMOs studied in this research rely on national VMSs and have not implemented a regional one.

Among the measures implemented for VMS is a requirement that transmitters be installed and operated by all vessels authorized in fisheries managed by the RFMO, they need to keep the VMS active and transmit signals to the RFMO, the obligation for vessels to keep the system active during all their activities and transmit information, including the vessel's identification, position, date, and time, to the secretariats of the international organizations.

Additionally, observer programs have been developed to collect scientific data and monitor the implementation and enforcement of the CMMs. In general, RFMOs set a minimum percentage of observers on fishing vessels, which can range from 5%, 10%, or even 100%, depending on the type of fishery, sustainability analysis of the species, the collection of relevant information, and the precautionary approach.¹⁶⁵ Currently, there is a wide debate on the importance of implementing video surveillance and other forms of electronic monitoring as a complementary tool to observers, primarily aimed at seeking greater coverage and reach.

Preliminary Conclusions

The measures adopted by the IATTC and SPRFMO represent coherent and coordinated actions to combat IUU fishing. These measures are crucial in ensuring that all states wishing to exploit the fishery resources within the areas of competence of these RFMOs are held accountable for

¹⁶³ Inter-American Tropical Tuna Commission (IATTC). (2023). Resolution C-23-11: Amendment to Resolution C-14-02 on the Establishment of a Vessel Monitoring System (VMS).

¹⁶⁴ South Pacific Regional Fisheries Management Organisation (SPRFMO). (2023). Conservation and Management Measure (CMM) 06-2023: Vessel Monitoring System in the SPRFMO Convention Area.

¹⁶⁵ Palma, M; Tsamenyi, M; and Edeson, W (2010). Promoting Sustainable Fisheries: the international legal and policy framework to combat illegal, unreported, and unregulated fishing. Pag 222. Martinus Nijhoff Publishers. Leiden, The Netherlands. ISBN 9789004175754

fulfilling their obligations under international law and for guaranteeing compliance with these measures.

The IUU list plays a pivotal role in identifying and targeting vessels engaged in illegal fishing, while cross-listing procedures enhance international collaboration. Transshipment controls, in conjunction with the FAO Voluntary Guidelines, provide an additional layer of oversight, preventing the exploitation of loopholes on the high seas. Port measures reflect a strong commitment to reducing IUU fishing by ensuring proper inspections and fostering cooperation between member states. Finally, the use of VMS and observer programs enhances monitoring and transparency, contributing to improved enforcement and the collection of scientific data.

These measures demonstrate that RFMOs are taking progressive actions to address IUU fishing. However, these regulatory advancements are not reflected in the actual figures regarding the protection of fish stocks and the conservation of marine ecosystems, where alarming deterioration continues to be observed. This is clearly shown in the FAO data, reflected in Figure 2 of Chapter 2 of this research, where approximately over 30% of fishery resources are overfished and 60% are maximally sustainably fished. All of this indicates the need to strengthen and accelerate actions to combat the IUU fishing practices and achieve the long-awaited goal of sustainable fisheries development.

Among the significant challenges that remain are the integration of technological tools; information exchange; difficulty in achieving 100% observer coverage; resistance from flag states and vessel operators to take stronger actions; practical implementation issues, such as species recognition; securing agreement on minimum standards; the high cost of electronic monitoring systems; the lack of political influence in the scientific bodies; the continuous need for capacity building; and cooperative actions between member states and other RFMOs.

Conclusion and recommendations

Illegal, Unreported, and Unregulated (IUU) fishing is one of the main threats to the sustainability of fisheries and the protection of marine living resources. It also deprives communities and states of the resources needed for their welfare and development. Therefore, this research aimed to identify, within the legal framework and ocean governance, the main provisions and initiatives that directly or indirectly address the issue of IUU fishing practices.

The focus was on analysing the key measures and actions undertaken by Ecuador and the RFMOs under review, the Inter-American Tropical Tuna Commission (IATTC) and the South Pacific Regional Fisheries Management Organization (SPRFMO), to combat IUU fishing, as well as identifying potential new actions to strengthen these efforts. Furthermore, opportunities presented by the BBNJ agreement and collaborations with IFBs were explored, along with best practices promoted by the European Union and the United States.

This research highlights the need to clearly identify the responsibilities and duties of states regarding the protection of the marine environment and the commitment to sustainable fishing. It is crucial to incorporate principles such as the precautionary approach and the Ecosystem Approach to Fisheries (EAF) in policymaking, and to internalize international regulations at both the state and institutional levels.

These two principles are a central part of sustainable fisheries and serve as guiding frameworks to achieve the objectives related to conservation and sustainable fishing. All of this, while keeping in mind that to combat IUU fishing practices, it is necessary to strengthen the vision of the marine ecosystem as a whole. This involves addressing the grey or unregulated areas of fishing on the high seas, while the precautionary approach leads us to consider the need to think about the future without neglecting present needs, which include communities and fishery resources.

Similarly, coordination and cooperation, which could evolve into the standardization of actions and policies to combat IUU fishing, are necessary. This is important given the cross-cutting impact on all maritime zones and the various related issues, such as the environment, navigation, labor rights, among others. This means that multiple jurisdictions are affected by IUU fishing, and many IFBs have a mandate to combat these practices.

Examples of progress in this area include the creation of IUU vessel lists by RFMOs, the exchange of information between them, and the establishment of minimum standard measures for the

implementation of Port State Measures. However, it is necessary to strengthen these efforts, including the pursuit of greater standardization of norms, rules, data collection and CMMs, as well as improving information exchange to combat IUU fishing, such as proper identification of vessels, capacity, gear, flag state, ownership, operator, fishing authorization, historical records, among others.

For developing countries like Ecuador, taking significant steps to modernize their legal frameworks and strengthen institutional capacity, often with limited resources, is crucial. Combating IUU fishing requires not only state-level coordination with society, specialized technical entities, and authorities overseeing all areas involved in fishing, but also international engagement through Foreign Affairs Ministries. Their experience in negotiation and international law enables the connection between supranational spaces and national policies.

Ecuador has made significant efforts to reform its laws and strengthen international cooperation in combating IUU fishing. However, the country still faces challenges in its institutional capacity to implement these legal changes, particularly in the areas of control, enforcement, and management of information and data in the fisheries sector. It is crucial that regulatory advancements are reinforced through the effective implementation of the legal framework, the expansion of inspection programs, and the adoption of new technological tools.

Moreover, it is important that countries allocate resources to build these capacities so that international provisions are not only incorporated locally, but local solutions are also brought to the multilateral arena. Diplomacy plays a central role in this process.

This could be reflected in the BBNJ Agreement and the possibility that the first COP establishes the linkage and relationship of this Agreement with the IFBs, which could have a significant impact on the preservation and conservation of the environment, including exploring cooperation solutions that strengthen the fight against IUU fishing. This agreement presents an opportunity to strengthen maritime governance, coordination, coherence, and cooperation, always keeping in mind the provision not to undermine existing IFBs.

It is also important to consider advancing international approaches to combat IUU fishing while not ruling out the need for states to construct a new agreement specifically focused on addressing this issue and providing greater coherence to the actions already implemented by RFMOs and states regarding these practices.

For Ecuador, the fight against IUU fishing has become a priority, not only because of the importance of the fishing sector to the country's economy but also due to the significant economic and diplomatic efforts the country makes in adapting its national legislation to international instruments and contributing to the international discussions of the Law of the Sea.

This is framed within the foreign policy objective of “strengthening bilateral relations, participation in international organizations and integration mechanisms, and increasing non-reimbursable international cooperation in line with national interests, while preserving sovereignty, peace, human rights, and the protection of nature.”¹⁶⁶

Ecuador, with its extensive coastline and rich marine biodiversity, holds a unique position to play an important role in promoting sustainable solutions in these areas. In this regard, marine governance is a central issue on the country's future international relations agenda.

In this context, Ecuador has been working within the IATTC and SPRFMO, proposing measures to strengthen the fight against IUU fishing and supporting CMMs that enhance the ongoing work. However, in many of these proposals, the country has lacked sufficient backing and consensus-building within international organizations, making it necessary for Ecuador to strengthen its diplomatic dialogue.

A clear example of the success of this strategy has been the work done in the Permanent Commission for the South Pacific (CPPS), where regional dialogue facilitated the creation of the first regional plan to combat IUU fishing. Engagement with neighbouring and coastal countries in the South Pacific presents a key opportunity to pool efforts in facing common challenges, which could also lead to cost reductions and the strengthening of Monitoring, Control, and Surveillance (MCS) systems for fishing activities. This could result in better control of jurisdictional areas, as well as the exchange and standardization of best practices in areas of common interest.

¹⁶⁶ Ministerio de Relaciones Exteriores y Movilidad Humana del Ecuador. (2022). PLAN ESTRATÉGICO INSTITUCIONAL 2021-2025. P.32 Retrieved from <https://www.cancilleria.gob.ec/wp-content/uploads/2022/07/Plan-Estrategico-Institucional-2021-2025-Completo-22-03-2022.pdf>

Within the CPPS, it could be considered to work on agreements regarding some minimum terms and conditions to create consistency across South American coastal States, even building common positions in RFMOs or other multilateral forums where the CPPS members are Parties, and the creation of a regional VMS.

Similarly, Ecuador must continue contributing to multilateral spaces, including international agreements such as BBNJ or PSMA, as well as engaging in relevant forums on the subject, such as the FAO or WTO.

In the case of RFMOs, the international agreements and CMMs play a central role in the protection of fish stocks, but their impact extends beyond this, influencing the global protection of the marine environment. The efforts and policies developed to combat IUU fishing are significant; however, they lack a standardization of policies, data collection, CMM, quotas or capacity, among others, that would allow for greater harmonization between various RFMOs and States.

In this regard, it is important to advance the recognition of IUU vessel lists, as well as establish more rigorous requirements regarding the presence of additional observers at sea, stricter controls on transshipment, and greater compliance with CMMs by State parties and CNMs.

Key actions, such as the implementation of technological improvements, further scientific development, and enhanced data collection, all aimed at separating science from politics, are essential steps to continue. This is necessary because all decisions made by RFMOs are based on the best available scientific evidence, which requires distancing the interests of States and industries to ensure accurate and high-quality information that supports sound decision-making.

Additionally, regulation should be expanded to include non-target and dependent species, as well as reduce bycatch. It is imperative to reduce the scope of unregulated fishing on the high seas and ensure the proper use of marine living resources.

Regarding unreported fishing, it is necessary to strengthen the capacity for record-keeping, both onboard vessels and in ports, ensuring the accuracy of the data. To achieve this, it is essential to take the necessary steps toward the digitization of records, logs, and forms, as well as to strengthen national inspection capacities concerning fishery resources and vessel compliance.

States should act in accordance with their duties as Flag State, Port State, Coastal State, and Market State, ensuring the effective exercise of their jurisdiction over vessels flying their flags, conducting inspections at port, controlling their EEZs and territorial seas, and guaranteeing the traceability of fisheries products to prevent IUU fishing products from entering the market.

To achieve this, the fight against IUU fishing must go beyond vessel detection and strengthen the enforcement of sanctions against the beneficiaries of IUU fishing practices, primarily the owners and operators, preventing them from hiding behind opaque companies or tax havens. More stringent sanctions and effective enforcement systems are measures that should continue to be promoted, including higher monetary fines, the prohibition of fishing permits, revocation of fishing authorizations, among others.

Finally, we consider it important to analyze the need to reform the consensus-based decision-making rules and encourage the growth and adhesion of new members to RFMOs. The former is a process that, in practice, has shown it can limit or hinder the implementation of enforcement and compliance, as several state parties of RFMOs have used their veto power to limit the scope of CMMs or even the inclusion of new vessels on the IUU fishing list.

On the other hand, the expansion process of RFMOs presents significant challenges, as it opens the possibility for other states to seek access to fishery resources, while simultaneously increasing the diversity of actors involved in decision-making. However, the current practice of some RFMOs to restrict full membership to new states limits the compliance with CMMs by these third countries and could be a factor driving vessels to engage in IUU fishing to access those resources. Increasing the cooperation and participation of new states in RFMOs will strengthen the compliance with and reach of CMMs, making it easier to take actions against violations by state parties and CNMs.

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ANNEXES

FIGURE 4.- GLOBAL COVERAGE OF RFMOS

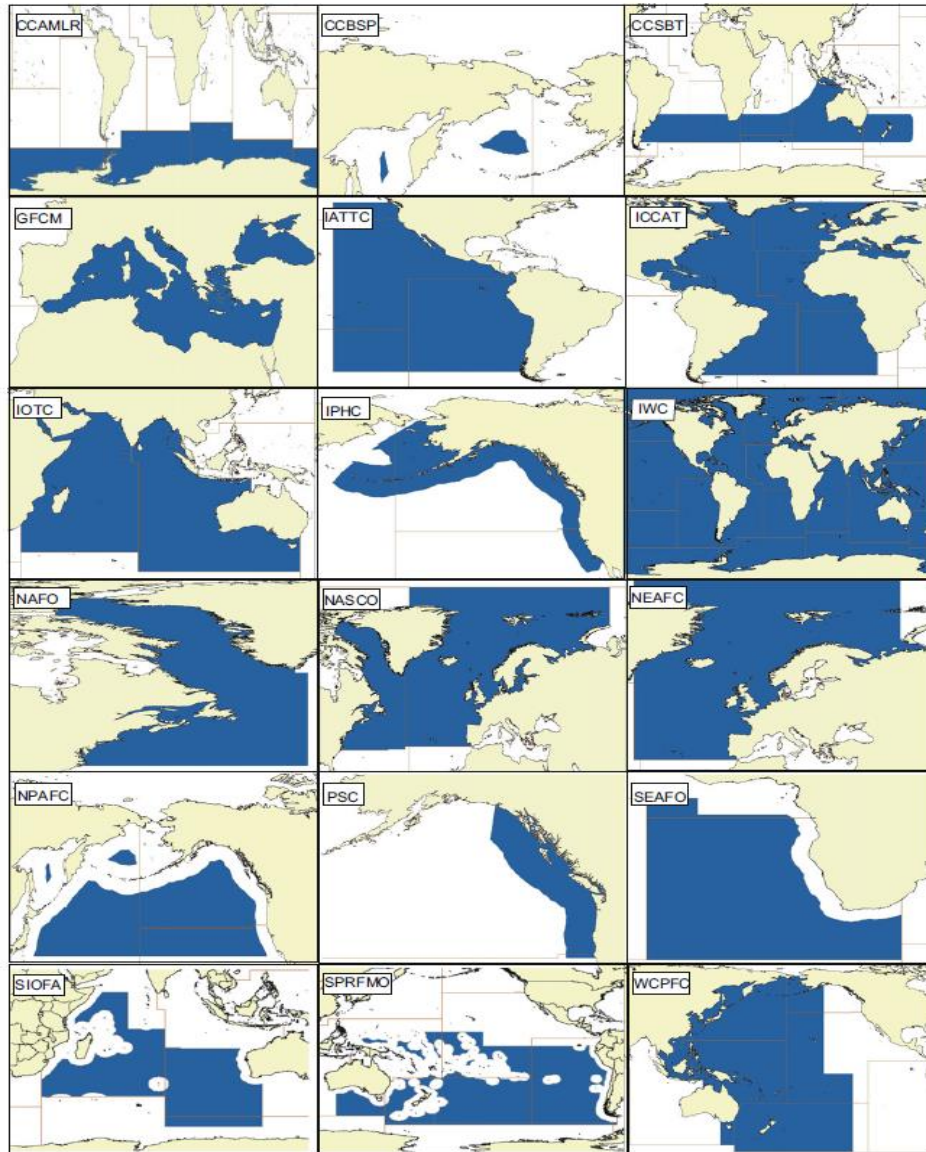


Fig 1. Global coverage of RFMOs: each box represents the area under management of one of the 18 current RFMOs.

Source: Cullis-Suzuki S, Pauly D.¹⁶⁷

¹⁶⁷ Cullis-Suzuki, S., & Pauly, D. (2010). Failing the high seas: An evaluation of regional fisheries management organizations. Marine Policy. Accessed on August 9, 2014.

FIGURE 5.- STATE RESPONSABILITIES IN TRANSSHIPMENT

ACTION REQUIRED	STATE RESPONSIBILITIES		
	FLAG STATE	COASTAL STATE	PORT STATE
Establish conditions for authorizing its flagged vessels to conduct transshipment operations	✓		
Establish conditions to authorize transshipment in areas under its jurisdiction		✓	✓
RFMO engagement	✓		
Effective control of the fishing trip	✓		
Receive prenotification	✓	✓	✓
Verify vessel compliance (VMS, observers coverage, regular catch and effort reporting)	✓		
If necessary, request confirmation of compliance from flag State		✓	✓
Acknowledge and confirm that the event can take place	✓		
Authorize the single transshipment event to take place in areas under its jurisdiction upon the fulfillment of the conditions		✓	✓
Request landing declaration if not defined as transshipment	✓		✓
Receive transshipment/landing declaration	✓	✓ (transshipment declaration)	✓
Establish reporting procedures to collect and cross-reference	✓	✓	✓
Confirm if requested by the port State or coastal State or RFMO/A, that the donated fish was taken in accordance with the rules and regulations	✓		
Port State measures consistent with PSMA for ports where receiving vessels land their transshipped fish, including donor vessels arriving from fishing grounds for direct landing or transshipment			✓

Source: 2022 FAO Voluntary Guidelines for Transshipment

TABLE 4.- IATTC MOUS WITH IGOS AND RFMOS

<i>IATTC MoUs with IGOs and RFMOs</i>		
	Objective	
<i>WCPFC</i>	Memorandum of Cooperation (MoC) on the cross-endorsement of IATTC and WCPFC and approved observers when observing on the high seas of the convention areas of both organizations	
	MoC for the exchange of Data	
<i>ACAP</i>	MoU focus establish consultation, cooperation, and collaboration to exchange data and information, on research and on CMM for stocks and species of mutual interests.	
	Cooperation to minimise the incidental bycatch of albatrosses and petrels.	
<i>IAC</i>	Enhance the conservation of sea turtles in the easter Pacific Ocean and reduce the incidental bycatch.	
<i>SPRFMO</i>	MoU to facilitate, where appropriate, consultation, cooperation, and collaboration between SPRFMO and IATTC in order to advance their respective objectives, particularly with respect to matters of common interest.	IUU fishing as one of the cooperation areas
<i>CPPS</i>	MoU to strenght cooperation for the sostenaibility of the fish stocks in the mutual areas of interest.	
<i>SPC</i>	Cooperation on Scientific research topics of mutual interest.	

Source: IATTC

TABLE 5.- SPRFMO MOUS

SPRFMO MoUs		
Objective		
WCPFC	MoU aimed at facilitating, where appropriate, cooperation between SPRFMO and WCPFC, in order to advance their respective objectives, particularly with respect to stocks or species which are within the mutual interest of both Organisations.	IUU fishing as one of the cooperation areas
NPFC	MoU to facilitate, where appropriate, consultation, cooperation, and collaboration between SPRFMO and NPFC ('the Organisations') in order to advance their respective objectives, particularly with respect to matters of common interest.	
CCAMLR	Arrangement to facilitate cooperation to advance objectives, particularly with regard to stocks and species of mutual interest.	
IATTC	MoU to facilitate, where appropriate, consultation, cooperation, and collaboration between SPRFMO and IATTC in order to advance their respective objectives, particularly with respect to matters of common interest.	
CPPS	MoU to establish a consultation and cooperation framework between CPPS and SPRFMO on matters of mutual interest.	

Red INDNR ALC	MoU to facilitate, where appropriate, cooperation and coordination between the participants in order to advance their respective objectives, particularly with respect to IUU fishing.	
IMCS Network	Network to promote and facilitate cooperation and coordination among Members through information exchange, capacity development and collaboration in order to achieve the improved effectiveness and efficiency of monitoring, control, and surveillance activities.	
FIRMS	Partnership of international organizations and regional fishery bodies aiming to provide access to a wide range of high-quality information on the global monitoring and management of fishery marine resources	
SPRFMO Secretariat MoU		
NOAA	MoU to strengthen the implementation of MCS measures.	
ACAP	Agreement to translate documents such as the Convention of SPRFMO and other relevant documents into languages other than English.	
RMIT University	MoU to facilitate cooperation between both Secretariats, with a view to supporting efforts to minimise incidental catches of seabirds listed in Annex 1 of the ACAP.	

Source: SPRFMO

TABLE 6.- IATTC CONSERVATION AND MANAGEMENT MEASURES FOR INFORMATION AND DATA COLLECTION

Conservation and Management Measures
C-19-08 Observers on longliners
C-19-01 FADs
C-12-10 Recommendation on best available science
C-12-08 Protocol for sealing wells
C-04-10 Catch reporting
C-04-03 Notification of sightings of vessels
C-03-04 At-sea reporting

Source: IATTC

TABLE 7.- COMPARATIVE ANALYSIS OF IUU ACTIVITY IDENTIFICATION IN IPOA-IUU, IATTC, AND SPRFMO

IPOA-IUU	IATTC – IUU activities CMM C-19-02	SPRFMO – IUU activities CMM 04-2020
	a. Harvest species covered by the Convention and are not on the IATTC Regional Vessel Register	a) engage in fishing for fishery resources and are not registered on the SPRFMO list of vessels authorised to fish in the Convention Area;
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;	b. Harvest species covered by the Convention in waters under the national jurisdiction of the coastal State in the Convention Area without authorization and/or in contravention of its laws and regulation, without prejudice to the sovereign rights of coastal States to take measures against such vessels	b) engage in fishing for fishery resources whose flag State has exhausted or has no quotas, catch limit or effort allocation, including, if applicable, those received from another Member or CNCP under relevant SPRFMO CMMs.
3.2.1 which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations. 3.2.2 undertaken in the area of competence of a relevant regional fisheries management organization which have not been reported or have been misreported, in contravention of the reporting procedures of that organization.	c. Make false reports or fail to record or report their catches made in the Convention Area	c) do not record and/or report their catches or catch related data made in the Convention Area, or make false reports.

	d. Engage in fishing activities in a closed area or during a closure period	e) engage in fishing during closed fishing periods or in closed areas, without or after exhaustion of a quota or beyond a closed depth, in contravention of SPRFMO CMMs;
	e. Use prohibited fishing gear or fishing methods	f) use prohibited or non-compliant fishing gear in a way that undermines SPRFMO CMMs;
	f. Transship with, participate in joint fishing operations with, support, or resupply vessels included in the IUU Vessel List	d) take on board, tranship or land undersized fish in a way that undermines SPRFMO CMMs;
	g. Conduct transshipment operations at sea with vessels not included on the IATTC Record of Carrier Vessels	g) tranship with, or participate in joint operations such as re-supply or re-fuelling vessels included in the IUU Vessel List.
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;	h. Are without nationality	h) are without nationality and engage in fishing for fisheries resources in the Convention Area; and/or
3.1.2 conducted by vessels flying the flag of States that are parties to	i. Engage in fishing activities contrary to the provisions of the	

<p>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.</p> <p>3.1.3 in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.</p>	<p>Convention or any other IATTC conservation and management measures</p>	<p>i) engage in fishing activities contrary to any other SPRFMO CMMs.</p>
	<p>j. Are under the control of the owner or operator of any vessel on the IATTC IUU Vessel List. (Procedures for applying this paragraph are attached as Annex B.)</p>	
<p>3.3.2 in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.</p>		

Source: IPOA-IUU, IATTC, SPRFMO