

Policy recommendations

Developing a more effective approach to curbing illegal, unreported, and unregulated (IUU) fishing in the nine countries covered by this report requires local, regional, and international action. This report details priority areas in which policies toward IUU fishing can be strengthened across Latin America and the Caribbean.

1. Build Regulatory, Legislative, and Law Enforcement Capacity

The nine countries vary considerably across all aspects of capacity, including regulatory oversight, legislative frameworks, and law enforcement capacity.

Some countries do not have sufficient capacity to establish the baseline data required to produce reliable estimations of fish stock for effective management, nor to distinguish illegal fishing from unregulated or unreported fishing. Continued bilateral support for the most basic forms of capacity building – equipment, training, and technical support – across all aspects of regulatory oversight is essential to developing technological know-how, simple registries of fishers and vessels, licensing systems, inspection and enforcement procedures, and implementation of international treaty law.¹ Countries that have not yet developed National Plans of Action (NPOAs) – Panama, Ecuador, Chile, Argentina, and Uruguay² – should be encouraged to do so. All nine countries require support in making their NPOAs effective.

Regulations vary considerably across the region, with significant gaps in some countries and a hodgepodge of regulations across the hemisphere. Efforts at harmonization should continue to focus on developing consistent national regulations regarding protected species, quotas, gear, catch documentation, port controls, and standards for Exclusive Economic Zone (EEZ) access, among others.³

In several countries, domestic laws fail to criminalize IUU activities. Greater criminalization of the most egregious crimes will ensure that violators can be prosecuted and that illegal fishing is punished not solely as a regulatory violation, but instead as a serious criminal act.⁴ The U.S. might contribute to this effort via the assertion of concurrent jurisdiction in the most egregious IUU fishing crimes, such as labor violations, catch upgrading, or destruction of marine habitats.⁵

Across Latin America and the Caribbean, there is considerable variance in accession to and implementation of existing treaties and agreements, including the Agreement on Port State Measures (PSMA, 2016), the International Labor Organization Work in Fishing Convention 188 (2007), the Cape Town Agreement (CTA, 2012) on vessel safety, as well as the Copenhagen Declaration on Transnational Organized Crime in the Fishing Industry (2018). Countries across the region should be encouraged to sign, ratify, and implement these accords. So, too, private sector actors in the fishing industry should be encouraged to develop training and compliance frameworks that meet or exceed international standards.

Regional fisheries management organizations (RFMOs) are widely recognized as playing a central role in regulating member states. The absence of an RFMO in the South Atlantic, a legacy of the conflict over the Malvinas/Falklands, ensures a significant regulatory gap in a

critical fishery, even as the number of IUU incidents by actors from outside the region has increased sharply. Creative thinking is needed that might break this unproductive logjam, to encourage the construction of a South Atlantic RFMO.

Even the best-equipped naval and coastal forces in the region are overwhelmed by the challenge of deterring IUU fishing by both domestic and foreign actors. The U.S. and its partners can help by working to develop consistent and enforceable standards for monitoring, control, and surveillance (MCS) that mandate that all fishing vessels are equipped with and use tracking technology such as automatic identification systems (AIS); release their vessel monitoring systems (VMS) data to the public; and ensure that fishing vessel authorizations are publicly available.⁶ Experts consulted for this report recommended creating incentives to reward good operators who follow MCS protocols consistently, such as expedited licensing and access to restricted fisheries. The U.S. should continue to build upon joint cooperative patrolling, such as the U.S. Coast Guard's Operation Southern Cross, whereby the USCG cutter Stone patrolled jointly in 2020-21 with partners in Guyana, Brazil, Uruguay, and Portugal. Finally, local fishers may be encouraged to serve as monitors within a broader maritime sensor network, feeding crowdsourced data platforms on IUU fishing activities in their national waters.⁷

2. Build Whole of Government Networks

It is commonplace to argue that a whole of government approach is needed to combat crime, and that networks of government are needed to combat transnational organized crime.

Within nation-states, it is important to encourage adoption of a whole-of-government approach that improves attention to IUU fishing matters across a variety of authorities.⁸ Most of the countries covered by this report have only limited interagency cooperation on fishing matters. Experts from the region consulted for this report particularly highlighted the low priority given to IUU fishing in their countries' executive branches, as well as the weakness of prosecutors' and judges' understanding of the urgency and the seriousness of IUU fishing crimes.

At a regional level, the international migrations of marine species and interconnectedness of ecosystems means that countries should be encouraged to engage in more systematic examination, and information sharing regarding the health of marine species, as well as examination, sharing, and analysis of crimes.⁹

3. Establish More Effective Controls over Transshipment

Transshipment is pernicious for a variety of reasons: it allows IUU fishing vessels to avoid port inspections, facilitates laundering of illicit catch into licit streams, makes it more difficult for national authorities to detect labor abuses, and complicates the task of national fisheries management by making it harder to record catch data.¹⁰

Significant transshipment activity takes place off the Argentine, Peruvian and Ecuadoran (including both mainland and Galapagos) coasts, including within national EEZs.¹¹ Studies demonstrate that transshipment occurs both on the high seas and within the EEZs of coastal

countries, and that “fishing vessels from China, Taiwan, South Korea, and Japan (the next common fishing vessel flag states engaged in these activities, apart from the United States) were associated with transshipment vessels flagged to Panama, Liberia, and Vanuatu, all of which are known open-registry states...”¹²

Some have argued that transshipment at sea should be avoided whenever possible.¹³ The South Pacific RFMO (SPRFMO) in early 2022 considered, but ultimately did not reach consensus on a mandate that all ships have observers on board by 2028 and that they unload their catches only in ports.¹⁴ As this demonstrates, it may be difficult to achieve international consensus to restrict transshipment. However, the relatively small number of transshipment vessels – one study found that only 130 carriers (22% of all carriers globally) accounted for 72% of all transshipment events¹⁵ – means that observation of key players can be achieved at relatively low cost.

Regulatory frameworks for the control of transshipments should be improved in cooperation with the private sector to encourage catch documentation and to implement an independent observer program aboard all transshipment vessels operating in the hemisphere.

4. Assess and Control Ports

Ports are a key chokepoint in the fishing production chain, as they are central to the tasks of replenishing ships, landing and boarding crews, and offloading and processing catch. As such, they also offer an important space for regulation. The Port State Measures Agreement was designed to reduce IUU fishing crimes, by ensuring more rigorous notification and inspection requirements in port, as well as establishing the possibility that port use might be denied.¹⁶

At least three problems arise with the PSMA in the nine countries covered by this report. First, there is a considerable threat of a “race to the bottom,” as countries compete for ship provisioning and repair services, fish processing business, and port fees.¹⁷ Recent studies indicate a high risk of IUU fishing crimes at ports in Ecuador, Peru, and Uruguay.¹⁸ The port of Montevideo is believed to be at a particularly high risk of labor abuse, and regional experts consulted for this report note that significant numbers of dead crew offloaded there. A report from Oceana also notes that 31% of vessels that go “dark” in the waters off Argentina’s EEZ – a clear flag for IUU fishing – subsequently visit the port of Montevideo.¹⁹ Second, Argentina, Jamaica and Suriname have not yet acceded to the PSMA (and only 56% of port states have joined globally²⁰). Third, even when port states do undertake inspections and uncover wrongdoing, these findings are not always passed on to problem vessels RFMOs or Flag States, nor do Flag States often act upon them.²¹

Until these gaps in PSMA coverage are filled, regional port controls will continue to revert to the least common denominator. Priority should be given to encouraging accession to, and effective implementation of, the Port State Measures Act.²²

5. Increase Beneficial Ownership and Flag State Transparency

A key driver of IUU fishing is the difficulty of identifying fishers and their true origin: that is, the challenge of tracking the real, or beneficial, owners of fishing vessels, and figuring out which are their true Flag States.

Vessels flying so-called “flags of convenience” – available in some cases online for a minimal fee – are believed to represent somewhere between 10% and 15% of vessels longer than 24 meters in the global fishing fleet.²³ Convenience flagging is not illegal and is driven by economic rationality: it decreases operating costs and reduces regulatory burdens. It may also permit industrial fishers in international waters to avoid RMFO regulations, since they are not subject to the RMFO if they are flagged to a state not party to that RMFO.²⁴ Similarly, ownership structures that shield beneficial ownership provide a legally permissible veil against regulators, shareholders, employees, or media. And both beneficial ownership provisions and flags of convenience are lucrative for the states that provide them. In Latin America, Bolivia and Panama are well-known for their flagging operations, while offshore companies prosper in a variety of jurisdictions in the Caribbean, as well as Panama and Uruguay.

The combination of beneficial ownership opacity and flags of convenience has significant costs. First, they contribute to a generalized lack of transparency in the fishing industry. Simply tracking fish catch as it moves from captain to agent to customer, oftentimes through a network of complex financial transactions in a variety of jurisdictions, can be a challenging proposition.²⁵ Complicating matters is the fact that in artisanal fishing many countries in the region lack the capacity to register all vessels and license them adequately, while in transoceanic industrial fishing it is possible for more sophisticated operators to “flag” a vessel to a variety of Flag States and update those registries (“re-flag”) frequently.

Second, they contribute to a regulatory “race to the bottom.” If regulation increases in one jurisdiction, it is likely that some regulated vessels will simply “re-flag” or “flaghop” to a less burdensome jurisdiction. Indeed, it is not unheard of for a vessel to reflag “on the fly,” as soon as enforcement officers close in on it. Meanwhile, past efforts to force states to effectively control the vessels they flag have failed.²⁶

Third, they permit criminality. Many Flag States provide flagging services for a fee without much regulation, whether it is to register true ownership or to engage in the type of due diligence that might prevent wrongdoing. It is not surprising, then, that recent studies show that the risk of criminality at sea is often heightened by beneficial owners hiding behind a web of front companies, subsidiaries, and concealed ownership networks.²⁷ Indeed, one scholar notes that the low capacity and lack of interest of Flag States in policing operators flying their flags amounts to a “modus operandi” in IUU fishing.²⁸

To diminish these deleterious consequences, efforts should be deepened to ensure that Flag States are held responsible for their flagged vessels’ behavior, by seizing repeat offenders, by using coercive measures such as export limitations or tariffs on offender states, and by embedding Flag State responsibilities in treaty. Already, the U.S. government has authority to block shipments from states engaged in IUU fishing, through National Marine Fisheries Service/NOAA biennial reports to Congress.²⁹ Flag States, especially countries such as Panama that provide flags of convenience with low levels of regulation, should be encouraged to increase oversight and recording to ensure that ownership structures are transparent.

Further, national governments should be encouraged to make all vessel data public. A number of the countries covered by this report have shied away from reporting vessel tracking information, due to reasonable fears that fishing locations might be revealed to competitors. Because VMS data is higher quality than other forms of tracking data, it is often kept confidential. Of the nine countries covered by this report, only Chile, Panama and Costa Rica have agreed to share this data.³⁰ VMS data collection should be routinely analyzed in conjunction with data on corporate registers and beneficial ownership to weed out bad actors.³¹

6. All Fishers Must Bear Fishing's True Economic Cost: Reduce Subsidies and Certify Catch

IUU fishing crimes are frequently committed precisely so as to elide the true economic cost of sustainable fisheries. Illegal fishers do not face the cost of exploiting workers or fisheries, nor of meeting the regulatory and tax burdens required to sustain sustainable fishing grounds.

One particularly pernicious practice that contributes to IUU fishing is the subsidizing of fishing fleets, which reaches \$35 billion annually³² (of which \$22 billion are harmful subsidies) and props up a global fleet 2.5 times larger than would be needed to fish sustainably.³³ Subsidies introduce otherwise unproductive vessels into fisheries that may already be under strain.³⁴ To give a sense of the problem, it is estimated that subsidies that permitted foreign fishing in Peru's EEZ accounted for 54% of the value of catch by those foreign fishers.³⁵

After two decades of negotiations, in June 2022 the World Trade Organization (WTO) committed to a pared-back agreement to curb harmful fishing subsidies. Further efforts are needed. At a most basic level, WTO members should be encouraged to ratify and implement these commitments. Negotiations continue, and more must be done to extend the scope of these efforts, including by limiting subsidies for fuel and fish processing that facilitate IUU fishing by foreign fleets.³⁶

A second problem is that there are very few limits to the laundering of illegal catch. As a recent Financial Action Task Force report noted, environmental crimes often involve the comingling of legal and illegal goods early in the supply chain to conceal their illicit source. Further, the use of layers of shell and front companies that occurs in crimes such as illegal logging, illegal mining, and waste trafficking is equally common in IUU fishing related crimes.³⁷ The problems of comingling and non-transparency must be addressed to ensure that illegal fishers are forced to play on the same playing field as their legal competitors.

A variety of audits and certifications are available from groups such as FishWise, the International Seafood Sustainability Foundation (ISSF), the Marine Stewardship Council (MSC), SeaBOS, the Seafood Ethics Action Alliance (SEA Alliance), the Seafood Alliance for Legality and Traceability (SALT) and the Seafood Task Force. However, these certifications are not widely employed in fisheries in Latin America and the Caribbean. Further, as already noted, there are few limits on shell companies to encourage beneficial ownership information for companies working in the Latin American and Caribbean. Regional RFMOs should be encouraged to create and strengthen semi-market-based solutions such as "catch documentation schemes" that provide a certification of sustainable stocks from "net to plate,"³⁸ so that buyers will preferentially purchase marine catch from particular fisheries.³⁹ In the most rigorous of these

certification programs, permanently operational vessel tracking systems and due diligence would be required for certification. The U.S. may assist this process through expansion of the Seafood Import Monitoring Program (SIMP) to cover a greater proportion of its imports.⁴⁰

7. Target High Offenders

Criminologists have noted that a small percentage of wrongdoers usually accounts for the vast majority of crimes, and that targeting those wrongdoers is therefore a cost-effective way to reduce the overall volume of crime, while reducing the incentives for lesser offenders to engage in wrongdoing. High offenders should be specifically targeted by authorities and penalized sufficiently to serve as an effective deterrent.

Recent studies of fisheries crime find high levels of concentration among a few bad actors. For example, one 2022 study concluded that, globally, “33% of all recorded offenses are associated with 450 industrial vessels and 20 companies originating from China, the EU, and tax haven jurisdictions.”⁴¹ Further, “[w]ithin that sample, a third of all illegal activities (n = 684) were linked to 20 companies.”⁴² Another study found that at-sea risk areas were marked by three qualities: poor control of corruption by the Flag State, high ownership of fishing vessels by countries other than the Flag State, and Chinese-flagged vessels.⁴³ Additionally, as noted earlier, a highly concentrated group of vessels is responsible for transshipment events: only 130 carriers (22% of the global total) account for 72% of all transshipment events.⁴⁴

Too often, the penalties for IUU fishing related crimes are a mere slap on the wrist. In part, this may be because there “seems to be an unstated assumption that parties engaged in IUU fishing are rationally self-interested enough not to destroy a fishery.”⁴⁵ But this assumption is clearly misguided, and egregious abuses by criminal actors suggest that current deterrents are insufficient. Too often penalties are limited to jail time for crew members rather than the actual vessel owners. Vessel seizures, rare though they may be, are an insufficient deterrent because the cost of a trawler may be less than a year’s profit from IUU fishing.⁴⁶ More needs to be done to establish clear deterrent penalties for the worst offenders, to improve the likelihood of effective prosecution of vessel owners, and to hit the pocketbook of potential offenders through vessel seizures, fines, and limitations on the sale of IUU fishing catch.⁴⁷

8. Expand and Safeguard Protected Zones

There are many benefits to establishing marine protected areas: MPAs protect species diversity, as well as providing space for stocks to replenish. The U.S. made an Ocean Conservation Pledge at the April 2022 Our Ocean Conference in Palau, committing to conserve, protect and restore 30% of oceans under its jurisdiction and pushing other nations to do so as well. A wide variety of MPA expansion projects are currently underway, including in the Western Hemisphere.⁴⁸ Notably, in 2021 Colombia, Costa Rica, Ecuador, and Panama announced the establishment of the Eastern Tropical Pacific Marine Corridor (CMAR), covering more than 500,000 square kilometers of ocean. And in 2022, during the Summit of the Americas, nine countries agreed to establish a network of interconnected MPAs along the Pacific coast of the Americas, from Alaska to Patagonia (Chile, Canada, United States, Mexico, Costa Rica, Panama, Colombia, Ecuador, Peru).

However, establishment of an MPA is not by itself a panacea. For example, Costa Rica's MPA around Cocos Island is subject to frequent incursions by a variety of foreign and domestic IUU fishers. To reap the full benefits of MPAs, then, countries should be encouraged to establish MPAs, provide buffer zones around them, and effectively police and safeguard these areas.

References

- ¹ The U.S. is already working in a variety of ways to provide such support. At the Seventh Our Ocean Conference in April 2022, for example, the US announced \$5 million in funding to strengthen work in the fishing sector in South America; a USAID-NOAA joint effort to support PSMA implementation, combat IUUF, and strengthen fisheries management in Peru, Ecuador, and Colombia; and efforts to strengthen natural resource governance in Ecuador. Multilateral organizations such as the FAO are also actively conducting capacity building workshops in the region.
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- ³ Liddick Don. 2014. “The Dimensions of a Transnational Crime Problem.” *Trends in Organized Crime* 17: 290-312.
- ⁴ Telesetsky, Anastasia. 2014. “Laundering Fish in the Global Undercurrents: Illegal, Unreported, and Unregulated Fishing and Transnational Organized Crime.” *Ecology Law Quarterly* 41: 939-.
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- ¹³ Human Rights and Environmental Due Diligence in the Seafood Industry On behalf of the Fisheries Governance Project Instructor: Judy Gearhart; Authors: Christopher Clayton, Jason Cowan, Michaela Dreeszen, Madeline Elminowski, Kyra Jones, Alex Mathews, Rishi Parikh, Luisa Pavarino Spezia, Leah Rullman, and Nina Song, citing Murphy, S. (2015). Report labels major global seafood industry players. SeafoodSource. <https://www.seafoodsource.com/news/supply-trade/report-labels-major-global-seafood-industry-players>.
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the FAO regarding measures and decisions taken regarding foreign flagged vessels. <https://www.fao.org/port-state-measures/news-events/detail/en/c/1458559/>

²³ 10% figure from Liddick (2014); 15% figure from Gianni and Simpson, cited in Telesetsky (2014).

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⁴⁸ Including a partnership on MPAs, Biodiversity and Climate Change between Chile, France, Costa Rica, and the UK; a global “Ocean Conservation Pledge,” aimed at pushing countries to conserve at least 30% of their national waters by 2030; and expansion of the Marine Protected Area Agency Partnership (MPAAP).

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Western Hemisphere Regional Illegal,
Unreported, and Unregulated Fishing
Assessment



Center for Latin American & Latino Studies
American University
4400 Massachusetts Ave., NW
Washington, DC 20016-8137
clals@american.edu
www.american.edu/clals