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WORKING DOCUMENT

on Combating illegal fishing at the global level - the role of the EU

Committee on Fisheries

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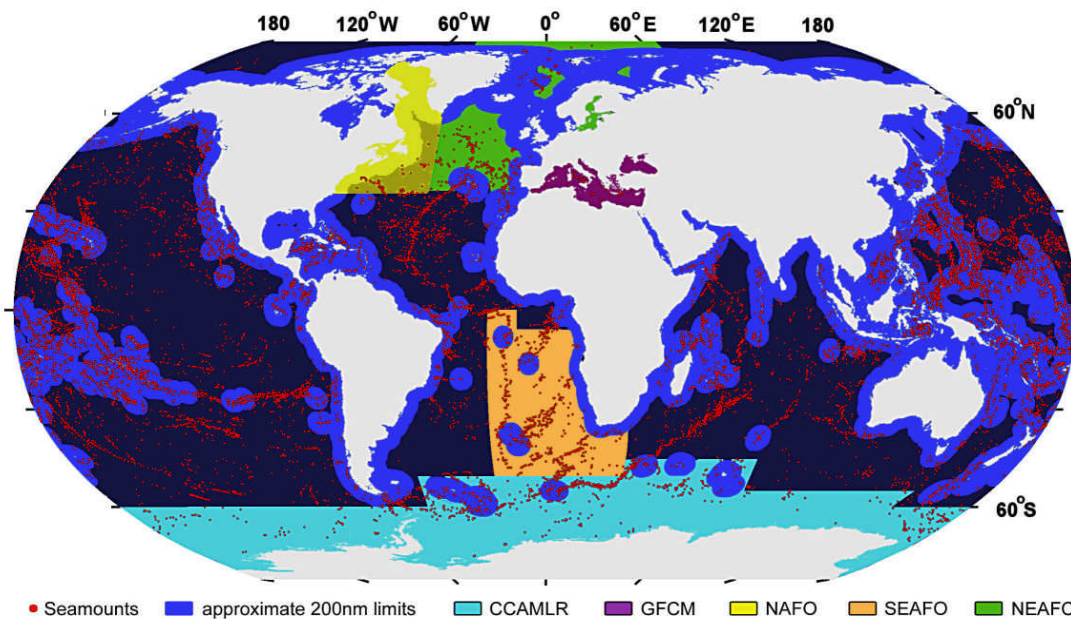
RFMO Measures Against IUU Fishing

The 2001 FAO International Plan of Action on Illegal, Unreported and Unregulated (IUU) Fishing¹ highlights the need to combat IUU fishing on the high seas. Regional Fisheries Management Organisations (RFMOs), the multilateral bodies responsible under the UN Law of the Sea for managing fisheries on the high seas, thus play a crucial role in combating IUU fishing.

In the Plan, and the subsequent EU IUU regulation², IUU includes fishing that does not respect the relevant management measures, that is not reported or that is conducted outside any management regime and in a manner not consistent with international law. A complete definition can be found in the FAO Plan.

There are currently 18 RFMOs. A network of five tuna RFMOs provide global coverage but for other species (straddling stocks, deep sea species, etc) there remain large areas of the oceans for which no internationally agreed measures for fisheries management exist - fishing here is effectively unregulated except for the general provisions of the UN Law of the Sea or the UN Fish Stocks Agreement (for those States which have ratified). The Atlantic Ocean is the best covered but even here there are gaps. In the Indian and Pacific Oceans very limited coverage exists, though two new RFMOs have been recently negotiated for the South Pacific Ocean and Southwest Indian Ocean and will, hopefully, enter into force soon.

Shaded areas RFMOs with regulatory competence over deep sea fisheries



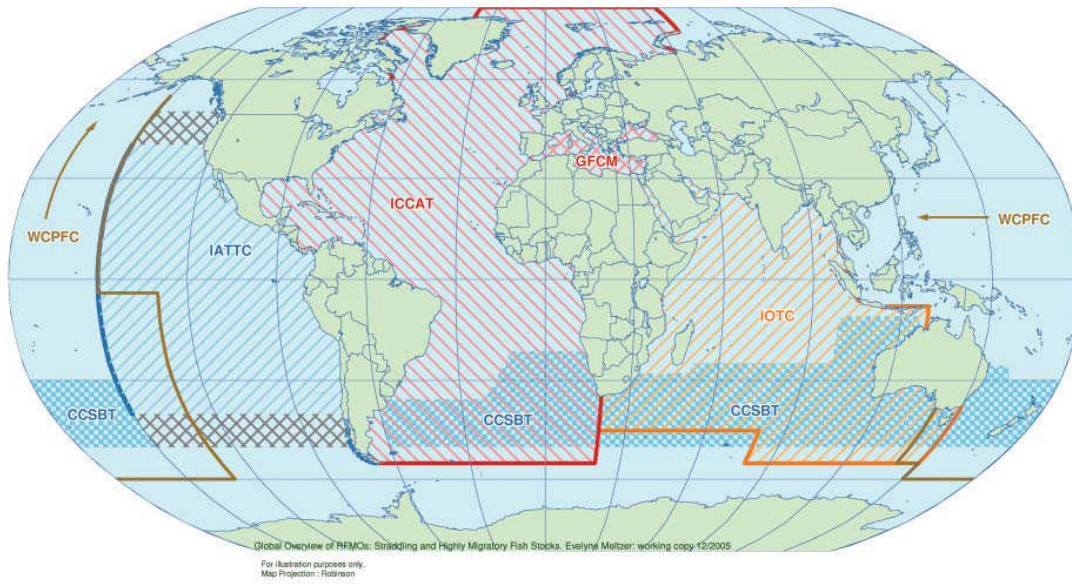
Source: IUCN Global Marine Programme

<http://www.countdown2010.net/files/marine/Presentation%20K%20Gjerde%20II.pdf>

¹ See FAO site <http://www.fao.org/DOCREP/003/y1224E/Y1224E00.HTM>

² COUNCIL REGULATION (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.

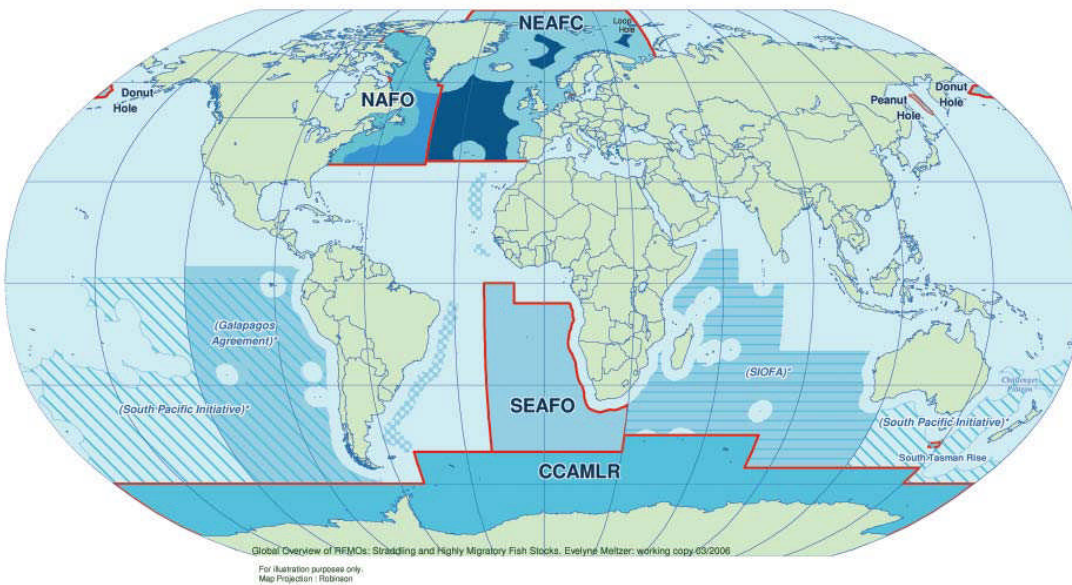
RFMO coverage for tuna (top) and non-tuna species (bottom)



**Global Overview of RFMOs:
Highly Migratory Fish Stocks (Tuna and Tuna-Like)**

- IATTC
- ICCAT
- Antigua Convention (not yet in force)
- IOTC
- GFCM
- WCPFC
- CCSBT

WCPFC Note: Northern boundary and most of Western boundary for RFMO are not defined, and Area is not intended to include waters in South-East Asia which are not part of the Pacific Ocean; nor is it intended to include waters of the South China Sea.



**Global Overview of RFMOs:
Straddling Fish Stocks**

- RFMO Boundary
- () * RFMO area under negotiation, not yet adopted or not yet in force.
- SEAFO
- NAFO Convention Area
- (Galapagos Agreement)* (Not yet in force)
- CCAMLR
- NAFO Regulatory Area
- (South Pacific Initiative)* (Under negotiation - preliminary boundary)
- NEAFC Convention Area
- Donut Hole Arrangement
- Other Unregulated High Seas Areas where Straddling Fish Stocks occur
- NEAFC Regulatory Area
- (SIOFA)* (Not yet adopted)

Source: Recommended Best Practices for Regional Fisheries Management Organizations. Chatham House, 2007

This working document examines the management measures taken by a selection of five important RFMOs, chosen to represent the diversity of those currently in existence:

- ICCAT - International Commission for the Conservation of Atlantic Tunas (in force 1969)
- NAFO - Northwest Atlantic Fisheries Organisation (1979)
- NEAFC - North East Atlantic Fisheries Commission (1982)
- CCAMLR - Commission for the Conservation of Antarctic Marine Living Resources (1982)
- WCPFC - Western and Central Pacific Fisheries Commission (2004)

These include RFMOs both very old (ICCAT) and very new (WCPFC) and cover a broad geographical range. Some, such as NEAFC, have a small number of industrialised countries, whereas others have large and complex memberships (ICCAT, WCPFC), illustrating the sometimes difficult dynamic between developed and developing States. The value of the species covered varies enormously from mostly small pelagic species of relatively low worth (NEAFC) to very valuable fish such as Patagonian toothfish (CCAMLR) and bluefin tuna (ICCAT).

All these RFMOs have experienced major problems with IUU fishing.

Measures Taken to Combat IUU Fishing

Since the first RFMOs began their attempts to combat IUU fishing in the 1990s, a number of measures have been tried.

Vessel identification: Vessels are responsible for IUU fishing activities, so several measures concern individual vessels. In order for any kind of action to be taken, a vessel must be identifiable, which is why many vessels hide their identity or disguise themselves at sea or in port. The FAO developed a standard set of specifications for the marking and identification of fishing vessels. All five of the RFMOs considered here require the FAO markings for vessels fishing in their regulatory area, or an equivalent system.

Registered vessel or "white" lists: Vessels that are authorised to fish in the RFMO regulatory area by its Contracting Parties or Cooperating Non-Contracting Parties (collectively CPCs) are put on a registered vessel list. Essentially, these are the vessels for which the CPC assumes responsibility. If a vessel is observed fishing that is not on the list, it can be assumed to be engaged in IUU activities. Though all five RFMOs have a registered vessels list, their scope varies as well as the accuracy and detail of the information included. For instance, the CCAMLR list includes vessels of all sizes, whereas ICCAT's only has vessels over 20 metres. Some also include reefers or transport vessels (WCPFC, NEAFC, ICCAT). A vessel's presence on the list does not mean that it is active in the area, nor is it a guarantee of respecting the rules.

IUU or "black" lists: These comprise vessels that a) have been identified fishing in the regulatory area without authorisation and are presumed to be IUU, b) have authorisation but that fish illegally or c) which appear in trade data as the source of IUU fish. Vessels on the black list are usually subject to increased surveillance and inspection and various sanctions (e.g. denial of port facilities, including off-loading of catches). These lists can be very

effective at dissuading individual vessels from IUU fishing - NEAFC credits its list with significantly reducing IUU fishing in its area. There is a positive trend towards the sharing of IUU lists among RFMOs, which expands their utility. But a major problem is that they are slow, cumbersome and political. The lists are only updated at the annual meeting, by which time the vessel may be long gone from the area or have changed its name or owner. Decisions on listing are made by the CPCs themselves, which usually try to keep their own vessels off, so IUU lists contain mostly vessels of non-CPCs - easier targets. For instance the ICCAT IUU list currently has 24 vessels - 21 of unknown flag, one from Guinea and two from Bolivia.

Trade sanctions: Only ICCAT has used black lists to push flag State responsibility to its logical conclusion. In the 1990s it banned the import of certain products (bluefin, bigeye, swordfish) from those countries whose flagged vessels were operating in the ICCAT area without authorisation. By 2003, eight countries were subjected to import bans. The effect was short-lived for two reasons. The vessels reflagged to other countries that were not sanctioned, and the sanctioned countries white-washed themselves by joining ICCAT, at which point the sanctions were lifted. No other RFMO has followed this approach and even ICCAT has diluted its use almost to the point of non-existence for at present trade sanctions exist only for bigeye coming from Bolivia and Georgia.

At-sea inspection programmes: Boarding and inspection at sea is an essential part of an effective surveillance scheme, for it is only at sea that a full idea can be had of what is happening. Port inspections may miss important elements. All five RFMOs allow inspectors from one CPC to board vessels from another CPC but only NAFO and NEAFC require CPCs to send inspection vessels to sea for fisheries they participate in. The ICCAT bluefin fishery has recently followed suite.

Regional observer programmes: Observer programmes are not widely used by RFMOs. Only NAFO requires an observer on every vessel in the fishery. WCPFC is setting up a regional programme for the high seas areas in its area and aims at 5% coverage by mid-2012. Otherwise, observers are only required on farms and purse seines in ICCAT's bluefin tuna fishery. An important ICCAT innovation is a programme for observers on tuna farms and reefers.

Port State measures: RFMOs tend to rely more on inspections in port than at sea. Both NEAFC and NAFO require CPCs to inspect at least 15% of landings in their ports (though only for frozen fish in the case of NEAFC) and to allow off-loading only if the flag State certifies that the fish has been caught legally. CCAMLR requires port inspections only for toothfish. While ICCAT sets up a protocol for port inspections, they are required only in the bluefin fishery or when vessels not on the list of authorised vessels enter port. WCPFC has no particular requirements for port inspections, leaving it up to each port State.

Catch documentation schemes: The first RFMO to develop a certificate attesting to the legality of the catch that must follow the fish throughout the chain of custody was CCAMLR, which in 2000 created the Catch Documentation Scheme for toothfish. ICCAT later developed a similar scheme for bluefin tuna, bigeye and swordfish. No certification schemes have been adopted by other RFMOs.

Vessel chartering: The primary responsibility for ensuring compliance lies with the flag

State. A frequent occurrence, though, is the chartering by a CPC of a fishing vessel flagged to a non-CPC. The flag State is thus not bound by the rules of the RFMO so it is not clear which State is responsible for its activities. Both ICCAT and NAFO have attempted to clarify the responsibilities of the chartering State and the flag State. ICCAT requires observers on 10% of the vessels chartered by a CPC.

Transshipment: Given the rarity of inspections at sea and the temptation to be less than scrupulous in logbook entries, transshipments at sea provide an enormous loophole for IUU fishing. ICCAT realised this many years ago and instituted a general ban on transshipment at sea except for longliners to registered reefers, and reinforced that by requiring the reefers to have both VMS and observers. The WCPFC bans transshipments by purse seines at sea but allows others to transship if they report and the reefer has an observer. Other RFMOs simply require the transshipment to be reported.

It should be noted that the format of the measures varies considerably. NEAFC and NAFO, which often cooperate, have a single document that includes all the control measures and which is simply updated as necessary. The tuna RFMOs, on the other hand, have dozens of separate measures that are quite chaotic to follow, often overlap and are sometimes even contradictory. The NEAFC/NAFO approach is by far easier to understand.

Discussion

There has been a slow but certain convergence among RFMOs in the tools adopted to combat IUU fishing, but there is a long way to go before they all have the most effective measures possible. There is a need for better coordination among RFMOs and for them to develop a culture of best practice to learn from each other's experience.

It must also be borne in mind that even if an RFMO has adopted a certain measure to ensure compliance with the rules, it does not mean that it is fully implemented. The individual CPCs could fail in their various responsibilities as flag, port, coastal or market States (for instance in failing to conduct proper port inspections), or the CPCs could, collectively, decline to make full use of the tools at their disposal to discipline each other (for instance by not reducing a CPC's quota for overfishing).

Ultimately, fighting IUU fishing is a question of political will. As long as governments are unwilling to take all possible and necessary actions against their own vessels and other parts of their fishing industry, little will change. The recent history of bluefin tuna illustrates this perfectly. The performance review of ICCAT fully documented the failings of the CPCs to address the problems in the fishery, to the extent that it described ICCAT management of the fishery as an "international disgrace". What was happening in the fishery was clear for all to see, yet the CPCs did too little, too late.

CPCs generally do their best to prevent action being taken against their own industry. Thus, the decision-making procedure in the RFMO is of paramount importance. As long as decisions are made unanimously, any CPC can veto any action that it considers to be against its interests or the interests of its industry. Even if decisions are taken by majority voting, informal deals can be struck to gather enough support to prevent action. The larger and more powerful the CPC, the easier it is to get the necessary support. The best way to combat such

behaviour is for full transparency of decision-making. Few RFMOs practise this, even if NGOs are allowed as observers, since deals are done privately.

For all of these reasons, RFMO performance needs to be evaluated by independent experts. Some evaluations have already been conducted but this needs to be an obligatory and regular occurrence, every five years or so. Implementation of any measures proposed in the evaluation should also be obligatory for the RFMO concerned.

The costs of IUU fishing are high, even if they cannot be precisely evaluated in monetary terms. They include:

- serious stock depletion by catches outside any control;
- revenues to governments that are not collected as the fish is outside the formal economy;
- environmental damage by vessels ignoring conservation measures;

Governments often claim that control and surveillance are expensive, and that is true. However, if controls are not implemented and IUU fishing is eradicated, the cost to society will be far higher.