

# Measures to Prevent the Importation of Illegal, Unreported and Unregulated Seafood: DAFF Discussion Paper

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This is a personal submission. I have limited my comments and suggestions to an attempt to clarify a couple of framing issues which might warrant attention before specific measures are effectively developed and adopted.

## The Official Definition of 'IUU' is Unmanageably Broad

As the NGO nominee on the Australian delegation to CCAMLR at the time, I had the privilege of being part of the discussions that first formulated and applied the concept of 'IUU' in the late '90s. Its use was limited to identifying unauthorised distant water industrial fishers targeting toothfish stocks in a manner and at a scale that undermined efforts of Member States of the CAMLR Commission to conserve and sustainably manage the living marine resources for which they were responsible (including albatrosses as well as toothfish). 'IUU' was simply a label applied to such unwelcome activities to indicate the determination of those States to contest the problem regardless of the jurisdictional circumstances in which they occurred and to seek the help and assistance of the broader international community in doing so.

The broader definition of 'IUU' used in the FAO IPOA and formalised in the FAO PSMA is so broad as to encompass a wide range of problems created by a wide range of actors to the concern of a wide range of stakeholders, most of which do not warrant an antagonistic response from the international community. Use of the term 'IUU' in a manner that implies all activities covered by the definition warrant equally antagonistic treatment is unhelpful. It is no longer a term used by States trying to do the right thing to describe ill-intentioned fishers wantonly and knowingly undermining their efforts and to mobilise international support in helping them fix that problem.

In essence, there are two very different groups of fishers at either end of a long continuum whose activities might – or might not - warrant the 'IUU' label being applied:

- Distant water industrial fishers knowingly breaking the rules and accepting any consequences as just a cost of doing business. These deserve to have the book thrown at them, including making predicate and related offences serious offences and criminal offences where warranted.
- Subsistence artisanal fishers participating in remote fisheries where management is ineffective for a whole variety of reasons. These and their managers deserve to be offered assistance sufficient to allow them to exercise effective control.

And there's a big grey area in between – but the important observation is that, in all cases, those responsible for the management of fisheries subject to 'IUU' problems deserve our help in addressing those problems, whatever they may be. While it may be appropriate to designate an entire fishery or country as 'bad' this should be done because they refuse such offers of help not simply because they are the victims of outside interference or have limited capacity.

In conclusion: **any effective approach to preventing the importation of 'IUU' seafood needs to include a package of 'carrot' measures as well as some 'stick' measures.** The ability to see and grasp this opportunity is obscured by using the term 'IUU' as an undifferentiated label lumping all qualifying activities into the same 'bad' category making it hard to identify those circumstances where offers of help are warranted.

## **The Identification of Fisheries and Countries of Origin Needs Work**

Existing data collection systems, and the resultant public availability of data, are of limited help in the fight against 'IUU' fishing because they tend to be limited to identifying the country from which imports into Australia were exported – regardless of the fishery or country of origin of the imported fish product. Such data is sufficient to address the question of whether or not a fish product was imported or sourced from within Australia but is not sufficient to effectively link an imported product to the fishery of origin through reliable identification of the supply chain between the two. Such a link is needed if efforts to prevent importation of 'IUU' product is to be effective.

**The appropriate link is the use of electronic catch documentation schemes (e-CDSs). This meets three critical needs:** (i) being electronic/digital, rather than paper-based, they are hard to corruptly misuse; (ii) they are effective in keeping 'IUU' product out of the supply chain; and (iii), most importantly, they originate within the fishery in which the fish were caught thus allowing that fishery and the national agencies responsible for regulation and management to be securely identified. Additionally, they can identify the originating fishing vessel (and its owner/operator). E-CDSs can also be administrative efficient.

Most importantly, the use of e-CDS allows a country exporting fish products to Australia to reliably identify the originating fishery for those products regardless of the number of intermediary steps in the supply chain. Such identification is validated by recognised authorisation by relevant agencies along the way.

Any commitment to the comprehensive use of e-CDSs for allowing imports into Australia will take time and resources to roll out. Firstly, originating fisheries (and others along supply chains) might be given reasonable time to get a reputable/recognised e-CDS in place. Secondly, a 'credible risk' approach might be taken to identifying priority fish product flows to be covered by e-CDS. Relevant criteria might include: the relatively larger, by volume or value, product import flows; fisheries with known problems; foreign processors unable to differentiate consignments or identify their origin; etc.. From a public policy perspective, the important thing is to take an 80-20 approach much as the US NOAA SIMP does – start with the most important imports and expand coverage over time.

## **Helping Fisheries Managers with 'IUU' Problems – the 'Carrot'**

Once originating fisheries can be reliably identified, Australia can reach out to develop relationships with managers, regulators and participants of those fisheries with a view to supporting improvement programmes aimed at fixing identified 'IUU' and other concerns with a view to bringing the operation of that fishery up to a standard that meets Australian expectations. This is the 'carrot' part of the approach.

Note that, while 'IUU' might be the trigger for the development of an improvement programme, it would be reasonable to include a broader range of concerns, especially modern day slavery and safety at sea.

Note that introducing an e-CDS as an introductory stage in the relationship with originating fisheries does not, of itself, address these identified concerns. E-CDSs can keep 'IUU' product out of supply chains beyond the fishery but the fishery's problems still need fixing – the e-CDS is just the messenger.

It is important to bear in mind that, while we import quite a lot of fish, Australia does not have the market power of the US, EU or Japan. It will be unusual, if not rare, to find circumstances where the threat of Australian market closure can drive improvement in originating fisheries and associated supply chains. In this regard, it will be important to ensure that Australian arrangements complement those of the major market powers.

## **Identifying IUU Fisheries, Fishers and Supply Chain actors Warranting Exclusion from Supply Chains – the 'Stick'**

There are two key situations where the antagonistic 'stick' use of the 'IUU' label would then be warranted - by closing access to the Australian market:

- Where those responsible for the management and/or regulation of a fishery of origin of fish products being imported into Australia decline to enter into an appropriate fishery improvement arrangement (or fail to appropriately implement that arrangement). In other words, the 'carrot' is offered but spurned. This is a really important consideration – the 'IUU' label should not be used for a fishery that is suffering from 'IUU' problems not of its making. This is a judgement that should not be made other than in response to sustained and informed engagement with fisheries managers/regulators.
- Despite the best efforts of the managers/regulators of the fishery of origin, identified individual fishers engage in 'IUU' activities (or others along supply chains, such as reefers, processors, ports similarly undermine efforts to run orderly fisheries). In such circumstances, fish products originating with such vessels (potentially including other vessels with the same owner or beneficial owner or registered with the same flag State) or passing through identified reefers, ports or processors would be excluded from the Australian market.

I note that a group of US Senators is reintroducing their 'FISH Act' to Congress (Bill No.S.4773 of Aug 4, 2022 "to combat [IUU] fishing at its sources globally" – full title: 'Fighting Foreign Illegal Seafood Harvests Act of 2022'). In this Bill, the sponsoring Senators propose that US\$20M be allocated to NOAA to fight 'IUU' wherever it might be found while a further US\$20M be allocated equally to USAID and the State Department to help fisheries managers improve their fisheries.

A similar carrot and stick approach is warranted in Australia.

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Best wishes,

Alistair