



Australian Government
Department of Agriculture,
Fisheries and Forestry

Measures to prevent the importation of illegal, unreported and unregulated seafood: discussion paper



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Acknowledgement of Country

We acknowledge the Traditional Custodians of Australia and their continuing connection to land and sea, waters, environment and community. We pay our respects to the Traditional Custodians of the lands we live and work on, their culture, and their Elders past and present.

Credits

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Contents

Introduction.....	1
Assessing the problem.....	2
Defining IUU fishing.....	2
Cost of IUU fishing and Australia’s share of the problem	2
Snapshot of Australia’s seafood imports.....	3
Information request 1.....	5
Actions to address IUU fishing	6
Australia’s response.....	6
Bilateral cooperation	7
Regional response.....	7
Global response	8
Industry response	9
Call for further action	9
Market-based approaches.....	9
Information request 2.....	13
Policy options to address IUU imports.....	14
Objectives	14
Policy options for further consideration	14
Evaluating welfare impacts.....	15
Information request 3.....	15
Make a submission.....	16
Have your say	16
Next steps	16
Contacts	16
Appendix A: Additional material	17
References	20

Tables

Table A1 Comparison of multilateral and unilateral catch documentation schemes.....	18
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Figures

Figure 1 Seafood imports, by country, Australia, July 2021 to June 2022	4
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Figure 2 Seafood imports, by product type, Australia, July 2021 to June 2022.....	4
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Boxes

Box 1 Environmental, economic and social costs of IUU fishing.....	3
Box 2 Approaches to combating IUU fishing.....	6
Box 3 Australia’s role in regional forums to combat IUU fishing	7
Box 4 Global instruments, agreements, and guidelines.....	8
Box 5 Unilateral import control schemes in the European Union, United States and Japan	10
Box 6 Evaluations of unilateral and multilateral CDS.....	11
Box 7 Trade restrictive measures implemented by the EU and US	12
Box A1 Seafood traceability and key data elements.....	17
Box A2 Illegal logging import controls.....	19

Introduction

The Australian Government is considering a framework that addresses the importation of seafood from fisheries that involve illegal, unreported, and unregulated (IUU) fishing practices.

IUU fishing is a key contributor to global overfishing. It threatens marine ecosystems, puts food security and regional stability at risk, and is linked to human rights violations and organised crime (FAO 2018; WWF 2023a).

Australia employs a multifaceted approach to combat IUU fishing. We take strong domestic action and apply effective legal and regulatory systems that deter illegal fishing within Australian waters and prevent the landing of illegal catch at Australian ports. International cooperation remains essential to successfully combating IUU fishing and Australia takes an active role in bilateral, regional and multilateral forums that aim to combat IUU fishing. Additionally, we work to strengthen the capacity of regional countries to combat IUU fishing within their waters and on the high seas.

Australia adheres to seafood traceability systems that apply to a number of species. However, we do not have a comprehensive import control scheme aimed at preventing IUU fishing product from entering our supply chain.

A key consideration in implementing seafood import control schemes is how to balance the benefits and costs to consumers, industry, governments, and the broader community. Benefits may include protection of marine ecosystems, preventing human rights violations, and ensuring a level playing field between domestic and international fishers (Fair Catch Alliance 2023; Garcia et al. 2021; Ma 2020; Minderoo Foundation 2021; USITC 2021). However, import control schemes, especially those implemented unilaterally, may impose a high compliance cost on industry, have a limited impact on preventing IUU fishing, disproportionately impact small-scale fishers, pose trade risks and increase seafood prices (Hosch 2016; Hosch & Blaha 2017; Song et al. 2020; USITC 2021).

This discussion paper is the first step in investigating whether Australia should take further action to strengthen its use of market-based measures to prevent the importation of IUU fishing derived seafood.

In response to this discussion paper, we are inviting public submissions to assist us in our assessment of the problem and the costs and benefits of potential policy responses.

We expect to release a draft report in late 2023, and will seek further feedback from stakeholders on draft findings and recommendations.

The final report is expected to be released early in 2024.

If the report identifies a need for government intervention, a regulatory impact statement will be required to assess the most feasible options to ensure any proposed additional regulation provides a net benefit to the Australian community.

Assessing the problem

Defining IUU fishing

IUU fishing is a broad term that captures a wide variety of fishing activity. It can occur within zones of national jurisdiction, within areas of control of regional fisheries bodies, or in unregulated areas of the high seas. For the purposes of this paper, we have adopted the definition of IUU fishing set out in United Nations Food and Agriculture Organisation's (FAO) International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU) (FAO 2001).

- **Illegal** – refers to fishing or fishing-related activities undertaken by either national or foreign-flagged vessels in waters within a state's exclusive economic zone (EEZ) or regional fisheries management organisation's (RFMO) jurisdiction, without permission from that state or RFMO, or in contravention of the state's or RFMO's regulations.
- **Unreported** – refers to fishing or fishing-related activities that have not been reported, or have been reported incorrectly, to the relevant state and/or RFMO.
- **Unregulated** – refers to fishing or fishing-related activities conducted within a state's EEZ or RFMO's jurisdiction by a vessel without nationality, by a vessel flying the flag of a state not party to the relevant RFMO body, or relating to a fish stock where there are no conservation or management regulations in place and which contravenes the general management measures of the state, RFMO or international law.

For full definitions, see the IPOA-IUU and FAO Port State Measures Agreement (FAO 2001; FAO 2016).

Cost of IUU fishing and Australia's share of the problem

IUU fishing is a key contributor to global overfishing and involves a complex and interrelated set of environmental, economic, and social impacts (Box 1).

Data limitations and variation in IUU fishing activity across regions complicates efforts to quantify the global costs of IUU fishing. Nonetheless, previous research has estimated the total value of IUU fishing losses worldwide is between US\$10 to US\$23.5 billion annually, representing between 11 and 26 million tonnes or approximately 20% of all global fish catch (Agnew et al. 2009). More recent studies found that the loss in annual economic impact due to the diversion of fish from the legitimate trade system is between US\$25.5 to US\$49.5 billion, while losses to countries' tax revenues are between US\$2.2 and US\$4.3 billion (Sumaila et al. 2020).

Although the high global costs of IUU fishing are widely acknowledged, the extent to which Australia's market is affected by or contributing to IUU fishing is not well understood. Australia has robust legal and regulatory systems that hold its fishers to account, deter illegal fishing within Australian waters and prevent IUU fishing operators from landing catch at Australian ports. However, there are concerns that Australia may be importing seafood derived from IUU fishing practices, which could inadvertently contribute to the problem.

Box 1 Environmental, economic and social costs of IUU fishing

IUU fishing is linked to a complex and interrelated set of environmental, economic, and social impacts.

Environmental costs of IUU fishing

- Undermines sustainable management of fish stocks – IUU fishing hampers the accuracy of fisheries data and assessments, thus impeding the achievement of sustainable management of fish stocks.
- Depletion of fish stocks – IUU fishing can result in a higher fish mortality rate, depleting fish stocks, and reduced rates of stock growth and long-term economic yields.
- Ecological impacts – by over-harvesting a specific stock, IUU fishing can have ripple effects on the prey, predators, and competitors of that stock and their ecosystem. The methods and equipment used in IUU fishing can also result in habitat destruction and excessive bycatch.
- Extinctions – overfishing, including by IUU fishing, can lead to the extinction of certain species.

Economic costs of IUU fishing

- Reduced profits – IUU fishing has economic impacts for fishers and consumers. In the short-term, it can result in more abundant and affordable supply of fish for consumers. However, the medium-long-term impacts include fewer and lower quality fish, higher costs of fishing, and higher prices for consumers.
- Market distortion – legitimate fishers are put at a disadvantage by competing with the unfair practices of IUU fishers, resulting in loss of market share for legal operators and trade distortions caused by the different cost structures of IUU fishing operators.
- Tourism impacts – IUU fishing can contribute to imbalances in ecological systems, with negative impacts on coastal area tourism.
- Reduced access to fisheries markets – IUU fishing can undermine the ability of fishery managers to ensure sustainable management of stocks, making the product less attractive to corporate buyers.

Social costs of IUU fishing

- Reduced employment – IUU fishing can have negative impacts on employment in the medium and long term, particularly in communities that are heavily dependent on fishing.
- Community impacts – fishing communities can suffer from IUU fishing through unfair competition. This can lead to more community fishers engaging in IUU fishing to compete for resources. As a result, these fishers suffer from an increased risk of detection and punishment, further risking their economic security.
- Labour rights abuses – fishing vessels engaged in IUU fishing have been linked to labour abuses including exploitation, forced labour, human trafficking, and modern slavery.
- Food security – IUU fishing can threaten the long-term availability of affordable and nutritious seafood. This can have significant food security implications, especially for small-scale fishers and individuals in developing countries who rely on fisheries for protein and livelihoods.

Source: Agnew et al. 2009; Cabral et al. 2018; Tinch et al. 2008; Widjaja et al. 2020

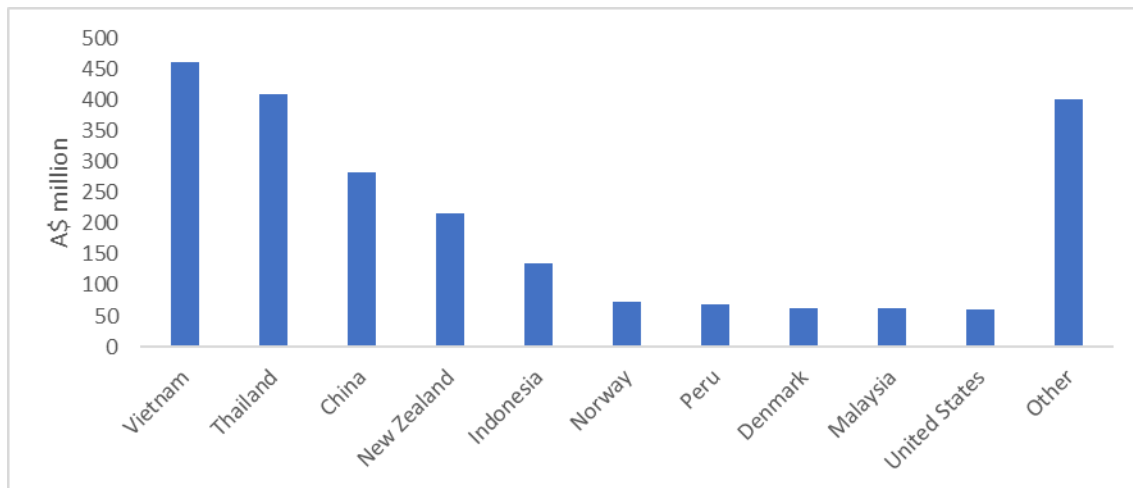
Snapshot of Australia's seafood imports

Australia imports a significant amount of seafood to meet the gap between domestic consumption and supply, as well as to cater to consumer preferences for a diverse range of seafood products (DAFF 2015, FRDC 2021). Approximately 65% of the edible seafood consumed in Australia (by weight) is imported (ABARES 2022). These imports mainly consist of lower-value products such as canned or

frozen finfish, but also include higher-value products like prawns and salmonids (ABARES 2022; DAFF 2015).

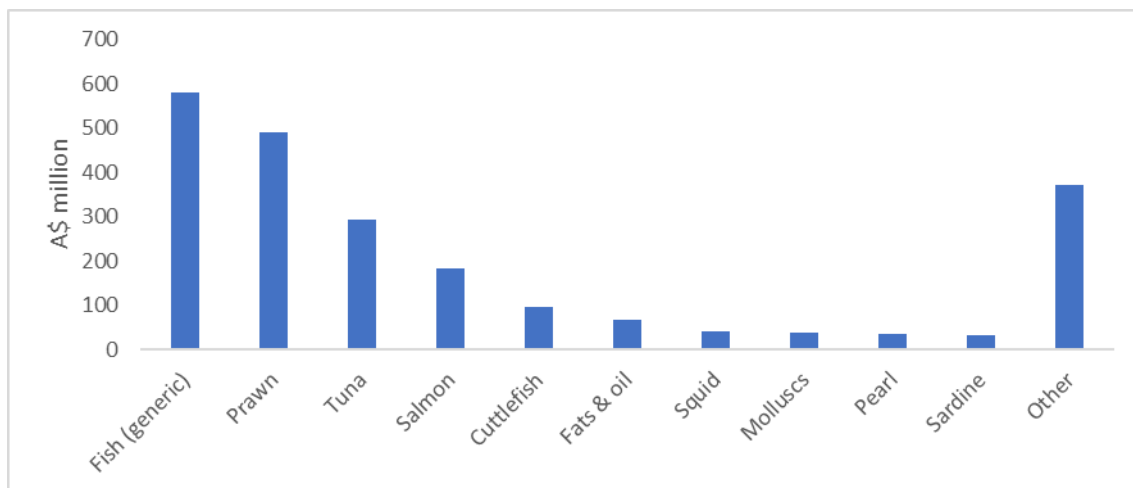
In 2021–2022, Australia imported seafood valued at AU\$2.23 billion from 100 different countries. The top 10 countries accounted for 82% of total seafood imports to Australia (Figure 1). Similarly, 10 main product types made up 83% of all edible and non-edible seafood imports (Figure 2).

Figure 1 Seafood imports, by country, Australia, July 2021 to June 2022



Source: ABS 2022

Figure 2 Seafood imports, by product type, Australia, July 2021 to June 2022



Note: Fish (generic) captures several product types, and fish species are not easily identifiable.

Source: ABS 2022

Given the prevalence of global IUU fishing and the broad variety of seafood that Australia imports, it is reasonable to assume that some products derived from IUU fishing could be making their way into the country. However, data limitations make it difficult to determine the precise extent of this problem. While a sizeable portion of this trade is likely to be low risk, particularly products sourced from aquaculture and eco-certified fisheries, there remains a significant residual where IUU fishing risks are not well known. Of concern, 7 of the top 10 largest countries by seafood import value to

Australia performed worse than the global average in terms of vulnerability, prevalence, and response to IUU fishing (Macfadyen & Hosch 2021).

Assessing the portion of Australia's seafood imports that may be linked to IUU fishing will be further considered in our draft report. We welcome stakeholder views on the extent of the problem, the relative risks of IUU fishing across species and wild catch source fisheries, and methodological approaches to estimating the value and volume of IUU fishing derived seafood entering Australia.

Information request 1

We are seeking feedback and evidence of Australia's exposure and contribution to global IUU fishing.

- To what extent do Australia's seafood imports contribute to global IUU fishing and how are we affected by this activity?
- What practices are already implemented by governments, non-profit organisations and industry (including importers, wholesalers and retailers) to reduce the risks of IUU fishing products from entering Australia?
- Are you aware of any evidence that Australian imports of certain species or seafood product from specific countries, regions or fisheries pose a higher risk of being derived from IUU fishing practices?
- What data and methodological approaches should we consider when assessing the key sources, and the value and volume of any IUU fishing product entering Australia?

Actions to address IUU fishing

IUU fishing is a complex, multidimensional issue that spans international borders. Successfully combating the problem requires collective and sustained action by countries at bilateral, regional and multilateral levels.

Efforts to combat IUU fishing can be classified into 2 categories:

- 1) the United Nations Convention on the Law of the Sea (UNCLOS) approach regulates the utilisation and conservation of marine fishery resources through the actions of flag states, coastal states, and port states.
- 2) the market-based approach involves actions taken by market states that trade in fishery products (Box 2).

Box 2 Approaches to combating IUU fishing

Flag states

International law requires all states to exert jurisdiction and control over vessels flying their flag. The failure of flag states to fulfill this responsibility is a major contributor to the problem of IUU fishing. The responsibilities of flag states include implementing a system of registration for ships flying their flag, maintaining a national record of their vessels, and implementing an authorisation system for vessels to fish. They must also ensure that vessels operating under their flag are properly controlled.

Coastal states

When a fishing vessel enters the waters of a coastal state, the primary responsibility for controlling its activities shifts from the flag state to the coastal state. To govern fisheries in their waters, coastal states establish monitoring, control, and surveillance systems. These systems involve various measures such as tracking vessels' movements and monitoring their activities, aerial or at-sea surveillance, and deploying observers on fishing vessels. Additionally, coastal states may undertake physical inspections of catch gear and documentation.

Port states

Port states can prevent the entry of IUU-caught fish into the market by enforcing port state measures. These measures are a set of requirements that foreign vessels must comply with to access ports within the port state. They include prior notification of port entry, use of designated ports, restrictions on landing or transshipment of fish, supply and service restrictions, documentation requirements, and port inspections.

Market states

IUU fishing products often enter international trade, allowing market states to combat the issue through trade-related measures. Two such measures are catch documentation schemes (CDS) and trade sanctions, which can be applied by a single country or multilaterally by regional fisheries bodies.

Source: EPRS 2022a; FAO 2001

Australia's response

Australia employs a multifaceted approach to combat IUU fishing, including direct domestic action and bilateral, regional, and global cooperation. We have strong legal and regulatory systems to deter illegal fishing within Australian waters and prevent IUU fishing operators from landing catch at Australian ports. We also take an active and collaborative role in regional and international forums

and work to strengthen capacity of neighbouring countries in combating IUU fishing. For further information, see Australia's Second National Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (NPOA-IUU).

Bilateral cooperation

Australia cooperates bilaterally with a range of countries on fisheries-related issues, including combating IUU fishing. For example, we have a memorandum of understanding with Vietnam committing us to cooperate to combat IUU fishing. We have several annual agriculture and fisheries-specific bilateral meetings, at which IUU fishing is discussed. We also have established bilateral forums that facilitate cooperation on combating IUU fishing, for example the Indonesia–Australia Fisheries Surveillance Forum.

Regional response

Regional fisheries bodies, including RFMOs and regional fisheries management arrangements (RFMAs), are key actors in promoting sustainable fisheries and combating IUU fishing. They offer a platform for states or organisations to collaborate on the conservation, management, and development of fisheries in specific regions (FAO 2023b). They typically have the authority to establish binding catch and fishing effort limits, as well as control obligations, technical measures, trade sanctions, and other enforcement measures to combat IUU fishing (DG MARE 2023b). Additionally, regional fisheries bodies have increasingly adopted and enforced conservation and management measures that directly or indirectly contribute to combating IUU fishing, such as port state measures, CDS, IUU fishing vessel lists and compliance monitoring (EU IUU Coalition 2019; FAO 2023b). Australia's participation in regional fisheries forums is outlined in Box 3.

Box 3 Australia's role in regional forums to combat IUU fishing

Australia participates in a range of fora that establish regional, and subregional management arrangements for migratory, straddling, pelagic and demersal fish stocks. These include the Convention on the Conservation of Southern Bluefin Tuna, the Agreement for the Establishment of the Indian Ocean Tuna Commission, the Convention for the Conservation of Antarctic Marine Living Resources, the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific, the South Pacific Regional Fisheries Management Organisation and Southern Indian Ocean Fisheries Agreement. Many of these organisations are focusing on the problem of IUU fishing as a major threat to the effective management and conservation of regional fish stocks and are consequently seeking to identify vessels engaged in IUU fishing within respective areas of competence to effectively combat and eliminate these operations.

In 2007, Australia and Indonesia were instrumental in establishing The Regional Plan of Action to Promote Responsible Fishing Practices Including Combating Illegal, Unreported and Unregulated Fishing (RPOA-IUU). The RPOA-IUU consists of 11 members (8 ASEAN member states, Timor-Leste, Papua New Guinea and Australia). Its objective is to enhance and strengthen the overall level of fisheries management in the region and promote adoption of responsible fishing practices. The Coordination Committee meets annually to renew the strategic directions and priorities for fulfilling RPOA-IUU objectives. The RPOA-IUU has been recognised as a best-practice model for regional cooperation in combating IUU fishing.

Australia advocates for the strengthening of existing fisheries management and conservation arrangements, the development and adoption of new measures to combat IUU fishing and urges countries to fully implement key international instruments aimed at combating IUU fishing (DAFF 2023b).

Global response

At the global level, significant effort has been made in recent decades to develop an international framework that promotes responsible fisheries management and combats IUU fishing (Box 4).

Australia is a party to virtually all binding global instruments, agreements, and guidelines to prevent IUU fishing. Australia engages with a range of multilateral forums that aim to combat IUU fishing, these include the United Nations (UN), FAO, Organisation for Economic Co-operation and Development (OECD), Asia-Pacific Economic Cooperation and the World Trade Organisation (WTO).

Box 4 Global instruments, agreements, and guidelines

Several global instruments, agreements and guidelines have been developed to combat IUU fishing.

- **United Nations Convention on the Law of the Sea (UNCLOS) (1982)** – defines the rights and duties of states with respect to their use of ocean space and resources. It designates areas of national jurisdiction, in which it gives coastal states responsibility over natural resources. For the flag states whose vessels fish beyond these areas, it introduces the obligation to effectively exercise jurisdiction and control over them and to cooperate with other states.
- **United Nations Food and Agriculture Organisation (FAO) Compliance Agreement (1993)** – promotes compliance with conservation and management measures on the high seas. It strengthens the responsibility of the flag states, which must maintain a system of authorisation for their high seas vessels and ensure that they do not undermine conservation and management measures. It also aims to prevent fishing vessels reflagging under flags of non-compliance.
- **United Nations Fish Stocks Agreement (1995)** – an implementing agreement under UNCLOS, addresses the management of highly migratory stocks travelling across coastal state waters and high seas, and of stocks straddling the 2 areas. It defines the duties of flag states, including those related to registration and record of vessels, control, compliance and enforcement, as well as cooperation in the framework of RFMOs, along with port state measures.
- **FAO Code of Conduct for Responsible Fisheries (1995)** – contains a series of voluntary guidelines providing principles and standards applicable to the management of all fisheries. It includes provisions on the duties of all states and promotes responsible trade of fishery products.
- **FAO's International Plan of Action To Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU) (2001)** – was the first global instrument tailored to combat IUU fishing. The plan assigns responsibilities to different states, including flag states, coastal states, port states and market states, with specific measures to be taken. The plan also encourages states to cooperate regionally, to harmonise policies and activities and to support RFMO measures.
- **FAO Port State Measures Agreement (2016)** – is an international legally binding agreement that aims to prevent IUU fishing vessels from using ports and landing their catches, and thus to block products derived from IUU fishing from reaching national and international markets. The agreement also determines the role of flag states in the implementation of port state measures.
- **WTO Fishing Subsidies Agreement (2022)** – prohibits countries from subsidising vessels engaged in IUU fishing, fishing overfished stocks, or fishing on the unregulated high seas.

Other supplements to this global framework, include the FAO voluntary guidelines for flag state performance (2014), guidelines for catch documentation schemes (2017) and the Global Record of Fishing Vessels, Refrigerated Transport Vessels and Supply Vessels.

Source: EPRS 2022a; FAO 2023a; WTO 2022.

Industry response

It is important to acknowledge existing self-regulatory practices implemented by industry (including importers, wholesalers and retailers) and other third parties. For example, independent eco-certification and chain of custody programs, such as those implemented by the Marine Stewardship Council, set sustainability standards and maintain a chain of custody for certified products. Such programs foster consumer trust in certified seafood and encourage consumers to demand that the seafood they purchase can be traced to legitimate operations (Longo et al. 2021). Additionally, major retailers, such as Coles and Woolworths, have competitive market incentives to mitigate the risk of selling products associated with IUU fishing practices, and have a history of collaboration with non-government organisations (NGOs) and fisheries management authorities to conduct their own risk assessments (Coles 2023; WWF 2023b).

Call for further action

Australia adheres to several multilateral traceability schemes or agreements applying to trade in aquatic species – including RFMO CDS and trade in species listed under the *Convention on International Trade in Endangered Species of Wild Fauna and Flora*. However, we do not have a unilateral import control scheme aimed at preventing IUU fishing product from entering the country. The European Union (EU), United States (US) and Japan are major seafood importers with unilateral import control schemes to prevent IUU fishing product from being imported (EU IUU Coalition 2020; SEAFDEC 2022).

Australia's limited use of market-based measures (relative to other OECD countries) and reliance on legislation focused on food safety and biosecurity to regulate the entry of seafood into the country, has created concern among some stakeholders in the Australian community that Australia is susceptible to importing IUU fishing-derived product (Minderoo 2021; OECD 2021).

In response, and considering the existing efforts of industry and third-party stakeholders, the government is considering whether Australia should strengthen its use of market-based measures to prevent the importation of IUU fishing derived seafood.

Market-based approaches

To prevent IUU fishing products entering the market, various market-based approaches have been implemented globally over the last decade to address inefficiencies in the chain of custody and to improve seafood traceability. Key market-based approaches to combat IUU fishing fall into 2 categories: catch documentation schemes (CDS) and trade restrictive measures (TREMs).

Catch documentation schemes

CDS are systems that aim to ensure traceability of seafood products throughout the supply chain from the point of harvest (FAO 2022b). A CDS can take various forms, including catch and trade certificates, traceability programs and other measures that disclose information about how fish are caught and moved through the supply chain (Ma 2020). It is essentially a reporting mechanism that seeks to positively identify legal products and deny market access to illegal products. Key data elements that a CDS may encompass are identified in Box A1.

CDS can be unilateral (adopted by individual market states) or multilateral (such as those implemented by RFMOs). The EU, US and Japan have each implemented their own unilateral CDS

(Box 5). These are 3 of the world's largest seafood importers and possess significant market power. Three regional fisheries bodies operate multilateral CDS – the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), the Commission for the Conservation of Southern Bluefin Tuna (CCSBT), and the International Commission for the Conservation of Atlantic Tunas (ICCAT). Several other regional fisheries bodies are in various stages of planning and/or developing CDS (Ma 2020).

Box 5 Unilateral import control schemes in the European Union, United States and Japan

European Union

The European Union (EU) is the world's largest seafood importer, importing US\$56.5 billion of seafood in 2020. The EU introduced a Catch Certification Scheme (CCS) in 2012 to prevent IUU fishing product from entering its market. All marine wild caught fish exported to the EU must be accompanied by catch certification. Fishing vessel operators from exporting countries must provide importers with documentation that demonstrates products were caught in compliance with national fishing laws. These certificates are required to be validated by authorities in the country to which the vessel is registered or flagged. The certificates also document other steps in the supply chain, including processing of product. EU importers must ensure that fish and seafood products are accompanied by catch certificates and have been legally caught according to a risk-based approach. The current system is paper based. However, plans are underway to move to electronic record keeping.

United States

The United States (US) is the second largest seafood importer in the world, importing US\$22.4 billion of seafood in 2020. The US introduced the Seafood Import Monitoring Program (SIMP) in 2018. The SIMP is a traceability program that requires US importers to provide and report chain of custody data on 13 imported fish and fish products which are identified as vulnerable to IUU fishing or seafood fraud. However, the number of species is currently being considered for expansion (NOAA 2022). Unlike the EU CCS, the US model places the onus on importers to collect and record traceability data. This data is submitted through a data portal managed by the US' National Oceanic and Atmospheric Agency (NOAA). Audits are conducted on importers to verify harvest and landing information.

Japan

Japan is the world's fourth largest importer of fishery products by value, importing US\$13.8 billion of seafood in 2020. In December 2022, Japan introduced a CDS applying to 4 species (squid and cuttlefish, pacific saury, mackerel and sardine). The CDS is based on the EU CCS and requires imports of these species are accompanied by a catch certificate issued by the competent authority of the flag state.

Source: DG MARE 2023a; European Commission 2009; JFA 2020; NOAA 2022, 2023; Statista 2021.

Comparative analysis of multilateral and unilateral CDS

There are fundamental differences between unilateral and multilateral CDS systems (Table A1). As summarised by Hosch (2016), multilateral schemes offer comprehensive protection to specific fish stocks; are based on RFMO rules which have standing in international law; apply to all fishers, traders, and processors dealing with products from a specific fishery; and are typically backed by strong enforcement mechanisms that cover domestic and international trade. In contrast, unilateral schemes seek to regulate what may enter an end market, not how or what comes out of a fishery. They are established under national law and compliance is established by looking backwards into the

supply chain and trying to determine if products were harvested in accordance with national, regional or international rules, at the point in time when products arrive at the border.

Considering these distinctions, and due to the increased effectiveness of CDS when states collaborate, the FAO advises multilateral schemes are preferred (FAO 2017). The IPOA-IUU goes further, stating 'unilateral trade-related measures should be avoided' (FAO 2001).

Evaluations of the EU and US CDS (Box 6) have brought to light concerns regarding the efficacy of unilateral CDS. Moreover, the regulatory burden accompanying unilateral CDS introduces further aspects to consider. Such schemes can impose significant compliance costs on industry and prove expensive to administer and enforce (FishWise 2022; Hosch 2016; Hosch & Blaha 2017). Additionally, they may disproportionately impact small-scale fishers and small island developing states, exacerbating existing challenges faced by these groups (Song et al. 2020). The EU IUU Coalition (2020) noted:

There is a real risk of a proliferation of non-harmonised unilateral trade instruments to combat IUU fishing ... For fishers and supply chain actors that currently or may in the future seek to sell or process catch for multiple markets, the costs of complying with different systems could be considerable.

However, while multilateral approaches are generally considered more effective than unilateral approaches, there are trade-offs to consider. Multilateral schemes can be complex and time-consuming to negotiate, develop, and implement, which may lead to delayed action. Additionally, they generally have limited coverage of species and geographic areas compared to unilateral schemes (FAO 2022a; Hosch 2018). Further, risks that new unilateral schemes will compound compliance costs can be minimised when harmonised with existing schemes (EU IUU Coalition 2020).

Box 6 Evaluations of unilateral and multilateral CDS

Evaluations of the EU and US CDS have revealed concerns regarding the effectiveness of unilateral approaches.

A 2021 review conducted by NOAA found that 'as currently implemented, SIMP does not prevent or stop IUU fish and fish products from entering US commerce.' The review highlighted that a key challenge for SIMP in identifying IUU products lies in the sheer volume of imports and the necessity for detailed knowledge of the fisheries laws in the exporting countries.

Research commissioned by the EU Commission found that, in the 4 years following the implementation of the EU CCS, no significant impact on seafood trade was detected, suggesting similar levels of IUU fishing products continued to enter the EU market. More recent evaluations recognised improvements in traceability due to the EU CCS. However, its effectiveness was called into question, given that only 48 import consignments out of 580,000 received by EU member states were denied entry during the 2018–19 reporting period. Key criticisms of the EU scheme include its reliance on paper-based documentation and inconsistent enforcement across EU member states.

In contrast, evaluations of multilateral schemes found they were effective. For example, the CCSBT and ICCAT CDS have been recognised as important factors in combating IUU fishing and supporting the recovery of bluefin tuna populations in their respective fisheries.

Source: EU Court of Auditors 2022; EPRS 2022a; Hosch 2016, 2018; NOAA 2021.

Trade restrictive enforcement measures

Trade restrictive enforcement measures (TREM), including ‘trade sanctions’ or ‘trade embargoes’, are another type of market-based measure aimed at preventing trade in IUU fishing derived seafood. Unlike CDS which seek to prohibit market access on a shipment-by-shipment basis, TREMs are intended to incentivise behaviour change at a country or operator level by imposing sanctions, import restrictions or other penalties on countries or operators that take insufficient measures to combat IUU fishing. They are typically punitive in nature (Hosch 2016).

TREMs can also be implemented unilaterally or multilaterally. For instance, several RFMOs including ICCAT have adopted resolutions that allow their members to impose TREMs on states that fail to comply with international fisheries law and CDS requirements. In contrast, the EU and US have regulatory frameworks in place to apply unilateral TREMs. These measures can be in response to non-compliance with a CDS, or they can be applied in response to other deficiencies not related to the operation of a CDS (Box 7).

Box 7 Trade restrictive measures implemented by the EU and US

European Union

The European Union (EU) has established regulations that allow for trade bans on seafood products from countries that they EU determine are non-cooperative in combating IUU fishing. The regulation, known as the EU carding scheme, rates countries based on their level of cooperation in addressing IUU fishing and assigns a green, yellow, or red card. Green cards are issued to countries in compliance with international rules, yellow cards to those not fully cooperating, and red cards to those failing to take sufficient measures. A yellow card prompts recommendations for improvement, while failure to comply may result in a red card and a trade ban being imposed. Up to May 2022, a total of 27 countries had at some time been issued a yellow card and 6 countries a red card under the EU IUU Regulation.

There is evidence this carding scheme has incentivised some countries to improve their fisheries management systems and take stronger measures to prevent IUU fishing. However, the extent to which that translated into actual reductions in IUU fishing is unclear. A report by the EU parliament found the ‘EU carding system has proven useful, but it often impacts countries with only minimal EU fish trade and loopholes exist’. Other criticisms of the EU scheme include lack of transparency regarding the criteria used to determine compliance, inadequate support for capacity building, and a disproportionate burden imposed on developing states.

United States

The US has identified countries involved in IUU fishing since 2009 in biennial reports submitted to Congress by the Secretary of Commerce. In preparing identification decisions, the US considers 3 years of data for IUU fishing, bycatch, and shark catch on the high seas. This is followed by a 2-year consultation process and flagged countries are required to take corrective action to address identified shortcomings. A certification decision is then made based on information provided during consultations. If a negative certification is issued, it could result in US port restrictions for fishing vessels of that nation or import restrictions on certain seafood products. In the 2021 Biennial Report to Congress, NOAA identified 7 nations with vessels engaged in IUU fishing activities and announced a negative determination for Mexico because it had not taken sufficient action to address concerns raised in the 2019 Biennial Report.

US TREMs are also designed to target operators directly, rather than imposing country wide sanctions. In 2022, The US Department of the Treasury’s Office of Foreign Assets Control sanctioned several individuals and companies allegedly involved in human rights abuses and IUU fishing while operating in distant waters.

Source: Coit & Spinard 2021; EPRS 2022b; European Court of Auditors 2022; Hosch 2016; USITC 2021; US Treasury 2022.

When considering whether Australia should impose unilateral trade sanctions against non-cooperating countries or operators, it will be important to consider a range of issues, including consistency with Australian international trade law obligations as well as Australia's market characteristics. The relatively small scale of our seafood imports and our limited market power compared to the EU and US, for example may limit the incentives for countries to take corrective action in response to any measure we might impose. Unilateral trade measures may lead non-cooperating countries to shift their trade to other markets or, there may be detrimental impacts on broader two-way trade relationships.

Information request 2

We are seeking feedback on the efficacy and cost-effectiveness of market-based measures to combat IUU fishing.

- Have market-based measures to combat IUU fishing applied in the European Union, United States or Japan, or by multilateral fishery bodies, been effective in curbing IUU fishing?
- To what extent do evaluations of existing import controls schemes translate to an Australian context? Do Australia's market characteristics pose additional challenges/risks?
- What is the relationship between non-market and market-based policy options to combat IUU fishing? In an Australian context, should market-based measures be prioritised over other approaches, such as providing support to developing states to implement international agreements or to enhance their monitoring, control and surveillance capabilities?
- Is there a compelling case for Australia to implement unilateral market measures or are multilateral approaches preferred? What are the trade-offs between these approaches?

Policy options to address IUU imports

Objectives

According to the FAO, there are various objectives and principles that seafood import controls should strive to achieve (FAO 2022b). These objectives and principles, adapted from the *Codex Alimentarius: Food Import and Export Inspection Certification Systems*, serve as a framework for creating effective and efficient seafood import controls, and are intended to inform government decision-making regarding potential policy responses.

- Fit for purpose – effective in providing an acceptable level of protection.
- Risk-based – based on scientific risk assessments, with the application proportionate to the level of risk.
- Non-discriminatory – avoiding arbitrary or unjustifiable distinctions.
- Efficient – mindful of costs and not unnecessarily restricting trade.
- Harmonised – promoting cooperation and adhering to internationally agreed standards.
- Equivalence – recognising functional equivalencies between different systems.
- Special requirements – acknowledging the special requirements of developing states.
- Control and inspection procedures – limited to those necessary for establishing compliance with requirements.

Policy options for further consideration

There are a range of possible market-based policy options that could be implemented to strengthen Australia's import controls and help prevent the product of IUU fishing from entering the country. These options, and others, will be further considered based on stakeholder consultation and further assessment of the problem.

Options for further consideration may include, but are not limited to:

- 1) Continue with the status quo.
 - a) adherence to multilateral traceability schemes and trade agreements, and industry or third party led traceability/risk assessment frameworks.
 - b) continue collaborating closely with regional partners on combating IUU fishing through non-market related approaches.
- 2) Require importers to obtain an international fisheries trade permit and gather and retain seafood traceability data to verify a products legality before entry into Australia (US system).
- 3) Implement a scheme requiring that seafood imported into Australia be accompanied by catch and trade certificates attesting to the legal origin of the products. The flag state of the catching vessel would be required to validate the catch certificate (EU system).
- 4) Introduce codes of conduct that require industry to manage compliance and enforcement, and to verify the legality of seafood products they import/sell.

- 5) Similar to Australia's approach to combating the importation of illegal timber (Box A2), make it an offence to import IUU fishing product and require importers and processors to collect information, assess and mitigate risk, and keep records.
- 6) Encourage the expansion of multilateral CDS systems and the establishment of an internationally coordinated CDS.
- 7) Introduce a procedure for identifying countries or operators that trade in IUU fishing product that may lead to punitive measures.

Evaluating welfare impacts

In assessing the case for additional market measures, we will take a community-wide view and attempt to balance the sometimes competing interests of multiple stakeholders. The broad impact of implementing any new measures and their alignment with international best practice will be considered and we will need to demonstrate that any new regulation delivers net benefits to the community. Relevant considerations include:

- The effectiveness of policy in reducing IUU fishing and associated environmental benefits.
- The impact on livelihoods, including fishers and those dependent on seafood for their income and wellbeing.
- Impacts on Australian commercial fishers from promoting fair competition.
- Compliance costs imposed on industry and trade partners.
- Costs required to administer and enforce policy and assist countries to meet our import standards.
- Potential impacts on seafood trade flows, seafood prices, and consumption; and whether such impacts disproportionately affect low-income households in Australia.
- Associated trade risks, including unintended consequences such as the diversion of legitimate seafood products and impacts on our broader trade interests.

Information request 3

We are seeking feedback on potential policy options aimed at preventing the importation of IUU seafood into Australia, as well approaches to assessing costs and benefits to stakeholders.

- What policy reforms are necessary to prevent the importation of seafood derived from IUU fishing practices?
- How can policy minimise compliance costs, trade risks and address transitional and distributional impacts?
- Are there any legal implications to the proposed policy options of which you are aware?
- What additional costs and benefits should be considered when evaluating policy options?

Make a submission

We invite contributions from industry, business, research bodies, governments, NGOs and the community to help us better understand of the extent of IUU fishing products entering Australia, and to explore ways to strengthen Australia seafood import controls. We want to hear from you about the questions and options raised in this discussion paper as well as your practical ideas.

Have your say

- Use this link <https://haveyoursay.agriculture.gov.au/iuu-seafood-imports> to answer questions and upload documents.
- You will need to register or sign in to participate. Read our privacy notice before you register.
- Your submission will be public on the Department of Agriculture, Fisheries and Forestry's website.
- Before you share your feedback, read this discussion paper.
- We have included 12 questions for you to consider. You may address all or some of these, or provide more general comments.
- Ensure you provide your feedback by 5 pm (AEDT) on 23 June 2023.
- Join the national conversation at <https://haveyoursay.agriculture.gov.au/iuu-seafood-imports>.

Next steps

Your ideas will help us to identify ways to address the importation of seafood derived from IUU fishing practices. We may seek more information about your submission. Recommendations will be presented to the Australian Government in 2024.

Contacts

For information about measures to prevent the importation of IUU seafood, email AG-FisheriesGovernanceandTradeSection@agriculture.gov.au.

Appendix A: Additional material

Box A1 Seafood traceability and key data elements

The seafood supply chain is complex and involves multiple stages, actors, and geographic locations. Effective traceability requires collaboration among actors and collection of various data elements. The challenges involved in mapping seafood supply chains is widely recognised and determining the optimal set of key data elements (KDEs) for effective traceability remains a matter of debate. While 17 KDEs are commonly cited as fundamental for establishing a robust traceability baseline, different organisations and jurisdictions may have varying perspectives on which KDEs are considered essential.

It is important to recognise the challenges that developing countries and small-scale fisheries may encounter in meeting the requirements of seafood traceability systems. These include limited financial resources, inadequate infrastructure, lack of technical expertise, and limited access to technology. Moreover, the diversity of fisheries, fishing practices, and monitoring systems make it challenging to standardise traceability systems.

As of 2020, the EU's CCS requested 13 of the following 17 KDEs, while the US SIMP required 12. Both schemes provide some exemptions for developing countries and small-scale fishers.

Who – vessel identifications and operators in processing states

- Vessel name
- Unique vessel identifier (IMO number)
- Vessel flag
- International radio call sign
- Information of exporter/re-exporter
- Identity of import company

What – type and quantity of catch

- Product type
- Species name embedded in FAO/ASFIS3-Alpha Code
- Estimated live weight (kg)
- Processed weight (kg)
- Declaration and authorisation of transshipment at sea

When – dates of operation

- Event date

Where – location

- Catch area
- Authorisation to fish
- Port of landing
- Processing location

How

- Fishing gear or catching method

Source: EU IUU Coalition 2020; FAO 2016b, 2022b; Mancion 2021; NOAA 2021b

Table A1 Comparison of multilateral and unilateral catch documentation schemes

Category	Multilateral CDS	Unilateral CDS
Design	<ul style="list-style-type: none"> Based on Regional Fisheries Management Organisation/Arrangement (RFMO/A) rules and enshrined in international law. Designed to prevent IUU fishing and trade. 	<ul style="list-style-type: none"> Established and enforced under the national law of the market state. Designed to prevent IUU fishing and trade.
Scope	<ul style="list-style-type: none"> Covers entire stock/species under RFMO/A management mandate. Typically, applies to 1 or 2 high-value species taken from a specific fishery. 	<ul style="list-style-type: none"> Covers only products entering the end market. Typically applies to high-risk species in all fisheries, or all wild species in all fisheries.
Product flows	<ul style="list-style-type: none"> Covers domestic and international trade regardless of how product is transported or traded from catch to market. 	<ul style="list-style-type: none"> Covers international trade with a single market only.
Compliance	<ul style="list-style-type: none"> Mandatory for all fishers, traders, and processors handling products originating from a given fishery at all stages of the supply chain. Comprises both catch and trade documents but variation in which information requires validation and by whom. An authority is designated to operate the CDS and there is central registry in which copies of all catch and trade certificates are deposited. Sequential linking of certificates allows for 'mass balance monitoring' and the identification of laundered IUU product. 	<ul style="list-style-type: none"> Compliance only required if product is destined for market operating the scheme. Can be designed to capture movement along the supply chain. Data/collection reporting requirements can be imposed on importers, or schemes can require catch and trade documents that are validated by public authorities. Relies on enforcement at the border when product enters the destination market and is susceptible to fraud.
Applicability	<ul style="list-style-type: none"> Identifies the extent to which IUU fishing is occurring in the source fisheries and provides insights into where and how IUU fishing may be occurring. Provides a cross-check on reported catches for use in stock assessment and can help to curtail residual IUU fishing. Development or expansion of multilateral schemes can be difficult to negotiate with member countries. 	<ul style="list-style-type: none"> Broader coverage and easier to implement than multilateral schemes. Risk that IUU product is diverted to other markets without legal provenance controls. Does not identify the extent to which IUU fishing is occurring in source fisheries or provide cross-checks on reported catches for use in stock assessments.

Box A2 Illegal logging import controls

Australia has taken significant steps towards combating illegal logging and promoting trade of legally sourced timber and timber products. In 2012, Australia introduced the *Illegal Logging Prohibition Act 2012* which seeks to 'reduce the harmful environmental, social and economic impacts of illegal logging by restricting the importation and sale of illegally logged timber products in Australia'. The Act makes it a criminal offence to import illegally logged timber products, or to process domestically grown raw logs that have been illegally logged.

The Act is supported by the Illegal Logging Prohibition Regulation 2012, which requires timber importers and processors to assess their supply chains for the risk of importing or processing illegally harvested timber. This assessment must be completed for each consignment of regulated timber products (as defined by tariff codes) that are imported into Australia, and for raw logs that are domestically grown and processed in Australia. This is referred to in the laws as 'due diligence', the specifics of which are set out in the Regulation. The Regulation outlines 5 key steps that regulated entities (importers and processors) must undertake as part of their due diligence:

- Establish a due diligence system – documenting steps ensuring non-dealing in illegal timber.
- Gather relevant information and evidence, confirming origin and legality of the timber contained in the product you intend to import.
- Assess the risk that the product has been illegally logged.
- Mitigate the risk of importing illegally logged products.
- Maintain written records – documenting the steps taken.

While the regulated entity (timber importer or processor) is responsible for meeting the due diligence requirements, other entities are impacted by the laws. These are primarily overseas suppliers and customs brokers who play a role in helping clients complete their due diligence and trace timber through the supply chain back to the source. The laws-regulated community is diverse, covering a range of timber and non-timber industry sectors and a range of business sizes (with a substantial number of small and micro sized businesses).

Source: DAFF 2023a

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