Managing IUU Fishing in the Southern Ocean: Rethinking the Plight of the Patagonian Toothfish*

Christopher C. Joyner
Institute for International Law and Politics, Department of Government, Georgetown University, Washington, D.C., U.S.A.

Lindsay Aylesworth

INTRODUCTION

Illegal, unreported, and unregulated (IUU) fishing in the world’s oceans ranks among the most serious problems confronting fishery managers today.1 Such IUU fishing activities on the high seas2 cost global fisheries

*The authors would like to express their gratitude to three anonymous reviewers whose constructive comments and substantive suggestions made the completion of this article possible. Any errors of commission or omission are the responsibility of the authors.

1. In order to appreciate the nature of the problem and devise realistic strategies for dealing with it, an essential precondition is to understand the key concepts at hand. As with other finite common resources, fishers are exploiting certain species of marine life—namely, tunas, sharks, groundfish, including orange roughy, high seas cod, and Patagonian toothfish—beyond permissible conservation measures by conducting “illegal,” “unreported,” and “unregulated” fishing activities. The concept of “illegal” fishing refers to fishing that is (1) conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations; (2) conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but which operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound or in contravention of relevant provisions of the applicable international law; or (3) in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.


249
between US$4.2 billion to $9.5 billion each year.\(^3\) Even more disturbing is that IUU fishers hobble efforts to attain sustainable world fisheries. Consequently, IUU fishing undermines the ability of conservation measures to function effectively at each level of management—local, national, regional, and global.\(^4\) In recent years, the United Nations’ Food and Agriculture Organization has indicated that many of the world’s fisheries have been depleted or overexploited over the past ten to fifteen years.\(^5\) This situation is likely to persist if IUU activities continue.

available online: <http://www.fao.org/DOCREP/003/yl224e/yl224e00.HTM>, at para. 3.1 (hereafter IPOA-IUU Plan). So-called “unreported fishing” refers to fishing activities that (1) have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or (2) have been undertaken in the area of competence of a relevant regional fisheries management organization which have not been reported or have been misreported, in contravention of the reporting procedures of that organization: Id. at para. 3.2. In contrast, the notion of “unregulated fishing” refers to fishing that is (1) in the area of application of a relevant regional fisheries management organization, conducted by vessels without nationality, or by those flying the flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization; or (2) in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.

IPOA-IUU Plan, n. 1 above, at para. 3.3.


5. In 2006, the FAO reported that, as of 2005, about one-quarter of the stock groups monitored were “underexploited or moderately exploited . . . whereas about half of the stocks were fully exploited. . . . The remaining stocks were overexploited, depleted or recovering from depletion”: FAO Fisheries Department, The State of World Fisheries and Aquaculture, at 7 (2006), available online: <http://www.fao.org/docrep/009/A0699e/A0699e00.htm>.