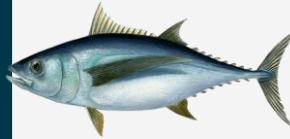


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From Fishing Rights to Right Fisheries:

The Development of International Fisheries Law and Its Practices



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OUTLINES

- I. Introduction
- II. Development of IFL: Combating IUU
- III. Practices:
 - Boarding and Inspection Procedure
 - Port State Measures
 - EU Sanctions on IUU Fishing Activities
- IV. Concluding Remarks

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Fishing

- Common property nature.
- It becomes “OLYMPIC FISHING”!



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High Seas

UNCLOS Art. 86:

...all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State.

Under the current development of the law of the sea, it is appropriate to conclude that the area of the high seas is *shrinking*.

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High Seas

UNCLOS Art. 88:

The high seas shall be reserved for peaceful purposes.

UNCLOS Art. 89:

No State may validly purport to subject any part of the high seas to its sovereignty.

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High Seas

UNCLOS Art. 87:

- (a) freedom of navigation;
- (b) freedom of overflight;
- (c) freedom to lay submarine cables and pipelines, subject to Part VI;
- (d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;
- (e) freedom of fishing, subject to the conditions laid down in section 2;
- (f) freedom of scientific research, subject to Parts VI and XIII.

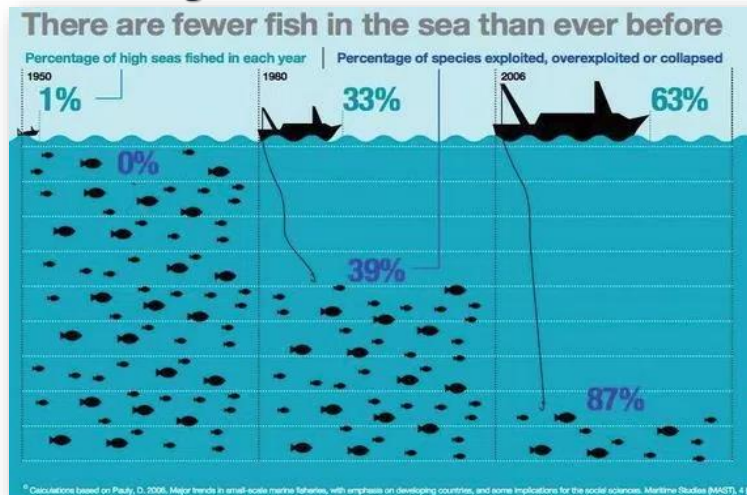
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High Seas: Freedom of Fishing

- Fishing is one of the most important and earliest activities for human being.
- Owing to the development of the concept of environmental protection and resources conservation, fishing activities are subject to certain restrictions.

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Needs proper conservation and management



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No Fish by 2050

~*Science* (Nov. 2006)~

- Enjoy the next 50 years of aquatic cuisine, for that might be all we have left.

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REASONS:

- Too many vessels chasing too little fish
- Overfishing will cause the result of biosphere collapse
- **Even worse:** IUU might be the main cause to overfishing
- IUU fishing represents a major loss of revenue, which worth between \$10bn and \$23.5bn per year

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- **IUU** means **illegal, unreported, and unregulated fishing activities** generally refers to fishing conducted in violation of national laws or internationally agreed conservation and management measures in effect in oceans around the world.

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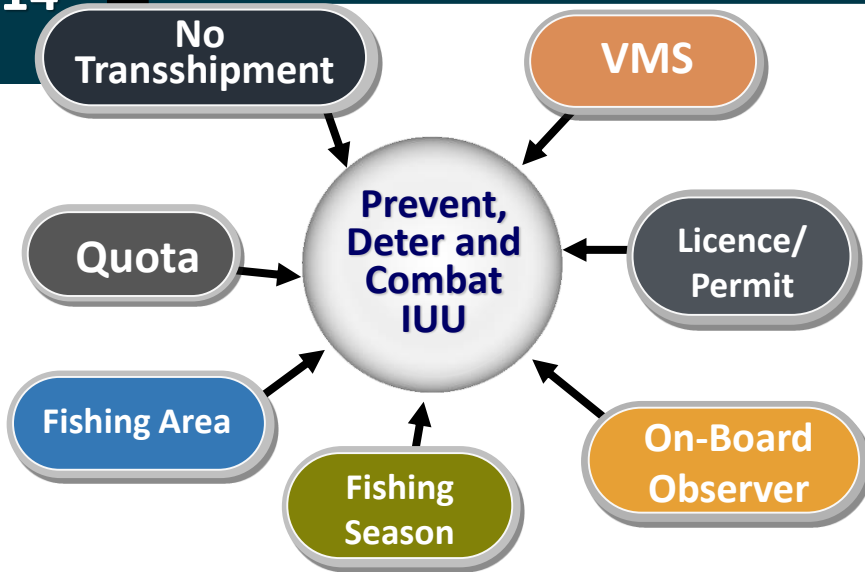
- By evading conservation and management measures, fishing companies engaging in IUU could raise their catches by lowering their operating costs.
- As a result, their illegally caught products provide unfair competition for law-abiding fishermen and seafood industries in the marketplace.
- Furthermore, IUU might cause extinction of certain species and even damage the food chain.

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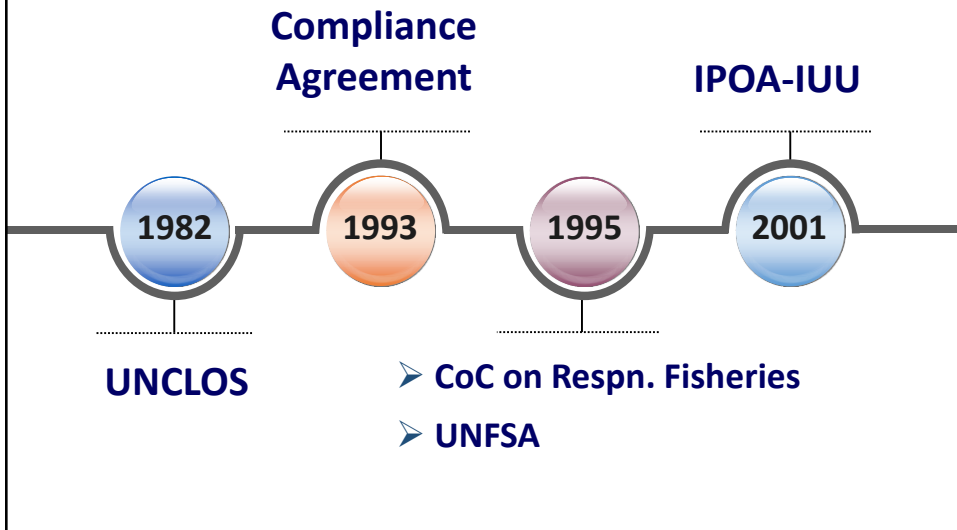
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How to deter or eliminate IUU?



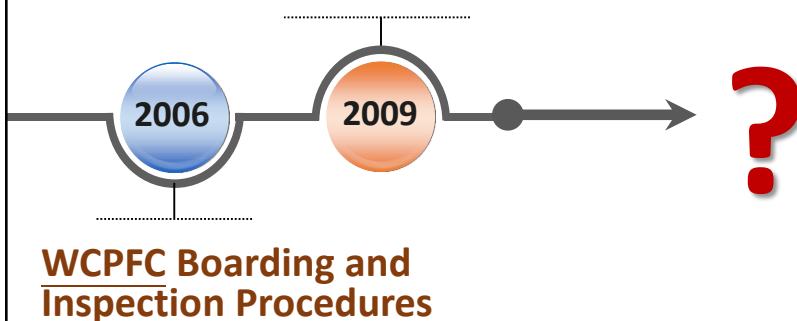
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International Instruments to Combat IUU



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Agreement on PSM to Prevent, Deter and Eliminate IUU Fishing





Practices:

- Boarding and Inspection Procedure
- Port State Measures
- EU Sanctions

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**Practices in the WCPFC
Boarding and Inspection
Procedure**

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What is WCPFC?



WCPFC: Western and Central Pacific Fisheries Commission

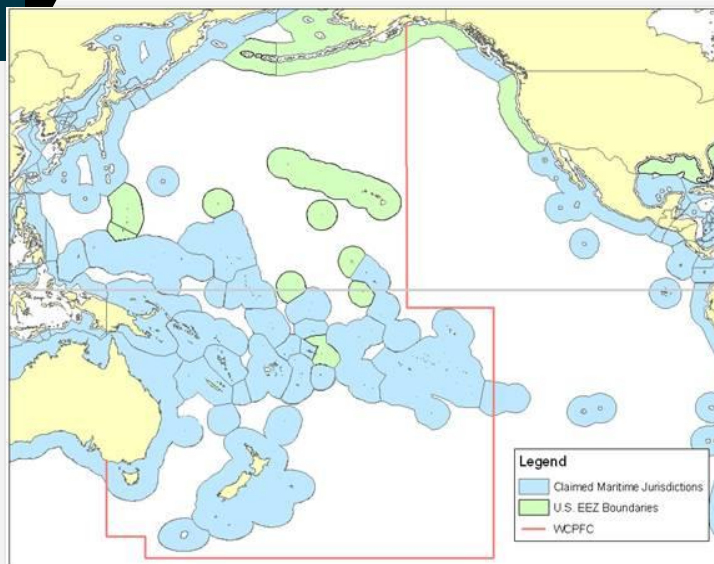
Established: 19 June 2004

Members (25):

Australia, China, Canada, Cook Islands, European Union, Federated States of Micronesia, Fiji, France, Japan, Kiribati, Korea, Republic of Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Philippines, Samoa, Solomon Islands, Chinese Taipei, Tonga, Tuvalu, United States of America, Vanuatu

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Convention Area of the WCPFC



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Basis for B & I



- UNFSA, Art. 21(1): In any high seas area covered by a RFMO, a State Party may board and inspect fishing vessels flying the flag of another State Party...
- UNFSA, Art. 21(2): States shall establish, through RFMO, procedures for boarding and inspection ... any subsequent enforcement action shall be conducted in accordance with such procedures.

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WCPFC B & I Procedure

**WCPFC Convention**

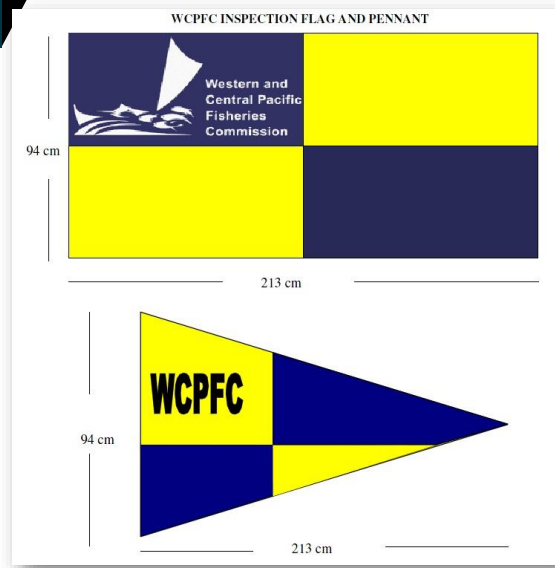
Article 26: establish B&I procedures in the Convention area; clearly marked and identifiable as being on government service and authorized

WCPFC B & I Procedure

5. Each Contracting Party may ... carry out boarding and inspection on the high seas
6. Also apply between a Contracting Party and a Fishing Entity
7. ensure that vessels flying its flag accept B&I

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WCPFC B & I Procedure



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WCPFC B & I Procedure



- WCPFC High Seas Boarding and Inspection Register
- List of Authorities of the Inspection Vessel
- Standardized Multi-Language Questionnaire
- Authorities of the Fishing Vessel
- Inspection personnel identity card

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Observations on B&I

Would such procedure be accepted universally?

- WCPFC: 1st RFMO implements B&I
- SPRFMO: in its Convention, UNFSA Arts. 21 and 22
- IOTC: through Informal Working Group
- ICCAT: through recommendation

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Observations on B&I

- A challenge to state jurisdiction? Or is it a limited universal jurisdiction through agreed arrangement among parties concerned?
- A challenge to the “flag state” principle on the high seas in customary international law?

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Port State Measures Agreement

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Port State Control

International law generally recognizes that a State has full sovereignty and jurisdiction with respect to ports in its territory.

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PSM Agreement

- Port State Measures (PSM) are requirements established or interventions undertaken by port states which a foreign fishing vessel must comply with or is subjected to as a condition for port entry or use of ports within the port state



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PSM Agreement

National PSM would typically include:

- requirements related to prior notification of port entry,
- use of designated ports, restrictions on port entry and landing/transshipment of fish,
- restrictions on supplies and services, documentation requirements and port inspections,
- and related measures, such as IUU vessel listing, trade-related measures and sanctions



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PSM Agreement

- In case a port State has clear evidence that a vessel having been granted access to its ports has engaged in IUU fishing activity, the port State shall not allow the vessel to land or transship fish in its ports, and should report the matter to the flag State of the vessel.



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PSM Agreement

- PSM Agreement adopted on 2009/11/22
- It needs 25 ratification, acceptance, approval or accession to make PSM Agreement to be in force
- This number was reached on 6 May 2016 (Dominica, Thailand, Tonga, Vanuatu)
- PSM Agreement thus entered into force on 2016/06/05.



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PSM Agreement

- In order to make PSM Agreement effective and efficient, it is necessary to enforce it uniformly in different ocean areas
- RFMO is the best player in dealing with such action



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Enforcement Capacity Building

- Coastal states should be equipped with enough facilities so that it is capable of accomplishing the goal
- Practices: Designated Ports system



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Observations on PSM

- Support developing countries
- Enforcement capacity building
- Need a stronger legal binding instrument
- Need a stronger cooperation among RFMOs

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European Sanctions on IUU Fishing Activities

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Tackling illegal, unreported and unregulated (IUU) fishing

Fishing is illegal if:

- no authorisation
- against conservation and management measures by RFMOs
- against national laws or international obligations.



Fishing is unreported if:

- not reported, or the reporting contravenes international, RFMO or national laws and regulations.

Fishing is unregulated if:

- the fishing vessel has no nationality
- fishing activities jeopardise fish stocks.



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If a third country has problems fulfilling international rules:

Pre-identification



The European Commission opens a formal dialogue during minimum 6 months.

If the country improves its situation, the 6 month period can be prolonged and ultimately the **pre-identification can be removed**.

Delisting



Continued dialogue can lead to restore the import of legally caught fishery products.

If the country does not address the problems, it will be **identified** by the European Commission as non-cooperating.

Identification

A ban of all products for which the catch certificate is validated after the Decision enters into force.



Listing by the EU

Fisheries products caught by fishing vessels flying the flag of these countries cannot be imported into the EU while the countries remain listed.



The Decision triggers further measures, including a fishing ban for EU vessels in these countries' waters.

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| Country | Pre-Identification | Pre-Identification Revoked | Identification | Listing | Delisting |
|---------------------------|--------------------|----------------------------|----------------|---------------|---------------|
| Belize | November 2012 | N/A | November 2013 | March 2014 | December 2014 |
| Cambodia | November 2012 | N/A | November 2013 | March 2014 | |
| Comoros | October 2015 | N/A | May 2017 | July 2017 | |
| Curaçao | November 2013 | February 2017 | | | |
| Fiji | November 2012 | October 2014 | | | |
| Ghana | November 2013 | October 2015 | | | |
| Kiribati | April 2016 | | | | |
| Korea | November 2013 | April 2015 | | | |
| Liberia | May 2017 | | | | |
| Panama | November 2012 | October 2014 | | | |
| Papua New Guinea | June 2014 | October 2015 | | | |
| Philippines | June 2014 | April 2015 | | | |
| Republic of Guinea | November 2012 | N/A | November 2013 | March 2014 | October 2016 |
| Sierra Leone | April 2016 | | | | |
| Solomon Islands | December 2014 | February 2017 | | | |
| Sri Lanka | November 2012 | N/A | October 2014 | February 2015 | June 2016 |
| St Kitts and Nevis | December 2014 | | | | |
| St Vincent and Grenadines | December 2014 | N/A | May 2017 | July 2017 | |
| Taiwan | October 2015 | | | | |
| Thailand | April 2015 | | | | |
| Togo | November 2012 | October 2014 | | | |
| Trinidad and Tobago | April 2016 | | | | |
| Tuvalu | December 2014 | | | | |
| Vanuatu | November 2012 | October 2014 | | | |
| Vietnam | October 2017 | | | | |

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- Since November 2012 the Commission has been in formal dialogue with several third countries (pre-identification or "yellow card"), which have been warned of the need to take strong action to fight IUU fishing. When significant progress is observed, the Commission can end the dialogue (lifting the pre-identification status or "green card").
- **Fiji, Panama, Togo and Vanuatu** since October 2014.
- And for **Korea and the Philippines** since April 2015.

Delisting

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- Formal dialogue is ongoing with Curaçao (since November 2013), the **Solomon Islands, Tuvalu, Saint Kitts and Nevis, and Saint Vincent and the Grenadines** (since December 2014), and **Thailand** (since April 2015).
- A few countries have not shown the necessary commitment to reforms. As a result fisheries products caught by vessels from **Sri Lanka** (since October 2014), and from **Guinea and Cambodia** (since November 2013) are banned from being imported into the EU (identification and listing or "red card").



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- Commissioner Vella noted that; "**By using our market weight the EU is getting important players on board.** Both Korea and the Philippines have taken responsible action, amended their legal systems and switched to a proactive approach against illegal fishing".
- Since they were issued with warnings, both Korea and the Philippines embarked on a series of reforms to upgrade their fisheries governance. **Their legal systems are now aligned to international law.**
- As a result of the action taken by Korea and the Philippines, the Commission has stopped formal discussions with the countries' authorities and looks forward to Korea and the Philippines becoming valuable allies on sustainable management within global and regional organisations.

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Yellow Card for Taiwan

EU:

- The decision to issue a **yellow card** to **Taiwan** is based on serious shortcomings in the fisheries legal framework, a system of sanctions that does not deter IUU fishing, and lack of effective monitoring, control and surveillance of the long-distance fleet.
- Furthermore, Taiwan does not systematically comply with Regional Fisheries Management Organisation (RFMO) obligations.

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Yellow Card for Taiwan

- From the mid-2000s to the present, due to IUU fishing and vessels operating under flags of convenience, the Taiwanese longline fishery was sanctioned by the International Commission for the Conservation of Atlantic Tunas (ICCAT) in 2005.
- This was devastating to the Taiwanese distant-water fisheries, but could be seen as an opportunity for Taiwan to reform its fisheries policies as well as to strengthen its law enforcement.

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Causes push Taiwan's distant water fisheries

- Increasing population: 23 million
- Increasing seafood consumption: Taiwanese diet with seafood consumption about 45kg per year per person
- Decline of near-shore resources
- Pollution of inshore areas

Total catches of the Taiwanese distant-water fleet were estimated to increase from 110,000 tonnes in 1959 to 1.5 million tonnes in 2007.

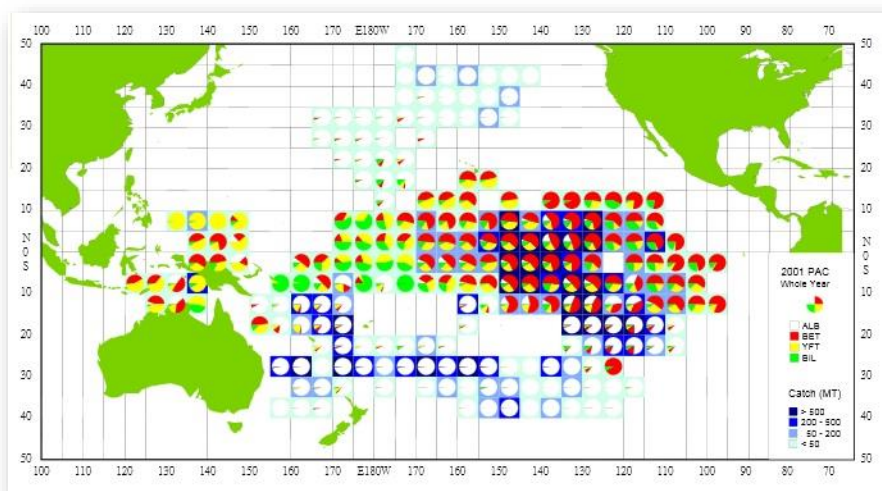
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- In 2009, Taiwan harvested 1.3 million metric tonnes of fish worth of US\$2.6 billion, of which:
 - Coastal fishing: 6.25%;
 - Distant water fishing: 46.35%;
 - Offshore fishing: 12.61%;
 - Inland aquaculture: 31.5%;
 - Marine aquaculture and inland fishing: 3.29%.
- About half of Taiwan's total production was exported, with skipjack, squid, big-eye tuna, yellow-fin tuna, and tilapia as the leading exports.

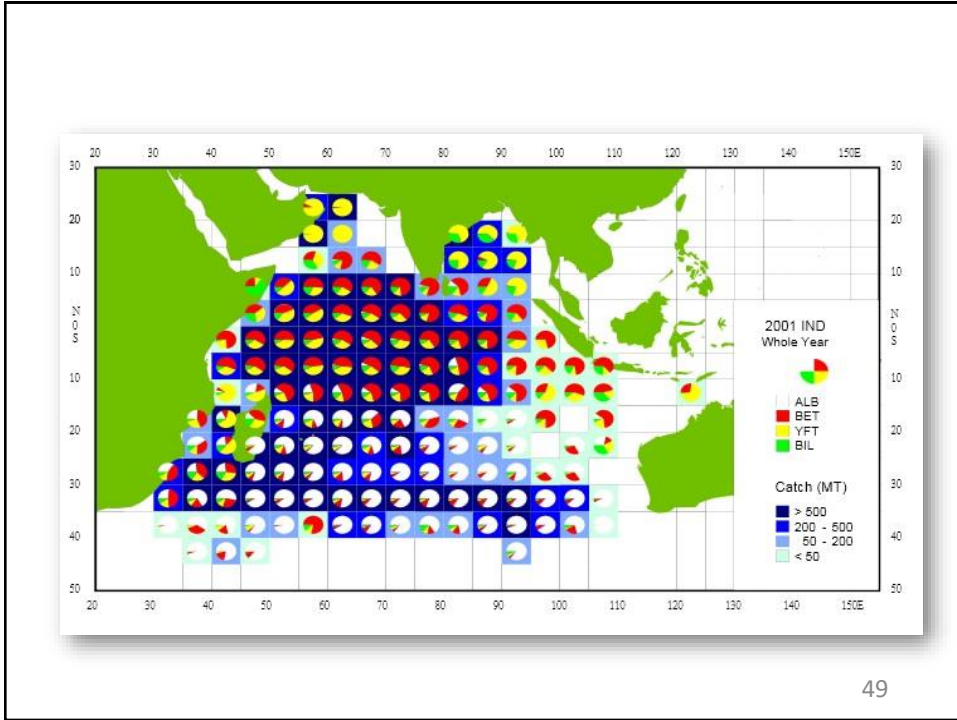
(Australian Trade Commission, 2011)

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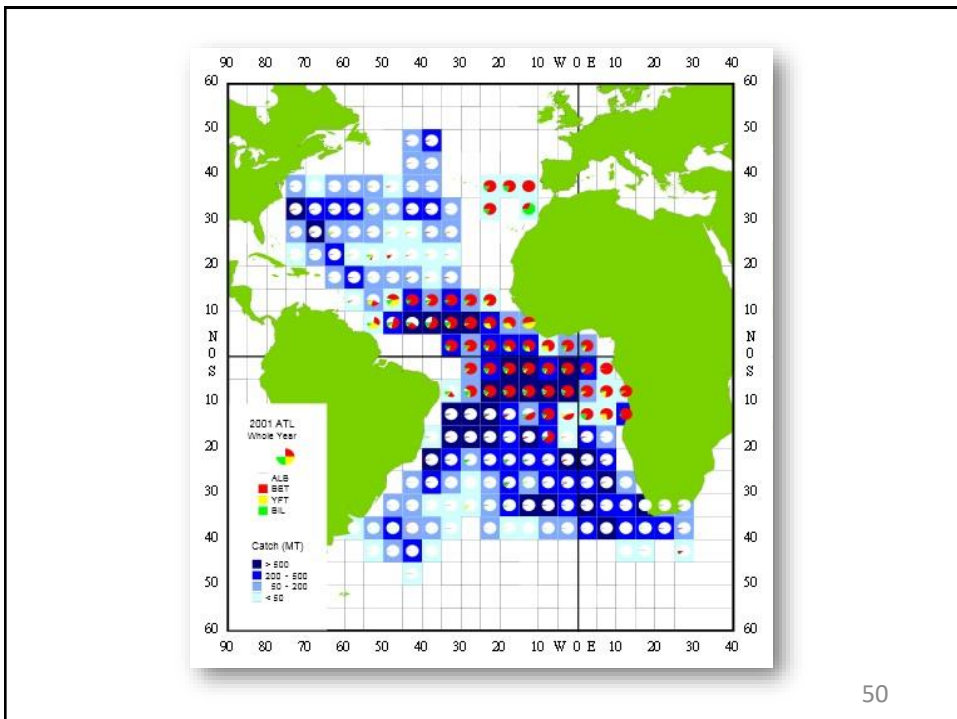
- Taiwan operates a large distant water fishing fleet numbering about 1,300 vessels that operate mainly in the Pacific and Indian oceans.
- Some of the vessels land their entire catch overseas and never call at ports in Taiwan.



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- Beginning in the 1980s, the Taiwanese DWF explored new gear types such as the squid drift net and tuna purse seiner.
- The main species targeted were yellowfin , bigeye, albacore , skipjack, and Argentine squid.
- However, drift net was banned by the UN in 1992.

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Impacts on Taiwan's Fishing Industry

- About 60% to 70% of Taiwan's distant waters catch is exported, the top 3 biggest markets are the US, Japan, the EU.
- About US\$200 million a year is exported to the EU – mostly skipjack, yellowfin, and swordfish.

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Taiwan's Efforts: Legal

- 2016/07/20 *Act for Distant Water Fisheries*
- 2016/07/20 amended the *Act to Govern Investment in the Operation of Foreign Flag Fishing Vessels*;
- 2016/07/20 amended *Fisheries Act*.

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Taiwan's Efforts: Policy

- establishment of the Interagency Task Force under the Executive Yuan to combat IUU fishing;
- implementation of the National Plan of Control and Inspection for Fisheries (NPCI);
- establishment of a fisheries monitoring center;
- mandatory installation of e-logbook on all distant water fishing vessels;
- inspection of vessels at designated foreign ports;
- and the implementation of fish unloading as well as transshipment declaration.

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Taiwan's Efforts: Cooperation

- Building up fisheries cooperation with 18 countries:

Micronesia, Fiji, Japan, Malaysia, Marshall Islands, Mauritius, Nauru, Palau, Papua New Guinea, the Philippines, Seychelles, Solomon Islands, South Africa, South Korea, Sri Lanka, Thailand, Tuvalu and the USA.

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CONCLUSION

- A new direction on high seas fishing
- New measures of combating IUU creates new issues?
 - Erosion on Flag State Jurisdiction?
 - Conflict of Jurisdiction in the Designated Ports system?
 - Role of International Organization

