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Fish Better Have My Money: Efforts to Combat Illegal, Unregulated, and Unreported Fishing in the Gulf and Beyond

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Fish Better Have my Money: Efforts to Combat Illegal, Unregulated, and Unreported Fishing in the Gulf and Beyond

*Madison Landry**

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INTRODUCTION

All over the globe, humans consume seafood. Whether it's grouper, red snapper, cod, or tuna, three billion people rely on fish as their main source of protein.¹ However, people rarely question the origin of their seafood. Though the everyday shopper may pick up a filet from the supermarket, or a restaurateur may order the “fresh catch of the day,” seafood is not always caught locally—or even legally. In fact, “of the annual global seafood catch, an estimated one-third—as much as 56 billion pounds—is illegally fished.”² Across the globe, the United States leads the world in seafood imports,³ bringing in around “450 wild-caught seafood

1. *New Illegal Fishing and Forced Labor Prevention Act Incorporates Stimson Recommendations*, STIMSON (May 11, 2021), <https://www.stimson.org/2021/new-illegal-fishing-and-forced-labor-prevention-act-incorporates-stimson-recommendations/> [https://perma.cc/KZ7S-DL6R] [hereinafter *Illegal Fishing Stimson Recommendations*].

2. *The Illegal Fishing and Forced Labor Prevention Act: A Bill to Combat Illegal, Unreported, and Unregulated Fishing and Human Rights Abuses at Sea*, GREENPEACE 1 (May 2021), https://www.greenpeace.org/usa/wp-content/uploads/2021/05/Illegal-Fishing-and-Forced-Labor-Prevention-Act-Fact-Sheet.pdf?_ga=2.37086310.710452760.1632258613-1354548698.1632258613 [https://perma.cc/X5EY-MX8M] [hereinafter *A Bill to Combat IUU Fishing*].

3. *Huffman, Graves Introduce Bipartisan Bill to Combat IUU Fishing, Human Rights Abuses*, JARED HUFFMAN (May 11, 2021), <https://huffman.house.gov/media-center/press-releases/huffman-graves-introduce-bipartisan-bill-to-com>

products from more than 130 countries annually.”⁴ Yet, in February 2021, the U.S. International Trade Commission (ITC) reported that “nearly 11% of total U.S. seafood imports in 2019, worth \$2.4 billion, were products of illegal or unreported fishing.”⁵ This criminal form of fishing is known as IUU (illegal, unregulated, and unreported) fishing.⁶ IUU fishing constitutes activities that occur outside the law and weaken sustainable fisheries.⁷ Such illegal fishing activities include “fishing without a license or authorization, not reporting or misreporting catches, fishing in prohibited areas and catching or selling prohibited species, or fishing in areas not covered by a regulatory framework.”⁸ IUU fishing is a black market business occurring right under the nation’s nose.⁹ What’s more, the looming and impending global threats of IUU fishing have trickled all the way down to Louisiana.

IUU fishing in the Gulf of Mexico has particularly harmed Louisiana’s shrimping industry and overall seafood revenue.¹⁰ In 2021, a National Oceanic and Atmospheric Administration (NOAA) report stated that “Mexico received a negative certification for IUU fishing activities identified in 2019, which were failing to curb the flow of small vessels

bat-iuu-fishing-human-rights-abuses [https://perma.cc/6CXC-7TUZ] [hereinafter *Bipartisan Bill*].

4. Michele Kuruc, *Oceans Under Threat from Illegal Fishing: Life and Law*, WORLD WILDLIFE FUND. (2015), <https://www.worldwildlife.org/magazine/issues/summer-2015/articles/oceans-under-threat-from-illegal-fishing> [https://perma.cc/2UGY-2XCU].

5. *Bipartisan Bill*, *supra* note 3.

6. See *Illegal, Unreported, and Unregulated (IUU) Fishing: Background: What is IUU Fishing?*, FAO, [https://www.fao.org/iuu-fishing/background/what-is-iuu-fishing/en/#:~:text=What%20is%20IUU%20fishing%3F,-%C2%A9FAO%2FMatthew&text=Illegal%2C%20unreported%20and%20unregulated%20\(IU%20U\)%20fishing%20is%20a%20broad,in%20areas%20within%20national%20jurisdiction](https://www.fao.org/iuu-fishing/background/what-is-iuu-fishing/en/#:~:text=What%20is%20IUU%20fishing%3F,-%C2%A9FAO%2FMatthew&text=Illegal%2C%20unreported%20and%20unregulated%20(IU%20U)%20fishing%20is%20a%20broad,in%20areas%20within%20national%20jurisdiction) [https://perma.cc/X5L8-8APF] (last visited Oct. 3, 2022).

7. *Get Involved! Sustainable Fishing Starts With Us*, FAO 3 (June 5, 2021), <https://www.fao.org/3/cb4882en/cb4882en.pdf> [https://perma.cc/UU4F-QR8L] [hereinafter *Sustainable Fishing Starts With Us*].

8. *Id.*

9. Kuruc, *supra* note 4.

10. See *Southern Shrimp Alliance Tells U.S. International Trade Commission that IUU Seafood Harms U.S. Commercial Fishing Industries*, S. SHRIMP ALL., <https://www.shrimpalliance.com/southern-shrimp-alliance-tells-u-s-international-trade-commission-that-iuu-seafood-harms-u-s-commercial-fishing-industries/> [https://perma.cc/SJX5-ATTE] (last updated Oct. 14, 2020) [hereinafter *Southern Shrimp Alliance*].

fishing illegally in the U.S. waters of the Gulf of Mexico.”¹¹ Due to Louisiana’s close proximity to the Gulf, the state will continuously be exposed to IUU fishing practices unless action is taken and better solutions are implemented. Though the United States and other countries have taken great legal strides against this illegal phenomenon, IUU fishing continues to maintain its vicious grip on even the world’s strongest economies, ecosystems, and political structures.¹² This Comment examines the United States’ efforts to combat IUU fishing practices and analyzes various solutions that the nation can implement to eradicate IUU fishing once and for all.

First, as the number one seafood importer, the United States should lead the world in combating IUU fishing. Though not currently leading the charge against IUU fishing, the United States has not been silent nor stagnant on the issue. In conjunction with the Magnuson-Stevens Act (MSA),¹³ the U.S. government instituted the Seafood Import Monitoring Program (SIMP) to trace 13 priority species from “boat to dock.”¹⁴ The federal government also created the Interagency Working Group to

11. *Report on IUU Fishing, Bycatch and Shark Catch*, NOAA FISHERIES, <https://www.fisheries.noaa.gov/international/report-iuu-fishing-bycatch-and-shark-catch> [<https://perma.cc/X7MK-SXSC>] (last updated June 30, 2022) [hereinafter *Report on IUU Fishing*].

12. Nicola Frost et al., *This Is a Solution That Could Help End Illegal Fishing*, GREENBIZ (Mar. 2, 2020), <https://www.greenbiz.com/article/solution-could-help-end-illegal-fishing> [<https://perma.cc/Z796-CSWS>] [hereinafter *Help End Illegal Fishing*]. The European Union has been extensively involved in the battle against IUU fishing by enacting strong legislation and regulations. *Id.* Thailand, Indonesia, and Spain are enforcing higher penalties for offenders. Germany, Canada, Japan, the United Kingdom, and the United States have focused on rewarding legal fishing practices in the hopes to curb IUU activity. *Id.*

13. *The Magnuson-Stevens Act: World's Leading Fisheries Management Under Threat*, OCEANA, <https://usa.oceana.org/magnuson-stevens-act-worlds-leading-fisheries-management-under-threat> [<https://perma.cc/TLX4-GCP8>] (last visited Oct. 3, 2022) [hereinafter *The Magnuson-Stevens Act*]. In 1976, the MSA extended the United States’ governance over ocean waters from a mere 12 miles to 200 miles off the nation’s coast, known as the Exclusive Economic Zone (EEZ). *Id.* The MSA also established eight regional councils, composed of eight critical fishing regions in the country. *Id.*

14. Anna M. Wiand & Maria C. White, *Is the Seafood Import Monitoring Program (SIMP) Fighting Fraudulent Fish?*, GRAY ROBINSON, <https://www.gray-robinson.com/insights/post/2514/is-the-seafood-import-monitoring-program-simp-fighting-fraudulent-fish> [<https://perma.cc/GF4D-MSBR>] (last visited Oct. 3, 2022).

directly combat IUU fishing.¹⁵ While these regulations and measures have proven to be effective, they are not foolproof; specifically, SIMP contains numerous gaps and is in dire need of expansion. Consequently, IUU fishing remains a substantial problem in the United States and beyond. Thus, it is imperative that the United States expands SIMP to finally curb the IUU fishing issue. This opportunity has recently presented itself in proposed, bipartisan legislation on the Congressional floor.¹⁶

In early 2021, Representatives Garret Graves (Louisiana) and Jared Huffman (California) introduced the Illegal Fishing and Forced Labor Prevention Act, which seeks to fill the gaps SIMP left open.¹⁷ The bill's measures include the expansion of SIMP to all species, increased "bait to plate" transparency, better data sharing, improved technology, audit system enhancements, and a broadened definition of IUU fishing.¹⁸ While this expansion is a critical step in resolving IUU fishing practices, its enactment is not guaranteed. Regardless of whether this new legislation passes, the United States can still gain inspiration from other effective, international approaches. For example, the European Union (EU) has engaged non-governmental organizations (NGOs)¹⁹ and implemented a carding system, which have both proven successful.²⁰ Moreover, the EU

15. OFF. OF MARINE CONSERVATION, *Illegal, Unreported, and Unregulated Fishing*, U.S. DEP'T STATE, <https://www.state.gov/key-topics-office-of-marine-conservation/illegal-unreported-and-unregulated-fishing/> [<https://perma.cc/2PAG-WP2N>] (last visited Oct. 3, 2022). Under the Maritime Security and Fisheries Enforcement Act (SAFE) in 2019, the U.S. government established an Interagency Working Group on Illegal, Unreported, and Unregulated Fishing. *Id.* The Working Group consists of 21 government agencies and offices with the NOAA serving as its head. *Id.*

16. See H.R. 3075 (117th Congress) (2021).

17. *Id.* Updates on the bill can be found at *H.R. 3075 - Illegal Fishing and Forced Labor Prevention Act: Actions*, CONGRESS.GOV, <https://www.congress.gov/bill/117th-congress/house-bill/3075/actions> [<https://perma.cc/UUN4-C7KV>] (last visited Oct. 3, 2022).

18. *Id.*

19. NGOs "exist to represent virtually every cause imaginable" and "develop and address new approaches to social and economic problems that governments cannot address alone." BUREAU OF DEMOCRACY, HUM. RTS., & LAB., *Non-Governmental Organizations (NGOs) in the United States*, U.S. DEP'T STATE (Jan. 20, 2021), <https://www.state.gov/non-governmental-organizations-ngos-in-the-united-states/> [<https://perma.cc/4XGR-JKKB>].

20. *Questions and Answers - Illegal, Unreported and Unregulated (IUU) Fishing in General and in Ghana*, EUR. COMM'N (June 2, 2021), https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_2747 [<https://perma.cc/3ZP9-P24H>] [hereinafter *IUU Fishing in General and in Ghana*].

has actively advocated for the Port State Measures Agreement (PSMA)—the first ever treaty to directly target IUU fishing on an international scale.²¹ Like the EU, the United States must actively engage and encourage countries to work together in the ongoing battle against IUU fishing. Without global resistance, IUU fishing practices will only mature and continue to destroy ecosystems, economies, and livelihoods, right up until the moment there are no fish left to catch.

The United States must take the lead in confronting the IUU fishing dilemma. The best way to do this is by expanding SIMP, an opportunity proposed in the Illegal Fishing and Forced Labor Prevention Act. (H.R. 3075). Even if Congress fails to pass such legislation or otherwise expand SIMP, there are alternative solutions worth contemplating, particularly those executed by the EU. First, the United States should actively encourage other coastal countries to join the Port State Measures Agreement (PSMA). Until the world's ports align with each other on a unified solution, the IUU fishing crisis will continue to fester and flourish. Second, the United States should leverage NGOs to reduce the government's burden in combating this issue. Last, the United States should implement a carding system similar to that of the EU. As a top seafood consumer and producer, the United States bears a responsibility to lead the response to the IUU fishing crisis. This looming issue can no longer be ignored and must be eradicated once and for all.

Part I of this Comment closely examines IUU fishing's global impact, discussing how IUU fishing continues to operate secretly and successfully in the world's oceans. Part I also explores how IUU fishing has evolved into an economic, environmental, and humanitarian crisis on an international scale. Part II explains how this global issue has become a

The EU's carding system utilizes different colored cards to determine which trading measures to use with different countries based on their involvement with IUU fishing practices. *Id.* The colored cards include yellow for a warning, red for a complete trade ban, and green for a reformed and/or satisfactory status. *Id.*

21. The PSMA sets a global standard for port inspections and provides measures for fishery conservation and management through a "whole-of-world approach." This treaty became fully effective in 2016. *Agreement on Port State Measures Agreement (PSMA): Parties to the PSMA*, FAO, <https://www.fao.org/port-state-measures/background/parties-psma/en/> [<https://perma.cc/8MQB-SPM2>] (last visited Oct. 3, 2022); *Frequent Questions: Implementing the Port State Measures Agreement*, NOAA FISHERIES, <https://www.fisheries.noaa.gov/enforcement/frequent-questions-implementing-port-state-measures-agreement#does-noaa-s-office-of-law-enforcement-have-the-resources-needed-to-effectively-implement-the-agreement> [<https://perma.cc/6VXX-5VXC>] (last updated Aug. 30, 2022) [hereinafter *Implementing Port State Measures Agreement*].

national problem for the United States, detailing how IUU fishing practices run rampant in the Gulf of Mexico and why they pose a grave threat to Louisiana. Part III analyzes America's long, evolving battle against IUU fishing and its past efforts to combat it. Specifically, Part III dives deep into the history of the Lacey Act, the Magnuson-Stevens Act, SIMP, and the Interagency Working Group. This Comment also addresses where these measures and agencies fall short.

Finally, Part IV suggests solutions to end IUU fishing practices. It highlights America's relations with countries around the globe and why it should lead the charge in finding solutions for this international problem. Part IV introduces the proposed Illegal Fishing and Forced Labor Prevention Act, aimed at protecting the United States and its seafood industry. Part IV next assesses effective international approaches, specifically those of the EU. This discussion stresses the EU's influential leadership in the fight against IUU fishing and analyzes several solutions worth implementing in the United States. Specifically, Part IV addresses the Port State Measures Agreement and explains why the United States should actively encourage other coastal states to participate in this treaty. It also examines how NGOs can play a vital role in assisting the government's fight against IUU fishing. Last, Part IV touches on the EU's carding system and argues that IUU fishing could be drastically reduced if the United States were to implement a similar, synchronized system.

I. EXAMINING THE IUU FISHING PROBLEM ON A GLOBAL SCALE

Throughout the world, fisheries are an indispensable source of food, employment, leisure, trade, and economic welfare.²² Three billion people rely on fisheries for a critical source of animal-based protein, and an estimated 56.6 million people depend on the ocean for their livelihood.²³ In 2020, global fishery and aquaculture production reached an all-time record of 214 million metric tonnes, encompassing 178 million metric

22. *The Toll of Illegal, Unreported and Unregulated Fishing*, UNITED NATIONS, <https://www.un.org/en/observances/end-illegal-fishing-day> [<https://perma.cc/FSF6-K9X2>] (last visited Oct. 1, 2022) [hereinafter *The Toll of IUU Fishing*].

23. *The Black Hole in the Seas*, ICSF 20 (Sept. 2017), https://www.icsf.net/wp-content/uploads/2021/06/4319_art_Sam77_e_art06.pdf [<https://perma.cc/NG27-MK8H>].

tonnes of aquatic animals. Roughly 89% of the whole production, or 157 million metric tonnes, was used for human consumption.²⁴

Despite these substantial numbers, fishing remains “one of the most unregulated commercial sectors in the world.”²⁵ IUU fishing capitalizes on regulatory gaps left open by corrupt administrations, fragile regimes, and communities “that lack the capacity and resources for effective monitoring, control, surveillance, and enforcement.”²⁶ Within these unregulated areas, IUU fishing accounts for 20% of the world’s total catch.²⁷ In other words, one out of every five fish caught traces back to IUU fishing practices.²⁸ As a result, this illegal phenomenon “depletes fish stocks, complicates fisheries management, disrupts or destroys marine habitats, disturbs market conditions, and threatens the livelihoods of many coastal communities.”²⁹ Specifically, IUU groups threaten the economies, ecosystems, and social stability of many nations.³⁰

A. Global Economies

IUU fishing practices are critically affecting economies across the globe. The seafood industry alone accounts for an estimated \$120.85 billion of the global economy and is only expected to continue to grow.³¹ In poor, coastal areas with little security, IUU fishing generally accounts for up to 50% of that area’s seafood catch.³² Consequently, 11–26 million metric tonnes of fish are lost to IUU fishing each year, amounting to an

24. *Towards Blue Transformation: A Vision for Transforming Aquatic Food Systems*, FAO, <http://www.fao.org/state-of-fisheries-aquaculture> [<https://perma.cc/J2KD-N8BY>] (last visited Oct. 3, 2022) [hereinafter *Towards Blue Transformation*].

25. *The Black Hole in the Seas*, *supra* note 23.

26. *Sustainable Fishing Starts With Us*, *supra* note 7.

27. *Id.*

28. *Id.*

29. Kuruc, *supra* note 4.

30. See *Fisheries Crime*, INTERPOL, <https://www.interpol.int/en/Crimes/Environmental-crime/Fisheries-crime> [<https://perma.cc/F2RV-QMDE>] (last visited Oct. 3, 2022). Nations that have been specifically vulnerable to IUU fishing include China, Japan, Russia, and many more. The most vulnerable nations are generally located in Asia, Oceania, and Africa. *The Illegal, Unreported and Unregulated Fishing Index*, GLOB. INITIATIVE AGAINST TRANSNAT’L ORGANIZED CRIME (Jan. 2019), <https://globalinitiative.net/wp-content/uploads/2019/02/IUU-Fishing-Index-Report-web-version.pdf> [<https://perma.cc/8LS2-YDV9>].

31. Piper Conway, *Unregulated Fishing: Impacts and Solutions*, ENV’T L. INST. (Mar. 4, 2020), <https://www.eli.org/vibrant-environment-blog/unregulated-fishing-impacts-and-solutions> [<https://perma.cc/88L8-YU3W>].

32. Frost et al., *supra* note 12.

estimated \$10–23 billion.³³ In the Pacific Ocean alone, the World Resources Institute (WRI) reported in 2019 that around 24% of fish (15 million metric tonnes) are “unreported and illegally traded in international markets.”³⁴ Due to this extreme percentage, the WRI predicted an annual loss in gross revenue between \$4.3 and \$8.3 billion every year from the legal fishing economy.³⁵ When such colossal amounts of money are lost to IUU fishing, governments across the globe lose the ability to effectively tax the seafood supply, which in turn reduces governmental capacity to deliver public services to their own citizens.³⁶ This is especially harmful to economies critically dependent on seafood as both a tax revenue and protein source.³⁷

Within global economies, law-abiding fishermen are arguably the most vulnerable to IUU fishing; these honest fishermen are consistently cheated and undermined by those who refuse to play by the rules. According to the Food and Agriculture Organization of the United Nations (FAO), “IUU fishing creates unfair competition, especially with coastal communities and small-scale fishers . . . threatening their food security and livelihoods.”³⁸ Where overfishing occurs, fish scarcity follows, which then increases the costs for legal fishermen.³⁹ Honest fishermen all over the world must travel farther and trawl their nets deeper to meet the same fish quota—a feat that demands more time, money, labor, and fuel.⁴⁰ Legal fishermen also abide by government limits on fish stock, while IUU fishermen ignore the system and catch more than their law-abiding

33. *The Toll of IUU Fishing*, *supra* note 22.

34. Mansi Konar & U. Rashid Sumaila, *Illicit Trade in Marine Resources Keeps Billions Out of Pacific Economies Every Year*, WORLD RES. INST. (Dec. 16, 2019), <https://www.wri.org/insights/illicit-trade-marine-resources-keeps-billions-out-pacific-economies-every-year> [<https://perma.cc/KD7P-NGRG>].

35. *Id.*

36. Conway, *supra* note 31.

37. *Id.* “Sri Lankan senior Navy officers ranked IUU fishing as the major threat to their national security due to the ‘combined effects of’ resource scarcity,” the need for fish proteins, global and environmental change, and population growth. *Id.*

38. *Sustainable Fishing Starts With Us*, *supra* note 7.

39. Gwen Guilford, *How Spain, Russia and Other Countries Cheat the World Out of Billions of Dollars in Fish*, QUARTZ, <https://qz.com/95583/how-spain-russia-and-other-countries-cheat-the-world-out-of-billions-of-dollars-in-fish/> [<https://perma.cc/7N2P-LSL3>] (last updated July 21, 2022).

40. *Id.*

competitors.⁴¹ As a result, honest fishermen tend to receive less economic benefits.⁴²

Alongside the honest fisherman, the consumer is another casualty of IUU fishing. Consumers are completely duped when they purchase illegally-caught and mislabeled seafood. Without even realizing, the average consumer could potentially purchase and intake fraudulent fish procured from IUU practices, such as the “short-weighting [of] products, species substitution, mislabeling, [or] false advertising.”⁴³ Subsequently, consumer confidence dwindles as IUU fishing practices continue to infiltrate economies across the globe.⁴⁴

B. The World’s Ecosystems

IUU fishing is slowly damaging marine ecosystems around the world due to uncontrolled harvesting and destructive fishing practices.⁴⁵ Overfishing practices further strengthen this threat.⁴⁶ On a global scale, “[a]round 85% of global fish stocks are over-exploited, depleted, fully exploited or in recovery from exploitation.”⁴⁷ Absent fishery management, the status of fish stocks within unregulated fisheries tends to decline and worsen over time.⁴⁸ In fact, fish stocks “within biologically sustainable levels have decreased from 90% in 1974 to 65.8% in 2017.”⁴⁹ To make matters worse, experts predict that the global fish supply will slowly diminish around the world due to climate change.⁵⁰ All the while, global seafood demand is expected to increase 30 million metric tonnes (20%) by the year 2030.⁵¹

This threat to the world’s ecosystems is so severe that Pope Francis of the Roman Catholic Church pointed out the dangers of unmonitored

41. *Id.*

42. *Four Reasons Illegal, Unreported and Unregulated (IUU) Fishing Affects Us and What We Can Do About It*, FAO (Apr. 4, 2021), <https://www.fao.org/fao-stories/article/en/c/1403336/> [<https://perma.cc/64WF-RXHM>].

43. *Id.*

44. *Id.*

45. *Sustainable Fishing Starts With Us*, *supra* note 7.

46. See Gaia Vince, *How the World’s Oceans Could Be Running Out of Fish*, BBC (Sept. 20, 2012), <https://www.bbc.com/future/article/20120920-are-we-running-out-of-fish#:~:text=Around%2085%25%20of%20global%20fish,the%20United%20Kingdom%20and%20Scandinavia> [<https://perma.cc/LH55-67WE>].

47. *Id.*

48. *Towards Blue Transformation*, *supra* note 24.

49. *Id.*

50. *Help End Illegal Fishing*, *supra* note 12.

51. *Id.*

fishing in an encyclical letter.⁵² He emphasized that “marine life in rivers, lakes, seas and oceans, which feeds a great part of the world’s population, is affected by uncontrolled fishing, leading to a drastic depletion of certain species.”⁵³ Pope Francis further noted the need for ocean governance to curb overfishing.⁵⁴ Though such agreements and resolutions do exist, a lack of regulation and control weakens these efforts.⁵⁵ Thus, unmanaged and uncontrolled IUU fishing practices continue to endanger the world’s fish stocks and aquatic ecosystems.

C. Social Structures

IUU fishing is a catalyst for crimes that chip away the social and political structures of numerous nations. It fosters and encourages crimes such as drug smuggling, piracy, and human trafficking.⁵⁶ Particularly, human trafficking and forced labor practices within IUU fishing have become major humanitarian concerns.⁵⁷ IUU fishing vessels are frequently connected to improper working conditions, labor abuse, child labor, and/or slavery.⁵⁸ As IUU overfishing continues, near-shore fisheries deplete around the world. IUU vessels must then “travel farther and remain out at sea longer, raising costs, and increasing incentives to engage in illegal labor practices and abuses.”⁵⁹ Because of this, it becomes increasingly difficult to find laborers who will willingly work in such inhumane conditions. Consequently, IUU fishing organizers opt for human trafficking to fill onboard working crews, thereby making the seafood cargo even cheaper to import.⁶⁰ Though the IUU fishing problem is clearly an environmental one, it has quickly developed into a humanitarian issue that cannot be ignored.

52. *Encyclical Letter of the Holy Father Francis on Care for Our Common Home*, VATICAN (May 24, 2015), https://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html [<https://perma.cc/MH5P-QC27>] [hereinafter *Encyclical Letter*].

53. *Id.*

54. *Id.*

55. *Encyclical Letter*, *supra* note 52.

56. *Links Between IUU Fishing and Other Crimes*, FAO, <https://www.fao.org/iuu-fishing/background/links-crimes/en/> [<https://perma.cc/9AAR-XL7X>] (last visited Oct. 3, 2021).

57. *Sustainable Fishing Starts With Us*, *supra* note 7.

58. *Id.*

59. *A Bill to Combat IUU Fishing*, *supra* note 2.

60. *Id.*

II. HOW THE UNITED STATES—AND LOUISIANA SPECIFICALLY—ARE THREATENED BY IUU FISHING PRACTICES

When compared to other countries around the world, the United States is the largest seafood importer. The United States imports over 90% of its total seafood supply, valued at over \$20 billion, from other parts of the world.⁶¹ The United States imports its seafood supply from “China, Thailand, Canada, Indonesia, Vietnam, and Ecuador,” and its main import species “include shrimp, freshwater fish, tuna, salmon, groundfish, crab, and squid.”⁶² As for seafood exports, the United States ranks fourth in the world.⁶³ The nation’s main export species include “Alaska pollock, [P]acific salmon, lobster, crab, fish roe, and surimi.”⁶⁴

As the global leader in seafood imports, it is no surprise that the United States falls prey to IUU fishing practices. In February 2021, the U.S. ITC reported nearly 11% of total U.S. seafood imports in 2019—worth \$2.4 billion—were products of illegal or unreported fishing.⁶⁵ Subsequently, the same consequences affecting the rest of the world are also infiltrating U.S. borders. In 2020, the U.S. Coast Guard went so far as to say that IUU fishing has now superseded piracy “as the leading global maritime security threat.”⁶⁶

The U.S. Gulf Coast is particularly susceptible to IUU fishing.⁶⁷ On February 7, 2022, NOAA Fisheries enacted a ban against Mexican fishing vessels operating in the Gulf of Mexico from accessing and servicing U.S. ports.⁶⁸ NOAA made the decision after it presented Mexico with a

61. *USA Fisheries Statistics: Production, Consumption and Trade*, FAO, <https://www.fao.org/in-action/globefish/countries/countries/usa/usa-trade/en> [<https://perma.cc/L3FX-CTDQ>] (last visited Oct. 3, 2022) [hereinafter *USA Fisheries Statistics*].

62. *Global Wild Fisheries*, NOAA: FISHWATCH, <https://www.fishwatch.gov/sustainable-seafood/the-global-picture> [<https://perma.cc/YDX3-Y2NP>] (last visited Oct. 3, 2022).

63. *Id.*

64. *Id.*

65. *Bipartisan Bill*, *supra* note 3.

66. John C. Vann, *Illegal Fishing Is a Global Threat. Here’s How to Combat it*, COUNCIL ON FOREIGN RELS. (June 4, 2021, 1:06 PM), <https://www.cfr.org/article/illegal-fishing-global-threat-heres-how-combat-it> [<https://perma.cc/Z9FU-7XEC>].

67. *Louisiana Seafood: A Life’s Work*, LA. SEAFOOD, <https://www.louisianaseafood.com/industry> [<https://perma.cc/A78L-6TF7>] (last visited Oct. 3, 2022).

68. Steve Bittenbender, *US to Ban Port Access to Mexican Boats Fishing in the Gulf of Mexico*, SEAFOOD SOURCE (Jan. 18, 2022), <https://www.seafood>

negative certification in NOAA's 2021 Report to Congress on Improving International Fisheries.⁶⁹ The Report stated that these particular IUU vessels "are known to catch finfish stocks that are regulated by the United States, including red snapper, as well as bycatch of protected sea turtles."⁷⁰ In Louisiana specifically, fisheries play a fundamental role in the state's economy.⁷¹ As the nation's second-largest seafood supplier, Louisiana's fisheries "provide jobs, income, and tax revenue, but they also generate innovations that protect coastlines and help keep waters pristine."⁷² In the "Pelican State," 1 out of every 70 jobs is connected to the seafood industry, many being family-owned-and-operated.⁷³ These jobs contribute \$2.4 billion a year to Louisiana's economy alone.⁷⁴

Despite the state's strength in seafood supply, Louisiana has developed a severe IUU fishing problem. The devastating effects of IUU fishing are particularly acute in Louisiana's shrimping economy.⁷⁵ The executive director of the Southern Shrimp Alliance (SSA) boldly stated, "[n]o commercial fishing industry has been more harmed by IUU seafood than the shrimp industry."⁷⁶ In 2020, the SSA emphasized, via submissions and testimony to the ITC, that IUU fishing practices contributed to substantial volumes of wild-caught shrimp imported into the United States.⁷⁷ The ITC found this "substantial volume" to be 20% of the \$712 million of wild-caught warmwater shrimp imported into the country.⁷⁸ The SSA stressed that, when the law is unenforced, seafood importers in the United States naturally gravitate towards cheaper imports, paying little mind to the unethical origins of their supply chains.⁷⁹

Unless there is cooperation to eliminate IUU fishing, Louisiana will continue to compete with this global and national threat. Over the past century, the United States has slowly attempted to protect its ports and

source.com/news/supply-trade/us-to-ban-port-access-to-mexican-boats-fishing-in-the-gulf [https://perma.cc/7XCH-3V2T].

69. *Report on IUU Fishing*, *supra* note 11.

70. Bittenbender, *supra* note 68.

71. *Louisiana Seafood: A Life's Work*, *supra* note 67.

72. *Id.*

73. The "Pelican State" is a nickname for Louisiana. *Id.*

74. *Id.*

75. *Southern Shrimp Alliance*, *supra* note 10.

76. *Id.*

77. *Id.*

78. *ITC Report Details Significant Impact of IUU Fishing on U.S. Shrimp Market*, S. SHRIMP ALL. (Mar. 22, 2021), <https://www.shrimpalliance.com/itc-report-details-significant-impact-of-iuu-fishing-on-u-s-shrimp-market/> [https://perma.cc/N7J4-9U36].

79. *Southern Shrimp Alliance*, *supra* note 10.

citizens from this particular problem through various legal developments and policy changes, yet the results have proven that the attempts are only partly effective.

III. HOW THE UNITED STATES HAS COMBATTED IUU FISHING PRACTICES THUS FAR

The United States has not remained completely silent against the impending threats of IUU fishing. Acts and regulations—such as the Lacey Act, the Magnuson-Stevens Act, and the Seafood Import Monitoring Program—attempt to combat this issue, some even implemented before IUU fishing had a name.⁸⁰ Though the United States has taken great strides to curtail IUU fishing, the looming threat is still present globally, nationally, and locally in Louisiana.

A. *The Lacey Act*

The Lacey Act became federal law on May 25, 1900, with the unique goal to protect wildlife on a national scale.⁸¹ As currently codified under the Lacey Act, it is illegal

to import, export, sell, acquire, or purchase (1) any fish or wildlife or plant taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States or in violation of any Indian tribal law or (2) any fish or wildlife taken, possessed, transported, or sold in violation of any law regulation of any State or in violation of any foreign law.⁸²

The Lacey Act did not originally include wildlife, but Congress finally expanded the statute in 1981 to include all species of fish.⁸³ This was the first step in protecting wildlife as a whole in the United States, but certainly not the last in the struggle against future IUU threats.

80. Karl Hermann Kock, *Elimination of IUU Fishing and the World's First Catch Document Scheme*, CCAMLR (Oct. 7, 2021), <https://40years.ccamlr.org/elimination-of-iuu-fishing-and-the-worlds-first-catch-document-scheme/> [<https://perma.cc/N3W4-VVKD>].

81. *The United States Lacey Act*, STOP ILLEGAL FISHING (Jan. 4, 2017), <https://stopillegalfishing.com/publications/united-states-lacey-act-application-fisheries-considerations-potential-adoption-lacey-like-provisions-countries-western-indian-ocean/> [<https://perma.cc/57NX-A5HF>].

82. 16 U.S.C. § 3372(a).

83. *The United States Lacey Act*, *supra* note 81.

Unfortunately, the Lacey Act alone was not enough to prevent IUU fishing practices from sneaking into the country's borders.

B. The Magnuson-Stevens Act (MSA)

In 1976, Senator Warren G. Magnuson (D-Washington) and Senator Ted Stevens (R-Alaska) came together to end a “virtual free-for-all” in U.S. waters by writing the Magnuson-Stevens Fishery Conservation and Management Act (MSA).⁸⁴ Before the MSA, the nation struggled to compete with foreign fishermen for the ocean's resources.⁸⁵ Consequently, fisheries suffered from overfishing and headed for collapse.⁸⁶ With the MSA's institution, the United States extended its claim over marine management from a mere 12 miles to 200 miles offshore, expanding the buffer known as the Exclusive Economic Zone.⁸⁷ The MSA also gave voice to critical U.S. fishing regions by establishing eight regional councils, including one for the Gulf of Mexico.⁸⁸ Each regional council was instructed to identify its own region's specific needs and manage its available resources, namely by setting annual catch limits and establishing procedures to enforce those limits.⁸⁹

Since its passage, the MSA has evolved and developed to provide proper fishing management practices for the entire country.⁹⁰ In 1996, the Sustainable Fisheries Act amended the MSA.⁹¹ The Sustainable Fisheries Act focused on promoting conservation, defining overfishing, and preventing bycatch.⁹² Ten years later, the MSA became the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act, including two new measures: Annual Catch Limits (ACLs) and

84. See 16 U.S.C. 38 § 1801.

85. *The Magnuson-Stevens Act*, *supra* note 13.

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*; *What Is Bycatch?*, NOAA FISHERIES, <https://www.fisheries.noaa.gov/node/251> [<https://perma.cc/8UCA-UPW6>] (last visited Oct. 3, 2022). Bycatch are collectively known as the fish that fishermen discard because they either do not want to keep them, are not allowed to keep them, or cannot sell them. *Id.* Bycatch can include other animals besides fish that become entangled in the fishing gear. *Id.*

Accountability Measures⁹³ (AMs).⁹⁴ The new and improved MSA also amended the High Seas Driftnet Fishing and Moratorium Protection Act (MPA)⁹⁵ and required NOAA to produce a biennial report to Congress identifying nations engaged in IUU fishing practices.⁹⁶ Once flagged, NOAA begins a “two-year consultation” with the identified nations and urges them to take action to resolve the violation.⁹⁷ After consulting with flagged countries, NOAA decides whether to highlight the flagged nations in a positive or negative light in the next Congressional Report.⁹⁸ If a nation is given a negative certification, the United States may deny port access to that nation, as well as place restrictions on seafood imports from that nation.⁹⁹

In the 40 years since its passage, the MSA rebuilt fish stocks, fought against overfishing, boosted economic and social benefits, and fostered safe seafood for the United States.¹⁰⁰ However, it has not been able to completely resolve the IUU problem on its own—even in conjunction with the Lacey Act.

93. *Ending Overfishing Through Annual Catch Limits*, NOAA FISHERIES, <https://www.fisheries.noaa.gov/national/rules-and-regulations/ending-overfishing-through-annual-catch-limits> [<https://perma.cc/8A2V-GKYD>] (last updated Feb. 6, 2018). (“If catch of a stock is approaching or exceeding its annual catch limit, fishery managers use accountability measures to ensure the limit is not exceeded or correct for any overage.”). These measures normally include size and trip limits, seasonal closures, and/or gear restrictions. *Id.*

94. *The Magnuson-Stevens Act*, *supra* note 13.

95. *See* High Seas Driftnet Fishing Moratorium Protection Act; Identification and Certification Procedures to Address Illegal, Unreported, and Unregulated Fishing Activities and Bycatch of Protected Living Marine Resources, 76 Fed. Reg. 2011 (Jan. 12, 2011). The MPA instructs the Secretary of Commerce to produce a biennial report to Congress detailing which foreign nations currently have fishing vessels involved in IUU fishing practices, particularly those that produce bycatch of protected living marine resources (PLMR). *Id.* The MPA also demands active procedures to verify “whether appropriate corrective actions have been taken to address IUU fishing or bycatch of PLMRs by fishing vessels of those nations.” *Id.*

96. *Report on IUU Fishing*, *supra* note 11.

97. *Id.*

98. *Id.*

99. *Id.*

100. *Laws and Policies: Magnuson-Stevens Act*, NOAA FISHERIES <https://www.fisheries.noaa.gov/topic/laws-policies> [<https://perma.cc/FP55-AR8S>] (last visited on Oct. 3, 2022).

C. Seafood Import Monitoring Program (SIMP)

In 2014, the U.S. government implemented measures to directly tackle the growing problem of IUU fishing. That same year, President Obama charged a Presidential Task Force with generating ways to combat IUU fishing practices.¹⁰¹ By the end of the year, the Task Force proposed a national traceability program to monitor seafood from its point of capture to its entry into the United States.¹⁰² With the traceability program, the Task Force contended that transparency in the supply chain would help authorities prevent IUU seafood from entering the U.S. supply chain and market.¹⁰³ The group concluded that, over time, this traceability and transparency program “would reduce the incentives to engage in IUU fishing” by preventing these imports from entering the U.S. economy. It would also create environmental benefits, “such as protecting overfished species and safeguarding sensitive marine ecosystems.”¹⁰⁴

By 2016, the Task Force proposed its final rule in accordance with the MSA. In doing so, it identified a list of priority species to trace.¹⁰⁵ Though IUU fishing spans thousands of marine species, the priority list named only 13 species that NOAA determined to be most at risk from IUU fishing.¹⁰⁶ The final rule required importers to collect and report traceability data for these priority species. In 2018, this final rule—the Seafood Import Monitoring Program (SIMP)—became fully effective.¹⁰⁷

Under SIMP, NOAA gathers “information regarding where, when, and how the seafood was harvested, what species were harvested, the quantity and weight of the catch, and details about the importer of record.”¹⁰⁸ In its 2020 report, NOAA conveyed that “out of the 1,073 audits completed, 57.3 percent were compliant while 42.7 percent were found to have various noncompliance issues.”¹⁰⁹ These numbers prove SIMP’s success in detecting IUU fishing practices, however, a huge percentage of violations still remain undetected.

101. Kuruc, *supra* note 4.

102. *Alfa Int’l Seafood v. Ross*, 264 F. Supp. 3d 23, 34 (D.D.C. 2017).

103. *Id.*

104. *Id.*

105. *Id.*

106. *Illegal Fishing Stimson Recommendations*, *supra* note 1.

107. *Id.*

108. See 16 U.S.C. §§ 8001–8041; Wiand & White, *supra* note 14.

109. *Report on the Implementation of the U.S. Seafood Import Monitoring Program*, NOAA FISHERIES 11 (Apr. 2021), <https://media.fisheries.noaa.gov/2021-05/SIMP%20Implementation%20Report%202021.pdf> [<https://perma.cc/WNH2-EN7D>].

Although SIMP provided the nation with a sturdy base, this foundation remains riddled with legal loopholes and gaps. Similar to the Lacey Act and the MSA, SIMP was unable to completely resolve the IUU fishing crisis following its implementation. Thus, the law requires more advancements and enhancements to finally bring an end to IUU fishing.

D. The Interagency Working Group (With a Specific Focus on the FDA)

In a whole-of-government approach,¹¹⁰ the United States passed the Maritime Security and Fisheries Enforcement Act (SAFE) in 2019.¹¹¹ Under this Act, the U.S. government fought back against IUU fishing threats by establishing the Interagency Working Group on Illegal, Unreported, and Unregulated Fishing (“Working Group”).¹¹² Led by NOAA, the Working Group united 21 government agencies and offices, including the U.S. Coast Guard, the U.S. Navy, the Department of Labor, and the Food and Drug Administration (FDA).¹¹³

The FDA is the authority responsible for “ensur[ing] that imported fish and fishery products are safe, wholesome, and accurately labelled [*sic*].”¹¹⁴ To prevent noncompliant, illegal seafood from entering the country and its supply chain, the FDA utilizes the Import Alert System.¹¹⁵ However, this system is not entirely effective, as illegal seafood continues to enter U.S. markets. In 2021, a U.S. District Court Judge fined a Louisiana seafood company \$10,000 for illegally selling and transporting 14,346 sacks of

110. *Whole-of-Government Approach (WGA)*, ISSAT DCAF, <https://issat.dcaf.ch/Learn/Resource-Library/SSR-Glossary/Whole-of-Government-Approach-WGA> [<https://perma.cc/2H7M-TN84>] (last visited Oct. 3, 2022). A whole-of-government-approach is “[a]n approach that integrates the collaborative efforts of the departments and agencies of a government to achieve unity of effort towards a shared goal.” *Id.*

111. OFF. OF MARINE CONSERVATION, *supra* note 15.

112. *Id.*

113. *U.S. Interagency Working Group on IUU Fishing*, NOAA FISHERIES, <https://www.fisheries.noaa.gov/national/us-interagency-working-group-iuu-fishing> [<https://perma.cc/SU37-7DGR>] (last updated May 11, 2022).

114. *USA Fisheries Statistics*, *supra* note 61.

115. The FDA’s Import Alert System prevents violative products from entering the United States. “Import alerts inform the FDA’s field staff and the public that the agency has enough evidence to allow for Detention Without Physical Examination (DWPE) of products that appear to be in violation of the FDA’s laws and regulations.” *Import Alerts*, FDA, <https://www.fda.gov/industry/actions-enforcement/import-alerts#:~:text=Import%20alerts%20inform%20the%20FDA's,the%20FDA's%20laws%20and%20regulations> [<https://perma.cc/J9SN-4B8R>] (last updated May 14, 2019). *USA Fisheries Statistics*, *supra* note 61.

oysters in violation of the Lacey Act from 2017 to 2019.¹¹⁶ The sacks “were acquired and possessed in violation of and in a manner unlawful under the laws of the State of Louisiana” and were worth “approximately \$656,865”¹¹⁷ From 2017 to 2018, the New York State Office of the Attorney General (OAG) commenced a study to examine seafood fraud in the United States at retail supermarkets.¹¹⁸ The OAG purchased seafood for the study from 155 locations, including 29 different supermarket brands.¹¹⁹ The study concluded that “more than one in four (26.92%) seafood purchases with an identifiable barcode was mislabeled” and “about two-thirds of the supermarket brands reviewed had at least one instance of suspected mislabeling.”¹²⁰

In spite of various statutory efforts (i.e., the Lacey Act, the MSA, and SIMP), as well as the Working Group, IUU fish are still ending up on the nation’s plates. These statutory efforts represent a promising start in the war against IUU fishing; nonetheless, there are gaps that need filling, areas that need expanding, and inspiring solutions worth noting to finally put an end to IUU fishing practices.

IV. SOLUTIONS TO FINALLY TACKLE THE IUU FISHING ISSUE

A. The United States Should Lead the World in Solving the IUU Fishing Crisis

Despite past and present efforts, IUU fishing practices continue to proliferate throughout the world’s oceans. In a 2021 report to Congress, NOAA identified “31 nations and entities with vessels engaged in illegal, unreported, or unregulated fishing activities or bycatch of protected species on the high seas.”¹²¹ Major countries, such as China, Mexico, the

116. *Seafood Company Sentenced for Illegal Sale of Oysters*, U.S. DEP’T OF JUST. (Mar. 9, 2021), <https://www.justice.gov/usao-edla/pr/seafood-company-sentenced-illegal-sale-oysters> [<https://perma.cc/HG5C-KKBM>].

117. *Id.*

118. Barbara D. Underwood, *Fishy Business: Seafood Fraud and Mislabeled in New York State Supermarkets*, OFF. OF THE N.Y. STATE ATT’Y GEN. 1 (Dec. 2018), https://ag.ny.gov/sites/default/files/fishy_business.pdf [<https://perma.cc/S8XK-3SKH>].

119. *Id.* at 1, 2.

120. *Id.* at 1.

121. *NOAA Issues 2021 Report on Global IUU Fishing and Bycatch of Protected Marine Life Resources*, NOAA FISHERIES, <https://www.fisheries.noaa.gov/feature-story/noaa-issues-2021-report-global-iuu-fishing-and-bycatch-protected-marine-life-resources> [<https://perma.cc/K2DN-KHBT>] (last updated Jan. 10, 2022).

Russian Federation, Taiwan, and Costa Rica were all reported to be engaged in IUU fishing practices from 2018 to 2020.¹²² Moreover, NOAA reported that Mexico failed to eliminate small IUU fishing vessels in the Gulf of Mexico.¹²³ Immediate action must be taken to end this growing international, national, and local emergency. Fortunately, many solutions exist that are worth implementing and exploring.

First and foremost, the United States should serve as the world's leader in resolving the global IUU fishing crisis. As the world's largest seafood importer and fourth largest seafood exporter, the United States bears a considerable responsibility to set an example in combating IUU fishing.¹²⁴ Alongside other coastal countries, the United States has been deeply affected by illegal fishing practices. Thus, America has an incredible platform to directly confront the issue, offer model solutions, and produce effective results on the global frontlines. For example, IUU fishermen choose to catch and report seafood illegally because it is cheaper than being honest and allows them to easily evade any consequences.¹²⁵ However, if the United States successfully thwarts these fishing practices, IUU fishermen will lose access to one of the largest markets in the world.¹²⁶ Subsequently, IUU fishermen will lose fiscal motivation to fish illegally.¹²⁷ With this in mind, the United States holds significant leverage in the fight against IUU fishing, and its decisions have the potential to impact the world.

B. SIMP Must Be Expanded

Though the United States has directly attempted to confront the IUU fishing problem with legal measures, the threat remains colossal. To more effectively address the problem, other improvements must be made—specifically, the residual gaps in SIMP must be filled.

It is worth noting that SIMP's original purpose aimed to merely decrease IUU fishing, not completely eradicate it.¹²⁸ SIMP was created to supervise and eliminate IUU practices in U.S. open waters, *not* to monitor

122. *Id.*

123. *Id.*

124. OFF. OF MARINE CONSERVATION, *supra* note 15.

125. Sandy Aylesworth, *NGOs Call for NOAA to Strengthen Seafood Import Standards*, NRDC (May 10, 2019), <https://www.nrdc.org/experts/sandy-aylesworth/ngos-call-noaa-strengthen-seafood-import-standards> [<https://perma.cc/79TX-GK9K>].

126. *Id.*

127. *Id.*

128. Wiand & White, *supra* note 14.

the entire supply chain from an original catch to its final consumer.¹²⁹ This supply chain journey is often nicknamed “bait to plate,” yet SIMP only promised to regulate between “boat to dock.”¹³⁰ Additionally, the SIMP program only monitors 13 priority species; clearly, IUU fishing knows no bounds or limits when it comes to seafood, and it extends far beyond the 13 priority species that NOAA deems the most at risk.¹³¹

SIMP represents only a single battle won in the raging war against IUU fishing. While a promising start, the program remains riddled with legal loopholes. IUU fishermen continue to take advantage of these gaps in the law and avoid punishment in the process. As a result, honest fishermen are constantly cheated, labor offenses thrive undetected, and large portions of seafood are completely mislabeled. To best resolve this overwhelming issue, Congress must take immediate action and expand SIMP. This expansion would undoubtedly deter IUU practices across the entire supply chain, as well as offer better assurance for the everyday consumer that his imported seafood is legally caught and properly labeled. If the United States were to take the lead in such a model expansion, the world would gain ample ground in the war against IUU fishing.

1. The Illegal Fishing and Forced Labor Prevention Act

In an attempt to expand SIMP and strengthen its effectiveness, Congressional Representatives Garret Graves (R-Louisiana) and Jared Huffman (D-California) recently introduced bipartisan legislation titled the Illegal Fishing and Forced Labor Prevention Act (H.R. 3075).¹³² In a whole-of-government approach, the bill seeks to address the complex problems arising from IUU fishing practices, such as economic, environmental, and human rights issues.¹³³ The Act promises a future in which “all seafood sold in the United States is safe, legally caught, responsibly sourced, and honestly labeled.”¹³⁴ Amongst its provisions, H.R. 3075 proposes to expand SIMP to include all species, increase transparency in the entire supply chain, improve the enforcement of SIMP, broaden the definition of IUU fishing, and “expand and enhance

129. *Id.*

130. *Id.*

131. *Illegal Fishing Stimson Recommendations*, *supra* note 1.

132. H H.R. 3075, 117th Cong. (2021).

133. *Illegal Fishing Stimson Recommendations*, *supra* note 1.

134. *Congress Introduces Bold New Legislation to Combat Illegal Fishing, Seafood Fraud*, OCEANA (May 11, 2021), <https://usa.oceana.org/press-releases/congress-introduces-bold-new-legislation-combat-illegal-fishing-seafood-fraud> [<https://perma.cc/8RYW-Q2H4>].

interagency cooperation and data sharing.”¹³⁵ If the Act passes and SIMP expands, the ITC projects that the removal of such potential IUU imports will “increase total operating income of the U.S. commercial fishing industry by an estimated 60.8 million dollars.”¹³⁶ In fact, one of the largest increases in income would be warm-water shrimp, a Louisiana staple.¹³⁷

a. Expansion to All Species

H.R. 3075 seeks to provide greater traceability and transparency in the entire supply chain.¹³⁸ Currently, SIMP only applies to 40% of all seafood imported into the United States, otherwise known as its priority species.¹³⁹ On the other hand, H.R. 3075 requires reporting for *all* imported species.¹⁴⁰ If implemented, the “Act will direct the Secretary of Commerce to expand [SIMP] to include all seafood and seafood products imported into the United States within two years.”¹⁴¹ With this critical expansion, IUU fishermen will be unable to cheat the system by purposely misreporting a species to avoid punishment.¹⁴²

b. Increased “Bait to Plate” Transparency and Data Sharing

President Obama’s task force never intended SIMP to operate as a labeling program or a program dedicated to the consumer.¹⁴³ SIMP, in accordance with the MSA, kept its traceability information from “boat to dock” highly confidential.¹⁴⁴ In other words, this program only recorded

135. *Illegal Fishing Stimson Recommendations*, *supra* note 1.

136. *Graves Introduces Legislation to Strengthen Louisiana’s Seafood Industry for Producers, Processors and Consumers Alike*, GARRET GRAVES (May 13, 2021), <https://garretgraves.house.gov/media-center/press-releases/graves-introduces-legislation-strengthen-louisiana-s-seafood-industry> [<https://perma.cc/M42V-6J5F>] [hereinafter *Graves Legislation for Seafood Industry*].

137. *Id.*

138. H.R. 3075, 117th Cong. (2021).

139. *The Illegal Fishing and Forced Labor Prevention Act*, GREENPEACE 2 (May 2021), https://www.greenpeace.org/usa/wp-content/uploads/2021/05/Illegal-Fishing-and-Forced-Labor-Prevention-Act-Fact-Sheet.pdf?_ga=2.37086310.710452760.1632258613-1354548698.1632258613 [<https://perma.cc/X5EY-MX8M>].

140. H.R. 3075, 117th Cong. (2021).

141. *Illegal Fishing Stimson Recommendations*, *supra* note 1.

142. *The Illegal Fishing and Forced Labor Prevention Act*, *supra* note 139, at 2.

143. Wiand & White, *supra* note 14.

144. NAT’L OCEAN COUNCIL COMM. ON IUU FISHING & SEAFOOD FRAUD, *U.S. Seafood Monitoring Program*, IUU FISHING HEADQUARTERS, <https://www>

data “regarding the chain of custody of the fish or fish product from harvest to point of entry into the U.S. commerce.”¹⁴⁵ H.R. 3075, however, increases the transparency of data in the *entire* supply chain from “bait to plait.” That is, the fish would be monitored from the moment of catch, through the supply chain, and to the point of final sale.¹⁴⁶ As a result, federal agencies would be better equipped to enforce conservation and labor efforts as they share public records with one another.¹⁴⁷

The Act also requires NOAA to amend its regulations, particularly regarding seafood import information.¹⁴⁸ NOAA would demand seafood importers to “provide more information regarding the entities in their supply chain and provide prior notification of this information no later than [72] hours prior to import entry.”¹⁴⁹ Seafood labeling requirements would also extend to include specific information about the fish, such as its species, the details of its catch, its country of origin, “and if it was wild-caught or farm-raised.”¹⁵⁰ Possibly one of the largest changes to SIMP is the requirement to collect data regarding the labor conditions of the imported fish harvest, transshipment, and processing.¹⁵¹ This change would be a monumental upgrade from the current law regarding the humanitarian side of the IUU fishing crisis. For example, shrimp importers would be able “to determine whether the shrimp they are sourcing had been produced through the use of unregulated contract peeling houses.”¹⁵² Because of this exposed information, consumers would then feel confident

.iuufishing.noaa.gov/recommendationsandactions/recommendation1415/finalruletraceability.aspx [https://perma.cc/UR3Z-7ALS] (last visited on Oct. 3, 2022).

145. *Id.*

146. *Southern Shrimp Alliance Applauds Introduction of the Illegal Fishing and Forced Labor Prevention Act*, S. SHRIMP ALL. (May 11, 2021), <https://www.shrimpalliance.com/southern-shrimp-alliance-applauds-introduction-of-the-illegal-fishing-and-forced-labor-prevention-act/> [https://perma.cc/Q5JT-EPFE]. [hereinafter *Southern Shrimp Alliance Applauds Fishing and Labor Act*].

147. *The Illegal Fishing and Forced Labor Prevention Act*, *supra* note 139, at 3.

148. *Southern Shrimp Alliance Applauds Fishing and Labor Act*, *supra* note 146.

149. *Id.*

150. *Id.*; *The Illegal Fishing and Forced Labor Prevention Act*, *supra* note 139, at 3.

151. *Southern Shrimp Alliance Applauds Fishing and Labor Act*, *supra* note 146.

152. *Id.* In Thailand, an Associated Press investigation uncovered “peeling sheds” where “enslaved migrant workers and children ripp[ed] the heads, tails, shells and guts off shrimp at processing factories.” *Are Slaves Peeling Your Shrimp?*, AP (Dec. 14, 2015), <https://apnews.com/article/83e426b99e0f45ff95a37aa71c14fa01> [https://perma.cc/T97D-NVS3].

that the seafood they purchase was unaffected by labor offenses throughout the entire supply chain.¹⁵³

c. Improved Technology

H.R. 3075 further utilizes automatic identification systems (AIS).¹⁵⁴ These systems play an essential role in tracking IUU vessels amidst the nation's waters by providing oversight to transshipping events, detecting vessels at higher risk for labor abuses, and assisting in the overall enforcement of the law.¹⁵⁵ Unfortunately, the United States only imposes AIS on vessels "longer than 65 feet, from stern to bow," a requirement that makes up only "12.4% of the U.S. fishing fleet."¹⁵⁶ Furthermore, these illegal fishing vessels can "go dark" by simply turning off their AIS. With one switch, a vessel can disappear from the system for hours or even days at a time.¹⁵⁷ Even worse, a vessel is only mandated "to have AIS switched on within 12 nautical miles of shore, an area covering less than 8% of the U.S. EEZ."¹⁵⁸ In other words, major holes remain open in the law that allow IUU fishing practices to creep into the country undetected.

If implemented, H.R. 3075 would allocate specific funding towards new AIS.¹⁵⁹ The Act would also require *all* seafood importers to "provide the unique mobile maritime service identity associated with their AIS as a condition of seafood import."¹⁶⁰ This would expand the AIS mandate to cover a larger category of vessels, thereby significantly improving detection of IUU fishing vessels.¹⁶¹ Moreover, the Act requires vessels to

153. *Southern Shrimp Alliance Applauds Fishing and Labor Act*, *supra* note 146. The legislation would also implement a 20 million dollar budget "for each fiscal year (FY) between FY2021 and FY2025 to the U.S. Customs and Border Protection for enforcement of the prohibition of the importation of goods produced through forced labor." *Id.*

154. H.R. 3075, 117th Cong. (2021).

155. Quinne Daoust, *Monitoring Technology in the Fight Against IUU Fishing*, AM. SEC. PROJECT (Nov. 1, 2021), <https://www.americansecurityproject.org/iuufishingmonitoringtechnology/> [https://perma.cc/QXK5-2XC9]; *The Illegal Fishing and Forced Labor Prevention Act*, *supra* note 139, at 3.

156. Daoust, *supra* note 155.

157. *Id.*

158. *Id.*

159. Steve Bittenbender, *Congressmen File Bill to Combat IUU Fishing, Increase SIMP Enforcement*, SEAFOODSOURCE (May 12, 2021), <https://www.seafoodsource.com/news/environment-sustainability/congressmen-file-bill-to-combat-iuu-fishing-increase-simp-enforcement> [https://perma.cc/9H2T-KTQQ].

160. *The Illegal Fishing and Forced Labor Prevention Act*, *supra* note 139, at 3.

161. Daoust, *supra* note 155.

utilize AIS past the current 12-mile limit and continue its use into open international waters.¹⁶² These crucial steps, taken together, would significantly fill the technology gaps in current U.S. legislation.

d. Enhanced Audit System with NOAA

H.R. 3075 proposes to expand SIMP's current seafood import auditing system.¹⁶³ The Act requires NOAA to publish public annual reports evaluating the compliance and enforcement of SIMP.¹⁶⁴ Additionally, the Act requires all seafood importers to obtain an International Trade Fisheries Permit (IFTP).¹⁶⁵ If an IFTP holder violates SIMP, the seafood importer risks modification or even revocation of the permit.¹⁶⁶ This system would thereby prevent violators from the privilege of partaking in the country's market and lucrative ports.¹⁶⁷ Furthermore, the Act requires NOAA to "publish and maintain on its website a list of all IFTP holders and the expiration date of that permit."¹⁶⁸

e. Broadened Definition of Illegal, Unreported and Unregulated Fishing

H.R. 3075 also seeks to broaden the definition of IUU fishing.¹⁶⁹ Currently, the MPA only refers to IUU fishing in domestic waters.¹⁷⁰ However, the new Act expands this definition to "any activity as noted in the United Nations Food and Agriculture Organization's 2001 International Plan of Action to Prevent, Deter, and Eliminate IUU Fishing, which includes vessels operating on the high seas, and beyond territorial waters."¹⁷¹ This expanded IUU fishing definition incorporates the additional issue of labor violations, such as human trafficking, which have become a huge threat connected to IUU fishing.¹⁷²

162. *Id.*

163. H.R. 3075, 117th Cong. (2021).

164. *Southern Shrimp Alliance Applauds Fishing and Labor Act*, *supra* note 146.

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. *Illegal Fishing Stimson Recommendations*, *supra* note 1.

170. *Id.*

171. *Id.*

172. Bittenbender, *supra* note 159.

2. Responses to SIMP Expansion

Many conservation groups, non-profits, and world leaders support general SIMP expansion in the fight against IUU fishing. In a 2021 report from Oceana, the largest international ocean conservation organization affirmed that such an expansion to all seafood is necessary, as well as transparency in the entire supply chain from “bait to plate.”¹⁷³ Oceana noted that “[w]ithout catch documentation, transparency and traceability requirements applying to all seafood, fish illegally caught around the world will continue to enter the U.S. market.”¹⁷⁴ The Stimson Center, a leading U.S. research institute for global issues, recommended to NOAA that “[e]xpanding SIMP enforcement would have a deterrent effect across the seafood supply chain globally and provide greater confidence that the seafood entering U.S. commerce is not illegally harvested or misrepresented.”¹⁷⁵

H.R. 3075 itself has already garnered zealous support from similar leaders. The World Wildlife Fund (WWF) labeled the proposed legislation as “a groundbreaking effort to confront the use of forced labor in seafood supply chains that will increase transparency and ultimately hold accountable those who put stolen profits above people and planet.”¹⁷⁶ SSA executive director, John Williams, stated, “[t]he Illegal Fishing and Forced Labor Prevention Act represents an essential step forward in eliminating IUU seafood imports from our market, leveling the playing field for the U.S. shrimp industry.”¹⁷⁷ Marty Scanlon, President of the Blue Water Fishermen’s Association, noted how legitimate fisheries must constantly compete with IUU fishing imports.¹⁷⁸ He expressed his gratitude to the congressmen for their leadership in protecting vulnerable, American fishermen: “When enacted, Congressman Graves' bill will substantially

173. *Transparency and Traceability: Tools to Stop IUU Fishing*, OCEANA 7 (Mar. 2021), https://usa.oceana.org/sites/default/files/4046/iuu-21-0001_iuu_transparency_report_m1_digital_singlepages.pdf [<https://perma.cc/9LQS-SZQY>].

174. *Id.*

175. *Illegal Fishing Stimson Recommendations*, *supra* note 1.

176. *WWF Statement on Illegal Fishing and Forced Labor Prevention Act*, WORLD WILDLIFE FUND. (May 11, 2021), <https://www.worldwildlife.org/press-releases/wwf-statement-on-illegal-fishing-and-forced-labor-prevention-act> [<https://perma.cc/PLJ6-8XZ3>].

177. Bittenbender, *supra* note 159.

178. *Graves Legislation for Seafood Industry*, *supra* note 136.

level the playing field for US pelagic longline¹⁷⁹ fishermen operating from Dulac, Louisiana to New Bedford, Massachusetts.”¹⁸⁰

Though it appears a large majority supports expanding SIMP and passing the proposed Act, the legislation has received criticism. The National Fisheries Institute (NFI) has previously conveyed extreme resistance to any form of expansion to SIMP. Robert DeHaan, Vice President for Government Affairs of the NFI, referred to SIMP as a “badly flawed regulation” with “far better ways to address IUU fishing.”¹⁸¹ DeHaan further stated, “[o]ur membership opposes any expansion of SIMP. The program has not proven its mettle in any way, and it generates job-killing compliance costs and headaches for our companies.”¹⁸²

It is no surprise SIMP contains massive gaps in its current form. Indeed, these gaps require filling, and the law must be improved; however, this does not mean SIMP has not proven “its mettle in any way.” Quite the contrary, SIMP has worked to cut down unsustainable fishing practices while bringing threatened species back to sustainable levels.¹⁸³ Although not perfect, SIMP has the potential to prompt monumental change, but not without expansion of the law.

As of now, there is no data associated with the “job-killing costs” if SIMP is expanded. What does kill jobs, however, is IUU fishing. Dr. C. David Veal, Director of the American Shrimp Processors Association, noted that IUU fishing is a “distortion of global seafood markets at the expense of the American fisherman and our family-run small businesses.”¹⁸⁴ The United States must create long-term solutions rather than short-term fixes. By expanding SIMP, the nation will fight IUU fishing more efficiently and effectively. As the threat is slowly eliminated, honest fishermen will have fewer violators to compete with and more fish to catch. This will only stimulate the seafood economy and benefit those who fish legally.

179. *Longlining: Pelagic Longline*, AUSTLN. FISHERIES MGMT., <https://www.afma.gov.au/fisheries-management/methods-and-gear/longlining> [<https://perma.cc/A7DX-YWVZ>] (last visited Oct. 3, 2022). Pelagic longlines typically consist of baited hooks attached “to the longline by short lines called snoods that hang off the mainline. The longline can be many kilometers long and carry thousands of hooks.” *Id.* The longlines are made to drift on the ocean’s surface and usually catch tuna and billfish species. *Id.*

180. *Graves Legislation for Seafood Industry*, *supra* note 136.

181. Bittenbender, *supra* note 159.

182. *Id.*

183. Wiand & White, *supra* note 14.

184. *Graves Legislation for Seafood Industry*, *supra* note 136.

C. The United States Should Look for Inspiration Abroad for Effective Approaches

Even if H.R. 3075 does not pass and/or SIMP never expands, the United States should exhaust all other avenues in the ongoing battle against IUU fishing. In doing so, the United States must examine and expand upon successful programs to bring an end to IUU fishing on the global frontlines. Notably, the EU, “as the largest trader of fishery and aquaculture products in the world in terms of value,” has devoted significant time, energy, and efforts to directly resist IUU fishing.¹⁸⁵ For example, the EU has implemented the EU IUU Fishing Coalition¹⁸⁶ and the EU IUU Fishing Regulation.¹⁸⁷ The EU is also a member of the FAO, which passed the first international treaty on IUU fishing: the Port State Measures Agreement.¹⁸⁸ As a founding party, the EU has consistently worked to promote the treaty to other countries and emphasize its potential.¹⁸⁹ These various attempts by the EU to finally subjugate IUU fishing have proven effective. In a 2019 study, the Global Initiative Against Transnational Organized Crime sought to rank countries around the world based on their performances against IUU fishing.¹⁹⁰ Under the ten best-performing countries (aggregated by responsibility), the United States ranked sixth. Four out of the five countries that ranked above the

185. *EU Leadership for Global Change*, OCEANS 5, <https://www.oceans5.org/project/eu-leadership-for-global-change/> [<https://perma.cc/LG8X-XMY4>] (last visited Oct. 3, 2022).

186. *What is IUU Fishing*, EU IUU FISHING COAL., <http://www.iuuwatch.eu/about/> [<https://perma.cc/XQ6K-AUYJ>] (last visited Oct. 3, 2022). The EU IUU Fishing Coalition is an alliance composed of five NGOs to combat IUU fishing: the Environmental Justice Foundation, Oceana, the Nature Conservancy, the Pew Charitable Trusts and WWF. *Id.*

187. Julie Janovsky, *EU Fights Illegal Fishing, One Card at a Time*, THE PEW CHARITABLE TRS. (Aug. 1, 2018), <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/08/01/eu-fights-illegal-fishing-one-card-at-a-time> [<https://perma.cc/LD7F-PZH2>]. The EU implemented Regulation (EC) No. 1005/2008 to prevent, deter, and eliminate IUU fishing practices on an international scale. *Id.* The Regulation pioneers a carding system and utilizes the EU’s market power to improve fisheries and ocean conservation efforts worldwide. *Id.*

188. *EU Hosts Meeting on the Port State Measures Agreement to Reinforce the Global Fight against Illegal Fishing*, EUROPEAN COMM’N (May 28, 2021), https://ec.europa.eu/oceans-and-fisheries/news/eu-hosts-meeting-port-state-measures-agreement-reinforce-global-fight-against-illegal-fishing-2021-05-28_en [<https://perma.cc/JF4A-YSQ8>] [hereinafter *EU PSMA Meeting*].

189. *Id.*

190. *The Illegal, Unreported and Unregulated Fishing Index*, *supra* note 30.

United States are part of the EU (Belgium, Poland, Latvia, and Bulgaria).¹⁹¹

In its attempts to conquer the IUU fishing issue, the EU has become a leading example for the world.¹⁹² Though not flawless, the EU's approach in tackling IUU fishing proves that it is a force to be reckoned with and a key actor in the war against IUU fishing. Thus, the EU should be looked to as a source of inspiration.¹⁹³ The United States can utilize the EU's approach in three ways: (1) encouraging non-treaty members to join the Port State Measures Agreement; (2) leveraging non-governmental organizations (NGOs) to alleviate pressure; and (3) implementing a carding system similar to that of the EU.

1. The United States Should Encourage Coastal States to Join the Port State Measures Agreement

One difficult setback in the fight against IUU fishing is the lack of a global, synchronized front. IUU fishermen undoubtedly deviate from countries that ban IUU fishing to those that do not enforce such laws.¹⁹⁴ In other words, one country's management practices may be challenged by another country "if the latter is unwilling or unable to implement strong practices—or worse, if it actively or tacitly condones IUU fishing."¹⁹⁵ In this way, IUU fishing "erodes collective global maritime governance" and continues to succeed in areas of weak global management.¹⁹⁶ It is imperative for countries, especially port states, to work together in a consistent manner with a coordinated framework.¹⁹⁷ If coastal countries work together to strictly govern access to their ports, the IUU crisis would shrink significantly. To best achieve this goal, the United States must encourage coastal countries to join the Port State Measures Agreement

191. *Id.*

192. *EU Leadership for Global Change*, *supra* note 185.

193. *Id.*

194. Sarah Hogan & Eri Oki, *A Big Win in the Fight Against Illegal Seafood – Lessons from the Coalition That Made it Happen*, THE DAVID & LUCILE PACKARD FOUND. (Mar. 29, 2021), <https://www.packard.org/insights/perspectives/a-big-win-in-the-fight-against-illegal-seafood-lessons-from-the-coalition-that-made-it-happen/> [<https://perma.cc/7D99-TR5K>].

195. Michael Sinclair, *The National Security Imperative to Tackle Illegal, Unreported, and Unregulated Fishing*, BROOKINGS (Jan. 25, 2021), <https://www.brookings.edu/blog/order-from-chaos/2021/01/25/the-national-security-imperative-to-tackle-illegal-unreported-and-unregulated-fishing/> [<https://perma.cc/HH9F-G6W5>].

196. Vann, *supra* note 65.

197. Sinclair, *supra* note 195.

(PSMA)—the first and only binding international agreement that specifically targets IUU fishing—to prevent, deter, and eliminate illegal, unreported, and unregulated fishing.¹⁹⁸

The PSMA has a lengthy history, spanning almost four decades.¹⁹⁹ Beginning in 1982, the United Nations Convention on the Law of the Sea met to address port state measures (PSMs). However, the issues discussed involved marine pollution rather than IUU fishing.²⁰⁰ In fact, the term “IUU fishing” went unemployed until 1997.²⁰¹ Nevertheless, more fishery-related issues reached the forefront in the years that followed the 1982 Convention meeting.²⁰² These concerns were highlighted through the passage of the 1993 FAO Compliance Agreement, the 1995 Code of Conduct for Responsible Fisheries, the 1995 UN Fish Stocks Agreement, and the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.²⁰³ Additionally, in 2005, the FAO Committee on Fisheries (COFI) recommended the Model Scheme on Port State Measures to Combat IUU Fishing, a soft framework which suggested “minimum standards for PSMs, requiring appropriate implementation at the regional or national level.”²⁰⁴

In the following year, a review conference for the 1995 UN Fish Stocks Agreement suggested redeveloping the Model Scheme into a “global, legally binding instrument.”²⁰⁵ After creating, reviewing, and negotiating this concept, the final PSMA passed during the 2009 FAO Conference under Article XIV of the FAO Constitution.²⁰⁶ Yet, the PSMA required 25 parties to enter the Agreement to be fully binding. The FAO, alongside numerous states, regional fisheries management organizations (RFMOs), and NGOs, began to persuade port states to join the PSMA.²⁰⁷ These efforts came to fruition on June 5, 2016, when 30 parties, including

198. *Agreement on Port State Measures Agreement (PSMA)*, FAO, <https://www.fao.org/port-state-measures/en/> [<https://perma.cc/8MQB-SPM2>] (last visited Oct. 3, 2022).

199. *Id.*

200. *Id.*

201. Kock, *supra* note 80.

202. *Agreement on Port State Measures (PSMA): Background: History*, FAO, <https://www.fao.org/port-state-measures/background/history/en/> [<https://perma.cc/B2VS-ELUM>] (last visited Oct. 3, 2022).

203. *Id.*

204. *Id.*

205. *Id.*

206. *Id.*

207. *Id.*

the United States, entered the treaty.²⁰⁸ The profound significance of this date was later acknowledged in 2018 when the General Assembly of the United Nations (UNGA) declared June 5th the International Day for the Fight Against IUU Fishing.²⁰⁹

The PSMA is an incredible tool for the world to create a unified front against IUU fishing. There are many global benefits from the treaty's implementation and enforcement.²¹⁰ For starters, the PSMA sets a global standard for port inspections.²¹¹ In accordance with the PSMA, ports can inspect or completely deny access to any vessel suspected of participating in IUU fishing.²¹² This national legislation incentivizes fishermen to cooperate under the risk of losing their catch or financial profits.²¹³ In this way, the PSMA thwarts IUU fish from reaching national and international markets.²¹⁴ Alongside the PSMA's express consequences for vessels engaged in IUU fishing, the treaty addresses those merely *assisting* in IUU fishing. For example, the PSMA "requires action against vessels that engage in supportive activities such as refueling or transshipping fish from IUU fishing vessels at sea."²¹⁵ Several countries have prohibited trade with other countries that lack similar port state measures.²¹⁶

Additionally, the PSMA provides positive incentives for fishery conservation and management.²¹⁷ The FAO has stated that "[t]he effective implementation of the PSMA ultimately contributes to the long-term conservation and sustainable use of living marine resources and marine ecosystems."²¹⁸ This is evidenced by the PSMA's improved data sharing and communications between the treaty's participating countries, regional fisheries management organizations (RFMOs), and enforcement

208. *Id.*

209. *International Day Against IUU Fishing*, FAO, <https://www.fao.org/iuu-fishing/background/international-day-against-iuu-fishing/en/> [<https://perma.cc/RX9Z-23FC>] (last visited Oct. 3, 2022).

210. *Benefits of Implementing PSMA*, FAO, <https://www.fao.org/port-state-measures/background/benefits-implementing-psma/en/> [<https://perma.cc/LJ83-YXRS>] (last visited Oct. 3, 2022).

211. *Implementing Port State Measures Agreement*, *supra* note 21.

212. *Benefits of Implementing PSMA*, *supra* note 210.

213. *Id.*

214. *Id.*

215. *Implementing Port State Measures Agreement*, *supra* note 21.

216. *Benefits of Implementing PSMA*, *supra* note 210.

217. *Implementing Port State Measures Agreement*, *supra* note 21.

218. *Agreement on Port State Measures Agreement*, FAO, <https://www.fao.org/port-state-measures/en/> [<https://perma.cc/8MQB-SPM2>] (last visited Oct. 3, 2022).

agencies.²¹⁹ This expanded data sharing increases the existing information on IUU fishing vessels and practices worldwide by amplifying the “ability to detect infractions and stop IUU-caught products from entering into commerce.”²²⁰ Moreover, the PSMA calls for stricter standards regarding international labor, safety, and pollution onboard all fishing vessels.²²¹ These standards heighten the world’s potential to combat IUU fishing and put a stop to those involved in such practices.²²²

For these reasons, the PSMA provides an effective global approach to finally cease IUU fishing practices in international waters.²²³ Unfortunately, only 72 countries have adopted the agreement thus far,²²⁴ representing a little more than a third of the world’s countries and almost two thirds of the world’s seafood imports.²²⁵ Yet, for the PSMA to reach its maximum potential, *all* coastal countries must participate in the harmonized solution.²²⁶

The EU has been especially involved with the PSMA since its original passage. As one of the first parties to sign onto the treaty, the EU “consistently promote[s] its ratification and implementation by the largest number of countries.”²²⁷ The EU has also hosted and chaired worldwide meetings to stress the power of the PSMA and promote its implementation—the most recent taking place from May 2 to May 6, 2022.²²⁸

Although the United States already joined the PSMA, it must continue to promote treaty participation to other countries like the EU. As the

219. *Implementing Port State Measures Agreement*, *supra* note 21.

220. *Id.*

221. *Benefits of Implementing PSMA*, *supra* note 210.

222. *Id.*

223. Vann, *supra* note 65.

224. These countries include, but are not limited to, Australia, the Bahamas, Canada, Costa Rica, Iceland, Indonesia, Japan, Madagascar, the Philippines, the Russian Federation, South Africa, Thailand, and Vietnam. *Implementing Port State Measures Agreement*, *supra* note 21.

225. Mike Gravitz, *Port State Measures Agreement*, MARINE CONSERVATION INST. (June 3, 2016), <https://marine-conservation.org/on-the-tide/port-state-measures-agreement/> [https://perma.cc/MUP5-QJVH].

226. Vann, *supra* note 65.

227. *EU PSMA Meeting*, *supra* note 189.

228. *Agreement on Port State Measures Agreement (PSMA): First PSMA Regional Coordination Meeting Held in Fiji*, FAO (Oct. 5, 2022), <https://www.fao.org/port-state-measures/news-events/detail/en/c/1507952/#:~:text=The%20first%20in%20a%20series%20of%20week-long%20regional,form%2C%20in%20Nadi%2C%20Fiji%2C%20from%202-6%20May%202022> [https://perma.cc/N8YM-V6UK].

world's leader in seafood imports, the United States bears global responsibility to fight IUU fishing, a feat the PSMA can accomplish.²²⁹ Yet, until all coastal countries join the treaty, the PSMA cannot ensure total global governance. By encouraging countries to join, the United States has the power to protect global, domestic, and even local Louisiana fishermen from illegal and unfair competition.²³⁰ Moreover, promoting the PSMA ensures safer seafood in the international, national, and local markets, while also protecting the daily seafood consumer.²³¹ The FAO maintains that "U.S. fishermen, seafood buyers, and consumers will benefit from broad, global implementation of the agreement."²³² Thus, the United States should actively encourage non-parties to finally sign on to the PSMA so that it may benefit from a global, comprehensive solution—one that can intercept IUU fishing at its source.

2. The United States Should Leverage NGOs to Alleviate Stress Off the Government

Another source of inspiration for the United States in the fight against IUU fishing is the EU's utilization of non-governmental organizations (NGOs).²³³ NGOs cover "a variety of groups, with the only requirement being that they do not fall within the organizational structure of a State."²³⁴ To combat IUU fishing, the EU currently employs five NGOs in an alliance named the EU IUU Fishing Coalition.²³⁵ This coalition aids "the EU and its Member States with improving measures that prevent seafood

229. *Implementing Port State Measures Agreement*, *supra* note 21.

230. *Id.*

231. *Id.*

232. *Id.*

233. Sinclair, *supra* note 195.

234. Solène Guggisberg, *The Roles of Nongovernmental Actors in Improving Compliance with Fisheries Regulations*, WILEY ONLINE LIBRARY (July 23, 2019), <https://onlinelibrary.wiley.com/doi/full/10.1111/reel.12304> [<https://perma.cc/M6UY-5ABT>].

235. The Coalition includes the Environmental Justice Foundation, Oceana, the Nature Conservancy, the PEW Charitable Trusts, and WWF. *Collaborations: IUU*, OCEANA, <https://europe.oceana.org/en/collaborations-iuu#:~:text=COALITIONS,Regulation%20around%20this%20global%20issue> [<https://perma.cc/4N2N-XNZV>] (last visited Oct. 3, 2022); *Managing External and International Fishing Activities*, EU IUU FISHING COAL., <http://www.iuuwatch.eu/about/> [<https://perma.cc/XQ6K-AUYJ>] (last visited Oct. 3, 2022).

products linked with IUU fishing from entering the EU market and works to strengthen the EU's external fleet Regulation."²³⁶

The United States should make use of NGOs that are willing to offer their time and energy to combat this global threat.²³⁷ The United States alone contains 1.5 million NGOs advocating for various issues.²³⁸ Within this sea of organizations, almost 15,000 focus on environmentalism and animal welfare.²³⁹ These NGOs are typically volunteer-run organizations that function on private donations from all over the world.²⁴⁰ Thus, NGOs "have the ability to make immediate impacts in a significantly shorter time period, at a fraction of the cost, than it would take to stand-up and equip instruments of a nation's maritime forces for global enforcement duties."²⁴¹ In fact, NGOs have already proven their worth in the fight against IUU fishing and have made major impacts in the endeavor.²⁴² NGOs, such as the Environmental Justice Foundation and Greenpeace, frequently identify IUU fishing vessels "through monitoring-at-sea programmes, desk studies or a combination of both."²⁴³ The Global Fishing Watch generates cutting edge technology to monitor IUU fishing vessels and activities.²⁴⁴ Even though the aforementioned NGO efforts only detect a small fraction of IUU fishing in an individual capacity, employing and utilizing NGOs collectively would significantly reduce the

236. *Managing External and International Fishing Activities*, *supra* note 235. The fleet Regulation governs the EU's fishing fleet outside EU waters and non-EU vessels operating in EU waters. *Id.* "In January 2018, the Regulation on the Sustainable Management of External Fishing Fleets (SMEFF) was brought into force, thereby repealing its predecessor, the Fishing Authorisation Regulation." *Id.*

237. *Leveraging NGOs and Volunteerism for Maritime Surveillance Against IUU Fishing*, CIMSEC (Oct. 20, 2020), <https://cimsec.org/leveraging-ngos-and-volunteerism-for-maritime-surveillance-against-iuu-fishing/> [<https://perma.cc/VBG5-KN7S>] [hereinafter *Leveraging NGOs and Volunteerism*].

238. BUREAU OF DEMOCRACY, *supra* note 19.

239. Brice S. McKeever, *The Nonprofit Sector in Brief 2018: Public Charities, Giving, and Volunteering*, NAT'L CTR. FOR CHARITABLE STATS. (Nov. 2018), <https://nccs.urban.org/publication/nonprofit-sector-brief-2018#the-nonprofit-sector-in-brief-2018-public-charities-giving-and-volunteering> [<https://perma.cc/P2F4-RDD6>].

240. *Leveraging NGOs and Volunteerism*, *supra* note 237.

241. *Id.*

242. Guggisberg, *supra* note 234.

243. *Id.*

244. The Global Fishing Watch was founded by Oceana, Skytruth, and Google. *Id.*

overall problem.²⁴⁵ It would be imprudent for the United States to fail to “enlist the help of volunteers and NGOs to help defend their fisheries and bolster capacity.”²⁴⁶

Because NGOs often receive international donations, they can also provide assistance in territories where the U.S. government treads carefully. For example, in Latin America, “the U.S. must walk a more delicate line since interventionist policies of the past are still raw in some collective memories.”²⁴⁷ Similarly, other governments apprehensive about partnering with the United States may feel more at ease communicating and receiving aid from NGOs rooted in those areas.²⁴⁸ With NGO assistance, maritime sovereignty would finally be enforced in areas that have historically struggled. The United States should leverage NGOs as their “liaisons” in this way.²⁴⁹

A word of caution: NGOs are not without their faults. Some NGOs have occasionally failed to follow government policy and subsequently triggered controversy. For example, in 2013, the U.S. Court of Appeals for the Ninth Circuit reprimanded the NGO “Sea Shepherd” for conducting piracy activities against a Japanese whaling vessel.²⁵⁰ These practices involved “aggressive maneuvering, ramming, and throwing bottles filled with noxious liquids.”²⁵¹ Nevertheless, not all NGOs participate in criminal or questionable behavior, and one wayward NGO does not render all NGOs immoral. International maritime law in the world’s oceans has also “proven successful in taming some of the more aggressive tactics utilized by direct-action NGOs.”²⁵² In short, the United States should utilize NGOs but also exercise extreme caution when selecting ones to partner with.²⁵³

245. *Id.*

246. *Leveraging NGOs and Volunteerism*, *supra* note 237.

247. Trevor Phillips-Levine et al., *How NGOs Can Help Keep Tabs on China's Illegal Fishing Activity*, THE MARITIME EXEC. (Oct. 20, 2020, 2:11 PM), <https://www.maritime-executive.com/index.php/editorials/how-ngos-can-help-keep-tabs-on-china-s-illegal-fishing-activity> [<https://perma.cc/S6H2-25RC>].

248. *Leveraging NGOs and Volunteerism*, *supra* note 237.

249. *Id.*

250. Alan Yuhas, *Sea Shepherd Conservation Group Declared 'Pirates' in US Court Ruling*, THE GUARDIAN (Feb. 27, 2013, 6:37 PM), <https://www.theguardian.com/environment/2013/feb/27/sea-shepherd-pirates-us-court> [<https://perma.cc/UJ2R-J6AB>].

251. *Leveraging NGOs and Volunteerism*, *supra* note 237.

252. *Id.*

253. Sinclair, *supra* note 195.

NGOs have the potential to relieve government stress in the ongoing battle against IUU fishing. Utilizing NGOs would remove a substantial burden from naval and law enforcement vessels by utilizing civilian groups willing to volunteer in their homeland and abroad. All the while, NGOs would gain “increased support and promotion of their mission.”²⁵⁴ In recruiting NGO’s, the United States can capitalize on the passionate citizen’s desire to protect the environment from the harms of IUU fishing.²⁵⁵ Thus, the United States should leverage NGOs as “force multipliers” and partners in global cooperation.

3. The United States Should Implement a Carding System Similar to That of the EU

In 2010, the EU implemented a unique regulation to prevent, deter, and eliminate IUU fishing practices.²⁵⁶ Regulation (EC) No. 1005/2008²⁵⁷ takes advantage of the EU’s market power to improve fisheries and ocean conservation worldwide, ensuring countries abide by their own management rules as well as international ones.²⁵⁸ Rooted in transparency, the Regulation “does not establish new rules,” but “simply reiterates existing international obligations of port, coastal, flag and market states.”²⁵⁹ The Regulation’s objectives include: carefully monitoring its imports and exports in accordance with international standards; issuing IUU vessel lists on a regular basis; barring states that ignore IUU fishing practices; and penalizing any EU operators who engage in IUU fishing anywhere in the world.²⁶⁰ This Regulation pioneered a catch certification system (also known as the carding system) applicable to any nation that has trading relations with the EU.²⁶¹ The EU IUU Fishing Coalition,

254. *Leveraging NGOs and Volunteerism*, *supra* note 237.

255. *Id.*; Sinclair, *supra* note 195.

256. *Background to the Regulation*, EU IUU FISHING COAL., <http://www.iuuwatch.eu/new-background-to-the-iuu-regulation/> [https://perma.cc/G68A-JK A6] (last visited Oct. 3, 2022).

257. *Council Regulation (EC) No 1005/2008*, UK LEGISLATION, <https://www.legislation.gov.uk/eur/2008/1005/contents> [https://perma.cc/KSK9-HV5E] (last visited Oct. 3, 2022).

258. Janovsky, *supra* note 187; *Background to the Regulation*, *supra* note 256.

259. Virginijus Sinkevicius, *Fighting for the Ocean: The Story of Tackling IUU*, EURACTIV (Dec. 9, 2020), <https://www.euractiv.com/section/energy-environment/opinion/fighting-for-the-ocean-the-story-of-tackling-iuu/> [https://perma.cc/NF9F-H9DZ].

260. *Background to the Regulation*, *supra* note 256.

261. Janovsky, *supra* note 187.

composed of NGOs, has also worked towards implementing this Regulation.²⁶²

The EU's pioneer carding system utilizes different colored cards "to indicate which trade measures it can employ with third party countries suspected or known to export IUU fishing products."²⁶³ The card system is relatively simple to understand: a yellow card represents an official warning and a red card signifies countries that have not reformed their identified deficiencies.²⁶⁴ Red-carded countries are banned from exporting seafood into the EU; however, a government can recover its right to export into the EU by receiving a green card.²⁶⁵ The European Commission issues these green cards to indicate the country has addressed its inadequacies and made necessary improvements.²⁶⁶ The system is triggered when flag states fail to certify that their products align with international laws.²⁶⁷ From there, the EU works to provide assistance with the goal of improving the country's legal framework and operations.²⁶⁸ The EU engages in "a more formal dialogue with the country, proposes actions, and ensures that a suitable plan is implemented to remedy the identified shortcomings."²⁶⁹ Most countries respond immediately and never fall to red-card status.²⁷⁰ However, the few uncooperative countries that fail to implement such measures will receive a red card.²⁷¹

Since the carding system has been implemented, the EU has sparked dialogue with more than 60 countries. Currently, eight countries bear yellow cards, and only three countries (Cambodia, Comoros, and St. Vincent and the Grenadines) maintain red cards.²⁷² Fifteen countries, however, hold green cards, demonstrating improvements and real, tangible change.²⁷³ This speaks volumes for how the EU's carding system motivates countries to make structural changes to their governments "by

262. *Id.*

263. See ALIN KADFAK, SUSTAINABLE NETWORKS: MODES OF GOVERNANCE IN THE EU'S EXTERNAL FISHERIES POLICY RELATIONS UNDER THE IUU REGULATION IN THAILAND AND THE SFPA WITH SENEGAL (2021).

264. Janovsky, *supra* note 187.

265. *Id.*

266. *Id.*

267. *Background to the Regulation*, *supra* note 256.

268. *Id.*

269. Sinkevicius, *supra* note 259.

270. *IUU Fishing in General and in Ghana*, *supra* note 20.

271. *Id.*

272. *EU Carding Decisions*, EU IUU FISHING COAL., <http://www.iuuwatch.eu/map-of-eu-carding-decisions/> [<https://perma.cc/9RUK-WK3Y>] (last visited Oct. 3, 2022); EUR. COMM'N, *supra* note 20.

273. *EU Carding Decisions*, *supra* note 272.

reinforcing national fisheries administrations and providing adequate tools to monitor, detect and address IUU fishing.²⁷⁴ For example, before the carding system, Ghana was teeming with IUU fishing activities.²⁷⁵ However, with the EU's assistance, the country witnessed a massive decline in IUU fishing practices.²⁷⁶ The card system has renewed "the artisanal in-shore fishing industry" in Ghana, "and fishermen there say their catch has risen to levels not seen in 25 years."²⁷⁷

The latest green card recipients include Thailand and Taiwan in 2019 and Kiribati in 2020. Leaders from these once-struggling countries note the impression the EU has made on the world with their carding system.²⁷⁸ In 2012, the Republic of Guinea received a yellow card followed by a red card the next year. The country made vital improvements that changed its status to green by 2016.²⁷⁹ Andre Loua, former Minister for Fisheries and Aquaculture for the Republic of Guinea, spoke of Guinea's commitment to the EU's system and subsequent stability: "[W]e have not only been keeping up the pace of reforms, monitored our EEZ, but strengthened our legislation to punish offenders who risk not complying with the Fisheries Code."²⁸⁰ Similarly, Belize received a yellow card in 2012, a red card in 2013, and a green card in 2014.²⁸¹ Robert Robinson, Deputy Director of High Seas Fisheries in Belize, commented how Belize's red-card status immediately prompted the country to reform its management regime: "We first had to recognize that it was not the European Union trying to bully a third world nation so much as they were trying to help us to bring our level of compliance with international regulations up to that international standard that is acceptable."²⁸²

In a 2019 study, Professor U. Rashid Sumaila from the University of British Columbia contemplated what it would look like if two leading seafood-importing countries (the United States and Japan) established a carding system alongside the EU.²⁸³ After various tests and analyses,

274. Sinkevicius, *supra* note 259.

275. Janovsky, *supra* note 187.

276. *Id.*

277. *Id.*

278. *What is IUU Fishing*, *supra* note 186.

279. *Id.*

280. *Id.*

281. *Id.*

282. *Id.*

283. U. Rashid Sumaila, *A Carding System as an Approach to Increasing the Economic Risk of Engaging in IUU Fishing?*, MARINE FRONTIERS (Feb. 13, 2019), <https://www.frontiersin.org/articles/10.3389/fmars.2019.00034/full#:~:te>

Professor Sumaila determined that the combined effect of carding systems in three major countries “would increase the worldwide effect of the system in stopping IUU fishing.”²⁸⁴ If unimplemented, Professor Sumaila found that the EU alone would continuously fall short of tackling the majority of IUU fishing worldwide, even with such a successful system in place.²⁸⁵ In order for the carding system to be more impactful, leading countries in the seafood industry, specifically Japan and the United States, need to implement a similar system.²⁸⁶ Without such collaboration, “it would be quite possible for these exporting countries to redirect the fish they sell to the EU to Japan and/or the United States when faced with a red card from the EU.”²⁸⁷ Overall, this type of system would enhance cooperation and prompt other countries to finally take action.²⁸⁸ Thus, the United States should implement a similar carding system to not only increase worldwide collaboration, but also to protect its citizens from lingering IUU fishing practices.

The United States would be more than wise to implement a carding system similar to the EU’s. This catch certification system is a catalyst for international change and has proven to be more than sanctions; instead, it is an influential system focused on overcoming weaknesses with guidance, rather than a mere slap on the wrist.²⁸⁹ Indeed, the system succeeds because it offers support and motivation to struggling countries.²⁹⁰ Moreover, the EU carding system ignites dialogue with other countries outside the EU.²⁹¹ These conversations remind the EU to focus on what can be done domestically and abroad.²⁹² Thus, the United States should also utilize this system to serve as a bridge for countries to finally arrive at worldwide cooperation. After all, international laws and goals cannot fully thrive unless all participate in them.

xt=This%20regulation%20stipulates%20that%20the,issuance%20of%20a%20red%20card [https://perma.cc/A44D-LUJB].

284. *Id.*

285. *Id.*

286. *Id.*

287. *Id.*

288. *Id.*

289. Sinkevicius, *supra* note 259.

290. *Id.*

291. *Id.*

292. *Id.*

CONCLUSION

Louisiana, the United States, and the entire globe face an everyday threat from illegal, unregulated, and unreported fishing. The victims of IUU fishing range from the average, hardworking fisherman, to the child laborer, and even the consumer. Until the massive IUU fishing crisis is resolved at the international level, it will never be resolved nationally, much less locally in Louisiana. However, all is not lost. A world without IUU fishing is possible—there need only be proper cooperation, governance, and adherence to the law. The United States stands in an advantageous position to function as the world's leader in the war against IUU fishing. For these reasons, an expansion of the Seafood Import Monitoring Program (SIMP) is necessary.

The Illegal Fishing and Forced Labor Prevention Act is a critical expansion that will fill SIMP's holes and enhance the program's enforcement. Activists, non-profits, and leaders alike in the seafood industry support this expansion. However, with or without the Act's passage, the United States must still work on the global frontlines to promote an IUU-free future. The EU has demonstrated an effective way to do so while simultaneously providing guidance and inspiration. Though not perfect, the EU has succeeded in various approaches to curb IUU fishing. Therefore, the United States should implement similar, fruitful measures. First, the United States should promote the PSMA and encourage remaining port countries to join. The battle will only continue to rage if the world's ports are not united. Second, the United States should consider leveraging NGOs in an effort to alleviate government stress and foster citizen involvement. Last, the United States should administer a carding system similar to the European approach. The carding system not only prevents IUU fish from entering EU markets but also instills vulnerable countries with the motivation to change.

Though such solutions may not be foolproof, they will undoubtedly carry the world closer to a day without IUU fishing. Presently, IUU fishing continues to threaten communities and livelihoods, often undetected or overlooked. The United States must implement additional measures for the globe, the nation, and Louisiana until the problem is eradicated. Unless the United States leads the world in a united front against the crisis, true danger will continue to trawl the ocean's waters—remaining illegal, unregulated, and unreported.