

USINDOPACOM J06/SJA TACAID SERIES

TOPIC: ILLEGAL, UNREPORTED, AND UNREGULATED FISHING**BLUF** 

- Illegal, Unreported, and Unregulated (IUU) fishing is a significant threat to the sovereign rights, food security, and economic stability of countries throughout the Indo-Pacific region and around the world.
- The People's Republic of China (PRC) is the world's largest exploiter of global fisheries.¹
- Several factors suggest that the PRC is complicit in IUU fishing or at least tolerant of a deep water fishing fleet that systematically engages in IUU fishing.² Much of this activity is conducted at the expense of the PRC's neighbors.
- Every flag state is obligated to take measures to prevent IUU fishing by vessels flying its flag and to comply with legal requirements to conserve and manage the marine environment and living marine resources.³
- IUU fishing in the exclusive economic zones (EEZs) of other countries violates international law as reflected in the United Nations Convention on the Law of the Sea (UNCLOS), erodes the rules-based international order, flouts sovereign rights, solidifies excessive maritime claims, secures an oversized share of finite resources, and unfairly seizes economic access at the expense of coastal states and populations.
- USINDOPACOM works with the U.S. interagency and with allies and partners to protect sovereignty, promote adherence to international law, and uphold the rules-based international order.
- USINDOPACOM stands united with allies and partners in recognizing the danger of IUU fishing and supporting actions that preserve the rights of coastal states to use and benefit from their natural resources.

WHY THIS MATTERS 

- IUU fishing exacerbates unsustainable levels of extraction that deplete global fisheries, upend global and regional fisheries governance, and negatively impact U.S. allies and partners.
- When foreign fishing vessels operate unchallenged in contested waters and other nations' EEZs, their presence can be used to solidify excessive maritime claims. This is especially true for the PRC, whose fishing vessels often work alongside—or are a part of—a maritime militia that seeks to deny access and enforce self-defined control over vast portions of the South China Sea.⁴
- In addition to violating sovereign resource rights, IUU fishing robs local populations of finite resources and local fishermen of gainful employment.
- The United States is resolutely committed to combating IUU fishing, but no single nation can fully address the scope of this problem. A coordinated effort amongst likeminded allies and partners that leverages all facets of national power to support international laws and norms is required.
- It is the responsibility of all nations to promote and ensure respect for sovereign rights and preservation of the marine ecosystem that feeds the entire world.

DETAILED DISCUSSION **IUU FISHING IS A GROWING, GLOBAL ISSUE**

- Nearly half of the world's population relies on fish for twenty percent or more of its animal protein intake.⁵ Estimates indicate that one in five fish caught around the world originate from IUU fishing.⁶ Given that the value of annual global fish production is estimated to exceed \$400 billion, IUU fishing accounts for potentially billions of dollars in economic losses for coastal governments, including unpaid taxes, landing fees, and export revenue.

- **IUU fishing is a pervasive, far-reaching security threat.**⁷ IUU fishing activities violate international laws and norms, jeopardize ocean ecosystems and sustainable fisheries, damage national economies, spur other transnational crimes,⁸ and imperil natural resources critical to global food security.⁹
 - **Illegal Fishing** refers to fishing activities conducted in contravention of applicable laws and regulations, including those laws and rules adopted at the regional and international level.¹⁰
 - **Unreported Fishing** refers to fishing activities that are not reported or misreported to relevant authorities in contravention of national laws and regulations or reporting procedures of a relevant regional fisheries management organization (RFMO).¹¹
 - **Unregulated Fishing** occurs in areas or for fish stocks for which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with state responsibilities.¹²
- Examples of IUU fishing include fishing without a license or quota for certain species, failing to report catches or making false reports, keeping fish that are protected by regulations, fishing in closed areas/seasons, and using prohibited fishing equipment.¹³
- The problem of **IUU fishing stems increasingly from state-supported deep water fishing fleets**, including massive trawlers accompanied by sustenance vessels, freezers, and transport vessels that allow continuous operations in large groups with global reach, often without regard for fisheries laws or consent of coastal nations.¹⁴
- This **threat is particularly acute for Pacific Island nations and developing economies that depend on fisheries for food security and export income.**¹⁵ The inherent nature of IUU fishing makes it difficult to accurately quantify the full global economic impacts resulting from these activities, but it is widely accepted that it is in the billions, or even tens of billions, of dollars each year. Moreover, Pacific Island nations exceed global averages and rely on fish for thirty percent of their diet and more than fifty percent of their daily protein intake.¹⁶ IUU fishing deprives access to this valuable protein source in vulnerable coastal states.



Chinese fishing boats heading out to sea from Zhoushan in Zhejiang province

Figure 1. IUU Fishing Examples

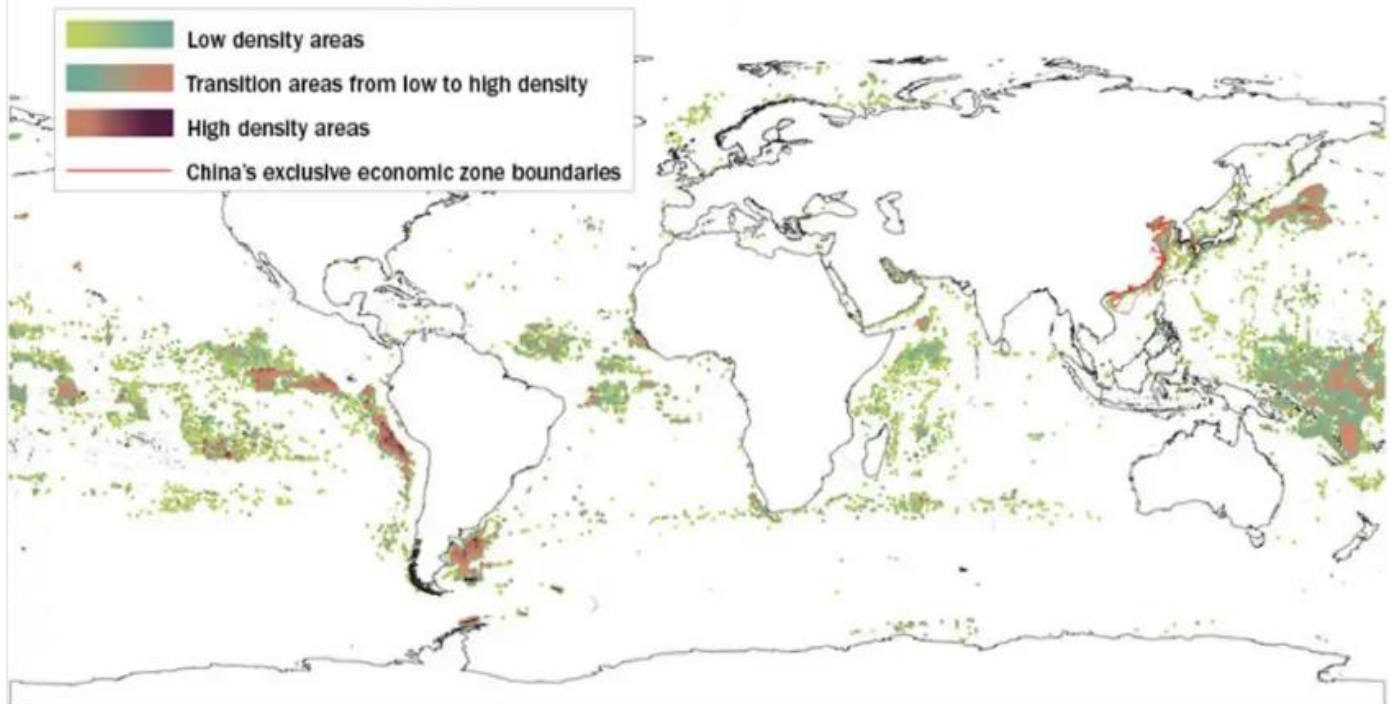


Source: MRAG, Review of Impacts of Illegal, Unreported and Unregulated Fishing on Developing Countries, 2005, at [http://transparentsea.co/images/5/58/Illegal\[1\]fishing-mrag-report.pdf](http://transparentsea.co/images/5/58/Illegal[1]fishing-mrag-report.pdf).

IUU FISHING VIOLATES WELL-ESTABLISHED INTERNATIONAL LAW

- International law as reflected in UNCLOS grants an EEZ extending 200 nautical miles seaward of the baselines from which the coastal nation's territorial seas are measured.¹⁷
- ***Within an EEZ, the coastal nation enjoys exclusive sovereign rights to the use and enjoyment of the natural resources***, and accompanying jurisdiction to protect and preserve such resources.¹⁸
- With respect to fishing, ***international law further provides coastal nations the right to “determine the allowable catch of the living resources in its exclusive economic zone”*** and to “take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance.”¹⁹
- The International Tribunal for the Law of the Sea (ITLOS) has opined that ***the flag state bears responsibility to ensure compliance with international law by its vessels.***²⁰
 - In a 2015 opinion, ITLOS held that flag states are obligated to conserve and manage living marine resources as part of their duty to protect and preserve the marine environment, and that every flag state must exercise “due diligence” in taking steps to ensure vessels sailing under its flag comply with that obligation.²¹
 - As applied to IUU fishing, ITLOS held that “this is an obligation ‘to deploy adequate means, to exercise best possible efforts, to do the utmost’ to prevent IUU fishing by ships flying its flag.”²²
 - This obligation ostensibly requires every state to establish adequate and enforceable legal and regulatory frameworks to avert IUU fishing by vessels sailing under its flag before such vessels engage in IUU fishing.
- The PRC reportedly catches more than five billion pounds of seafood every year and accounts for fifty percent of worldwide fish consumption.²³ The PRC's seafood industry is estimated to be worth more than thirty-five billion dollars and has created fifteen million jobs.²⁴
- ***With dwindling fish stocks near its own shores, the PRC's distant water fleets—the world's largest²⁵—venture thousands of miles away from the PRC mainland and engage in an array of harmful fishing practices to meet demand.***²⁶ In 2019 and 2021, the Global Initiative Against Transnational Organized Crime identified the PRC as the worst-scoring coastal country with regard to IUU fishing practices.²⁷

FISHING ACTIVITY BY PEOPLE'S REPUBLIC OF CHINA'S DISTANT-WATER FISHING FLEET



Sources: Overseas Development Institute report: "China's distant-water fishing fleet: scale, impact and governance," June 2020; Vulcan's Stylight

U.S. STEPS TO ADDRESS THE IUU FISHING THREAT – A JOINT, INTERAGENCY, MULTILATERAL EFFORT

- **Current legislative direction on combatting IUU fishing involves a whole-of-government approach mandated by the Maritime SAFE Act** (part of the 2020 National Defense Authorization Act (NDAA)).²⁸ The SAFE Act Working Group brings together 21 federal departments and agencies, including the Department of Defense (DoD), to address IUU fishing.²⁹ The Working Group is tasked with curtailing the global trade in seafood and seafood products derived from IUU fishing, including its links to forced labor and transnational organized illegal activity.³⁰
- The National Oceanic and Atmospheric Administration (NOAA), by statute, is the lead federal agency for countering IUU fishing. The Coast Guard is the lead federal agency for at-sea enforcement of IUU fishing and living marine resource laws.
- In June 2022, President Biden issued the Memorandum on Combating Illegal, Unreported, and Unregulated Fishing and Associated Labor Abuses, which unambiguously stated that IUU fishing is one of the greatest threats to world ocean health, food security, and economic stability.³¹
 - The policy directed multiple U.S. government departments and agencies to use a wide array of tools to address the problem. These included coordination with various foreign governments, the World Trade Organization, the European Union, and the G-7 to set tighter controls on fisheries management and to use bilateral maritime law enforcement agreements to enforce existing and future regulations.³²

- **U.S. efforts in the USINDOPACOM area of responsibility (AOR) are focused on improving surveillance, enforcement, and the capacity of allies and partners.**

Examples include:

- DoD and U.S. Coast Guard subject matter expert exchanges with coastal states across the USINDOPACOM AOR aimed at developing legal frameworks and enforcement capabilities within coastal state EEZs.
- Novel bilateral agreements with Papua New Guinea, Palau, and the Federated States of Micronesia that contain “enhanced” shiprider provisions whereby the United States is authorized by the relevant coastal state authority to conduct fisheries boardings within these countries’ EEZs without a coastal state shiprider on board.
- The Oceania Maritime Security Initiative (OMSI), a cooperative effort between DoD, the U.S. Coast Guard, and NOAA, under the auspices of USINDOPACOM, to improve maritime domain awareness (MDA) and EEZ security across the Pacific Ocean.
- The informal Partners in the Blue Pacific (PBP) initiative (involving Australia, Japan, New Zealand, the United Kingdom, and the United States) that includes a commitment to addressing the challenges of IUU fishing and maintaining MDA through cooperative partnerships across the region.³³
- The Quad’s (Australia, India, Japan and the United States) creation in 2022 of the Indo-Pacific Partnership for Maritime Domain Awareness (IPDMA) that uses tools such as commercial satellite radio frequency data collection to provide real-time information to coastal states across the USINDOPACOM AOR on activities occurring within their maritime zones.³⁴
- IUU fishing actors operate in the shadows; a broad network of allies, partners, and interagency experts is needed to root out illicit behavior, spotlight bad actors, and eradicate threats to sovereignty and prosperity.
- The challenges on the horizon involve forming more robust international partnerships, empowering regional fisheries management organizations, and supporting partner nation law enforcement efforts through shiprider, bilateral, and MDA/information-sharing agreements.³⁵
- Meeting the challenge of IUU fishing, whether by the PRC or other actors, will take a firm commitment to enhanced partnerships, decisive support to countries with limited resources, and dedicated support throughout the law enforcement cycle from detection to interception, investigation, and legal resolution.³⁶



The crew of USCGC Oliver Henry conducts an approach in support of the Pacific Islands Forum Fisheries Agency's Operation 365 and Operation Rematau to stop IUU fishing, April 2023. Image source: USINDOPACOM.

LEGAL SOLUTIONS FOR STATES AFFECTED BY IUU FISHING

- ***States that are negatively impacted by IUU fishing should consider pursuing or supporting civil litigation as a tool to deter IUU fishing, promote accountability, and receive compensation for damages.***
- In 2016, an Arbitral Tribunal convened in accordance with UNCLOS determined in a legally binding award that the PRC's activities within the Philippines' EEZ, such as illegal fishing and environmentally ruinous artificial island construction, infringed on the Philippines' sovereign rights.³⁷
- States affected by IUU fishing may consider the precedent set by this award in pursuing relief in the Permanent Court of Arbitration or in other international fora, including ITLOS or the International Court of Justice.
- ITLOS's 2015 advisory opinion provides an important framework in which states may seek to hold other states accountable through ITLOS (or other courts that may look to ITLOS for precedent) for failing to exercise "due diligence" – i.e., "deploy[ing] adequate means, to exercise best possible efforts, to do the utmost to prevent IUU fishing by ships flying its flag."³⁸
- States may be able to establish a foundation to prove failure to exercise "due diligence" by providing detailed notification and demand for action to the state whose flagged vessels are causing harm through IUU fishing. Such notification and demand might take the form of a demarche, diplomatic note, or public announcement.
- If a state fails to act following notification and demand, the affected state may be in a stronger position to demonstrate there was a failure to exercise "due diligence" and to obtain an award of damages based on a detrimental effect to its economy or fish stocks.
- Another potential legal claim could arise under the recently concluded World Trade Organization (WTO) Agreement on Fisheries Subsidies, which generally prohibits IUU fishing, bans support for fishing overfished stocks, and ends subsidies for fishing on the unregulated high seas.³⁹
- This agreement is not yet enforceable (two-thirds of WTO members must deposit an "instrument of acceptance" with the WTO). Nevertheless, it establishes important legal benchmarks for states to combat IUU fishing. Notably, the U.S. and the PRC are among 17 nations that currently accept the agreement.
- In addition to civil action by states, private persons or organizations affected by IUU fishing may wish to pursue civil litigation in an appropriate domestic court against state or non-state sponsors of IUU fishing.
- Regardless of legal enforcement, actively exposing and opposing IUU fishing could stimulate certain states to implement a more proactive approach to preventing IUU fishing as required by international law.

PROPOSED COUNTER-LAWFARE APPROACH 

**** This section offers suggested language for incorporation into communications strategies ****

- ***International law provides coastal states exclusive sovereign rights over the use and benefit of the natural resources, to include fisheries, in their exclusive economic zones***, which includes jurisdiction over the preservation and enforcement of those rights.
- ***IUU fishing violates sovereign rights and is a major international threat*** to the food security and economic stability of countries throughout the Indo-Pacific region and around the world.
- ***IUU fishing is a pervasive, far-reaching threat to the long-term economic security of Pacific Island nations***, the food security of the peoples of those nations, and the fragile maritime ecosystems that sustain livelihoods across the Pacific and around the world.
- ***IUU fishing violates international law*** as reflected in UNCLOS, erodes the rules-based international order, flouts sovereignty, solidifies excessive maritime claims, and secures an oversized share of finite resources at the expense of coastal states and populations.
- ***IUU fishing exacerbates unsustainable levels of extraction*** that are depleting global fisheries, upending global and regional fisheries governance, and negatively impacting critical U.S. allies and partners.
- In addition to violating sovereign resource rights, ***IUU fishing robs local populations*** of finite resources and local fishermen of gainful employment.
- ***IUU fishing relies on vulnerable workers and disadvantaged populations*** who are often lured on board fishing vessels under duplicitous employment arrangements and trapped for years in conditions where abuse, lack of medical care, and malnutrition exacerbate an already dangerous profession. Oversight and accountability of these labor abuses is nonexistent.

- **Vessels flying the flag of the PRC are the leading perpetrators of IUU fishing**, which is conducted at the expense of sovereign rights, economic interests, and food security of many nations in the Western and South Pacific.
- **Every flag state is obligated** to ensure that vessels flying its flag are not involved in IUU fishing or activities that undermine legal requirements to conserve and manage the marine environment and living marine resources.
- **USINDOPACOM works alongside the U.S. interagency and with allies and partners** to protect sovereignty, promote adherence to international law, and uphold the rules-based international order.
- **Addressing IUU fishing requires a multilateral effort.** USINDOPACOM supports and defends a Free and Open Indo-Pacific and stands with allies and partners in recognizing the danger of IUU fishing and supporting actions that preserve the rights of coastal nations to use and benefit from their natural resources.
- **It is the responsibility of all nations** to promote and ensure respect for sovereign rights and preservation of the marine ecosystem that feeds the entire world.

¹ Congressional Research Service (CRS) Report R47065, *China's Role in the Exploitation of Global Fisheries: Issues for Congress*, 12 Apr 2022, available at <https://crsreports.congress.gov/product/pdf/R/R47065/3> [hereinafter CRS Report]; see also White House Press Briefing, Background Press Call on the President's National Security Memorandum on Illegal, Unreported, and Unregulated Fishing, 27 Jun 2022, available at <https://www.whitehouse.gov/briefing-room/press-briefings/2022/06/27/background-press-call-on-the-presidents-national-security-memorandum-on-illegal-unreported-and-unregulated-fishing/>.

² CRS Report, *supra* note 1; see also Ian Urbina, *The Crimes Behind the Seafood You Eat*, *The New Yorker*, 9 Oct 2023, available at <https://www.newyorker.com/magazine/2023/10/16/the-crimes-behind-the-seafood-you-eat> (stating that China bolsters its fishing fleet with more than seven billion dollars a year in subsidies, as well as with logistical, security, and intelligence support).

³ See UNCLOS Art. 94.

⁴ See Urbina, *supra* note 2 (referencing research by the Center for Strategic and International Studies indicating that the PRC pays the owners of some vessels forty-five hundred dollars a day to remain in contested waters for most of the year).

⁵ U. S. Coast Guard, *IUU Fishing Strategic Outlook*, last accessed on 29 Sep 2023, available at <https://www.uscg.mil/iuufishing/>.

⁶ The spoils of IUU fishing do not solely accrue to nations that support or tolerate the activity. See U.S. Interagency Working Group on IUU Fishing, *National 5-Year Strategy for Combatting Illegal, Unreported, and Unregulated Fishing 2022-2026*, last accessed on 16 Oct 2023, available at https://media.defense.gov/2022/Oct/20/2003099271/-1/-1/0/22-0084234_NATIONALSTRATEGICPLAN_USIWGONIUFISHING.PDF. Recent reporting indicates that some U.S. supply chains are directly connected to the PRC fishing fleet. See Urbina, *supra* note 2.

⁷ U.S. Coast Guard, *supra* note 5; see also John Grady, *Coast Guard: Illegal Fishing Has Surpassed Piracy as a Global Threat*, *U.S. Naval Institute News*, 19 Jan 2023, available at <https://news.usni.org/2023/01/19/coast-guard-illegal-fishing-has-surpassed-piracy-as-a-global-threat> (noting IUU fishing surpasses piracy as global concern in maritime domain).

⁸ See NATO ACO Office of Legal Affairs, *Legal Vigilance Bulletin*, Issue 056, *Illegal Fishing in Southeast Asia: Scope, Dimensions, Impacts, and Multilateral Response*, Sep 2023 (explaining IUU fishing practices often exacerbate human trafficking; depleted fish stocks close to shore have pushed fishing vessels further afield for ever-diminishing returns, incentivizing vessel owners/operators to turn to human slavery is used as a means for lowering costs, forcing duped or co-opted individuals to work for weeks, months, or even years for little, if any pay). See also Urbina, *supra* note 2 (providing direct accounts from fishermen and their families about the duplicity, violence, and human suffering associated with PRC fishing vessels and the international staffing agencies who help crew the vessels).

⁹ NOAA, National Marine Fisheries Service (NMFS), *Understanding Illegal, Unreported, and Unregulated Fishing*, last accessed 29 Sep 2023, available at <https://www.fisheries.noaa.gov/insight/understanding-illegal-unreported-and-unregulated-fishing>.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Mike Studeman, *China's Rampant Illegal Fishing Is Endangering the Environment and the Global Economy*, *Newsweek*, 24 Jan 2023, available at <https://www.newsweek.com/chinas-rampant-illegal-fishing-endangering-environment-global-economy-opinion-1776034>. See also Urbina, *supra* note 2 (describing how advancements in technology mean that fishing vessels can now remain at sea for more than two years).

¹⁵ See NOAA, *supra* note 9; Joseph Hammond, *Chinese Fishing Fleet Poses Threat to Pacific Island Economies*, *Indo-Pacific Defense Forum*, 21 Jun 2021, available at <https://ipdefenseforum.com/2021/06/chinese-fishing-fleet-poses-threat-to-pacific-island-economies/>.

¹⁶ See Hammond, *supra* note 15; see also Food and Agriculture Organization of the United Nations, *Role of Fish in Food Security in Selected Pacific Island Countries*, Policy Brief No. 2, May 2018, available at <https://www.fao.org/fishery/fr/publication/9273>.

¹⁷ UNCLOS Art. 57.

¹⁸ UNCLOS Art. 56.

¹⁹ UNCLOS Arts. 61, 73.

²⁰ ITLOS Advisory Opinion of 2 April 2015, para. 114.

²¹ *Id.* at paras. 119-120, 127-129.

²² *Id.* at para. 129.

²³ Jennifer Runion, *Fishing for Trouble: Chinese IUU Fishing and the Risk of Escalation*, Proceedings Vol. 149, Feb 2023, available at <https://www.usni.org/magazines/proceedings/2023/february/fishing-trouble-chinese-iuu-fishing-and-risk-escalation>.

²⁴ *Id.*

²⁵ Estimates of the total number of PRC-flagged, owned, and/or operated vessels in the PRC distant-water fishing fleet range from approximately 3,000 to almost 17,000. CRS Report, *supra* note 1, at p. 11; see also Urbina, *supra* note 2 (describing that in addition to its expanding fishing fleet, the PRC owns/operates commercial fishing terminals in ninety-five foreign ports).

²⁶ See Runion, *supra* note 23.

²⁷ CRS Report, *supra* note 1; Global Initiative Against Transnational Organized Crime, *IUU Fishing Index 2021*, last accessed 29 Sep 2023, available at <https://globalinitiative.net/analysis/iuu-fishing-index-2021/>; see also Global Initiative Against Transnational Organized Crime, *IUU Fishing Index* web tool, last accessed 29 Sep 2023, available at <https://iuufishingindex.net/>.

²⁸ Nat'l Def. Auth. Act, § 3531-3572 (2020); see also Michael T. Amy, Audrey E. Gitz, Megen M. Gold, Justin G. Guthrie, Christopher et. al., *Recent Developments in Admiralty and Maritime Law*, 56 Tort Trial & Ins. Prac. L.J. 185, 224 (2021).

²⁹ Amy et. al., *supra* note 28.

³⁰ *Id.*

³¹ U.S. National Security Memorandum, *Memorandum on Combating Illegal, Unreported, and Unregulated Fishing and Associated Labor Abuses*, 27 Jun 2022, available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/06/27/memorandum-on-combating-illegal-unreported-and-unregulated-fishing-and-associated-labor-abuses/>.

³² *Id.*

³³ U.S. Department of State (DoS) Press Statement, *Strengthening Shared Understanding Among the Partners in the Blue Pacific and Pacific Islands: Illegal, Unreported and Unregulated Fishing (IUUF) and Maritime Domain Awareness*, 27 Jan 2023, available at <https://www.state.gov/strengthening-shared-understanding-among-the-partners-in-the-blue-pacific-and-pacific-islands-illegal-unreported-and-unregulated-fishing-iuuf-and-maritime-domain-awareness-mda/>.

³⁴ Government of Australia, Indo-Pacific Partnership for Maritime Domain Awareness, last accessed 27 Sep 2023, available at <https://www.pmc.gov.au/resources/quad-leaders-summit-2023/indo-pacific-partnership-maritime-domain-awareness>.

³⁵ See Runion, *supra* note 23.

³⁶ Brad McNally, *The United States Must Act to Stop Illegal Fishing in 2023*, Brookings Institution, 3 Feb 2023, available at <https://www.brookings.edu/articles/the-united-states-must-act-to-stop-illegal-fishing-in-2023/>.

³⁷ For a copy of the award, see <https://pca-cpa.org/en/news/pca-press-release-the-south-china-sea-arbitration-the-republic-of-the-philippines-v-the-peoples-republic-of-china/>.

³⁸ See McNally, *supra* note 36.

³⁹ See World Trade Organization, *United States Formally Accepts Agreement on Fisheries Subsidies*, 11 Apr 2023, available at https://www.wto.org/english/news_e/news23_e/fish_11apr23_e.htm.