



Beyond IUU Fishing: Rethinking the Regulatory Approach of International Fisheries Law

Maiko RAITA

Associate Professor, The University of Osaka, Japan

22 SEPTEMBER 2026, 49th Conference on Oceans Law & Policy

What is IUU Fishing?

- Violating or contravening national or international law *(illegal)*
- Un- or misreported *(unreported)*
- Inconsistent with or contravening conservation or management measures *(unregulated)*
- Areas or targeting species without conservation or management measures *(unregulated)*

Problems with the IUU Fishing Approach

IUU fishing:
a rule - based concept

1. Legal character of unregulated fishing

- Unregulated fishing on the high seas may be lawful under Article 87(1)(e) of UNCLOS.
- It may therefore create the impression that activities of different legal character are all illegal.

2. Insufficient environmental coverage

- Environmentally problematic fishing may fall outside domestic laws and RFMO measures.
- The IUU fishing concept focuses on compliance with existing fisheries regulations.

A New Approach under the BBNJ Agreement

Conservation of
biodiversity beyond
national jurisdiction

- Ecosystem approach
- Cross-cutting assessment of environmental impacts
- Integrated and ecosystem - oriented regulation



A de facto impact on RFMOs
through their member States

High Seas Fisheries under UNCLOS

Freedom of fishing

- Article 87(1)(e)
 - Articles 116–119
- > Conditional “freedom to fish on the high seas”

Environmental obligations

- Article 192:
marine environmental protection
- Article 194(5):
protection of rare or fragile ecosystems

Development through International Courts

- Southern Bluefin Tuna Case (1999)
- SRFC Advisory Opinion (2015)
- Chagos Marine Protection Area Arbitration (2015)
- South China Sea Arbitration (2016)

Key developments

- Broader scope of Part XII
- More specific due diligence obligations
- Environmental obligations applied to fishing

Environmentally Harmful Fishing

- Concept used in the South China Sea Arbitration
- No clear definition provided, *but...*

	IUU fishing	Environmentally harmful fishing
Conceptual basis:	Rule -based concept	Environment and ecology -based concept
Applicable law:	Fisheries treaties and RFMO measures (+ national domestic laws)	Environmental norms protecting the marine environment and biodiversity
Protected interests:	Fishery resources	Marine life, ecosystems and the surrounding environment
Temporal scope:	Violations of existing rules	Criteria may evolve with scientific knowledge and environmental risks

Conclusion

- IUU fishing remains centred on existing rules
- UNCLOS imposes broader environmental obligations
- The BBNJ Agreement reflects an ecosystem-oriented approach
- A new test must clarify what should be regulated
- “Environmentally harmful fishing” offers a possible basis

Towards ecosystem-based high-seas fisheries regulation

References

- Harrison, James. “International Fisheries Law in Pursuit of the Three Pillars of Sustainability.” *The International Journal of Marine and Coastal Law* 40, no. 4 (2025)
- Marel, Eva R. van der. “Problems and Progress in Combating IUU Fishing.” In *Strengthening International Fisheries Law in an Era of Changing Oceans*, edited by Erik J. Molenaar Richard Caddell, Hart Publishing (2020)
- Rayfuse, Rosemary. “Addressing Climate Change Impacts in Regional Fisheries Management Organizations.” In *Strengthening International Fisheries Law in an Era of Changing Oceans*, edited by Erik J. Molenaar Richard Caddell, Hart Publishing (2020)
- Scott, Shirley V., and Nengye Liu. “The Prospects of the High Seas Treaty Decisively Reducing the Negative Biodiversity Impacts of Distant-Water Fishing Operations.” *The International and Comparative Law Quarterly* 74, no. S1 (2025)
- Serdy, Andrew. “Pacta Tertiis and Regional Fisheries Management Mechanisms: The IUU Fishing Concept as an Illegitimate Short-Cut to a Legitimate Goal.” *Ocean Development and International Law* 48, no. 3–4 (2017)
- Tanaka, Yoshifumi. “Reflections on the Implications of Environmental Norms for Fishing: The Link between the Regulation of Fishing and the Protection of Marine Biological Diversity.” *International Community Law Review* 22, no. 3–4 (2020)
- 兼原敦子 (Kanehara, Atsuko). “伝統的海洋法への挑戦—国家管轄権外の生物多様性(BBNJ)の保存と持続的利用をめぐる—.” In 国家管轄権外区域に関する海洋法の新展開, edited by 坂元茂樹, 薬師寺公夫, 植木俊哉 (2021)
- 西本健太郎 (Nishimoto, Kentaro). “国際裁判所を通じた海洋環境の保護・保全義務の拡大と具体化.” 法学 86, no. 3 (2022)



Thank you for listening!

Σας ευχαριστώ!