



**Mutual Security
through Partnership**



AUXILIUM WORLDWIDE

CARIBBEAN FISHERIES LEGISLATION GAP ANALYSIS

December 2025





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ACRONYMS

AI	Artificial Intelligence
AIS	Automatic Identification System
BVI	British Virgin Islands
CARICOM	Caribbean Community
CARICOM IMPACS	Caribbean Community Implementation Agency for Crime and Security
CRFM	Caribbean Regional Fisheries Mechanism
EEZ	Exclusive Economic Zone
EU	European Union
FAD	Fish Aggregating Device
FAO	Food and Agriculture Organization of the United Nations
GPS	Global Positioning System
IMO	International Maritime Organization
IUU	Illegal, Unreported and Unregulated (Fishing)
PSMA	Port State Measures Agreement
SAR	International Convention on Maritime Search and Rescue
SIDS	Small Island Developing States
TCI	Turks and Caicos Islands
UK	United Kingdom
UNCLOS	United Nations Convention on the Law of the Sea
US	United States



CARIBBEAN FISHERIES LEGISLATION GAP ANALYSIS



INTRODUCTION

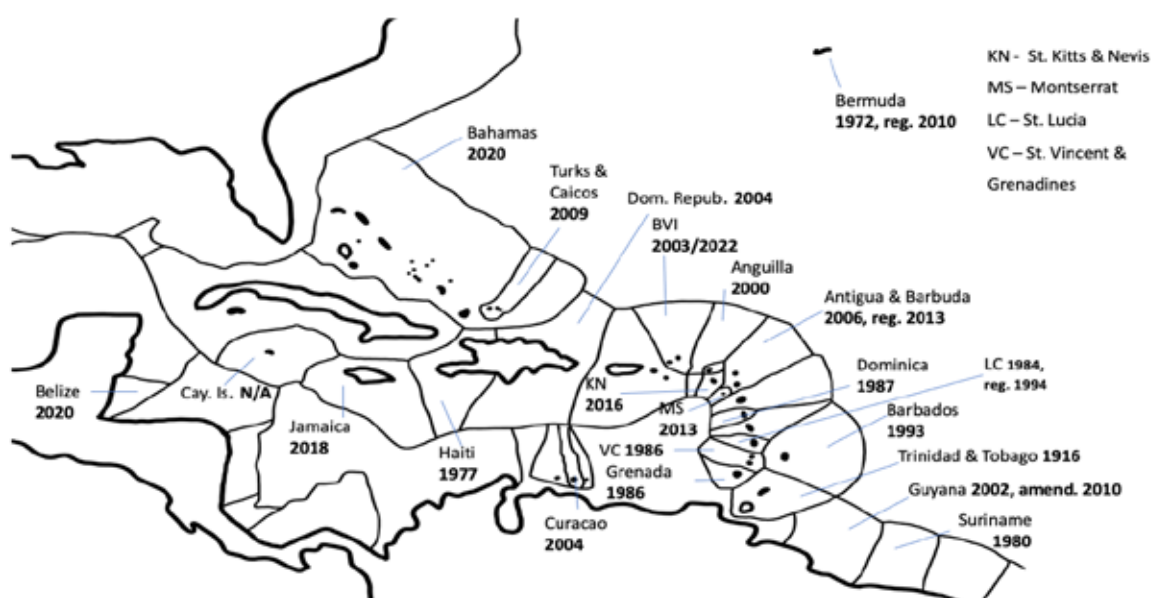
In the last decade, the Caribbean Region has made significant progress in addressing various issues within their fisheries' spaces. International efforts to improve enforcement, such as the Food and Agriculture Organization of the United Nations (FAO's) International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unregulated and Unreported (IUU) Fishing, and Agreement on Port State Measures, along with increased regional focus on fisheries' management and sustainability, have spurred many countries to revisit their fisheries' legislation and management plans. This report offers findings and observations from review of the relevant fisheries legislation and policies of the 22 Caribbean countries including Anguilla, Antigua and Barbuda, Bahamas, Barbados, Belize, Bermuda, British Virgin Islands (BVI), Cayman Islands, Curaçao, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago, and Turks and Caicos Islands (TCI).

Despite renewed interest in protecting the Region, the Caribbean continues to be high-risk for illicit activities occurring within its waters. While much attention has been paid to the area's environmental concerns, there is less focus on the transnational crime impacting the Region. The increasing criminal use of the fisheries space has necessitated a closer look at the legislation that governs that sector. On-going research shows that fishing, fishing vessels and fishing-related activities are being used in the commission of transnational crimes such as drug trafficking, firearms-trafficking, money laundering, migrant smuggling and IUU fishing, just to name a few.

The goal of this report is to identify legal gaps in the current fisheries laws of the Caribbean countries that make a State (and the Region, overall) more vulnerable to criminal exploitation of and within its fisheries sector. Due to constraints on time and personnel, this report is not exhaustive. However, it offers a birds-eye view of the legislative landscape of the Region's fisheries and draws attention to gaps and inconsistencies that are experienced across multiple jurisdictions.

KEY OBSERVATIONS FROM FISHERIES REGULATIONS – MODERNITY OF FISHERIES STATUTES

Fisheries regulations in the 22 countries spread across severely outdated legislations (Trinidad & Tobago 1916¹; BVI 2003²) to the more modern legislations (St. Lucia 2023;³ The Bahamas, enacted in 2020; TCI 2018⁴).



- ¹ Fisheries Act of Trinidad and Tobago 1916.
- ² Fisheries Regulations of the British Virgin Islands 2003.
- ³ Fisheries Act, Revised Laws of St. Lucia 2023
- ⁴ Fisheries Protection Ordinance of Turks and Caicos 2018

The majority of the Region's Fisheries Statutes are outdated, even if they have occasionally been updated with amendments. Half of the countries have base-statutes that are enacted before 2000, while six have statutes dated between 2000 and 2015. The remaining countries have more recent statutes, but as this report will discuss, they still do not fully address the increase in criminal use of the fisheries' sector or the changes emerging after the COVID-19 pandemic. The discrepancy among the Fisheries Statutes also matters because several statutes do not incorporate the many international and regional obligations and policies the countries are bound by and, thereby, may not give force to those agreements. This variation in the modernity of legislation highlights the lack of unity and consensus among the countries regarding the Caribbean waters, which does not go unnoticed or unexploited by illicit actors.

Additionally, older statutes fail to address the current state of technology and how that technology is being used in the fisheries sector. For example, many statutes do not have clauses around tracking or Global Positioning System (GPS) or Automatic Identification System (AIS) requirements, and do not include violations for GPS-spoofing or other track manipulation. Further, it is unclear whether statutory updates and fisheries management plans are accounting for the “*technological creep*” in the fishing sector as a result of industrial and artisanal fishers having increased access to fish-finding equipment and superior fishing methods.⁵ As the use of technology and fish finders enables fishers to locate catch more easily and fish more efficiently, countries may need to adjust their mandates to account for the effect of “*fishing power creep*” on the sustainability of fish stocks.⁶ Conclusions will need to be incorporated into their legislation, through rules and policy such as stricter management of quotas, extended closed seasons, license distributions, permissible gear, etc.⁷ Likewise, use of drones – above and below water – to locate and bait fish, as well as support criminal activity, needs to be managed and addressed in local and regional fisheries management, likely requiring cross-collaboration with aviation and other authorities.

⁵ Palomares, M. L. D., and D. Pauly. 2019. On the creeping increase of vessels' fishing power. *Ecology and Society* 24(3):31. <https://doi.org/10.5751/ES-11136-240331>

⁶ Roberts, C., Béné, C., Bennett, N. *et al.* Rethinking sustainability of marine fisheries for a fast-changing planet. *npj Ocean Sustain* 3, 41 (2024). <https://doi.org/10.1038/s44183-024-00078-2>

⁷ Kim Scherrer, Eric Galbraith, Regulation strength and technology creep play key roles in global long-term projections of wild capture fisheries, *ICES Journal of Marine Science*, Volume 77, Issue 7-8, December 2020, Pages 2518–2528, <https://doi.org/10.1093/icesjms/fsaa109>

LAGGING LEGISLATION

Although fishing falls within national considerations, especially in the Exclusive Economic Zone (EEZ),⁸ the conservation and management of fisheries depend on cooperation across regional lines.⁹ With ever-increasing attention on the Caribbean Region, multiple jurisdictions have been working with the Caribbean Community (CARICOM), the Caribbean Regional Fisheries Mechanism (CRFM), and other regional organisations to update their fisheries legislation. The CARICOM developed a Common Fisheries Policy of 2020 (updated in 2024) containing the strategic plan and implementation mechanism for safe and sustainable fisheries within the Region.¹⁰ The Common Fisheries Policy, though not a binding treaty, reflects the common understanding of States within the Region to sustain fisheries and develop advanced national policies relating to monitoring and surveillance, implementation and management of stocks in order to develop fisheries value chains and expand in fisheries trade.¹¹

Further to the shared vision in the Policy, several countries have taken steps to draft new guidelines, get stakeholder input and engage the legislative procedures. However, many of these draft laws are stuck in the bureaucratic process or are being implemented haphazardly. Barbados had a draft Sustainable Fisheries Management and Development Act approved by the Cabinet in May 2023. However, this Act only received Cabinet approval on 12 May 2025, two years after drafting.¹² More recent examples of the delay in passing essential fisheries legislation is Trinidad and Tobago, which spent the last several years compiling a new Fisheries Management Bill 2020.¹³ Final passage of the comprehensive legislation is critical, yet local sources suggest political division is frustrating the process. The BVI passed the Food Security and Sustainability Act in 2022, yet its implementation is allegedly occurring in “phases”. The law repeals the prior Fisheries Act, so more research is needed to understand how the fisheries-specific laws are being phased in and what legislation (if any) is filling the gaps in the meantime.

⁸ UNCLOS, Article 55

⁹ UNCLOS, Article 118.

¹⁰ Caribbean Community Common Fisheries Policy, CRFM Special Publication, No. 26, available at https://www.crfm.int/images/Caribbean_Community_Common_Fisheries_Policy_Jan2020_FINAL.pdf

¹¹ Common Fisheries Policy, paragraph (ii).

¹² Sustainable Fisheries Management and Development Act 2005, available at <https://www.fisheries.gov.bb/content/files/2025/07/Sustainable-Fisheries-Management-and-Development-Act-2025-1.pdf>

¹³ Fisheries Management Bill 2020, available at <https://agriculture.gov.tt/wp-content/uploads/2023/10/Fisheries-Management-Bill-2023-Revised-October-2023.pdf>

Significant measures are being taken in some areas around the Caribbean. Curaçao has an ambitious Oceans Policy Plan that kicked off in 2017. The Blue Halo Curacao Project is “government-led, with the goal to optimise ocean uses, protect 30% of the Curaçao’s waters, strengthen (artisanal) fisheries management, and improve marine education and awareness. {They} are in the process to create the largest offshore marine sanctuary in the Caribbean, measuring approximately 7,500 square kilometers, create an additional six smaller No Take Zones, aim to enhance protection and management of our coral reef ecosystem, make our coastal zone more resilient to climate change, support marine science, and create a financial mechanism to finance ocean management”. This project has an identified deadline of 2030.

Lagging legislation in the Caribbean hinders the effective management of all the fishery sectors in the entire Region, as well as encourages further exploitation of the less well-governed areas. In many countries, regional and international treaties are not effective until they are incorporated into domestic law. Consequently, those efforts and intentions go unfulfilled and can undermine the country’s reputation and reliability in the maritime realm.

Trinidad and Tobago, for example, must update its outdated Fisheries Statute to comply with its obligations as a flag and port State under existing international laws.¹⁴ The European Union (EU) issued a “red card” to Trinidad and Tobago on 25 September 2023 for failing to cooperate “in the fight against illegal, unreported, and unregulated fishing”.¹⁵ The consequences of an EU “red card” includes a possible ban on seafood imports to EU countries and restrictions on EU involvement with State-flagged vessels, along with international headlines declaring the State’s tarnished status.¹⁶ In the Caribbean, where maritime cooperation is a necessity, ineffective implementation of international agreements has a direct impact on regional collaborations.¹⁷ In summary, outdated and haphazard legislation creates gaps in oversight and enforcement of a country’s domestic and international legal regimes, reduces the economic potency of the fisheries sector, and inhibits full cooperation with regional initiatives.

¹⁴ EU Commission, ‘Fight Against Illegal Fishing: Commission Identifies Trinidad and Tobago as Non-Cooperating Country’, 25 September 2023, available at https://ec.europa.eu/commission/presscorner/detail/en/IP_23_4589

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ UNODC/CARICOM IMPACS, ‘Caribbean Maritime Security Strategy and Implementation Plan’, July 2023, available at https://www.unodc.org/ropan/uploads/documents/2024/Caribbean_Maritime_Security_Strategy-V03.pdf

INTERNATIONAL OBLIGATIONS

The United Nations Convention on the Law of the Sea (UNCLOS) is the foundational agreement for international maritime affairs. It provides for a country's claim to an EEZ up to 200 nautical miles from every coastal State's baseline. Within the EEZ, countries have the sovereign rights over fisheries. Specifically, fisheries are regulated internationally by the United Nations Agreement for the Implementation of the Provisions of the Convention relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Stocks (the Fish Stocks Agreement) 1995. This Agreement provides for the adoption of sustainability measures of fish stocks, conservation and management measures to protect biodiversity,¹⁸ cooperation among neighboring countries for management of stocks and for enforcement measures.¹⁹ It appears that a number of countries in the Caribbean Region have not ratified the Fish Stocks Agreement. Antigua and Barbuda, Dominican Republic, Guyana, Jamaica, Suriname and TCI, among others have neither signed nor ratified the Agreement.²⁰

A downside to this uneven ratification across the Region is that obligations preserved in the Agreement for States are identifiable in the laws of some countries but not recognised by others. This ultimately makes cooperation and enforcement difficult particularly for regional boarding, inspection, investigation and sharing of information required under the UN Fish Stocks Agreement.²¹ In this regard, only 15 of 22 countries are represented in the Caribbean Fisheries Forum,²² some of which are not parties to the Fish Stocks Agreement (partly because they are unable to as overseas territories of Britain)²³ and which do not nationally accept the obligations therein.

¹⁸ Fish Stocks Agreement, Article 8.

¹⁹ Ibid, Article 10.

²⁰ UN, Status of the Convention and its Implementing Agreements, available at https://www.un.org/Depts/los/reference_files/StatusTablesEnglish.pdf

²¹ Fish Stocks Agreement, Article 21 and 22.

²² Member States' Representatives in the Caribbean Fisheries Forum, available at https://www.crfm.int/index.php?option=com_k2&view=item&layout=item&id=521&Itemid=456

²³ Montserrat, British Virgin Islands, Cayman Islands, Anguilla, Turks and Caicos.



INCONSISTENT DEFINITIONS OF TERMS

Definitions are crucial to avoiding and preventing ambiguities.²⁴ In legislation, a definition may be a determining factor as to how and whether a law applies. On a broader level, legal definitions provide an exact language that supersedes or codifies the common definition and perfects its understanding. Across the Caribbean countries, there was significant variation in definitions one would consider basic and essential to the fisheries sector.

FISHING

For example, all of the Caribbean Fisheries Statutes regulate the artisanal and commercial fishing industries. However, the statutes differ on how, or whether, “*fishing*” is legally defined. Several countries limit their definition of fishing to some version of “*fishing for, catching, taking, harvesting or killing fish by any method or placing, searching for, or retrieving any fish aggregating device and includes searching for fish*”.²⁵ More recently updated statutes have expanded the definition to reflect modern practice. The Bahamas, Belize, and St. Kitts and Nevis, for example, specify the acts of “*attracting*” fish, using equipment such as radio beacons and aircraft to locate or recover fish, and “*engaging in any other activity that can reasonably be expected to result in the locating or taking of fish*”. Moreover, their definitions of “*fishing*” incorporate activities that are *related* to fishing but separate from the act itself, such as transshipping fish to/from vessels and supplying fuel to fishing vessels.

Taken individually, the differences in these definitions might not seem like much. Yet, across the Region, even minor discrepancies create legal loopholes that may enable criminal actors to evade detection, avoid prosecution due to a technicality, or facilitate an act that, legally, is not acknowledged as a crime. To promote a cohesive and holistic definition of “*fishing*”, the Common Fisheries Policy may be referred to. Article 1 defines fishing broadly to include actual or attempted searching for, catching, taking and harvesting of fish; engaging in activity

²⁴ F. Macagno Definitions in law. *Bulletin Suisse de Linguistique Appliquee* 2:199-217, [online] 2, pp.199-217. Available at https://www.researchgate.net/publication/256008191_Definitions_in_Law (2010), accessed 9/24/2024

²⁵ Antigua & Barbuda, Dominica, Grenada, Montserrat, Saint Lucia, St. Vincent and the Grenadines.

which can reasonably lead to catching of fish; placing or recovering fish aggregating devices; any other operations related to the aforementioned including transshipment and the use of vessels for any of the aforementioned activities.²⁶ Adopting this definition will not only cover a broad range of fishing-related activities, but will also broaden the scope of authority of enforcement granted to Caribbean countries.

BENEFICIAL OWNER

Similar inconsistencies exist for the term “*beneficial/owner*”. Identifying owners of fishing vessels has become increasingly difficult. In many cases, the person or entity receiving the ultimate benefit of the vessel use is hidden behind several layers of corporate protection. In an effort to pinpoint true ownership, jurisdictions began using the term “*beneficial owner*”. The idea is to push through any corporate veils and identify the actual shareholders of a vessel interest.

Across the Region, though, there are various issues and inconsistencies with how the countries approach this problem. For example, in the Fisheries Statute of The Bahamas, the definition of “*beneficially owned*” is linked back to the country’s Register of Beneficial Ownership Act, 2018, which sets forth the implementation of and requirements for a private search registry with details on beneficial owners.²⁷ Notably, The Bahamas has the only Fisheries Statute that refers back to its own business legislation for some direction on this matter. However, the term “*beneficially owned*” is not assigned any meaning in the 2018 Act, nor does the term appear in the legislation. One can, of course, infer the intention and meaning, but from a legal perspective, this indicates a significant oversight. The Fisheries Statute goes on to declare that the term “*owner, in relation to a fishing vessel – a) means a beneficial owner...*” yet *beneficial owner is nowhere defined in the statute. With the statute’s qualifying language of “in relation to a fishing vessel”, it is plausible to imagine that “beneficial owner” could have some different meaning apart from the 2018 Act.*

On a side note, the 2018 Act specifies what agencies have the authority to request a search of the beneficial owner database; the Fisheries Department is not listed. The Fisheries Department would have to go through the Office of the Attorney General or a specified financial institute

²⁶ Common Fisheries Policy, Article 1 paragraph (n).

²⁷ Register of Beneficial Ownership Act 2018, available at <https://bfsb-bahamas.com/wp-content/uploads/2019/01/REGISTER-OF-BENEFICIAL-OWNERSHIP-ACT-31-DECEMBER-2018-GAZETTE-1.pdf>

in order to initiate a search. Failure to include the Fisheries Department (or Port Authority, Customs Department, and other enforcement agencies) as an authorized agency adds another obstacle to verifying and tracking ownership of fishing vessels.

Several countries fail to define “*owner*” at all. The Fisheries Statutes of Anguilla, Antigua and Barbuda, Barbados, Cayman Islands, Dominica, Grenada, Guyana, Haiti, Montserrat, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, and TCI do not have definitions for “*owner*”. With ownership being integral to enforcement and assigning accountability, countries need to have this term defined.²⁸ When the ownership term is not defined (or defined well), fishing vessel operators are free to subjectively determine what information to provide. This may lead to confusion, inadequate contact information, false information, and/or inconsistent application of owner information across jurisdictions. It may also encourage the use of fishing vessels for illegal fishing activity as a result of the lack of link to the owner of the vessel.

²⁸ Pew Review, ‘Ownership of Fishing Companies, Vessels need Greater Transparency and Accountability’ available at <https://www.pewtrusts.org/-/media/assets/2023/10/ownership-of-fishing-companies-vessels-need-greater-transparency-and-accountability.pdf>

LACK OF LEGISLATION AROUND BYCATCH, INCIDENTAL CATCH AND DISCARDS

Promoting optimum utilisation of fisheries is a key mandate for countries according to the UNCLOS.²⁹ Notably absent from the Fisheries Statutes were definitions or general instructions for bycatch, incidental catch, and discards. Of the Fisheries Statutes reviewed, only one had a definition for “*bycatch*” (St. Kitts and Nevis) and mentioned as one of its objectives to “*minimize – wastes, by-catch, discards, regulatory discards, and catch by lost or abandoned gear*”. Several of the statutes offered specific directives for particular species (Spiny Lobster, conch) but did not address bycatch generally. While this oversight may be due to the particularities of their fishery, failure to provide instructions or laws on bycatch, incidental catch and discards allows for the unmitigated possession and catch of non-targeted species, which can have widespread ecological damage, affect quotas, and indirectly encourage undesirable or illegal activity.³⁰ Research also indicates that failing to understand the impact of bycatch, incidental catch, and discards in a fishery can result in potential loss of income and overexploitation of the fishery sector.³¹

²⁹ UNCLOS, Article 62.

³⁰ Food and Agriculture Organization Technical Paper 633, ‘A Third Assessment of Global Marine Fisheries Discards’, available at <https://openknowledge.fao.org/server/api/core/bitstreams/141decf1-33f3-4837-a137-d6ba8b0a9456/content>

³¹ *Id.*

INCONSISTENCIES RELATING TO FISHING GEAR STOWAGE, USE AND PROHIBITION

USE AND POSSESSION OF FISHING GEAR

All of the Fisheries Statutes reviewed had sections relating to fishing gear or equipment. Across the Region, there was consistent prohibition on the use of noxious substances, poison, explosives, or chemicals. Similarly, most statutes had restrictions on certain types of nets or specifications as to mesh size.³² However, there were variations in the language as to “use” and “possession” of prohibited gear. In some areas, use of particular equipment was prohibited but there was no mention of penalty for possession or carrying it onboard. In other areas, mere possession of prohibited gear was a violation of the law. A handful of statutes strike middle ground with a clause explaining that “*{having} any prohibited fishing gear in his possession on board any fishing vessel in circumstances that indicate an intention to use it for fishing, is guilty of an offence*” (Barbados, Guyana, St. Lucia, St. Vincent and the Grenadines). Unfortunately, there is no following clarification as to what would indicate the intended use for fishing. Failing to clearly penalise possession of prohibited gear or indicate what qualifies as “use” or “intention to use” creates ambiguity for enforcement authorities and could lead to clandestine or unauthorised use of the illegal equipment.

STOWAGE OF FISHING GEAR

Another potential loophole is the failure to explicitly describe proper stowage techniques for questionable fishing gear or equipment. Nearly all of the statutes included a clause regarding the stowage of the fishing gear of a foreign fishing vessel, which gear is otherwise prohibited in that country’s waters. Many provisions simply provide that the gear “*be stowed/stored in such manner as may be prescribed*”, with the following prescription that the gear not be “*readily available for fishing*”. (See Anguilla, Barbados, Belize, BVI, Dominica, Montserrat).

³² See Food and Agriculture Organization, ‘Classification and Illustrated Definition of Fishing Gears’ Technical Paper 672, available at <https://openknowledge.fao.org/server/api/core/bitstreams/d194ba36-af7a-48ed-9e58-563143b96863/content>

The ambiguous language, here, leaves these clauses open for interpretation and makes them difficult to enforce. Other statutes offer helpful clarifications as to what is meant by “availability for fishing” and require gear to be free of bait or lures, stowed below deck, and/or be disconnected or secured as is relevant to gear type (St. Lucia, St. Vincent and the Grenadines). Such prescriptions may not be comprehensive, but they offer some specific indications that make it easier for enforcement officials to identify violations.

Penalties for improper use, possession of, or stowage of fishing gear are also inconsistent across the Region. Consequently, illicit actors may be more inclined to take risks in those areas where the penalties are lower.

USE OF FISHING GEAR FOR OTHER ILLEGAL ACTIVITIES

One area where legislation is notably missing is when fishing gear or equipment is used for activities other than fishing. Research shows that fishing vessels are increasingly employed to commit transnational illicit acts.^{33,34} However, the Fisheries Statutes do not contemplate or provide penalty for the use of fishing vessels or gear for these kinds of nefarious purposes. Further, the intentional discarding of fishing gear to evade arrest seems to be an issue with vessels engaged in IUU fishing. Vessels engaged in IUU fishing may be more likely to abandon their nets in order to escape authorities and inhibit prosecution by destroying evidence. There have also been instances where artisanal fisherfolk have been forced to abandon their nets in order to escape piracy attacks. Tracking discarded gear is incredibly difficult but statutes could provide for added penalties if discard is found to be intentional or occurring during pursuit.

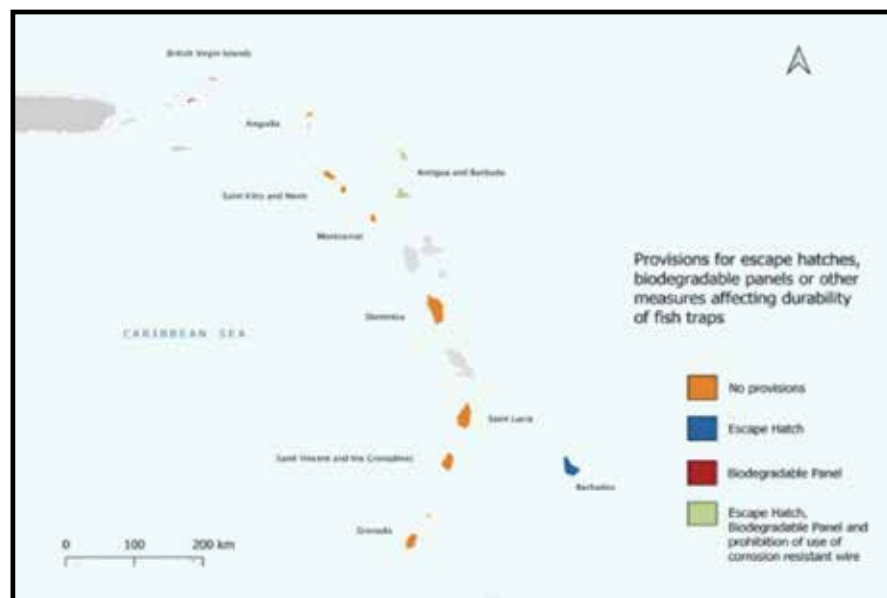
A recent report (February 2023) on Eastern Caribbean small-scale fisheries also highlighted notable legislative, regulatory and policy gaps concerning the proper labelling, management and disposal of derelict fishing gear.³⁵ The report described in detail the differences in various countries’ approaches to this issue. Laws and regulations for derelict gear were found to be

³³ Narco-Fish: Global fisheries and drug trafficking Dyhia Belhabib, Philippe Le Billon, David J. Wrathall, First published: 26 June 2020 <https://doi.org/10.1111/faf.12483>

³⁴ St. Vincent Times, ‘St. Vincent-registered Vessel Caught with \$70 million Worth of Cocaine’, 1 March 2017, available at <https://www.stvincenttimes.com/st-vincent-registered-vessel-caught-with-us70-million-worth-of-cocaine/>

³⁵ <https://www.sciencedirect.com/science/article/pii/S0308597X22004791> (States reviewed and surveyed: Anguilla, Antigua and Barbuda, Barbados, BVI, Dominica, Grenada, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines)

split between fisheries laws, shipping/maritime pollution laws, waste management laws and environmental protection legislation. Consequently, management and responsibility of discarded fishing gear is shared across multiple agencies, enforcement is inconsistent and regulations are generally weak and lack specificity. Additionally, existing regulations are inconsistent across the Eastern Caribbean Region, particularly regarding technical provisions and restrictions on fishing gear. Instructions and mandates are inconsistent or, in some cases, non-existent, for the markings and identifiers of Fish Aggregating Devices (FADs) and other gear, use of GPS markers or other location devices for gear (including ropeless gear), and technical or design specifications for fishing gear. For example, many countries do not have provisions mandating the use of mitigating designs such as escape hatches or biodegradable panels.



(Ex. Chart from <https://www.sciencedirect.com/science/article/pii/S0308597X22004791>)

RULES ON CONSTRUCTION AND MANAGEMENT OF FISHING GEAR

Legislation is lacking for the initial construction, marking and registration of gear and also for its disposal. Significantly, *“None of the fisheries laws reviewed contained clear provisions preventing the disposal of gear at sea, or mandating that derelict gear be reported and*

*removed. Such provisions were generally found within other legislation such as marine pollution laws”.*³⁶

In a supplemental survey, in which the authors charted fisherfolk observations and opinions, respondents from Antigua and Barbuda commented that 35% of fishing trap losses were due to the gear being intentionally discarded.³⁷ Dumping derelict gear, even when attempts are made to do it in an “*environmentally-friendly*” way, can harm delicate ocean habitats, contribute to ocean pollution, and inadvertently capture other animals. Formulating a uniform approach to fishing gear management, disposal, and mitigation tactics would help close the gap on these illegal and unregulated actions.

³⁶ *Id.*

³⁷ Lovell TA (2023) Understanding the drivers, scale and impact of abandoned, lost and otherwise discarded fishing gear in small-scale fisheries: an Eastern Caribbean perspective. *Front. Mar. Sci.* 10:1139259. doi: 10.3389/fmars.2023.1139259

ACCESS AGREEMENTS

One area that could use further research and consideration is the practice of allocating fishing rights to foreign fishers and fishing associations under access agreements. Access agreements and sharing of fish stocks are founded under Articles 69 and 70 of the UNCLOS, permitting coastal countries to allow the participation of other countries in the exploitation of an appropriate part of fisheries surplus.³⁸ The Common Fisheries Policy of the Caribbean also recommends that countries enter into arrangements with one another for providing access to fisheries resources subject to their capabilities.³⁹ One problematic aspect is that these fishing rights are generally limited in relationship to the total amount of fishing allowed in the fishery waters, and the amount of fishing to be allowed is to be determined by a “Fisheries Plan”. (*“The fishing rights allocated under agreements ... shall not exceed the total resources or amount of fishing allowed to the appropriate category of foreign fishing vessels under the fisheries plan”*. (Anguilla, Belize, Dominica)). However, for some countries, there are issues with this vague notion of a Fisheries Plan.

In the cases of Anguilla and Dominica, the statute does not offer any additional instruction as to how often the Fisheries Plan is to be reviewed, what constitutes “fisheries management”, how long the access agreements may be contracted for, or what percentage of fishing rights must be preserved for local fishers.⁴⁰ The statute doesn’t direct what the Fisheries Plan needs to consider or describe an approval and implementation process.⁴¹ These statutes have been in effect for more than 20 years, yet research produced only a draft Fisheries Management Plan for Anguilla and no plan for Dominica.⁴² At least one statute references an access agreement but gives no other specifications as to how the foreign fishing rights are to be allocated (BVI). Future legislation should ensure there are guidelines for the Fisheries Management Plans and greater detail as to how access agreements for foreign fishing rights are to be contracted.

³⁸ UNCLOS, Articles 69 and 70.

³⁹ Caribbean Common Fisheries Policy 2020, Article 9.

⁴⁰ Anguilla Fisheries Development Plan 2015 – 2025, available at <http://www.gov.ai/document/fisheries/2015%20fisheries%20development%20plan.pdf>

⁴¹ *Id.*

⁴² UNDP, ‘Blue Economy Scoping Study for Dominica, 2019, available at https://www.undp.org/sites/g/files/zskgke326/files/migration/bb/Dominica-Blue-Economy-Scoping-Study_Final_January-2019.pdf

Legal clarity is needed regarding the access agreements, but transparency is a major concern as well. Research shows that access agreements are notoriously handled in secret and susceptible to corruptive practices and relationships.⁴³ Especially because Fisheries Departments tend to be somewhat isolated and concentrate power in few individuals (frequently with smaller budgets), investments from foreign governments or organizations in exchange for fishing rights presents opportunity for bribery and corruption.⁴⁴ In some countries, the designated official has unilateral authority to enter into an access agreement, and the terms of these agreements are generally not required to be shared publicly. Therefore, it is difficult to know whether such access agreements adhere to whatever statutory requirements there may be and whether they are being fairly implemented, free of corruptive influence.

While access agreements can be problematic, they are also key to ensuring food security and ocean access for those States with smaller EEZ's or limited access to the high seas. A United Kingdom (UK) committee for the Commonwealth Marine Economies Programme recently determined that “*cross-country bi-lateral or multi-lateral agreements may ... need reform. For some Small Island Developing States (SIDS) such as Dominica, Saint Kitts and Nevis and Montserrat, fishers are unable to move far from shore due to their countries' restricted exclusive economic zones (EEZ) and others lack access to 'high seas' at all, including the Cayman Islands and Jamaica (Monnereau and Oxenford, 2017)*”.⁴⁵ Accordingly, it is increasingly important for countries to revisit their access agreements with neighboring countries. Of course, doing so will likely exacerbate many of the issues raised here regarding inconsistencies of laws, etc. Having a more uniform approach in the Caribbean could go a long way towards avoiding some of the more basic IUU fishing problems such as reporting, permissible gear usage, and licensing and registration.

There are a couple of issues with existing agreements. In some cases, the existing agreements are severely outdated. For example, Barbados and Trinidad and Tobago have an agreement from 1990, which has recently been challenged as Trinidad and Tobago claims Barbadians are

⁴³ TNRC Practice Note, 'Corruption in the Fisheries Sector: Import Controls, Transparency and WWF Practice', 2021, available at <https://www.worldwildlife.org/pages/tnrc-practice-note-corruption-in-the-fisheries-sector-import-controls-transparency-and-wwf-practice>

⁴⁴ Yifei Yan and Adam Graycar, 'Exploring Corruption in Fisheries', 2020, Vol 44, Issue 2, pp 176-190, at <https://onlinelibrary.wiley.com/doi/full/10.1111/1477-8947.12201>

⁴⁵ Bryony Townhill et al, 'Responding to Climate Change in Caribbean Fisheries and Aquaculture through Adaptation', CMEP Report, available at https://assets.publishing.service.gov.uk/media/606326c68fa8f515b5684678/CME_adaptation_report_Final_text.pdf (p.37).

overfishing in its waters.^{46, 47} The two countries are in the process of updating the agreement to reflect current fishery conditions but such updates appear to be dependent on analysis of the fish stocks of each fishery.⁴⁸ Taking stock of a fishery can take years to complete and be difficult to assess, especially if there are external factors such as hurricane effects or understaffing of the relevant agencies. Consequently, requiring a stock assessment can significantly delay any agreement from being finalised as well as allow fisheries to continue being depleted. Recent studies indicate that widely used approaches to fish stock assessment tend to overestimate the resources available.⁴⁹ Initial review of artificial intelligence (AI) assessments indicate that AI generated estimates may be more accurate than others.⁵⁰ Reviewing outdated agreements, reconsidering how agreements are approached, and using advanced technology to implement best practices may be essential to protecting fisheries shared amongst multiple States.

⁴⁶ Aguinaldo Belgrave, 'Two Neighbors must Chart a New Course for Flying Fish Harvesting', Barbados Today, 15 November 2023, available at <https://barbadostoday.bb/2023/11/15/two-neighbours-must-chart-a-new-course-for-flying-fish-harvesting/>

⁴⁷ Ria Taitt, 'T&T, Barbados in Talks for New Fishing Agreement', 21 February 2024, available at https://trinidadexpress.com/business/local/t-t-barbados-in-talks-for-new-fishing-agreement/article_44884de4-d112-11ee-9629-eba7ea4823d4.html

⁴⁸ *Id.*

⁴⁹ Eco, 'Current Fish Stock Assessment Models Overestimate Productivity and Recovery Trajectory', 26 August 2024, available at <https://ecomagazine.com/news/fisheries-aquaculture/current-fish-stock-assessment-models-overestimate-productivity-and-recovery-trajectory/>

⁵⁰ SeaAroundUs, 'AI-powered Data-Limited Stock Assessment Method More Accurate than 'Gold-Standard' in Predicting Sustainable Fisheries Catches', 30 October 2023, available at <https://www.seaaroundus.org/ai-powered-data-limited-stock-assessment-method-accurate-gold-standard-predicting-sustainable-fisheries-catches/>

LINKS BETWEEN FISHERIES OFFENCES AND CRIMES

Another area of concern is a highly narrow approach to criminality in relation to fisheries. First, fisheries officers are not given authority to cite or enforce laws outside Fisheries Statutes or even obligated to report criminal offences outside that narrow scope of responsibility. There is also little to no coordination or collaboration between fisheries authorities and other law enforcement agencies. In a related sense, there is a widespread failure to consider criminal use of the fisheries space, or broader criminality, as grounds for cancelling, suspending, or denying a fishing licence. For instance, criminal history, even including a conviction for drug trafficking in the maritime space, is not considered grounds for limiting or eliminating eligibility for a fishing licence – and that assumes that competent authorities such as Fisheries Departments would even be made aware of such criminal history. One example of this is Antigua and Barbuda, where no considerations outside of fisheries law are applied to an application for a fishing license.

Additionally, in most statutes, there is not an explicit link between fisheries violations and the criminal statutes. For example, Jamaica’s penal code references only certain provisions of the Fisheries Act; St. Kitts and Nevis’ criminal code does not reference its Fisheries Act but does mention interference with fishing gear and illegal fishing nets; and Grenada’s penal code also does not reference the Fisheries Act but does criminalise private theft of fish or gear, poisoning fishing waters, and use of illegal fishing nets. As many of the countries in the Caribbean have maritime territory equal to or exceeding the size of their physical landscape, it is imperative that the penal/criminal codes and Fisheries Statutes are cross-referential and equally enforced to prevent the creation and exploitation of legal gaps.

Similarly, very few statutes offered any focus on the “*white-collar*” or non-violent type of fraudulent activities that often accompany illegal fishing. While the majority of Fisheries Statutes had clauses requiring truthfulness and honesty when reporting or applying, none of the statutes specifically mentioned illegally copying documents, renting out licences, duplicating vessel numbers, possessing documents or information an individual should not have (i.e. confidential fisheries records), using fishing vessels for money laundering, or participating in or facilitating tax-evasion or tax-fraud schemes.

FISHERIES CRIMINALISATION

Some fisheries laws do not provide for the procedure to be applied by authorised agents for arresting or prosecuting an individual or vessel suspected of committing a fisheries offence. The Fisheries Act of St. Lucia, for example does not specify what a fisheries offence is and what penalties are to be imposed for offenders. The majority of these laws require an official to make regulations for management of fisheries, a breach of which would attract punishment to the tune of fines,⁵¹ forfeiture, disposal of goods or, in some cases imprisonment.⁵² Only the Fisheries Act of Jamaica has developed procedural provisions for enforcement, including the role of the fisheries inspectors to board and search⁵³ and for seizure, release and forfeiture in specific cases.⁵⁴ The Fisheries Regulation Ordinance of Turks and Caicos provides for the collection of evidence⁵⁵ during interdiction but no specific rules relating to what is considered a fisheries offence and which authorities within the country are responsible for enforcement and prosecution. Overall, criminalisation of fisheries offences within the Caribbean suffers from a number of deficiencies:

1. Non-specificity of fisheries offences and delegation to the Minister -

Aside from Jamaica with a more robust fisheries regulation, other Caribbean countries require the Minister to determine what constitutes fisheries offences. As such, it becomes difficult for fishers and enforcement personnel to determine what activities are in violation of the rules at every point. This is the first challenge for proper enforcement as it gives room for illegal activity on the basis of uncertainty in the laws.

2. Penalisation by imprisonment - It is necessary to note that according to the UNCLOS, penalties for the violations of fisheries laws in the EEZ should not include imprisonment or any form of corporal punishment.⁵⁶ A handful of countries

⁵¹ St. Lucia Fisheries Act Section 29 and 39 of the Fisheries Act.

⁵² Anguilla Fisheries Protection Act Section 7 (3); Jamaica Fisheries Act Fourth Schedule; Barbados Fisheries Act Section 37; Turks and Caicos Fisheries Protection Ordinance Section 37; Grenada Fisheries Act Section 45.

⁵³ Jamaica Fisheries Act, Part XIII, XV

⁵⁴ Ibid.

⁵⁵ Turks and Caicos Fisheries Protection Ordinance, Section 34.

⁵⁶ UNCLOS, Article 73.

present a scheduled approach to the first, second, and third offences. With each offence, the penalties increase. On one hand, this gives greater direction to prosecutors and courts, but on the other hand, such an approach may not allow for sufficient consideration of the extent of the violation. A majority of the countries provide for a maximum allowable penalty (of varying amounts) for a given offence but rarely establish a minimum penalty. According to the law, it could be possible for an offender to not be penalised at all, or to receive a penalty so minimal it ceases to be deterrent.

3. Inadequate penalisation - Additionally, the stated penalties within the countries' legislation appear to focus only on the act that is committed, and do not specifically allow for consideration as to the impact such act has beyond that moment. There also does not appear sufficient direction or instruction for the judiciary as to how to think about these cases and the precedents they may set. For example, in 2022, several Dominicans were caught illegally fishing in Bahamian waters.⁵⁷ Thousands of pounds of illegally harvested fish and lobster were found onboard. Ultimately, the Dominicans spent, at most, six months in jail and the court did not impose any fines despite the fact that the Dominicans were guilty of multiple violations of the Fisheries Act.

From anecdotal evidence, this kind of incident is not uncommon. Caribbean judiciaries seem to be known for underappreciating the value of the fish taken and under-penalising the offenders. In its defense, the Bahamian Supreme Court considered that none of the men arrested were the captain of the vessel (who had evaded arrest) and, thus, further penalty might fall on the wrong people. In the end, interviews demonstrated that the local fishing community felt unsupported, frustrated, undervalued and less encouraged or motivated to follow the law. The value of the fish illegally caught did not appear to be a factor in the court's decision, nor the impact on the local fisher folk of ignoring the multiple violations and failing to implement meaningful penalties, nor the precedent for future poachers.

⁵⁷ The Tribune, 'Fishermen's Fury Over Poaching 'Slap in Face' at <https://www.tribune242.com/news/2022/mar/08/fishermens-fury-over-poaching-slap-face/>

The inadequacy or indeterminacy of penalties for illegal fishing becomes a challenge for the identification of and enforcement against fisheries offences. It thus potentially makes the Caribbean Region an attractive zone for illegal fishing if the laws are not specific about consequences for offences of this nature and magnitude.

4. Procedural silence on interdiction– Of the 22 countries in consideration, only Jamaica and Barbados provide procedural direction on the activities of fisheries inspectors in the sense of identifying a suspected vessel, boarding, seizing and prosecuting.⁵⁸ Other laws are silent on the procedures to be followed by authorised officers or fisheries inspectors. This makes enforcement operations very abstract and difficult to carry out legally. Questions like in what events can authorised officers stop and search a vessel? What procedures should the authorised officers undertake prior to search? Are these officers permitted to seize goods on the suspected vessel? What steps should be taken when a vessel has been seized? In what jurisdiction can fisheries offences be prosecuted and for which types of vessels – local or foreign? These questions reveal unregulated areas in majority of the fisheries laws and thus, are susceptible to multiple interpretations or to evasion by illegal fishers.

5. Absence of inter-agency coordination - Each country authorises certain officials, inspectors, or agents to enforce the fisheries laws. Throughout the Region, there are variations for which authority can enforce against fisheries offences. The Fisheries Statutes of Anguilla, Jamaica, Trinidad and Tobago, and TCI do not specifically authorise customs agents to act on behalf of the Fisheries Department. The current Fisheries Statutes of Dominica, Grenada, Montserrat, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago do not expressly authorise the Coast Guard or other armed defense forces as fisheries officers. While the statutes do empower the Chief Fisheries Officer (or equivalent designee) to authorise military branches and other persons, best practice would be to explicitly designate them in the statute and codify those relationships to prevent any possible lapse or gaps in authority, or confusion over who is able to act and under what circumstances. In

⁵⁸ Jamaica Fisheries Act Fourth Schedule; Barbados Fisheries Act.

some cases, officers in one agency may not know they are also authorised officers of another agency, or the partnership between agencies may have changed and new officers are no longer trained to cover multiple jurisdictions.

For instance, the Chief Fisheries Officer for Antigua and Barbuda recently commented that the country no longer does joint patrols with fisheries, customs and immigration and emphasised the need for retraining and cooperation of officers in those agencies.⁵⁹ With most countries' maritime space exceeding their land territory, all available maritime-related resources and authorities should be efficiently maximised. Additionally, defining these relationships prevents ambiguity about enforcement in the maritime space. When it comes to addressing IUU in the Caribbean, there needs to be a clear, unified approach among the fisheries department, customs, immigration, law enforcement, legal and military agencies.

6. Lack of rules for prosecuting incidental offences - The enforcement authorisation of many fisheries officers are limited to enforcing the Fisheries Statute. Thus, if a fisheries officer encounters criminal or illicit activity that is not addressed in or considered by the statute, the officer does not have authority to investigate such activity, make arrests, or direct the vessel. Legislatively addressing the criminal use of the maritime space and employing cross-enforcement capabilities and authority can extend the impact and protection of the fisheries legislation to the entirety of the maritime waters.

⁵⁹ Philana Johnson, 'Antigua and Barbuda – More Research Needed', CIJN, 26 July 2024, available at <https://www.cijn.org/antigua-and-barbuda-more-research-needed/>

MARITIME BOUNDARIES

Maritime boundaries are delineated per UNCLOS.⁶⁰ These boundaries that designate a coastal country's sovereignty in the oceanic space are important for shipping, access rights, status of sea-lanes, environmental issues, and regional and State protections.⁶¹ Due to the overlapping maritime boundaries in the Caribbean Region, countries have had to work together to determine fair use of their surrounding waters. At least a few countries have not yet formalised boundary agreements with their neighbours and are, in some cases, generally relying on the UNCLOS median line principle.⁶² For example, Antigua and Barbuda still need to settle boundaries with Montserrat and St. Kitts and Nevis.⁶³ The Bahamas does not have fully delimited boundaries with the United States (US) and has not defined boundaries with any of its neighbours except Cuba;^{64,65} Belize has an outstanding maritime boundary issue with Guatemala; and there has been an on-going boundary dispute between Guyana and Venezuela.⁶⁶ When boundaries are in conflict, it creates a gap wherein the authority of a country is not clear and security is tenuous. Lack of clarity on these territorial issues can have significant economic and environmental impacts, as well as affect matters of domestic and international security.⁶⁷

⁶⁰ UNCLOS Articles 15, 33, 55, 76, 83.

⁶¹ Andreas Østhagen, Maritime boundary disputes: What are they and why do they matter?, Marine Policy, Volume 120, 2020, 104118, ISSN 0308-597X, <https://doi.org/10.1016/>

⁶² Article 15 of UNCLOS states, "Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured".

⁶³ The Commonwealth, 'Antigua and Barbuda, UK Sign Maritime Boundary Agreement', 19 August 2021, available at <https://thecommonwealth.org/news/antigua-and-barbuda-uk-sign-maritime-boundary-agreement>

⁶⁴ The World Factbook – Disputes – International, available at <https://www.cia.gov/the-world-factbook/about/archives/2022/field/disputes-international/>

⁶⁵ Efforts are currently underway to establish maritime boundaries between the Bahamas and Turks and Caicos (UK). <https://mofa.gov.bs/the-commonwealth-of-the-bahamas-meets-the-turks-and-caicos-islands-to-discuss-maritime-boundaries/>

⁶⁶ Security Council Press Statement on Guyana-Venezuela Situation, SC/15665, available at <https://press.un.org/en/2024/sc15665.doc.htm>

⁶⁷ Hasan, Md. M., Jian, H., Alam, Md. W., & Chowdhury, K. M. A. (2019). Protracted maritime boundary disputes and maritime laws. *Journal of International Maritime Safety, Environmental Affairs, and Shipping*, 2(2), 89–96. <https://doi.org/10.1080/25725084.2018.1564184>

One oddity discovered is that the BVI are advocating to be designated as an EEZ instead of their current status as an Exclusive Fishery Zone. In October 2024, BVI Premier Dr. Wheatley stated: *“The Ministry is working on legislation to transition from an exclusive fishery zone to an exclusive economic zone, which will include monitoring our waters, mainly via satellite, and appropriate penalties for violators”*.⁶⁸

⁶⁸ All News, ‘Premier Optimistic over BVI’s Border Security Measures’, 22 October 2024, available at <https://bvinews.com/premier-optimistic-over-bvis-border-security-measures/>



VESSEL REPORTING

Lack of reporting requirements and the inability to effectively monitor vessels provide multiple opportunities for vessels to “*work the system*”. One such gap is the lack of requirements as to how often vessels are required to report. Many statutes reference what vessels are supposed to do when they report, or instruct as to *what* they are to report, but little is said about how often vessels must check in. Given the widespread and authorised use of transshipment of fish and crew, and bunkering of fuel, some commercial fishing vessels are able to stay out at sea for significantly longer periods of time. If a vessel avoids port-calls, it also avoids potential detection of repair issues, detection of poor crew treatment or other human rights violations, and potential detection of illegal gear or operations. A recent report has shown vessels capable of being at sea for more than 350 days at a time.⁶⁹ To ensure adequate monitoring of their fleets, States should consider requiring commercial fishing vessels to visit State-designated ports at least twice a year.

⁶⁹ Oceana Report, ‘Fishing Vessels Spend Years at Sea Without Oversight, New Oceana Analysis Finds,’ 2024 available at <https://usa.oceana.org/press-releases/fishing-vessels-spend-years-at-sea-without-oversight-new-oceana-analysis-finds/>

MARITIME-RELATED EXTRATERRITORIAL REACH

Most of the Fisheries' Statutes offer minimal direction and capability as to prosecuting maritime crimes or addressing crimes other than basic fishing-related violations that occur within their own waters.⁷⁰ Nearly all the statutes fail to consider the significant harm and crimes that can occur in the wider maritime space. One area that is generally overlooked is utilising a state's full legislative capacity and judicial ability to prosecute people for maritime crimes. One such incident is described here:

“One case that highlights the critical need for improved legislation occurred off the coast of Suriname and French Guiana in April 2018. In a display of extreme brutality, assailants attacked vessels operated by Guyanese fishers and then proceeded to burn, hack to death, and throw overboard those onboard. Only five of the roughly 20 are known to have survived. While Suriname arrested several of the men involved, the principal accused in the matter was a Guyanese citizen who was arrested in Guyana. Only because of a 2008 update to the Piracy and Armed Robbery Act was Guyana able to claim extraterritorial reach so that the prosecution could proceed, as normally a crime occurring beyond Guyana's territory would be beyond the reach of its courts. Remaining loopholes in the maritime law could impede justice in future cases”.⁷¹

The Guyanese government had, fortunately, updated their piracy laws to accommodate such a possibility and were able to move forward with the case. With the increasing overlap of the fisheries space and crime, though, fisheries departments (and their statutes) need to be more proactive in expanding their jurisdictional reach and establishing relevant agreements with other countries. The enforcement limitations across maritime zones are often exploited by illegal fishers for escape since entering into another maritime zone limits the power of the

⁷⁰ Emma Witboi, Kamal-Deen Ali and Mas Santosa, 'Organized Crime in the Fisheries Sector', Blue Paper, available at <https://oceanpanel.org/wp-content/uploads/2022/05/Organised-Crime-Associated-with-Fisheries.pdf>

⁷¹ Stable Seas: Caribbean, 4 December 2020, available at <https://www.stableseas.org/post/stable-seas-caribbean>

coastal country. However, the doctrine of hot pursuit in Article 111 of the UNCLOS can be used by countries to extend their enforcement reach beyond the EEZ.⁷² Additionally, bilateral or trilateral agreements with neighbouring countries for enforcement will strengthen existing pursuit and arrest mechanisms, therefore, making the Caribbean Region a danger zone to illegal fishers. Countries need to be empowered to fully embody their authority in the maritime waters.

⁷² UNCLOS, Article 111(1).

STATELESS VESSELS

Similarly, countries need to update their statutes to address stateless vessels.⁷³ International law only requires countries to treat vessels flying no flag as those without nationality for which the right of visit applies.⁷⁴ No further guideline is provided on the treatment of stateless vessels. Thus, countries are not prevented from extending their jurisdiction over stateless vessels in their waters or on the high seas (if, for example, a stateless vessel should be involved in a crime or offense against a flagged ship).⁷⁵ However, few countries have legislation that empower their governments to assert such authority. This is a legal loophole that needs to be addressed at the state level unless or until international authorities implement a different approach.

⁷³ CIMSEC, 'Why do Nations Voluntarily Limit their Jurisdictional Reach Over Stateless Vessels', 14 April 2025, available at <https://cimsec.org/why-do-nations-voluntarily-limit-their-law-enforcement-jurisdiction-at-sea/>

⁷⁴ UNCLOS, Article 91 (2), 110.

⁷⁵ Andrew Norris, 'Rudderless and Adrift: States' Unwarranted Timidity Respecting Stateless Vessels, International Law Studies, 2025, Vol 106 at <https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=3102&context=ils>

RECOMMENDATIONS FOR REFORM

1. TRAINING FOR ALL OFFICIALS, INCLUDING NON-FISHERIES INSPECTORS

Illegal fishing is a multi-dimensional offence that pervades all maritime zones while producing vast economic and social implications. One way to reduce IUU fishing is to ensure that multiple stakeholders are trained on spotting suspicious activity, monitoring, reporting and interdicting where they are qualified and authorised to.

This could happen in different ways: First, it is necessary to encourage and empower local fishers to report illegal activity. Only a couple of countries had specific clauses allowing for rewards for those whose information led to convictions (St. Lucia, TCI). It is unknown whether any countries have sufficient processes in place to retain confidentiality or investigate the reports. Fishers are less likely to report illegal activity or provide information if they cannot be promised their identities and reports will be treated confidentially, and they may fear retaliation if their identity is compromised.⁷⁶

While local fishers may be unlikely to report on their own community, failure to engage the fishing community in reporting instances of foreign IUU fishing could be excluding an important resource in the fight against it. Allowing rewards for reports leading to arrests, convictions, or gathering of significant information would be a small step in this direction.

Secondly, training should be extended to other maritime enforcement officials who may not be authorised fisheries officers (non-fisheries officials). Noting that one of the loopholes identified in this paper is the gap between interdiction for fisheries offences and other incidental offences, it is necessary for non-fisheries officials to be trained on identifying

⁷⁶ Belize Fisheries Project: Full Report on Stakeholder Workshops and Meetings, 2023 at <https://www.eli.org/sites/default/files/files-pdf/BFP%20Full%20Report%20of%20June%20Trip.pdf>

suspected illegal activity on fishing and taking initial enforcement procedures such as stopping the vessel and gathering evidence before further reference to an authorised fisheries officers according to law. Similarly, fisheries officers must be trained to address offences that are incidental to illegal fishing. Such offences may include the boarding of illegal weapons or gear, use of unlicensed vessels and unauthorised exploratory or surveillance activities within the EEZ.

Restricting fisheries officers to fishing-related interdiction does not give these officers the broad powers to address incidental offences carried out on the pretext of fishing. Overall, breaking the bureaucracy across officials and stakeholders will strengthen the mechanism for monitoring, interdicting and prosecuting illegal fishers. It will also ensure that evidence is preserved and transmitted faster since multiple stakeholders are involved in the interdiction process either directly or indirectly.

2. SHIPRIDER AGREEMENTS/ARRANGEMENTS

Shiprider agreements are not provided for in any treaty relating to the law of the sea. However, since its inception as a suitable measure of monitoring and enforcement, it has spread across countries for different purposes. Exceptionally, shiprider agreements were first and now popularly used for enforcement against fisheries offences. The origin of shiprider agreements can be traced to the 1992 Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific.⁷⁷ The Niue Treaty permitted any party to extend fisheries surveillance and law enforcement activities to the territorial sea and archipelagic waters of a party; zones that would ordinarily be within the full sovereignty of a State. Beyond this, several countries and regions have adopted shiprider agreements to bypass the exclusivity hurdle and extend enforcement powers.

Such agreements have been considered effective between the US and Kiribati, Nauru, Palau, Samoa, Tonga and Micronesia to curb illicit maritime activity including IUU fishing and within the Central Pacific.⁷⁸ Interestingly, some countries in the Caribbean Region have

⁷⁷ Article VI of the Niue Treaty signed by parties to the South Pacific Forum Fisheries Agency.

⁷⁸ Center for Australian, New Zealand and Pacific Studies, 'Shiprider Agreements Making Headway', 6 March 2024, available at <https://canzps.georgetown.edu/shiprider-agreements-making-headway/#:~:text=The%20genesis%20of%20the%20shiprider%20program%20was%20the,the%20South%20Pacific%2C%20signed%20in%20Honiara%20in%201992.>

engaged in shiprider arrangements to address the issue of illicit trade in drugs. One such instance is the 1998 agreement between the US and the UK for shiprider in the Caribbean and Bermuda. This agreement covered Anguilla, BVI, the Cayman Island, Montserrat and TCI for joint enforcement against suspected drug trafficking within the Region.⁷⁹ Also, Jamaica and the US engaged in shiprider arrangements on Jamaican vessels from 2021 to curb illegal drug trafficking.⁸⁰ Thus, countries within the Caribbean Region are familiar with external enforcement agreements concerning illegal trafficking in drugs. Similar measures can be taken towards strengthening enforcement against illegal fishing within the Caribbean. Countries can consider engaging in bilateral or regional shiprider programmes within the Caribbean to facilitate monitoring and enforcement against illegal fishing within the territorial seas or EEZ of neighbouring countries.

3. RATIFICATION OF THE TREATY OF SAN JOSÉ

The “*Agreement Concerning Cooperation in Suppressing Illicit Maritime and Air Trafficking in Narcotic Drugs and Psychotropic Substances in the Caribbean Area*” – better known as the Treaty of San José – was drafted in 2003 and came into force on 18 September 2008, when it was ratified by five countries.

The Treaty of San José is based on the unique maritime enforcement jurisdiction afforded to drug interdiction under international law. While three crimes – piracy, the slave trade and unauthorised broadcasting – can be addressed by any country outside of the territorial sea, and fisheries offences can be addressed out to 200 nautical miles in the EEZ, most maritime crimes, including arms trafficking, human trafficking and smuggling of contraband, may only be interdicted within the 12 nautical mile territorial sea (or within the 12-24 nautical mile Contiguous Zone for inbound vessels). Under the 1988 Vienna Drug Convention, drugs may be interdicted anywhere outside of the territorial sea as long as a specific process (under article 17 of that Convention) is followed. The Treaty of San José reduces some of the burdens of that process and simplifies maritime drug interdiction in the Caribbean.

⁷⁹ Agreement between the US and the United Kingdom 1998, available at <https://www.state.gov/wp-content/uploads/2020/02/00-1030-United-Kingdom-Maritime-Mtrs-Shiprider-Carib-and-Bermuda.pdf>

⁸⁰ Caribbean Today, ‘Jamaica and US Agree on Updated Shiprider Agreement’, 6 July 2021, available at <https://www.caribbeantoday.com/sections/politics/jamaica-and-us-agree-on-updated-shiprider-agreement#:~:text=KINGSTON%2C%20Jamaica%20%E2%80%93%20Jamaica%20and%20the%20United%20States,Foreign%20Trade%20Minister%2C%20Kamina%20Johnson%20Smith%20has%20said.>

As of mid 2025, there are 12 States Party: 1. Belize, 2. Costa Rica, 3. Dominican Republic, 4. El Salvador, 5. France, 6. Guatemala, 7. Honduras, 8. Kingdom of the Netherlands, 9. Nicaragua, 10. Suriname, 11. Trinidad and Tobago, and 12. the US. Trinidad and Tobago just acceded to the Treaty on 8 October 2024, becoming the latest Party and the first of the CARICOM island State to ratify. Four States – Haiti, Jamaica, Panama and the UK – have signed but not ratified the Treaty.

The Treaty does not impose burdens; instead it offers options. In particular it:

1. Encourages regional and international cooperation;
2. Streamlines the process for drug interdictions (reducing a potentially endless procedure to a mere four hours); and
3. Enhances capacity for maritime law enforcement by creating legal mechanisms for sharing resources.⁸¹

While the focus of this Treaty is countering narcotics, it is applicable irrespective of the type of vessel. A foreign-flagged fishing vessel in the EEZ of a country may not be able to be boarded for lack of suspicion of fishing, but that does not mean it cannot be addressed for suspicion of drug trafficking, and the Treaty of San José provides a simplified and enhanced method for doing so in the Caribbean.

4. ENHANCING PORT STATE MEASURES AGREEMENTS

Eight Caribbean countries have ratified the Agreement on Port State Measures (PSMA) to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.⁸² The PSMA enables countries to enforce against a vessel seeking to enter its port when there is suspicion of illegal fishing. Countries may also allow entry of such vessels for the purpose of inspecting and carrying out follow-up enforcement actions against erring vessels.⁸³ When there are clear grounds for believing that a vessel has engaged in IUU fishing, the port State may promptly

⁸¹ For more on the specifics of the Treaty, its benefits and the options for how it could be leveraged to greater operational effect, see: “[Finding Solutions to New Problems in Old Agreements: Options for Adopting and Implementing the Treaty of San José.](#)”

⁸² Food and Agriculture Organization, ‘Parties to the PSMA’, available at <https://www.fao.org/port-state-measures/background/parties-psma/en/>

⁸³ Port State Measures Agreement, Article 12.

notify the flag State and the relevant regional fisheries organisation, deny the vessel the use of its port for landing, resupplying or drydocking.⁸⁴

With information provided to the flag State and upon further investigation, the flag State may then take enforcement measures against its flag vessel in contravention of fisheries regulations.⁸⁵ The downside to the PSMA is that it only permits port States to investigate and share evidence with the flag State but not directly enforce against the vessel in breach. Notwithstanding, implementing the PSMA in the Caribbean will be beneficial to the Region. It will strengthen existing regional mechanisms and allow countries to use their ports as monitoring gateways against illegal fishing. More importantly, it will ease up the procedure for collection of evidence and ensure that flag States within the Region are accountable to their neighbours for enforcement when prompted by a port State. It becomes necessary to encourage more countries in the Caribbean to ratify this agreement so that regional implementation can be sped up in the coming years.

5. DEVELOP COASTAL WATCH CENTERS

A corollary to the recommendation for broad stakeholder training and participation in curbing IUU fishing is to create watch centers or contact points for monitoring and information exchange in the region. The international community has benefitted from the establishing of coordination centers across several maritime zones especially for search and rescue purposes.

According to the 1979 International Convention on Maritime Search and Rescue (SAR Convention), searches at sea are coordinated by rescue coordination centers or sub-centers.⁸⁶ These centers are established in cooperation with other countries for the provision of rescue services, including communication and technical help to vessels and persons in distress.⁸⁷ Accordingly, maritime rescue coordination centers exist in strategic locations across the globe like Australia, China, France, India, Italy, Norway, the UK and Vietnam – maritime areas with the higher vessel or human activity and with active coastguard structures to undertake rescue operations.⁸⁸

⁸⁴ Ibid, Article 18.

⁸⁵ Ibid, Article 20.

⁸⁶ SAR Convention, Annex 1.3.1

⁸⁷ Ibid, Article 2.3

⁸⁸ MRCC locations, available at <https://www.inmarsat.com/en/solutions-services/maritime/solutions/safety/maritime-rescue-co-ordination-centres.html>

Rescue Coordination Center operations are also supported by the International Maritime Organization (IMO) through guidelines issued on minimum communication needs.⁸⁹ Transferring this strategy to the issue of illegal fishing within the Caribbean Region will require a concerted effort to establish points for communication and information exchange on fishing activities within the waters of the Region with the cooperation of countries. The centers, likely maintained by all countries through the CRFM, will operate to monitor and identify IUU fishing and related challenges and speed up communication to local authorities for immediate enforcement.

6. JOINT REGIONAL DOCUMENTATION AND SYSTEM DIGITISATION

Technology can be adopted as a collaborative strategy for eliminating IUU fishing in the Region. First, countries within the Region can promote and establish a joint regional platform for documenting vessels granted the license to fish and explore within their respective EEZs, including the history of such vessels and their ownership records. To the extent permitted, the joint information can be accessible across countries, with mutual visibility between CRFM and the Caribbean Community (CARICOM) Implementation Agency for Crime and Security (IMPACS) for the identification of legitimate and illegal vessels within their maritime zones.

This platform may also include vessels and individuals which have been subject to enforcement action for IUU fishing, fisheries crimes, or other criminal offences, or which are sanctioned, either nationally or internationally.

Secondly, fisheries records can be provided on digitised databases to enable neighbouring countries to ascertain the accurate statistics for fishing and other licences. This strategy would be especially beneficial if the port State enforcement strategy on fishing is implemented. In this regard, communication and exchange of information will be made easier and quicker, records will become more accessible and collection of evidence, easier.

⁸⁹ IMO Guidance on Minimum Communication Needs of Maritime Rescue Coordination Centers (MRCCs) COMSAR.1/Circ.37/Rev.1 Annex, available at <https://www.wcdn.imo.org/localresources/en/OurWork/Safety/Documents/Documents%20relevant%20to%20GMDSS/COMSAR.1-Circ.37-Rev.1.pdf>

Thirdly, with the collaboration of CARICOM IMPACS, a database can be created for tracking the procedure from interdiction to prosecution of fisheries offences. This will enable countries to track the progress of prosecutions, create greater transparency in the Region and enable CRFM track the types of fisheries offences and its regularity within the Region.

Lastly, it is recommended that AIS systems are adopted on all non-artisanal vessels to foster easy identification of vessels and their records beyond physical visual range.



Mutual Security through Partnership

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