# Maritime Law Enforcement and High Sea Challenges

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The operations of some of the worlds fishing vessels and crews involved in Illegal, Unreported and Unregulated (IUU) fishing will have a detrimental environmental impact upon the future of the World’s oceans. The impacts will result in serious depletions in fish stocks, reduced food security for developing nations, reduced employment and economic sustainability for legitimate operations.[[1]](#footnote-1) The term IUU fishing was first coined by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR).

The term captures the destructive and exploitative fishing practices employed to catch the endangered Patagonian Tooth fish in the Southern Ocean.[[2]](#footnote-2)

In basic terms, these vessels fish illegally in violation of national laws or international obligations. They under report misreport or misrepresent their catches; are unregulated by a competent Flag State, and they contravene conservation and management measures of a Regional Fisheries Management Organisation.[[3]](#footnote-3)

Fishing vessels make the perfect vehicles for organised crime groups and syndicates to undertake illegal criminal maritime activities. It is these organised crime groups which engage in conspiracies premeditated to breach national laws and international conventions, and profit from the world’s environmental resources. The illegal business operations have total disregard for sustainable management of the World’s fish stocks. They show contempt for the livelihoods of local fisherman and by their actions, threaten the legitimate fisheries licensing fees, essential for developing nations Gross Domestic Product (GDP).

The organised crime groups have extensive transnational networks for the efficient and successful distribution of their illegal commodities that return generous, untaxed, illegal revenues to further fund illegitimate operations within the organised criminal business environment.

The vessels are highly mobile and able to follow the fish and take advantage of distant waters fisheries, taking their catches from remote oceans, such as, the Southern Ocean, and areas of the Indian and Pacific Oceans. The IUU vessels are supported by larger refrigerator cargo vessels known as reefers. The offloading process between the IUU vessel(s) and the reefer is universally known as transhipment.

The reefer vessel facilitates the transhipment of the illegal catch. Each reefer vessel has enough cargo hold capacity to support a number of IUU fishing vessels. In this manner, the IUU fishing vessel(s) avoids having to undertake long ocean transits to a distant port of convenience or non compliance, which effectively avoids international Port State Measures designed to deter IUU fishing by the presence of law enforcement and compliance intervention.[[4]](#footnote-4) In undertaking the transhipment, it allows the IUU vessel(s) to remain on the fishing grounds continuing their illegal activities. The reefer vessel departs the ocean area to distribute the illegal commodity. Reefer vessels also replenish the IUU vessels and later provide the market distribution function.[[5]](#footnote-5)

## The High Seas

IUU fishing vessels operated by organised crime groups operate outside the maritime zones of National jurisdiction and in regions where maritime law enforcement capability is poor. Organised crime business operations pillage the High Seas for highly valuable species, such as southern blue fin tuna and Patagonian tooth fish.

The High Seas are the salt waters of the world that are outside a State’s internal waters, Territorial Sea, Contagious Zone and Exclusive Economic Zones. The High Seas are all parts of the water column that are not included in the EEZ of a State. [[6]](#footnote-6)

The Illegal operations are concentrated in the High Seas; where very few instruments of international law exist that permit law enforcement agencies to board a vessel for the purpose of search, detection, investigation and arrest, in an attempt to deter illegal criminal operations. The United Nations Convention Law of the Sea, 1982 (UNCLOS III) provides the legal framework for States to create legislation within their own sovereign jurisdiction, but is unable to provide legislation outside of the EEZ. [[7]](#footnote-7)

At present to board a suspect vessel in the High Seas, Australian, along with International Law enforcement agencies, are required to diplomatically approach the Flag State and request permission to board the vessel in the High Seas.

A request made to a Flag State must outline the purpose and justification for the boarding. At this point, an international law enforcement operation may have lost the tactical advantage, and the elements of covertness are diminished, if not entirely lost. If the intelligence is shared on the basis that it forms the necessary justifications, the control of the sensitive, restricted, criminal intelligence is no longer confidential and open to the influences of corruption when dealing with FOC and FONC Flag States.

The request process to board a foreign vessel becomes even more challenging when dealing with FOC and FONC States, well known for their lack of maritime regulations and international compliance.

Receiving permission to board is one objective; however, conducting the search, investigation, executing an arrest, and then applying national legislation to a detected criminal offence or breach against the suspect foreign flagged vessel and its crew on the High Seas is presently not possible.

Vessels detected with illegal commodities, whether weapons, narcotics, fish, people (smuggling, sexual servitude, body parts, all an element of modern day slavery), [[8]](#footnote-8) environmental and any other illegal income generating commodity, operate without the presence of law enforcement intervention. Law enforcement is restricted to boarding, search and investigative practices within the Exclusive Economic Zones of their national jurisdiction. Seeking and obtaining permission of a Flag State to board vessels flying their flag is complex and timeless even by compliant and competent Flag States standards.

How can law enforcement police the High Seas? How can law enforcement provide the security over natural resources or dismantle the organised crime threats if they have to negotiate nonexistent legislation in an ocean subject to organised crime? The universal law enforcement aim is for a safer global communal environment. The challenge for law enforcement is what legislation to use where no legislation exists?

## Transhipments of Illegal Commodities

The Pacific Ocean is not immune from the practice of transhipment at sea. Whilst the practice is not allowed in the Australian Fisheries Zone, many of Pacific Island Countries allow the practice to occur as a contract condition or an authorization attached to the Fisheries License.

Unfortunately, the good intention is occasionally contravened, whilst the majority of transhipment operations may take on a legitimate function, there is always the opportunity for an illegal aspect to occur at sea. Transhipments at sea can facilitate a number of illegal operations and are not limited to the following;

1. Transfer of illegal fish catches.
2. Movement of narcotics, and illicit drugs.
3. Transfer of weapons and firearms,
4. Money Laundering.
5. People smuggling (Crew, women and children, asylum seekers)
6. Black market commodities
7. Fuel and Oil products (West Africa)
8. Exportation of illegal wildlife (rhino and elephant –East Africa)

One of the main reasons these operations occur at sea is to avoid the law enforcement intervention and compliance, monitoring and oversight that these activities would attract if conducted in a port. The practice of transhipment occurs .

in the High Seas, which presents even more challenges for the law enforcement effort attempting to target these practices.[[9]](#footnote-9) During Operation Kurukuru 2012, the command team was confronted with a number of transhipments occurring in the Pacific Ocean. The Automated Identification System and the Vessel Monitoring System illustrated different patterns of navigation where transhipment operations were involved.

One specific model that is practiced by organised crime is the structure of the vessel operations. The reefer vessel, flagged to either a FOC or FONC State enters a Fishing Zone where fishing vessels are targeting high-value species.

The high-value fish species like Southern Blue fin, Yellow fin and Big Eye Tuna will return very large financial yields. These financial gains do not find their way back to the fishers and crew. The funds are generally not reinvested in the industry in a legitimate manner; rather they provide finance for organised criminals to continue operations and finance other IUU fishing activities or facilitate diversified criminal activities within their syndicate’s scope of reach. By design, this increases the monetary value of the operation and the potential return for illegal profits.

The reefer vessel, transits along High Sea corridors or the maritime extremities of Exclusive Economic Zone(s). Performing this transit the reefer vessel avoids any law enforcement detection or confrontation and is afforded the privilege of innocent passage. The Fishing vessel(s) rendezvous with the reefer vessel and commence transhipment operations, the non transparency of the operation may well conclude with differing results. The transhipment(s) will either be legal, illegal or a fusion of the two will occur. Performing this method of transhipment operation, it demonstrates the reefer vessel is disguising its illegitimate fisheries distribution function.

Upon further investigation, the reefer vessel, and the other Fishing vessels are all flagged to different States, usually FOC or FONC Flags. The owners of the vessels are listed are companies registered in a third State and the Master and crew are a mixture of Nationalities different to both the Flag State and place of Company registration.

The complex issues continue as the nature of the transhipment and commodity transhipped is identified. The demanding effort to try to detect the point of embarkation of the illegal commodity; determine how many different vessels the commodity has been transhipped at sea upon and then continued its transit; and where the commodity is likely to land for further distribution - is at times pure speculation. This illustrates the often intricate dilemma that is Maritime Law Enforcement and High Sea Challenge.

## Considerations for the Pacific Region.

Over fishing will see a reduction in the amount of available fish stocks for the World’s compliant fishing nations. This will impact upon Australian fishing operations with direct and indirect consequences for business and government. Supporting industries and businesses will be affected, which will have a negative flow on effect through the economy.

In 2012, Inspector McNulty observed Operation Kurukuru in Honiara, Solomon Islands. Kurukuru is an annual Monitoring Control and Surveillance operation targeting the illegal activities of foreign fishing vessels across the Pacific Ocean. [[10]](#footnote-10) An observation made during the operation was the large concentration of fishing vessels, usually in the 50 – 100 metres in length fishing the waters of the Pacific Ocean. These vessels were operating virtually free of any law enforcement process. This provided criminal opportunity to overfish, under report, under declare or freely conduct other illegal maritime operations at sea. The illegal opportunities were numerous and relatively unobstructed by maritime law enforcement vessels and aerial surveillance, which provide ample opportunity for illegal transhipment operations.[[11]](#footnote-11)

The challenges for Pacific Island Nations are numerous and strategically critical for their development. According to the FFA, Pacific Island Nations receive 5-8% of the landed fish value in licence access fees, a small fee for fishing rights and the right to exploit the highly valued resource. [[12]](#footnote-12) Some of the Pacific Island Nations are so reliant on this income that it represents up to 50% of their GDP. The average across all Pacific Island Nations is 11% of their GDP is derived from fishing. **[[13]](#footnote-13)** The important income dependence on fisheries licence fees as a % of their GDP is not sustainable.

The coastal communities dependence on this source of food and protein is significant, the ocean tuna fisheries is the cornerstone which many States depend on for revenue and economic activity. The estimated wealth of the Western and Central Pacific Tuna fishery is US $3.1 billion.[[14]](#footnote-14) Based on this figure, it is easy to understand the interest, organised crime groups have in the size of this potential market.

However, if the revenues received from fisheries licence access fees are invested in infrastructure, such as schools, roads, ports, hospitals etc, the results will include sound economic and communal benefits. However, what should be a future strategic consideration for the Pacific Islands, including Australia and New Zealand, is the economic position and regional stability once the fisheries resource is greatly reduced or depleted. The local population, extremely reliant on traditional fishing methods, will be affected by the food shortage. The economic forces of supply and demand will have inflationary price increases on fish and could price it out of the reach of local populations.

This problem could escalate and perhaps have a regional domino effect throughout Pacific Island Nations, which are very dependent on the fish stocks as a means of GDP and a food source for local populations. The effect on the Pacific Region will have far reaching consequences. The impact will include national security challenges for Australia and New Zealand, and foreseeable increases in foreign aid, defence and security costs.

The diagram illustrates the potential of Pacific region domino effect.

Diagram 1: Operation Big Eye. 6 June 2014. NSW Police vessel Nemesis and Japanese Flagged long liner, “Hoshin Maru No.78”. Source: New South Wales Police Force.

Illegal fishing will have an adverse impact of the region as the fishing capacity is above optimum sustainability levels. Economists, suggest Western and Central Pacific Ocean tuna fisheries will be less profitable as the supply decreases.[[15]](#footnote-15) The reduction of supply will impact upon the prices the Pacific Island Nations may achieve during licence access fees negotiations. This problem is also replicated in eastern and western African waters.

As the availability and access to the Pacific Ocean’s high valued fishery decreases, there will be the likelihood that many of the Asian and FONC State’s vessels will reposition their fishing fleets closer to Australian and New Zealand coasts. The repositioning effort will be to supplement the reduction of available fish stocks that are no longer commercially obtainable from the Pacific Island Nations EEZ’s. This will increase the amount of foreign fishing and supporting vessels in closer proximity to Lord Howe and Norfolk Islands.

The international law model of maritime policing in the High Seas has not kept pace with the transnational sophistication of organized crime and the tactics and methodologies used to move and distribute illegal commodities to illegal markets across the World. This remains a constant and imminent threat to the wellbeing and security of the global community. If we, can engage in constructive discussion towards a legal international acceptable framework for the dismantling of maritime organised crime, it will provide a suitable resolution to an international problem.

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