

# Malaysia's Approach Towards Illegal, Unreported and Unregulated (IUU) Fishing in South China Sea

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## ABSTRACT

Illegal, Unreported and Unregulated (IUU) fishing is triggered by high and increasing demand for seafood, particularly in Southeast Asia, where people are deeply dependent on marine food and income resources. The migratory essence of fishes and the maritime laws in place demand that nations understand the situation and curb all stability constraints. As part of the national plan of action to prevent, deter and eliminate illegal, unreported and unregulated fishing, Malaysia is either a party or member to a number of instruments or arrangements. This paper will look at the beginnings of IUU fishing with the perspective of ASEAN and how Malaysia complement its IUU approach in the South China Sea (SCS). Currently there is no specific IUU fishing policy on SCS but this paper will look at certain general approaches which can be identified and complement for SCS in general. This research concluded that there is a need for continued regulatory framework to address IUU fishing in Malaysia, an effective institutional structure and compliance agencies are essential for enforcing and coordinating such initiatives and maintaining responsible fishing practices, not only among the local stakeholders but also among their regional counterparts

**Keywords:** Illegal, Unreported and Unregulated (IUU), South China Sea (SCS)

## 1. Introduction

Overfishing is the biggest threat to ocean habitats in every corner of the globe. More than 2.6 million people worldwide are dependent on the protein source scattered in oceans. (UNDP,2010). The Food and Agriculture Organisation (FAO) mentioned that 85% of global aquatic sea food from oceans were over exploited and exhausted (FAO,2016). Overfishing happens when fish are netted at a faster rate than they could reproduce. Fish stocks have declined by one-third over the past 30 years and are expected to fall by another 59 per cent by 2045 if current practices continue.<sup>1</sup> Advanced fishing technology, rising demand for fish and illegal fishing are some of the contributing factors to overfishing. Overfishing can have both destructive and long-lasting environmental and cultural impacts. The global value of illegal, unreported and unregulated IUU fishing is projected to be US\$ 22 billion (RM90.4 billion) per annum (FAO, 2016). It is also estimated that 53 per cent of the world's marine fishery resources have been fully exhausted or fished to the highest sustainable amount, while 32 per cent are

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<sup>1</sup> Hsiao, Amanda. "Opportunities for Fisheries Enforcement Cooperation in the South China Sea." *Marine Policy*, June 2019, 103569.  
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actually overfishing, depleting or recovering from depletion.<sup>2</sup> FAO and the World Bank have cautioned that potential pressures on seafood will increase at the current rate of production.



Over the past decades, international trade in fish and fishery products has risen dramatically, based on FAO fishery estimates, as almost all countries trade large portions of their fishery production on the world market. For example, the Indian Ocean Tuna Commission (IOTC) recently indicated that at least 70,000 tons of tuna caught by large longline vessels are unreported each year in the Indian Ocean.<sup>3</sup> This has led the FAO to support the International Plan of Action to avoid, assess and abolish Illicit, Unreported and Unregulated (IPOA-IUU) Fisheries, which includes legislation to prohibit international trade in IUU fish and fishery products (FAO, 2001; FAO, 2002). Up to 26 million tons of fish are illegally captured each year, estimated conservatively at between 10 and 20% of global catches (N. Majid, 2017). However, the quantity derived from Illicit, Unreported and Unregulated (IUU) fishing could not be calculated from the amount of internationally traded fish and fishery items. With the rising demand for marine resources and limited marine resources, particularly to support the supply of food, IUU fishing has become a major threat to fishing countries. Several scientific studies have emphasized how IUU fishing threatens marine habitat and abuses fishery resources at the South China Sea (SCS). However, not enough of this research has translated into policy-relevant information that can be used to influence the agenda-setting processes taking place in regional fora, particularly in the SCS. Consequently, most policy enforcement initiatives are not evidence-based, and thus cannot effectively safeguard fisheries resources. Coastal states bordering the SCS have the right to claim maritime zones, as undertaken by Malaysia, the Philippines, Brunei, Vietnam and Indonesia, not only for territorial sea but also for Economic Exclusive Zone (EEZ) and continental shelf.<sup>4</sup>

The lucrative sector is also a significant contributor to the gross domestic product (GDP) of several ASEAN nations. All Indo Pacific stakeholder groups sharing the SCS in particular need to help mitigate the negative security, political and economic implications of IUU fishing.<sup>5</sup> Fishing landings in Malaysia in 2011 were

<sup>2</sup> SEAFDEC. 2016. Report of the Expert Consultation on Managing Fishing Capacity to Combat IUU Fishing in Southeast Asia, September 2016, Bangkok, Thailand

<sup>3</sup> Malaysian Efforts in Combating IUU Fishing: A Legal and Policy Review. Journal of East Asia and International Law 12(2):387-400. Journal of East Asia and International Law 12(2):387-400. [10.14330/jeail.2019.12.2.09](https://doi.org/10.14330/jeail.2019.12.2.09)

<sup>4</sup> MALAYSIA'S NATIONAL PLAN OF ACTION to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (Malaysia's NPOA-IUU), 2013

<sup>5</sup> FAO. 2001. International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. FAO, Rome, Italy

1,665,857 tonnes, with an estimated RM 9.38 billion worth.<sup>6</sup> The contribution to the Gross Domestic Product (GDP) was 1.1 per cent. The maritime regions of Malaysia are surrounded by other states on almost every side. Since territorial waters are vast and require multiple governing bodies to ensure regulations, it is difficult to trace owners of IUU fishing vessels (J. Azmath & D. Grewal, 2017). This paper will look at the beginnings of IUU fishing with the perspective of ASEAN and how Malaysia complement its IUU approach in the SCS. Currently there is no specific IUU fishing policy on SCS but this paper will look at certain general approaches which can be identified and complement for SCS in general.

## 2. What is IUU?

The 2001 FAO International Plan of Action (IPOA) to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (FAO, 2001; FAO, 2002) provides the following composite definition of illegal, unreported and unregulated (IUU) fishing. IUU fishing tends to be one of the biggest threats to marine ecosystems due to its strong potential to threaten national and international attempts to preserve fisheries as well as marine biodiversity conservation efforts. Illegal fishing happens when fishing is carried out by vessels from countries that are parties to a Regional Fisheries Management Organisation (RFMO) but operate in breach of their rules or operate in waters of a country without authorization.<sup>7</sup> It is estimated that IUU fishing accounts for approximately one third of the total catches in some important fisheries and may represent an overall cost to developing countries of between USD 2-15 billion a year. Unreported fishing occurs when catches are not recorded or misreported to local national authorities or RFMOs. Unregulated fishing occurs when fishing is carried out by vessels without nationality or when flying the flag of non-partisan States of related fisheries organisations which do not consider themselves bound by their laws. Essentially, fishing which can be defined as illegal, unreported and unregulated (IUU) is now widely understood as fishing activities which are inconsistent with or contravene the management or conservation measures in place for a particular fishery (Agnew and Barnes, 2004). Globally, IUU fishing has been a growing concern in the Southeast Asian region, and even nationally, given that such activities continue to threaten the sustainability of fisheries resources. The global value of IUU fishing is estimated at US\$ 22 billion per annum (RM90.4 billion).<sup>8</sup> Every year, up to 26 million tons of fish are illegally captured, with a conservative estimate of 10 to 20 % of global catches (FAO, 2016). By definition, “IUU fishing is either an expressly illegal activity or, at a minimum, an activity undertaken with little regard for applicable standards” (FAO, 2010).

Fishermen of IUU achieve an unfair advantage over legal fishermen; i.e. those who work according to those criteria. In this context, IUU fishers are "free riders" who disproportionately profit from the sacrifices made by others in the interests of proper protection and management of fisheries. This condition damages the morale of legal fishermen and also allows them, even more importantly, to ignore the law. “The objective of International Plan of Action for Illegal, Unreported and Unregulated (IUU (IPOA-IUU) is to prevent, deter and eliminate IUU fishing by providing all States with comprehensive, effective and transparent measures by which to act, including through appropriate regional fisheries management organisations established in accordance with international law”. THE IPOA-IUU defines IUU fishing to the definitions below.<sup>9</sup> Malaysia also uses these definitions in her NPOA-IUU. “Illegal fishing refers to fishing activities carried out by national or international vessels in waters under a State's control, without that State's permission, or in contravention of its laws and regulations”. It is carried out by vessels flying the flag of States which are parties to a particular RFMO but operate in contravention of the conservation and management measures introduced by that organisation, by which States are bound, or by specific provisions of applicable international law or in contravention of national laws or international obligations, including those performed by collaborating States. Unreported fishing refers to fishing activities not recorded or misreported to the appropriate national authority in contravention of national laws and regulations or conducted

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<sup>6</sup> FAO. 2002. Implementation of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. FAO, Rome, Italy; 122 p

<sup>7</sup> J. Li, R. Amer, Closing the net Against IUU fishing in the South China Sea: China's practice and way forward, J. Int. Wildl. Law Policy 18(2) (2015) 139–164.

<sup>8</sup> Ibid

<sup>9</sup> MALAYSIA'S NATIONAL PLAN OF ACTION to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (Malaysia's NPOA-IUU), 2013

in the area of competence of a particular RFMO that have not been recorded or misreported in contravention of that organisation's reporting procedures.

Unregulated fishing refers to fishing activities conducted by vessels without nationality or by those flying the flag of a State not party to that organisation or by a fishing body in the field of operation of a particular RFMO in a manner that does not comply with or contravene the protection and management measures of that organisation or in areas or fish stocks in relation to that organisation. IUU fishing exploits corrupt administrations and weak management regimes, especially those of developing countries lacking capacity and resources for effective oversight, control and monitoring (MCS). It is present in all forms and dimensions of fisheries, occurs in high seas as well as in areas under national jurisdiction, affects all aspects and stages of fish capture and use, and may often be related to organised crime. Fishery resources available to genuine fishermen are heartlessly poached by IUU fishing, frequently contributing to the collapse of local fisheries, with small-scale fisheries proving to be especially vulnerable in developing nations.

IUU fishing threatens livelihoods, heightens hunger and raises food insecurity. It is well known that in the last 20 years, IUU fishing has escalated, especially in high seas fisheries (FAO, 2016). Unfortunately, the complex, adaptable, highly mobile and clandestine nature of IUU fishing prevents its effect from being straightforwardly calculated.<sup>10</sup> However, rough estimates suggest that IUU fishing around the world's oceans weights approximately 11–26 million tons of fish annually or a price tag of US\$ 10–23 billion (FAO, 2016).<sup>11</sup> Thus, IUU fishing continues to facilitate additional IUU fishing, generating a downward spiral of failure in management. IUU fishing is essentially performed in all catch fisheries, whether in areas under national control or in the high seas. IUU fishing presents a direct and serious threat to the successful protection and management of many fish populations, with numerous adverse effects on fisheries and on people who depend on them in pursuit of their legal livelihood. By undermining the goals of fisheries management, IUU fishing may cause a fishery to collapse or seriously hinder efforts to restore declining fish stocks.<sup>12</sup> This, in turn, may lead to loss of both short- and long-term economic and social opportunities and can diminish food security. Left unchecked, the advantages of successful fishery management can be totally cancelled by IUU fishing.

IUU fishing is essentially performed in all catch fisheries, whether in areas under national control or in the high seas. IUU fishing presents a direct and serious threat to the successful protection and management of many fish populations, with numerous adverse effects on fisheries and on people who depend on them in pursuit of their legal livelihood. The unreported existence of IUU fishing renders quantification especially difficult. Available information nevertheless indicates that, for some important fisheries, IUU fishing accounts for up to 30 percent of total catches and in at least one case possibly much more. Examples of IUU fishing in Malaysian fishing waters involve interference by foreign and local fishing vessels as well as unlicensed fishing by local fishing vessels. Until now, however, there have been no credible corresponding estimates of IUU fishing in Malaysia. IUU fishing has negative and widespread implications for the climate, culture and the economy. Besides its effect on target species survival, IUU fishing adversely affects related and dependent species as well as the broader environment. IUU fishing threatens efforts at international, regional and national levels to efficiently protect and maintain fish stocks, fisheries impact and biodiversity. In the end, IUU fishing will cause a fishery to collapse. At a different level in the perspective of regional picture, the security, safety and sovereignty of a nation is rendered by the existence of such illegal foreign fishing elements. Existing international agreements must be committed by all states to ensure the implementations of all requirements and conduct of IUU in the SCS.

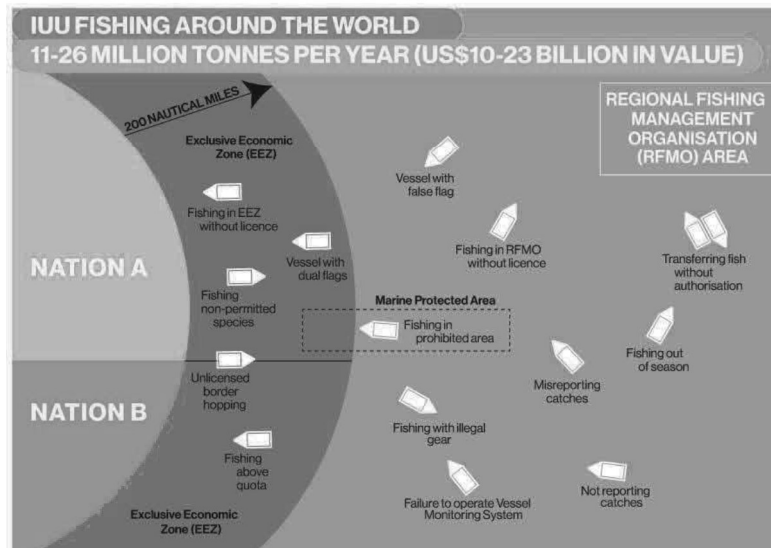
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<sup>10</sup> R. Pedrason, Y. Kumiawan & Purwasandi, Handling of Illegal, Unreported and Unregulated (IUU) Fishing, 2:1 J. Pertahanan 71-90 (2016).

<sup>11</sup> *Ibid*

<sup>12</sup> Farahdilah Ghazali et al., Malaysian Efforts in Combating IUU Fishing: A Legal and Policy Review. J. East Asia & Int'l L. Vol. 12/No.2 (2019); 387-400 Publication type

# ILLEGAL, UNREPORTED AND UNREGULATED FISHING



Source: IUU. European Commission, US National Intelligence Council (2016)

However, when handling fishery resources, applying such sovereign-based policies is counterproductive to the survival of those resources. Fish are migratory and flexible by nature, and do not respect territorial boundaries. While they may spawn in the EEZ of one country, during their juvenile stage they travel to another region, and end their lives in the EEZ of another country. Imposing aggressive state-driven IUU fishing practices in a specific area would prohibit fish from migrating to another location, thus reducing the entire fishing population in the region. Through continuing to equate the fisheries crisis with the territorial disputes, maritime law enforcement agencies in the area would be likely to implement similar requirements while addressing the fisheries crisis in the area. While these requirements tend to protect national interests, they also threaten the sustainability of common regional resources. IUU fishing also challenges regional stability by making other transnational crimes simpler. As a crime per se, IUU fishing leads per year to a global loss of up to \$45 billion (FAO, 2018).<sup>13</sup> Due to diminishing fish stocks in the SCS, however, fishing communities are now forced to pursue revenue through alternative avenues that still rely on a fishing boat and a crew familiar with the waterways of the area.<sup>14</sup>

<sup>13</sup> Hsiao, Amanda. "Opportunities for Fisheries Enforcement Cooperation in the South China Sea." *Marine Policy*, June 2019, 103569. <https://doi.org/10.1016/j.marpol.2019.103569>.

<sup>14</sup> *Ibid*

### 3. IUU in South China Sea

The SCS is situated in a tropical and semi-tropical area between latitudes of 4 average S and 24 average N and 102 average E and 123 average E between longitudes. In terms of geographical location, it is the crossroads between Asia and Oceania, connecting the Pacific and the Indian Oceans. The SCS (SCS) region, as the world's third largest continental sea, is more than 3 million square kilometres. Southern China's island, Indochina, Malay's peninsulas and Malay's Archipelago surround the sea. There are nine countries in the SCS, namely China, Vietnam, Cambodia, Thailand, Malaysia, Singapore, Indonesia, Brunei and the Philippines. SCS is a large maritime region bordered by countries such as Malaysia, Vietnam, Indonesia, Brunei, the Philippines and China.<sup>15</sup> SCS accounts for 12 per cent of global fish catch in 2015, and more than half of the world's fishing vessels are reported to be operating there. Officially, about 3.7 million people are working in its fisheries.<sup>16</sup> But they have the SCS dangerously overfished. Total stocks have been depleted by 70-95 per cent since the 1950s and grab rates have declined by 66-75 per cent over the last 20 years.<sup>17</sup> The Southeast Asian Fisheries Development Centre, an intergovernmental organisation that comprises all non-China SCS nations, reports that IUU fishing currently accounts for 8-16 per cent of total catch. Fishery stocks in the SCS are required to meet global demand for food. The SCS, which also hosts more than half of the world's fishing boats, accounts for about 12 per cent of global fish catch.<sup>18</sup> Fish stocks in the SCS are now only 5 percent of what they once were in the 1950s.<sup>19</sup>

### 4. Asean Perspective on IUU

Overfishing can have detrimental and long-lasting impacts on the ocean as well as society. A report by the World Wildlife Fund (WWF) states that "once considered inexhaustible, our oceans are now facing a global crisis as more and more people compete for fewer and fewer fish."<sup>20</sup> It is estimated that 53 percent of the world's marine fishery resources have been completely depleted or fished to the maximum sustainable level, while 32 percent is currently being overfished, depleted, or recovering from depletion.<sup>21</sup> Examples of IUU fishing in Malaysian fishing waters include international and local fishing vessels intervention as well as unlicensed fishing by local fishing vessels. Until now, however, the corresponding estimates of IUU fishing in Malaysia have not been accurate. IUU fishing has negative and widespread climatic, cultural and economic consequences. In addition to its impact on the survival of target species, IUU fishing adversely affects both associated and dependent species as well as the wider ecosystem. IUU fishing challenges attempts to effectively preserve and sustain fish stocks, fisheries impact and biodiversity at the international, regional and national levels. The Resolution on Sustainable Fisheries for Food Protection for the ASEAN Area Towards 2020 serves as policy platform for the formulation of national policies to harmonize all efforts in the area.<sup>22</sup> In 2016, ASEAN member states jointly declared war on IUU fishing and pledged to enhance sustainable fishing in the region during the ASEAN-Southeast Asian Fisheries Development Center (SEAFDEC) regional cooperation forum in Thailand. The association aimed to increase the competitiveness of ASEAN's seafood industry and to comply with international standards and regulations. Combating IUU fishing has been complicated as many countries share fishery resources, and fishery products are traded intra-regional before export. To tackle IUU fishing involves close collaboration between

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<sup>15</sup> SEAFDEC, ASEAN Catch Documentation Scheme for Marine Capture Fisheries (Sept. 28, 2019), available at <https://asean.org/wp-content/uploads/2012/05/16.-ASEAN-Catch-Documentation>

<sup>16</sup> *Ibid*

<sup>17</sup> "Catch Documentation and Traceability." *Southeast Asian Fisheries Development Center*, n.d. <https://www.seafdec-oceanspartnership.org/catch-documentation-and-traceability/>.

<sup>18</sup> Zhang, Hongzhou. "Chinese Fishermen in Disputed Waters: Not Quite a 'People's War.'" *Marine Policy* 68 (June 2016): 65–73. <https://doi.org/10.1016/j.marpol.2016.02.018>.

<sup>19</sup> *Ibid*

<sup>20</sup> SEAFDEC, ASEAN Catch Documentation Scheme for Marine Capture Fisheries (Sept. 28, 2019), available at <https://asean.org/wp-content/uploads/2012/05/16.-ASEAN-Catch-Documentation-Scheme.pdf>.

<sup>21</sup> A. David, Illegal foreign fishermen affecting livelihood of KT fishermen, *New Strait Times*, Dec. 14, 2017, available at 392 Farahdilah Ghazali et al

<sup>22</sup> SEAFDEC. 2016. Report of the Expert Consultation on Managing Fishing Capacity to Combat IUU Fishing in Southeast Asia, September 2016, Bangkok, Thailand

agencies in different countries. Monitoring, control and surveillance systems (MCS) need to be improved, and the traceability of sources of fish and fishery products needs to be enhanced at the risk of more ASEAN countries receiving EC alerts.<sup>23</sup> The three areas in the region prone to IUU fishing include the Gulf of Thailand, Indonesian waters and Malaysia's Exclusive Economic Zone (EEZ). The Department of Fisheries in Malaysia stated that the country loses up to RM6 billion (US\$1.4 billion) to illegal fishing every year".<sup>24</sup> Despite major plans and strategies within ASEAN to combat IUU fishing across the region as stated in the Strategic Plan of ASEAN Cooperation on Fisheries 2016 to 2020 that was adopted in 2018, illegal fishing is still rampant in Southeast



Source: OceanAsia Project (2016)

Asia. With China, Taiwan, Vietnam, the Philippines and Malaysia claiming part of the sea, making ocean governance and fisheries management a political obstacle, the situation in the proper SCS is more problematical<sup>25</sup>. While the Association of Southeast Asian Nations (ASEAN) has plans to address the problem of IUU fishing through, for example, the 2016 to 2020 Strategic Action Plan on ASEAN Fisheries Cooperation adopted in 2018, they have not gone far enough to rein in the problem. Because of the importance of fishing in the area, both economically and as an essential source of livelihood, overfishing in the SCS should not be regarded as some minor ancillary issue of the main sovereignty dispute. It should better be treated and considered as a big issue that needs to be

rectified as soon as possible. Citing the UN Convention on the Law of the Sea (UNCLOS), experts suggest that countries in the Southeast Asian region namely Malaysia, Vietnam, the Philippines, Brunei and Indonesia should collaborate with other claimants on the management of fish supplies without undermining claims over the sea. Since all communities across the SCS are heavily dependent on fish stocks for food security and income, this working group notes that "there is a definite legal duty to cooperate on practical necessity based on fisheries management and the environment".

## 5. Malaysia's Approach in Policy Implementation in SCS

According to the FAO of the United Nations, up to 30 per cent of global catches may be illegally captured or remain unreported. Unreported catches make sustainable fishing difficult and jeopardize all conservation initiatives (FAO, 2016). Malaysian fisheries waters span a 4,492 km long coastline consisting of the mainland of Peninsular Malaysia, Sabah and Sarawak with 453,186 km<sup>2</sup> of EEZ waters in the Andaman Sea, the Malacca Straits, the SCS and the Celebes Sea.<sup>26</sup> As the territorial waters are infinite and require various governing bodies

<sup>23</sup> The Indonesian Government has campaigned for illegal fishing to be recognised as a transnational organised crime in order to promote more effectively regional control mechanism on IUU Fishing. See A. Yuliantiningsih et al., From Illegal, Unreported and Unregulated Fishing to Transnational Organised Crime in Fishery from an Indonesian Perspective, 11 J. East Asia & Int'l L. 335-58 (2018).

<sup>24</sup> Department of Fisheries Malaysia, Malaysia's National Plan of action to prevent, deter and eliminate illegal, unreported and unregulated fishing (Malaysia's NPOAIUU), Putrajaya: Department of Fisheries Malaysia, 2013

<sup>25</sup> H. Zhang, S. Bateman, Fishing Militia, the securitization of fishery and the South China Sea Dispute, *Contemp. Southeast Asia* 39(2)(2017) 288-314

<sup>26</sup> SEAFDEC. 2016. Report of the Expert Consultation on Managing Fishing Capacity to Combat IUU Fishing in Southeast Asia, September 2016, Bangkok, Thailand

to ensure compliance, it is difficult to trace owners of IUU fishing vessels. In addition to the 1982 United Nations Convention on the Law of the Sea (UNCLOS), the International Plan of Action (IPOA) on IUU fishing is one of the key international instruments adopted to facilitate sustainable long-term fisheries.<sup>27</sup> The territorial waters available for exploration and management increased considerably from 47,000 to 160,000 square nautical miles with the EEZ declaration in 1980.<sup>28</sup> It is estimated that approximately 980,000 metric tonnes of fish (value RM6 billion) are robbed annually by illegal foreign vessels, usually from Thailand, Vietnam and Indonesia, in Malaysian waters (mainly East Coast) particularly in the SCS.<sup>29</sup>

Just 50 percent of the fish captured in Malaysian waters have been known to be landed; the remainder are 'unreported' mostly due to territorial sea encroachment by foreign fishing vessels. Infringement of foreign fishermen on the eastern coast of the Malaysian Peninsula not only affects local fishermen's livelihood, but also causes degradation of marine biodiversity, as well as being tangled with drug and weapons trafficking. There are two types of fishing operations, traditional and commercial. Traditional fishing in Malaysia refers to vessels of less than 40GRT (Gross Register Tonnage), which operate traditional gears. Commercial fishing refers to 40GRT and above vessels which use commercial gear such as trawl nets, purse seines (fish and anchovies), longlines and traps. In 2011, there were 134,110 fishers employed onboard 53,002 approved fishing vessels operating in the fisheries business. A total of 80,546 (60.06%) of this workforce operated on board fishing vessels using traditional fishing gears while 53,564 (39.94%) fishermen operated on board commercial fishing vessels.<sup>30</sup> The key threats of IUU fishing in Malaysia include, but are not limited to, infringement of license terms, infringement by local and foreign fishing boats, illegal fishing, misreporting of catch and the use of damaging gears and methods to fish. This has impacted both the fishermen's economic and social livelihoods and the Malaysian fisheries business. Illegal fishing on Malaysian fisheries waters by international fishing vessels poses a security threat to the country and a heavy and unhealthy rivalry with local fishermen. Local illegal fishing also leads to social tensions between licensed fishing operators and unlicensed fishing operators, and between the interference of commercial fishing vessels and traditional fishermen.

In Malaysia, the Malaysian Fisheries Department gathers and maintains data and information about local fishing vessels and foreign flagged vessels engaged in IUU fishing in Malaysian fishing waters as well as international fishing vessels engaged in IUU fishing in the high seas and entering Malaysian ports. Malaysia always cooperate with other nations in the investigation of IUU fishing activities. Under section 15(2) of the 1985 Fisheries Act, Malaysia can, without the approval of the Malaysian Fisheries Department, refuse the loading or unloading of any fish, fuel or supply or transshipment of any fish in Malaysian fishery waters. To some extent, Malaysia has introduced its EEZ, a comprehensive surveillance, control and monitoring system established under the United Nations Convention on the Law of the Sea (UNCLOS) in 1982.<sup>31</sup> In the context of fisheries, Monitoring, Control And Surveillance or MCS is defined by the FAO as an extension of the conventional implementation of national fisheries rules to help broader fisheries management problems. MCS, "functions are controlled as the selection, calculation and analysis of fishing activity, including but not limited to: capture, species composition, fishing effort, by-catch, discards, area of service, etc.; regulation includes determining the terms and conditions under which resources may be collected, and monitoring includes controlling and supervising fishing activities to improve the efficiency of fishing activities". There are a number of agencies in Malaysia which are involved in the MCS activities as listed in **Table 1**.

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<sup>27</sup> J. Azmath & D. Grewal, A Perspective on Safety and Governance Issues of Fishing Vessels, 31 Ocean Y.B. 483-5 (2017).

<sup>28</sup> N. Majid, Malaysia loses RM6b annually due to illegal fishing in South China Sea, New Strait Times, June 19, 2017, available at <https://www.nst.com.my/news/nation/2017/06/250427/malaysia-loses-rm6b-annually-due-illegal-fishingsouth-china-sea>.

<sup>29</sup> *Id*

<sup>30</sup> Department of Fisheries Malaysia, Malaysia's National Plan of action to prevent, deter and eliminate illegal, unreported and unregulated fishing (Malaysia's NPOAIUU), Putrajaya: Department of Fisheries Malaysia, 2013

<sup>31</sup> Department of Fisheries Malaysia, Malaysia's National Plan of action to prevent, deter and eliminate illegal, unreported and unregulated fishing (Malaysia's NPOAIUU), Putrajaya: Department of Fisheries Malaysia, 2013

**TABLE 1: Agencies in Malaysia which are involved in the Monitoring, Control and Surveillance (MCS) activities (Source: Malaysia's NPOA-IUU, 2013)**

NO	DEPARTMENT	LAWS	FUNCTIONS
1.	Department of Fisheries (DOFM)	<ul style="list-style-type: none"> <li>• Fisheries Act 1985</li> <li>• International trade in Endangered Species act 2008</li> <li>• Exclusive Economic Zone (EEZ) Act 1984</li> </ul>	“DOFM is responsible for the overall control of matters relating to fisheries. It administers and enforces the Fisheries Act 1985, EEZ Act 1984 and the Endangered Species Act 2008. It also undertakes research and offers technical assistance to fisheries in the marine, aquaculture, and freshwater sectors”
2.	Department of Fisheries Sabah (DOFS)	<ul style="list-style-type: none"> <li>• Fisheries Act 1985</li> <li>• Sabah Fisheries Ordinance 1964</li> <li>• International Trade in Endangered Species Act 2008</li> </ul>	“DOFS is responsible for the management of fisheries related matters in the state of Sabah only. It also administers and enforces the Fisheries Act 1985 and the International trade in engendered Species Act 2008. It also provides technical support for the marine, aquaculture and freshwater fisheries industry.”
3.	Fisheries Development Authority of Malaysia (LKIM)	<ul style="list-style-type: none"> <li>• Fisheries Development Authority Act 1971</li> <li>• Fishermen’s Association Act 1971</li> </ul>	“The functions of LKIM are to promote and develop efficient and effective management of fisheries enterprises and fish marketing: to promote, facilitate and undertake economic and social development of the Fishermen’s Associations: to register, control and supervise Fishermen’s Associations and Fisheries Co-operatives and to make provisions for matters related thereto: and to control and coordinate the implementation of aforesaid activities”
4.	Department of Marine Parks Malaysia	Fisheries Act	“The Department of Marine Parks Malaysia is entrusted with the function to afford special protection to aquatic flora and fauna, and protect, preserve and to manage the natural breeding grounds and habitat of aquatic life with particular regard to species that are rare or endangered within the Marine Parks”
5.	Malaysia Maritime Enforcement Agency (MMEA)	Malaysian Maritime Enforcement Agency Act 2004	“MMEA was established to perform enforcement functions for ensuring the safety and security of the Malaysian Maritime Zone with a view to the protection of maritime and other national interests in such zone. The MMEA is entrusted to enforce law and order under any federal law; perform maritime search and rescue; prevent and suppress the

			commission of an offence; lend assistance in any criminal matters on a request by a foreign State as provided under the Mutual Assistance in Criminal Matters Act 2002 (Act 621 ); carry out air and coastal surveillance; establish and manage maritime institutions for training; ensure maritime security and safety; as well as maritime search and rescue”
6.	Marine Police	Police Act 1967	“The Marine Police has the responsibility to control, plan and implement operations involving public order. It is also involved in planning and coordinating joint maritime patrols and joint border patrols with the Malaysian Armed Forces and the army/navy and coast guards of neighbouring countries. It is also involved in planning, controlling and coordinating search and rescue operations”
7.	Marine Department	Merchant Shipping Ordinance 1952 • Merchant Shipping Ordinance (Amended) 1998.	“The Marine Department has the responsibility to register fishing vessels above 500 GT and register fishing vessels of 15 NRT and above operating in Sabah waters”.
8.	Royal Malaysian Customs Department	Customs Act 1967	“The Royal Malaysian Customs Department is involved in the collection of direct truces such as sales tax, petroleum sales tax, service tax, excise duty and windfall profit levy for national revenue. It is also involved in trade and industry facilitation as well as enforcement and in ensuring compliance with legislations”
9.	Malaysian Quarantine and Inspection Services (MAQIS)	Malaysian Quarantine and Inspection Services Act 2011	“MAQIS is involved in the enforcement of all relevant written laws at the entry points, quarantine stations and quarantine premises to ensure that plants, animals, carcasses, fish, agricultural produce, soils, microorganisms and food which are imported into and exported out of Malaysia comply with the health aspect of humans, animals, plants and fish and food safety”
10.	Sarawak Forestry Department and Sarawak Forestry Corporation	National Parks and Nature Reserves Ordinance 1988 (Sarawak)	“These agencies are entrusted with the functions to protect, preserve and manage natural resources including aquatic fauna and flora within protected areas in Sarawak including marine or freshwater endangered or rare species”

11.	Sabah Parks and Harbours Authority	Ports and Harbours Enactment 2002	“The Sabah Port and Harbours Authority is responsible in the licensing of small vessels below 15 NRT in Sabah”
12.	Sabah Wildlife Department	Sabah Wildlife Conservation Enactment 1997 International	“The Sabah Wildlife Department is responsible to manage and conserve the flora, fauna and nature of Sabah so as to ensure the perpetuation of all species within their natural habitats”
13.	Sabah Parks	Sabah Parks Enactments 1984 National Park Enactment 1977	“The Sabah Parks is responsible to protect, conserve and preserve natural areas which have been gazetted as a park, especially areas which contain unique features with high esthetical values as a natural heritage”.

Malaysia has also adopted various conservation measures to prevent the use of marine resources on the eastern coast of the Malaysian Peninsula including SCS. Malaysia as a fisheries region is facing severe and deteriorating fisheries management problems. Its IUU fishing problems are typically associated with competing with neighbouring fishermen like Vietnam, Thailand, and Indonesia. The importance of controlling and implementing regulations for both fishing activities and trade should never be ignored in combating IUU fishing. Furthermore, to reduce IUU fishing, effective cooperation between government agencies, data and research management, and participation and commitment from all stakeholders are important. Such collaboration involves an effective governance structure involving numerous stakeholders that involves supervision, compliance, coordination, and involvement.<sup>32</sup> The UN Convention on the Law of the Sea I (1958) and II (1960) were among the international community's first multilateral efforts to address problems relevant to ocean governance. Given that these two conventions did not address issues related to territorial boundaries and fisheries rights, UNCLOS was further negotiated and signed in 1982 to identify nations' rights and responsibilities with respect to their use of the world's oceans and to establish guidelines for companies, the environment and the management of marine natural resources. Following the steps provided for in UNCLOS (Table 2), various legal instruments were made.

**TABLE 2:** UN and FAO Legal Implications in Combating IUU (Source: Malaysia's NPOA-IUU,2013)

United Nations (UN)	Food and Agriculture Organisation (FAO)
UNCLOS 1982	“UNCLOS 1982 FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, 1993”
United Nations Fish Stocks Agreement, 1995	“United Nations Fish Stocks Agreement, 1995 International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, 2001 (IPOA-IUU)”
	“FAO Agreement on Port State Measures to Prevent, Deter and Eliminate IUU Fishing, 2009”

In Malaysia, there are a number of government ministries, departments and agencies which are involved in the implementation of the NPOA-IUU. This NPOA-IUU's overall aim is to ensure the protection of fishery

<sup>32</sup> Farahdilah Ghazali et.al., Malaysian Efforts in Combating IUU Fishing: A Legal and Policy Review. J. East Asia & Int'l L. Vol. 12/No.2 (2019); 387-400 Publication type : Research Article Section : East Asian Observer DOI : <http://dx.doi.org/10.14330/jeail.2019.12.2.09>

resources and is a collection of current initiatives within the national system to combat IUU fishing.<sup>33</sup> This covers all the coasts of Malaysia including the SCS. The Malaysian National Plan of Action to Discourage, Assess and Eradicate IUU Fishing (NPOA-IUU), which is consistent with the International Plan of Action on IUU Fishing (IPOA-IUU) of the FAO, is committed to contributing to the credibility of joint action to combat IUU fishing by cooperating with other countries and parties and fulfilling its obligations at the regional level. This includes refusing requests to use its ports by fishing vessels claimed to have fished for IUU. Malaysia's NPOA-IUU adheres similarly to IPOA-IUU regulations. It includes general measures aimed at all States, as well as initiatives explicitly targeted at flag states, coastal states and port states. It also includes market-related measures, measures to meet developed countries' special requirements, and steps to be taken by States through regional fisheries management organisations.

The Department of Fisheries Malaysia's Strategic Plan (2011-2020) also provides for efforts to tackle IUU fishing in Malaysia with the aim of growing the number of IUU fishing cases by 10 per cent annually from 2012-2020.<sup>34</sup> In response to the European Union legislation, the Department is also interested in issuing catch certificates to discourage IUU fishing for wild caught fish and fishery products. The NPOA-IUU was established in line with the 2001 FAO International Action Plan to Discourage, Decide and Eradicate IUU Fishing. The IPOA-IUU was established within the context of the FAO Code of Conduct for Responsible Fisheries as a voluntary instrument. The IPOA's objective is to avoid, discourage, and eradicate IUU by providing comprehensive, efficient, and clear steps for all States to act, including through appropriate Regional Fisheries Management Organisations (RFMOs) developed under international law. The IPOA-IUU calls on States to establish and adopt NPOAs by June 2004 in order to further achieve the IPOA's goals and fully incorporate its requirements as an integral part of its fisheries management programmes and budgets.

The Strategic Plan (2011-2020) of the Department of Fisheries Malaysia also provides for efforts to tackle IUU fishing in Malaysia with a view to the number of IUU fishing cases by 10 per cent annually from 2012-2020. The Department is also involved in issuing catch certificates in response to European Union legislation to prevent IUU fishing for widely captured fish and fishery products. In line with the 2001 FAO International Action Plan to Discourage, Determine and Eliminate IUU Fishing, the Malaysian NPOA-IUU was developed. The IPOA-IUU was developed as a voluntary instrument, within the framework of the FAO Code of Conduct for Responsible Fisheries. The goal of the IPOA is to prevent, discourage and eliminate IUU by providing thorough, effective and consistent steps for all States to act, including through appropriate RFMOs established under international law. The IPOA-IUU calls on States to develop and implement NPOAs by June 2004 with a view to further achieving the objectives of the IPOA and completely integrating its requirements as an integral part of its fisheries management programmes. Approximately 980,000 metric tons of fish (worth RM6 billion) are said to be stolen annually by illegal foreign vessels, typically from Thailand, Vietnam and Indonesia, in Malaysian waters (mainly East Coast).<sup>35</sup> Just 50 percent of the fish captured in Malaysian waters have been known to be landed; the remainder are 'unreported' mostly due to territorial sea encroachment by foreign fishing vessels.<sup>36</sup> Infringement of foreign fishermen on the eastern coast of the Malaysian Peninsula not only affects local fishermen's livelihood, but also causes degradation of marine biodiversity, as well as being tangled with drug and weapons trafficking.

IUU fishing puts the Malaysian fish harvest at risk, as well as the long-term survival of Malaysia's fishing industries and the livelihood of its coastal communities, especially on Malaysia's eastern coastline. IUU fishing has adverse effects on fish populations and marine habitat resulting from the use of illegal fishing gears. Malaysia has introduced several pieces of IUU fishing regulation legislation in Malaysian waters. Notably, Malaysia's legislative authority is split between federal and state governments, as enumerated in the Federal Constitution's Ninth Schedule, which was divided into three lists. Matters relating to land management include coastal areas that

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<sup>33</sup> Department of Fisheries Malaysia, Malaysia's National Plan of action to prevent, deter and eliminate illegal, unreported and unregulated fishing (Malaysia's NPOA-IUU), Putrajaya: Department of Fisheries Malaysia, 2013

<sup>34</sup> Strategic Plan of the Department of Fisheries Malaysia (2011-2020)

<sup>35</sup> N. Majid, Malaysia loses RM6b annually due to illegal fishing in South China Sea, New Strait Times, June 19, 2017, available at <https://www.nst.com.my/news/nation/2017/06/250427/malaysia-loses-rm6b-annually-due-illegal-fishingsouth-china-sea>.

<sup>36</sup> *Id.*

fall under the control of the states, while the federal government has authority over matters related to the sea and marine resources, including coastal fisheries. By virtue of that list, Malaysia's federal government passed the 1985 Fisheries Act to regulate fisheries-related matters, including the protection, management and production of marine and estuarine fisheries and fisheries.<sup>37</sup>

To improve governance in Malaysian waters, the Fisheries Act 1985 had undergone multiple amendments until 2012. Regional cooperation between Thailand and Malaysia is expanded further by information sharing to achieve a shared maritime-security aim. This legislation provides regulatory and enforcement measures to combat unauthorised marine-related activities, especially illegal maritime invasion of Malaysian territorial waters by foreign fishing vessels, including the SCS.<sup>38</sup>

Pursuant to NPOA-IUU, Section 6 of the Act empowers the Director General of Fisheries to control IUU fishing matters in Malaysia. In view of the fact that IUU can also include local fishermen or vessels, Section 8 stipulates that any fishing operation in Malaysia's fishing waters requires a valid license issued and that the vessel shall not contravene any provision of the license. As far as foreign fishing vessels are concerned, Part V of the Fisheries Act 1985 sets out their rights and obligations to access fishery resources in Malaysian fishing waters. Section 15 prohibits any fishing operation by foreign fishing vessels unless allowed under an international fisheries agreement between Malaysia and another state or international organisation under which the vessel is flagged. To ensure compliance with the rules and regulations, Section 46 prescribes measures to be taken where any authorized officer may act without warrant if they believe there is a violation. This provision allows an authorized officer to halt and search any vessel or vehicle transporting fish, and further to inspect all the documents and anything else on board, including the crew, equipment and the catch.<sup>39</sup>

The enactment, amendment and implementation of the Fisheries Act 1985 is a reflection of Malaysia's commitment to improving its local fisheries sector and ensuring its compliance with international legal requirements and management practices. This Act has well interpreted the duties of the state as mentioned in the UNCLOS. Malaysia also has several others in place procedures of federal legislation that help reinforce and complement the implementation of the 1985 Fisheries Act, particularly those relating to fisheries management and compliance in the EEZ.<sup>40</sup> These laws are defined in the 1984 Exclusive Economic Zone Act, the 1966 Continental Shelf Act, the 2012 Territorial Sea Act, and the 2004 Maritime Enforcement Agency Act, which are also necessary for the management of maritime-related activities and resources in the EEZ of Malaysia. The first three laws have been enacted to establish national sovereignty and sovereign rights in maritime space, while the fourth law has been enacted. Malaysia is either a party to or a member of a variety of instruments or agreements as part of the national action plan to discourage, deter and eradicate illicit, unreported and unregulated fishing. Although many international instruments have underlined the principles of responsible fisheries for coastal states to regulate matters in relation to sustainable marine-resources management, it is also important to ensure that comprehensive regional fisheries management considers the measures to protect marine ecosystems at the regional level.

As part of the national plan of action to prevent, deter and eliminate illegal, unreported and unregulated fishing, Malaysia is either a party or member to a number of instruments or arrangements. To this end, Malaysia subscribes, adapts and adopts certain principles and standards promoted under these arrangements such as the "1982 United Nations Convention on the Law of the Sea (UNCLOS), Indian Ocean Tuna Commission

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<sup>37</sup> Fisheries Act 1985 (Act 317), §§ 15-24.

<sup>38</sup> *ibid*

<sup>39</sup> Section 47 of the Fisheries Act 1985 allows authorized officer to entry, seizure and arrest without a warrant when he has reason to believe that an offence has been committed under the Fisheries Act 1985. Section 47A, Section 47B and Section 47C authorize any fisheries officer to investigate, to require attendance of witnesses and to examine witnesses.

<sup>40</sup> Farahdilah Ghazali et. al., Malaysian Efforts in Combating IUU Fishing: A Legal and Policy Review. J. East Asia & Int'l L. Vol. 12/No.2 (2019); 387-400 Publication type: Research Article Section: East Asian Observer DOI: <http://dx.doi.org/10.14330/jeail.2019.12.2.09>

(IOTC), Asia-Pacific Fishery Commission (APFIC), Southeast Asian Fisheries Development Center (SEAFDEC), Association of Southeast Asian Nations (ASEAN), ASEAN-SEAFDEC MOU on Sea Turtle Conservation and Management, IOSEA Marine Turtle Memorandum of Understanding, Turtle Island Heritage Protected Area (TIHPA) - a bilateral agreement between the Government of Malaysia and the Government of the Philippines, Intergovernmental Organisation for Marketing Information and Technical Advisory Services for Fishery Products in the Asia and Pacific Region (INFOFISH), Asia-Pacific Economic Cooperation (APEC), Bay of Bengal Large Marine Ecosystem Project (BOBLME), Coral Triangle Initiative (CTI), 1978 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Convention on Biological Diversity 1992 and FAO Code of Conduct for Responsible Fisheries (CCRF).<sup>41</sup> Although many international instruments have underlined the principles of responsible fisheries for coastal states to regulate matters in relation to sustainable marine-resources management, it is also important to ensure that comprehensive regional fisheries management considers the measures to protect marine ecosystems at the regional level. Through regional efforts, several measures can be adopted such as preventive actions against the adverse effects of IUU fishing on marine ecosystems and the sustainability of fishing industries (**Table 3**).

**TABLE 3:** Regional Instruments to Combat IUU Fishing (Source: Farahdilah Ghazali et.al.2019)

SEAFDEC	ASEAN	CTI-CFF
SEAFDEC Regional Fishing Vessels Record (RFVR)	“ASEAN Guidelines for Preventing the Entry of Fish and Fishery Products from IUU Fishing Activities into the Supply Chain”	CTI-CFF Regional Plan of Action (RPOA)
	ASEAN Catch Documentation Scheme (ACDS)	

Malaysia conducted Operation Naga in April 2019, the multi-agency task force operation led by the Malaysian Maritime Enforcement Agency (MMEA), which included Royal Malaysian Navy, Royal Malaysian Air Force, Marine Police, Air Wing Unit Police and Fisheries Department, was a big success in ensuring that Malaysian waters are free of illicit foreign vessels. Op Naga is an initiative of the Ministry of Home Affairs (KDN) following the government's approval of the proposal paper forming a Task Force to eliminate the invasion of international fishing boats by Malaysian Maritime. This KDN-led task force is a joint venture with the Ministry of Defense and Agriculture and Agri-based Industry which aims to address these issues in a comprehensive manner. At the start of the implementation of Op Naga, compliance was concentrated in the waters of West Malaysia, covering in particular the Kelantan, Terengganu and Pahang states. Op Naga Timur then activated in Sabah and Sarawak on 1 August 2019. During the implementation of Op Naga Barat conducted a total of 3,951 inspections on local and foreign fishing vessels for a period of 380 days on 16 April 2019.<sup>42</sup> As a result, there were 141 arrests involving 95 international fishing boats, 46 local fishing boats and 1,295 crew or crew members, most of whom were Vietnamese nationals, totaling 1,069 individuals.<sup>43</sup> Op Naga Timur has reported 2,572 inspections involving the detention of 182 crew or Vietnamese crew with 38 arrest cases. Together with other agencies, Maritime Malaysia, as the leader of enforcement agencies in Op Naga, is constantly working to optimize the allocation and placement of marine and air assets, especially in combating the threat of illegal entry of illegal immigrants (PATI), international fishing boats and the spread of the COVID-19 pandemic, particularly in the SCS. The operational area included Malaysian waters and airspace in Pahang, Terengganu, and Kelantan, namely

<sup>41</sup> Department of Fisheries Malaysia, Malaysia's National Plan of action to prevent, deter and eliminate illegal, unreported and unregulated fishing (Malaysia's NPOAIUU), Putrajaya: Department of Fisheries Malaysia, 2013

<sup>42</sup> <https://www.airtimes.my/2019/12/04/ops-naga-90-peratus-perairan-malaysia-bebas-pencerobohan-bot-nelayan-asing/>

<sup>43</sup> *Ibid*

Operation Naga Timor and Op Naga Barat, which was performed in May 2019 and included all states of Perlis, Kedah, Penang, Perak, Selangor, and Johore. This operation managed to inspect 266 vessels and 25 Vietnamese fishing vessels detained by 123 crew members. The operation helped curb smuggling operations, selling subsidized diesel and gasoline to foreign fishermen, as well as illegal actions at sea.

## 6. Conclusion

IUU fishing is also triggered by high and increasing demand for seafood, particularly in Southeast Asia, where people are deeply dependent on marine food and income resources. IUU still pose a challenge to all SCS sharing nations like Malaysia. The migratory essence of fishes and the maritime laws in place demand that nations understand the situation and curb all stability constraints. There are many factors that contribute to the incidence of such fishing activities, one of them being weak governance, explicitly referring to the restricted and overlapping regulation by the relevant authorities. The operationalisation of a multi-agency special task force to resolve the problem was one of the manifestations of Malaysia's response to tackling IUU fishing particularly in SCS. While the plan has been mulled for a long time and its initial development was seen, its operationalisation was supposed to occur only after the details and procedures had been finalized. There has also been a strengthening of regional cooperation between the ASEAN countries to tackle illegal fishing. This has shown that apart from having a regulatory framework to address IUU fishing in Malaysia, an effective institutional structure and compliance agencies are essential for enforcing and coordinating such initiatives and maintaining responsible fishing practices, not only among the local stakeholders but also among their regional counterparts. While several international instruments have highlighted the principles of responsible fisheries for coastal states to control issues related to sustainable management of marine resources, it is also important to ensure that effective regional fisheries management takes into account the measures for the conservation of marine ecosystems. However, the political will of each country's authorities is very critical as this will lead the nations to tackle such problems. It is important to achieve the shared objectives as well as shared areas of interest such as capacity building and knowledge sharing, increased collaboration, involvement and support from interested parties such as policy-makers, stakeholders from both the government and private sector.

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