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FORTIFYING AUSTRALIA'S IMPORT REGIME AGAINST IUU FISHING

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Acknowledgement

The McKell Institute would like to thank **Oceans Five** for their generous support of this project.

The McKell Institute would also like to acknowledge the **Commonwealth Department of Agriculture, Forestry and Fisheries** for their constructive engagement and consultation throughout this project

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Acknowledgement of country

This report was written on the lands of the Darug and the Eora Nations and on Ngunnawal Country. The McKell Institute acknowledges Aboriginal and Torres Strait Islander peoples as the Traditional Owners of Country throughout Australia and their continuing connection to both their land and seas.

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Foreword

In a world facing complex and interconnected challenges, it is our responsibility to address the pressing issues that impact our environment, our economy, and, most importantly, the welfare of the communities that rely on our oceans for their sustenance. As the CEO of The McKell Institute, I am honoured to introduce this report on Illegal, Unreported, and Unregulated (IUU) fishing, a topic of utmost importance for our shared future.

IUU fishing, with its destructive practices and disregard for our planet's delicate ecosystems, poses a grave threat to our oceans, marine life, and coastal communities. It is a problem that transcends borders and demands a collective response. Through this report, we aim to shed light on the interconnected nature of IUU fishing, its adverse social, environmental, and economic impacts, and the measures that must be taken to address this global challenge.

At The McKell Institute, we believe in policies that foster sustainability, inclusivity, and social responsibility. We understand that safeguarding our oceans and marine resources is not just an environmental imperative but a moral one. This report offers a comprehensive examination of IUU fishing and provides pragmatic recommendations that align with our values, emphasising the importance of international cooperation, responsible governance, and equitable access to fisheries.

I want to express my gratitude to the dedicated experts and researchers who have contributed their time and expertise to produce this report. Their commitment to raising awareness about IUU fishing and advancing solutions is commendable. We hope that the insights and proposals presented in these pages will serve as a valuable resource for policymakers, advocates, and all those who share our commitment to a more sustainable, just, and thriving future.

> Addressing IUU fishing is not just a choice; it is an imperative.

By working together, we can make a profound difference in preserving our oceans, supporting vulnerable communities, and upholding the values that are at the core of our ideology. Let us embark on this journey, knowing that through concerted efforts, we can combat IUU fishing and contribute to a better world for all.

ED CAVANOUGH
CHIEF EXECUTIVE OFFICER
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Executive Summary

Illegal, Unreported, and Unregulated (IUU) fishing is a complex problem with a wide range of environmental, economic, and social impacts. IUU fishing can deplete fish stocks, damage marine ecosystems, and undermine sustainable fisheries management. It can also lead to lost economic opportunities for coastal communities and legitimate fishing businesses.

Addressing IUU fishing requires a comprehensive approach that involves governments, the fishing industry, and civil-society organisations. Some of the key elements of a comprehensive approach are:

- **Strengthening fisheries management and enforcement globally;**
- **Constantly increasing transparency and accountability in the fishing sector; and**
- **Supporting sustainable fishing practices.**

The aim of this report is to examine the mechanisms by which Australia can strengthen its import regime to prevent IUU products entering the domestic market. Australia, as a respected middle power, cannot radically alter the behaviour of international actors but it can lead by example with strong policies. Further, Australian consumers support ethical choices and better information, such that greater transparency, and intelligent government policy can drive local demand for legally and sustainably sourced seafood.

Part 1 of this report explores the background and context of IUU fishing. It discusses the threats that IUU seafood pose to sustainable fisheries management, food security, economic prosperity, and the protection of human rights. Australia, as a seafood importer, risks allowing IUU product into its market, especially from countries with weak governance and fisheries management practices.

Part 2 delves into efforts to combat IUU fishing on national and international fronts. It outlines Australia's involvement in international bodies such as the Food and Agriculture Organization (FAO) of the United Nations, its commitment to responsible fisheries, and its participation in bilateral and multilateral agreements. While international efforts are growing, more action is needed domestically. Australia has shown leadership in combating IUU fishing in Australian waters and among Australian fishing operators, but lacks sufficient trade regulations to assure the legality and sustainability of seafood imported into Australia.

In search of solutions, Part 2 explores what Australia can learn from the EU, the US, and Japan. The EU's Catch Certification Scheme offers an example of how seafood traceability can be enhanced by imposing additional

documentation requirements at the border, but given the scope of involved countries, this approach has faced implementation difficulties. The US's Seafood Import Monitoring Program is an ambitious and bold scheme but its effectiveness has been questioned. Finally, Japan's gradual implementation of IUU import regulations for an increasing number of species—using a system similar to that established by the EU—sets an example of a reduced-scope model.

Drawing on the lessons learned from the international examples outlined in Part 2, along with analogues from Australia's illegal logging laws, **Part 3** of the report advocates a three-stage reform plan aimed at creating a comprehensive policy framework for combatting the importation of IUU seafood into Australia.

1. The first stage involves the establishment of an electronic Catch Documentation Scheme (eCDS). This system would require exporters supplying Australian markets to meet increasingly comprehensive catch-traceability standards in order for their products to be accepted at the border.

2. In the second stage, Australia would criminalise the importation of IUU seafood, making it an offence to import seafood that is caught through illegal, unreported, or unregulated means, while introducing stringent due-diligence requirements for importers bringing seafood into Australia's market.

3. The third and final stage involves the creation of a 'green-light system', which would accredit cooperating countries, fisheries, and companies as certifiably IUU-free. The intention of this stage is to further enhance cross-border efforts to combat IUU fishing practices while reducing the burden of proof for credible Australian seafood importers.

These three stages combine to form an evolutionary model, with each stage building on the one before it to gradually strengthen Australia's IUU-prevention regime.

Finally, the report concludes with two key recommendations:

1. **Reform Timeline:** The McKell Institute proposes an urgent implementation of Stage One, a three-year timeline for Stage Two, and immediate international engagement for the development of Stage Three to establish a preliminary green-light system within five years.

2. **Cost-Benefit Analysis:** The McKell Institute recommends that the Australian Department of Agriculture, Fisheries and Forestry conduct a comprehensive analysis of the proposed reform mode— including reduced-scope options—in terms of environmental, social, economic, reputational, and diplomatic costs and benefits. This analysis should compare the proposed model with any alternatives that may arise during the Department's consultation process.

Key Findings

1. **IUU Fishing is a Complex Global Challenge:** IUU fishing is a widespread problem that affects fisheries worldwide and poses threats to both the environment and human security. It undermines sustainable fisheries management, threatens food and income security for vulnerable communities, and is often associated with other criminal activities such as drug trafficking and human smuggling.

2. **Need for Nuanced Approach:** There is a growing need for a more nuanced approach to addressing IUU fishing; one that distinguishes between different types of fishers and circumstances, as well as variability in resourcing for enforcement.

3. **Risks Extend to Labour Abuses and Human Rights Violations:** IUU fishing is not only an environmental concern but also has significant human-rights implications. Abuses are often linked to IUU fishing practices, and addressing them requires collaboration between the seafood industry and human-rights organisations.

4. **Australia's Involvement in Multilateral and International Agreements on IUU Fishing:** Australia is a signatory to the UN Law of the Sea (UNCLOS) as well as the UN Fish Stocks Agreement. It is also member of the FAO's Committee on Fisheries (COFI) and has agreed to the Technical Guidelines for Responsible Fisheries, which emphasise sustainability and traceability in the seafood trade. Australia is also part of several conventions and agreements to manage diverse fish stocks, including the Convention on the Conservation of Southern Bluefin Tuna, the Indian Ocean Tuna Commission, and the Convention for the Conservation of Antarctic Marine Living Resources.

5. **Continuous Expansion of Tools and Technologies:** Over the last two decades, flag and coastal states across the world have been expanding their tools, technologies, and systems to combat IUU fishing. This includes introducing catch documentation schemes and imposing trade restrictions on nations and companies with poor IUU-prevention practices.

6. **Leaders in Unilateral IUU Measures:** The US and the EU are leaders in implementing independent strategies to combat IUU fishing. Japan has also started to develop its own unilateral measures in recent years.

7. **Australia Can Implement a Three-Stage Reform Process.** Initially, Australia should deploy an electronic Catch Documentation Scheme (eCDS), requiring exporters who provide goods to Australian markets to adhere to traceability requirements demonstrating the origin and legality of their products. Second, Australia should criminalise the importation of IUU seafood. Third, Australia should establish a green-light system that certifies seafood imports from cooperating countries, fisheries, and companies as free from IUU product.

Part One: IUU fishing is a complicated matter

The problem of Illegal, Unreported, and Unregulated (IUU) fishing poses a global challenge, spanning all oceans and all fishing sectors.[1] It undermines the sustainable management of fisheries and poses a threat to the food and income security of fishing communities, particularly those in the vulnerable coastal regions of developing countries.

Owing to its impacts on natural resources and on the economic progress of coastal nations, coupled with its frequent association with other criminal activities including drug trafficking and human smuggling, IUU fishing is increasingly acknowledged as a security issue.[2]

As international awareness of the harmful consequences of IUU fishing has grown in recent decades, so too has the demand for global efforts to address the problem.[3] The rapidly evolving international legal landscape necessitates that nation states—encompassing coastal states, flag states, port states, and market states (defined in Table 1)—fulfill their respective responsibilities in preventing and deterring IUU fishing.

TABLE 1 DEFINING FLAG, COASTAL, PORT, AND MARKET STATES IN THE CONTEXT OF IUU FISHING

ICC STATES	DEFINITION
Flag states	The country where a vessel is formally registered. Effective oversight by the flag state is crucial in combating IUU fishing, and it involves tasks like managing vessel registrations.
Coastal states	These are countries that host a portion of a recognised fish population within their own waters. The coastal state holds the main authority over a vessel once it enters its territorial waters, rather than the flag state. According to international law, coastal states possess sovereign rights to oversee fisheries in their jurisdictional waters. Coastal states are empowered to conduct monitoring, control, and surveillance (MCS) operations to discourage and counteract IUU fishing.
Port states	The country where a vessel arrives and is obligated to adhere to its regulations while in the waters. Port states can combat IUU fishing by implementing port state measures, which include conducting inspections when vessels enter their ports.
Market states	These are countries that receive imports of fish products. They have the authority to implement trade-related measures aimed at curbing illegal, unreported, and unregulated (IUU) fishing, such as the establishment of catch documentation programs.

Source: Minderoo Foundation[4]

Australia now has a further opportunity to fortify its regulatory framework as a market state and prevent IUU seafood from entering its domestic market. Currently, Australia lacks trade regulations that ensure imported seafood is sourced legally, sustainably, and responsibly.i A 2021 report from the OECD pointed out that Australia could make substantial progress, particularly in terms of market measures, given its below-average implementation of best practices for market states according to OECD standards.[5]

1.1 – BACKGROUND AND CONTEXT

1.1.1 — Defining the problem: Illegal, Unregulated, and Unreported

The technical definition of IUU fishing is set out in the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU) adopted by the FAO in 2001. The products of fishing practices captured by any of the definitions set out below are considered IUU seafood.

TABLE 2
DEFINITION OF ILLEGAL, UNREPORTED, AND UNREGULATED FISHING AS OUTLINED BY THE FAO

FAO TYPE OF FISHING	DEFINITION
Illegal fishing	REFERS TO FISHING ACTIVITIES: › Conducted by national or foreign vessels in waters under the jurisdiction of a state, without the permission of that state, or in contravention of its laws and regulations; › Conducted by vessels flying the flag of states that are parties to a relevant regional fisheries management organisation but operate in contravention of the conservation and management measures adopted by that organisation and by which the States are bound, or relevant provisions of the applicable international law; or, › In violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organisation.
Unreported fishing	REFERS TO FISHING ACTIVITIES: › Which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or, › Undertaken in the area of competence of a relevant regional fisheries management organisation which have not been reported or have been misreported, in contravention of the reporting procedures of that organisation.
Unregulated fishing	REFERS TO FISHING ACTIVITIES: › In the area of application of a relevant regional fisheries management organisation that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organisation, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organisation; or › In areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.

Source: FAO's International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU)[7]

1.1.2 — Nuance in the application of IUU terminology

The term 'IUU' was initially coined in the 1990s to refer to unauthorised, distant-water, industrial fishers targeting toothfish stocks in a way that undermined the conservation and sustainable management efforts of the Conservation of Antarctic Marine Living Resources (CAMLR) Commission Member States. It served as a signal of these states' determination to address the problem and seek international assistance, regardless of jurisdictional complexities.

Over time, the definition of 'IUU' was expanded in the FAO International Plan of Action (IPOA) and the FAO Agreement on Port State Measures (PSMA), encompassing a wider range of issues involving different actors and stakeholders. However, not all activities falling under this definition necessarily warrant an antagonistic response from the international community. The term 'IUU' is no longer used solely by states combatting ill-intentioned fishers, which can make use of the term ambiguous and therefore less helpful.

Broadly, there are two distinct groups of fishers at opposite ends of the spectrum receiving the 'IUU' label:

1. Industrial fisheries, especially in distant waters, knowingly breaking rules and accepting potential consequences as part of their business approach. These individuals are committing serious and often criminal offenses and deserve strict punishment; and

2. Subsistence fishers operating in remote fisheries where management is ineffective. These fishers and their managers deserve assistance to gain effective control rather than being subject to punitive measures.

Between these two groups lies a grey area, wherein responsible fishery management may be obstructed by 'IUU' problems, but requires support rather than punitive measures to address problems. Bearing this variability in mind, an entire fishery or country should be designated 'bad' based only on its refusal of assistance rather than due to limited capacity. Poor management practices, such as the failure to adequately collect and report fisheries data, must also be addressed through capacity building and by exerting pressure on relevant stakeholders to rectify the problem.

Having the flexibility to be selective in this way also allows us to identify the subset of 'IUU' problems warranting serious antagonistic 'stick' intent—namely, miscreant industrial fishers—while not unduly penalising local fishery problems that deserve the 'carrot' approach. This nuance and flexibility should be embedded and reflected in policies that seek to address IUU issues.

1.1.3 — The impacts of IUU fishing are pervasive

IUU fishing has far-reaching consequences that compromise human rights, economic security, and sustainable environments at both local and international levels. Illegal fishing maximises both catch and profits with no consideration of long-term sustainability and is thus one of the main drivers of overfishing globally.[8] Removing key species from ecosystems through IUU fishing can disrupt the balance of marine food chains. This can have cascading effects on other species, leading to ecosystem instability and potential collapse. Further, IUU fishing can also intentionally target endangered threatened or protected (ETP) marine species, use banned gear types that are a threat to these species

(such as large-scale high seas driftnets), or fail to use prescribed mitigation measures that reduce bycatch. Along with high levels of bycatch, illegal fishing methods can also cause great harm to the ocean ecosystem. This threatens marine biodiversity and can lead to the decline of vulnerable species.

The financial magnitude of this problem is substantial, with estimates indicating that IUU fishing activities capture between US$15.5 billion and US$36.4 billion worth of product annually, constituting an estimated 14 - 33 per cent of the total value of marine captures globally (as at May 2017).[9] Moreover, not only does IUU fishing itself pose significant financial losses on a global scale, but importing IUU seafood can also impact national fishing revenues. It was estimated, for instance, that imports of IUU seafood into the US cost domestic fishers $1 billion annually as a result of price suppression alone, equating to 19 per cent of total revenues from their catch.[10] Further, many coastal communities rely on fish as a primary source of income and as a food source. IUU fishing can threaten local economies and contribute to food insecurity in regions where fish is a key source of income and a food staple.[11]

IUU fishing has also been associated with other crimes such as tax evasion, drug and arms trafficking, and money laundering.[12] These illegal or otherwise harmful activities can occur at various stages along the supply chain, which may result in seafood products circulating in international markets being tainted by criminal activity. For example, organised criminals can use fishing vessels to smuggle drugs or arms into a country.[13] These activities can occur on fishing vessels without any harvesting taking place, but they have also been known to occur alongside IUU fishing.

1.1.4 — Risks extend to labour abuses and human rights violations

Beyond the above concerns, illegal fishing has also been linked to exploitative labour practices, such as forced labour and human trafficking.[14] As such, incorporating human rights abuse within the framework of IUU fishing is imperative to address the broader ethical and social dimensions of this global issue. These violations of human rights not only harm the well-being of those involved but also undermine the sustainability of fisheries. By including human rights abuse as an integral component of IUU fishing, we can raise awareness of these grave injustices, strengthen regulations, and work toward a more comprehensive and ethical approach to fisheries management that safeguards both our oceans and the rights of the people who depend on them.

Of the various groups most susceptible to suffering severe human rights violations on fishing vessels, migrant workers are a clear stand out. These individuals often face verbal and physical violence or are trapped in debt bondage due to coercion from intermediaries and recruitment agencies, compelling them to work on ships against their will.[15] Instances of labour abuse on fishing boats frequently coincide with IUU fishing practices.[16]

IUU fishing is closely intertwined with labour-related issues because they share common catalysts. Diminishing fish stocks in coastal areas have compelled an increasing number of vessels to venture further in search of fish, resulting in extended periods at sea, and consequently, heightened fuel expenses. To save time and fuel, vessels opt to transfer their catches to fish carriers at sea rather than returning to port, rendering catch monitoring more challenging. Simultaneously,

unprincipled vessel operators reduce expenses by mistreating and underpaying crew members, effectively keeping them confined onboard in substandard conditions.

It is estimated that as many as 800 million people depend on jobs related to the seafood industry, potentially making it the world's largest employer.[17] Developing countries, where labour costs are lower, produce around 65 to 70 per cent of seafood for export markets.[18] For rural communities, employment opportunities in distant fishing fleets, aquaculture areas, and processing centres can compensate for diminishing local job prospects in the seafood sector. However, this often involves migration through the use of labour brokers.[19]

Forced labour, as defined by the International Labour Organization (ILO), entails work or service extracted from individuals under the threat of penalties and without their voluntary consent.[20] The seafood industry grapples with significant cases of forced labour, child labour, and forced child labour.[21] In response to mounting concerns, some nations have introduced legislative changes to hold food companies to account for labour conditions within their supply chains.[22] Despite having frameworks and data at the national level to address forced labour, companies still lack the means to gather detailed data needed to identify and rectify forced labour risks in their supply chains.

The unique nature of fishing work can make it difficult to ascertain whether workers are acting voluntarily or involuntarily.[23] Fishing vessels operate remotely, and working hours depend on ocean conditions, making it challenging to oversee labour practices. In addition, compensation is often based on a share of the catch value, leading to disparities in earnings among crew members.[24] Labour agencies also play a role by supplying workers from different countries, leaving some vulnerable to involuntary and unpaid labour.[25] The absence of proper traceability systems for seafood further complicates efforts to address forced labour risks,[26] as do poor inspection and reporting mechanisms at ports.[27]

Addressing forced labour necessitates building connections between the seafood industry and human-rights organisations. By considering worker perspectives and behaviour, a more comprehensive representation of seafood sustainability can be achieved, aligning with broader social goals.[28] Governments, companies, workers, and human-rights organisations have an obligation to work together collaboratively, focusing on areas of high risk, to reduce labour exploitation in global fisheries.[29]

1.2 – THE IUU RISK IN AUSTRALIA

1.2.1 — IUU fishing within Australia

Australia is party to key international maritime and fisheries treaties and cooperates regionally to manage fisheries through Regional Fisheries Management Organisations (RFMOs), while also supporting capacity building for developing partners through its development assistance program.

It has adopted a National Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and. Unregulated Fishing (NPOA-IUU), signed a Regional Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated IUU Fishing (RPOA-IUU), and is party to the FAO's Port State Measures Agreement (PSMA).

Briefly, the PSMA is an international treaty aimed at combating IUU fishing. It was adopted by the FAO in 2009 and entered into force in 2016. The PSMA empowers port states to take specific measures to prevent, deter, and eliminate IUU fishing by foreign vessels seeking access to their ports. Key provisions of the PSMA include the inspection of foreign vessels, the denial of port access to vessels engaged in IUU fishing, and the exchange of information among member states to enhance the tracking and monitoring of IUU fishing activities.

Australia demonstrates effective governance of seafood products caught and fish harvested within its own waters, including by foreign fishing vessels. There are comprehensive legislative frameworks in place to manage fisheries, with federal, state, and territory legislation in place to govern fishing activity levels. In addition, government agencies, such as the Australian Fisheries Management Authority (AFMA) and other relevant state and territory authorities, undertake comprehensive monitoring, control, and surveillance (MCS) of maritime borders through on-water enforcement patrols capable of apprehending IUU fishing operators for prosecution. Effective measures exist to prevent, deter, and detect illegal fishing within Australian waters, and to prevent illegal operators from landing catches at Australian ports.

In short, Australia appears to be upholding its responsibilities as a coastal, flag, and port state. Further, Australian consumers are increasingly aware of the need to protect the ocean from unsustainable fishing and want better information about the seafood on offer. Around 75 per cent of Australian seafood consumers believe supermarkets and restaurants should remove unsustainable fish from their shelves and menus.[30]

Seafood fraud is common in Australia, with an estimated 12 per cent nationally, particularly the substitution of one species for another or mislabelling.[31] Intentional mislabelling likely has multiple drivers.[32] It may involve the pursuit of increased profits by substituting more expensive species with cheaper ones or replacing unavailable popular species with those that are readily accessible. It may also be motivated by a desire to circumvent regulations, such as higher tariffs on certain products, to gain entry into specific markets, or conceal the origins of products obtained through IUU fishing or from sources involving slavery. However, mislabelling can also be unintentional and result from issues like simple negligence, the mixing of different species in fisheries that are not accurately sorted and identified, or the presence of inadequate systems to ensure a transparent and traceable supply chain. Inconsistent labelling laws, along with the absence of traceability and import

regulations in Australia, are likely contributing factors that exacerbate and enable mislabelling and fraudulent practices.

The entry of IUU or mislabelled seafood into Australia's supply chain also has economic implications for legal fishers operating in Australia, who risk losing market share as a consequence of having to compete with cheaper illegal operators.[33]

1.2.2 — A seafood importer with underperforming trading partners

Although Australia's waters and ports are strongly regulated, 65 per cent of the seafood consumed by Australians is imported.[34]

Across 207 nations examined by the FAO, Australia holds the 22nd spot on the list of top importers of aquatic products based on their value (2020).[35] In terms of value, Australia has a trade imbalance as a net importer of seafood products.[36] Between 2008 and 2018, while exports saw a cumulative growth of 16 per cent, imports surged by 33 per cent.[37] Over the period of 2012 to 2022, a total of 2473 million tonnes of seafood, valued at AUD$21.5 billion AUD, was brought into the country.[38]

The involvement of IUU fishing practices in imported seafood products poses risks for Australian seafood producers and consumers, while also endangering the sustainability of global fisheries. Given the scale of Australia's import market for seafood, it is imperative to recognise and address these risks.[39]

A considerable portion of Australia's imports likely pose low risks in terms of direct connections to IUU fishing, especially those originating from certified fisheries and aquaculture.[40] However, the situation is complicated by the potential utilisation of wild-caught fish as feed for cultured species, which has been associated with a range of sustainability concerns including IUU fishing, as well as human rights abuses in both the fishing and the fishmeal and fish oil processing sectors (see for example CMF and CWF 2019).[41] Unfortunately, owing to the absence of detailed data differentiating between imports sourced from cultured versus wild-caught fisheries, assessing this level of risk becomes challenging.[42] That said, about half of the world's fishmeal is produced in SE Asia—a high risk region for IUU—and is crucial to the aquaculture industries of the region, particularly for farmed shrimp,[43] a key seafood import for Australia.

Even when focusing solely on imports of wild-caught species, excluding aquaculture, the extent and probability of risk vary depending on the country of origin and the species of the seafood product.[44] Nevertheless, recent research suggests that the overall risk for Australia might be substantial, given the lack of policies that could serve as deterrents for IUU products at the border.[45] Other examples demonstrating the IUU risk in Australia's supply chains are presented by the importation of white shark from South Africa,[46] and demonstrated by instances of dynamite fishing in Southeast Asia.[47]

Recent research in the Asia-Pacific region, including Thailand, has identified tuna as having a high likelihood of significant illegal landings (second only to sharks).[48] And tuna is the second-most imported species category by volume in Australia, primarily coming from Thailand. It is estimated that up to 40 per cent of tuna exported from Thailand to the US could be illegal or unreported.[49]

It is important to note that Thailand has a significant tuna processing sector that produces canned tuna from foreign long-

distance fleets, which often land raw fish in Thai ports.[50] Not only that, but that tuna is also air freighted to Thailand for canneries—a significant proportion of Western & Central Pacific tuna is also canned there, and there are major IUU issues with Pacific tuna as well. Despite certain efforts by prominent retailers and brands to procure canned tuna in a more sustainable manner, tuna as a significant concern.[51] This is especially true considering that a 2016 study examining tuna fisheries in Pacific Island Nations revealed that IUU fishing constituted 70 per cent of the volume in the purse seine sector and 11-19 per cent of the volume in the longline sector.[52]

This means that, in assessing the risk of importing illegally caught tuna from Thailand, one must consider the potential involvement of non-Thai tuna vessels landing in Thai ports.[53] Thai ports are commonly used by foreign vessels operating in the West Indian Ocean, a major hotspot for IUU fishing, especially for high-value tuna.[54] Studies indicate that nearly half the fishing of tuna occurring in the West Indian Ocean may be associated with illegal or unregulated activities.[55] These findings highlight a substantial risk of Thai tuna imports being tainted by IUU product.[56] Indeed, the European Commission issued a 'yellow card' to Thailand in 2015 due to inadequate efforts to combat IUU fishing.[57]

After prawns, cuttlefish and squid are the most frequently imported species in Australia, and are predominantly sourced from China. That said, some of the cuttlefish and squid coming from China is imported to China and reexported, adding to traceability issues.

Investigative work into the human rights abuses and illicit fishing practices of China's fishing industries has been in the spotlight of late. Recent articles published by Ian Urbina brings to light the dark side of the global seafood trade. The research finds that China's distant-water fishing fleet is the largest in the world, with over 3,000 vessels operating in all parts of the globe.[58] Chinese fishing vessels are often involved in illegal fishing, including fishing in unauthorised waters, and using banned fishing methods.[59] They are also known for their harsh working conditions and labour abuses, where workers are often beaten, threatened, and forced to work long hours for little or no pay.[60] In addition, Uyghurs are being forcibly taken from their homes in Xinjiang, China, and transported to seafood processing factories across the country, where they are forced to work long hours for low pay under conditions of extreme surveillance and control.[61]

Additionally, policymakers have noted a global decline in squid stock abundance, and an unregulated squid fishery in the northwest Indian Ocean—often flagged to China—has raised international concerns with vessels deactivating their automatic identification systems' (AIS) signalling upon reaching fishing areas.[62]

The northwest Indian Ocean is not the only location that unregulated squid fishing is occurring, it is happening across multiple regions and poses a significant threat to the sustainability of squid stocks.[63] A recent study has found that fishing effort increased by 68 per cent between 2017 and 2020, suggesting a growing pressure on squid stocks.[64] Not only that, but the majority of vessels were found to be highly mobile, operating across multiple regions and fishing primarily in unregulated areas (86 per cent).[65]

When assessing the risk of importing seafood products associated with IUU fishing, the following factors should be considered:[66]

1. The possibility of IUU fishing occurring within the country of origin, especially for countries whose flag vessels land fish in their ports and subsequently export to Australia. China has the worst IUU fishing score among 150 countries assessed, indicating it as the highest-risk country of origin. Japan and Indonesia also rank among the bottom 20 performing countries. Indonesia, Thailand, and Vietnam also face significant IUU fishing issues in the Asia-Pacific region, particularly for small demersal and pelagic species.[67]

2. Import standards in re-exporting countries. With low traceability standards, China re-exports nearly 75 per cent of its imports, creating uncertainty about the origin and legality of the seafood.[68] China, a major exporter of cod, relies on imports of Russian Alaska pollock and Norwegian cod, which are then re-exported.[69] Some frequently imported seafood products in Australia, such as tuna, Pacific salmon, and cuttlefish, are commonly re-exported from China.[70]

3. General standards of practice with countries that indicate the likelihood of IUU practices, fraudulent activities, or sustainability issues throughout the supply chain. In 2019, 17 countries that accounted for 88.8 per cent of total import volume scored lower than Australia in terms of Environmental Performance.[71] Sixteen of these countries had a higher susceptibility to slavery within their supply chains,[72] and nine had a relatively elevated risk of illicit trade involving counterfeit, mislabelled, or illegally smuggled products.[73] These indicators reflect an environment conducive to IUU practices and other fraudulent or unsustainable activities throughout the supply chain. In addition, a significant proportion of wild-caught products imported into Australia come from countries with weaker fisheries management than Australia.[74]

4. Finally, both wild and farmed seafood have a lot of crossovers in how they are produced and share complex supply chains—there is ample opportunity for mixing or mislabelling these sources. Farmed seafood cannot be ignored in this process, especially for commonly imported species that are both farmed and wild-caught like the prawns, salmons, and barramundi.

While Australia has instituted strong sustainable fishing practices as a coastal, flag and port state, market-based measures are lacking, leaving Australians vulnerable to complicity in IUU fishing.

Part Two: National and international policyscapes

As the international community's understanding of the impacts of IUU fishing has increased, so too has the collective demand for global initiatives to combat this issue.[75] Ending overfishing and IUU fishing is target 14.4 of the United Nations Sustainable Development Goals (SDGs), a subtarget of SDG 14 'Life Below Water'. It is also recognised that eliminating IUU helps to achieve other SDGs, such as helping to combat illegal labour practices (SDGs 8.7 and 16.2) and enabling access to nutritious food (SDGs 2.1 and 2.2).[76]

Concrete responses have materialised on various fronts, including localised legislative enhancements (e.g., the US Lacey Act), novel technological tools embraced by governmental and non-governmental entities (e.g., blockchain technology and DNA forensics), and amplified adherence to international frameworks.[77] The PSMA is an important example of the latter and has become a key tool in the fight against IUU fishing by, for example, stipulating more rigorous procedures at port, such as prior notification and port inspection.[78]

Although coastal and flag states historically carried most of the responsibility to fight IUU fishing via measures such as the implementation of vessel monitoring systems (VMS), port and market states have also begun establishing legal frameworks to help combat IUU fishing.

2.1 – AUSTRALIA'S CURRENT INTERNATIONAL ENGAGEMENT ON IUU

Australia is signatory to the *United Nations Convention on the Law of the Sea* (UNCLOS) that provides the international legal basis for the protection and use of living and non-living resources of the world's oceans. UNCLOS led to the development of a variety of legally binding and voluntary international fisheries instruments important in managing international fisheries, including addressing IUU, particularly *The Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UN Fish Stocks Agreement)* which entered into force in 2001.

Further, Australia is a member of the FAO's Committee on Fisheries (COFI), which was established in 1965. COFI functions as the principal global intergovernmental platform through which FAO members address concerns related to fisheries and aquaculture.[79] In this capacity, Australia has committed to abiding by the Technical Guidelines for Responsible Fisheries, which underscore the significance of sustainable and traceable fish trade. While these guidelines are not legally binding, they provide a framework for the responsible trading of seafood.

In 2001, following a two-year consultation period, the FAO officially adopted the IPOA-IUU, a process in which Australia actively participated in negotiations and drafting. Subsequently, Australia played a substantial role in shaping the FAO's PSMA. This agreement was crafted during a Technical Consultation convened by the FAO at the behest of COFI and was presented to the 36th FAO Conference in 2009. Australia signed the agreement in 2010, completed the ratification process in 2015, and it came into effect in 2016.[80]

2.2 – AUSTRALIA'S CURRENT BILATERAL ENGAGEMENT

Australia has 15 Free Trade Agreements (FTAs) with 26 nations, encompassing obligations to reduce or remove tariffs for commodities that satisfy Rules of Origin criteria. If there is a desire for granting special treatment to imported seafood within the context of a trade agreement, it may require the submission of a Certificate of Origin or a Declaration of Origin. These documents are used to record information pertaining to the product's source or place of origin.[81] Nonetheless, the 'country of origin' might not necessarily reflect the nation or regulatory jurisdiction where the imported fish were captured, the location of their landing, or the nationality of the vessel responsible. Instead, it only pertains to the country from which the fish were dispatched before their arrival in Australia.[82]

This signifies a notable deficiency in policy with regard to establishing comprehensive traceability throughout the entire seafood supply chain. Furthermore, the format and authentication of such documents differ depending on the specific trade agreement in question. As a result, the dependability of these forms fluctuates based on factors like the entity making the declaration (e.g., self-declaration or a third-party declaration) and the robustness of the certification procedures in place.[83]

2.3 – AUSTRALIA'S CURRENT MULTILATERAL ENGAGEMENT ON IUU

An example of a free trade agreement addressing IUU fishing is the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). Within the agreement's Environment chapter, participating parties commit to combatting IUU fishing and promoting the sustainable management of fisheries. This encompasses responsibilities to prohibit subsidies that negatively impact fish stocks.[84] The agreement also underscores the realisation of obligations outlined in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

In 2007, Australia and Indonesia played pivotal roles in the establishment of the RPOA-IUU. This regional initiative involves 11 members; comprising eight ASEAN member states, Timor-Leste, Papua New Guinea, and Australia. The central goal of the RPOA-IUU is to bolster fisheries management within the region while advancing responsible fishing practices.[85]

Australia is also a member of several global, regional, and subregional organisations, and signatory to their respective conventions, with the purpose of managing diverse fish stocks under the UNCLOS and the UN Fish Stocks Agreement. These include: the Commission for the Conservation of Southern Bluefin Tuna (CCSBT), the Indian Ocean Tuna Commission (IOTC), the Western and Central Pacific Fisheries Commission (WCPFC), and the South Pacific Regional Fisheries Management Organisation (SPFRMO). In addition, Australia is a signatory to, and hosts the secretariat for, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR).[86]

2.4 – AUSTRALIA'S DOMESTIC LEGAL INSTRUMENTS WITH COVERAGE OF IUU

Australia's national biosecurity regulations and limitations must align with its obligations as a member of the World Trade Organization (WTO). These obligations stem primarily from the WTO's 1995 Sanitary and Phytosanitary Agreement (SPS).

The right to implement SPS measures is coupled with a duty to minimise the adverse effects of these measures on international trade. Under this agreement, the essential obligations are that SPS measures must:

- Only be applied as needed to safeguard human, animal, or plant life or health, without being excessively trade restrictive.
- Be grounded in scientific principles and not be maintained without adequate scientific evidence.
- Not constitute arbitrary or unjustifiable treatment or hidden trade restrictions.

At a national level, although Australia has released an Australian Fisheries National Compliance Strategy 2022-2026, it lacks a comprehensive seafood import scheme akin to those adopted by the EU and the US. Instead, it relies on fragmented legislations targeting food safety and biosecurity to regulate entry into the country.[87] These controls specifically address species with elevated safety and biosecurity risks, such as prawns and salmonids.[88]

All goods entering Australia must undergo customs clearance in accordance with the Customs Act 1901. Under this Act, a permit is mandatory for importing all fish, including fresh, smoked, preserved, and frozen products.[89] Imported goods are subject to audit checks to verify the accuracy of import declarations in comparison to commercial documents and physical cargo. However, there is no official process to authenticate or validate this information.[90]

Chapter 3 of the *Biosecurity Act 2015* addresses the management of biosecurity risks linked with goods imported into Australia. This includes the necessity for food importers to obtain a permit before entry. Goods arriving without a valid permit are either re-exported or disposed of.[91]

To manage risks related to the safety of imported food, compliance with guidelines outlined in the *Imported Food Control Act 1992*, the *Imported Food Control Order 2019*, and the *Imported Food Control Regulations 2019* is mandatory. These laws establish compliance requirements to ensure that imported food adheres to Australian standards for public health and safety, complies with the Australia New Zealand Food Standards Code, and follows the Country-of-Origin Food Labelling Information Standard 2016.[92]

In addition, various government departments play pivotal roles in domestically regulating seafood products. For instance, the Department of Agriculture, Fisheries and Forestry takes on a significant policy role in promoting the biological, economic, and social sustainability of Australian fisheries. It collaborates with the Department of Climate Change, Energy, the Environment and Water to safeguard and conserve marine ecosystems while supporting a profitable, competitive, and sustainable fishing industry.

Finally, while not all definitions or research entities incorporate concerns about modern slavery within the realm of sustainable fishing practices, IUU fishing has often been connected with transnational crime and modern slavery working conditions.[93] The *Modern Slavery Act 2018* became effective on 1 January 2019. The International Labour Organization and the Walk Free Foundation define modern slavery as "any situation of exploitation that a person cannot refuse or leave because of threats, violence, coercion, deception, and/or abuse of power". This encompasses "forced labour, debt bondage, forced marriage, slavery and slavery-like practices, and human trafficking".[94]

2.5 – PROBLEMS WITH AUSTRALIA'S EXISTING POLICY FRAMEWORK

Despite Australia's strong efforts to combat domestic and regional illegal fishing, its policies pertaining to international seafood imports are less comprehensive.[95] Australia's existing policy framework falls short of effectively safeguarding the domestic market against the infiltration of imported IUU products. Three key vulnerability areas facilitate the entry of IUU seafood into the local market:

1. Minimal documentation prerequisites, making it difficult to achieve complete a traceability trail from catch to consumption.
2. The lack of a comprehensive and dedicated policy to ensure the authenticity, legality, and sustainability of imported items.
3. An inadequate system for precisely labelling seafood products.

These gaps in policy undermine both national and international endeavours aimed at combating illegal fishing, while exposing Australia's market to IUU seafood products.[96]

2.6 – LESSONS IN UNILATERAL MEASURES FROM ACROSS THE SEA: EU, US, JAPAN

Over the last two decades, there has been a continuous expansion of tools and technologies employed by both flag and coastal states around the world to counter the threats posed by IUU fishing.[97] This same period has also seen a broader range of port states contributing to the deterrence of IUU fishing through developments such as the implementation and enforcement of the PSMA. Market state measures, whether enacted individually by a single nation or collectively through multilateral agreements, are a more recent development and typically consist of two primary components.

The first component is the establishment of systems for tracking documentation, aiming to differentiate between products that are legally traded and those obtained through illegal means. This encompasses early-stage trade documentation or information schemes (TDS/TIS) and the more recent and comprehensive Catch Documentation Schemes (CDS), which evolved from these early systems.[98] These CDSs validate the lawful origin of seafood using catch certificates to track fish from fishing locations to markets. They also offer a means for countries where landing, processing, and consumption occur to collaborate with flag and port states in identifying and eradicating IUU fishing.

The second component involves the application of trade restrictions enforcement measures (TREMs), empowering one or multiple countries within a market to either prohibit or impose limitations on trade with nations or companies that are perceived to be neglecting their responsibilities in addressing issues related to IUU fishing, sustainability standards, human rights abuses, and labour exploitation concerns. These measures can be guided by the information obtained from documentation systems or other relevant sources. Usually both components are integrated, where the first element provides

the necessary traceability and transparency needed to enforce the second element.[99]

At present, the US and the EU are leading in the advancement and execution of independent market-based strategies to address IUU fishing. Japan has also recently joined in the advancement of unilateral measures, although its program is still in its beginning stages.

2.6.1 — EU IUU regulations

The EU adopted Regulation 1005/2008 to prevent, deter, and eliminate illegal, unreported, and unregulated fishing on 29 September 2008, with an effective date of 1 January 2010.[100]

The first element of the EU regime is a Catch Certification Scheme (CCS) requiring all wild-caught seafood imports to be accompanied by a document certifying that the product has been obtained in compliance with existing conservation and management measures.[101] The EU's regulations mandate that exporting countries must authenticate the catch certificates accompanying seafood products destined for the EU market.

Beyond requiring an authenticated catch certificate demonstrating the origin and legality of the product, the regulations also establish a mechanism for the EU to take action against countries that do not effectively combat IUU fishing. This mechanism, known as the carding system, allows the EU to designate a non-EU country as a "non-cooperating third country" if it fails to fulfill its obligations under international law in preventing, deterring, and eliminating IUU fishing.[102]

If the EU determines that a non-EU country has not met its obligations in addressing IUU fishing, and if initial informal discussions between the parties do not result in satisfactory progress, the non-EU country will enter the carding process the EU has implemented, which involves initiating formal bilateral discussions.

When the EU issues a yellow card, it serves as an official warning signifying that the country is deemed to be inadequate in its efforts to combat IUU fishing. It alerts the country that it is at risk of being formally identified as a non-cooperating country under the IUU regulation.[103]

If a country that has been issued a yellow card is determined by the EU to have taken sufficient action to address concerns regarding non-cooperation, the yellow card will be revoked, restoring its full access to EU markets. However, if the yellow-carded country fails to take the necessary steps, the EU has the authority to issue a red card. Once approved by the EU Member States, a country with a red card will be officially designated as a non-cooperating country. This designation results in TREMs, such as a ban on seafood product exports from vessels flying the flagged country's flag to the EU and the prohibition of EU fishing vessels from operating in the waters of the carded country, among other measures.[104]

The EU's success in effectively implementing the CCS has, however, been limited. Validating the authenticity of a certificate involves a time-consuming process that necessitates direct communication and feedback from the issuing authorities, categorised under the EU IUU Regulation as "mutual assistance." Implementing such procedures by EU border authorities leads to delays and additional costs for operators, irrespective of the legality of the shipments. At present, there is no available data on the volume of shipments covered by certificates or the frequency with which specific certificates have been utilised to import fisheries products into the EU market

since the inception of the scheme.[105] And while the EU would expect changes in trade patterns if IUU products are being effectively blocked, the number of rejected shipments and verification requests sent to non-EU countries has been lower than anticipated, possibly indicating that minimal change has been effected.[106]

However, this could be partially attributed to the characteristics of IUU fishing and the lack of transparency within supply chains, which create challenges in establishing a fundamental dataset for evaluating IUU imports.[107] Ideally, the EU should be able to show shifts in trade patterns if they are significantly impeding the entry of IUU products. Yet, this shift may only be noticeable for high-volume IUU-risk species or countries heavily involved in IUU trade.[108] In cases where IUU is spread more evenly across various species and sources, detecting alterations within the usual fluctuations of seafood supply chains might prove more challenging.[109]

A recent evaluation suggests that the apparent failure of the EU system is primarily due to inadequate implementation by EU member states.[110] It emphasises that the EU's CCS operates without a central certificate registry. As a result, neither EU authorities, whether on a central or national level, nor other competent authorities around the world that adhere to the system, possess information regarding the quantity of certificates in circulation or the scope of products to which they pertain. This lack of knowledge also extends to private-sector entities involved in the supply chain who handle products under these certificates.[111]

The review further highlights inconsistencies in seafood import controls and discrepancies between members in terms of inspecting import catch certificates from non-EU countries, applying risk-based evaluations, and physically examining imported seafood.

Several design shortcomings have hampered the effectiveness of the EU's CCS and hindered its execution:

1. The system is currently paper based, although a voluntary electronic alternative is in place. This manual process of checking paper documents and inputting data into national systems is prone to human errors and fraud.[112]

2. The CCS covers most wild-caught seafood, excluding a few exceptions such as freshwater-caught salmon and trout. However, it fails to encompass farmed species, despite significant overlaps in production and trade between these categories, which can lead to mislabelling between wild and farmed varieties.[113]

3. The system incorporates only 13 of the required 17 Key Data Elements (KDEs) needed for complete traceability from the point of harvest to the final point of sale.[114]

4. Trade between EU member countries is excluded, except in cases where seafood is caught and landed outside EU waters before being imported or if it is caught in EU waters and subsequently exported and reimported. This is concerning, given the history of IUU fishing among some EU members, particularly those with distant-water fleets focusing on tunas, sharks, and billfishes, or operating in West African waters. [115]

The EU's carding system identifies 'non-cooperating countries' in terms of their responsibilities as flag states to take action against IUU activities on their vessels. Unfortunately, the EU's IUU legislation only allows action against flag states, neglecting the potential non-compliance of countries in their roles as port states (where fish is landed) or as processing or market states that might facilitate fish 'laundering'.

Finally, the application of red-card penalties at the country level affects all fisheries, not just those facing IUU issues. This is likely to disproportionately affect small-scale fisheries that rely on local waters, while larger industrial fisheries often have the option to reflag and operate in different areas.[116]

It is worth noting that, although the direct impact on reducing IUU practices in countries 'carded' by the EU is not entirely clear, recent case studies do suggest a level of improvements in governance, increased compliance at RFMOs, and enhanced MCS efforts in some carded countries, notably Thailand.[117]

2.6.2 — US's SIMP

The US implemented the Seafood Import Monitoring Program (SIMP) in 2016. SIMP is a risk-focused system that oversees the importation of seafood products, focusing on 13 seafood types (comprising over 1,100 distinct species) deemed highly susceptible to IUU fishing and seafood fraud. This initiative, which encompasses around 40 per cent of US seafood imports, mandates importers to provide and report essential data from the point of capture to entry.[118] This information, which includes catch and landing details, is collected via the International Trade Data System—the central platform for import and export reporting by the US government.[119] Data is stored confidentially.

The program is, however, limited in its scope. Recent reports have found that the US imports about 85 per cent of the seafood that its population consumes. But SIMP currently only covers about 40 per cent of the products shipped to the US from other countries, which calls into question the effectiveness of the program.[120] There have been repeated demands from environmentalists to expand the species groups that SIMP covers, as a recent report found that 60 per cent of US seafood imports escape regulatory scrutiny, thereby allowing IUU products entry into the market.[121]

Other notable criticisms the US SIMP are:

1. It falls short of requiring the complete set of 17 Key Data Elements (KDEs) needed for comprehensive traceability.
2. Importers are solely responsible for verifying the accuracy of provided information; no validation by flag, coastal, port, or processing states is mandatory.
3. Importers have expressed concerns about insufficient communication regarding SIMP's data utilisation and validation procedures, stemming from the confidential approach to data management in the system.
4. While approximately 60 per cent of companies underwent audits (random and targeted) from March 2019 to March 2020, issues have been raised concerning the lack of standardised audit guidelines, subjectivity among auditors, and the general audit process.
5. Some importers have encountered difficulties in obtaining necessary data from international suppliers or overseas supply chains, often due to proprietary data concerns.[122]

Calls for improvement to the system centre on more-fully integrated electronic traceability systems, standardised supply-chain management processes, and broadening SIMP to encompass all species of imported seafood.[123] The industry appears largely supportive of SIMP, because it expedited the adoption of robust traceability practices for some companies, while others that had already addressed traceability concerns before SIMP's implementation considered their existing data collection systems to be adequate to meet SIMP's requirements.[124]

Beyond the SIMP, the US has also identified countries involved in IUU fishing through biennial congressional reports since 2009, with the threat of TREMs being imposed on poor actors. The process begins with the gathering of information to assess whether a nation or entity has been engaged in IUU fishing activities. The biennial reports, commonly referred to as "report cards," highlight nations and vessels involved in IUU fishing. After identification, a two-year consultation period is initiated. At the conclusion of this period, a subsequent bi-annual report is issued indicating whether the nation or entity is certified negatively or positively based on their efforts to address IUU fishing.[125]

It is notable that the US can also take action through TREMs when exporting countries do not meet other ethical and environmental standards set in the US, including countries with persistent issues on forced labour and human trafficking and those that do not meet the US's own fisheries standards required to protect marine mammals or to adequately mitigate sea turtle bycatch in trawls.

A nation or entity is positively certified when it takes actions to address the reasons why it was identified and prove it is not complicit in IUU fishing. When a nation or entity receives a negative certification, the US may implement TREMs such as denying port privileges for all of the non-compliant country's fishing vessels or sanctioning specific operators. This method, unlike the EU's, is fully transparent.

The lists of countries flagged as complicit in IUU fishing differ between the EU and the US, with variations unrelated to sourcing locations. This underscores the importance of Australia adopting an evidence-based and transparent approach in developing its IUU-import-prevention framework.

2.6.3 — Japan's reduced-scope program

Seafood plays a crucial role in Japanese cuisine. In November 2018, the Japanese government introduced a bill to make substantial amendments to the Fisheries Act, which has formed the basis of the country's fishery policy since its inception in 1949. In December 2020, Japan enacted a unilateral law that completely prohibits the importation of IUU seafood. This law, translated as the 'Domestic Trade of Specific Marine Animals and Plants Act,' came into effect in December 2021. The legislation mandates the collection and submission of records on seafood catches and transfers to establish traceability.

For imports entering Japan, specific fishery products necessitate a 'certificate of legal catch' issued by the exporting country's government, similar to the EU scheme. Currently, this requirement applies to four targeted species or species groups: squid, saury, mackerel, and Japanese pilchard. The species subject to this regulation will be reviewed biennially and adjusted as needed. As is the case with the US SIMP, environmental organisations are advocating an expansion of the list of species subject to these regulations.

The Japanese system is still in its early stages, having initiated its first trials in 2022, making it difficult to assess its efficacy. The reduced-scope introduction of the system—commencing with a limited group of highly vulnerable species before expanding to encompass a larger list—could aid Japan in establishing and, importantly, thoroughly testing an effective system prior to its broader implementation. This pilot approach is worthy of consideration in the Australian context.


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SYDNEY
FISH MARKET

Part Three: Policy recommendation

The EU, the US and Japan should be applauded for their attempts to prevent the importation of IUU seafood into their jurisdictions. More extensive data tracking and more rigorous documentation requirements are common to all three systems and have every reason to be at the core of Australia's reform process in this area.

The criticisms of the US, EU and Japanese systems, and the difficulties with their implementation, must also be taken into close consideration. Compliance is the key to any regulatory reform and appears to have been the downfall of the EU's highly ambitious approach. To avoid this mistake, ambition should be balanced with feasibility to ensure whatever scheme is introduced in Australia is effective in realising its aims. The Australian government does not have unlimited resources and should implement changes that deliver the greatest reduction in the IUU risk in Australia's imports at the lowest possible cost to both taxpayers and industry.

3.1 – PRINCIPLES FOR REFORM

The objective underpinning the McKell Institute's policy recommendation is preventing the importation of IUU seafood into the Australian market, not preventing IUU fishing per se. Of course, enough states uniting to do the former will ultimately achieve the latter. Australia must acknowledge its position on the world stage and make decisions in that light; namely, as a credible and respected middle power incapable of determining the behaviour of a multitude of international actors by fiat but capable of encouraging greater action through strong policy leadership.

In short, despite Australia lacking the market sway of actors like the EU and the US, governments the world over will pay attention to what Australia chooses to do—and whether it chooses to do anything—to address the global challenge of IUU fishing. In determining the appropriate course of action, the Australian government should be mindful of this reality.

Should it choose to act on IUU seafood imports, the government can expect cooperation from Australian consumers, who are increasingly sensitive to ethical considerations when making day-to-day

purchasing decisions. If provided with better information and encouraged to develop greater awareness of IUU fishing, consumers are likely to signal to the market a strong preference for legally caught, sustainably sourced seafood.

Australia can also expect, however, a degree of diplomatic tension from trading partners likely to be affected by policy measures introduced to prevent the contamination of Australia's markets with IUU seafood. Any such tension should be met with understanding and supportive measures where possible, acknowledging the financial and logistical difficulties faced by developing countries in managing their fisheries while making clear Australia's unequivocal support for a world free of IUU fishing.

The Australian government's first priority should be developing a clearer, more detailed picture of the import market's specific points of vulnerability to IUU seafood products. This cannot be done without better customs data.

Inconsistency in documentation requirements at the border stymies catch-to-consumption traceability. Vital data is either missing or lost, with importers often having more information on hand than what is reported. This problem also impedes efforts to improve the accuracy of seafood labelling, making it difficult for both industry and consumers to make informed decisions regarding the sourcing of their seafood.

A more comprehensive, centralised, digitised data-capturing system for seafood imports will (a) give the Department the information it needs to canvass accurately the IUU risk in different segments of Australia's imports; (b) help increase transparency so that consumers can make better decisions; and (c) send a relatively low-cost signal to the market that Australia is taking action on IUU imports. Better data capture will also permit authorities to maximise the efficiency and effectiveness of policy interventions, compliance-monitoring efforts and enforcement activities undertaken thereafter.

3.2 – EVOLUTIONARY MODEL

Extensive stakeholder feedback and consultation with the Department has helped refine the McKell Institute's recommended policy framework for preventing the arrival of IUU seafood on Australia's shores. This model is intended to be evolutionary in nature, with each step building providing incremental improvements that strengthen the framework as a whole.

The McKell Institute proposes three stages of reform culminating in a comprehensive multi-tiered policy framework. First, Australia should establish an electronic Catch Documentation Scheme (eCDS) requiring exporters supplying Australian markets to comply with traceability requirements capable of demonstrating the origin and legality of their products. Second, Australia should make it a criminal offence to import IUU seafood into Australia. Third, Australia should push for the establishment of a multilateral 'green-light system' that integrates unilateral systems into a larger, more comprehensive framework capable of accrediting cooperating countries—as well as companies and fisheries—as certifiably free of IUU.

3.3 – STAGE ONE: ELECTRONIC CATCH DOCUMENTATION SCHEME

The first stage of the proposed policy framework is the introduction of an electronic Catch Documentation Scheme (eCDS). This scheme would require all seafood imports (both farmed and wild caught) to be accompanied by comprehensive documentation covering every step in the supply chain from point of harvest to arrival at market. Its stated purpose would be to improve data capture at the border with the intention of ensuring the legality of all seafood imported into Australia.

The introduction of an Australian eCDS would immediately enhance transparency and accountability in the seafood import market to the benefit of both consumers and regulators. In addition, the electronic nature of the program would make it easier to link to other schemes, share data, and collaborate across the region and globe on flagging high risk or illegal consignments. Although the McKell Institute does not propose introducing any punitive measures to combat IUU seafood imports concurrently with the initial establishment of the eCDS, the increase in transparency brought about by the scheme's introduction could nonetheless be expected to put downward pressure on the likelihood of IUU seafood entering the Australian market. It would, moreover, send a clear signal to companies supplying Australian importers with seafood that reform is underway and that their supply chains are expected to be free of IUU if they wish to continue exporting to Australia.

3.3.1 – Digitisation

Establishing an electronic system from commencement would, in time, make possible the imposition of stringent real-time traceability requirements throughout the entire seafood supply chain. When rolling out this scheme, however, some consideration may need to be given to the possibility of technological barriers preventing some suppliers from providing electronic documentation. Importers would, of course, be prohibited from receiving any seafood products from exporters unable to provide the required documentation. But transitional arrangements could be considered whereby the transcription of paper documents into an electronic database would be permitted for, say, the initial 12-24 months of the scheme's operation. Support could be provided during this transitional period to fishing operators from less developed countries—and to their regulating governments—to help them prepare for the fully electronic scheme. The final model would more closely mirror the functioning of RFMOs' multilateral catch documentation regimes whereby data is tracked 'live' at each point along the supply chain—from catch to transfer to sale—rather than being logged only upon entry into the importing market.[126]

The Association of Southeast Asian Nations (ASEAN) is using cloud-based software to establish an electronic ASEAN Catch Documentation Scheme (eACDS). The eACDS prioritised harmonisation with existing catch documentation schemes to ensure consistency with other schemes, including the EU and US schemes. The eACDS can be used by fishing operators, government officials, and importers through web and mobile

apps.[127] Traceability data is provided via a QR code included as a label on the packaging of imports. Australia should engage with ASEAN to ensure technical alignment with their system and avoid duplication of efforts and processes.

Australia could also offer to collaborate in developing and further strengthening the ASEAN system. A worthy longer-term ambition could be expanding its scope to offer retailers, hospitality venues, and consumers access to the data via a public-facing mobile app. This would permit individuals to make better-informed purchases at the tail end of the supply chain. Australian consumers typically have relatively high ethical expectations regarding the sourcing of their food. Brands that thrive in Australian markets are aware of the large reputational risks—and associated bottom-line consequences—of being seen to make poor ethical choices. Providing consumers with a simple, user-friendly app capable of outlining the history of any given piece of seafood could thus be expected to send a reasonably strong demand-side signal to the market in favour of legally and sustainably sourced seafood.

The introduction of an eCDS would support work already being undertaken voluntarily by major retailers to clean up their supply chains, address the mislabelling of seafood, and increase consumer awareness of the origins of their seafood. Labels on seafood products could be audited at any time through comparison with the sea-to-plate traceability data logged through the eCDS. The increasing accuracy and precision of genetic testing of seafood could also be integrated into such audit processes, which could be undertaken formally by the regulator or, equally, by relevant industry associations acting in the public interest. Further, improving the accuracy and completeness of the labelling of imported seafood products could play a role in encouraging consumers to engage with information about the origin and legality of the seafood products they purchase. The resultant increased awareness of ethical issues surrounding fishing would help gather support for continued improvements to Australia's regulatory response to IUU, evoking shifts in consumer attitudes similar to those responsible for the nation-wide move away from caged eggs in Australia.

3.3.2 – The Simplified Trade System

The development of a centralised and integrated electronic system for tracking data for seafood imports at multiple points in the supply chain aligns closely with—and can be facilitated by—current work being undertaken by the Simplified Trade System (STS) Implementation Taskforce. The objective of the Taskforce, established by the Australian government in July 2021, is to streamline trade regulations, reduce compliance complexity, avoid duplication across systems and modernise Australia's import and export processes. The STS is being designed to enable paperless trade, achieve a modernised Australian Trade Single Window, and establish a Cross-Border Trade Data Sharing Framework, all combining to make possible a 'tell-us-once' user experience for importers and exporters.[128] The long-term vision is complete cross-border integration such that the destination country's import customs data is automatically populated by the originating country's export customs data.

While the work of the STS Implementation Taskforce is framed primarily in terms of boosting productivity and reducing delays at the border, it can also make possible a maximally efficient cross-border regulatory

regime for preventing IUU seafood imports into Australia. If integrated into a modern digital system capable of sharing data freely, instantaneously, and securely across borders, Australia's new eCDS can be designed so as to maintain continuity with the catch documentation/certification schemes already administered by RFMOS and the EU. This would maximise efficiency in the short term while preparing the ground in the longer term for knitting together the unilateral and regional seafood traceability schemes being established across the world into a comprehensive multilateral framework for global seafood traceability.

3.3.3 – Authentication

The McKell Institute proposes a model whereby imported seafood must be accompanied by catch documentation but that this documentation need not be validated by regulating authorities in the exporting country; that is, the flag state. The EU's catch certification system and Japan's catch documentation scheme both require flag states to issue operators with a certificate validating the legality of seafood products destined for their respective markets. This is an administratively burdensome requirement that may be beyond the resources and capabilities of the governments of less developed countries. Questions have been raised, therefore, about the EU system's vulnerability to fraud in relation to this process.[129] Further, it could be argued that Australia's market size, especially in comparison with that of the EU, is insufficient to warrant making this requirement of flag states.

Omitting the flag-state authentication requirement from Australia's eCDS would, of course, leave the system open to the submission of fraudulent documentation. But if the flag states of exporting operators are, at this stage, either unlikely or unable to expend the requisite resources to authenticate the origin and legality of their seafood exports, there may in fact be no real reduction in the validity of the information supplied. This initial leniency in Australia's eCDS should be revisited as global practices improve and capabilities in less developed countries are boosted with support from more developed trading partners.

A system operating independently of authorities in flag states would rely, in the first instance, on consumer pressure to reduce the prevalence of fraud. Importers receiving goods accompanied by documentation that was highly unlikely to be authentic would face reputational risks if these practices were to be made public. Australian authorities could also analyse the customs data in search of irregularities or inconsistencies that might indicate fraudulent information had been provided—for instance, if a shipment purported to contain a species of fish that was known not to be caught in the stated catchment location.

For this reason, establishing an eCDS is a necessary first step in reforming Australia's seafood importation regulations, authentication of that data will be addressed in Stage Two. Even without a formal flag-state authentication process, the Australian government should be requiring operators to declare comprehensive information regarding the sourcing of their seafood products. Operators supplying inaccurate customs documentation are doing something quite different from operators whose shipments are not accompanied by any such documentation. Following the establishment of an eCDS, those operators with poor record-keeping

practices—or those deliberately allowing IUU seafood into their supply chain—would no longer be able to plead innocence by omission. And, of course, the Customs Act 1901 makes it an offence to make a false or misleading statement to a customs officer.

Receiving unreliable information at the border is, perhaps counterintuitively, a significant improvement on receiving no information. As well as making explicit any hidden complicity on the part of exporters whose shipments contain IUU seafood, it will also provide a huge amount of additional data for local authorities seeking to better understand the scope and nature of the IUU risk in Australia's imports. And it will help the Australian government, equipped with an abundance of new data, to better target both supportive measures for foreign authorities and future enforcement efforts at the border.

3.3.4 – Implementation

Logistical practicalities and resourcing limitations may prevent the immediate introduction of a complete eCDS into Australia's regulatory regime. Industry resistance to reform may also present a barrier to the swift establishment of a comprehensive scheme. Should that be the case, the Australian government could consider a staged approach whereby a basic scheme is introduced in the first instance with the level of data collection gradually increased thereafter, culminating in a more comprehensive system 24 months post-introduction. This could be done by adjusting the number of key data elements (KDEs) collected through Australia's eCDS. At each stage, a review of the system may be needed before the eCDS is expanded.

A wide range of KDEs must be captured throughout the seafood supply chain to maximise cross-border traceability and ensure the legality of fish products traversing global markets. According to the EU IUU Coalition, a best-practice catch documentation scheme would capture the following 17 KDEs:

1. Vessel name
2. Unique vessel identifier
3. Vessel flag
4. International radio call sign
5. Identity of exporter/re-exporter
6. Identity of importer
7. Product type
8. Species name
9. Estimated live weight in kilograms
10. Processed weight in kilograms
11. Declaration and authorisation of transhipment at sea
12. Date of harvest
13. Catch area
14. Authorisation to fish
15. Port of landing
16. Processing location
17. Fishing methods[130]

The EU IUU Coalition describes these KDEs as "fundamental for achieving a robust baseline" and, in a later analysis, reaffirms its position that this is "the most complete and most balanced list of requirements for CDS completion."[131] Of the 17 KDEs recommended in these analyses as necessary to determine the legality of imported seafood, 13 are compulsory in the EU system, 12 are required under the US scheme and only six or seven are used in the ASEAN eCDS.

TABLE 3 EXISTING & RECOMMENDED CDS KDE REQUIREMENTS

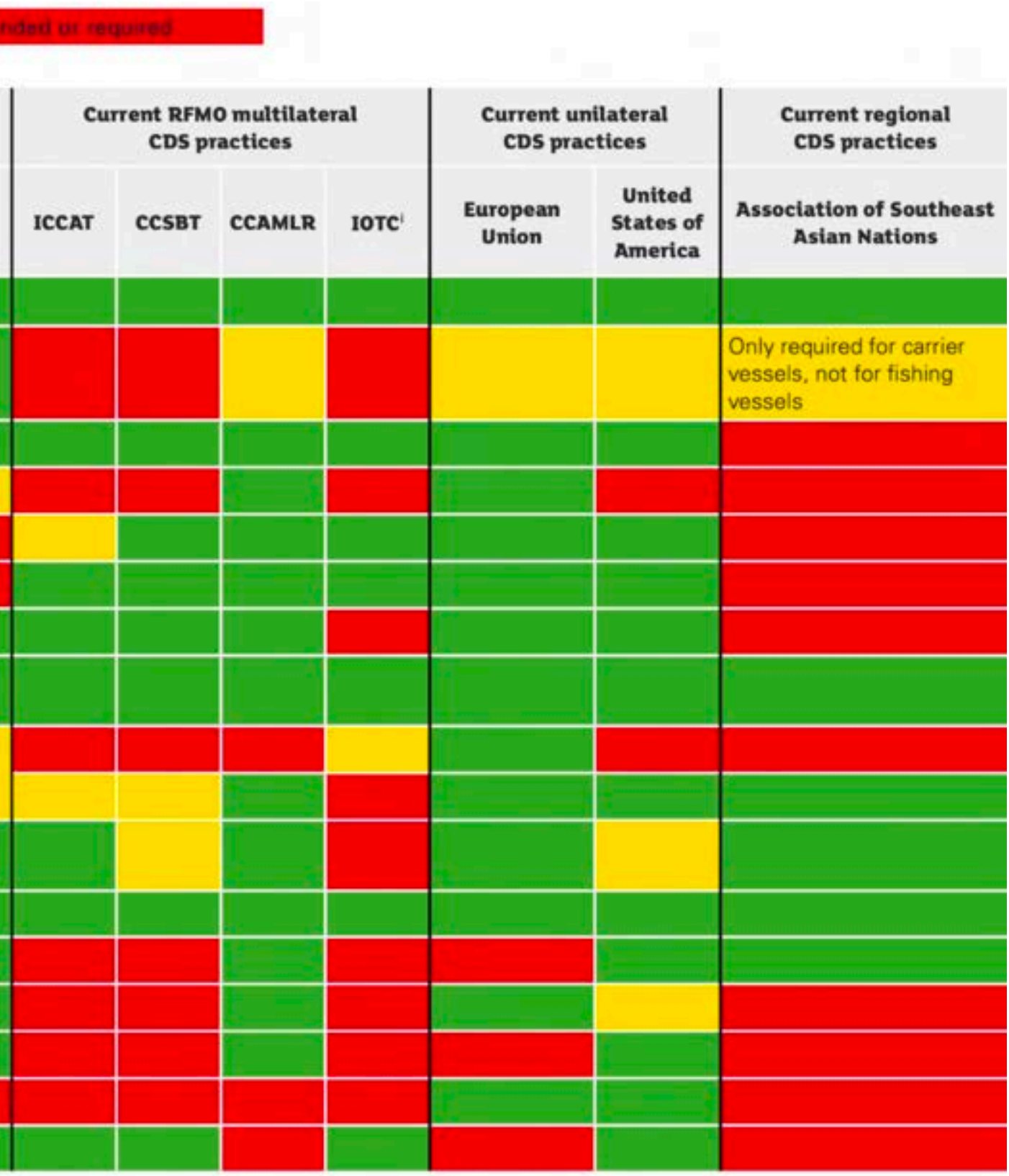
Recommended or applied in practice | Optional or needs to be improved | Not recomme

	Key Data Elements (KDEs)	Stakeholder recommendations for CDS: EU IUU fishing Coalition	FAO Voluntary Guidelines	GDST 1.0 Standard
WHO	Vessel name		See article 1(b)	
	UVI(IMO number)		See article 1(b)	
	Vessel flag		See article 1(b)	
	International Radio Call Sign(IRCS)		See article 1(b)	
	Information of exporter/re-exporter		See article 1(f)	
	Identity of import company		See article 1(g)	
WHAT	Product type(use of FAO Alpha code)		See article 1(d)	
	Species name embedded in the FAO/ASFIS 3-Alpha Code		See article 1(b)	
	Estimated live weight(kg)			Not specified between live or processed
	Processed weight(kg)		See article 1(d)	
	Declaration and authorisation of transshipment at sea		See article 1(c)	
WHEN	Event date(Harvesting operation)		See article 1(b)[ii]	
WHERE	Catch area		See article 1(b)	
	Authorisation to fish		See article 1(e)[iii]	
	Port of landing		See article 1(b)	
	Processing location			
HOW	Fishing methods			

i Refers to IOTC Statistical document for Bigeye tuna, which is not strictly speaking a CDS

ii Guidance is not clearly provided or vague; article 1(b) merely states: *"Information on catch and landing (fishing vessel or vessel group [SSF], species, catch area, landing information, etc."*

iii Guidance is not clearly provided; article 1(e) merely states: *"issuing Authority validating the catch certificate, including contact details"*



Current RFMO multilateral CDS practices				Current unilateral CDS practices		Current regional CDS practices
ICCAT	CCSBT	CCAMLR	IOTC[1]	European Union	United States of America	Association of Southeast Asian Nations
						Only required for carrier vessels, not for fishing vessels

Source: Cazalet, B. & Mostert, E. (2021), p. 21.

Australian authorities currently request information covering just two of these 17 KDEs when receiving seafood imports: product type (e.g., fresh or frozen) and processed weight.[132] In its initial form, Australia's eCDS should at a minimum capture the KDEs common to both the EU and US systems.

INITIAL COMPULSORY KDES:

1. Product type
2. Processed weight
3. Vessel name
4. Vessel flag
5. Species name
6. Date of harvest
7. Identity of exporter/re-exporter
8. Identity of importer
9. Processing location

The Australian eCDS should begin by mandating these nine KDEs with all farmed and wild-caught seafood imports, while allowing for the remaining eight KDEs to be logged optionally. Doing so would (a) encourage importers to provide additional information to help fill (and expose) existing data gaps and permit authorities to better understand the IUU problem in Australia's seafood market and (b) signal an intention to importers to expect an increase in data capture requirements at the border for seafood. Indeed, this intention could be made explicit by stating that although only nine KDEs are currently mandatory, all 17 KDEs will be made obligatory within a defined time period.*

After 12-24 months, the remaining KDEs could be made compulsory.

SECONDARY KDES

10. Unique vessel identifier
11. International radio call sign
12. Estimated live weight
13. Declaration and authorisation of transhipment at sea
14. Catch area
15. Authorisation to fish
16. Port of landing
17. Fishing methods

While the McKell Institute's suggested sequencing of KDE tracking across two stages is premised on maximising alignment with the existing unilateral CDS in place in Europe, the US, and Southeast Asia, it would also guarantee a high level of consistency with the multilateral CDS currently operated by RFMOs across the world (see Table 2). Any consideration of which KDEs to add to Australia's eCDS—and at what stage—should be made through the lens of avoiding unnecessarily misaligning Australia's approach with existing unilateral and multilateral schemes, thereby increasing the feasibility of knitting such schemes together into a comprehensive global eCDS in the future. Additional intermediary stages could be added if needed to make more gradual the transition to a comprehensive system. Noting the current levels of complexity and contestation concerning the definition of IUU fishing, gradually ratcheting up the comprehensiveness of Australia's eCDS by increasing the number of compulsory KDEs would also set a precedent for further data elements to be introduced at any future time, making the system adaptable to shifts in terminological definitions and global expectations.

* It should be noted that there is also the Global Dialogue on Seafood Traceability (GDST), which is an international B2B platform that proposes a standardised set of KDEs. However, for simplicity's sake as well as maximal alignment with existing CDSs, we have chosen the staged approach as described in this section.

3.4 – STAGE TWO: CRIMINALISATION

The second stage of the McKell Institute's proposed policy framework is criminalising the importation of IUU seafood. A due diligence model of criminalisation should be implemented—modelled on the *Illegal Logging Prohibition Act 2012*—whereby it is made a criminal offence to import IUU seafood knowingly, intentionally, or recklessly into Australia. The purpose of this stage is to reduce the likelihood of seafood importers accepting illegitimate documentation from exporters, enforcing the expectation that importers take responsibility for the quality of their supply chains through the imposition of substantial due diligence requirements.

3.4.1 – The Illegal Logging Model

The *Illegal Logging Prohibition Act 2012* makes it an offence to import any item that is or contains illegally logged timber. This offence attracts a penalty of up to five years imprisonment and a maximum fine of 500 penalty units, equating to $156,500 for an individual or $782,500 for a corporation (as of 1 July 2023). Due-diligence requirements are imposed on importers and failing to comply with those requirements can attract a fine of 300 penalty units, equating to $93,000 for an individual or $469,500 for a corporation. If a corporation fails to make a customs declaration regarding its compliance with the due-diligence requirements of the Act and related regulations, a fine of 100 penalty units may be imposed—$31,300 for an individual or $156,500 for a corporation.

The nature and extent of the due-diligence requirements is laid out in the *Illegal Logging Prohibition Regulation 2012*. Importers must have in place a due-diligence system that gathers extensive information regarding the timber product being imported, including its country of origin, the forest in which the timber was harvested, the identity of the product's supplier, evidence that the product has not been illegally logged, and more. An importer must also undertake a risk identification and assessment regarding the accuracy and reliability of the information provided by the exporter and the likelihood of illegally logged timber being contained in the product. If the risk is not low, the importer is required to conduct an appropriate risk mitigation process. Records detailing the importer's due-diligence system and processes must be stored for five years and provided if requested by the Department.

3.4.2 – Introducing an Illegal Seafood Importation Prohibition Act

The importation of IUU seafood into Australia could be criminalised through the establishment of an *Illegal Seafood Importation Prohibition Act* or similar.** As is the case with timber, this Act could require the establishment of an *Illegal Seafood Importation Prohibition Regulation* or similar, wherein the due-diligence requirements for importing seafood into Australia would be outlined in detail. Importers of seafood would thereby be required by law to identify, assess, and mitigate the risk of illegal product being contained in shipments they bring into Australia. The data-gathering requirements for importers would be less extensive in the case of seafood, given that customs would at this stage already be capturing all the KDEs considered necessary to determine the origin and legality of the items being imported, courtesy of the eCDS introduced in Stage One of the McKell Institute's proposed

** Such an Act is not without precedence; see, for instance, the US' *Maritime Security and Fisheries Enforcement Act (2019)*, whose purpose is "To address the threat to national security from illegal, unreported, and unregulated fishing and associated illegal activity, to prevent the illegal trade of seafood and seafood products, and for other purposes."

reform process. The purpose of the Act would be to put the onus on importers to ensure—to the greatest extent reasonably possible—the accuracy and reliability of the data being logged in the eCDS. The specific risk identification, assessment, and mitigation procedures undertaken by seafood importers would vary depending on factors such as the species being imported, the country of origin of the exporter, the practices of the exporting fishery managers, and whether or not transhipment had occurred prior to the importation of the seafood in question.

At the conclusion of Stage Two in the McKell Institute's model, importers would be committing an offence by intentionally, knowingly, or recklessly importing IUU seafood products as defined by the Act, or by failing to satisfy the due-diligence requirements laid out in the Regulation. In determining the final form of the Act and Regulation, the Department should give consideration to feedback received as part of its recent review of the illegal logging laws that may also be relevant in the case of IUU seafood, particularly:

- allowing importers to provide due-diligence information ahead of importation;
- adding powers to use emerging DNA technology and stable isotope/trace-element analysis for origin verification to test products at the border, and to publish test results and instances of non-compliance; and
- optimising the types of products regulated.[133]

3.4.3 – Implementation

The IUU seafood importation laws could be introduced as a reduced-scope pilot before being rolled out to cover all seafood imports. For instance, due-diligence requirements could be introduced for a subset of imports, perhaps by being applied only to mixed-species shipments in the first instance. While this would reduce the burden on the Department of administering the laws, it could also affect behaviour in undesirable ways. Suppliers might be incentivised, for example, to erroneously claim their shipments contained only one species. Consideration should be given to such perverse incentives if the Australian government does choose to begin with a reduced-scope criminalisation of a subcategory of IUU seafood imports.

Another option, perhaps less likely to generate perverse incentives, might be to focus auditing efforts on the due-diligence systems of importers bringing in the highest-risk species. As mentioned earlier, data provided through the eCDS established in Stage One of the reform process could be analysed to determine where resources would be best spent in Stage Two.

3.5 – STAGE THREE: GREEN LIGHT SYSTEM

While taking concrete steps to prevent IUU seafood from entering the domestic market, Australia should also position itself immediately as a champion for greater international collaboration to prevent IUU fishing, both taking advantage of and reinforcing its status as a socially responsible and trusted global actor. Although this can and should be done informally through both diplomatic channels and public discourse, the McKell Institute also recommends that the Australian government take further steps by working with cooperating countries to establish a 'green-light system' for seafood imports into Australia.

While the EU's carding system functions by assigning a yellow or red card to exporting countries based on their level of cooperation in combating IUU fishing, such an approach would be difficult for Australia to implement from a diplomatic perspective. Key trading partners for Australia could be expected to receive yellow or red cards based on the integrity of their fisheries management systems, or lack thereof. The US system is similarly punitive, publicly flagging countries in which IUU fishing activities and issues of sustainability are occurring and issuing country-wide negative determinations—with associated restrictions on imports—when the US government deems insufficient action has been taken on the part of a given country to address IUU fishing and sustainability concerns. The Australian government would be hesitant to implement such systems, with possible damage to relationships in the Asia-Pacific region that are currently being proactively cultivated.

3.5.1 – A positive approach

A green-light system could be contemplated, being entirely positive in nature. No yellow- or red-light determinations would be made, and no country-wide sanctions or punitive measures would be introduced. Instead, a green light would be given (and periodically reviewed) where an exporting country was able to certify the origin and legality of all the seafood products leaving its shores. The stringency of the system would be necessarily high, with green lights given only to countries with a very strong track record and strict monitoring and compliance practices. This would introduce a high level of government-to-government engagement to guarantee the integrity of green-light determinations and ensure all Australian laws—including those criminalising IUU seafood imports—were being complied with in full. The Australian government would need to exercise restraint in green lighting an entire country, being mindful of the reputational risks of any shipment from a greenlit country being shown to contain any level of IUU product at any time.

A green-light system would depend on greater integration of government-to-government import/export data, with the exporting country's export customs data being fed directly into the importing country's import customs data as per the stated aims of the Simplified Trade System discussed earlier. The benefit of such a system would be a significantly reduced administrative burden at the business-to-business level. Exporters from greenlit countries would be certified as fully compliant (with periodical re-evaluations), resulting in reduced due-

diligence obligations. This would introduce a strong market signal for Australian importers to favour seafood products coming from greenlit countries, serving as further economic motivation for participating countries to take the steps required to receive a green-light determination.

This proposal aligns with feedback provided to the review of the illegal logging laws, wherein stakeholders proposed the introduction of 'deemed to comply' arrangements for certified products.[134] Indeed, the green-light system could be extended by permitting exporters from countries lacking a green light to seek certification from a trusted independent organisation. Operators and fisheries would be individually certified only if they logged comprehensive real-time data in Australia's eCDS at each stage in the supply chain *and* if they were deemed to comply with all the requirements of Australia's IUU seafood importation laws. This would incentivise operators/fisheries from countries with less-robust fisheries management practices to invest in improving their practices voluntarily and thereby make themselves eligible for being greenlit to export to Australia. The Australian government could also consider bilateral and regional partnerships to support small-scale operators in their efforts to receive a green-light determination, adopting a 'carrot' approach for such operators while allowing the 'stick' approach inherent in the carding system and similar models to remain the prerogative of larger markets like the EU and the US.

3.5.2 – Strengthening the system

Australia could seek at any time to strengthen its IUU-seafood-prevention scheme by ratcheting up the stringency of green-light determinations. For instance, the provision of a green light could be made dependent on other issues such as tackling labour rights abuses. Standards could be gradually increased over time as the number of participating countries and operators grew and ethical expectations expanded. Updates to relevant conventions and agreements could also be incorporated into the system, increasing both the speed and robustness of compliance with any newly-agreed-upon requirements. This willingness to update the prerequisites for receiving a green light would also help ensure the adaptability of Australia's regime to shifting definitions of IUU, as discussed in Section 1.

3.5.3 – Implementation

The remaining question in formulating this stage of the proposed reform model is how best to make country-wide green-light determinations. Reciprocity should be the fundamental operative principle in answering this question. Existing and future trade agreements could be (re)negotiated to include provisions and lay out clear processes for green lighting partnering nations' seafood exports into Australia and, in return, could contain commitments to reducing barriers for Australian exports into the partnering nation(s). Australia's participation in international conventions and agreements supporting the conservation of fish stocks, as discussed in Section 2.3, could also be repurposed for making green-light determinations.

Doing so would establish grounds for an initial reduced-scope system whereby a limited number of species groups could be made eligible for green lighting at the outset. This piloting of the green-light system would build on Australia's existing engagement in multilateral conventions and agreements relating to sustainable fishing while also maximising the logistical feasibility and early

effectiveness of the system. The Australian government could focus on giving the green light to lower-risk imports in the early stages of the system's operation with a view to gradually expanding the scope of the system over time, ultimately making green-light determinations possible for all species of non-endangered seafood.

With respect to endangered species, Australia's green-light system must be designed to accord with the Convention on International Trade in Endangered Species (CITES).* CITES works by listing species—or segments of species—where trade in that species is a threat to the effective conservation of that species. CITES Appendix I bans trade of a given species if the commercial trading of that species is deemed irreconcilable with its effective conservation. It is populated by species considered in danger of extinction. Appendix II lists species that are not currently facing an immediate threat of extinction but may face such a risk if their trade is not carefully regulated. International trade in specimens of species listed in Appendix II can be authorised through the issuance of an export permit or re-export certificate. No import permit is mandated for these species under CITES, though some countries, like Australia, have adopted more stringent regulations than CITES necessitates and still require import permits for species on the list. The issuance of permits or certificates is contingent upon the relevant authorities being satisfied that specific conditions are met, primarily ensuring that the trade will not have a detrimental impact on the species' survival in their natural habitat.

Finally, Appendix III lists species requested for inclusion by a participating Party that regulates trade in the species and is seeking cooperation from other Parties to support its efforts in ensuring sustainability in the trade of that species. While species can be added to Appendix III unilaterally by any Party to the Convention, Appendices I and II can be updated only with the agreement of the CITES Conference of the Parties (CoP), which comprises all the Parties to the Convention.

Under the proposed model, seafood species listed on Appendix I would be ineligible for a green-light determination. Those listed on Appendices II and III could be greenlit if the required conditions established by the Convention, and by Australia's IUU seafood import control laws, were met by the exporting country or operator. Beyond its existing functions, CITES also provides a framework for engaging with other nations with an interest in the effective conservation of species across the globe. Australia could explore opportunities for using the CITES CoP meetings to initiate cooperative efforts with participating Parties and encourage them to seek the green light for seafood exports leaving their shores bound for Australia's market.

* Australia's obligations under CITES are given effect by the *Environment Protection and Biodiversity Conservation Act 1999*.

3.6 – SEQUENCING OF STAGES

Although a comprehensive multilateral system, including a fully integrated international CDS, may ultimately be required to prevent IUU fishing across the globe, immediate action can and should be taken to help keep IUU imports out of Australia's market. The establishment of a green-light system—premised on a high level of international engagement between the Australian government, key trading partners, and individual fishing operators—should be viewed as a comprehensive long-term solution to this problem. Even global cooperation of this kind is likely to take a long time to achieve, requiring a high degree of both resourcing and political will on all sides. In the interim, Australia has the opportunity and, the McKell Institute would argue, a responsibility to implement short-to-medium-term solutions that can start having an impact on industry behaviour now.

The first two stages of the McKell Institute's evolutionary model send a clear message to trading partners and operators in the seafood industry that Australia wants to see its markets rid of IUU seafood. In Stage One, Australia would establish a world-class eCDS with a view to maximising cross-border integration, permitting the long-term alignment of systems and the eventual merging of unilateral schemes into de-facto multilateral systems. Australia should ensure its approach in this area builds on and draws from the work already being done to develop a Simplified Trade System, as well as being informed by the shortcomings of other CDS in place across the world. At a minimum, Stage One would allow the Australian government to capture the level of data needed to develop a comprehensive account of the scope and nature of the IUU risk in Australia's seafood imports.

In Stage Two, the importation of IUU seafood would be criminalised, imposing stringent due-diligence requirements on importers bringing seafood into Australia. This could be expected to radically increase the quality of the data being captured by the eCDS established in Stage One. The impetus would be placed on importers to ensure their supply chains are clean and to invest in establishing relationships with high-quality trading partners. Stage Two would create a strong market signal in favour of those operators who took seriously the intention signalled by Stage One and began implementing the behavioural changes needed to reduce the likelihood of IUU product making its way into Australia's market.

Finally, Stage Three would permit importers who source their seafood products from greenlit countries and/or operators to be freed both of the burden of fulfilling the most stringent of the due-diligence requirements and of any uncertainty about whether or not they are contravening the Australian laws established in Stage Two. It can be argued, then, that Stage Three makes Stage Two redundant. This is by design and demonstrates the core logic of the McKell Institute's evolutionary model; Stage Three might never arrive without Stages One and Two first having been introduced. Further, each stage is built on the one before it in a way that strengthens the scheme as a whole. Stage One establishes the systems that make possible the implementation of Stage Two. Stage Two then creates the market signal for importers, exporters, and the governments of key trading partners to invest in seeking a green-light determination as made possible by Stage Three.

3.7 – RECOMMENDATIONS

It is the McKell Institute's strong view that, although Australia might not be in a position to prevent IUU fishing practices globally, it does have at its disposal reform options to avoid inadvertent complicity in those practices. Australia is a relatively wealthy country and a trusted, respected, and socially responsible global actor. Australian consumers have expectations regarding the quality, legality, and ethical soundness of the goods they purchase. It does not make sense for Australia's markets to remain open to IUU seafood.

RECOMMENDATION 1:

The McKell Institute proposes that Stage One be implemented with urgency, that Stage Two be implemented over a three-year time horizon and that engagement on the development of Stage Three begin imminently with a view to achieving a preliminary green-light system within five years.

To help facilitate the reform process, reduced-scope options have been presented for each stage of the McKell Institute's proposed model, giving consideration to the diplomatic, logistical, and resourcing limitations faced by the Australian government.

RECOMMENDATION 2:

The McKell Institute recommends that the Department undertakes a full environmental, social, economic, reputational, and diplomatic cost-benefit analysis of the evolutionary model, including the reduced-scope options provided, in comparison with any proposed alternatives emerging from the Department's consultation process.

The McKell Institute wishes to thank the Australian government for its willingness to pursue reform in this area and welcomes the opportunity to engage further with the Department on this matter moving forward.

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