CATCHING LESS FISH WITH MORE HONEY: INTRODUCING INCENTIVES FOR SUSTAINABLE INTERNATIONAL FISHING COMPLIANCE

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Introduction ..................................................................................... 207
I. State of the World’s Fisheries ..................................................... 209
II. International Fisheries Legal Framework ................................. 211
   B. UN Fish Stocks Agreement............................................... 213
   C. Regional Fisheries Management Organizations............... 215
   D. FAO Code of Conduct .................................................... 217
   E. International Fisheries Litigation ...................................... 218
III. Weaknesses and Failures of the Current Legal Regime .......... 221
   A. Subsidies ........................................................................ 222
   B. Illegal, Unreported, and Unregulated Fishing and Flag-State Enforcement .................................................. 223
IV. Alternative Enforcement Strategy: The Introduction of Incentives to Induce Compliance ....................................................... 225
   A. Israel–Egypt Peace Treaty of 1979 .................................... 228
   B. The United States and Panama: A Case Study of Possible Incentives for International Fisheries ...................... 230
      1. The United States and Panama: Sanctions .................... 232
      2. The United States and Panama: Incentives ................. 236
Conclusion ...................................................................................... 241

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INTRODUCTION

Two-thousand twelve marked the 20th anniversary of the Newfoundland cod fishery collapse, the most well-known fishery disaster in the past century. The Newfoundland cod fishery collapse refers to the fishing moratorium that the Canadian government placed on the North Atlantic cod in 1992. Beginning in the 1950s, new fishing technology allowed both Canadian and foreign vessels to harvest unprecedented amounts of cod from the Newfoundland stock. The capacity to harvest increased exponentially in the 1970s and 1980s with the introduction of instruments like sonar detection and trawlers, which “vacuumed” cod from the sea. Despite increased international fishing regulation in the 1980s, member states could defect from the fishing quotas set by regional management bodies, further exacerbating the problem. By 1992, the catch had collapsed and the Canadian government placed a moratorium on the stock. Some 35,000 fishers and other workers were out of a job overnight. Despite initial hopes that the stock would rebound after a couple years, the moratorium remains in place more than 20 years later.

Even after two decades of increased attention and louder environmentalist voices, the world’s fisheries remain in peril. The

2. Id.
3. Id.
4. Id.
5. Id.
6. Id.
7. Id.
Food and Agriculture Organization of the United Nations estimates that 57.4% of fisheries are fully exploited and 29.9% of stocks are over exploited.\textsuperscript{10} Recent closures, like the Japanese anchovy stock in the Bay of Biscay,\textsuperscript{11} demonstrate that under the current international regime, we are still in danger of repeating the mistakes that led to the 1992 collapse.

Rather than following the current ineffective paradigm of enforcement, the international community needs to start providing incentives to enforce sustainable fishing quotas and practices; this method will allow states to overcome political and economic obstacles and make a rational decision in favor of sustainable fishing compliance.

Part I of this article begins with a brief overview of the status of the world’s fisheries. Part II then summarizes the current regime that regulates and enforces international fishing standards. This includes major conventions and treaties, international governmental organizations, and regional management bodies. Next, Part III analyzes why the current regime is ineffective, focusing on its inability to successfully enforce penalty provisions, the economic and political disincentives of member states to practice and enforce sustainable fishing practices, and the negative effect of domestic policies that undermine international regulatory efforts. These issues are identified in the context of domestic fishing subsidies; illegal, unreported, and unregulated fishing; and reliance on flag state enforcement. Finally, Part IV proposes an alternative enforcement strategy, which introduces incentives for states to comply with and create sustainable fishing practices. It demonstrates this strategy with a case study where the United States provides deforestation program

\textsuperscript{10} Fully exploited stocks refer to those that produce at or close to the maximum sustainable production. There is no room for further expansion, and if further exploited they are at risk of decline. \textit{Id.} at 53. Over exploited stocks refer to those that are fished beyond their ecological and biological potential. \textit{Id.} They must be carefully managed to rebuild stock supplies. \textit{Id.}

\textsuperscript{11} The Bay of Biscay Japanese anchovy stock was closed from 2005 to 2009 after the stock experienced a collapse. \textit{Bay of Biscay Anchovy Quota Reduce by 17\%}, \textsc{Undercurrent News} (July 9, 2013), http://www.undercurrentnews.com/2013/07/09/bay-of-biscay-anchovy-quota-reduced-by-17/.
support to Panama in exchange for greater international fisheries regulation compliance.

I. STATE OF THE WORLD’S FISHERIES

In 2013, the United States became the top importer of fish and fishery products, valued at $19 billion. This is just a portion of the preliminary estimates of the value of fish imports in 2013, which is around $137 billion. Indeed, the fisheries sector is the fastest growing employer in agriculture. The primary sector provides income and livelihoods to some 54.8 million people, while an additional 660–820 million (including dependents) rely on ancillary activities like boat construction and processing for jobs. In total, 10–12% of the world’s population relies on the fisheries sector for work. Over 100 million of these individuals are among the world’s poorest people.

Not only does the fishery industry represent a major economic endeavor, fish also provide more than half the world’s population with 15% of its animal protein intake. Four of the 30 countries most dependent on fish as a source of protein are developing nations. As consumption of fish increases, harvested fish are now smaller and more difficult to find and catch.

Since the first Food and Agriculture Organization (“FAO”) assessment, the proportion of non-fully exploited stocks has consistently decreased. About one-third of the top ten capture fishery stocks are over exploited, with the rest fully exploited. The

13. Id.
14. FAO STATE OF THE WORLD, supra note 9, at 41.
15. Id.
16. Id.
18. FOOD & AGRIC. ORG. OF THE UNITED NATIONS, supra note 12.
19. HUNTER, supra note 17, at 762.
20. Id. at 761.
21. FAO STATE OF THE WORLD, supra note 9, at 11.
22. Id. at 12.
same holds true for the seven principal tuna species, with one-third over exploited and over one-third fully exploited. In its most recent report, the FAO expressed concern that the situation for tuna may deteriorate further unless there are significant improvements in management because of substantial demand and the overcapacity of nations’ fishing fleets.

To illustrate the impact that technology, demand, and overcapacity have on the globe’s fisheries, consider the anecdote that trawlers near British Columbia recently fished their annual quota of 847 tons of herring after only eight minutes. Between 1970 and 1990, the global fishing fleet doubled in size, excluding the millions of small fishing boats not measured in official sources. The FAO estimates that the fishing fleet has more than doubled the capacity to harvest at maximum sustainable yield levels. Were Iceland and the European Union to cut their fleets by 40%, they could still harvest the same number of fish.

As the FAO writes:

The declining global catch over the last few years together with the increased percentage of over-exploited fish stocks and the decreased proportion of non-fully exploited species around the world convey a strong message—the state of world marine fisheries is worsening and has had a negative impact on fishery production.

The FAO goes on to note that the situation is more concerning for fishery resources on the high seas that are governed by international law. Despite oversight by international organizations like the FAO and strong warnings from conservation failures like the North Atlantic cod moratorium, international law has failed to remedy the

23. Id.
24. Id.
25. HUNTER, supra note 17, at 763.
26. Id.
27. Id.
28. Id. at 763–64.
29. FbA STATE OF THE WORLD, supra note 9, at 59.
30. Id.
precarious situation of the world’s fisheries. To understand why the current legal regime is ineffective in this purpose, a brief overview of the international fisheries legal framework is required.

II. INTERNATIONAL FISHERIES LEGAL FRAMEWORK

For much of recorded history, freedom of capture or freedom of the seas was the dominant legal framework that governed the oceans and its natural resources, such as fisheries.\(^1\) Grotius’ natural law theory advocated a “global commons” idea, where no one nation could claim ownership of the high seas’ resources.\(^2\) Fish belonged to whichever nation caught them first. This concept of rights prevailed until the 1958 Law of the Sea Conventions.\(^3\)

The advent of new technology in the 1950s, combined with a freedom of capture mentality, began to strain the oceans’ natural resources like never before.\(^4\) Concerns about over exploitation during this decade culminated in the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas.\(^5\) The Convention established general conservation duties such as interstate

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34. Larocque, supra note 31, at 90; D.H. Steele et al., The Managed Commercial Annihilation of Northern Cod, 8 NFLD. STUDIES 34, 38 (1992).

cooperation\textsuperscript{36} to achieve the optimum sustainable yield.\textsuperscript{37} Yet, it was not until the passage of the 1982 United Nations Convention on the Law of the Sea (“UNCLOS”) that a comprehensive international regulatory scheme for fisheries was established.\textsuperscript{38}


UNCLOS revolutionized states’ claims to the oceans’ resources. By establishing an Exclusive Economic Zone (“EEZ”) of 200 nautical miles,\textsuperscript{39} UNCLOS placed up to 90% of the oceans’ fish resources within the jurisdiction of coastal states.\textsuperscript{40} UNCLOS Articles 61 through 73 deal with living natural resources, including conservation and exploitation of fish species.\textsuperscript{41}

Articles 61 and 62 direct nations to determine catches based on maximum sustainable yield and optimum utilization.\textsuperscript{42} However, these terms are not explicitly defined and, in some instances, have been used by nations to justify controversial activities like commercial whaling.\textsuperscript{43} In addition, the Convention exhibits a bias in favor of economic exploitation rather than non-consumptive management objectives.\textsuperscript{44} However, UNCLOS does place an obligation “to ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation.”\textsuperscript{45}


\textsuperscript{37} Id. at art. 2.


\textsuperscript{40} Carr & Scheiber, supra note 35, at 52.

\textsuperscript{41} UNCLOS, supra note 39, at arts. 61–73.

\textsuperscript{42} Id. at arts. 61–62.


\textsuperscript{44} Id.

\textsuperscript{45} UNCLOS, supra note 39, at art. 61, para. 2.
Conservation decisions within an EEZ are not subject to compulsory dispute settlement, 46 but UNCLOS provides for mandatory dispute resolution in a tribunal or other approved forum for other conflicts under the Convention. 47

While UNCLOS briefly deals with migratory or straddling stocks, gaps in coverage of these special stocks were dealt with in the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention of the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks ("Fish Stocks Agreement"). 48

B. UN Fish Stocks Agreement

As identified in Agenda 21 of the UN Conference on Environment and Development, the gaps left in migratory fisheries regulation under UNCLOS required state action. 49 Among those gaps, Agenda 21 recognized that "there are problems of unregulated fishing, over-capitalization, excessive fleet size, vessel relflagging to escape controls, insufficiently selective gear, unreliable databases, and lack of sufficient cooperation among countries." 50 The Fish Stocks Agreement entered into force in 2001 and regulates highly migratory fish stocks, meaning those that travel between the high seas and areas subject to national jurisdictions. 51 As of early 2014, 81

46. UNCLOS, supra note 39, at art. 297, para. 3, sub. a.
47. Tyler, supra note 38, at 54.
50. Id.
51. Id.
nations have ratified the Fish Stocks Agreement. This includes nearly all the major fishing nations such as the United States, Japan, Russia, and the European Union. Most of all, the Fish Stocks Agreement hoped to create a framework for state cooperation between coastal states and high seas fishing states in migratory stock conservation.

Signatories to the Fish Stocks Agreement agree to a variety of conservation-based obligations for migratory species. Notably, the treaty adopts the precautionary approach in the context of conservation and exploitation of fish resources. The precautionary approach is the idea that in the face of scientific uncertainty, measures exercising caution in favor of environmental protection should be applied. States should promote long-term sustainability in utilization decisions, use the best scientific evidence available, and adopt an ecosystem approach to conservation.

In addition, the Fish Stocks Agreement designates Regional Fishery Management Organizations (“RFMOs”) as implementing
bodies.\textsuperscript{59} These Organizations have the ability to enforce conservation measures on the high seas by excluding non-member states from exploiting fishing stocks.\textsuperscript{60} This is a major departure from the high seas freedom of fishing paradigm; it requires states to cooperate through international organizations for shared resources.\textsuperscript{61} Finally, the Agreement enables non-flag states to board and inspect vessels for compliance with RFMO measures.\textsuperscript{62}

C. Regional Fisheries Management Organizations

There are two main categories of RFMOs: those established under the Food and Agriculture Organization of the United Nations ("FAO") and those created outside the FAO framework by international treaty.\textsuperscript{63} All RFMOs have the authority to implement the Fish Stock Agreement provisions.\textsuperscript{64} These bodies can implement further regulations pursuant to their founding authority and documents.\textsuperscript{65}

Those established by the FAO framework fall under authority of either Article 6 or Article 24 of the FAO Constitution.\textsuperscript{66} Article 6 organizations are purely advisory bodies.\textsuperscript{67} Examples include organizations like the West Central Atlantic Fishery Commission and the Fishery Committee for the Eastern Central Atlantic.\textsuperscript{68} The West

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59. Id. at art. 8, para. 1.
60. Id. at art. 8, para. 4.
61. See Tyler, supra note 38, at 55 (stating that the duty to cooperate runs throughout the Fish Stocks Agreement).
62. Fish Stocks Agreement, supra note 55, at art. 21.
64. See Fish Stocks Agreement, supra note 55, at art. 21, para. 2 (stating that RFMOs can implement procedures to enforce the Fish Stocks Agreement).
65. Id. at art. 21, para. 15.
66. FOOD & AGRIC. ORG., CONSTITUTION arts. VI, XXIV (1945).
67. Id. at art.VI.
\end{footnotesize}
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Central Atlantic Fishery Commission’s main role is to aid in international cooperation efforts for the conservation and use of fishery resources.69 Its activities include promotion of sustainable fishing practices.70 It does not attempt to regulate or enforce provisions against states fishing in the West Central Atlantic.71

In contrast, FAO Article 24 bodies are normally created by treaties, and parties can choose to commit to binding conservation measures.72 Examples include the Indian Ocean Tuna Commission, Asia-Pacific Fisheries Commission, and General Fisheries Commission for the Mediterranean.73 The General Fisheries Commission for the Mediterranean has authority to adopt binding quota recommendations for fishery management in its jurisdiction,74 while the Indian Ocean Tuna Commission may only provide non-binding quota recommendations.75 Member states choose whether to include in these bodies the authority to create binding provisions.76

Other regional fishing bodies are established outside the FAO framework by international treaty.77 Some well-known examples include the Northwest Atlantic Fisheries Organization (“NAFO”), International Commission for Conservation of Tunas (“ICCAT”), and Commission for the Conservation of Antarctic Marine Living Resources (“CCAMLR”). These bodies are tasked with responsibilities such as setting Total Allowable Catches (“TACs”).78

70. Id.
71. Id.
72. RFMOs Report, supra note 68, at para. 4.
73. Id. at para. 3.
76. RFMOs Report, supra note 68, at para. 4.
77. Fish Stocks Agreement, supra note 55, at art. 8, para. 1.
78. TACs are catch limits set for fishery stocks. TACs and Quotas, EUROPEAN COMM’N, http://ec.europa.eu/fisheries/cfp/fishing_rules/tacs/index_en.htm (last visited Nov.
and allocating resources among member states.\textsuperscript{79} Many RFMOs have scientific bodies tasked with providing information relating to conservation efforts.\textsuperscript{80} Despite the revolutionary nature of RFMOs, their effectiveness in sustainable fishery conservation has been controversial.\textsuperscript{81}

One anecdote of common criticism refers to ICCAT as “the International Conspiracy to Catch All Tunas.”\textsuperscript{82} RFMO problems range from inability to create binding provisions to non-enforcement by member states.\textsuperscript{83} As a result, the FAO attempted to fill gaps in domestic non-compliance through a recommended Code of Conduct.\textsuperscript{84}

\textbf{D. FAO Code of Conduct}

The FAO Code of Conduct for Responsible Fisheries and Technical Guidelines (“FAO Code of Conduct”) is a voluntary document, which sets forth standards for sustainable fishing practices.\textsuperscript{85} The Code is consistent with international law.\textsuperscript{86} Some of

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\item 8, 2014). Most often TACs are set based on advice from scientific advisory bodies. \textit{Id.} Limits may be annual or biennial. \textit{Id.} Whether TACs are binding upon RFMO member states depends on the regional body’s charter and enforcement authority. \textit{Id.}
\item 79. \textit{See RFMOs Report, supra} note 68, at para. 4 (explaining that Article XIV bodies enjoy a certain level of autonomy from the FAO).
\item 81. \textit{See id.} (asserting that RFMOs set ineffective quotas).
\item 83. \textit{See id.} (explaining that EU ministers promise action to stop illegal fishing, but no action is actually taken).
\item 85. \textit{Id.} at art. 1.1.
\end{enumerate}
\end{footnotesize}
the notable goals of the Code include a multi-dimensional approach to conservation, promotion of food security in developing nations, and ecosystem research. Increasingly, nations like the United States, Canada, and Australia have incorporated elements of the FAO Code into domestic fishing regulations.

E. International Fisheries Litigation

Another available option for international fisheries law enforcement involves litigation. Under UNCLOS, high seas fisheries disputes are subject to compulsory dispute resolution. However, UNCLOS only requires non-binding conciliation for disputes over conservation decisions in a state’s EEZ. The UN Fish Stocks Agreement extended the UNCLOS compulsory dispute procedure to disputes arising under the Agreement or regional fishery treaties. The *Southern Bluefin Tunas Case* was the first arbitral tribunal created to hear a dispute under part XV of UNCLOS, per authorization of the Fish Stocks Agreement.

In that case, the tribunal decided, contrary to prior interpretations of the Fish Stocks Agreement, that a regional fishing treaty deprived the tribunal of jurisdiction under UNCLOS to decide a high seas fishery dispute. However, despite initial concerns over this controversial ruling, later inconsistent decisions, like the *MOX Plant Case*, indicate that the *Southern Bluefin Tunas Case* tribunal is unlikely to be followed on this jurisdictional issue. Therefore, most

86. *Id.*
87. *Id.* at art. 1.3.
89. UNCLOS, *supra* note 39, at art. 297, para. 3, sub. a.
90. *Id.*
91. *Fish Stocks Agreement, supra* note 55, at art. 3, para. 1.
94. *Id.*
disputes arising under regional fishing treaties will be subject to compulsory dispute resolution under UNCLOS.95

The International Tribunal for the Law of the Sea (“ITLOS”) also provides a forum for states to bring their international fisheries disputes.96 ITLOS is a permanent judicial body established to hear disputes relating to UNCLOS.97 ITLOS has the power to proscribe provisional measures to protect international fish stocks.98

Prior to UNCLOS and the establishment of the specialty ITLOS court, a few fishery disputes were heard by the International Court of Justice (“ICJ”).99 Some states continue to use the ICJ as a forum to bring issues related to fisheries.100

Hopes to use the World Trade Organization (“WTO”) as an alternative forum to adjudicate environmental issues have grown over the past two decades.101 However, recent cases demonstrate that this endeavor will be difficult at best.102 Though Article XX of the

95. Id.
96. HUNTER, supra note 17, at 773.
97. UNCLOS, supra note 39, at art. 287, para. 1, sub. a.
99. See Fisheries Jurisdiction (Ger. v. Icel.), 1973 I.C.J. 49, 50 (Feb. 2) (deciding a dispute over Iceland extending its fisheries jurisdiction); see Fisheries Jurisdiction (U.K. v. Nor.), 1951 I.C.J. 116, 118 (Dec. 18) (discussing the validity of the Norwegian fisheries zone); see Fisheries Jurisdiction (U. K. v. Icel.), 1973 I.C.J. 3 (Feb. 2) (adjudicating a dispute between the U.K. and Iceland over Iceland’s proposed extension of its exclusive fisheries jurisdiction); see Fisheries Jurisdiction (Spain v. Can.), 1998 I.C.J. 432, 435 (Dec. 4) (deliberating a dispute between Spain and Canada over a Canadian Fisheries Protection Act).
101. See HUNTER, supra note 17, at 1226 (stating that because of a case heard by the WTO, the issue of “like products” was brought to the public’s attention).
General Agreement on Tariffs and Trade ("GATT") seemingly allow states to create trade restrictions based on environmental considerations, the standard has proven an elusive one to meet. Yet, application of approved RFMO trade sanctions, such as those passed by ICCAT in 1994, may survive GATT scrutiny because of their multilateral nature.

Ultimately, litigation relating to enforcement of fisheries is infrequent. And the peril of fisheries remains, despite the plethora of legal enforcement options available to the international community.

In summary, states have several international fisheries enforcement options through UNCLOS, the Fish Stocks Agreement, RFMOs, the FAO Code of Conduct, and litigation. However, the FAO continues to publish warnings about the perilous situation of the world’s fisheries. Despite the conservation goals and cooperative framework that have been established, many stocks are over-exploited and nearly all the rest are fully exploited. An inquiry into the failures and weaknesses of the current legal system explains why the danger to the world’s fisheries remains.


104. See WTO Restrictions on Tuna Imports, supra note 102 (holding that the Pelly Amendment may violate GATT Article XX); see WTO Panel Report on Shrimp Ban, supra note 102 (holding that the U.S. restrictions did not meet the requirements under GATT Article XX chapeau).

105. Carr & Scheiber, supra note 35, at 73.

106. See Tyler, supra note 38, at 87–90 (explaining that trade sanctions and other RFMOs probably do not “run afoul” of Article XX of GATT, due in part to their requirement to make good faith efforts to negotiate multilateral agreements).

107. See HUNTER, supra note 17, at 775 (stating that the Tribunal has only heard 15 cases since 2009).

108. See FAO STATE OF THE WORLD, supra note 9, at 59 (concluding that the state of world marine fisheries is worsening).

109. Id.

110. Id. at 53.
III. WEAKNESSES AND FAILURES OF THE CURRENT LEGAL REGIME

Before UNCLOS, no state had an incentive to limit their fleet’s catch to a sustainable level.111 While it may be in the common interest of each state to conserve fishery captures to a sustainable limit, it is in each state’s immediate interest to capture as many fish as possible.112 This freedom of catch approach represents a classic case of the tragedy of the commons.113 In this situation, each fisher catches as many fish as possible because “if one person does not capture it, another person will.”114

A frequent solution to this commons problem is to allocate property rights to the resource, thereby providing a direct incentive for a party to conserve the resource.115 In the context of fisheries, a state “owner” has the right to exclude other states’ fishers from the stock, and the absence of competition creates an incentive for sustainable conservation.116 Therefore, when UNCLOS created EEZs, most assumed that putting 90% of the world’s fisheries under national jurisdiction would encourage conservation and sustainable practices through strict national oversight.117 However, the exact opposite occurred.118

Two of the biggest problems resulting from this regulatory change in fishing resources include subsidies and illegal, unreported,
and unregulated fishing. Both represent significant problems that the current international regulatory framework is inadequate to control. This inability results in over-exploitation of stocks and enforcement difficulties. An analysis of these two issues illustrates the weaknesses and failures of the current international framework.

A. Subsidies

After the creation of EEZs and the resultant eagerness to exploit their new national resources, states began to subsidize their national fishing industries. National fishing subsidies include low-cost government loans, tax breaks, guarantees against defaults, funding of new technology and boat construction, and other services like harbor improvement. Subsidies distort traditional markets by investing and hiding losses in sectors that competition would otherwise prevent. Fishing subsidies amount to a loss of $16 billion per year, or about 25% of the value of the world’s fish catch. Additionally, Oceana estimates that American fishing subsidies cost taxpayers nearly $520 million per year.

Ultimately, subsidies combine to encourage the overcapacity of national fishing fleets, which exploit high seas fisheries once

119. Tim Eichenberg & Mitchell Shapson, The Promise of Johannesburg: Fisheries and the World Summit on Sustainable Development, 34 GOLDEN GATE U. L. REV. 587, 597 (2004); see also Tyler, supra note 38, at 51 (explaining that illegal, unreported and unregulated fishing continues to be a major problem, despite regulatory efforts).
120. See HUNTER, supra note 17, at 764 (referring to fact that coastal states, under UNCLOS, bear the primary responsibility to conserve fish stocks).
121. Id.
122. Eichenberg, supra note 119, at 597; Fagenholz, supra note 111, at 644.
123. Fagenholz, supra note 111, at 644.
126. HUNTER, supra note 17, at 764.
127. Eichenberg, supra note 122, at 597.
national EEZ stocks are depleted. Subsidies may also place downward pressure on global fish prices, further exacerbating overexploitation. With a global fishing fleet estimated to be 250% larger than necessary to catch sustainable amounts of fish, governments face internal economic and political pressures to support overfishing practices. The FAO recognizes that eliminating national fishing subsidies lies outside the scope of the current international legal regime: “[F]isheries reform would ‘require broad-based political will founded on a social consensus’ with a ‘common vision that endures changes of governments,’ which would take time to build.” The problem is further exacerbated in regionally shared waters managed by multiple states in RFMOs. Subsidies represent a significant problem that the international fishing legal regime currently cannot effectively manage.

B. Illegal, Unreported, and Unregulated Fishing and Flag State Enforcement

Subsidies also support another weakness within the current legal regime known as illegal, unreported, and unregulated (“IUU”) fishing, sometimes called pirate fishing. IUU fishing is any fishing that does not comport with national, regional, or global fisheries obligations. Estimates consider IUU fishing to be responsible for up to $25 billion of the fish catch each year. In addition, developing countries suffer the brunt of this practice. While countries are able to pursue IUU vessels operating in their EEZs,

128. See HUNTER, supra note 17, at 764 (explaining that developing nations will sell their EEZ fishing rights to foreign vessels to fish in their waters).
129. Id.
130. Eichenberg, supra note 119, at 597.
131. FAO STATE OF THE WORLD, supra note 9, at 200.
132. Id. at 201.
133. Sumalia, supra note 124, at 204–06, 217.
134. FAO STATE OF THE WORLD, supra note 9, at 201.
135. NAT’L OCEANIC AND ATMOSPHERIC ADMIN., IMPROVING INTERNATIONAL FISHERIES MANAGEMENT 8 (2013) [hereinafter IMPROVING FISHERIES MANAGEMENT].
136. Id. at 9.
137. FAO STATE OF THE WORLD, supra note 9, at 17.
enforcement on the high seas remains within the exclusive control of the flag state, pursuant to UNCLOS.\textsuperscript{138} Although UNCLOS requires a genuine link between a state and a ship registered there, this standard is open to exploitation by states that permit vessel registration without strict requirements for nationality, safety, or fishing practices.\textsuperscript{139} Thus, ships fly flags of convenience and engage in IUU, knowing that their flag states will not enforce international standards against them.\textsuperscript{140}

IUU fishing is one manifestation of the deeper problem—that the organizations responsible for enforcing international sustainable fishing practices must rely on flag state enforcement.\textsuperscript{141} The Fish Stocks Agreement attempted to solve this problem by granting RFMO member states the authority to inspect non-flag states.\textsuperscript{142} However, inspecting states have little enforcement authority, which is always subject to the intervention of a flag state.\textsuperscript{143}

Dependence on flag states for the primary authority in investigation and sanctioning international violations means “the success of the [Fish Stocks] Agreement will depend on the willingness of flag states to contribute equitably to the required reduction in excessive fishing effort which characterizes many high seas fisheries.”\textsuperscript{144} In addition, “there will always be a risk that investigations will not be thorough or that penalties will not be strong enough” to deter violation.\textsuperscript{145} Thus, much like subsidies, flag states

\begin{footnotesize}
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\item[138.] UNCLOS, supra note 39, arts. 21, 94, & 111.
\item[139.] Jessica K. Ferrell, Controlling Flags of Convenience: One Measure to Stop Overfishing of Collapsing Fish Stocks, 35 ENVTL. L. 323, 328–29 (2005).
\item[140.] HUNTER, supra note 17, at 766.
\item[141.] Ferrell, supra note 139, at 356.
\item[142.] Id. at 355.
\item[143.] On clear grounds of a serious violation, an inspecting state may board a ship. It must notify the flag state and secure evidence of any violations. Inspecting states may take a ship to the nearest port and impose sanctions, subject to the permission or failure of a flag state to respond to a report. Flag states may assert supervening jurisdiction over the vessel at any time. All actions taken by inspecting states must be proportionate. Id. at 355–57.
\item[144.] Eichenberg, supra note 119, at 610–11.
\item[145.] Id. at 610.
\end{enumerate}
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must overcome significant political and economic obstacles to pursue greater enforcement objectives.\textsuperscript{146}

Flag states face strong domestic opposition from subsidized fishing industries,\textsuperscript{147} making enforcement decisions politically and economically difficult. Furthermore, states permitting flag of convenience registration exist for the exact opposite purpose—to encourage lax enforcement for economic gain.\textsuperscript{148} Even more, punishing IUU vessels fails to reach the states, those responsible for ensuring actual compliance and enforcement.\textsuperscript{149} Just as convicting pirates of high seas violations fails to solve the broader issue of piracy, convicting IUU vessels and crew fails to solve the broader issue of lack of enforcement by flag states.\textsuperscript{150}

In conclusion, both IUU fishing and subsidies illustrate the failures of the current international fishing regime. Each supports practices of over-fishing and incentivizes economic and political behavior that discounts sustainability.\textsuperscript{151} Countries must overcome these obstacles if they wish to change their laws and behavior in favor of sustainable quotas and fishing practices. Thus, if the global community wishes to solve the fisheries problems, these weaknesses and failures of the current system demand a new approach.

IV. ALTERNATIVE ENFORCEMENT STRATEGY: THE INTRODUCTION OF INCENTIVES TO INDUCE COMPLIANCE

Despite the common adage that “you catch more flies with honey than vinegar,” the majority of international law scholarship focuses on the imposition of sanctions rather than the provision of incentives to engender compliance with international law.\textsuperscript{152} Notable theories argue that: states comply with international law because compliance

\begin{itemize}
  \item \textsuperscript{146} Ferrell, supra note 139, at 368.
  \item \textsuperscript{147} HUNTER, supra note 17, at 764.
  \item \textsuperscript{148} Ferrell, supra note 139, at 361.
  \item \textsuperscript{149} Id. at 364.
  \item \textsuperscript{150} Id. at 365.
  \item \textsuperscript{151} HUNTER, supra note 17, at 764.
  \item \textsuperscript{152} Andrew T. Guzman, A Compliance-Based Theory of International Law, 90 CAL. L. REV. 1823, 1825 (2002).
\end{itemize}
is efficient; consent generates a legal obligation that leads to compliance; obligations generated through a legitimate process, such as a democratic mechanism, encourage states to comply; certain patterns or norms of international behavior are incorporated within states’ domestic legal institutions, leading to compliance; or compliance is due to states’ concerns about their reputation and fear of direct sanctions for law violations. Neorealist theorists posit that compliance with international law is merely a coincidence, a matter of course when national self-interest and international law overlap. In contrast, others argue that institutions reduce the transaction costs of punishing violators and increase the occurrence of state interaction, making cooperation between states more likely than with the imposition of sanctions.

While the idea of rational, self-interested state actors has great explanatory power, the confinement of the model to the imposition of sanctions or transaction costs is limiting. For example, when using the popular game theory of the “prisoner’s dilemma” to explain two countries’ rational decision-making in the context of an arms control treaty, the equilibrium is for both states to violate their obligations under international law. The common solution to this problem is to create a law that increases the cost of violation to make the rational decision tip in favor of compliance rather than defection. Of course, this method is only an effective model of international law compliance if there is some mechanism by which violators of the law

153. Id. at 1831–33.
154. Id. at 1833.
155. Id. at 1834.
156. Id. at 1835.
157. Id. at 1827.
158. Id. at 1836–37.
159. Id. at 1840.
160. Id. at 1842–43. The default model is one where countries decide in a single instance whether to comply with the arms control treaty. In a basic prisoner’s dilemma model, each country is better off if it violates the treaty and the other country complies. In contrast, both are better off if they both comply compared with when both violate the treaty. The equilibrium in this scenario is for the states to violate the arms control treaty seeking to improve their position.
161. Id. at 1844.
may be sanctioned.\textsuperscript{162} Critics of international law and its effectiveness claim that the sanctioning mechanisms of the international law system are never sufficient for states to tip the balance in favor of compliance.\textsuperscript{163}

It is simple to perceive this situation in the current international legal framework for fisheries. While there is a comprehensive system of international fishery regulations and obligations, there are weak enforcement strategies that are never able to tip the balance away from the economic and political costs states must overcome to comply with fishery obligations. Instead, states overfish and deplete stocks in favor of the short-term economic and political gains that accompany unsustainable fishing practices. To deal with this problem, scholarship calls for stronger enforcement mechanisms such as trade sanctions,\textsuperscript{164} stricter technology and monitoring regulations,\textsuperscript{165} and legal proceedings.\textsuperscript{166} Absent from these writings is the idea that states should introduce incentives to induce compliance rather than increase the strength of punishment to prevent violation.

By introducing incentives, states will be able to tip the balance of a rational, self-interested state’s decision in favor of compliance. Unlike the difficulties that the international fishery law system faces to strengthen enforcement mechanisms, which must overcome political and economic obstacles, incentives allow states to overcome these obstacles by generating the necessary capital to implement compliance measures. Similar to sanctions, bilateral incentives (meaning those provided country-to-country) will be most effective because the incentive-providing country enjoys the benefits of the potential violator’s compliance.\textsuperscript{167} Multilateral incentives, on the other hand, open up the potential for free-riding states to enjoy the benefits of other states’ efforts,\textsuperscript{168} reducing the benefit for a state that

\begin{thebibliography}{9}
\bibitem{162} Id. at 1845.
\bibitem{163} Id.
\bibitem{164} Tyler, supra note 38, at 82; Carr & Scheiber, supra note 35, at 50.
\bibitem{165} Nicola Kieves, Crisis at Sea: Strengthening Government Regulation to Save Marine Fisheries, 89 MINN. L. REV. 1876, 1912 (2005).
\bibitem{166} Peel, supra note 48, at 53.
\bibitem{167} Guzman, supra note 152, at 1869.
\bibitem{168} Id.
\end{thebibliography}
expend the resources to provide incentives for compliance. Therefore, the most suitable strategy to create greater compliance with sustainable fishing quotas and practices is to introduce bilateral incentives into the existing system of international regulation, enabling states to generate the necessary capital to make a rational decision in favor of compliance. Indeed, there is historical precedent establishing the effectiveness of introducing incentives to get states to comply with international law—the peace agreement between Israel and Egypt in 1979.

A. Israel–Egypt Peace Treaty of 1979

A 1985 *New York Times* poll indicated that the American public considered the Camp David Accords (which produced the Israel–Egypt Peace Treaty) the most successful American foreign policy initiative to date.\(^ {169}\) Despite criticisms that the peace negotiation failed to find an effective solution to the Palestine question or solve the tensions between Israel and other Arab nations, the agreement did bring peace to Egypt and Israel, an outcome impossible to imagine a decade earlier.\(^ {170}\) It resulted in Israel’s withdrawal from Sinai, the dismantling of civilian settlements located there, and the establishment of diplomatic relations between Israel and Egypt.\(^ {171}\) What made the Camp David negotiations unique was that threats were rarely uttered and the United States did not use heavy-handed pressure with either side.\(^ {172}\) Instead, the United States was able to offer incentives to both Israel and Egypt that induced compliance with the peace agreement. This tactic ultimately changed each state’s decision-making calculation in favor of compliance rather than violation of international law. To understand the difference that the provision of incentives made in the Israeli–Egyptian case, an


\(^{171}\) Quigley, *supra* note 170.

\(^{172}\) Quandt, *supra* note 169, at 360.
overview of the states’ obligations and incentives that the United States offered is necessary.

The Israel–Egypt Peace Treaty certainly created international obligations for both states. Article I stated that each state would “refrain from the threat or use of force, directly or indirectly, against each other and will settle all disputes between them by peaceful means.”173 It also required Egypt to establish diplomatic relations with Israel, while Israel agreed to withdraw its troops from the Sinai.174 Both states would have faced international sanctions for failure to comply with these obligations.175 However, the United States offered additional incentives to both states for complying with their obligations.

This unique approach proved to be a breakthrough in securing both states’ cooperation. Up until that point, the mere reciprocity of obligations between Israel and Egypt did not produce a peace agreement. Indeed, of the four agreements between Israel and Egypt between 1974 and 1979, each one featured heavy participation from the United States.176 The introduction of incentives tipped the balance of the obligations for peace in favor of compliance. The United States committed significant financial resources to both Egypt and Israel, in addition to military support and oil supplies for Israel.177 Egypt not only received its territory back, but the introduction of United States financial aid would allow it to turn its attention to domestic development, reducing the need for Egypt to rely on the political capital of a broader pan-Arab movement.178 Similarly, Israel, with the promise of American military support, in addition to an Egyptian promise of peace, could focus its attention on

174. Id. at arts. 1, 3.
176. Quandt, supra note 169, at 359.
177. Quigley, supra note 170.
178. See Quandt, supra note 169, at 357 (stating that Egypt resumed diplomatic relations with other Arab countries without renouncing its peace with Israel).
other threats without fear of Egyptian military aggression.179 For both states, incentives provided by the United States allowed each to make a rational decision in favor of peace treaty compliance. This same model can work in the international fisheries context.

B. The United States and Panama: A Case Study of Possible Incentives for International Fisheries

The United States is Panama’s largest trading partner, accounting for approximately 23% of all of its two-way trade.180 In 2013, United States exports to Panama totaled $10.5 billion, and its imports from Panama totaled $448 million.181 The US–Panama Trade Promotion Agreement indicates that United States and Panama trade relations will continue to grow.182 In recent trade between the two countries, fish and seafood was the second largest import category.183 Unfortunately for Panama, its status as one of the largest sources of flags of convenience vessels complicates this relationship.184

As discussed above, flags of convenience vessels are a major source of IUU fishing.185 Of Panama’s vessel registrations, 80.4% of vessels are foreign-owned.186 The United States department responsible for fishery oversight identified Panama as one of six

179. Id.
182. Panama Relations Fact Sheet, supra note 180.
185. Ferrell, supra note 139, at 329.
nations engaging in IUU fishing during 2012 and 2013, and one of ten nations engaged in IUU fishing based on violations of international conservation and management measures during 2011 and 2012. 187 Several Panamanian-flagged vessels have been documented violating Inter-American Tropical Tuna Commission (“IATTC”) resolutions. 188 These violations include illegal tuna discarding, violating the purse seine net closure period, 189 and fishing without registering with the IATTC. 190

While the National Marine Fisheries Service (“NMFS”) determined that the government of Panama took appropriate action to address IUU fishing practices during 2009 and 2010, Panamanian-flagged vessels continued to violate international fisheries law during 2011 and 2012. 191 Therefore, it appears that the current enforcement strategy, where the Panamanian government fines individual vessels and crew, is doing little to prevent IUU fishing. 192 Prosecution of criminal vessels and crews does not result in the Panamanian registry changing its standards—the true source of IUU problems. 193 Indeed, vessels and crew remain undeterred by judicial prosecution and

187. IMPROVING FISHERIES MANAGEMENT, supra note 135, at 3.
188. Id. at 28.
190. IMPROVING FISHERIES MANAGEMENT, supra note 135, at 28, 46.
191. Id. at 49.
192. Id.
193. Ferrell, supra note 139, at 364.
simply evade responsibility by re-registering. 194 Therefore, the enforcement strategy must reach the flag state itself to encourage it to change its approach towards sustainable fishery management practices.

The United States has two possible options to engender greater compliance from Panama. First, it may impose sanctions on Panama to force compliance, or second, it may offer incentives to Panama in exchange for compliance. Part 1 analyzes why imposing sanctions in this context would be ineffective to produce greater compliance from Panama. In contrast, Part 2 demonstrates why introducing incentives will result in greater compliance by Panama.

1. The United States and Panama: Sanctions

One possible sanction that the United States could pursue against Panama to force fisheries compliance is a process of “naming and shaming.” The idea is that the threat of a negative reputation encourages a state to comply with international law. 195 In fact, the United States already pursues this option by publishing an annual IUU report that identifies countries that do not comply with their international fishing obligations. 196 Panama is a frequent fixture in those reports. 197 Indeed, Panama’s reputation for registering flags of convenience that result in IUU violations is well known. 198 Panama’s repeated IUU violations are evidence that Panama does not care about its reputation in the context of fishing. Panama simply does not care about its fishing compliance reputation on the international stage, at least not enough to change its compliance behavior. Instead, the only way to incentivize Panama to change its behavior in favor of compliance is to entice it with the opportunity to improve its reputation. Further reputation deterioration will not affect Panama in a significant way because it faces no additional punishments as a

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194. Id. at 365; IMPROVING FISHERIES MANAGEMENT, supra note 135, at 48.
195. Guzman, supra note 152, at 1827.
196. IMPROVING FISHERIES MANAGEMENT, supra note 135, at 3.
197. Id.
198. Flags of Convenience, supra note 184.
result, leaving intact the political and economic incentives for its non-compliance.

Instead of trying to shame Panama’s reputation, the United States may pursue sanctions against specific Panamanian vessels violating international fishing regulations. Authority granted under the Fish Stocks Agreement and IATTC regulations permit the United States to board, inspect, and impose sanctions on violators if it has sufficient evidence. However, this authority is contingent upon Panama’s permission. As the flag state, Panama has the purview to intervene at any time and usurp prosecutorial action that the United States may wish to take against a Panamanian-flagged ship. Indeed, the United States’ prosecution of vessels likely will not be permitted by Panama due to political and economic obstacles. Since Panama’s economy relies heavily on foreign vessel registration, it may worry that an increased threat of United States prosecution will drive foreign vessels to competitor registrars, such as El Salvador. In addition, Panama has a record of pursuing sanctions against identified vessel violators in its own domestic courts, further bolstering the chance that Panama will choose to intervene and prosecute vessels itself rather than allowing the United States the right of prosecution.

Moreover, the endeavor of monitoring and prosecuting Panamanian vessel violators in IATTC waters is a geographic and monetary near-impossibility for the United States. The United States’ jurisdiction over its own EEZ fishery resources covers more than 100,000 miles of United States coastline and more than 2.2 million nautical square miles of the sea. This area is nearly double the size of the country and includes nearly 20% of the world’s capture fisheries. Despite an elaborate domestic statutory framework, political and budgetary enforcement fails to sustain even

199. Ferrell, supra note 139, at 355–56.
200. Id. at 356.
201. Eichenberg, supra note 119, at 610.
202. CIA WORLD FACTBOOK, supra note 186.
203. IMPROVING FISHERIES MANAGEMENT, supra note 135, at 48.
204. HUNTER, supra note 17, at 776.
205. Id.
206. Id. at 776–77.
the most commercially important domestic fish stocks. Attempting to expand regulatory and enforcement efforts beyond the United States’ EEZ to international waters is infeasible. If the implementation of domestic enforcement has failed to manage EEZ fisheries effectively, what reason is there to think that enforcement in international IATTC waters will prove more successful or even possible?

Finally, as discussed above, prosecuting individual violators fails to address the underlying issues of state non-compliance. Individual Panamanian vessel owners and crew may disregard judgments and simply reflag in a new country or join a new crew. Instead, what is needed is an incentive for Panama to alter its flag of convenience vessel registrations from the state level. Sanctions cannot engender the political or economic will needed to do this.

Instead of seeking to punish individual vessel violators, the United States may seek to sanction Panama under the current international fishery framework. One possibility is for the United States to sue Panama in an international tribunal for violations of its international fishery obligations. However, a prima facie case of an international law violation would be difficult to make out, as shown in the previous failures of international fishery litigation. Indeed,

207. Id. at 777.
208. Id.
209. See id. (asserting that the United States has managed its fishing resources poorly).
210. Ferrell, supra note 139, at 365.
211. Eichenberg, supra note 119, at 614.
212. Fish Stocks Agreement, supra note 55, at art. 3, para. 1.
213. See Southern Bluefin Tuna (N. Z. v. Japan; Austl. v. Japan), Case Nos. 3 & 4, Order of Aug. 27, 1999, http://www.itlos.org/index.php?id=62 - c596 (stating that the parties failed to make a prima facie case); see Fisheries Jurisdiction (Ger. v. Ice.), 1973 I.C.J. 49, 50 (Feb. 2) (deciding a dispute over Iceland extending its fisheries jurisdiction); see Fisheries Jurisdiction (U.K. v. Nor.), 1951 I.C.J. 116 (Dec. 18) (discussing the validity of the Norwegian fisheries zone); see Fisheries Jurisdiction (U. K. v. Iceland), 1973 I.C.J. 3 (Feb. 2) (adjudicating a dispute between the U.K. and Iceland over Iceland’s proposed extension of its exclusive fisheries jurisdiction); see Fisheries Jurisdiction (Spain v. Can.), 1998 I.C.J. 432, 468 (Dec. 4) (holding that the court did not have jurisdiction to adjudicate the dispute between Spain and Canada over a Canadian fisheries statute).
Panama has a strong argument that it complies with all its international obligations, at least to the extent that it should not be held liable for damages. The very fact that flags of convenience exist demonstrates a gap in the international fishery law framework. Panama’s vessel registry is de jure compliant, even if it leads to de facto non-compliance by individual vessels.

In addition, Panama will likely argue that it cannot be held liable as a state for the non-compliance of individual vessels. It cooperates with states under the IATTC framework and does pursue some remedial action against violators in its domestic courts. Furthermore, what is the remedy to be granted by an international tribunal? Any tribunal is unlikely to have the authority to order Panama to change its domestic law to prevent flag of convenience registration. While a negative judgment against Panama may generate some political will to alter domestic policies, the economic obstacles remain, favoring no behavior change on the part of Panama.

Seeking to change this economic situation, the United States may try to impose trade sanctions against Panama. However, trade sanctions based on environmental fishing considerations have yet to prevail in the WTO. The United States cannot impose trade sanctions unilaterally under current interpretations of GATT restrictions, and it will have to seek negotiation and permission for sanctions under the multilateral auspices of IATTC. Currently,

215. Ferrell, supra note 139, at 329.
216. Flags of Convenience, supra note 184.
218. UNCLOS, supra note 39, at art. 297, para. 1, sub. b.
219. See WTO Restrictions on Tuna Imports, supra note 102 (holding that the U.S. restrictions did not meet the requirements under GATT Article XX); see WTO Panel Report on Shrimp Ban, supra note 102 (holding that the U.S. restrictions did not meet the requirements under GATT Article XX chapeau).
220. See WTO Restrictions on Tuna Imports, supra note 102 (holding that the U.S. restrictions did not meet the requirements under GATT Article XX); see WTO Panel Report on Shrimp Ban, supra note 102 (holding that the U.S. restrictions did not meet the requirements under GATT Article XX chapeau).
221. See Tyler, supra note 38, at 88 (stating that “unilateral trade measures are appropriate when all of Article XX’s requirements have been met, and . . . multilateral solutions are a precursor to such actions”).
IATTC’s authority does not include such far-reaching, binding authority. This means that multilateral sanctions under IATTC will require a change of law approved by the IATTC member states. As Panama is a voting member in IATTC, any attempt to alter the organization’s authority towards this outcome is unlikely at best. Therefore, the United States’ ability to impose trade sanctions will also be ineffective.

The imposition of sanctions under the current international fishery framework simply cannot deal with the problem of Panamanian-flagged IUU fishing vessels. Whether the United States attempts to name and shame, seek individual vessel enforcement, sue Panama, or impose trade sanctions, there is not enough force behind these actions to incentivize Panama to overcome the political and economic obstacles to engender better compliance. Instead, the United States could offer an incentive for Panama to comply with sustainable fishing practices. This method would change the rational equation in favor of Panama’s compliance by offering it both political and economic benefits for its actions.

2. The United States and Panama: Incentives

Since Panama heavily relies on the United States for trade, especially fish exports, the United States is in a unique position to offer incentives that encourage fisheries regulation compliance from Panama. Similar to the financial and diplomatic position the United States found itself in during the Israel–Egypt negotiations, this position allows the United States to negotiate an innovative solution. In addition, as the United States valued stability in the Middle East, the United States values sustainable fishing compliance.

223. Id.
225. Panama Relations Fact Sheet, supra note 180.
226. Quigley, supra note 170.
227. Id.
228.
and finding the right incentives to offer Panama grants the United States many benefits in which it declares an interest. 229

If the United States enables Panama to better comply with sustainable fishing practices, the United States will be able to fulfill many domestic statutory goals. 230 These include: strengthening its leadership in improving international fisheries management and enforcement, especially for IUU fishing; helping the Secretaries of Commerce and State improve the effectiveness of international RFMOs; incorporating market-related measures to combat governments whose vessels participate in IUU fishing; encouraging other nations to take necessary steps to prevent IUU fish harvesting; and improving compliance for high seas and RFMO-regulated fisheries. 231 Furthermore, the United States “is a member of or has substantial interests in numerous international fisheries and related agreements and organizations,” which have sustainability and compliance goals of their own. 232 NMFS further believes that IUU activities jeopardize the United States’ ability to manage its fisheries sustainably and unfairly disadvantages national fishers. 233 It is clear that the United States places a lot of value, in the form of economic and political capital, in combating IUU fishing and helping other nations do the same. 234 Therefore, it is plausible that incorporating another enforcement mechanism—the introduction of incentives to generate other nations’ compliance towards this goal—is possible.

However, the United States must first find an appropriate incentive that will tip the balance of the decision in favor of Panama’s compliance with international law. As the United States

228. IMPROVING FISHERIES MANAGEMENT, supra note 135, at 7.
230. IMPROVING FISHERIES MANAGEMENT, supra note 135, at 7.
231. Id. at 7–9.
232. Id. at 9.
233. Id. at 15.
234. Id. at 7–8.
identified the appropriate financial and political incentives to offer Israel and Egypt for peace in 1979, it must similarly identify the appropriate incentives to offer Panama to engender its fishing compliance. Deforestation is one area where this trade-off is possible.

Deforestation in Panama is a significant problem, requiring United Nations and United States Agency for International Development (“USAID”) assistance. Agriculture is the largest driver of deforestation. Small farmers often engage in “slash and burn” tactics, cutting and burning a few acres of forest to feed their families. In addition, loggers not only cut down trees, but also continually build roads to access more remote forests.

The results of deforestation are many, including the loss of habitat. Deforestation is also a driver of climate change. While the quickest solution to the issue is to place a moratorium on all tree-harvesting activities, the international community recognizes that because of the involvement and reliance of indigenous communities on the forest, sustainable management is a more workable solution.

Panama lacks a national forest program to deal with its deforestation problem on its own. Indicative of this are the USAID

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235. Quigley, supra note 170.
238. Id.
239. Id.
240. Id.
241. Id.
242. Id.
243. See FOOD & AGRIC. ORG. OF THE UNITED NATIONS, GLOBAL FOREST RESOURCES ASSESSMENT 302 (2010) (reporting that while Panama has passed a national forest program, it has not implemented it yet).
and United Nations programs that provide resources for Panama to fight deforestation practices. USAID’s regional program, the Management of Aquatic Resources and Alternative Development (“MAREA”), established a Sustainable Community Forestry in Darien, Panama. The program promotes sustainable forestry management by building capacity in indigenous communities. It does this by targeting the use of unsustainable resources in indigenous reserves of Panama. Increasing the budget of MAREA for deforestation assistance is an incentive the United States could offer in exchange for greater Panamanian compliance with international fisheries regulation.

To start, Panama faces great international pressure to deal with deforestation because deforestation is closely related to climate change and involves the rights of indigenous communities protected under international law. Panama would be able to “clean up” its environmental record on the international stage with increased USAID assistance to fight deforestation. Furthermore, because the United Nations recognizes indigenous issues as the most important in Panama’s deforestation efforts, and because the existing USAID program builds capacity in indigenous communities and focuses on climate change adaption, the United Nations program could further support the initiative. This UN support could help underwrite USAID requests for increased budget allocations. In addition, connecting the deforestation effort to the United States’ statutory obligations to assist Panama in fighting IUU fishing would help

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244. See Panama’s Efforts, supra note 236 (discussing how the UN helps Panama’s anti-deforestation efforts); USAID PANAMA, supra note 236.

245. USAID PANAMA, supra note 236.

246. Id.

247. See id. (targeting unsustainable resources in Panama).

248. See Panama’s Efforts, supra note 236.

249. See id. (discussing the agreement between the Panama government and indigenous people to work together).

250. USAID PANAMA, supra note 236.

251. See Panama’s Efforts, supra note 236 (discussing the United Nations’ involvement with anti-deforestation efforts in Panama).

generate economic and political capital for increased MAREA budgetary allocations. It is also easier to fund an existing program than to create a new program.\textsuperscript{253}

Moreover, because Panama would exchange fisheries compliance for deforestation assistance, its reputation on environmental issues on the international stage could be strengthened. Because Panama is recognized by many states—including its largest trading partner, the United States—for poor environmental compliance when it comes to international fisheries,\textsuperscript{254} the incentive to repair its reputation will be meaningful to Panama. Indeed, one international legal scholar identified a positive reputation as the main driving force behind state compliance with its international obligations.\textsuperscript{255} Unlike the ineffectiveness of deteriorating Panama’s reputation, the prospect of improving Panama’s reputation provides Panama with tangible political benefits it could leverage internationally and domestically.

The United States receives at least 21\% of Panamanian imports as fish and seafood products.\textsuperscript{256} This benefit, combined with its domestic duty to fight IUU fishing and to assist nations like Panama, allows the United States to enjoy the benefits of its resources expended for greater Panamanian compliance. While other states party to the IATTC will also receive benefits from greater Panamanian compliance, this “free riding” will not be enough to offset the United States’ benefits because it receives them directly.

Of course, Panama must value the benefits of the deforestation program as greater than those it receives from engaging in IUU fishing. Given the negative attention, the poor reputation, and the costs of IUU investigations and judicial proceedings that Panama receives for non-compliance activities,\textsuperscript{257} the benefits of the

\begin{itemize}
  \item \textsuperscript{253} See Glossary: Continuing Resolution/Continuing Appropriations, U.S. SENATE, http://www.senate.gov/reference/glossary_term/continuing_resolution.htm (last visited Oct. 31, 2014) (defining a continuing resolution/appropriation as a resolution that provides continuing funding to current programs at the beginning of each fiscal year).
  \item \textsuperscript{254} Improving Fisheries Management, \textit{supra} note 135, at 36.
  \item \textsuperscript{255} Guzman, \textit{supra} note 152, at 1827.
  \item \textsuperscript{256} Panama, \textit{supra} note 183.
  \item \textsuperscript{257} Improving Fisheries Management, \textit{supra} note 135, at 46–49.
\end{itemize}
deforestation program could plausibly change Panama’s rational decision making in favor of compliance. In contrast, the sanctions that the United States could impose on Panama are not strong enough to tip the balance in favor of compliance. Therefore, offering Panama the incentive of deforestation assistance is one example where the introduction of a bilateral incentive by the United States creates greater international fisheries regulation compliance.

CONCLUSION

The world does not want to repeat the same mistakes that led to the Newfoundland cod fishery collapse. Fishery resources remain an important food and economic resource for developed and developing countries alike.\footnote{FAO STATE OF THE WORLD, supra note 9, at 10.} Despite the addition of the Fish Stocks Agreement and RFMOs to the regulatory framework in recent decades, the fish stocks of the world remain in peril.\footnote{Id. at 59.} Many continue to be over-exploited, and the majority are fully exploited.\footnote{Id. at 53.} Given the inexact science of predicting stock numbers and maximum sustainable yields, even those stocks supposedly exploited at “sustainable” levels may also be in danger.\footnote{Id.} While the international fishery law framework is expansive, many regulatory gaps allow countries to rationalize noncompliance with sustainable fishing practices.\footnote{Tyler, supra note 38.} Furthermore, scholarship focuses on the imposition of sanctions to engender greater sustainable fishing compliance.\footnote{Guzman, supra note 152, at 1825.} This approach is simply ineffective in the international fishery context. Instead, countries like the United States need to learn from the example of the Israel–Egypt Peace Treaty of 1979 and start offering countries incentives to comply with sustainable fishing practices. The introduction of incentives allows non-compliant states, like Panama, to overcome political and economic obstacles and make rational decisions in favor of compliance. Indeed, the world will catch less
fish when countries start offering more honey in furtherance of this goal.