

COMMENTARY

The national security imperative to tackle illegal, unreported, and unregulated fishing

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Editor's note: This piece is part of a series titled "[Nonstate armed actors and illicit economies: What the Biden administration needs to know](#)," from Brookings's [Initiative on Nonstate Armed Actors](#).

Over the last few years [illegal, unreported, and unregulated \(IUU\) fishing](#) has become more recognized as a [national security concern](#). At first glance, fish hardly seem to be on par with other cutting edge national security issues — [cyber](#), [space](#) (<https://www.brookings.edu/blog/order-from-chaos/2020/07/06/the-u-s-defense-space-strategy-works-on-paper-but-will-it-be-implemented/>), [artificial intelligence](#), [drones](#), [nuclear proliferation](#), and perhaps most importantly the return of [strategic competition](#) now commonly referred to "[great](#)" [power rivalry](#) (although perhaps not for long). But in the years to come, make no mistake, fishin' may indeed become an increasingly important mission for the United States and its security partners and allies around the world, and most certainly those in the Indo-Pacific.

To succeed in this mission, the Biden administration should lean on the [U.S. Coast Guard](#) to do what it does best, especially in the Pacific, where Chinese fishing fleets do double-duty as maritime militias that threaten and intimidate the fishers from neighboring nations. The administration should also continue to develop counter-IUU bilateral agreements, including those that may allow prosecuting masters of vessels that commit "grave breaches." It may also need to make a hard choice between partnering with China's neighbors, or with China itself, to best address this threat.

Fishing as an industry

[Fishing](#), a \$401 billion global industry, provides 20% of the protein intake for nearly half of the world's population, and global fish consumption has been on the rise for almost 60 years. Yet [93% of the world's fish stocks](#) are fully exploited, overexploited, or significantly depleted, and [global climate change](#) is adversely affecting stocks.

It's axiomatic that sustainment requires effective [management](#). The problem is that fish move, so for management to be truly effective it must be consistently applied both [regionally](#) and, really, around the world. In other words, country A's strong fisheries management practices can be [undermined](#) by country B's if the latter is unwilling or unable to implement strong practices — or worse, if it actively or tacitly condones IUU fishing.

Enter: China

Chinese fishing practices present a truly unique and dire IUU threat. First, China boasts the [world's largest fishing fleet](#). It uses this fleet, to devastating effect, to meet its [population's huge demand](#) for protein. It also provides generous [subsidies](#), which has incentivized the rapid proliferation of [large, capable, "distant water" vessels](#) that can harvest [staggering amounts](#) of catch in a single voyage, often by dragging the [ocean bottom without regard](#) to fish type, age, or quantity limits. When working together in fleets, these vessels are rapacious.

Chinese-flagged fishing vessels range the world over in search of catch and are notorious for fishing within [other nations'](#) — especially developing nations' — [exclusive economic zones \(EEZs\)](#). Most recently, a huge Chinese fishing fleet, estimated to have [350-400 vessels](#), plied the waters near the environmentally sensitive Galapagos islands — [a UNESCO World Heritage Site](#) — and so [overwhelmed the government of Ecuador's ability to respond](#) that Ecuador requested [U.S. Coast Guard assistance](#) to protect its EEZ. This fleet then moved south into [Chile's EEZ](#), where it continued to operate as late as December 2020 in the face of an [active response](#) from the Chileans and a [strong rebuke](#) from then-U.S. Secretary of State Mike Pompeo. Shortly after, Pompeo also imposed [visa sanctions](#) on certain Chinese officials associated with China's malign maritime activities, including IUU fishing, in the South China Sea. The presence of this fleet has most recently resulted in a new [sustained regional response](#): Operation Southern Cross.

While China sometimes attempts to strategically deny oversight for activities of its distant water fishing fleet in much the same way that Russia denied responsibility for the activities of [armed actors during violence in the Crimea](#), China takes the opposite tack in the South and East China Seas. There, its fishing fleet doubles as the sanctioned [People's Armed Forces Maritime Militia](#). This militia has a history of working in a coordinated fashion [to harass and bully China's neighbors' own fishing vessels](#) in [disputed maritime territory](#) and, in some cases, [those neighbors' EEZs](#). It's increasingly clear that these maritime militias are part of a concerted [Chinese "gray zone"](#) effort to exert [strategic influence](#) throughout the region.

The operational and legal challenges of fisheries enforcement

IUU fishing is an exceedingly difficult challenge. First, the operational dynamics are significant. Patrol vessels and aircraft (and their crews) are expensive. Few countries can afford them or dedicate such resources to fishing regulation in meaningful numbers. And the tyranny of distance plagues EEZ protection, like it does other maritime issues. This makes developing and maintaining the domain awareness across thousands of miles of ocean necessary for effective fisheries management a [Herculean](#) (or perhaps more accurately [Sisyphean](#)) task. Further, bad actors actively frustrate state attempts to build that awareness, through tactics like [disabling required tracking devices](#); deploying difficult-to-detect, untended gear like [high seas drift nets](#) that indiscriminately kill marine life; and using on load/offload ["motherships"](#) to mask the type and size of fish they catch.

The international legal landscape also makes it difficult for states, beyond a vessel's [flag state](#), to engage in IUU fishing enforcement. Thus, often [only China](#) can address Chinese IUU fishing. China is largely not interested in doing so, although that might be [improving slowly](#) as China develops [aquaculture](#) capabilities and recognizes that sustainment and better transparency may be in its best long-term interests.

Moreover, several other international legal norms complicate countering IUU fishing. First, Article 73 of the [United Nations Convention on the Law of the Sea \(UNCLOS\)](#) prohibits criminal prosecution of fishing offenses in the absence of an express agreement between two states authorizing such prosecution. While the United States has signed but not yet ratified UNCLOS, it considers the vast majority of the treaty to [accurately reflect the current state of customary international law as it relates to the law of the sea](#) (<https://www.brookings.edu/blog/order-from-chaos/2020/07/22/what-did-the-us-accomplish-with-its-south-china-sea-legal-statement/>). Next, there are several broad-reaching, multi-lateral international agreements like the [United Nations Fish Stocks Convention](#) and many [specific regional fisheries conventions](#) that provide for enforcement remedies like catch and vessel seizures, but consistent with UNCLOS, do not typically allow for criminal prosecution.

Domestically, the [Magnusson-Stevens Fisheries Conservation Act](#) and the [Lacey Act](#) provide the substantive law for fishing violations in the United States EEZ, but aren't particularly helpful elsewhere. On a positive note, Congress recently passed the [Maritime Security and Fisheries Enforcement \(SAFE\)](#) Act directing the U.S. government to [start the process](#) of focusing the efforts of relevant federal departments and agencies on the challenge posed by IUU fishing.

Options

The Biden administration can adopt several measures to better address the national security challenge posed by IUU fishing, both in general and regarding China.

First, the United States could look to increase its use of non-governmental organizations (NGOs) as force multipliers, especially in the realm of improving the quantity and quality of [maritime domain awareness information](#). The European Union's [partnerships with](#) NGOs to extend its fisheries management capabilities are a good model. But Washington should exercise great discretion on who to partner with and [what activities the government sanctions](#) — there are some [cowboys](#) out there.

Second, the administration should ensure the [maximum availability of Coast Guard forces](#) (<https://www.brookings.edu/blog/order-from-chaos/2020/10/16/stuck-in-the-middle-with-you-resourcing-the-coast-guard-for-global-competition/>) in the [Pacific theater](#): both [cutters](#) and [law enforcement detachment](#) boarding teams that are embarked aboard Navy ships and perhaps even [integrated within deployed U.S. Marine Corps forces](#) (<https://www.brookings.edu/blog/order-from-chaos/2020/11/12/the-coast-guard-and-marines-should-work-together-to-enhance-deterrence-in-the-western-pacific/>). An increased Coast Guard presence will help model what [responsible maritime behavior](#) should look like, and provides the operational commander in theater with [flexible options](#) (https://www.brookings.edu/wp-content/uploads/2019/09/FP_20190930_china_gray_zone_ohanlon.pdf) to prevail [across the full spectrum of strategic competition](#). In other words, there should be lots of Coast Guard resources in the Pacific, and U.S. Navy ships there should be fully capable of delivering *both* lethality and coast guardsmen, depending on the mission need.

Third, the United States should consider developing the legal framework, and associated policies and procedures, to embark Coast Guard boarding teams aboard the [National Oceanographic and Atmospheric Administration \(NOAA\)](#)'s [growing fleet of vessels](#). NOAA, [already in the IUU fight](#), oversees the [National Marine Fisheries Service \(NMFS\)](#) charged with domestic fisheries enforcement. Both NOAA and NMFS have a long history of teaming up with the Coast Guard. This will require jointly developed protocols to safely and effectively deploy Coast Guard law enforcement detachment boarding teams on NOAA's more capable, longer-range vessels as a sort of "Coast Guard Cutter-lite." This should be undertaken in a manner [similar](#) to how the Navy employs embarked Coast Guard personnel during counter-drug operations.

Fourth, the State Department and the [U.S. Coast Guard](#) should expand the use of [bilateral IUU fishing agreements](#). These agreements are particularly crucial in the Pacific, where competing claims of international sovereignty necessitate [increasing the capacity and capabilities of partner nations](#) (<https://www.brookings.edu/articles/sustaining-the-future-of-indo-pacific-defense-strategy/>) to better deal with Chinese maritime aggression, including the malign activities of its fishing fleet/maritime militia.

More globally, the United States should pursue bilateral agreements that make criminal prosecution possible for especially heinous cases. This could be akin to the [grave breaches](#) [“try or transfer” provisions](#) that established the quasi-[universal jurisdiction](#) and helped make the Geneva Conventions so revolutionary in the humanitarian law context. Indeed piracy — [another crime of universal jurisdiction](#) — shares much (but not all) in common with IUU fishing, especially as IUU fishing [so often](#) intersects with [other forms of criminality](#). This is of course easier said than done, especially with nations like Mexico, whose fishers are notorious [IUU fishing recidivists](#) (<https://www.brookings.edu/blog/order-from-chaos/2020/09/14/illegal-fishing-in-mexico-and-policy-responses/>). (Moreover, the United States is unlikely to reciprocally subject its own citizens to Mexican criminal jurisdiction.) Yet, despite a long history of U.S. flagged fishing vessels sometimes [violating domestic fisheries laws within the U.S. EEZ](#), the overall risk of foreign criminal prosecution for U.S.-based fishers is relatively low. This is because U.S. fisheries management within its EEZ has been [relatively successful, even if not perfect](#). Thus, [unlike near Chinese shores](#), lots of fish remain in the U.S. EEZ, so U.S.-flagged fishing vessels don't need to travel all over the world chasing catch.

But, adding prosecutorial teeth and applying those teeth — especially with regard to the [vessel's master](#) — may begin deterring some of the more egregious IUU violations. The United States would therefore also need to develop its own applicable [extraterritorial criminal statute](#), perhaps modelled on the extraterritorial reach of the [Maritime Drug Law Enforcement Act](#). Such a statute would enable it to engage in appropriate criminal prosecutions of IUU fishing cases with a sufficient nexus to the United States. As such, criminal prosecution for “grave breaches” of IUU fishing measures could then become increasingly central to U.S. negotiations of international fisheries management agreements.

Finally, fisheries enforcement is not a good issue area for reducing U.S.-China tensions. In fact, on this issue, seeking cooperation for the sake of cooperation may pose unacceptable risk. Specifically, it risks undermining the [important and necessary collaboration](#) with other countries in the Pacific and around the world to guard their fisheries, including against China's fishing fleet. A focus on cooperating with China on fisheries enforcement also risks charges of hypocrisy and complicity against the United States from specially affected states, including [isolated island nations](#) in the Pacific and [West African nations](#), both of which are extremely vulnerable and whose fisheries, food security, and livelihoods are devastated by Chinese fishing. Why should these countries seek partnership with the United States to check Chinese EEZ encroachments if the United States is itself partnered with China?

Further, calling for more aggressive Chinese enforcement of the activities of its fishing fleets also runs the risk of incentivizing China to engage in more far-flung military operations. China's naval force [grows more impressive](#) by the year. Thus, China could disguise its military maritime expansionism under the sought-after self-policing of its fishing fleet (while in reality not breaking with its current tacit consent to fishing crimes). Better first to build capacities, capabilities, and partnerships with affected, like-minded countries.

The views expressed are the author's alone and do not reflect the official policy or position of the United States Coast Guard, U.S. Department of Defense, U.S. Department of Homeland Security, or the U.S. Government.

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