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Creating External Impacts: the Case of IUU Regulation and the EU Yellow Card Policy Conditionality[1]

Abstract

RESEARCH OBJECTIVE: This exploratory article examines policy instruments created by the EU that aim to contribute to marine resources sustainability. Taking as an example the IUU Regulation, the article identifies the conditions of their effective implementation and shows that these instruments create the chain of policy conditionality.

THE RESEARCH PROBLEM AND METHODS: The EU Common Fisheries Policy (CFP) has been created to manage pooled marine resources, but increasingly serves also to generate external policy effects. The main instrument of external policy is the IUU Regulation and fisheries yellow card conditionality. The article analyzes how this instrument is deployed and identifies main conditions of its effectiveness by using secondary qualitative data.

THE PROCESS OF ARGUMENTATION: Recognizing that marine living resources are global common resources whose sustainability is at stake due to overfishing, pollution and climate change, the article discusses the evolution of CFP instruments and especially the IUU regulation. Then, it examines the principal elements and conditions for IUU effectiveness and the mechanism

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of policy conditionality. The article shows how IUU conditionality operates, balancing policy dialogue and commercial threats.

RESEARCH RESULTS: The article shows that policy conditionality is a slow but potentially effective instrument to influence fishing practices of a partner country. This instrument gains on weight thanks to shadow commercial threats that can be implemented, if a warned country does not show willingness to cooperate. The argumentation demonstrates that the effectiveness of policy co-operation requires deep knowledge of partner's domestic administrative system and transparency in result oriented policy dialogue.

CONCLUSIONS, INNOVATIONS, AND RECOMMENDATIONS: Policy conditionality is a way the EU promotes global sustainability objectives. Effective deployment of this instrument requires result oriented policy interactions with third countries. The EU should keep examining the implementation of IUU Yellow Card to improve its implementation and increase the likelihood of achieving expected results.

Keywords:
global common resources, CFP, international regulatory cooperation, policy conditionality

INTRODUCTION

Fish are a living natural resource that simultaneously contribute to food security, economic resilience and biodiversity throughout the World. Fish stocks can be understood as a global common resource. Fish stock, if not properly managed, can become over used, ultimately depleting or even eliminating the resource. The economic theory of public goods explains why fishing countries, firms and individual fishermen find it difficult to cooperate to limit catches without external regulations and norms (Jakubowski, 2013). As so often occurs, over investment in commercial fishing firms leads to more vessels chasing smaller or decreasing fish stock across multiple jurisdictions (Stavins, 2011). This well know problem calls for the globalization of administrative management of the sector across countries and jurisdictions (Wellings, 2017).

The sustainability of international fish stocks are threatened not only by overfishing, but also by ocean pollution and climate change. Climate changes negatively affect the marine ecosystem and the

viability of fish stocks through reducing or increasing variability of yield, changing distribution of stocks; sea-level change can cause flooding and wave surges which also changes species environments often negatively influencing commercial fishing (FAO, 2021; Galappaththi et al., 2021). Fisheries (and coastal communities) are particularly vulnerable to climate change.

Fishing is a critical international economic sector with world production of fisheries and aquaculture reaching of 223.2 M tonnes in 2022. Global capture fisheries production of aquatic animals has fluctuated between 86 and 94 M tonnes per year since the late 1980s. By 2022 an estimated 61.8 M people were employed in the primary production sector, mostly in small-scale operations. Worldwide fishing fleet was estimated at 4.9 M vessels in 2022, two-thirds of which were motorized. Small-scale fisheries create the bulk of fisheries employment and are locally important, but global fish supply is dominated by large vessels. Small-scale fisheries contribute approx. 40% of the global catch and support 90% of the capture fisheries workforce. Some 500 M people rely on small-scale fisheries for their livelihoods.

Some countries with significant commercial fishing heavily subsidize fishing vessels, distorting incentives that can lead to unsustainable market outcomes. This situation, along with the factors mentioned above contribute to economic conflicts and political tensions between countries with conflicting objectives in fisheries policy; for example, some countries may prioritize a fisheries productivity while other countries prioritize natural or social sustainability of commercial fishing. Fishing is also a way of life closely tied to the unique characteristics of different marine ecosystems, and thus is often central to the identity and prosperity of many coastal communities (Self, 2021).

Aquatic products are important for human nutrition. Approximately 89% of the World production is used for human consumption, equivalent to an estimated 20.7 kg per capita in 2022 – a steep rise from 9,1 kg in 1961 (in 2022 the consumption of fish products in Poland was estimated at 517,000 tonnes and at 13.68 kg per capita, increasing gradually in recent years – Hryszko, 2023; Zasępa, 2024). They provide on average 6% of proteins worldwide, reaching the threshold of 50% in several countries in Asia and Africa (FAO, 2024).

According to FAO and the EU, exports of aquatic animal products are expected to grow, amounting to 34% of the total production in

2032. FAO foresees that World production of aquatic animals will reach 205 M tonnes in 2032, 111 M tonnes from aquaculture and 94 M tonnes from capture fisheries, increasing respectively by 17% and 3% from current levels (FAO, 2024). Global capture fisheries production remains stable, but sustainability of fisheries resources is a cause for concern and will likely continue in the near future.

Table: 1 World Trade in Fisheries (in bl USD)

Exporting countries	2020	2021	2022	Importing countries	2020	2021	2022
China	18,38	21,11	22,12	USA	22,65	29,81	31,95
Norway	10,91	13,69	15,38	China	14,64	16,92	22,15
Viet Nam	8,45	9,02	10,93	Japan	13,15	14,09	15,17
Equator	5,42	7,14	10,11	Spain	7,27	8,82	9,10
Chile	5,77	6,60	8,26	France	6,32	7,75	8,08
Russia	4,85	6,13	8,17	Italy	6,08	7,71	7,73
India	5,81	7,54	7,89	South Korea	5,37	5,87	6,60
Canada	4,86	7,09	6,51	Germany	5,97	5,96	6,46
USA	4,67	5,54	5,74	Sweden	5,04	5,60	6,13
Spain	4,44	5,55	5,70	UK	4,35	4,54	4,66
Others	74,22	83,70	86,25	Others	55,14	62,22	66,47
World total	147,78	173,11	187,06	World total	145,98	169,29	184,50

Source: International Trade Centre (ITC), Trade statistics, https://intracen.org/resources/data-and-analysis/trade-statistics (after Hryszko, 2023).

Marine and aquaculture seafood products are the most internationally traded food commodities. In 2022, approximately 38% of wild-caught and aquaculture products entered into international trade generating USD 187 bn (see Table 1) in exports. The value of exports of aquatic animal products increased by 19% in 2022 compared with 2019. Fisheries exports represent more than 9.1% of total agricultural trade (excluding forest products) and about 1% of total merchandise trade in value terms in 2022. The EU is the largest single fisheries market, with USD 62.7 bn of aquatic animal products in 2022, including USD 29.5 bn of intra-EU trade (FAO, 2024). The EU strength in the World fisheries sector results from the fact that external actors interested in exporting into the European market must follow EU rules to participate and compete in the EU market or risk facing the opportunity costs associated with ignoring or violating EU market regulations (Miller, Bush, & Mol, 2014).

GLOBAL REGULATORY FRAMEWORK FOR FISHERIES MANAGEMENT

The state of World fisheries and fish resources is currently unsatisfactory and getting worse. The fraction of marine fishery stocks within biologically sustainable levels continued to decline, as monitored across the 15 FAO Major Fishing Areas, falling to 62.3% in 2021, that is 2.3% lower than in 2019.

Fisheries are under pressure resulting from overfishing, pollution and climate change. This fact has been stressed in the UN Sustainable Development Goal (SDG) 14, that recommends to conserve and sustainably use the oceans, seas and marine resources for sustainable development. The UN highlights the responsibility of FAO as custodian of four out of ten indicators of SDG 14, and calls for the acceleration of the global momentum to secure safe diets from "healthy and productive oceans" (United Nations, 2024).

Inclusion of fisheries and aquaculture in multilateral environmental agreements is crucial for sustainability since they are a shared renewable natural resource between countries and, if not managed properly, over harvesting can be a 'natural' outcome. International fish stocks can therefore be understood as a global common resource with non-excludible and rival properties making them liable to the free rider problem and exploitation (Stavins, 2011).

Starting from the 1982 United Nations Convention on the Law of the Sea (UNCLOS) – an international treaty that has established a legal framework for all marine and maritime activities, the World community has developed global fisheries governance through a dense framework of international laws, conventions and forums that include: the UN Food Systems Summit dialogues, the United Nations Framework Convention on Climate Change negotiations, the Kunming-Montreal Global Biodiversity Framework; supporting these international initiatives is the adoption of the Agreement on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction), and the World Trade Organization Agreement on Fisheries Subsidies. The latter is of increasing importance since subsidies provide capital to fishers to expand fleets and increase capacity to fish. Reducing fisheries subsidies could make part of IUU fishing operations unprofitable, potentially decreasing

IUU over harvesting of fish stock and improving conservation. Members of the WTO concluded a multilateral agreement to stop harmful commercial subsidies to fisheries in June 2022. The agreement is to enter into force after two- thirds of WTO members ratify it. Thus, 111 WTO members are needed for the agreement to enter into force (by early 2025 88 members have joined, 23 more ratifications are still needed (see: https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/fish_acceptances_e.htm, accessed on 15th January 2025).

To attribute rights and responsibilities UNCLOS has designed criteria to distinguish between territorial waters, exclusive economic zones and international waters. Territorial waters include X whereas exclusive economic zones (EEZ) include 200 nautical miles. (Article 57). In both zones countries enjoy exclusive rights regarding the exploration and use of marine resources. However 2/3 of total ocean area lies beyond these zones in international waters, and therefore beyond the jurisdiction of any one country. This means that two-thirds of the ocean lacks universal laws protecting open fishing stocks from overexploitation or overfishing. While, territorial waters and inshore zones are reserved for small scale "artisanal" fishermen, the vast majority (95%) of global marine fish catch occurs within EEZs. Large actors like the EU or China have concluded agreements with third countries to fish within their own EEZs. Over half of such China's agreements have been made with west African countries. China operates a long-distance fleet composed of more than 3500 fishing boats equipped to stay at sea for months (Economist, 2022). Given the investment by the Chinese and its corresponding agreements with other countries, the global commercial fishing industry is prone to the geopolitical rivalries among the world's most powerful states (Campling et al., 2024).

GOALS AND INSTRUMENTS OF EU COMMON FISHERIES POLICY

To mitigate some of these problems within the commercial fishing industry, international laws have been developed to help institute a general framework that also complements EU fisheries regulatory and policy initiatives. The CFP was initially linked to the Common

Agricultural Policy (CAP). It incrementally gained a separate identity with conservation and management of fish stocks at the core of its 1983 reform. While taking into account the needs of producers and consumers, the conservation and sustainable harvesting of marine biological resources remains the main goal of the CFP. Since its inception, the CFP has been amended several times. The most important changes to the CFP were made by three reforms carried out in 1992, 2002 and 2013 (Council of the European Communities, 1992; Council of the EU, 2002; European Parliament & European Council, 2013). When launching its 2013 reforms the EC identified a host of challenges affecting the industry and the efficacy of the earlier version of the CFP. These included the overcapacity of fishing fleets, imprecise policy objectives regulating the sector, a decision making system that encouraged short-term planning, lack of stakeholder responsibility, poor compliance, and a lack of political will to ensure compliance with the CFP (European Parliament & European Council, 2013).
The new regulation tried to address the earlier deficiencies of the CFP by creating common rules for management and exploitation of marine resources, while protecting competition among fishing units. The mechanics of the policy is based on scientific advice to EU ministers provided by ACOM (Advisory Committee) of the International Council for the Exploration of the Seas (ICES). Based on expert assessments provided to ACOM on the Maximum Sustainable Yield (MSY), EU fisheries ministers set the Total Allowable Catches (TACs) for given fishing areas and species. The TACs are shared among member states as quotas, according to a formula of fixed percentages, stable over time (The formula is not optimal since the "principle of relative stability" protects the early rights established in the 1970s which may be inappropriate to some states – too small for some and too large for others – creating tensions among states and undermining the goal of conservation (Economist, 2021)). Next, concerned member states distribute their quotas among fishing enterprises, granting them according to the particular characteristics of domestic fishing industry.

In its original version prior to 2013, the CFP was plagued with two set of problems. First, EU fisheries ministers usually set TACs above the level indicated by scientific experts, and, second, fishing vessels tended to misreport the volume of catch. Illegal, unreported

or unregulated (IUU) fishing emerged as a major problem. In addition, a host of technical conservation measures presented challenges including the size of the mesh in the net, bans on the use of certain fishing gear, and conservation periods for individual fish species and prohibitions on catching certain types of fish, for example, fish that have not yet reached reproductive capacity. Few of these technical prohibitions have been fully respected (Berkowska, 2008). Furthermore, the weakness of the advisory role reserved to scientific experts was insufficient to independently determine new MSY standards. These omissions led to insufficient accountability by member states that ultimately undermined the sustainability objectives of the CFP (Wake, 2016).

What are the main reasons for overfishing and suboptimal resource extraction over time? Overfishing is a joint product of the oversized fishing fleet and diminishing resources – both creating incentives to fish beyond the biological limits of resource sustainability (Stavins, 2011). Diminishing fish stocks therefore cause commercial fishing fleets to contract or lose profits. To decrease the adjustment costs to commercial fisheries (associated with reductions in labor, profits and stranded capital assets), the EU created the European Maritime and Fisheries Fund (EMFF) which provides funding mechanisms for fisheries to diminish the number of vessels and to reduce pollution generated by fishing boats – the EMFF has been successful supporting 30,000 fishing vessels in its first 10 years of activities (see: https://oceans-and-fisheries.ec.europa.eu/news/celebrating-10-years-emffemfaf-european-maritime-fisheries-and-aquaculture-fund-2024-06-07_en – accessed on 1st September 2025).

Despite EU efforts, IUU fishing remains one of the most serious threats to the sustainable use of living marine resources, threatening the foundation of the CFP (internal dimension) and international efforts to promote better ocean governance (external dimension). IUU fishing amounts to approximately 11-19% of reported global fisheries production and leads to between 23.9 and 46 bn EUR in losses every year to the World economy, due to the depletion of fish stocks, which reduces the available catch for legal fisherman and disrupts sustainable fisheries (Tabelli, 2024). In addition, IUU fishing represents a major hazard to the marine environment, the sustainability of fish stocks and marine biodiversity (WWF, https://www.wwf.org.

uk/what-we-do/illegal-unreported-unregulated-fishing, accessed on 1st September 2025).

To diminish trespassing catch limits the EU required fishing operators to possess and demonstrate catch certificates to verify whether the operators stayed within granted quotas. Catch certificates therefore became a pillar of the EU policy to fight IUU fishing within EU waters and beyond. In order to fight IUU fishing at home and abroad the European Council also issued Regulation (EC) No 1005/2008 to prevent, deter and eliminate IUU fishing. The definition of IUU fishing in the EU Regulation is modeled on the definition introduced by the FAO International Plan of Action to prevent, deter and eliminate IUU fishing adopted in 2001 (FAO, 2001).

The FAO continues to provide an international platform to address IUU fishing globally. However EU policies to prevent IUU fishing continue to support FAO efforts. Relevant EU policies include:

- Prohibitions on infringements to rules on management and conservation of fisheries resources in national, EU and international waters;
- Prohibitions on fishing activities in high seas areas covered by a Regional Fisheries Management Organization (RFMO) carried out by vessels without nationality or registered in a non-party to the RFMO and in a manner contravening the rules issued by this organization;
- Prohibition on fishing activities carried out in high sea areas not covered by a RFMO in a manner inconsistent with state responsibilities for the conservation of fisheries resources under international laws.

RFMOs are international fishery management bodies established to conserve and manage transboundary fish stocks and fisheries on the high seas. Countries with fishing interests in a given geographical area can form RFMOs. Since RMFOs can be joined also by countries whose fleets have been usually fishing in these areas or are interested in participating, RFMOs are the primary mechanism for cooperation between fishing countries and coastal states to fulfil responsibilities of UNCLOS. These RFMOs can be understood as a so-called 'club good' that can help manage transnational stocks (Buchanan, 1965). These RFMOs are also supported by the IUU Regulation requiring that the trade with the EU of fishery products obtained from IUU fishing will

be prohibited. It therefore creates a basis for the EU to engage with third countries to prevent the importation of fishery products caught by fishing vessels flying the flag of non-cooperating countries.

The IUU Regulation takes advantage of EU catch certification scheme developed to trace of all marine fishery products traded with the EU. By ensuring product-traceability, the certification scheme is strengthening compliance with management and conservation rules in the fight against IUU fishing. This is of fundamental importance of EU fisheries policy conditionality since it is setting up a credible monitoring and compliance system for 'club' members states.

CRITICAL ELEMENTS FOR THE EFFECTIVENESS OF ANTI-IUU MEASURES

How does this system work to monitor commercial fishing behaviors and ensure compliance? According to UNCLOS all fishing vessels must be registered in a flag state. Flag states regulate domestically-flagged fishing vessels also in the areas beyond their national jurisdiction (OECD, 2018, p. 9). Under the Agreement for the Implementation of the Provisions of UNCLOS Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (known as the 1995 UN Fish Stocks Agreement), countries party to the agreement are obligated to regulate "the activities of vessels flying their flag which fish on the high seas." The EU IUU Regulation states that any flag state whose fishing vessels are presumed to carry out IUU activities will be notified with an official request for an enquiry into the IUU allegations. If suspicions confirmed, the fishing vessel, irrespective of its flag (EU Member State or third country) will be listed on the EU IUU vessel list, if the flag State fails to take appropriate measures in response to any official request. The vessel owner and its flag state will be informed of the listing, and of its reasons. The European Commission adopts a list of vessels that cannot land or sell their fish in the EU as they have been identified as taking part in IUU fishing. Restrictive measures are applied to infringing vessels to prevent them from continuing IUU fishing.

The fight against IUU fishing will be even more effective if controls are performed in ports where vessels download their catches. This

will result in stronger monitoring controls. The Port State Measures Agreement (PSMA) is an international effort to combat IUU fishing, signed by participating countries that entered in force in June 2016 and was later reinforced by several other administrative coordinating agreements including the FAO Global Information Exchange System, the Voluntary Guidelines for Transshipment, and expansion of the global capacity development programme. This web of administrative coordination and regulatory controls has clearly enhanced developing countries capacities and ability to combat IUU fishing. The FAO has emerged as the principal actor that helps achieve the cohesive implementation of the provisions of the PSMA at national and regional levels.

UNCLOS stresses responsibility of coastal states to monitor and control fishing and fishing-related activities in their EEZs. Registration, catch and entry authorisation rules are main tools for the sustainable management of marine resources in EEZs. Any non-cooperating coastal state becomes "weak link" in the global monitoring and control systems that have been created to eliminate IUU fishing (Barrett, 2007, p. 12). However the production of IUU fish for consumption or commercial use can be mitigated by corresponding disincentives or prohibitions on demand. The role of states that buy marine products (market states) is to create economic disincentives for IUU fishing by using policy tools to detect illegal seafood moving along the trading chain. All concerned states need to use trade information, sourced for instance from customs authorities, to target the movement of IUU fishing products along the trading chain.

Monitoring of IUU fishing products by market states is enhanced through the control of re-export certificates. States make sure that certificates are validated by the member state from which the re-exportation takes place, indicating the quantity of the products imported that are re-exported. Furthermore, the exporter should send the original catch certificate, including the transport details, to the importer in the EU, who will have to submit it to the authorities of the EU member state of importation three working days before the estimated time of arrival at the place of entry into the territory of the EU.

Vessels equipped to transport fishing products should fulfil conditions for access to EU ports by third country fishing vessels. These

measures apply irrespective of the concrete use of the port (landing, transshipping, processing, refueling, or resupplying). If a third country fishing vessel entering a EU port is suspected to have committed a breach of applicable conservation and management measures outside the EU waters, the flag state (if the breach was in high seas) or the coastal state (if the breach was in its waters) may transfer its jurisdiction on the investigation and right to sanction to the port state. In such cases, the port state would act on behalf of the flag or the coastal state. Thus, this international regime to fight against IUU fishing requires a flag, port, coastal or market states to discharge their duties under international law.

The implementation of these control measures is not easily visible from outside by external actors. IUU fishing can only be prevented, deterred and eliminated if states effectively track down IUU operators. This becomes more likely thanks to technological progress. Technological improvements are observed at different stages of the industry: from mobile applications that allow identifying the origin of the catch to the establishment of innovative business models (Ji & Li, 2021), but high level of inter-state cooperation is always needed and incentives to cooperate are critical to the success of this international enforcement regime.

EU YELLOW CARDS AS ANTI-IUU MEASURE

IUU fishing practices are a global public policy problem which affects all countries and in particular coastal developing countries where sustainability of local communities is dependent on fishing industry. It is therefore vital to set up efficient cooperation mechanisms between EU Member States and third countries in order to curb IUU fishing, while providing economic opportunities for operators acting in compliance with conservation and management measures to see sustainable policy improvements.

The EU IUU Regulation designs a comprehensive system of administrative sanctions, enforcement and accompanying measures for serious infringements in order to ensure that operators engaging in or supporting IUU fishing can be deprived of the benefits of such activities and be discouraged from participating in them. To this end,

EU member states can impose a maximum sanction of at least 5 times the value of the fishery products obtained by committing the serious infringement, and 8 times the value of the fish.

All marine fishery products imported into the EU must be accompanied by a catch certificate regardless of the mode of transportation to the EU. Checks and verifications with regard to such consignments are based on the principle of risk management. The IUU Regulation requires that catches are certified that they have been taken in accordance with applicable laws, regulations and international conservation and management measures.

The European Commission (EC) is obliged to identify third countries that fail to discharge their duties under international law to take action against IUU fishing, and initiates dialogue with each of them. If the dialogue does not resolve the problems, the EC notifies the country of the risk of being identified as non-cooperating. This notification is known as a 'yellow card'. The EC then proposes tailored measures, which a non-EU country is expected to address by a specified deadline. If the pre-identified country makes progress in line with the proposed measures, but more time is needed to conclude the reforms, the yellow card status may be extended. The list of such countries is published in the EU Official Journal and on the website of the EC. In cases where the pre-identified country fails to resolve its IUU fishing problems, the EC identifies it as a non-cooperating country, in what is called the 'red card', and proposes to the European Council to place the country on the list of non-cooperating countries. Red card listing involves trade-restrictive measures – the prohibition of imports of fishery products from the listed country, associated with a prohibition on EU vessels to operate in its waters.

Policy dialogue remains open throughout the whole procedure. When a pre-identified, identified or listed country makes concrete progress in resolving EU concerns, the EC lifts the pre-identification status or proposes to the Council to delist the country.

Increasingly EU is using such a principle of policy conditionality as "hard mode of soft governance". EU IUU Regulation displays characteristics of what Becker (2024) calls: "Regulative /policy/ conditionality /which/ combines the purpose rationality of the conditionality provider with changes and adjustments in policies of the recipient". It sets up policy conditions and attaches to them the threat of closing

access to EU market. If countries are "yellow carded", they are placed in a transition status and threatened with "red cards", unless they show progress and demonstrate that they faithfully cooperate. This can be a complex and lengthy process that states may wish to avoid.

How effective is this 'Yellow Card' policy? And how does policy conditionality function? To understand this, we explore the case of Vietnam with a large fishing industry and the recipient of an EU yellow card.

CASE STUDY: IUU YELLOW CARD TO VIETNAM

Vietnam has large fishing industry. Its fish exports hit record value of USD 9.2 bn in 2023, ranking the country 3rd largest exporter in the World. Vietnamese marine fishing industry employs directly around 730 thousand workers and creates almost 4 M jobs indirectly. Vietnamese fishers operate approx. 86000 vessels. Such huge industry faces own resource constraints. Thus, in the period 2016-20, Vietnam had in its EEZ a fish stock of approximately 3.95 M tonnes, with a TAC of 1.67 M tonnes per year. But, the total catch of Vietnamese fishers is estimated to be around 3.8 M tonnes per year, creating pressure on EEZ fish stocks and forcing smaller scale fishers to venture into foreign seas.

By 2024, the EU had issued yellow card warnings to a total of 27 countries, with six countries receiving a red card. Vietnam received a yellow card warning from the EC on 23 October 2017 and the country was inserted on the list of countries that tolerate IUU fishing.

In line with warning procedure the EC has issued recommendations that need to be faithfully implemented by Vietnam in order to be de-listed. The first or priority recommendation is for Vietnam to revise its legal framework to ensure compliance with international and regional agreements applicable to the conservation and management of fishery resources. Second, Vietnam must ensure effective implementation and enforcement of its revised national fisheries legislation. Third, Vietnam must strengthen the effective implementation of international regulations and handling measures through a fully enforced and monitored sanction regime. Fourth, Vietnam must overcome identified deficiencies in monitoring, control and surveillance (MCS) related to the requirements set forth by international

and regional regulations and within the framework of the certification system as well. Fifth, it must strengthen fisheries management and improve the fishing license and registration system. Sixth, Vietnam needs to balance fishing effort and vessel management policy. Seventh, it must strengthen the traceability of fishery products and take all necessary steps, following international law, to prevent illegal landing. Eight, it must strengthen and develop cooperation with other countries (especially coastal countries in the waters where fishing vessels flying the Vietnamese flag can operate) in accordance with international obligations. Ninth, it needs to ensure compliance with reporting and retention obligations in Regional Fishery Management Organisations (RFMOs).

Although called recommendations, these are *de facto* implicit policy conditionalities designed to encourage, but not necessarily enforce, actions. They are purposefully general and broad, open to adjustments and interpretations – designed exactly to create evaluation uncertainty, but also to open policy dialogue and encourage policy innovations. Field inspections are components of the mechanism of monitoring and control of the implementations of the recommendations. By 2023 the EC conducted four inspections of the way Vietnam implements the recommendations.

Table 2. Characteristics of yellow card conditionalities

Form of application	**Negative conditionality – possible market access sanctions**
Time of application	*Ex ante* – the implementation of the recommended policy changes
Legal character and status of conditionality	Implicit conditionality through policy commitments
Frequency of application	Periodic application and monitoring of conditionality
Decision-making level	European Commission
Policy reach	Conditionality related to fisheries

Source: Own elaboration based on Becker (2024).

Since 2017, Vietnamese authorities have responded to yellow card warnings and recommendations with a series of legal and policy measures. They promulgated a new fisheries law, two decrees, and ten guiding circulars and legal documents. In addition, the Vietnamese government established a National Steering Committee on IUU Fishing Prevention.

But by 2023, EU DG MARE inspectors found that only two out of nine recommendations have been entirely effectively implemented, namely the recommendations number seven and eight. During 2024 the government of Vietnam issued instructions to ministries, agencies and localities to focus on rectifying shortcomings in the management of fishing vessels and cracking down on IUU violations, including VMS (vessel monitoring systems) disconnection and illegal fishing in foreign waters. It also introduced revised decrees to regulate seafood imports from container vessels, has imposed stricter penalties for fishing beyond designated zones and deployed technical measures for stronger administrative enforcement in the fisheries sector. The Ministry of Agriculture and Rural Development of Vietnam has amended regulations to ban non-registered or non-licensed fishing vessels and to improve their controls. In addition on June 12, 2024, the Vietnamese Supreme People's Court issued a resolution regarding the application of specific Criminal Code provisions to penalize those facilitating illegal fishing in foreign waters.

The actions of Vietnamese government are induced by the fact that yellow card makes Vietnamese seafood exports liable to the EU to pre-checks, which create additional costs, lengthen delivery times and harm Vietnam's global reputation as a country wishing to promote sustainable aquaculture and fisheries. As a result, Vietnamese seafood may become less attractive to EU consumers. In fact, the share of the EU in the value of Vietnam's seafood exports dropped from 35% in 2017, to 12% in 2022.

Vietnam perceives need to reduce the size of its fishing industry to make it sustainable. This goal is recognized by the country's authorities as rational in the medium to long term, but the expected downsizing of the number of vessels and fishers by 10% by 2030 is confronted with economic reality of 28 coastal provinces and thousands of fishers who need to face costly adjustments. Thus, local authorities are reluctant to enforce requirement on commercial fisheries that break IUU regulations--especially if it happens outside Vietnam's EEZ.

Vietnam shares IUU fishing problems with other Southeast Asian countries on the coasts of South China Sea. High seas areas in the South China Sea do not have geographically specific RFMO. The ambiguous management rules and weak enforcement of high seas fisheries in the area may contribute to unabated IUU fishing.

The establishment of a RFMO could reduce the number of fisheries conflicts in the South China Sea (World Bank, 2021, p. 23).

Officially reported numbers of Vietnamese fishing vessels and fishers that violated foreign waters show that progress is continuing with violations falling from 2419 in 2017 to 447 in 2021 (Van Phuong & Pomeroy, 2023). But, external observers question these numbers as underreporting the extent of the phenomena. Why is underreporting occurring? VMS equipment on Vietnamese fishing boats does not prevent many fishers from turning them off or removing to install on other boats and keep fishing in prohibited areas, thus evading supervision from authorities (Nguyen Khac, 2024).

Although Vietnam's regulatory framework seems increasingly comprehensive and converging on EU and FAO rules, the true effectiveness of anti-IUU fishing policies is probably reduced by domestic socio-economic considerations and administrative weaknesses. Vietnam sees fisheries and fishers as important economic and political assets. With a coastline of more than 3200 kilometers, Vietnam considers its fishers as guardians of its maritime sovereignty (famous Vietnamese slogan says "Each fishing boat is a living landmark, each fisherman is a soldier protecting the sovereignty of the sea and islands"). This may create justifications for complacency for IUU fishing.

Investigating the Vietnamese case, we find the 'Yellow and Red Card' policy encourages national policy changes consistent with EU conditionality. Vietnamese authorities have responded to yellow card warnings and recommendations with a series of legal and policy measures including the establishment of a National Steering Committee on IUU Fishing Prevention. The IUU yellow card helps Vietnam improve its fisheries policy in the medium term, but it creates political and symbolic costs in the short term. The power of EU conditionality is sufficient to induce legal and regulatory changes, but not sufficient to assure their effective implementation.

CONCLUSIONS

Policy conditionality is not a new instrument in international politics and global policies. It was brought to academic and public attention in the context of IMF's efforts to influence macroeconomic policies

of indebted countries (Koeberle, 2005), but next was used to explain the adoption of the EU Acquis Communautaire, implementation of structural policies or the protection of the rule of law. The general mechanism of conditionality (Pinelli, 2013) needs to be adapted to a given policy context, its specific design requires comprehensive and adequate knowledge about a policy area.

The IUU red and yellow card policy conditionality sets as its objectives reducing and even stopping IUU fishing. These objectives are in the general interest of the World sustainability – not directly to the EU member states alone. It leverages the importance of the EU as marine products importer and home to consumers demanding higher quality fisheries standards from internal and external suppliers. The policy conditionality helps the EU to act externally in line with the method called 'governance by market access conditionality' (Di Mascio et al., 2020, p. 218).

The EU IUU yellow card policy conditionality attaches market access to the respect of the EU IUU Regulation and is based on policy dialogue, agreement and technical support not pushing foreign states to do things they would not do otherwise. It points to the care for the outcome of public policies and expected specific policy adjustments (Koch, 2015). External policy conditionality is used by the EC as a method of enforcing soft policy obligation inducing third countries to introduce policy changes that address imposed conditions.

The policy developments in the yellow carded country are monitored, analysed and re-assessed. The reward consists of withholding the country from the list of yellow carded and lifting the threat of blocking country's exports of fisheries products.

This exploratory article shows that "IUU Yellow card" conditionality is a process-oriented governance instrument supporting policy dialogue between partners. It promotes complex, interpretable and flexible policy dialogue that is subject to continuous adjustments. Its expected end-result is to trigger lasting changes in the fisheries policies that will comply with the SDG14 and sustainable use of the Oceans.

The evaluation of such a policy instrument encounters three types of problems. First, measuring policy effects depend on a sufficiently long time horizon; however, regulatory changes are fast, their implementation is rather slow and durability over time is uncertain. Second, IUU Regulation aims at multiple effects – environmental

and economic simultaneously. Thus, any evaluation of effects requires careful balancing to understand trade-offs and relative merits of the policies. Third, these policies are meant to accompany efforts by external partners helping to build trust and loyal cooperation to a regulatory regime designed to protect the global commons. Naturally implementation efforts are complex and hardly visible from outside – suggesting that the complexity of domestic policy making in partner countries calls for patience and comprehension among more developed countries. The effectiveness of the IUU Yellow Card needs to be studied and this calls for a more open access to the way the EC interacts with the Yellow carded country. However this study shows that EU policy conditionality and EC regulatory regimes are potentially yielding positive long term results.

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