



IUU Fishing in Malaysia: A Gateway to Transnational Crime?

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Abstract. Illegal, Unreported and Unregulated (IUU) fishing has been a common challenging issue for maritime nations. Not only it involves myriad interpretations and applications of the United Nations Law of the Sea (UNCLOS III) among maritime states but importantly, managing IUU fishing needs effective enforcement strategies and mechanism. Additionally, developing diplomatic skills among affected countries to foster cooperation is crucial in overcoming the challenges. This study asserts that the lack of coordination and policy implementation has, thus far, contributed to the issue of illegal, unreported, and unregulated (IUU) fishing in Malaysia. The numerous law enforcement agencies in the country addressing this issue, combined with unclear and overlapping laws, exacerbate gaps in law enforcement. It is believed that illegal, unreported, and unregulated (IUU) fishing activities are not only conducted by foreign individual vessels but also organized by transnational crime syndicates in the region. The country is losing billions of dollars annually due to this illegal activity. Additionally, these coordinated activities pose security challenges for authorities owing to the engagement of transnational criminal elements. Furthermore, this paper will analyze the efficacy of policies and recommend appropriate measures to mitigate this issue.

Keywords: IUU Fishing, Maritime Crime, National Security, Enforcement Agencies, Malaysia.

1 Introduction

According to Cusimano, the borderless world today as known globalisation, suggests that our lives have been determined by incidences that have taken place outside our boundaries. There is ongoing debate regarding globalization, with both pros and cons. Nevertheless, the discussions bring attention to cross-border issues, as globalization poses risks to national and global security. The threat of IUU fishing that has been prevalent since the 1990s, the increasing fish catch issues at the national and international level, and the involvement of illegal, unreported and unregulated fishing activities-related crime illustrated the role of non-state actors who have increasingly put the

national security at peril. Based on the current situation, it is unlawful to fish without the appropriate licenses or quotas for specific species. Furthermore, it is imperative to avoid actions such as failing to report catches or falsifying reports, retaining fish that are undersized or protected by regulations, fishing in closed areas or during prohibited seasons, as well as utilizing prohibited fishing equipment and engaging in unauthorized transshipment (a place to move or transfer fish) are all violations of laws and regulations to cargo vessels [1] have grown exponentially. This estimate suggests that fisheries crime generates up to RM6 billion annually [2,3].

IUU fishing is becoming an increasingly pressing global issue. Though considered a "new threat," little interest is shown by national security experts, despite the fact that the risk remains constant [4,5]. Numerous prevention efforts have been implemented at national, regional, and international levels, however, an effective solution has not yet been found for this ongoing issue. This problem has become an important political agenda in many countries, particularly Malaysia. Even Indonesia, a major maritime nation, has declared a war against illegal, unreported, and unregulated (IUU) fishing or also called "IUU fishing war" [6]. This fishing issue was a significant topic of discussion at the 2017 United Nations (UN) Conference and was also heavily debated in the European Union regarding its institutional implications. Currently, it is listed as one of the primary agenda items under the IUU Regulation [7].

In Southeast Asia, IUU fishing easily infiltrates a country by exploiting supply chains [8]. IUU fishing, which has negatively impacted Thailand, Indonesia, the Philippines, and Vietnam, also poses a problem in Malaysia. Malaysia serves as a source and transit country for internationally traded fish and other marine life [9]. Criminal activities originating from China, Australia, and Jamaica also occur in the Southeast Asian region. Illicitly obtained Malaysian fish are transported to locations outside Southeast Asia, including countries such as the United States, Australia, Japan, and Turkey, as well as countries boasting favorable economic conditions like Brunei Darussalam, Thailand, and Vietnam. This indicates that countries with a higher standard of living tend to generate more demand, and Malaysia serves as a hub for this type of activity [2].

The paper's purpose is to examine the management of IUU fishing law enforcement in Malaysia, specifically regarding policy coordination and implementation. The country has several maritime agencies responsible for enforcing, coordinating, and managing the fishing industry, including the Malaysian Maritime Enforcement Agency (MMEA), the Department of Fisheries, the Marine Police, the Malaysian Navy (TLDM), Lembaga Kemajuan Ikan Malaysia (The Fisheries Development Board), among others. The proliferation of law enforcement and coordinating bodies has resulted in the creation of overlapping jurisdictions and unclear law enforcement implementation. Thus, this paper will appraise the policy's efficacy and outline the necessary steps to overcome the challenges facing the IUU in the country.

2 The Threat of IUU Fishing as a Critical Problem

IUU fishing in pre-independence Malaysia throughout Peninsular Malaysia, Sabah, and Sarawak has a long-standing history within the country. This involved fishing without a license and using destructive fishing gear like fish bombs. IUU fishing activities were governed by the Fisheries Act of 1963, 1985, and 2018.

As this issue becomes more critical in Malaysia, it is estimated that the country loses about RM6 billion (\$1.43 billion) per year in this regard, mostly from fishing vessels from Thailand and Vietnam, but sometimes with local involvement, according to previous government estimates. In 2019, several policies were implemented to address the issue of IUU fishing.

IUU fishing reports that illegal fishing by foreign vessels prompted the declaration of IUU fishing as a critical issue on April 10, 1985. To prevent this problem, drastic changes were implemented, including law enforcement measures enacted through legislation. It imposes a maximum fine of RM1 million to RM6 million for the owner or master of a foreign vessel caught trespassing in Malaysian waters, and a fine of RM100,000 to RM600,000 for each crew member. Illegal fishing is now considered a significant threat to national security due to its transformation from a minor environmental and social issue into an adversary of society that endangers security (MMEA, 2022).

This statement was issued following a surge in foreign vessels encroaching on Malaysian waters. Without prompt action, the main casualty will be the national fish stocks that are integral to future economic prospects. IUU fishing, furthermore, has the potential to detrimentally affect the social, economic, spiritual, and cultural well-being of communities, resulting in further debilitation and jeopardizing national security. The affiliation between IUU fishing and crime is intimately close. Thus, the state bears high costs for combating IUU fishing. Government agencies are involved in a specified sequence, including the establishment of a unit within the Malaysian Marine Law Enforcement Agency (MMEA) to combat IUU fishing. Several law enforcement agencies are involved in combatting IUU fishing activities in Malaysian waters. The Royal Malaysian Police, Royal Malaysian Navy, and Royal Malaysian Fisheries Department, along with other departments, base their actions on established policies [2].

In addition, the book 'Malaysia: A Maritime Nation', authored by Harun and Ja'afar [10], addresses the issue of illegal, unreported, and unregulated (IUU) fishing as a response to the challenges that Malaysia is currently facing. According to the authors, the government declared IUU fishing as a critical issue for Malaysia since 1985. However, although almost thirty years have passed, the issue remains unresolved and is becoming increasingly pressing. Some argue that this problem has resulted in numerous negative impacts and financial costs for the country [11]. The unchanging policy up to the point when an agency was set up, specifically to address the issues of IUU fishing in the country is another effort of the government is empowering or adding to the fisheries community in the effort to combat the threat of IUU fishing in Malaysian waters.

3 Threat from the Fisheries Syndicate

IUU fishing trends in the nation indicate a move away from the use of conventional fishing gear like traps, drift nets, beach seines, and fishing rods, towards the use of modern gear such as trawls and purse seines. Additionally, individuals who partake in fishing tend to employ a mix of various IUU fishing techniques simultaneously. While the present generation exhibits a proclivity towards overexploitation of substitute fishing methods, traditional fishing problems, like 'Bubu traps', continue to jeopardize coastal fish populations. There have been a lot of arrested based on the misuse of fishing gear by foreign vessels where the fishing is processed on a large-scale in the country [12]. In addition, numerous foreign vessels are apprehended at MMEA ports for transporting illegal goods.

The issue of foreign vessels engaged in criminal activities is attributed to Malaysia's open door policy for vessels, which allows them to enter the country with only a permit [13]. This has led to an increase in opportunities for transnational criminals to carry out their illegal activities. Until today, ASEAN countries, especially Indonesia (neighbour Malaysia) are granted a permit by the Malaysian government. They are allowed to fish in Malaysian waters within a zone-wide area limited to daylight hours only (6:00 am to 7:00 pm). Therefore, once they enter Malaysia, they are authorized to fish within the country until daylight.

Foreign fisheries or vessels are frequently linked to national security levels in regards to their involvement with IUU fishing crimes, according to numerous international and domestic crime experts. Such links can be attributed to the emergence of domestic fisheries or vessel syndicate networks, which have established close connections with foreign counterpart syndicates. To maintain competitiveness, some syndicates resort to sourcing foreign labor from neighboring countries. On the east coast of the peninsula, these organizations are additionally suspected of employing Vietnamese crew members possessing local fishing licenses. Besides, transfer their haul to a foreign vessel [14,15]. As syndicate-related activities expand, additional illicit activities such as smuggling and human trafficking ensue, resulting in rampant disorder and chaos. Malaysia Maritime Enforcement Agency (MMEA) (2022) has given an example of an incident in the 'hotspot' in East Coast Peninsula Malaysia in 2021 where the Chief of MMEA in Putrajaya, stated that from 2019 to 2021, a total of 1,609 Vietnamese fishermen and 159 fishing vessels were arrested, involving a seizure of RM493. Million. Malaysia is losing as much as RM6 billion a year to illegal fishing. The participation of non-citizens in unauthorized fishing is highly condemned. The authorities in Malaysia have made arrests of foreign nationals, which serves as evidence. Please see Figure 1 for further details:

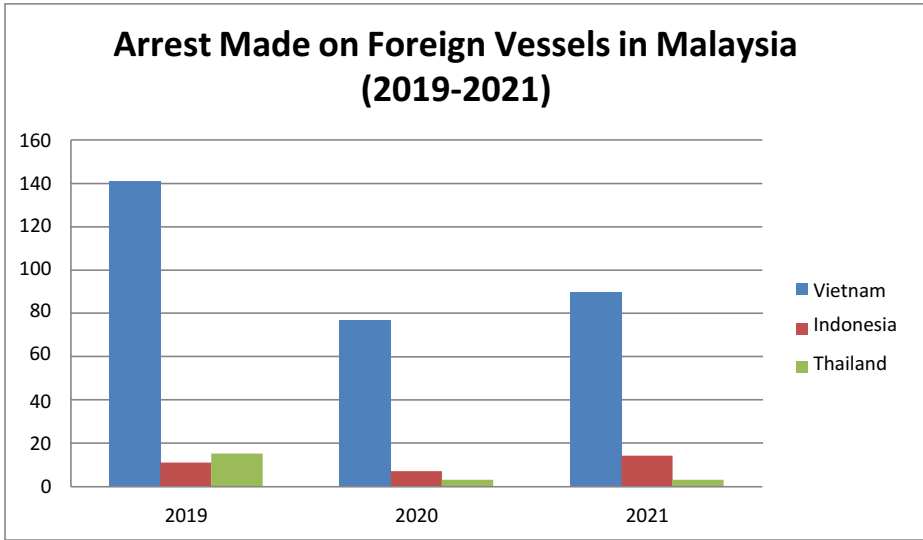


Fig. 1. Arrest made on foreign vessels in Malaysia (2019-2021).

According to a report published by MMEA (2021), numerous seizures were reported for foreign vessels originating from Vietnam, Indonesia, and Thailand. There were no subjective evaluations included in the report. Technical term abbreviations were explained, and a formal register was maintained. Vietnam had 141 vessels seized in 2019, whereas Indonesia and Thailand had 11 and 15 vessels seized, respectively. Additionally, in 2020, there were 77 vessels from Vietnam, and the number remained the same in 2021. A department study revealed that over 50% of Vietnam-related arrests occurred due to Malaysia's territorial waters violation.

MMEA eliminated the threat of IUU fishing in the region in 2005, aiming to uphold the well-being of citizens and preserve national stability and resilience. This paper investigates the degree to which IUU fishing serves as a facilitator of transnational crime in Malaysia, analyzing the menace of IUU fishing as a national security threat. In addition, experts in the field will present their views and recommendations on the necessary changes for addressing IUU fishing.

This opportunity is used by fisheries syndicates to leverage Malaysia as a hub for illegal fishing and network expansion. Figure 2 shows a marked rise in the number of foreign fishing crew members detained for illegal fishing in Malaysia between 2015 and 2021. This suggests a significant increase in the number of offenders brought to justice. By using fishing ports, non-state actors or syndicates engage in illegal fishing with impunity in Malaysia.

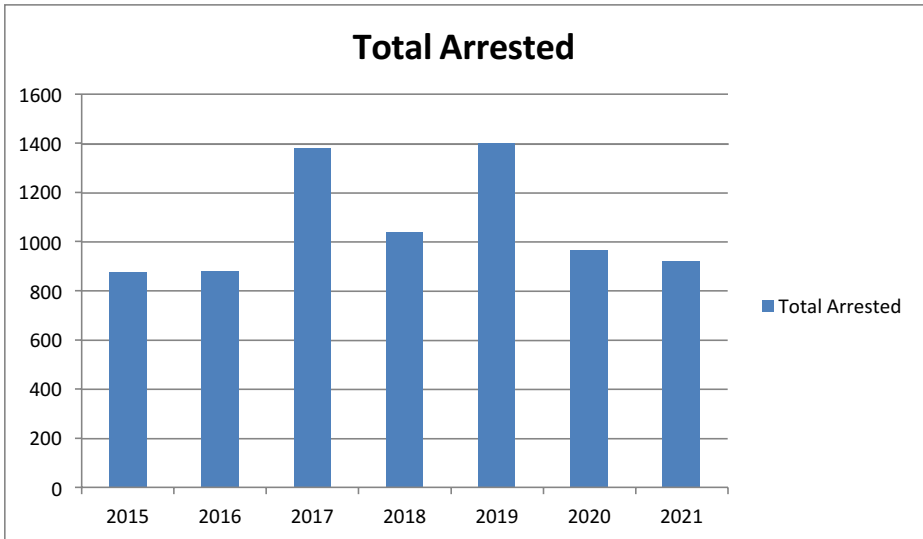


Fig. 2. Arrest of foreign fishermen crews in Malaysia (2015-2021).

4 Threat from Migrant Smuggling Issues

The rise of artisanal and syndicate fisheries in Malaysia is contributing to the growing issue of migrant smuggling in the country. The 2015 MMEA report shows multiple detentions of Myanmar and Indonesian skippers, who are suspected to be syndicate leaders and were using local Class B and C vessels [13]. The syndicates' modus operandi involves transporting small groups of migrants across international waters from one vessel to another in order to avoid detection by authorities. According to the 2021 MMEA report, approximately 265 cases occurred in 2020. In 2021, 1,854 trafficking cases were reported, which resulted in 2,732 arrests. Local syndicates are reportedly involved in many migrant smuggling cases that enable illegal entry into Indonesia, according to media reports. Such activities pose a threat to the security and sovereignty of this country [13]. The preceding instances demonstrate the inadequacy of the policies implemented for prevention and rehabilitation. Despite a decreasing demand for forced labor in the fishing industry, the supply remains high, contrary to expectation.

Although several policies and strategies have been implemented, they have not effectively reduced the rampant increase in human trafficking. The average number of newly-detected arrests each year confirms this. The Anti-Human Trafficking and Anti-Smuggling of Migrants Council reported that 115 cases of human trafficking involving migrants and locals in Malaysia were recorded in 2021, compared to just 17 cases in 2008. Before Malaysia declared IUU fishing as its enemy number one in 1985, it was considered a gateway to transnational crime, according to the APEC study (2008). However, after the introduction of police and laws, the situation improved significantly.

5 Gaps in Term of Enforcement

Law enforcement is a potent tool utilized by many nations to combat the issue of IUU fishing. However, it also reveals several significant gaps. While there have been numerous successful seizures and arrests of foreign vessels and crews, these accomplishments are often highlighted in local news. However, the investigation into cases of unauthorized entry by foreign vessels is insufficient, resulting in numerous failures to prosecute and exclusion of cases from court proceedings, ultimately leading to acquittal for violators due to weak investigations (MMEA, 2022). Ghazali et al. [3] similarly discovered inadequate investigation handling resulting from insufficient training and resources.

Weak law enforcement, abuse of authority, and fraud have been reported in cases involving MMEA, DoF, LKIM, and others. This exposes the shortcomings of law enforcement agencies. For instance, a court ruling found Vietnamese foreign fishermen working as forced laborers on local vessels and middlemen involved in local fisheries guilty (APMM, 2022). In the writing of Lewerissa [16], Arrests for bribing law enforcement officials, poor investigations, and excessive workloads have been reported. The MMEA officer (2022) emphasized this privilege in an interview conducted in Mersing (MMEA, 2022).

“There are sufficient and effective legislations to combat IUU fishing problems in Malaysia. Enforcement agencies must double their efforts to weed out the IUU fishing problem zest and gusto. The investigative agencies must investigate thoroughly all the case and the prosecution of offenders must be carried out meticulously to ensure the desire result”

The above statement reflects the judge's dissatisfaction with all law enforcement agencies that investigated the requested premises. The judge believed that investigations should be conducted to achieve victory in a case. Furthermore, law enforcement is weak in terms of legislation.

6 The Re-Evaluation of the Enforcement Approach

Approach is a critical component of both short and long-term action plans. This section presents recommendations for a comprehensive and inclusive approach to managing fisheries in light of the rising influx of foreign vessels into Malaysian waters. The increase in the number of foreign vessels is interconnected with the issue at hand. The terms Monitoring, Control, and Surveillance (MCS) are commonly used by the Malaysian Maritime Enforcement Agency (MMEA) and Department of Fisheries (DOF) to describe the actions of Vietnamese and Indonesian fishermen who enter Malaysian waters without authorization and engage in forced labor on local boats (MMEA, 2022). The measure is to maintain the issuance of arrests and fines for individuals engaged in specific activities relating to illegal, unreported, and unregulated fishing, as well as for specific purposes.

These sanctions target skippers and crew members and exclude subjective evaluations unless explicitly marked as such. It is illogical for them to confess working as forced laborers on the ship, given the significant fines levied- \$1.4 million for the captain and \$140,000 per crew member- which they may be unable to afford. In effect, imprisonment may be the only option (MMEA, 2022).

7 The Strategies and Approaches to Combat IUU Fishing

The issues of increased Illegal, Unreported, and Unregulated (IUU) fishing and transnational crime in Malaysia are interconnected. For instance, the entry of foreign vessels into Malaysian waters is related to transnational crime. One of MMEA's frequently used terms is MCS, which refers to vessels that enter Malaysian waters without authorization, and its misuse has classified fishermen as forced labor. There are various strategies and approaches to tackle the issue of IUU fishing that must be implemented. One way to tackle the issue of IUU fishing is to implement a 'spirit of nationalism' approach among the fishermen associated with IUU fishing. This involves improving education and systems, as well as integrating various aspects of a sovereign approach, including a love for the nation and its resources. Despite the different educational initiatives taken until now, the success rate has been disappointing. In practice, the implementation of various theories to address this issue requires further improvement. Objective evaluation is necessary to identify and rectify existing flaws.

Meanwhile, to address the issues of IUU fishing, there is a need for implementing the 'national security' approach coupled with continuing the policy of providing the necessary support for local fishermen. Furthermore, implementation of this strategy within the fisheries industry is crucial. This would ensure buy-in from all stakeholders in executing any suggested approaches. It is crucial to develop a national security strategy that tackles the issues related to illegal, unreported, and unregulated (IUU) fishing. National security is a vital commitment that aims to provide economic growth and social stability for the citizenry [17]. The financial and economic challenges experienced by IUU fishing offenders during and after detention and observation are crucial concerns for their survival as fishers. The application of the national security concept can provide a safety net for both local and foreign fishers involved in IUU fishing, particularly those who lack a sense of nationalism (i.e. fisheries syndicates).

The current policies exhibit ineffectiveness and lack of commitment from various parties within fisheries management regarding law enforcement. The absence of coordination among law enforcers, specifically government agencies, is a considerable weakness. Remote sites for monitoring, control, and surveillance (MCS) should be established in district or fishery zones (Zones A, B, C, and C2) (Fisheries Act, 1985). The establishment of specialized fishing areas can prevent individuals from engaging in illegal, unreported, and unregulated (IUU) fishing. This will not only promote personal well-being but also protect national security. Establishing specialized fishing areas can prevent individuals from engaging in illegal, unreported, and unregulated (IUU) fishing, safeguarding the fisheries sector and enabling sustainable economic growth.

8 Conclusion

In conclusion, the challenges of IUU fishing in Malaysia require a more comprehensive approach through the existing Fisheries Act 1985 and timely implementation of relevant actions. However, the current issues of IUU fishing in Malaysia are also caused by the borderless nature of the world due to globalization, particularly by non-state actors. Today's globalization has enabled transnational crimes to expand their reach. The rapid advancement of information technology has enabled IUU fishing to pose an even greater threat and create new methods of criminal activity. Such technology is also being exploited for illicit purposes, while social media platforms like Facebook are being used to recruit naive and uneducated fishermen into becoming part of fisheries syndicates. Thus, despite the government's implementation of laws and policies to address IUU fishing, such as through fines and imprisonment, these measures continue to prove ineffective in deterring the issue in Malaysia. Vietnam, Indonesia, and Thailand have been identified as the most involved in illegal fishing activities in Malaysian waters. It is suggested that the government adopts a national security-focused approach. Although fundamentally, Malaysia has taken a swifter action on national security to address the IUU fishing issue as one of the proposed measures to combat IUU fishing issues in this country.

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