

FISHING NEWS INTERNATIONAL

October 2015
Issue 10 Volume 54
www.intrafish.com

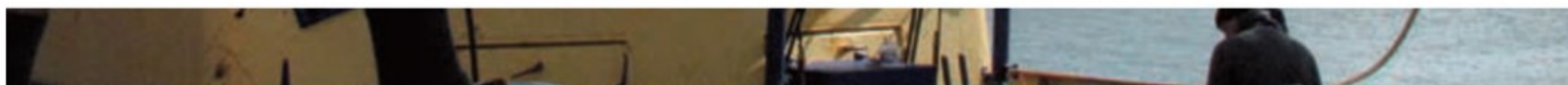
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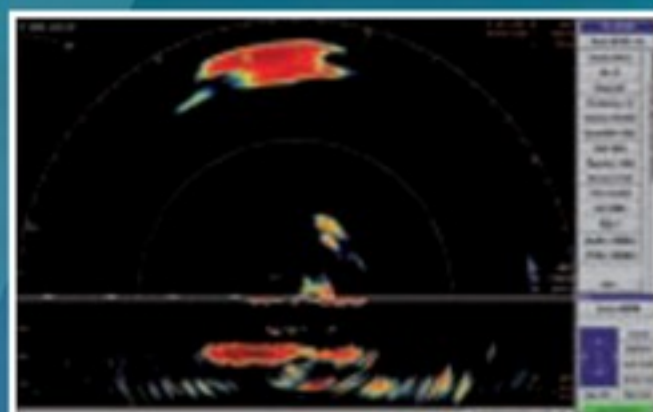
THE FUTURE'S LEGAL

PROGRESS ON IUU FISHING?

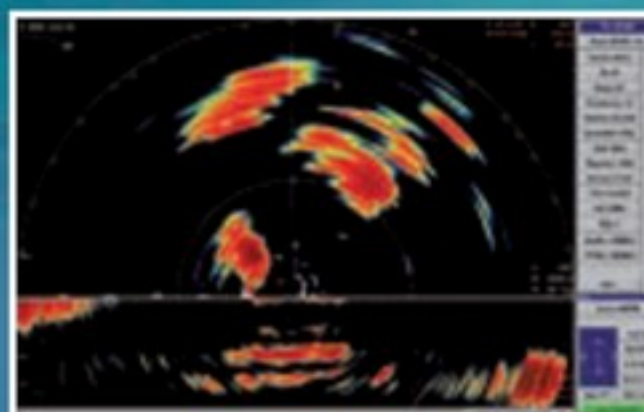


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OPINION

It may be slow, but it's progress



QUENTIN
BATES

Illegal fishing is in everywhere – not IUU fishing itself, which has in many areas been brought under control, but the subject. NGOs give it a sporadic but increasing amount of attention, generally tending to focus on what might be termed the simpler aspects of what is in reality a complex set of issues, not least when it concerns places where the many people are poor, often hungry and where a problem is easily solved with a bag of dollars or a bullet.

The over-simplification is perplexing. We're repeatedly told that all that needs to be done is for XY or Z to be outlawed, and a whole raft of problems will be solved. Oh, and don't forget to click the 'donate' button on your way past.

Despite the bleak outlook the NGOs would apparently like us to believe, there has been progress and it's still being made. A great deal of effort is being made discreetly, without shouting about it, to address the problem that hurts everyone – particularly affecting the majority of fishermen who tend to operate within the law, however nonsensical the rules may often be.

Illegal operators are the ones expecting to reap the rewards without the costs, restrictions and standards everyone else has to live with. It's the equivalent of breaking into your house and chugging all the beer in your



fridge before borrowing your car for a quick joyride and dumping it in next door's yard with a few new dents and a speeding fine in your name.

The reality of the situation is that IUU fishing on the scale that RFMOs, NGOs and governments concern themselves with happens because it's allowed to. The 2009 report that NGOs are happy to pluck figures from indicates that the root of IUU fishing is corruption, with a clear correlation between bad governance and bad fisheries.

Corruption ranges from an inspector taking a kickback for turning a blind eye to a couple of extra boxes to a minister conjuring

up a fishing licence for his latest best friend.

As several of those interviewed on the subject in this issue of FNI commented, some of the tools are already there but aren't used, in the form of international agreements that aren't enforced as rigorously as they could be. The development of aspects of international law is still a work in progress. We don't even have a accurate ideas of the scope of the problem, other than that it's big.

On the whole, the fishing business knows that the future lies in responsibly managed fishing carried out by people who are in it for the long haul, and it's going that way – albeit at a painfully slow rate.

FISHING NEWS INTERNATIONAL

Fishing News International is a subsidiary of NHST, an Oslo, Norway-based publishing company whose publications cover the shipping, oil and seafood industries. The IntraFish Media group of seafood publications includes Seafood International and Fish Farming International. Seafood Processor and Fiskeribladet/Fiskaren, a publication for the Scandinavian fishing industry, published three times per week. IntraFish also operates the daily websites IntraFish.com, IntraFish.no, fishfarminginternational.com and fishingnewsinternational.com.

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ISSN 0015-3044
Printed by Mortons Print Ltd,
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COVER STORY



THE FUTURE'S LEGAL



THUNDER: The sinking of the Thunder earlier this year highlighted the success of the long battle against toothfish pirates



ARRESTED: IUU fishing in the North-East Atlantic has been brought under control. PHOTO: Norwegian Coastguard



TOOTHFISH: Illegal catches peaked at 40,000 tonnes, and are now believed to be down to 1,000 tonnes

A variety of factors are at play in allowing IUU fishing to continue. To start with, even the approximate scale of the problem isn't known.

Quentin Bates

Regional Fisheries Management Organisations (RFMOs) are not toothless, but still don't have all the tools they would otherwise need to act against illegal operators.

International law in this field is evolving very slowly and has several grey areas that remain unchallenged, and there is the continuing problem of flag states that allow rogue vessels to operate under their flags. At the same time, there are links

between illegal fishing and other problems; poor governance in some parts of the world, corruption and the shadow of forced labour and exploitation that go hand-in-hand with dubious fishing activities.

It's an acronym that's everywhere; Illegal, Unreported, Unregulated. The concept of IUU fishing arose following the extension of national EEZs through the 1980s, as nations with more waters to monitor once limits had been pushed out to 200 miles started to notice activity in areas that maybe

hadn't been previously watched as carefully, often fishing activity that had been going on for years in what had until then been international waters beyond the monitoring remit of national agencies.

The IUU term came about during the 1990s when the FAO and RFMOs began to express real concern – and the FAO definition of IUU fishing was finally coined in the late 1990s.

Now the figures are starting to enter the territory of urban legend. A great many NGOs and pressure groups

quote the estimate that IUU fishing is worth between \$10 and 23.50 billion annually and that IUU landings account for somewhere between 11 and 26 million tonnes. There's a long way between the higher and lower estimates, although the higher figures are the ones that are generally quoted, with some NGOs simply taking the top figure as the definitive one. The higher end of the scale puts the level of IUU fishing at close to 18% of the world catch, a genuinely colossal amount of fish. The FAO estimates world's legal



SHADOWY: There is much about illegal fisheries that remains shrouded in secrecy

and reported capture fisheries to total approximately 90 million tonnes annually (91,336,000 tonnes in 2012) but the IUU estimates could take the total to somewhere between 112 and 117 million tonnes.

In fact, these figures stem from a 2009 report by Dr David Agnew and others. It's a slim report, only a few pages. Estimating the Worldwide Extent of Illegal Fishing is the nearest thing there is to a comprehensive survey of the extent of IUU fishing worldwide. Published in 2009, it's questionable now how valid its findings still are – but it's all we have and speaking to *Fishing News International*, Dr Agnew, now the Marine Stewardship Council's Standards Director, expressed his surprise that in the intervening years there has been nobody appears to have been tempted to continue the work and build on what was laid down in that original report.

He commented that the original work was extremely difficult to complete, with the work on it done in 2007-08, and since then much has changed. A second generation of ship-to-satellite AIS is now in existence that makes possible meshing VMS and AIS.

"There are interesting opportunities," he said, commenting that in only a few years new tools have appeared to make tracking fishing fleets easier and more effective.

Asked if there has been a reduction in IUU fishing in the intervening years, now that the original work is now almost a decade old, he said; "We don't know."

"The problem with IUU activity is that when you start looking for it, it goes underground and you can't see it any more. I'd be very interested to see some substantive work done on this," he said, commenting that there is a need for the original report's work to be repeated, either to take a global view, or else to take individual areas, and to document what has happened in those regions in detail without worrying about a global estimate. He pointed at the FAO as the most

likely candidate to be overseeing this kind of work, commenting that when COFI requests information, member states tend to supply it, which would make the work significantly easier than it was for the team behind the original 2009 report.

He said that he sees no firm evidence that IUU fishing has been reduced significantly, although there have certainly been shifts. A significant problem of illegal fishing in Somali waters has to a great extent been brought to an end due to vessel owners not being willing to run the risks of encountering pirates in those waters, while other African waters are just as badly exploited as they were before.

"The EU IU regulations have made a difference, waving yellow flags at nations that have since made improvement, but I couldn't say how much. We don't know how big the problem was before, or how big it is now," he said, adding that it would be interesting to understand the effects of the EU IUU regulations, what effects it has had on imports.

He told *Fishing News International* that the 2006 High Seas Fish Stocks Task Force has been partially implemented and the FAO Port State Measures Agreement is on the horizon.

"That could be working with in a few years and there's a likelihood that those countries that haven't signed it will see fewer ships calling at their ports and they'll lose business."

The toothfish story

Pioneering work was done on eliminating the extensive poaching operation on Patagonian toothfish in the Southern Ocean. This is estimated to have peaked in 1996-97 with an illegal total catch of around 40,000 tonnes. In spite of the work that has been

done to wipe this out, vestiges of the illegal fishery remain and one of the last poachers was pursued half-way around the world earlier this year by Sea Shepherd, culminating in the dramatic and highly publicised sinking of the *Thunder* off west Africa.

Today the illegal fishery is estimated at being in the region of a thousand tonnes a year taken by a handful of diehard rogues determined to stay in business by flag-hopping and a various strategies to remain out of sight, including the use of smart lawyers to chase down anyone who might mention them by name.

The work of CCAMLR, COLTO, the MSC and other bodies in pushing through to

"Countries are reluctant to take other countries to court over infringements of UNCLOS. This is law that in many ways remains untested,"

Mercedes Resello, a former insurance and reinsurance lawyer

institute a legal and responsibly managed fishery, which has been covered in *Fishing News International* in the past, is very much an example that other RFMOs and governments could take as an example of how this work can be done. It has to be recognised that this doesn't happen overnight, but the result is good news for the legal operators, the fishery as a whole and the consumers who generally seem happy to pay a premium for responsibly-sourced meals on their plates.

Progress

A former head of the Community Fisheries Control Agency based in Vigo, and with many years of experience in monitoring the state of illegal fisheries, Harm Koster is now retired from his EU role and works with the International Monitoring, Control, and Surveillance (IMCS) Network, which was established to provide a mechanism for fisheries law enforcement professionals to share information and experiences as they monitor the increasingly complex harvesting and marketing of fish around the world.

This voluntary organisation operates informally and encourages participation from fisheries managers, investigators, lawyers, foreign service officers, and forensics specialists. The IMCS Network hosts a variety of fisheries law enforcement information through its website, holds meetings, implements training, and serves as a liaison point MCS professionals.

He told *Fishing News International* that much has changed and we are not at the same point as when awareness of IUU fishing activity began to grow; we are now about to see the twenty years of the FAO Code of Conduct for Responsible Fisheries that included IUU fishing, and which has been an important tool in reducing illegal activity.

Commenting that an estimate of the extent of IUU activity is vital, he confirmed that the FAO is working on an updated set of figures, based partly on the work being done by various agencies around the world. Part of the problem is that while the extent of the problem in international waters can be estimated to some extent, evaluating what happens inside national EEZs is more problematic and is dependent on the will of national governments

to co-operate – and in some areas illegal fishing is closely linked to corruption, which further compounds the problem of estimating how far it goes.

"There are big studies taking place. The Forum Fisheries Agency is working on this in the Pacific islands, with some EU support, and there are studies being done in New Zealand and Australia," he said, adding that south-east Asian nations

are also making progress on getting a grip on the situation, while RFMOs are also working actively on this – with the exception of NEACF now that illegal fishing outside national waters in the north Atlantic as been effectively brought under control.

"There is also a US Presidential taskforce working on wildlife crime, which includes IUU fishing and with attention on the Pacific Coral Triangle where there are a lot of species that are within CITES and for which there is a ready market in some Asian countries. A lot needs to happen there and we need

to get a grip on this if we are to conserve these species."

What is clear is that no country can work effectively on this alone and there has to be international co-operation, and while enforcement is one thing, building capacity and maintaining information exchanges are crucial.

"Enforcement officers are delighted when they arrest a vessel, which is then impounded or maybe scrapped, but it doesn't help a great deal. The crew don't care as there are jobs elsewhere. The cost of the vessel is less than the profits of a year's fishing and there are plenty of second-hand fishing vessels for sale all over the world. But the capital is still there. It's not about vessels – it's about money."

He highlighted the importance of ascertaining how the illegal fish is marketed, following the trail of money in both each direction, which can often be a murky trail obscured by corruption. This is an aspect that David Agnew's team highlighted in the 2009 report, linking IUU activity more closely to a state's quality of governance than to the price of fish or the extent of its EEZ. In fact, there was a closer correlation to World Bank governance indicators than to other indicators. The message is clear enough; corruption at every level is what allows IUU fishing to take place

The legal angles

Mercedes Resello, a former insurance and reinsurance lawyer who became fascinated by the intricacies of marine law and is now working on a PhD examining accountability in international fisheries law, commented that with IUU fisheries in national waters, the situation is relatively straightforward.

"Inside a country's EEZ it's cut and dried. Either law has been breached or it hasn't," she said, adding that the nation state has a responsibility to deal with it – or not, although many developing nations do not have the resources to monitor their own waters effectively, plus host nations, those where IUU fishing is taking place and which are therefore losing wealth to someone else, have a strong incentive to deal with IUU fishing. But it's when fishing moves offshore to the high seas that things get properly complex.

"High seas fishing is generally on highly migratory stocks that have a high trade value. Some catches go to domestic markets, but much of it is traded internationally," she said.

"There are some very important international agreements here, UNCLOS and specially the 1995 Fish Stocks Agreement and the 1993 Compliance Agreement under UNCLOS that places obligations on flag states – although that has not been ratified as widely as it could have been and demonstrates an unwillingness on the part of states to be bound."

Grey areas in international law complicate the situation, plus the presence of voluntary UN instruments that are seen as soft law – and their enforceability is doubtful. This leads to the fact that cases of this nature rarely come to court, with the result

that international tribunals have not been given opportunities to refine and develop this field of law.

"Countries are reluctant to take other countries to court over infringements of UNCLOS. This is law that in many ways remains untested," she said.

The RFMOs worldwide play a key role, but there remains the question, generally unchallenged, of whether vessels flagged to states that are not members are bound – and instances of member states' vessels fishing illegally also undermine the work of the RFMOs in managing the waters they are responsible for.

She said that the EU has led the way in curtailing both the activities of operators in its own member states in illegal fishing operations, as well as in using the red and yellow cards it has shown to countries as powerful incentives to clean up their acts, while CCAMLR and ICCAT had been leaders as RFMOs in the use of trade measures, using market rather than legal measures to combat illegal activities, not least in the grey areas that surround what can take place on the high seas.

"What is interesting is that these measures have not been challenged at WTO level," she said, commenting that the WTO operates in a looser framework than the UNCLOS convention, allowing greater leeway for nations to formulate measures to work on issues that are against their own interests.

Korea has notably made efforts, passing new legislation and placing sanctions on some vessels that had been involved in dubious practices, while other countries have followed suit by improving practices even when they would maybe prefer not to.

"States can be reluctant to take measures that reduce their economic output. There are definite tensions there that are not easy to solve at both an economic and a political level," she said, commenting that the threat of market closure and EU disincentives to IUU fishing have been shown to be powerful tools, but there is still a need to improve the legal frameworks available.

"International law is currently deficient in accountability. This can change, but it requires the international community to implement existing law better and to develop legislation that is enforceable on the high seas," Mercedes Resello said.

Keeping track of fleets

Commenting on the work being done at FAO level to provide information on the fishing fleets at work around the world, Ari Gudmundsson at the FAO Fishing Operations and Technology Branch (FIRO) said that the Global Record of Fishing Vessels, Refrigerated Transport Vessels and Supply Vessels (Global Record) is one of the latest international initiatives, initially requested by Ministers and then taken on by the FAO Committee on Fisheries (COFI) as a cost-effective global tool to combat IUU fishing. Its aim is to increase transparency and traceability of vessels and their activities, as well as

fish products 'from the net to the plate', through information exchange and dissemination of that information in a simple and neutral manner.

This initiative has three main pillars; system development, capacity development and awareness-raising, with the focus currently on system development at this first stage.

"COFI has repeatedly expressed its support for the continued development of the Global Record by FAO," he said.

At its 30th Session in 2012, the Committee recognised the

necessity of a global unique vessel identifier (UVI) as a key component of the Global Record to identify and track vessels. The IMO Assembly agreed, in 2013, to an FAO co-sponsored proposal that fishing vessels of 100 gross tonnage and over should be included in the IMO Ship Identification Number Scheme, with the result that the IMO number, which remains with it through its entire lifetime, regardless of changes of ownership or flag, now provides an invaluable identification tool also for fishing vessels.

Several RFMOs, including CCAMLR, IATTC, ICCAT, IOTC, NAFO, SPRFMO and WCPFC have already made provision for an IMO number to be compulsory for vessels fishing in their areas.

In 2014, at COFI's last session, FAO Members commended the Organisation on the preparation of a strategy document on the proposed way forward for the Global Record and the demonstration of the system prototype, whilst recognising that outstanding issues need to be clarified and a solution

is needed to secure long-term financing.

"Consequently, the Global Record Informal Open-Ended Technical and Advisory Working Group (GRWG) was established to address these issues. The GRWG, which held its first meeting in February 2015, considered key issues related to the Global Record, such as the scope, system development and governance framework" he said.

The budget necessary for the development of the Global Record system and

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Between 2011 and 2015 this 60m netter has sailed under seven names and six flags.

implementation of Phase 1 (vessels of 100 gross tonnage and over) is estimated to be around 500,000 to 600,000 USD per year for an initial 5-year programme. "Provided that sufficient funds can be secured, the Global Record system can be operational within this timeframe", Ari Gudmundsson said.

He also commented that in order to secure the future financing of the system development, operation and maintenance of the system, consistent funding ideally needs to be shared by a group of donors. "It is hoped that the 2nd GRWG meeting will give us a clearer idea on the way forward, including options for financial mechanism for the long-term sustainability of the Global Record Programme" he suggested.

The next session of COFI is scheduled to take place in 2016 and it is envisaged that the Global Record will be considered as part of the IUU fishing issue, which continues to be one of the greatest threats to sustainable fisheries and to those whose livelihoods depend on it.

Industry awareness

It's not just governments and NGOs that are hot under the collar about illegal fishing. Legal fishing operators themselves are increasingly aware of the disadvantage they are under in competing with operators who don't abide by the rules. In the southern hemisphere, they responded by setting up the Coalition of Legal Toothfish Operators (COLTO) which played a major role in combating poaching of Patagonian toothfish.

Operators in other areas are

also increasingly aware of how much they are losing out to competing operators who aren't playing to the same rules. A report by Frequentz, on behalf of the US crab business, estimates that Alaskan crabbers have lost £560 million between 2000 and 2012, and pointing the finger firmly at Russian operators also harvesting crab. The Frequentz reports draws a distinction between 'grey' operators, those operating with licences but overshooting their quotas and diluting legal crab catches with illegally caught products, and 'black' operators, crabbing vessels under flags of convenience poaching Russian waters and landing their catches in Korean or Japanese ports.

The report paints a dismal picture, pointing out that during the 2013 season, landing prices were low due to the glut of crab on the market – much of it from illegal operations, and the crab industry is far from being the only one adversely affected by operators fishing to their own rules outside the law.

"As one of the major seafood consumer products, there has been a focus on tuna for some time now by environmental NGOs," said Susan Jackson, president of US-based group ISSF, which includes tuna producers across a variety of countries.

"While most groups share the same ultimate goals, it is not an easy task to find consensus among the various conservation stakeholders when it comes to approach and tactics for both protecting tuna stocks from overfishing and protecting the market from tuna caught illegally and we don't expect it to be. That said, ISSF considers

itself as a convener by identifying and making use of the common ground that environmental stakeholder groups all share. There's not one NGO that I'm aware of that has downplayed the threat of illegal fishing, it's a serious problem that needs to be a priority for governments, advocacy groups and industry participants alike."

ISSF has some strict requirements, demanding that all participating processors, traders, and importers refrain from transactions with vessels that are not flagged to a coun-

"In order to begin weeding out tuna caught by illegal, unregulated, and/or unreported fishing activities, we have worked with industry to make permanent and unique vessel identifiers (IMO numbers) standard practice. At the end of 2011, only 12% of large-scale purse seine vessels targeting tropical tuna had IMO numbers. Today, 90% have registered IMO numbers and all four of the tuna management bodies now mandate these numbers. In addition, ISSF broke new ground by introducing the ProActive Vessel Register (PVR)."

Anytime you have a portion of the vessels fishing for tuna operating without having to follow regional quotas, area closures, by-catch prevention guidelines, observer coverage requirements, data collection requirements and other rules that exist for a reason, you're going to adversely impact the entire industry and the ability for RFMOs and governments to protect and manage stocks," she said.

Improvement

"Things are a lot better than they were ten years ago. There is virtually no illegal fishing in the north-east Atlantic now," Harm Koster said, adding that on the other hand, the South Atlantic and the Indian and Pacific Oceans still see significant illegal fishing taking place, although this is increasingly monitored and also increasingly under control.

"If you look forward and ask where are we going to be in ten years, you get depressed," Harm Koster said. "But if you look back, you're surprised at how far we have come."

He added that a decade ago, there was a feeling that IUU fishing was an insurmountable obstacle and that this was almost an impossible task, but that has changed.

"In 2014 at IMCS Network's Costa Rica meeting there was the feeling that in certain areas things are really under control, although there is still a lot to be done in other areas."

There have been notable successes, not least the huge changes that have taken place in the CCAMLR zone where Patagonian toothfish poaching has been dramatically reduced,

"Things are a lot better than they were ten years ago. There is virtually no illegal fishing in the north-east Atlantic now."

Former head of the Community Fisheries Control Agency

try that is participating in the relevant RFMO, do not have a unique, permanent identification number issued by the IMO, or that are not on an authorised vessel list from the RFMO.

"These companies are voluntarily taking a critical next step by withdrawing their tuna from the marketplace upon a discovery that the tuna was caught by a harvesting or transshipment vessel on any tuna RFMO IUU Vessel List," she said.

This database uses third party auditing, desktop and onsite, to verify that vessels are implementing applicable ISSF Conservation Measures and are committed to a series of improved practices, which we've worked with industry, NGOs and scientists to identify.

"Everyone loses with IUU fishing. It undermines fisheries management and creates an unlevel playing field for legitimate harvesters and businesses.



FLAGS OF CONVENIENCE: This former English trawler now has dubious role as a Togo-registered netter.

although not fully eradicated. "The certification programme was an important part of this. A lot of people were scared off. Importers could go to the CCAMLR data base and see

where the fish had been caught and it's a very good system. But there is still some illegal fishing and for some years scientists declined to estimate how much as there was activity in areas they

had not been aware of. "It goes to North America as Chilean sea bass," he said, speculating that it can be landed as grouper, filleted in Asia and can still be marked as grouper right

up until it reaches a consumer's plate. "But Interpol has been successful in taking action against operators," he said. "We're maybe not seeing the

end of the tunnel, but there is some real progress. The future is in legal fisheries. The industry understands this, especially the European operators."

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