

University of Milano-Bicocca

Preliminary report: Commercial fishing and the sustainable use of marine living resources

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Table of contents

A.	Introduction	3
B.	Fisheries law at the international, EU and national levels	4
C.	Geographical context: Italian maritime zones	7
D.	Methods, licenses and gear	9
E.	Work onboard of fishing vessels	13
F.	Inspection activities.....	17
G.	Conclusion.....	19
H.	Table of stakeholders.....	21
I.	Bibliography	22



A. Introduction

1. This report has been drafted in the context of research project *Progetto ID 2022-NAZ-0633 "Finanziamento dell'Unione Europea - NextGenerationEU - missione 4, componente 2, investimento 1.1 - Avviso 1409/22 - Legal Strategies for Actions and Interactions in the Sustainable Blue Economy - PRIN 2022 PNRR"*, by the Research Unit of the University of Milano-Bicocca. The objective of the report is to illustrate the current normative framework that applies in Italy concerning commercial fishing, spotlighting its connection with the sustainable use of marine resources.

2. The aim of this report is to collect, classify and analyse Italian legislation that has an impact on the management of marine living resources, both within the Italian territorial sea and on the high seas, highlighting gaps and inconsistencies which will be instrumental to further understand the implications that the creation of an exclusive economic zone will have for Italy, from both a normative and regulatory perspective. Thus, the report focuses specifically on legislation regulating commercial fishing and impacting the management of marine living resources. In particular, the report highlights key aspects concerning the enhancement of sustainable development goals in their economic, environmental and social dimensions.

3. To specify the scope of the report, we elucidate the use of the word ‘fishing’ throughout this document. First, we include only legislation regulating commercial fishing activities and not recreational fishing. Second, we refer to ‘fishing activities’ or simply ‘fishing’ in the report to indicate any economic activity carried out at sea aimed to catch living marine resources via different methods or systems from a fishing vessel,¹ to bring onboard the catch, to conserve the catch and to unload the catch and the other marine living resources caught.² Third, although the regulation of fishing activities in Italy has a regional dimension, we mainly focus on the national level.³ Indeed, it is agreed that due the intrinsic nature of commercial fishing, there are many aspects of it which need a uniform approach and cannot be regulated

¹ We understand a ‘fishing vessel’ to be defined as “any vessel, ship of another type or boat used for, equipped to be used for, or intended to be used for, fishing or fishing related activities.” Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing approved by the FAO Conference at its Thirty-sixth Session (Rome, 18-23 November 2009), Art. 1(j).

² Based on Art. 2, DECRETO LEGISLATIVO 9 gennaio 2012, n. 4. Original text: “definita come l'attività economica organizzata svolta in ambienti marini o salmastri o di acqua dolce, diretta alla ricerca di organismi acquatici viventi, alla cala, alla posa, al traino e al recupero di un attrezzo da pesca, al trasferimento a bordo delle catture, al trasbordo, alla conservazione a bordo, alla trasformazione a bordo, al trasferimento, alla messa in gabbia, all'ingrasso e allo sbarco di pesci e prodotti della pesca.”

³ See, Article 119 of the Italian Constitution dealing with allocation of competences between the State and the Regions and the obligation to comply with EU law. Original text: “I Comuni, le Province, le Città metropolitane e le Regioni hanno autonomia finanziaria di entrata e di spesa, nel rispetto dell'equilibrio dei relativi bilanci, e concorrono ad assicurare l'osservanza dei vincoli economici e finanziari derivanti dall'ordinamento dell'Unione europea.”

but by the State.⁴ Thus, a comprehensive mapping and subsequent analysis of all regional laws and provisions on fisheries would not serve the purpose of the present report which, rather, seeks to focus on the compatibility of national laws with the international legal system and EU law.

4. This report is divided into five substantive sections. Section B provides an overview of fisheries law at the national, EU and domestic levels. Section C deals with the Italian maritime zones and the delineation of borders in the Mediterranean Sea. Section D reviews Italian legislation – complemented by international law and European Union law – regulating fishing methods, the issuing of licenses and gear. Section E deals with the work conditions onboard of fishing vessels and, last, Section F analyses the system of inspections and sanctions.

B. Fisheries law at the international, EU and national levels

5. The state of Italian fisheries legislation is due to be reviewed. To provide a comprehensive picture of the current state of affairs in this domain, specific attention must be paid to commercial fishing activities. Fishing represents one of the most fundamental human activities of sustenance for littoral States – like Italy – and land-locked ones alike.⁵ The regulation of fishing activities has expanded in recent years, the vastity of the seas and the oceans to humans has provided for intense commercial fishing, which for decades was mainly concerned with ever-rising economic gains. Indeed, fish still is, to this day, the most internationally traded commodity⁶ and one of the most important sectors of Italy's economy.⁷ Accordingly, historically, the development of fisheries law has been primarily concerned with the economic exploitation of marine resources and the growing need to regulated trade and commercial

⁴ See, in original language, DECRETO DEL PRESIDENTE DELLA REPUBBLICA 2 ottobre 1968, n. 1639 recante, "Regolamento per l'esecuzione della Legge 14 luglio 1965, n. 963, concernente la disciplina della pesca marittima"; See also the regulation of regional powers in the Italian Constitution. Original text: "potestà legislativa residuale delle Regioni", Art. 117, quarto comma, Costituzione Italiana. See also the United Nations Convention on the Law of the Sea (1982).

⁵ See, *inter alia*, A. Targioni Tozzetti, 'La pesca in Italia', Genova (1874); T. Scovazzi, 'Elementi di Diritto internazionale del mare', Giuffrè (1994); A. Caligiuri, I. Papanicolopulu, L. Schiano di Pepe, R. Virzo (eds) 'Italia e Diritto del Mare', AssIDMer – Editoriale Scientifica (2023); C. Carletti, 'Il regime giuridico della pesca e dell'acquacoltura alla luce del diritto internazionale del mare e dell'Unione europea', Collettanea CRISPEL, Roma Tre (2016); C. Fioravanti, 'Il ruolo delle istituzioni dell'Unione e degli Stati membri nella nuova politica comune della pesca', Napoli (2017); S. Cataudella e M. Spagnolo, 'Lo stato della pesca e dell'acquacoltura nei mari italiani', Ministero delle politiche agricole alimentari e forestali (2011); E.J. Molenaar and R. Caddell, 'Strengthening International Fisheries Law in an Era of Changing Oceans', Bloomsbury (2019); S. Vezzani, 'Jurisdiction in International Fisheries Law - Evolving Trends and New Challenges' Wolters Kluwer: CEDAM (2020); G. Cataldi and V. Rossi (eds), 'Approcci e strumenti innovativi per la pesca sostenibile nel Mar Mediterraneo', AssIDMer – Cahiers de l'Association Internationale du Droit de la Mer (2023).

⁶ FAO, The State of World Fisheries and Aquaculture 2022, Towards Blue Transformation, Rome, FAO. <https://doi.org/10.4060/cc0461en>.

⁷ In 2021, the Italian fishing industry generated 736 million euros with an increase in the activity of +31% compared to 2020. Camera dei deputati, Documentazione parlamentare, Studi – Agricoltura, Dati sul settore pesca in Italia, 23 maggio 2023. < <https://temi.camera.it/leg19/post/dati-sul-settore-pesca-in-italia.html#:~:text=L'attività%20di%20pesca%20della,dei%2079%20giorni%20del%202020> >.

activities, leaving this field of international law to expand largely unencumbered by environmental and conservation concerns.

6. In the past few years, sustainability has emerged as one of the key elements to account for in fisheries law, as the field of environmental law and growing concerns over the exploitation of natural resources and the environment (including the marine domain) consolidated. Thus, the notion of ‘sustainable fishing’ was coined, underpinned by international law and European Union law. For instance, the United Nations Convention on the Law of the Sea (UNCLOS) (1982) refers to “the maximum sustainable yield”⁸ with regard to the conservation of living resources and the United Nations Fish Stocks Agreement (UNFSA), adopted in 1995, establishes that State parties shall “ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks.”⁹ Last, the United Nations Sustainable Development Goal 14 sets out a clear agenda for all Members of the international community as it requires them to “Conserve and sustainably use the oceans, seas and marine resources for sustainable development.”¹⁰ Furthermore, it is worth mentioning at this stage that another concept closely connected to the sustainable use of marine living resources (and the project at hand) is ‘blue economy’ which has been defined in different ways but can be overall summarised as “compris[ing] a range of economic sectors and related policies that together determine whether the use of ocean resources is sustainable.”¹¹

7. Considering the already unwieldy challenge to improve the management of marine living resources and enhance sustainable fishing activities, the widespread phenomenon of illegal, unreported and unregulated (IUU) fishing activities has proven to make the situation even worse. Indeed, the closely related nature of these two phenomena is exemplified by the FAO Agreement on Port State Measures (PSMA) (2009) targeting IUU fishing and which explicitly “contributes to the long-term conservation and sustainable use of living marine resources and marine ecosystems.”¹² Thus, without proper regulation of fishing activities aiming to counter IUU fishing, the sustainable management of marine living resources is impossible to fulfil. Indeed, with many changes occurring in the space of maritime law and efforts to achieve sustainability objectives, the protection of living marine resources has become one of the priorities of the future of law-making at the national, EU and international levels.

⁸ Art. 61(3), United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397 (UNCLOS).

⁹ United Nations Fish Stock Agreement, A/CONF.164/37, 1995.

¹⁰ United Nations, Department of Economic and Social Affairs, Sustainable Development, Sustainable Development Goal (SDG) 14. < <https://sdgs.un.org/goals/goal14> >.

¹¹ United Nations, Definitions. < https://www.un.org/regularprocess/sites/www.un.org/regularprocess/files/rok_part_2.pdf >.

¹² Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing approved by the FAO Conference at its Thirty-sixth Session (Rome, 18-23 November 2009) (PSMA), Preamble.

8. At the level of European Union law, until recently, the main piece of legislation regulating fisheries was Regulation 1224/2009.¹³ This policy has been heavily amended in November 2023 when the European Parliament and the Council approved Regulation 2023/2842 which created a new EU's common fisheries policy.¹⁴ Bearing in mind that Italy will have to implement the newly adopted Regulation, the EU has accorded roughly two years to Member States to complete the process of integration in the domestic systems.¹⁵

9. This process is proving to be far from easy: the current Italian Government has been explicitly criticising the new Regulation stating that it dampens the economic development of the country, and it penalises Italian fishermen. Moreover, Italy has voiced concerns over the issue of fishermen's right to privacy on board of vessels which is strongly connected to some of the newly included control practices, requiring fishing vessels to include the installation of closed-circuit television (CCTV) onboard.¹⁶ Indeed, Italy brought a legal action against the European Parliament and the Council before the Court of Justice of the European Union (CJEU) on 11 March 2024.¹⁷ More specifically, Italy calls for the annulment of the Regulation 2023/2842, grounding the claim on two pleas: the first legal plea is based on fundamental rights protection and alleges an infringement of the principle of proportionality;¹⁸ the second legal plea is connected to economic law and it alleges that the Regulation will likely infringe the principle of equal treatment of economic operators.¹⁹ In sum, it is unclear whether and to what extent Italy will incorporate the new EU's common fisheries policy, as the development of the CJEU's jurisprudence is pending. For the purposes of this report, bearing in mind these upcoming changes, we look at the legislation that is currently into force, providing an overview of the regulation regarding fishing activities still in force.

¹³ Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006.

¹⁴ Art. 1, Regulation (EU) 2023/2842 of the European Parliament and of the Council of 22 November 2023. See also Art. 2 amending Regulation 2019/473 of the European Parliament and of the Council as regards fisheries control. The historical roots of EU's common fisheries policy date back to the 1970s, but the main document regulating this area (until November 2023) consisted in Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the common fisheries policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354, 28.12.2013, pp. 22–61).

¹⁵ More specifically, Art. 7(2) states that “Article 1 shall apply from 10 January 2026.” Regulation (EU) 2023/2842.

¹⁶ Ministero dell'agricoltura, della sovranità alimentare e delle foreste, ‘Pesca. Lollobrigida: depositato ricorso a Corte Giustizia Ue su obbligo strumenti di controllo’, Comunicato stampa. <
https://www.politicheagricole.it/ricorso_ue_controlli_pescherecci>.

¹⁷ Case C-194/24 - Action brought on 11 March 2024 – *Italian Republic v European Parliament and Council of the European Union*.

¹⁸ Specifically, an infringement of Arts. 7, 8, 31 and Art. 52(1), (2) and (4) of the Charter of Fundamental Rights of the European Union (2000) and an infringement of Art. 52(3) and Art. 53 of the Charter, read in conjunction with Art. 18 of the European Convention on Human Rights (1950).

¹⁹ Specifically, an infringement of Art. 3(3) Treaty on European Union (2007), an infringement of Art. 101 *et seq.* and Art. 120 Treaty on the Functioning of the European Union (2007) and an infringement of Protocol No 27 on the internal market and competition.

10. It is important to elucidate, at this stage, the relationship between Italian law and international law as well as the relationship between Italian law and EU law, dealing in particular with aspects related to the hierarchy of normative provisions. According to the Italian Constitution,²⁰ international law is incorporated into the domestic system through the approval of a national law, which is then published in the *Gazzetta Ufficiale*. Instead, customary international law is automatically incorporated into the domestic legal system. However, for this process of transposition of international obligations to occur, international law ought to be consistent with the Italian Constitution itself.²¹ Similarly, European Union law is incorporated into the Italian legal system through the approval and publication of domestic laws.²² Yet, the principle of the primacy of European Union law is also relevant since when there is a conflict between an aspect of EU law and a national law, EU law will prevail.²³

C. Geographical context: Italian maritime zones

11. Legislation concerning fishing must be seen in the broader context of the division of maritime space into different maritime zones. These zones are regulated in the 1982 United Nations Convention on the Law of the Sea, which has been ratified by Italy.²⁴ The maritime zones of Italy are measured from the baselines established by the Decree of the president of the Republic 816/1977²⁵ which established straight baselines long parts of the coasts of Italy and its islands. Landwards from these baselines, waters fall under the regime of internal waters, over which Italy exercises full sovereignty.

12. Seawards from the baselines, Italy has a territorial sea, a continental shelf, and an ecological protection zone. The territorial sea extends up to 12 nautical miles (n.m.) from the baselines.²⁶ In the territorial sea, Italy exercises sovereignty (Art. 2 UNCLOS), which includes exclusive rights over

²⁰ See Art. 10 of the Italian Constitution. Original text: “L’ordinamento giuridico italiano si conforma alle norme del diritto internazionale generalmente riconosciute. La condizione giuridica dello straniero è regolata dalla legge in conformità delle norme e dei trattati internazionali.”

²¹ It is important here to distinguish the legal relationship between international treaties ratified by Italy and the Italian Constitution before and after 2001, when Italy underwent a constitutional reform. See, in general, G. Cataldi, ‘Italy’, Chapter 3, Pages 328–359 in D. Shelton (ed.), ‘International Law and Domestic Legal Systems: Incorporation, Transformation, and Persuasion’, Oxford University Press (2011).

²² See LEGGE 24 dicembre 2012, n. 234 which is the most important reference framework regulating the relations between Italy and the EU. See also LEGGE 9 marzo 1989, n. 86 and LEGGE 4 febbraio 2005, n. 11.

²³ See Consolidated version of the Treaty on the Functioning of the European Union - DECLARATIONS annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007 - A. DECLARATIONS CONCERNING PROVISIONS OF THE TREATIES - 17. Declaration concerning primacy. Note also the jurisprudence of the Court of Justice of the European Union: *Van Gend en Loos v Nederlandse Administratie der Belastingen* (Case 26/62); *Costa v ENEL* (Case 6/64); *Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel* (Case 11/70); *Amministrazione delle Finanze dello Stato v Simmenthal SpA* (Case 106/77); *Marleasing SA v La Comercial Internacional de Alimentación SA* (Case C-106/89).

²⁴ LEGGE 2 dicembre 1994, n. 689.

²⁵ DECRETO DEL PRESIDENTE DELLA REPUBBLICA 26 aprile 1977, n. 816.

²⁶ LEGGE 14 agosto 1974, n. 359.

exploitation of marine living resources, while other states enjoy the right of innocent passage (Art. 17 UNCLOS). Vessels exercising the right of innocent passage cannot undertake any fishing activity (Art. 19(2)(i) UNCLOS).

13. Beyond the territorial sea, the regime varies for the water column, on the one hand, and the seabed and subsoil, on the other. The seabed and subsoil, up to the boundaries with other states, falls under the regime of the continental shelf (Art. 76 UNCLOS). Italy exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources, which consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species (Art. 77 UNCLOS).²⁷

14. Italy has also adopted legislation which allows for the creation of “ecological protection zones”,²⁸ and has actually created one such zone, which includes waters in the Ligurian Sea, Tyrrhenian Sea and parts of the Western Mediterranean westwards from the island of Sardinia.²⁹ This is a *sui generis* zone, which included some aspects of the exclusive economic zone, as regulated by the UNCLOS; but not others. Within the ecological protection zone, Italian legislation concerning protection of the marine environment, including underwater cultural heritage, applies to all vessels. The ecological protection zone does not affect the regime applicable to fishing.

15. Finally, Italy has enacted legislation which provides for the creation of the exclusive economic zone. The actual exclusive economic zone has not been created yet. Due to the geographical configuration of the Mediterranean Sea, Italy cannot claim a full extension of its maritime zones, and needs to delimit them *vis-à-vis* its neighbours. To this end, Italy has so far entered into 10 maritime delimitation agreements.³⁰ Beyond the outer limits of the territorial sea and, where established, the outer limit of the ecological protection zone, the regime of waters falls under the regime of the high seas. On the high seas,

²⁷ Sedentary species are defined as organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil. They include, among others, barnacles, oysters and tridacnas.

²⁸ LEGGE 8 febbraio 2006, n. 61.

²⁹ DECRETO DEL PRESIDENTE DELLA REPUBBLICA 27 ottobre 2011, n. 209.

³⁰ These are: Agreement between Italy and Yugoslavia concerning the delimitation of the continental shelf between the two countries in the Adriatic Sea, 8 January 1968; Agreement between the Government of the Republic of Tunisia and the Government of the Italian Republic concerning the delimitation of the continental shelf between the two countries, 20 August 1971; Convention between Spain and Italy on the delimitation of the continental shelf between the two States (with chart), 19 February 1974; Agreement between the Hellenic Republic and the Italian Republic on the delimitation of the respective continental shelf areas of the two States, 24 May 1977; Agreement between the Government of the French Republic and the Government of the Italian Republic on the Delimitation of maritime frontiers in the area of the straits of Bonifacio, 28 November 1986; Agreement between the Republic of Albania and the Republic of Italy for the determination of the continental shelf of each of the two countries, 18 December 1992; Agreement on the Delimitation of Territorial Waters and Maritime Jurisdiction between Italy and France, 21 March 2015; Agreement between the Government of the Hellenic Republic and the Italian Republic on the Delimitation of their Respective Maritime Zones, 9 June 2020; Agreement between the Italian Republic and the Republic of Croatia on the delimitation of the exclusive economic zones, 24 May 2022.

the coastal state does not enjoy any preferential rights, since all states enjoy the freedom of the high seas (Art. 87 UNCLOS).

D. Methods, licenses and gear

16. Commercial fishing activities require specific and diverse technical gear, can involve several methods, and are subject to the issuing of a license. Fishing methods or systems are indicated in the license and may include the employment of multiple gears, as in the case of trawling fishing, for example. These components of fishing activities and their regulatory framework within the Italian system will be considered in the following sections.

17. Before delving into the technical components of commercial fishing activities, we highlight that a fundamental asset which allows for commercial fishing activities to be implemented is constituted by the vessel itself. The classification of allowed fishing vessel for commercial activities is provided in Article 8 of the Decree of the President of the Republic 2 October 1968, n. 1639 (Decree 1639/1968), which distinguishes the different types of vessels according to their seaworthiness and their gear dotation, including the equipment on board to store fish products. Furthermore, as indicated in the Decree 1639/1968, each fishing vessel is assigned to a specific category as envisioned in the classification of the vessels by the chief of the maritime section when the vessel is matriculated.³¹

a. Methods and licenses

18. Fishing methods or systems in Italy vary both within territorial waters and beyond, due to the multifaceted nature of the maritime environment that borders the Italian coast. Methods for fishing activities involving a vessel may require the active trawling of gear or the stillness of the vessel itself, awaiting the catch. Moreover, as already mentioned, fishing systems may require the use of more than one type of fishing gear. Thus, as established by Italian legislation, according to Article 9 of the Decree 1639/1968, commercial fishing systems are classified as follows: first, local fishing which is exercised up to six n.m. from the coast. Second, close fishing is carried out up to 20 n.m. from the coast. Third, deep sea fishing is employed beyond 20 n.m., within the waters of the Mediterranean Sea. Fourth and last, oceanic fishing is counted when employed beyond the straits of the Mediterranean Sea.³² The different fishing method

³¹ Original text: “L’assegnazione alla rispettiva categoria spetta al capo del compartimento marittimo, all’atto della iscrizione nelle matricole delle navi maggiori o nei registri delle navi minori e galleggianti. Contro il provvedimento di assegnazione alla categoria può proporsi ricorso al Ministro per la Marina Mercantile entro 30 giorni dalla comunicazione del provvedimento stesso.” Art. 8, DECRETO DEL PRESIDENTE DELLA REPUBBLICA 2 ottobre 1968, n. 1639.

³² Art. 9, DECRETO DEL PRESIDENTE DELLA REPUBBLICA 2 ottobre 1968, n. 1639. See also Art. 220, Italian Code of Navigation (REGIO DECRETO 30 marzo 1942, n. 327) and Art. 408, Regolamento per la navigazione marittima (DECRETO DEL PRESIDENTE DELLA REPUBBLICA 15 febbraio 1952, n. 328). At the EU law level, see also Regulation (UE) 404/2011.

employed will correspond to the use of a particular fishing vessel, as categorized and matriculated according to Article 8 of the Decree 1639/1968.

19. The issuing of commercial fishing permits is regulated under Italian legislation primarily via the Decree 1639/1968, provided that independent fishermen or fishing enterprises, respectively, have been recorded in the official registry, named *Registro dei pescatori*.³³ Indeed, as established by the subsequent Legislative Decree 153/2004, those who wish to carry out commercial fishing activities ought to record their name in one of the registries of the *Capitanerie di porto*.³⁴ Following the official registration, fishermen and enterprises can file a request for the issuing of a fishing license. The request ought to be inclusive of personal information, accurate details on the categorization of the fishing vessel, mention of the type of fishing method one wishes to adopt, the category, marking and characteristics of the fishing gear to be employed, the details on the vessel dotation for fresh fish conservation, and armament table.³⁵ The Italian maritime authority will then assess the request in light of the documentation provided and decide whether to issue the license.³⁶ If approved, the fishing license will be valid for a specific maritime zone, as provided by the aforementioned Article 9 of the Decree 1639/1968.³⁷ Moreover, the license must be renovated upon request of the interested party.³⁸

20. According to Italian law, fishing licenses cease to be valid when one of the conditions listed in Article 74 of the Decree 1639/1968 at the moment of submission of the request, changes and is not communicated or the prerequisites and/or conditions are not present anymore.³⁹ Moreover, the system of withdrawing of fishing licenses has been regulated at the EU level, in order to grant uniformity and harmony amongst the Member States of the Union, in particular via Article 92 of the Council Regulation 1224/2009⁴⁰ and Article 125 (*et seq.*) of the Commission Implementing Regulation 404/2011.⁴¹ Accordingly, Italy activated the points system for serious infringements⁴² on 1 January 2012, aiming to

³³ See Arts. 32-73, DECRETO DEL PRESIDENTE DELLA REPUBBLICA 2 ottobre 1968, n. 1639.

³⁴ Official text: “Coloro che intendono esercitare la pesca marittima professionale devono conseguire l'iscrizione al pertinente registro dei pescatori marittimi istituito presso le Capitanerie di porto.” Art. 2(1), DECRETO LEGISLATIVO 26 maggio 2004, n. 153. See also Art. 3 on the registry of fishing enterprises.

³⁵ Art. 74, DECRETO DEL PRESIDENTE DELLA REPUBBLICA 2 ottobre 1968, n. 1639.

³⁶ See Arts. 75-76, DECRETO DEL PRESIDENTE DELLA REPUBBLICA 2 ottobre 1968, n. 1639.

³⁷ Art. 77, DECRETO DEL PRESIDENTE DELLA REPUBBLICA 2 ottobre 1968, n. 1639.

³⁸ See Art. 81, DECRETO DEL PRESIDENTE DELLA REPUBBLICA 2 ottobre 1968, n. 1639.

³⁹ Art. 80, DECRETO DEL PRESIDENTE DELLA REPUBBLICA 2 ottobre 1968, n. 1639.

⁴⁰ Art. 92(1) states: “Member States shall apply a point system for serious infringements as referred to in Art. 42(1)(a) of Regulation (EC) No 1005/2008 on the basis of which the holder of a fishing licence is assigned the appropriate number of points as a result of an infringement of the rules of the common fisheries policy.” Council Regulation 1224/2009.

⁴¹ Art. 125 effectively obliges Member States to set up and operationalise a point system for serious infringements. Commission Implementing Regulation n. 404/2011.

⁴² ‘Serious infringements’ are listed in Art. 90 of the Council Regulation 1224/2009 which complements Art. 42 of the Regulation (EC) No 1005/2008. One example of serious infringement is constituted by “the non-transmission of a landing declaration or a sales note when the landing of the catch has taken place in the port of a third country.” Art. 90(1)(a), Council Regulation 1224/2009.

counter activities of IUU fishing, in line with EU obligations.⁴³ In particular, the Italian Decree 4/2012 provides a refined definition of fishing activities as inclusive of ‘young fishing entrepreneur’ and created a points system attached to fishing licenses, distinguishing between grave breaches of maritime regulations to be criminally persecuted and administrative sanctions.⁴⁴ An example of behaviour subject to sanctions and subsequent assignment of points is the fishing of protected species or catch which does not respect the minimum length required for marine living resources.⁴⁵ Moreover, according to Article 16 of the Decree 4/2012, the sum of points may lead to the suspension of a fishing license which can eventually reach its definite withdrawal when 90 points have been gathered.⁴⁶ Importantly, the license is also fully revoked if any illegal fishing activity is carried out during the temporary suspension of a license.⁴⁷ When a fishing license is definitively revoked, it is also removed from all relevant lists at the national and international levels.⁴⁸

b. Fishing gear

21. Fishing gear⁴⁹ can be active – employed to actively catch fish – or passive – when gear is left in the water and passively waits for fish and other marine living resources to reach it. According to Italian legislation, fishing gear may consist of nets, hooks, and other tools and apparatus.⁵⁰ Moreover, Italy needs to follow the EU regulatory framework in terms of classification and marking of fishing gear. More specifically, Article 2 of the Council Regulation 1967/2006 establishes that fishing gear may consist of ‘towed gears’, ‘bottom-set net’, ‘surrounding nets’, ‘traps’, ‘longlines’, ‘hooks’ and provides definitions for each of the listed types of fishing gears.⁵¹

22. Regarding the use of nets, the underlying method to establish whether nets can be employed consists in measuring the depth and length of the meshes. As indicated by Italian law, the measuring of the net is carried out by considering the opening of the mesh itself, meaning the distance between the two

⁴³ See DECRETO LEGISLATIVO 9 gennaio 2012, n. 4 e la pubblicazione nella Gazzetta Ufficiale n. 213 del 12 settembre 2017, dei Decreti attuativi 2 marzo e 20 luglio 2017.

⁴⁴ See Arts. 7 and 10, DECRETO LEGISLATIVO 9 gennaio 2012, n. 4

⁴⁵ See Arts. 86-91, DECRETO DEL PRESIDENTE DELLA REPUBBLICA 2 ottobre 1968, n. 1639.

⁴⁶ In line with Art. 129, Commission Implementing Regulation n. 404/2011.

⁴⁷ In line with Art. 132, Commission Implementing Regulation n. 404/2011. See also Art. 47, Council Regulation n. 1224/2009, on the storage of fishing gear during the suspension.

⁴⁸ Art. 131, Commission Implementing Regulation n. 404/2011.

⁴⁹ Now referred to in Italian legislation only by ‘single gear’, according to DECRETO 26 gennaio 2012.

⁵⁰ Original text: “Ai fini della disciplina della pesca, gli attrezzi consentiti si distinguono in: reti, ami, altri strumenti ed apparecchi.” Art. 3, DECRETO DEL PRESIDENTE DELLA REPUBBLICA 2 ottobre 1968, n. 1639. See also Arts. 4-6, DECRETO DEL PRESIDENTE DELLA REPUBBLICA 2 ottobre 1968, n. 1639.

⁵¹ At Art. 2(1)-(3)-(4)-(5)-(6)-(7), Council Regulation (EC) No 1967/2006 of 21 December 2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea, amending Regulation (EEC) No 2847/93 and repealing Regulation (EC) No 1626/94. See also the following Regulation (CE) 1224/2009 and Commission Implementing Regulation (UE) 404/2011. Incorporated in Italian legislation with DECRETO LEGISLATIVO 9 gennaio 2012, n. 4, as required by LEGGE 4 giugno 2010, n. 96 and then amended by LEGGE 28 luglio 2016, n. 154, Art. 39.

opposite knots. The measuring ought to be done on the longest axis of the net, after its usage.⁵² Accordingly, gill nets are allowed when the mesh is not less than 20 mm and when accurately marked.⁵³ Purse seines can be used if the mesh is not less than 10 mm.⁵⁴ Trawl nets are also allowed but the mesh measurement cannot be less than 40 mm.⁵⁵ These measurements are mainly required to ensure that juvenile fish is not impacted by the use of nets, as we will delve into in greater depth in Section 5 on Inspection activities.

23. The width of fishing activities in the Mediterranean Sea requires careful consideration of the gear employed in the commercial sector. This also means to restrict and to limit the use of certain types of gear, as well as to adopt particular norms of behaviour. Italian law regulates the limitations of fishing gear primarily in Chapter II, Decree 1639/1968. This piece of legislation comprises several obligations for fishermen and the gear that they decide to use. First, fishermen ought to maintain an appropriate safety distance between fishing vessels, according to the usual custom or as regulated by regional and/or local norms.⁵⁶ Moreover, the Decree underlines that protected zones must be considered with the utmost attention and that fishing activities may be suspended in an area of concern for biological conservation, regardless of what kind of fishing gear is used.⁵⁷

24. Second, special fishing gear is allowed but only in limited circumstances.⁵⁸ Regular fishing gear is regulated depending on its classification and methods of employment, i.e. active or passive. Accordingly, gill nets cannot be used at a distance > 200 meters from the sea outlets, whether natural or artificial.⁵⁹ Purse seines which close mechanically cannot be used in maritime areas where the water is less than 50 meters deep within three n.m. from the coast.⁶⁰ Furthermore, the use of light gear for purse seines is forbidden in maritime areas where the water is less than 30 meters deep within three n.m. from the coast.⁶¹ Last, trawl nets are typically not allowed in maritime areas where the water is less deep than 50 meters within three n.m. from the coast, unless special circumstances occur, such as when the fishing activity is carried out with rowing boats.⁶² When other fishing gear is correctly marked in a particular maritime area, trawl nets can also be employed at a distance of minimum 300 meters from the marking.⁶³

⁵² Art. 100, DECRETO DEL PRESIDENTE DELLA REPUBBLICA 2 ottobre 1968, n. 1639. Eventually, the Council Regulation N. 129/2003 introduced new meters which ought to carry the mark ‘CE’, now required as part of the inspections on board of fishing vessels of Member States carried out by EU as well as national inspectors.

⁵³ Arts. 103-104, DECRETO DEL PRESIDENTE DELLA REPUBBLICA 2 ottobre 1968, n. 1639.

⁵⁴ Art. 106, DECRETO DEL PRESIDENTE DELLA REPUBBLICA 2 ottobre 1968, n. 1639.

⁵⁵ Arts. 109-110, DECRETO DEL PRESIDENTE DELLA REPUBBLICA 2 ottobre 1968, n. 1639.

⁵⁶ Original text: “I pescatori debbono tenersi a conveniente distanza gli uni dagli altri, in conformità del tipo di attrezzo impiegato, secondo le consuetudini locali salva la osservanza di diverse disposizioni di legge o regolamento.” Art. 96, DECRETO DEL PRESIDENTE DELLA REPUBBLICA 2 ottobre 1968, n. 1639.

⁵⁷ Art. 98, DECRETO DEL PRESIDENTE DELLA REPUBBLICA 2 ottobre 1968, n. 1639.

⁵⁸ See Arts. 99-101-102, DECRETO DEL PRESIDENTE DELLA REPUBBLICA 2 ottobre 1968, n. 1639.

⁵⁹ Art. 105, DECRETO DEL PRESIDENTE DELLA REPUBBLICA 2 ottobre 1968, n. 1639.

⁶⁰ Art. 107, DECRETO DEL PRESIDENTE DELLA REPUBBLICA 2 ottobre 1968, n. 1639.

⁶¹ Art. 108, DECRETO DEL PRESIDENTE DELLA REPUBBLICA 2 ottobre 1968, n. 1639.

⁶² Art. 111, DECRETO DEL PRESIDENTE DELLA REPUBBLICA 2 ottobre 1968, n. 1639.

⁶³ Art. 112, DECRETO DEL PRESIDENTE DELLA REPUBBLICA 2 ottobre 1968, n. 1639.

25. The EU’s Council Regulation 1967/2006 also complemented Italian legislation on the limitations of fishing gear, in light of concerns regarding the protection of the marine ecosystem and the fostering of sustainable fishing activities. For instance, the Regulation forbids the use of trawl nets with mesh measurements inferior to 40 mm.⁶⁴ Moreover, trawl nets are not allowed on Posidonia meadows and other types of seagrasses.⁶⁵ However, this piece of legislation has recently been amended by Regulation 2023/2842 of the European Parliament and of the Council on 22 November 2023, as we will come back to in the conclusions of this report.

E. Work onboard of fishing vessels

26. To operationalise commercial fishing activities, fishermen are expected to register on the official records and been issued a license, as provided by Article 32, Decree 1639/1968.⁶⁶ Once these conditions have been fulfilled, crewmembers may start working onboard of fishing vessels. As it is widely known, the work conditions onboard of fishing vessels are tough, by the very own nature of the maritime environment and the types of activities required.⁶⁷ There are several risks associated with commercial fishing activities, especially in the high seas which require more time spent onboard of fishing vessels, away from land. The hazards of working in the fishing industry include, but are not limited to, health concerns,⁶⁸ socio-economic insecurity, human rights violations,⁶⁹ and labour exploitation.⁷⁰ Moreover, these challenges are inevitably linked to sustainable development goals to enhance a blue economy approach to small-scale as well as larger fishing activities. Indeed, the intersectional and challenging work conditions on board of fishing vessels are more likely to occur in cases of IUU fishing. IUU fishing

⁶⁴ Art. 8, Council Regulation (EC) No 1967/2006.

⁶⁵ Art. 4, Council Regulation (EC) No 1967/2006.

⁶⁶ Original text: “Il registro nel quale ai sensi dell’art. 9 della legge sono iscritti coloro che esercitano la pesca professionale è tenuto in due parti: nella prima parte sono iscritti quanti esercitano la pesca a bordo di navi nella seconda parte sono iscritti quanti esercitano tale attività senza imbarco o negli impianti di pesca. Sono iscritti nella prima parte del registro quanti esercitano promiscuamente le due forme di attività.” Art. 32, DECRETO DEL PRESIDENTE DELLA REPUBBLICA 2 ottobre 1968, n. 1639.

⁶⁷ See, for instance, FAO, ‘Fishing Safety’, < <https://www.fao.org/fishing-safety/risk-management/occupational-hazards/en/#:~:text=Fishing%20requires%20working%20for%20long,cause%20accidents%2C%20injuries%20and%20fatalities.> >; ILO, ‘Decent Working Conditions, Safety and Social Protection’, < https://webapps.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_161209.pdf >.

⁶⁸ See F.F. Casson et al., ‘Work and chronic health effects among fishermen in Chioggia, Italy’, The Italian Journal of Occupational Medicine and Ergonomics (1998) 20(2), 68-74.

⁶⁹ See The Danish Institute of Human Rights, ‘Promoting Human Rights in Fisheries and Aquaculture’, < <https://www.humanrights.dk/promoting-human-rights-fisheries-aquaculture> >.

⁷⁰ ILO, ‘Forced Labour and Human Trafficking in Fisheries’, < https://webapps.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_216003.pdf >.

activities are, in turn, those which often disregard environmental conditions and respect the protection of living marine resources.⁷¹

27. In light of the intricate challenges presented so far, recent legislation has been approved at the international, EU and national levels to improve the conditions of crewmembers around the world. Within the Italian context, it is relevant to spotlight the recent Legislative Decree 39/2020⁷² which effectively incorporates in the national legal system the Council Directive 2017/159,⁷³ which in turn enacted the ILO Work in Fishing Convention (2007) (henceforth, ILO Convention).⁷⁴ In this sense, the Legislative Decree 39/2020 represents a good example of national legislation incorporating EU law, in light of the international legal framework. More specifically, the Legislative Decree 39/2020 is simply structured in two provisions: Article 1 establishes the competent authorities in relation to the management of working conditions on board of fishing vessels; Article 2 specifies that these obligations for several Italian Ministries should not lead to additional costs and the bearing or further financial administrative tasks.

28. In terms of substance, as aforementioned, the important function of the Legislative Decree 39/2020 is to incorporate the Council Directive 2017/159. The primary purpose of this Directive is to implement and complement and Agreement which was concluded between the General Confederation of Agricultural Cooperatives in the European Union (Cogeca), the European Transport Workers' Federation (ETF), and the Association of National Organisations of Fishing Enterprises in the European Union (Europêche), “wishing to undertake a first step towards a codification of the Union's social acquis in the sea fishing sector and to help create a level playing field for the sea fishing sector in the Union”,⁷⁵ to give effect to the ILO Work in Fishing Convention (2007).⁷⁶ Importantly, the Directive establishes that the main aim is “to improve living and working conditions and to protect health and safety of workers in the sea fishing sector.”⁷⁷ Moreover, the commitment to respect, protect and fulfil fundamental rights is explicitly stated in the Directive: ‘This Directive respects the fundamental rights and principles

⁷¹ On these synergies and beyond, see A.M. Song and A. Soliman, ‘Situating human rights in the context of fishing rights – Contributions and Contradictions’, *Marine Policy* 103 (2019) 19–26.

⁷² In the original text, DECRETO LEGISLATIVO 11 maggio 2020, n. 39.

⁷³ Council Directive (EU) 2017/159 of 19 December 2016. Included in the Italian system through the LEGGE 4 ottobre 2019, n. 117; see also LEGGE 24 dicembre 2012, n. 234.

⁷⁴ ILO, C188 - Work in Fishing Convention, 2007 (No. 188). Within the ILO framework, see also the Forced Labour Convention, 1930 (No. 29), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Equal Remuneration Convention, 1951 (No. 100), the Abolition of Forced Labour Convention, 1957 (No. 105), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182).

⁷⁵ Preamble, (4), Council Directive (EU) 2017/159 of 19 December 2016.

⁷⁶ Art. 1, Council Directive (EU) 2017/159 of 19 December 2016.

⁷⁷ Preamble, (20), Council Directive (EU) 2017/159 of 19 December 2016.

recognised in the Charter of Fundamental Rights of the European Union, in particular Articles 20, 31 and 32 thereof.”⁷⁸

29. It is worth noting that, with this Directive, the Council acknowledges that the requirements introduced with this piece of legislation only provides the minimum standards required to Member States; indeed, “Member States may maintain or introduce provisions more favourable to workers in the sea fishing sector than those laid down in this Directive.”⁷⁹ Furthermore, the Directive establishes that Member States will be free to determine what penalties are applicable in case of infringements of the provisions of the Directive itself, although it is explicitly stated that the penalties “shall be effective, proportionate and dissuasive.”⁸⁰ Article 6 also specifies that the Directive “shall enter into force on the day of entry into force of the International Labour Organization Work in Fishing Convention, 2007” – i.e., 16 November 2017.⁸¹

30. As follows, it is relevant to introduce the content of the ILO Work in Fishing Convention. First, the objective of the ILO Convention is “to ensure that fishers have decent conditions of work on board fishing vessels with regard to minimum requirements for work on board; conditions of service; accommodation and food; occupational safety and health protection; medical care and social security.”⁸² Moreover, on the minimum standards required to work in the fishing industry, the ILO Convention establishes that fishers cannot be below the age of 16 years old to work in the fishing industry⁸³ and shall undertake a medical examination to be awarded a “certificate attesting to fitness to perform their duties.”⁸⁴ Member States are also required to ensure that fishers are given enough time to rest for purposes of safety and health⁸⁵ and to adopt laws, regulations and other measures providing that fishers’ work agreements are comprehensible and provide decent work conditions, as required by the ILO Convention.⁸⁶ For the time being, Italy has not adopted such laws, at least at the national level. Indeed, Italy has not ratified the ILO Convention, but is now bound to transpose the Council Directive 2017/159 leading to a particular legal

⁷⁸ Preamble, (19), Council Directive (EU) 2017/159 of 19 December 2016. In detail, Art. 20 of the Charter of Fundamental Rights of the European Union (2000) (EU Charter) states that ‘Everyone is equal before the law.’ Art. 31 of the EU Charter: ‘1. Every worker has the right to working conditions which respect his or her health, safety and dignity. 2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.’ Last, Art. 32 of the EU Charter: ‘The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations. Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.’ *Cfr.* Also the Universal Declaration of Human Rights (1948), the European Convention on Human Rights (1950), the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966).

⁷⁹ Art. 2(1), Council Directive (EU) 2017/159 of 19 December 2016.

⁸⁰ Art. 3, Council Directive (EU) 2017/159 of 19 December 2016.

⁸¹ Art. 6, Council Directive (EU) 2017/159 of 19 December 2016.

⁸² Preamble, ILO Work in Fishing Convention (2007).

⁸³ Art. 9(1), ILO Work in Fishing Convention (2007).

⁸⁴ Art. 10(1), ILO Work in Fishing Convention (2007).

⁸⁵ Art. 13, ILO Work in Fishing Convention (2007).

⁸⁶ Arts. 16-24, ILO Work in Fishing Convention (2007).

conundrum in terms of integration of international legal obligations into a domestic legal system through EU law.

31. Part V and Part VI of the ILO Convention deal with conditions of work on board of fishing vessels and social security measures, respectively. Part V primarily requires State Parties to “adopt laws, regulations or other measures for fishing vessels that fly its flag with respect to accommodation, food and potable water on board.”⁸⁷ For instance, States Parties ought to ensure that the “size and quality”⁸⁸ of fishing vessels are adequate to the needs of fishers working onboard. Furthermore, enough food and potable water shall be available to fishers at no cost for them.⁸⁹

32. Part VI broadly governs medical care regulation on board and aspects connected to social security. Indeed, States Parties shall ensure that each vessel is appropriately equipped with the necessary medical supplies and that they “have at least one fisher on board who is qualified or trained in first aid and other forms of medical care and who has the necessary knowledge to use the medical equipment.”⁹⁰ Moreover, “occupational accidents, occupational diseases and work-related risks on board fishing vessels”⁹¹ should be prevented as much as possible by States Parties depending on the type of fishing gear employed in each case. In terms of social security, States Parties ought to create conditions for fishers “to benefit from social security protection under conditions no less favorable than those applicable to other workers”⁹² also through bilateral or multilateral agreements if necessary.⁹³ Last, fishers must be afforded adequate protection in the case of work-related sickness, injury or death.⁹⁴

33. In sum, the ILO Convention, integrated into Italian legislation through EU law, represents a relatively comprehensive legal document which creates a baseline to ensure work conditions in the fishing industry are humanly appropriate and inclusive of the socio-economic dimension. This is true especially if the provisions of the ILO Convention are read in conjunction with the relevant FAO Voluntary Guidelines.⁹⁵ It remains however doubtful to what extent the Italian legal system at the national level has built on these provisions which, are indicated by the Convention itself, require further action and law-making processes to be concluded at the local level.

⁸⁷ Art. 25, ILO Work in Fishing Convention (2007).

⁸⁸ Art. 26, ILO Work in Fishing Convention (2007).

⁸⁹ However, Art. 27(c) establishes that “in accordance with national laws and regulations, the cost can be recovered as an operational cost if the collective agreement governing a share system or a fisher's work agreement so provides.” ILO Work in Fishing Convention (2007).

⁹⁰ Art. 29(b), ILO Work in Fishing Convention (2007).

⁹¹ Art. 31(a), ILO Work in Fishing Convention (2007).

⁹² Art. 34, ILO Work in Fishing Convention (2007).

⁹³ Arts. 36-37, ILO Work in Fishing Convention (2007).

⁹⁴ Art. 38, ILO Work in Fishing Convention (2007).

⁹⁵ Including, for instance, Food and Agriculture Organization, “Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries”, FAO (2015); Food and Agriculture Organization, “Voluntary Guidelines on Transshipment”, FAO Committee on Fisheries (2022).

F. Inspection activities

34. Inspection activities of vessels carrying out commercial fishing are instrumental to counter IUU fishing and to contribute to mid-term and long-term environmental protection goals and socio-economic sustainability in the maritime space. These considerations are important also in the case of Italy, whose economy strongly relies on fishing activities and requires additional efforts due to the geographical configuration of the country itself, i.e. due to the extensive coastlines that Italy has. Given the unquestionable importance of inspection operations, these activities do not amount to an easy quest in terms of implementation, especially regarding the difficulty in merging needs of such different nature – primarily, the protection of the marine environment and its living and non-living resources *vis-à-vis* economic goals. This is indeed one of the challenges of implementing a functioning blue economy.

35. Taking stock of these difficulties, Italy has been implementing inspection activities through different means. At the national level, inspections were originally regulated by the Decree 1639/1968. This piece of legislation established, for instance, that at the national level the control activities of fishing vessels and subsequent possible inspections are carried out primarily by the personnel of the *Ministero della Marina Mercantile*.⁹⁶ However, with the emergence of the EU’s policymaking activities, things eventually changed. We look at these policies differentiating between the specificities of Port State Controls (PSCs) and the legislation seeking to counter IUU fishing activities more generally.

36. PSCs are regulated by numerous international norms and EU legal instruments. Though it goes beyond the scope of this report to cover all of them in depth, we offer an overview of the main provisions which have been transposed into Italian law. First, Article 11 UNCLOS gives a definition of ‘ports’ and states that “the outermost permanent harbour works which form an integral part of the harbour system are regarded as forming part of the coast.”⁹⁷ Moreover, Article 218(1) UNCLOS also establishes that when a vessel is voluntarily in the port of another State that State will be able to carry out inspections and, if warranted, may institute proceedings.⁹⁸ At the EU level, port state controls have been regulated primarily by the Directive 2009/16/EC, whose main aim is to ensure that all ships comply with maritime safety and environmental rules.⁹⁹

⁹⁶ Arts. 154-156, DECRETO DEL PRESIDENTE DELLA REPUBBLICA 2 ottobre 1968, n. 1639.

⁹⁷ Art. 11, UNCLOS.

⁹⁸ The full text of the provision reads as follows: “When a vessel is voluntarily within a port or at an off-shore terminal of a State, that State may undertake investigations and, where the evidence so warrants, institute proceedings in respect of any discharge from that vessel outside the internal waters, territorial sea or exclusive economic zone of that State in violation of applicable international rules and standards established through the competent international organization or general diplomatic conference.” Art. 218(1), UNCLOS. See also IMO, Procedures of Port State Control, 2021 (resolution A.1155(32)).

⁹⁹ Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control. See also the complementary Paris Memorandum of Understanding on Port State Controls. < <https://parismou.org> >.

37. Regarding the systems of inspection of fishing vessels, they can be carried out through physical inspections as well as via modern digital tools which enhance the efficiency and overall performance of control activities. These activities are regulated by several international treaties including the PSMA, which aims to counter IUU fishing activities,¹⁰⁰ and the UNFSA, whose objective “is to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through effective implementation of the relevant provisions of the Convention.”¹⁰¹

38. At the EU level, Regulation 1224/2009 broadly governs inspection activities within the EU and sets out inspection systems for different types of fishing vessels, including those who fly the flag of a non-EU Member States. Thus, most vessels measuring between 12 and 15 meters in length¹⁰² are required to include a satellite-controlled system which comprises the use of a Blue Box in order to track the movements of the fishing vessel at any time. The skipper is the actor responsible for the correct functioning of the Blue Box and the National Control Centre for Fishing Activities for each Member State is the actor that will receive the signals from the vessels.¹⁰³ Moreover, vessels measuring over 15 meters in length ought to be equipped with an Automatic Identification System, which gathers data of fishing activities to be distributed to the national competent authorities for control purposes as well as EU control centres.¹⁰⁴

39. Taking stock of the above, we now consider the legal framework targeting IUU fishing activities. Illegal fishing, in particular, can take different forms including the use of nets outside the legally allowed mesh measurements, fishing protected species and the employment of dangerous fishing gear including under-water explosives. Within Italy’s territorial waters, these activities are prohibited primarily under Articles 39 and 40 of the Law 154/2016.¹⁰⁵ According to this law (and in line with international legal obligations) it is also prohibited for an Italian fishing vessel to enter the territorial waters of another State to conduct commercial fishing activities. Likewise, it is prohibited for a vessel that does not fly the Italian flag to do the same in Italian territorial waters. Moreover, the Italian legal system differentiates between civil and criminal wrongful conduct to the end of protecting marine living resources whilst not

¹⁰⁰ On inspections, see Arts. 12-19, PSMA. Integrated in EU law with the Council Decision 2011/443/EU of 20 June 2011 on the approval, on behalf of the European Union, of the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.

¹⁰¹ Art. 2, UNFSA. Ratified by the EU with the Council Decision 98/414/EC of 8 June 1998 on the ratification by the European Community of the Agreement for the implementing of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling stocks and highly migratory fish stock.

¹⁰² Art. 9(5) determines that States may not require such use of control measures for vessels which measure less than 15 meters, flying the State’s own flag and which only navigate the territorial waters of said State for a period of time of no more than 24 hours. Regulation (CE) No 1224/2009.

¹⁰³ See Art. 2, DECRETO 1 luglio 2006 - Trasferimento agli armatori degli oneri blue box.

¹⁰⁴ See Annex II, Part I, 3, Directive 2002/59/CE. In line with Ch. V, Reg. 19, Sect. 2.4.5, International Convention for the Safety of Life At Sea, 1184 UNTS 3, 1 November 1974.

¹⁰⁵ LEGGE 28 luglio 2016, n. 154.

hampering commercial activities.¹⁰⁶ For example, one of the main criteria employed by national authorities as well as EU policymakers to enhance the conservation of marine living resources is the measuring of the catch both in terms of juvenile fish caught and volume of the catch of the day.¹⁰⁷

40. To conclude, the system of inspection activities aimed at curbing practices involving IUU fishing and enhance sustainable commercial fishing has evolved over time. Indeed, the Italian legislative framework has shifted along with the development of EU policymaking processes, as evidenced by the recent introduction of the new common policy on fisheries. Controlling fishing activities is a complex task, involving the delicate act of balancing distinctive and, at points, conflicting needs – primarily, commercial objectives and targets of living marine resources conservation. Moreover, the advancement of technological and digital tools (although effective from the point of view of inspection activities of fishing vessels), is also raising concerns over specific risks and challenges which question the protection of fishermen working onboard and the provision of adequate work conditions.

G. Conclusion

41. The above analysis illustrates how Italy has adopted legislation to comply with its international obligations concerning fishing. This legislation is essentially based on Decree 1639/1968, which has been updated and completed to reflect developments at the international level, as well as the increasing normative production at the level of the European Union, and, more recently, Decree 4/2012. This legislation relates to fishing gear, methods and licences, work conditions on board fishing vessels, and administrative and enforcement measures.

42. From a legal point of view, the normative framework is developed at three separate yet interrelated levels: national legislation, EU legislation, and international instruments and norms. The hierarchical relationship between these separate sources, which in principle should be clear, is not always straightforward. As a result, the conservation and management of fisheries resources is a heavily regulated sector and, at the same time, still presents some gaps and inconsistencies.

¹⁰⁶ The different types of criminal wrongful conduct are indicated in Art. 7, Ch. II, para. 1, DECRETO LEGISLATIVO 9 gennaio 2012, n. 4. Instead, civil wrongful conduct and sanctions are listed under Arts. 10-11, DECRETO LEGISLATIVO 9 gennaio 2012, n. 4.

¹⁰⁷ See Art. 10, para. 2, DECRETO LEGISLATIVO 9 gennaio 2012, n. 4. See also, Council Regulation (CE) 1967/2006, Regulation (CE) n. 2847/1993, replacing Regulation (CE) n. 1626/1994, Regulation (CE) 1380/2013. See also, The Council of Europe's Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention) (1979), The Convention on Migratory Species (CMS) (Bonn Convention) (1979), The Convention on International Trade in Endangered Species of Wild Fauna and Flora (Washington Convention) (1973), the Convention for the Protection of the Mediterranean Sea Against Pollution (Barcelona Convention) adopted on 16 February 1976 and entered into force in 1978, and additional protocols.

43. Among others, the transposition of EU law and international law into the Italian domestic system is not always automatic and sometimes raises political issues, as in the case of the future adoption of Italian legislation to comply with Regulation 2023/2842 and with the ILO Convention, which has been adopted by the EU but has not been ratified by Italy. Furthermore, new technologies may pose issues, in particular concerning their compatibility with other interests, as the pending case in front of the CJEU concerning privacy of fishermen demonstrates. Finally, the fact that Italy, so far, has not created an exclusive economic zone, but exercises jurisdiction only within the 12 n.m. territorial sea, restricts significantly the scope of conservation measures.



H. Table of stakeholders

Name	Level	Website
FAO / GCFM	United Nations	https://www.fao.org/gfcm/en/
International Maritime Organization	United Nations	https://www.imo.org
Agenzia europea di controllo della pesca (EFCA)	European Union	https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/search-all-eu-institutions-and-bodies/european-fisheries-control-agency-efca_it
EMSA	European Union	https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/search-all-eu-institutions-and-bodies/european-maritime-safety-agency-emsa_it
Directorate-General for Maritime Affairs and Fisheries (DG MARE)	European Union	https://commission.europa.eu/about-european-commission/departments-and-executive-agencies/maritime-affairs-and-fisheries_en
Distretto Pesca Alto Adriatico, Veneto	National / Italian	https://www.venetoagricoltura.org/distretto-alto-adriatico/
Distretto Produttivo della Pesca – COSVAP	National / Italian	https://www.distrettopesca.com
Osservatorio Pesca	National / Italian	https://osservatoriopesca.it

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- Convention for the Protection of the Mediterranean Sea Against Pollution (Barcelona Convention) (1976).
- Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention) (1979).
- Convention on Migratory Species (CMS) (Bonn Convention) (1979).
- United Nations Convention on the Law of the Sea (1982).
- United Nations Fish Stock Agreement (1995).

European Union law

- Council Decision 98/414/EC of 8 June 1998 on the ratification by the European Community of the Agreement for the implementing of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling stocks and highly migratory fish stock.
- Charter of Fundamental Rights of the European Union (2000).
- Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC.

- Council Regulation (EC) No 1967/2006 of 21 December 2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea, amending Regulation (EEC) No 2847/93 and repealing Regulation (EC) No 1626/94.
- Treaty on European Union (2007).
- Treaty on the Functioning of the European Union (2007).
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- Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control.
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