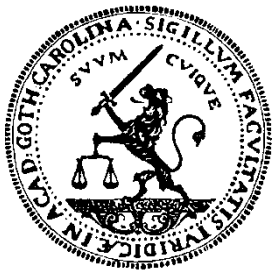

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Are Criminal Sanctions an Appropriate Punishment for Illegal Unregulated and Unreported Fishing in EU?

- Sweden as a case study

Master thesis
30 credits

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Sammanfattning

Bakgrund
En stor utmaning idag ligger i att skydda det marina ekosystemet från en total kollaps. Överfiske, olagligt, orapporterat och oreglerat fiske, klimatförändringen i havet, korallblekning, havsförsurningar och föroreningar, exotiska och främmande arter och sist men inte minst alla de kumulativa effekter, är bara några av de faktorer som degraderar vår marina miljö. I Europeiska unionen (EU), förlorar idag många av fiskeflottorna sina pengar eller göra enbart minimala vinster.

Olagligt orapporterat och oreglerat fiske (IUU) är enligt kommissionären för fiske, Joe Borg, ett av de allvarligaste hoten mot en hållbar fiskeriförvaltning. IUU-fiske har för närvarande en status som den näst största producenten av fiskeriprodukter i världen. Det beräknas stå för nära 20% av alla de marina fångsterna i världen. EU kämpar med att vidta lämpliga åtgärder och nyligen antogs en ny gemensam fiskeripolicy (GFP).

Kontroll och tillsyn är några av de svagaste delarna i den nuvarande gemensamma fiskeripolitiken. En ny förordning (EG nr 1005/2008) trädde i kraft den 1 januari 2010, med syftet att uppnå en mer hållbar fiskeförvaltning. Regleringen fokuserar mycket på att harmonisera administrativa påföljder, men överlåter till medlemsstaterna att välja sina egna straffrättsliga påföljder. Eftersom det straffrättsliga systemet faller utanför EU: s harmoniseringspolitik när det gäller denna reglering, kan detta leda till en försvagad användning av sanktioner inom EU. Det är fortfarande osäkert om utvecklingen av en harmoniserad straffrätt skulle vara att föredra som ett komplement till de administrativa påföljderna. Alternativet är också att gå mot ett helstyrt administrativt sanktionssystem.

Forskningsfokus
Denna studie undersöker effekten av straffrättsliga påföljder för att bekämpa olagligt, orapporterat och oreglerat fiske ur en juridiskt synvinkel. Den fokuserar på problemet *huruvida vi bör behålla straffrättsliga sanktioner som ett val i den nuvarande harmoniseringen av sanktioner för att bekämpa IUU-fiske, eller inte*. För att besvara ovan problemformulering, har två forskningsfrågor och fem delmål formulerades:

Fråga 1: Varför går vi mot ett administrativt sanktionssystem i stället för en harmonisering av straffrättsliga påföljder när det gäller IUU-fiske?

Fråga 2: Vilka är bristerna i det straffrättsliga systemet och hur kan det effektiviseras?

Delmål:
1. Ge en översikt över IUU-fiske och de rättsliga åtgärderna i EU.
2. Utveckla innebörden av effektivitetskriteriet och ge en översikt av de befintliga påföljderna i EU.
3. Identifiera de aktuella trenderna inom EU när det gäller att använda sig av straffrätten som sanktion.
4. Utforska fördelarna och nackdelarna med att använda straffrätten som ett verktyg för att stärka och bidra till en hållbar fiskeförvaltning, i stället för de administrativa påföljderna. Analysera även skillnaderna mellan de båda.
5. Identifiera alternativa sätt att utveckla de straffrättsliga påföljderna på, i syfte att förbättra dess effektivitet.

Resultat

På frågan om vi bör behålla straffrättsliga sanktioner som alternativ till administrativa sanktioner för att förebygga olagligt, orapporterat och oreglerat fiske, är svaret ja. Ett viktigt steg är att behålla ordet "alternativ" i IUU-förordningen. Som utrett i denna studie, har både administrativa och straffrättsliga system sina styrkor men även brister. Dessutom har vissa nationella system lättare för att implementera det ena systemet framför det andra, därav behovet av att behålla dem båda. Harmoniseringen av sanktioner inom EU är ett viktigt arbete för att säkerställa liknande fiskemetoder, upprätthålla målen med det nya gemensamma fiskeripolitiken, samt för att skydda känsliga marina ekosystem från total degradering. Denna studie visar att det är viktigt att fortsätta harmonisera, men pekar också på att EU bör gå ännu längre vad gäller användandet av de straffrättsliga påföljderna. En möjlig lösning är att inrätta en omfattande ”verktygslåda” kopplad till vissa brott, blandat av alternativ med både straffrättsliga och administrativa påföljder samt kombinationer av de båda.

Förslag på ytterligare forskning

Åtgärder som krävs	Behov av ytterligare forskning
Reglera en Flexibel Harmonisering – Skapa en omfattande ’verktygslåda’ av sanktioner att välja mellan, knutna till specifika överträdelser. Detta bör vara en blandning av både administrativa och straffrättsliga påföljder.	Hur skall denna ’verktygslåda’ se ut? Vilka påföljder skall gälla för vilka överträdelser? Hur säkerställer man att de flexibla sanktionerna är livärdigt betungande?
Alternativa Straffrättsliga Sanktioner – Utveckla det straffrättsliga påföljdssystemet och ge fler alternativ än fängelse och böter.	Vilka alternativ fungerar på “common-pool” resurser? Hur kan ett rehabilitionistiskt system bidra och se ut?
Gemensam Implementeringsmodell – Harmonisera och använd redan existerande initiativ och organisationers ledande arbete för att få till en slagkraftigare implementering.	Kan vi använda oss av en liknande model som i Global Reporting Initiative (G3 riktlinjer), när vi harmoniserar implementeringsåtgärderna?

Executive Summary

Background
A major challenge of today is to protect the marine ecosystem from a total collapse. Overfishing, illegal, unregulated and unreported fishing, climate change in the sea, coral bleaching, ocean acidification, marine pollution impacts of coastal development, exotic and invasive species and last but not least all the cumulative impacts, are just some of the factors degrading our marine environment. In the European Union (EU), many of the fishing fleets are currently losing money or only making minimal profits.

Illegal unregulated and unreported (IUU) fishing is according to the Fisheries Commissioner, Joe Borg, one of the most serious threats to a sustainable fishery management. IUU fishing is currently having the status of the second largest producer of fishery products in the world whereas it is estimated to account for nearby 20% of all marine catches in the world. EU is therefore struggling to take the appropriate measures and recently a new Common Fishery Policy (CFP) was adopted.

Control and Enforcement are one of the weakest elements in the current CFP. A new regulation (EC No 1005/2008) entered into force on 1 January 2010, with the purpose to achieve a more Sustainable Fishery Management. The regulation is focusing a lot on harmonizing administrative sanctions; leaving it up to the members states to choose their own criminal sanctions, if they would like to treat the infringements with that system instead. Since the criminal system falls outside EU's harmonization policy, this may lead to a weakened use of sanctions in EU. It still remains open whether the development of a harmonized criminal law would be to prefer as a complement to the administrative sanctions, or if we should move towards an entire administrative system.

Research Focus
This Research explores the effectiveness of Criminal Sanctions for combating Illegal, Unregulated and Unreported Fisheries from a policy perspective. It focuses on the problem identification of *whether or not we should keep criminal sanctions as a choice in the current harmonization of sanctions for combating IUU fishing.* In order to answer the research problem previously outlined, two research questions and five objectives were formulated:

Question 1: Why are we heading towards an administrative system in IUU fishing rather than harmonizing criminal sanctions?

Question 2: What are the shortcomings in the criminal system and how could it become more effective?

Objectives:

1. Provide an overview of IUU fishing and legal measures taken in the EU.
2. Present an overview of the effectiveness criteria and the existing sanctioning system in EU.
3. Identify current trends in EU when it comes to using Criminal Law as a sanction.
4. Explore the advantages and drawbacks for using criminal law as a tool to reinforce Sustainable Fishery Management, instead of administrative sanctions and the differences between the two systems in terms of penalties.
5. Identify alternative ways of developing criminal sanctions in order to improve the effectiveness.

Main Findings

To the question whether or not we should keep criminal sanctions as alternative to administrative sanctions in the prevention of Illegal Unregulated and Unreported fishing, the answer is yes. The crucial thing is to keep the word "alternative" in the IUU Regulation. As proven in this study, both the administrative and criminal system has its' strengths but also shortcomings. Moreover, some national systems comply better with one of the system than the other, hence the crucial need to keep both of them. The harmonization process in EU is an important work in order to ensure similar fishing practices, uphold the goals of the New Common Fishery Policy, as well as to protect the sensitive marine ecosystem from total degradation. This study shows that it is important to continue the harmonization but also go longer with the criminal sanctions. A good solution could be the creation of a comprehensive toolkit connected to specific offences, mixed of alternatives with both criminal and administrative sanctions as well as combinations of the two.

Suggestions on Further Research

Measures to take	Further Research needed
Regulate Flexible Harmonization – Create a comprehensive toolkit of sanctions to choose between, connected to specific infringements. This should be a mixture of both administrative and criminal sanctions.	How could this toolkit be designed? Which sanctions shall be connected to which infringements? How do you ensure the alternatives to be equally burdensome? Pros&cons with flexible harmonization
Alternative Criminal Sanctions – Elaborate the criminal sanctioning system and develop more alternatives to prison and monetary penalties.	Which alternatives are applicable to regualate common pool resources? How can a rehabilitionistic approach contribute and look like?
The Creation of a Comprehensive Implementation Plan – Harmonize already existing good initiatives and organisations working towards better implementation of IUU fishing.	Could we use the similar model as they do in Global Reporting Initiative (G3 guidelines) for sustainable reporting when harmonising the implementation measures?

Acknowledgments

After spending around four months inside of possibly the warmest summer in Swedish history, writing a Master Thesis (focusing on implementation of the Marine Strategy Framework Directive at a local level) for the International Institute for Industrial Environmental Economics, IIIEE, I found myself starting a second master thesis period, only one week later...

I can ensure you all that my eager will to write theses have declined for at least one semester... However, the state of the marine ecosystem is something that is close to my heart and these two theses have been a great journey for me filled with new experiences, many new friends, places, better understanding of the current situation, as well as new questionmarks.

A special thank you goes to my dear family, my closest friends and to all the people that helped me during this extremely long thesis period, you know who you are!

Abbreviations

CFCA	Community Fisheries Control Agency
CFP	Common Fishery Policy
CPR	Common Pool Resource
EC	European Community
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
EEZ	Exclusive Economic Zone
EPA	Environmental Protection Agency
EU	European Union
FAO	The UN Food and Agriculture Organisation
GRI	Global Reporting Initiative
G3	Guidelines of GRI
ICES	International Council for the Exploration of the Sea
IIIEE	International Institute for Industrial Environmental Economics
IPOA-IUU	International Plan of Action to Prevent, Deter and Eliminate IUU Fishing
IUU	Illegal Unreported and Unregulated
MCS	Monitoring, Control and Surveillance
NGOs	Non-Governmental Organisations
PECL	Council of Europe Convention on the Protection of the Environment through Criminal Law
RFMOs	Regional Fisheries Management Organisations
SADC	Southern Africa Development Community
TEU	Treaty of the European Union
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
WWF	World Wildlife Fund

1 Introduction

1.1 Research Background

A major challenge of today is to protect the biodiversity in the sea. Overfishing (such as illegal fishing, the settings of too high fishery quotas, development of effective technique, poor fishery practices etc) is depleting our stocks and the world's fishery fleet is losing huge amount of money due to the over capacity of vessels. The Food and Agriculture Organization (FAO), estimates that over 70% of the world's fish species are either fully exploited or depleted, which is a devastating number not only to the environment and protection of biodiversity but also to the 200 million people that depends on fish for food and livelihood.[1]

In the European Union (EU) many of the fishing fleets are currently losing money or only making minimal profits. There are about three times more vessels in the sea than are needed to catch the available fish and around two thirds of the fish stocks are in decline. The World Wildlife Fund (WWF) is insisting on better enforcement rules to tackle illegal fishing but also to set sustainable quotas that are higher than the ones today.[2]

Control and Enforcement are one of the weakest elements in the current CFP. A new regulation (EC No 1005/2008) entered into force on 1 January 2010, with the purpose to achieve a more Sustainable Fishery Management.[3] The regulation is focusing a lot on harmonizing administrative sanctions; leaving it up to the members states to choose their own criminal sanctions, if they would like to treat the infringements with that system instead. Since the criminal system falls outside EU's harmonization policy, this may lead to a weakened use of sanctions in EU. It still remains open whether the development of a harmonized criminal law would be to prefer as a complement to the administrative sanctions, or if we should move towards an entire administrative system.

Sweden is one of the Members States (MS) that still uses criminal sanctions when combating illegal fishery. Recently they got critic from the European Commission for not reaching the objectives of the CFP because of an insufficient and non effective sanction system. This thesis will use Sweden as a case study and analyze the criteria of effective sanctions in fighting IUU fishing and in particular focusing on the appropriateness of using criminal sanctions. This thesis will also try to come up with some conclusions and suggestions for the continuing development.

[1] UN (2004).
[2] WWF (2009).
[3] Council Regulation (EC) No 1224/2009.

1.2 Problem Definition

The new Control Regulation is stating that administrative sanctions are to prefer when it comes to treatment of serious infringements in IUU fishing offences. This may influence the development of criminal law in a negative manner, even if it is still allowed to use criminal law.[4] Does this mean that criminal sanctions are not regarded as fulfilling the effectiveness criteria, as outlined by the EU?

The possibilities of harmonization of Criminal Law in EU took major steps by the entry into force of the Lisbon treaty in 2009.[5] Nevertheless, IUU fishing tends to move more towards an administrative system. This leads to an important problem identification: When harmonizing sanctions for combating IUU fishing in EU, should we move towards an administrative system rather than a criminal? In other words; should we keep criminal sanctions as a choice in the current harmonization of sanctions for combating IUU fishing?

Should we keep criminal sanctions as a choice in the current harmonization of sanctions for combating IUU fishing?

1.3 Research Questions and Objectives

In order to answer the research problem previously outlined, two research questions were formulated:

Question 1: Why are we heading towards an administrative system in IUU fishing rather than harmonizing with the use of criminal sanctions?

Question 2: What are the shortcomings in the criminal system and how could it become more effective?

In order to facilitate the answering of the chosen Research Questions, the following five objectives were constructed:

1. Provide an overview of IUU fishing and legal measures taken in the EU.
2. Present an overview of the effectiveness criteria and the existing sanctioning system in EU.
3. Identify current trends in EU when it comes to using Criminal and Administrative sanctions.

[4] Council Regulation (EC) No 1224/2009**,** Ingress (38).
[5] Mitsilegas (2009), p 9-13.

4. Explore the advantages and drawbacks for using criminal law in comparison with administrative sanctions as a tool to reinforce Sustainable Fishery Management.
5. Identify alternative ways of developing criminal sanctions in order to improve the effectiveness.

1.4 Research Methodology

1.4.1 Project Initiation and Research Approach

In order to answer my research questions I choose to conduct this research by the use of a case study – Sweden. The choice thereof is mainly due to the critic that Sweden recently received from the European Commission regarding the failures of effectiveness in their sanctioning system. Sweden is one of the countries in the European Union that still uses a system with both criminal and administrative sanctions in combating IUU fishing.

1.4.2 Data Collection

Most of the material have been collected according to a *traditional legal dogmatic methodology*, which is a systematic approach were various sources of law have been reviewed and interpreted.[6] The sources of law used from the European Union are reports, documents, archival records, regulations, and court cases. The Swedish material derives mainly from governmental institutions and constitutes of reports, documents, archival records, legislation, and court cases. In addition, there has been a comprehensive review of doctrine in the matter of sanctions, IUU fishing and Environmental Law in the European Union.

Before this study, I conducted a *literature review* as a form of pre-study (in March-May, 2010) which here serves as a base for deciding the accurate data, getting to know my subject as well as being able to better delimit my thesis. As a part of the literature review, in order to find out more relevant information, discussing challenges and finding out reigning opinions in Sweden when it comes to criminal and administrative sanctions, I conducted semi-structured interviews (by telephone and e-mail). The people interviewed were Petter Asp (Professor in Criminal Law at Stockholm University), Jacob Hagberg (Swedish Environmental Protection Agency, in the field of Marine Questions), Johanna Hagman (Jurist at the Control Section, at the Swedish Board of Fisheries), and Staffan Westerlund (Head of the Institute for Environmental Law, IMIR, and Professor in Environmental Law at Uppsala University). See supplement A for the semi-structured questionnaire. Only two interviews are used in this thesis due to the fact that the majority of them only served as a form of pre-study (as above mentioned). The selected interviewees are Jacob Hagberg and Staffan Westerlund.

[6] Peczenik (2003).

In order to not forget the most important field and perspective of this study; the arena with the fishermen, the perpetrators of the laws, I conducted some *field work* in Sigri, Lesvos, Greece (one month). The field work in Greece was conducted this summer for my first master thesis for the International Industrial Institute for Environmental Economics, IIIEE (*Implementing a Good Environmental Status in the Mediterranean Sea by 2020? Through the eyes of a small scale fishing village – Sigri as a case study (2010)*). Even if this research doesn't confront with the Swedish problems and the choices of appropriate sanctions, there are many similarities and I got to know and understand a little more on why some people may transform from law-obeying citizens to rule breakers. However, in order to put focus on the Swedish system, I will not retell their story in this thesis (see above mentioned source).

1.4.3 Data Analysis

The analysis of my data was conducted in different stages. Overall, this has been an iterative process where I compared different kind of data with different sources of information as well as discussing some matters (especially the anonymous results from the questionnaires) with outsiders (other students and professors).

Some parts of my research was analysed according to the traditional legal dogmatic methodology, by outlining the design and approach of the legal text (de lege lata), and how it can be changed (de lege feranda). Other parts were more analysed in a comparative manner, EU vs. Sweden (literature review and field study).[7] When assessing the sanctions in EU (general chapter) and Sweden (case study) I was looking at five major areas; the system, efficiency, monitoring, acceptance and alternatives.

1.4.4 Limitations

Limitations in the data collection: The positions in the doctrine, reports, articles, and interviews are sometimes reflecting the apprehension of the authors/interviewees and thus considered in some manners as subjective opinions. In order to limit the risks, I conducted a literature review to find different aspects and opinions to compare.

Limitations in the data analysis: By choosing five major areas for the assessment of sanctions, this research does not focus on all aspects, which is one limitation. Another limitation is I as a researcher. My background and my opinions reflect the choice of theories and methods for analysing and understanding the outcome.

[7] Peczenik (2003).

1.5 Scope and Delimitations

As the title implies "*Are criminal sanctions an appropriate punishment for Illegal Unregulated and Unreported Fishing in EU – Sweden as a case study*", this thesis focuses on the sanctioning measures only. Naturally, this delimitation only constitutes a small part of EU's giant marine policy and massive work towards more sustainable fishing practices and healthier oceans and seas. Maybe with another political system, the sanctions would not even be that urgent to discuss, but considering the current system and its outcomes, this is a relevant issue.

My focus will be on Chapter IX (*Immediate enforcement measures, sanctions and accompanying sanctions*) in the new EU IUU Regulation (EC No 1005/2008) and its consequences for the Members States by giving them an alternative to choose their own sanctioning system. I will use Sweden as cases study due to the recent critic from the European Commission about not fulfilling the effectiveness criteria, hence the focus on EU and Swedish regulations.

Control and Enforcement are two crucial factors for ensuring an effective implementation of criminal sanctions. However, the focus of this thesis will be on the trends, limits and potentials of criminal law as well as finding alternatives to improve the current criminal sanctioning system. This means that the issues relating to implementation will be left outside and only reviewed in the light of the latter. Implementation is such a big field that it deserves an own study.

The sanctions in focus are criminal in the first place. The thesis will also review administrative measures and treat some suggestions on a rehabilitionistic approach to punishment as an alternative or complement to the current system.

1.6 Intended Outcome and Target Group

There is today an urgent need to better control and regulate IUU fishing, which is one of the consequences to a declining resource and stricter measures. The sanctioning system is only one piece of the cake and this research seeks to find out relevant problems connected to our current sanctioning system, as well as bridging some research gaps when it comes to finding the "appropriate" punishment for the illegal activities. The overall desire is that this case study may contribute to the current discussion in Sweden whether we should keep our criminal sanctions or move even more towards an administrative approach.

The target group: Policy makers, authorities, scientists and researchers (in the Swedish region in the first place)

1.7 Outline

The thesis is structured as follows;

- Chapter 2 gives a general background to the problem with IUU fishing, its consequences and impacts, as well as a description of the resource. This Chapter will also introduce the reader to the legal measures taken in EU, with a special focus on the sanctioning system.

- Chapter 3 dives deeper into the use of Criminal Sanctions for combating IUU fishing in EU. This Chapter will review the development of criminal law as well as the looking at the instruments characteristics, strengths, and shortcomings. At the end, there will be a discussion about Alternative ways of punishing criminal acts.

- Chapter 4 further develops the identified problem by taking a case study perspective and discussing the Swedish system of sanctions, the critic, challenges, and current trends. Moreover, an assessment of Swedish administrative and criminal sanctions will take place with focus on their system, efficiency, monitoring, acceptance and alternatives. The outcome of the assessment will be elaborated together with some suggestions in Chapter 4.4.

- Chapter 5 will analyze the two Research Questions and provide a possible answer to the identified research problem.

- Chapter 6 will finalize with some concluding remarks and solutions, as well as suggestions on further research.

2 IUU Fishing and EU Measures

Firstly, in order to get a deeper understanding of the identified problem, there will be a general overview of Illegal Unregulated and Unreported Fishing (from now on written as IUU–fishing) in the European Community and the management of the resource. This will be followed by a general introduction of the New Common Fishery Policy, how it all connects and future plans for improving and protecting our Seas. Chapter 2.4 and 2.5 will dive deeper into the legal framework of applicable Regulations for IUU fishing and the harmonization of sanctions in EU. Criminal sanctions will be further elaborated in Chapter 3 (more general) and in Chapter 4 (by a case study of Sweden).

2.1 Definition of IUU Fishing

The term of IUU fishing is very broad and is defined differently in different parts of the world. The only internationally agreed definition is the one found in FAO's International Plan of Action to prevent deter and eliminate illegal, unreported and unregulated fishing (IPOA). This agreement was adopted in February 2001 and approved by the Comittee on Fisheries (COFI) in March 2000. Ever since, it has been open for States to sign since it is a voluntary Framework. However, when developing the Council Regulation (EC) No 1005/2008 *establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing* (the IUU Regulation), the EU used the same definition as IPOA for IUU fishing. By doing so the EU Member States are nowadays obliged to follow the same definition of IPOA.[8]

According to the two frameworks, *Illegal fishing* is referring to activities that are conducted in obedience of current legislation. It is also considered illegal when a vessel, flying the flag of States that are parties to a regional fisheries management measures, operates in contravention to or violating international obligations.[9]

Unreported fishing refers to fishing activities that have not been reported or been misreported in contravention to regional fisheries management organisations or to a State's national legislation.[10]

Unregulated fishing refers to fishing activities that are conducted by vessels without nationality or by those not party to the same organization in an area that is under application of a relevant regional fisheries management organization. Moreover, acts that are inconsistent with State responsibilities

[8] Illegal-fishing.info (2011)
[9] Council Regulation (EC) No 1005/2008, Article 2.1.
[10] Council Regulation (EC) No 1005/2008, Article 2.3.

for the conservation of living marine resources under international law even if the fishing activities are not regulated in legislation.[11]

IUU fishing can be summarized as follows:

- Fishing without a license within a State's exclusive economic zone (EEZ) or fishing with a license but without following the current decisions (from the Swedish Board of Fishery) concerning legal fishing practices. (*Illegal*)

- Breaking the international or national laws regarding fishing. (*Illegal*)

- Negligence or miss in reporting the total catch of fish or mixture with the numbers. (*Unreported*)

- *Unregulated* fishing means fishing without a flag or fishing by vessels carrying the flag of another country that doesn't participate in the fishing organization in that area where they are operating.

- Using bad methods or/and fishing equipment that harm the marine environment. Such methods/fishing equipment could be fishing with explosive tools, using too small mesh seize in the nets, harmful bottom trawling within the 12 nautical miles zone of a countries EEZ.(*Illegal*) [12]

2.2 The Problem with IUU fishing

IUU fishing is a global problem and widely spread in virtually all fisheries. WWF is estimating it to count for up to 30% of total catches in some important fisheries. However, due to lack of statistics of our marine species and lack of reported catches, the exact number of IUU fishing is extremely difficult to determine and can even be a bigger number.[13] In a press release 2009 concerning IUU fishing at EUROPA news homepage, the European Fisheries Commissioner Joe Borg states IUU fishing to be one of the most serious threats to a sustainable fishery management. The article identifies IUU fishing as the second largest producer of fishery products in the world with an estimated value of approximately 10 billion Euros every year. The European Union is also the single largest importer of fishery products and of the roughly 500.000 imported tonnes per year (worth around 14 billion Euros), around 45.000 tonnes could originate from illegal fisheries (worth around 1.1 billion Euros).[14] Overall figures show that IUU fishing is an expensive story for the European Community, but what are the other consequences?

[11] Council Regulation (EC) No 1005/2008, Article 2.4.
[12] Naturskyddsföreningen (2009).
[13] WWF (2011).
[14] Europa, Press, (2009).

According to FAO, IUU fishing is not a new phenomenon and occurs both in the exclusive economic zones (EEZs) of coastal States and in rivers and inland fisheries. These waters are under a States jurisdiction and control and may therefore be easier to regulate, a bigger problem is the marine fisheries that happens in international waters. Even if there are international agreements, such as the Law of the Sea, these waters are not easy to control and for some species, the level of IUU fishing has reached major proportions.[15] One of the reasons behind today's expansion of illegal activities is the lack of control, especially for developing countries since they are lacking financial means. Additionally their communities may suffer disastrous socio-economic impacts when the fish stocks are declining and disappearing since they are highly dependent on fish for food and work. Consequences like job losses, unfair competition between fishermen and possibly also more IUU fishing since it becomes a way to survive, may even destroy smaller coastal communities. Apart from socio-economic consequences, IUU fishing constitutes one of the most serious threats to the marine ecosystem and its species. The marine environment is frequently damaged by overfishing, irresponsible fishing practices and harmful techniques. This reduces the size and quality of the catches, which in turn leads to a degradation of the marine environment; a decrease of certain species as well as an increase of lower species in the food chain.[16] This is the case with the increase of jellyfish in some waters. A possible future for our seas, if the fish continue to decrease, is seas filled with jellyfish and bacteria.

Figure 2-1 National Geographic, Giant jellyfish invade Japan, 2006.[17]

[15] Europa, Press, (2009).
[16] Handbook to (EC) No 1005/2008.
[17] National Geographic (2006).

The drivers behind above mentioned consequences are important to understand in order to be able to find the appropriate measures. According to Greenpeace one of the main drivers is the economic incentive. Unfortunately (but fortunately for some), many species which have been over-exploited and are short in supply, are also of high value.[18] This is the case for the Atlantic Bluefin Tuna that is currently under up scale in the Japanese fishing fleet since its meat is expected to be very valuable once it is totally extinct...[19]

Figure 2-2 Sustainability Ninja, Atlantic Bluefin Tuna could Disappear by 2012, 2009[20]

FAO is mentioning a number of other key factors to why IUU fishing occurs. The key drivers include (apart from the high value/demand for fishery products): (i) weak fishery administration and management at a national, regional and an international level; (ii) ineffective monitoring, control and surveillance; and (iii) social problems such as poverty, lack of alternative livelihoods and inadequate social legislation. In addition to these drivers, FAO is also naming secondary factors. These are: (iv) unsuccessful capacity management; (v) poor fisheries resource status; and (vi) insufficient data collection and information exchange.

The root cause of IUU fishing is said to be the lack of effective flag State control. As a tool to combat the problem, the importance of enhanced port state control has increasingly gained ground. The EU recently reformed their Common Fishery policy (CFP) and with this created new common control regulations. The CFP constitutes of a number of measures against IUU fishing. One of these measures is the sanctioning system, which will be further elaborated in Chapter 2.5. Firstly, Chapter 2.4 will provide an overview of the various measures.

2.3 A Quick Glance at the Resource

Fish is viewed as a natural resource and has the character of a common good. This is a good that often generates rivalry among its users since the

[18] Illegal-fishing.info (2011).
[19] Rupert, The End of the Line (2009).
[20] Sustainability Ninja (2009).

ownership of the same is viewed as collective. Extraction of the resource by one user most likely reduces the amount of fish left for others. If multiple individuals only see to their own self-interest and extract fish independently and solely, there is a big risk of overfishing. It may also come to a point where the resource becomes fully depleted. This dilemma was firstly described by Garett Hardin and named as "Tragedy of the Commons". Other examples of Common Pool Resources (CPRs) are water and forests. Other problems for CPRs are pollution, overuse and congestion of the resource.[21]

The characteristics of a CPR may cause difficulties already in the management of the resource. According to an interview conducted with Jacob Hagberg, a marine biologist from the Swedish EPA, one of the biggest threats of today when it comes to sustainable fishery management is the set of too high total allowable catch quotas. This shows that the legal fishing practices are very depleting in themselves.[22] Whether or not this has any implications on criminal sanctions is hard to tell, but it sure puts pressure on them to work effective. Finding effective sanctions is only a small part of the whole preventing and depleting IUU fishing process but it is yet a frequently debated problem. A factor that may be direct affected by the characteristics of this resource is the possibilities of effective control. Criminal sanctions requires higher onus of proof and evidence than administrative sanctions which can be a delimiting factor of the sanction itself.[23]

2.4 General Introduction of the Measures

2.4.1 Global Initiatives

During the last decade there have been a number of measures and initiatives to combat IUU fishing. In 2001, FAO agreed on an International Plan of Action to Prevent, Deter and Eliminate IUU Fishing (IPOA-IUU) and in 2009 the same organization adopted new measure to prevent IUU fish from entering ports (Agreement on Port State Measures to Prevent, Deter and Eliminate IUU fishing).[24] The IPOA-IUU identifies responsibilities for all States (flag States, coastal States, port States), in applying agreed market measures and the same goes for the Regional Fisheries Management Organisations (RFMOs). Moreover, the framework aims to improve Monitoring, Control and Surveillance (MCS), catch reporting systems, statistical systems (against unreported fishing), as well as develop and implement the measures and strengthen regional institutions.[25] However, this action plan is only a voluntary framework, which is also the case with many other measures, for example in Africa where the members of the Southern Africa Development Community (SADC) signed a statement of

[21] Hardin (1968).
[22] Hagberg (2010-03-11).
[23] Heine and Prabhu (1997), p 24.
[24] Illegal-fishing.info (2011).
[25] FAO (2011).

commitment in 2008 to work to combat IUU fishing.[26] The EU has also taken a number of measures (mandatory), which will be further elaborated in Chapter 2.4.2.

A number of legal instruments were developed already in earlier stages. This is the case with the binding FAO Compliance Agreement (1993), The United Nations Agreement for the Implementation 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 Fish Stocks and Highly Migratory Fish Stocks (in force since 2001). These instruments are specifically designed to empower governments to take actions by delegating responsibilities to national authorities in various forms. There are different responsibilities outlined for flag states, coastal states and port states, but they will not be further elaborated in this thesis since the focus will be on EU and their sanctioning system.[27] A crucial factor to mention before providing an overview of the EU measures is the coordination difficulties between all these instruments. If not coordinated well, they may in fact become barriers rather than drivers for one another. The IUU network (www.imcsnet.org) established among fisheries MCS agencies constitutes a facilitator in this important work. One of their main tasks is to coordinate the many activities, handle the sharing of information between all levels (regional, national, international), identify key priorities, as well as leading the application of their respective resources to implement the methods.[28]

2.4.2 EU Policy Instruments

Legislation combating IUU fishing in the EU is the outcome of a long procedure of different activities by the European Commission.[29] For over a decade now the European Commission have been involved in the fight against IUU fishing and in 2002 an Action Plan was adopted, inspired by the FAOs International Plan of Action to prevent, deter and eliminate IUU fishing of 2001. However the measures taken were still not enough to stop the problem from growing and as a response, a consultation process was launched in 2007.[30] Several changes were made due to pressures from different actors such as non-governmental organisations (NGOs). These changes lead to four major outcomes according to WWF:

1. *reduced fishing capacity through the abolition of public aid (subsidies) for building new fishing boats after the end of 2004 and tougher conditions for subsidies for the modernization of old boats*

[26] Illegal-fishing.info (2011).
[27] FAO (2011).
[28] FAO (2011).
[29] Handbook to (EC) No 1005/2008.
[30] European Commission, Combating illegal fishing (2011).

2. *the incorporation of a more ecosystem-based approach to fisheries management through the introduction of recovery plans for threatened stocks and management plans for non-threatened stocks*

3. *reduced fishing effort through increased premiums for the scrapping of vessels as part of fisheries recovery plans*

4. *better promotion of sustainable development in developing countries through a new framework for negotiating fishing access agreements between the EU and other countries*[31]

One of the weaknesses that were identified with the old Action Plan was the control and enforcement. In September 2008, the IUU Regulation (EC No 1005/2008) was adopted in order to establish an entire new Community system for combating IUU fishing. This Regulation entered into force on 1 January 2010. As control and enforcement are seen as one of the weakest elements of the current Common Fishery Policy (CFP), a special Control Regulation (EC No 1224/2009) was also established and entered into force on 1 January 2010. However the Members States still have some time to adopt the Control Regulation. In Sweden the changes entered into force in 2011.[32]

The new CFP sets out a broad framework that, if implemented properly, could lead to a more sustainable fishery management and a healthier environment. WWF is specifically highlighting the introduction of special recovery plans for endangered fish stocks and the ending to subsidies for building more fishing boats, as important measures for conservation. However, weaknesses still exists and the reformed CFP is very depending on the genuine commitment of EU Members States. The case study of Sweden in Chapter 4 will provide a deeper understanding of the difficulties mentioned. Now follows some deeper information about the new IUU and Control Regulations.

2.4.2.1 Council Regulation (EC) No 1005/2008

The overall goal of the Council Regulation (EC) No 1005/2008 *establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing* (from now on named as the IUU Regulation) is to combat illegal, unreported and unregulated fishing and to make sure that none of its products end up at the Community market.[33] The IUU Regulation constitutes one of three pillars of the new control system in the European Community. The other two pillars address authorizations for fishing activities of Community fishing vessels outside community waters as well as control of compliance with the Common Fisheries Policy. Together they aim to ensure no discrimination between Community and

[31] WWF (2011).
[32] European Commission, Combating illegal fishing (2011).
[33] Europa, Press (2009).

third country fisheries.[34] The scope of the IUU Regulation is outlined in Article 1.3 and covers violations that occurs both in national and international waters, in high seas areas covered by a Regional Fisheries Management Organization (RFMO) carried out by "*vessels without nationality or registered under a flag States which is a non-contracting or non-cooperating Party to the RFMO and in a manner contravening the rules issued by this organization*".[35] Even illegal activities that are carried out in high seas areas not covered by a RFMO are included, if they are done "*in a manner inconsistent with state responsibilities for the conservation of fisheries resources under international law*".[36] Moreover, behaviors which are qualified as presumed IUU fishing activities are also included in the scope.[37] Such activities are regulated in Article 3 and consist of a number of actions. Examples of presumed IUU fishing could be when vessels do not fulfill their obligations to record and report catch, are engaged in direct fishing for a stock which is subject to a moratorium, are fishing without a valid licence, uses prohibited or non-compliant fishing gear, have taken onboard, transhipped or landed undersized fish, have been fishing in closed areas, or have obstructed the work of officials in the exercise of their duties. The latter situations are not exclusive, there are more situations regulated in the same Article.[38]

The IUU Regulation provides improved regulations for port State control by allowing EU Member State authorities to better monitor incoming fishing vessels and their catches. One of the essential measures is the catch certification scheme. The purpose of the scheme is to improve the traceability of marine fishery products traded from and into the Community so that products from IUU fishing will become prohibited. To ensure this intention, fishery products shall only be imported into the Union if they have a catch certificate. The expected result is that the countries will be able to comply easier with their own conservation and management rules since the certificate must be validated by the competent authority of the flag State of the catching vessel.[39] Another measure suggested by the Community is an alert system to detect the most suspect cases of illegal practices, the vessels involved and any non-cooperating third countries. The system, which is managed by the European Commission, is an instrument for sharing information on operators and fishing vessels which are presumed to carry out IUU fishing activities. Alert notices will then be generated by the system and communicated to all the Member States when there are well founded doubts.[40] Articles 27-30 regulate the community IUU vessel list which is an additional instrument to the first two measures. If a vessel is listed it will not be authorized to fish or be chartered in EC waters, nor be supplied with fuel or other services in port, or authorized to have its fishery

[34] Handbook to (EC) No 1005/2008, page 7.
[35] Handbook to (EC) No 1005/2008, page 10.
[36] Handbook to (EC) No 1005/2008, page 11.
[37] Handbook to (EC) No 1005/2008, page 11.
[38] Council Regulation (EC) No 1005/2008, Article 3.
[39] Handbook to (EC) No 1005/2008, page 16.
[40] Handbook to (EC) No 1005/2008, page 58.

products traded with the EC. These are just some of the measures and more restrictions are listed in the Articles (27-30).[41]

One of the goals with the IUU Regulation is to obtain a better enforcement. This will be accomplished through a harmonized system of deterring and proportionate sanctions for serious violations.[42] Articles 44-46 of the Regulation is introducing a comprehensive system of harmonized administrative sanctions, as well as a leaving a choice for Members States to alternatively use criminal sanctions for serious infringements (Article 44.3). In order for a Member State to use criminal sanctions these need to be effective, proportionate and dissuasive (further elaborated in Chapter 2.5 and 3).[43]

Overall the IUU Regulation is laying down a mandatory framework for Member States aiming at preventing, deterring and eliminating IUU fishing in any maritime waters that are related to the Community through the flag of fishing vessels, trade flows or the nationality of operators. It obliges Member States to take active measures in order to combat IUU fishing. Enhanced instruments in the Regulation are the catch certification scheme, the community alert system, the community IUU vessel list and the harmonization of sanctions.[44]

2.4.2.2 Council Regulation (EC) No 1224/2009

Given that the IUU Regulation obliges the Member States to take appropriate measures in order to ensure an effective combat of IUU fishing this regulation, *Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy* (from now on known as the Control Regulation), works complementary to the later and is also there to ensure that no discrimination takes place between Member States' and third country nationals. The main goal however, is to establish a Community system of control, inspection and enforcement to ensure compliance with the objectives of the CFP.[45] This Regulation is laying down detailed rules for Member States concerning general conditions for access to waters and resources. The first section is regulating the fishing licence, fishing authorization, vessel monitoring and detection system, among others. Chapter one is moreover focusing on control of the use of fishing opportunities by regulating completion and submission of the fishing logbook, authorization to access the port of coastal Member States, completion and submission of the landing declaration, etc. Section 2 of the same Chapter is instead focusing on the monitoring system by regulating notification of fishing gear, fishing effort reports and recording of catches. Other important measures that is regulated by the Control Regulation is

[41] Council Regulation (EC) No 1005/2008, Articles 27-30.
[42] Europa, Press (2009).
[43] Council Regulation (EC) No 1005/2008, Articles 44-46.
[44] Handbook to (EC) No 1005/2008, page 9.
[45] Council Regulation (EC) No 1224/2009, (2).

when a State must establish closure of fisheries due to overfishing or other reasons, the use of fishing gear, principles for the control of marketing, surveillance, inspections and proceedings, enforcement procedures, control programmes for following up measures as well as rules for the implementation process of this Regulation which entered into force on 1 January 2010.[46]

The harmonization of sanctions between Members States is also regulated in the new Control Regulation in Articles 89-90. As earlier mentioned this Regulation is complementary to the IUU Regulation and thus adds some additional decisions, mostly related to what is considered as serious infringements. This will be further elaborated in Chapter 2.5.[47]

2.4.2.3 Commission Regulation (EC) No 1010/2009

In order to implement the above mentioned legislation there is also an Implementation Regulation, *Commission regulation (EC) No 1010/2009 laying down detailed rules for the implementation of Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing* (from now on known as the Implementation Regulation). This framework is laying down detailed rules for implementation of the IUU Regulation and regulates procedures and forms for pre-landing and pre-transhipment declarations, port inspections, catch certification scheme for importation and exportation of fishery products and rules concerning information exchange. Chapter IV is laying down the relations between the Member States and the Commission.[48] Each Member State shall communicate to the Commission as soon as they find out methods, practices or revealed tendencies used for IUU fishing. In other words, it is the Commission that has the responsibility to coordinate the implementation process.[49] In 2005 the European Commission also proposed the establishment of a Control Agency to organize the operational coordination of the fisheries control and inspection activities of the Members States, as well as helping them apply the rules of the CFP. The name of the Agency is Community Fisheries Control Agency, CFCA.[50]

2.4.2.4 Amendments

There have been two recent amendments in the legislation concerning IUU fishing.

Since 1 January 2010, the EU has adopted two amendments to the IUU Regulation and the Implementation Regulation. The changes are outlined in two Regulations: *"Commission Regulation (EU) No 86/2010 of 29 January*

[46] Council Regulation (EC) No 1224/2009.
[47] Regeringskansliet (2008).
[48] Commission Regulation (EC) No 1010/2009.
[49] Commission Regulation (EC) No 1010/2009, Chapter IV.
[50] Europa, Community Fisheries Control Agency (2011).

2010 amending Annex I to Council Regulation No 1005/2008 as regards the definition of fishery products and amending Commission Regulation (EC) No 1010/2009 as regards exchange of information on inspections of third country vessels and administrative arrangements on catch certificates" and *"Commission Regulation (EU) No 395/2010 of 7 May 2010 amending Commission Regulation (EC) No 1010/2009 as regards administrative arrangements on catch certificates".*[51]

As the title of the amendments are implying, the first amendment modifies Annex 1 of the IUU Regulation by adding new products to the list of "*products excluded from the scope of the catch certification scheme*".[52] This amendment is concerning more than 72 new products, such as carp, eels, sockeye salmon, pacific salmon, trout, etc (see Annex 1). Moreover it transposes into EU law three administrative arrangements with New Zealand, Norway and US. The second amendment also transposes into EU law three administrative arrangements when it comes to templates of the catch certificates that these countries use. The countries are Canada, Faroe Islands and Iceland.[53] However, these amendments did not affect the sanctioning system that much which will now be further elaborated.

2.5 Sanctions for Serious infringements

According to FAO, one of the major challenges for improving the governance system is the difficulty in the application of penalties severe enough to be deterrent.[54] Could criminal sanctions fulfil this wish? Before elaborating precedent question, this Chapter will serve as an introduction to the sanctioning system in EU.

2.5.1 Scope and the meaning of Serious Infringements

According to Article 41 in the IUU regulation, which outlines the scope for when EU measures and sanctions are applicable, the illegal act has to be defined as a serious infringement in order for administrative and criminal sanctions in Chapter IX to be used. The Article is outlining three situations when a serious infringement may be punished according to this Chapter. The first situation is when a serious infringement is committed within the territory of Member States which are parties of this Treaty, or within maritime waters under a Member States jurisdiction or sovereignty. Excepted to this scope are countries adjacent to territories and countries mentioned in Annex II of the Treaty establishing the European Community.[55] Turkey is one such country that doesn't appear on the list.

[51] European Commission Addendum to Handbook (2011), p 2.
[52] Commission Regulation (EU) No 86/2010, Annex 1.
[53] European Commission Addendum to Handbook (2011), p 2.
[54] FAO (2011).
[55] Council Regulation (EC) No 1005/2008, Article 41.

The second situation when this Chapter is applicable is when a serious infringement is committed by Community fishing vessels or nationals of Member States. The last case is when a serious infringement is detected within the territory or within waters as in the first situation but which have been committed on the high seas or within the jurisdiction of third country and are being sanctioned according to the IUU Regulation.[56]

The definition for a serious infringement is outlined in Article 42 of the IUU as in Article 84, 90-93 in the Control Regulation. Serious infringements are activities considered to be IUU fishing according to the criteria set out in Article 3 of the IUU Regulation, the conduct of business directly connected to IUU fishing (import also included here), and the falsification of documents referred to in the same regulation. The competent Authority of a Member State shall determine the seriousness of the infringement, by taking into account the criteria outlined in Article 3(2). The criteria to consider are the damage done, its value, the extent of the infringement or its repetition.[57]

Article 3 is outlining a number of presumed illegal fishing activities. It is everything from fishing without licence, fishing in the wrong area or in the wrong time period, using prohibited fishing gear, doing it in a manner that is inconsistent with current conservation and management measures:

Fishing vessels engaged in IUU fishing

1. A fishing vessel shall be presumed to be engaged in IUU fishing if it is shown that, contrary to the conservation and management measures applicable in the fishing area concerned, it has:

(a) fished without a valid licence, authorisation or permit issued by the flag State or the relevant coastal State; or

(b) not fulfilled its obligations to record and report catch or catch-related data, including data to be transmitted by satellite vessel monitoring system, or prior notices under Article 6; or

(c) fished in a closed area, during a closed season, without or after attainment of a quota or beyond a closed depth; or

(d) engaged in directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited; or

(e) used prohibited or non-compliant fishing gear; or

(f) falsified or concealed its markings, identity or registration; or

(g) concealed, tampered with or disposed of evidence relating to an investigation; or

(h) obstructed the work of officials in the exercise of their duties in inspecting for compliance with the applicable conservation and

[56] Council Regulation (EC) No 1005/2008, Article 41.
[57] Council Regulation (EC) No 1005/2008, Article 42 and 3(2).

management measures; or the work of observers in the exercise of their duties of observing compliance with the applicable Community rules; or

(i) taken on board, transhipped or landed undersized fish in contravention of the legislation in force; or

(j) transhipped or participated in joint fishing operations with, supported or re-supplied other fishing vessels identified as having engaged in IUU fishing under this Regulation, in particular those included in the Community IUU vessel list or in the IUU vessel list of a regional fisheries management organisation; or

(k) carried out fishing activities in the area of a regional fisheries management organisation in a manner inconsistent with or in contravention of the conservation and management measures of that organisation and is flagged to a State not party to that organisation, or not cooperating with that organisation as established by that organisation; or

(l) no nationality and is therefore a stateless vessel, in accordance with international law[58].

In addition to Article 42 of the IUU Regulation, Article 90 of the Control Regulation is adding some new activities to the list of serious infringements. These comprise three new situations. The first situation is the non-transmission of a landing declaration or a sales note. The second situation is when somebody has manipulated an engine with the aim to increase its power beyond maximum level in comparison to the engine certificate. The third situation concerns the failure to land any species subject to a quota caught during a fishing operation. Situations where such a landing is contrary to obligations provided for in the rules of the CFP, are excepted. Moreover, these activities are depending on the gravity which shall be determined by the competent Member State authority, taking into account the nature of the damage, its value, the economic situation of the offender and the extent of the violation or its repetition.[59]

In order to improve the control of serious infringements, The Control Regulation added a new tool in form of a point system. This tool works as a warning. When you get a total number of points, the fishing licence shall be automatically suspended for a period of at least two months. This period will be doubled if the licence is suspended a second time. If it happens a fifth time, the fishing licence will be permanently withdrawn.[60]

The Commission is in charge for reviewing and then communicating to the council and the European Parliament, the Members States and their behaviours which seriously infringed the rules of the CFP. This is done through a report which is based on Members States yearly reporting to the Commission about the number of serious infringements detect and on the sanctions imposed. Due to Council Regulation (EC) No 1447/1999, the

[58] Council Regulation (EC) No 1005/2008, Article 3.
[59] Council Regulation (EC) No 1224/2009, Article 90.1 (a-c).
[60] Council Regulation (EC) No 1224/2009, Article 92.

yearly reporting from the Members States is mandatory. After reviewing the Members States reports, the Commission gives its statement on what has to be done in order to improve the work with improving IUU fishing measures.[61]

The latest Communication refers to the cases of serious infringements which were reported on 31st December 2005. As a reader of this table (table 2-1 on next page) it is important to keep in mind that it may be inexact to draw firm conclusion by comparing the Members States against these figures. First of all these figures are depending on the Members States own performance in control and reporting. Secondly, the serious infringements are not always related to breaches committed by the fishermen but also by other economic operators.[62]

Member State	**Number of vessels**	**Serious infringements**
Belgium	121	22
Denmark	3269	361
Germany	2121	96
Greece	18279	377
Estonia	1045	19
Spain	13684	2949
France	7859	864
Ireland	1415	109
Italy	14426	3280
Cyprus	886	9
Latvia	928	132
Lithuania	271	3
Malta	1420	3
Netherlands	828	117
Poland	974	105
Portugal	9186	761
Slovenia	173	13
Finland	3267	25
Sweden	1639	53
United Kingdom	6766	234

Table 2-1 Serious Infringements compared to the number of fishing vessels in each Member State in 2005.

The total number of cases reported by the Members States is 10 443 (all kind of breaches), which is an increase from 2004 with 8 %. If this is due to more breaches of the IUU- and Control Regulations or to better control and reporting is hard to tell. One must not forget that the fleet also has increased since 2004. The number of serious infringements from previous years was 7

[61] European Commission, COM/2007/0448 Country Reports , Note 1.
[62] European Commission, COM/2007/0448 Country Reports.

298 in 2000, 8 139 in 2001, 6 756 in 2002, 9 502 in 2003 and 9 660 in 2004.[63]

The main features of the serious infringements was: 23% cases of Unauthorized fishing concerns, 17% cases of storing, processing, placing for sale and transporting fishery products not meeting the marketing standards, 15% cases of fishing without holding a licence, and less than 10% cases of other types of serious breaches to the rules of the CFP. The first three violations are similar to the percentage in 2004, while other types of serious breaches decreased in percentage. However, the number of cases of tampering with the Vessel Monitoring systems almost doubled.[64]

Before moving over to the sanctions, it might be of interest to know that in 2005, 8665 procedures ended with a sanction. The Commission is acknowledging that there are still striking and inexplicable differences for the same type of serious infringement across the EU which is also shown by the average fine imposed in the Union. In 2005 it was an amount of EUR 1548, which is half the fine that was imposed in 2003 (EUR 4664) and less than the average fine imposed in 2004 (EUR 2272).[65]

2.5.2 Administrative and Criminal Sanctions

The effectiveness of the sanctioning system is in the first place depending on the success of the control system and the tracking down of IUU operators. Nevertheless, the sanctions are there for a reason: to punish IUU operators, hopefully hinder them from committing the same infringements several times, as well as taking a deterrent preventative function. One can say that the sanctions are there to strengthen the rules of the new CFP.[66]

Both the IUU- and Control Regulations consist of a system of effective, proportionate and dissuasive sanctions for serious infringements. The IUU Regulation goes deeper into the various measures (as told before, the Control Regulation is only complementary to the IUU Regulation and therefore refers back to the sanctions outlined in the IUU, with some exceptions) and sets up a comprehensive harmonized system of administrative sanctions. Criminal sanctions are an alternative to administrative sanctions if, and only if, they fulfill the criteria of being effective, proportionate and dissuasive.[67] The Control Regulation is adding the criteria of being "*effectively dissuasive*", "*appropriate*", and "*calculated on the value of the fisheries products obtained by committing a serious infringement*" when deciding on the appropriate sanction.[68]

[63] European Commission, COM/2007/0448 Country Reports, Note 5.
[64] European Commission, COM/2007/0448 Country Reports, Note 5.
[65] European Commission, COM/2007/0448 Country Reports, Note 5.
[66] European Commission, Infringements and Sanctions, 2011.
[67] Handbook to (EC) No 1005/2008, p 61f.
[68] Council Regulation (EC) No 1224/2009, Article 90.3.

Article 43 of the IUU Regulation is first outlining the administrative sanctions, which may take different forms. The most common ones are imposition of a monetary penalty, a temporary ineligibility to hold fishing authorization, a suspension or revocation of a fishing authorization as well as the confiscation of catch, gear, equipment or vessel.[69] The European Union have given some examples of when a certain administrative sanctions should be used for a certain violation, but it is still also up to the Members States themselves to decide appropriate sanctions with the purpose to work deterrent (Article 89, 90, 91, 92, 93 in EC No 1224/2009).

Article 44 of the IUU Regulation is regulating the level of seriousness of the sanction when deciding the appropriate measure for a serious infringement. The first paragraph states that sanctions can be imposed on both natural and legal persons. A legal person is here defined as "*any legal entity having such status under the applicable national law, with the exception of States or public bodies in the exercise of State authority and public organisations*".[70] The second paragraph is outlining a maximum sanction of at least five times the value of the fishery products obtained by committing the serious infringement, and eight times the value of the fishery products in case of a repeated infringements within a five year period for any serious infringement. The Members States shall also take into account the prejudice of the fishing resources and the marine environment when choosing an appropriate sanction.[71]

Article 45 of the IUU Regulation is enabling the use of accompanying sanctions to be added on the already decided sanction. Such sanctions can be the confiscation of prohibited fishing gear/catches, the temporary immobilisation of fishing vessel, suspension or withdrawal of fishing rights, etc. Article 46 is regulating how the determination of the latter shall be calculated.[72] For accompanying sanctions this should be calculated in such a way that they effectively deprive the responsible person of the economic benefits derived from the illegal act. This calculation have to be balanced with the legitimate right to exercise a profession, which means that it is left up to the Member States to make a weighing of interests.

Criminal sanctions are not specified in the IUU Regulation other than the criteria of being *effective*, *proportionate* and *dissuasive*.[73] The same goes for the Control Regulation whereas Article 90 p. 5 says that the Members States may adopt their own criminal sanctions but they have to be effective, proportionate and dissuasive.[74]

The main difference between administrative sanctions and criminal penalties is that the decision to impose an administrative sanction is done by an

[69] FAO (2003).
[70] Council regulation (EC) No 1005/2008, Article 2.19.
[71] Council regulation (EC) No 1005/2008, Article 44.
[72] Council regulation (EC) No 1005/2008, Article 45-46.
[73] Council regulation (EC) No 1005/2008, Article 44.3.
[74] Council Regulation (EC) No 1224/2009, Article 90.5.

administrative authority instead of a court (at least in the first instance). In Sweden this means that a fine under the administrative sanction can be decided without trial and directly handed out by the Swedish Board of Fisheries to the person that committed the violation. The placement of a "fine" under the criminal sanctions means that the infringement needs to be proved and decided in court before entering into force of the penalty. This sometimes leads to a statute-barred of the violation before the court even treats the issue.[75]

As above mentioned the Members States can use criminal sanctions as an alternative instead of administrative for serious violations. In the ingress of the Control Regulation it is however written that "*it is appropriate to introduce administrative sanctions in combination with a point system for serious infringements to provide a real deterrent*."[76] What this will mean for the existence of national criminal sanctions is still to be seen.[77]

2.5.3 Liability

The IUU Regulation is outlining a presumed liability for fishing vessels to be engaged in IUU fishing when they are conducting activities that are described in paragraph one of Article 3. The presumption appears when it is shown that a vessel has done either of the following; fished without a valid licence, not fulfilled its obligations to record and report catch or catch related data, fished in closed area during a closed season, engaged in directed fishing for a stock which is subject to a moratorium, used prohibited or non-compliant fishing gear, falsified or concealed its markings, concealed, tampered with or disposed of evidence relating to an investigation, obstructed the works of officials, taken on board, transhipped or landed undersized fish, carried out fishing activities in the area of a regional fisheries management organisation in a manner inconsistent with conservation management measures, or having no nationality and therefore being a stateless vessel. These activities shall be considered as serious infringements in accordance with Article 42 depending on the gravity of the infringement. This shall be determined by the competent authority of the Member State by taking into account damage done, its value, the extent of the infringement or its repetition.[78]

The IUU Regulation is talking about both liability for a natural person as well as for a legal person. A natural person is defined as a fisherman and is regulated in Article 3. A legal person is defined in Article 2.19 as any legal entity having such status under the applicable national law. States and public bodies in the exercise of State authority are excepted. Article 47 of thew same Regulation is laying down the rules for when a legal person shall be held liable for serious infringements. The first paragraph is outlining that a legal person should be held liable if the infringement were committed for

[75] SOU 2007:20, p. 13.
[76] Council Regulation (EC) No 1224/2009**,** Ingress (38).
[77] SOU 2007:20, p. 13.
[78] Council regulation (EC) No 1005/2008, Article 3.

their benefit by a natural person, having a determining position within the legal person based on the power of representation of the legal person, an authority to take decisions on behalf of the same or an authority to exercise control. The legal person may also be held liable for a serious infringement where the lack of supervision and control by a natural person, has made it possible for the benefit of that legal person.[79]

Liability is treated differently under criminal and administrative law. Criminal liability occurs only in cases of clearly illegal behaviour and is not limited to intentional behaviour. Due to this reasons there is a need for the criminal procedures to include mechanisms and principles, protecting and ensuring a fair trial.[80] This will be further elaborated in Chapter 3.3.

[79] Council regulation (EC) No 1005/2008, Article 47.
[80] Faure and Heine (2005), p 31f.

3 Criminal Sanctions and IUU Fishing

This Chapter will elaborate the difficulties with criminal sanctions and IUU Fishing from a more general perspective (Chapter 4 will be more specific by the use of Sweden as a case study). Firstly, in order to get a better understanding of criminal law and when it is applicable, there will be an overview of its characteristics. This will be followed by a review of the historical development in EU when it comes to Criminal Law, its relation to the environment and in particular to IUU fishing. Chapter 3.3 will identify strengths and shortcomings when sanctioning environmental offences, both from an administrative and criminal angle. Chapter 3.4 will then provide some alternatives to the way of punishing offenders.

3.1 Characteristics

First, in order to apply criminal sanctions, there must be a criminal act. In other words, the legislation must treat the specific serious infringement under criminal law in order to apply criminal penalties. The countries in EU that recently switched some criminal sanctions to administrative measures were therefore obliged to decriminalise the criminal act and transform it into an illegal act under the administrative system.[81]

In a Comprehensive study focused on Criminal Enforcement of Environmental Law in the EU, conducted before 2003, it appeared that most legal systems have a variety of criminal sanctions that can be applied in environmental cases. According to the country reports, the most common sanctions are imprisonment and fines.[82] However, Article 73 of the United Nations Convention on the Law of the Sea (UNCLOS) prohibits coastal states from including imprisonment as a penalty for violating fisheries laws and regulations, unless they do have an agreement between the States concerned. This is not the case in the EU, hence the excluded application of *monetary penalties*. Nevertheless, Members States may still apply imprisonment to crimes committed in internal waters, but not in marine fisheries and fisheries within a state's Exclusive Economic Zone (EEZ).[83]

[81] FAO Study (2003), Chapter 2.1.1.
[82] Faure and Heine (2005), p 55.
[83] Erceg (2004), p 176.

The picture (Figure 3-1) shows the various zones of a coastal State's "water". UNCLOS regulates the scope and jurisdiction within each zone. Article 2 of the Convention provides that a coastal State has sovereignty over its territorial sea, beyond its land territory and internal waters. This means that a coastal State has an absolute control over the management in this area that lies within 12 nautical miles from the coast. The Convention provides an important concept in Part V that permits States to assert jurisdiction over activities within 200 nautical miles of their coasts, which goes under the name EEZ.[84] The aim of the criminal sanctions is mainly to work deterrent against IUU fishing operations, as well as specifying the seriousness with the offence. However, the criminal sanction must fulfill the criteria of being effective, proportionate and dissuasive in order to be applied.[85]

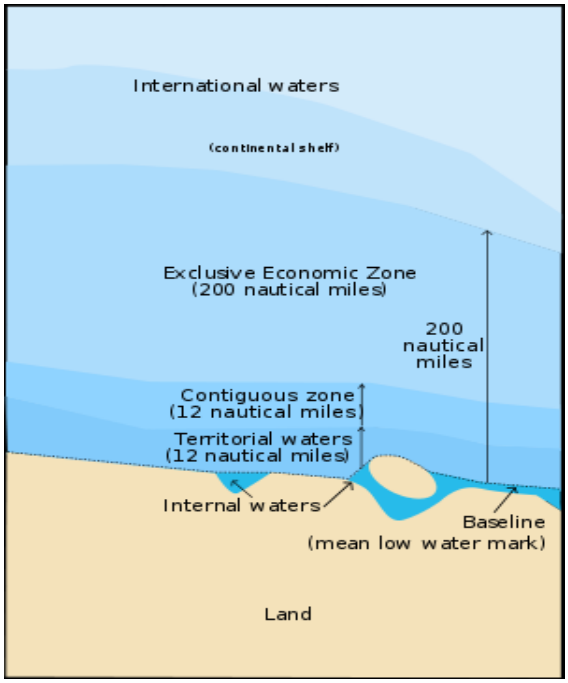

Figure 3-1 Sea Areas in International rights according to UNCLOS, 2010[86]

There is not much guidance in the Regulations regarding the requirements of effectiveness, proportionality and dissuasiveness. The IUU regulation is in its ingress highlighting the need of deterrent sanctions in order to handle the serious infringements.[87] Article 46 of the same Regulation regulates the calculation of the sanctions. However, this article is only concerning the calculation of overall level of sanctions and accompanying sanctions, not criminal sanctions in particular. The Article states that the use of sanctions together with accompanying sanctions "*shall be calculated in such a way to make sure that they effectively deprive those responsible of the economic benefits derived from their serious infringements without prejudice to the legitimate right to exercise a profession*".[88] In other words, the right to exercise a profession must be taken into account when combining sanctions in order to make them deterrent.

Looking at general case law of criminal sanctions in EU, there is more to go on, but the guidance is still a bit unclear and leaves much open for the European Court of Justice (ECJ) to interpret. From a case between the Commission and Greece (concerning Community environmental protection

[84] Stuart M Kaye, p. 98-102.
[85] Council Regulation (EC) No 1005/2008, Article 44.3.
[86] UNCLOS (2011).
[87] Council Regulation (EC) No 1005/2008, Ingress (34).
[88] Council Regulation (EC) No 1005/2008, Article 46.

law), the Court stated that the basic criteria which must be taken into account in order to ensure that penalty payments have coercive force and Community law is applied in an effective way is the "*duration of the infringement, its degree of seriousness and the ability of the Member State to pay*".[89] Other criteria to take into consideration are if the serious infringement is endangering the human health or harming the environment in a serious way.[90] Chapter 4 will be used as a case study in order to elaborate the picture of the meaning of effective, proportionate and dissuasive sanctions.

3.2 The Development of Criminal Sanctions

3.2.1 Criminal Sanctions in EU

One of the striking developments in European Union Law has been the gradual growth of criminal law. For a long time this was an untouched field for the Community but in the last decade many things have happened, both when it comes to legislation and court procedures. The reason to why it took so long is indicative of the policy of EU criminal law, which is a field with significant consequences for State sovereignty. Another reason is the division in separate pillars of the Union law. Until recently, criminal law which lies under the third pillar was more intergovernmental and thus limited for the EU institutions to elaborate. The entry into force of the Lisbon treaty opened up a whole new possibility.[91] Before diving deeper into the recent change, there will be a flashback of the development.

Over the years there have been a number of factors influencing the development of a Community criminal law. First of all the increase of illegal acts with common concern for the Members States lead to judicial cooperation in criminal matters. In the 80s it was the security threat of drug trafficking, in the 90s various types of organized crimes and the new thing for 2000 is terrorism. Another driving factor was the development of EU internal market law, which had implications for criminal law matters. The abolition of internal frontiers and goal of free moment resulted in a need to harmonize even the criminal laws. This lead to the adoption of the 1990 Schengen Implementing Convention and to harmonization of provisions on immigration, asylum, border controls and police cooperation. Shortly after the fall of the Berlin Wall and the collapse of the Soviet bloc, concerns were raised that a criminal wave would hit the Western Europe. More cooperation emerged among the Members States which finally influenced the negotiations of a new treaty in EU.[92] The final compromise resulted in the Maastricht treaty which introduced the three pillar system. The new system opened up for the use of criminal law, but still in a very restricted manner

[89] Tobler (2006).
[90] Tobler (2006).
[91] Mitsilegas (2009), p 5.
[92] Mitsilegas (2009), p 5-9.

where much of the criminal power remained with the Members States. The deficiencies of the third pillar were discussed in the intergovernmental conference leading to the adoption of the Amsterdam Treaty. The debate concerned the competence, institutional framework and whether or not to transfer matters falling under the third pillar to the Community pillar. Significant changes were made to the third pillar despite many opinions. Matters concerning immigration, asylum, borders and civil law were "*communitarised*" and the third pillar was revamped and strengthen. After some amendments by the Treaty of Nice regarding the role of Eurojust and enhanced cooperation, the EC treaty for long included detailed provisions on competence and the types of common action in the fields of police and judicial cooperation, as well as criminal law approximation.[93]

The harmonization of criminal sanctions took a major step as a result of the entry into force of the Lisbon treaty in 1 December 2009. The most important change is the abolishment of the "third pillar". The former Article 31 paragraph 1 letter e) of the Treaty of the European Union (TEU) is replaced by the article 83 paragraph 1 of the Treaty on the Functioning of the European Union (TFEU), which states that:

"The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.

These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.

On the basis of developments in crime, the Council may adopt a decision identifying other areas of crime that meet the criteria specified in this paragraph. It shall act unanimously after obtaining the consent of the European Parliament".[94]

The transfer of this provision resulted into the adoption of the so called community method instead of restricting many powers to the national governments. Firstly, this change is in fact limiting the sovereign power of the Members States to regulate the criminal matters when it comes to defining types of crimes and establishing penalties. Secondly, the power of governments was restrained and the competence of the European Parliament was extended when adopting any directive of criminal matter. The reason behind the extended influence of the European Parliament is an attempt to

[93] Mitsilegas (2009), p 9-13.
[94] Rozmus, Topa, Walczak (2010), p 17.

strengthen the democracy deficit since criminal law is very interfering with a person's freedom.[95]

The areas of crime have been extended to include more acts. However, there is also a possibility for the EU to add new crimes to the list. These crimes should be justified by the criminological research concerning the development of crime before being added.[96] With this said, the possibilities of developing EU criminal law seems very extensive, but it remains to be seen. The change in procedure form being intergovernmental to communitarian seems to be quicker, simpler and more democratic. After year 2014 it will also be possible to out-vote a Member State in decisions over criminal matters. This may cause reluctance of the Member States to even discuss criminal matters since they do not have any veto. This was shown in the Framework Decision on the protection of the environment through criminal law, which first was rejected as a proposal for a directive. The possibility of applying directives to criminal matters is otherwise a great advantage since it is a popular instrument. However, it is not possible that all these directives will have direct effect in the member states, which may affect the implementation in a negative manner. The crucial point is therefore the jurisdiction of the ECJ, whether or not they can force Member States to implement a directive.[97] The new legal framework is the same as that on any other issue regulated earlier in the first pillar, meaning that "*the European Commission is entitled to bring an action against a member state that do not exercise its duty to implement a directive. Even more important is unlimited competence of the ECJ to interpret the legal acts concerning criminal matters"*.[98] The Court's interpretation of the Treaty is therefore a crucial factor on the future of the European criminal law.

3.2.2 Criminal Sanctions and European Environmental Law

As above mentioned, the Framework Decision on the protection of the environment through criminal law was not adopted as a Directive until later. For a long time it was only regulated by a Convention: Council of Europe Convention on the Protection of the Environment through Criminal Law (PECL) 1998.[99] In 24 October 2008, the Justice and Home Affairs Council formally adopted the directive: *Directive 2008/99/EC on the protection of the environment through criminal law*; which had to be transposed by Member States by December 2010. The process was lengthy and resulted in a very important judgment by ECJ regarding the extent of the Community's competence in the area of criminal law.[100] The Court held (on 13 September 2005) that EU institutions are competent to enact EC legislation that is designed to harmonize certain aspects of criminal law. However, which

[95] Rozmus, Topa, Walczak (2010) , p 16.
[96] Rozmus, Topa, Walczak (2010) , p 16.
[97] Rozmus, Topa, Walczak (2010), p 16-20.
[98] Rozmus, Topa, Walczak (2010), p 20.
[99] Hedemann-Robinson (2007), p 516f.
[100] European Commission Environment (2011).

specific criminal sanctions to use were still left up to the Member States.[101] Whether this will be changed as a result of the Lisbon Treaty remains to be seen, theoretically it is possible.

The Directive is laying down a list of environmental offences that must be considered as criminal offences by all Member States and thus punishable with criminal sanctions. The sanctions must be effective, proportionate and dissuasive in nature. However, the Directive only sets out a minimum standard of environmental protection through criminal law, the Member States are still free to maintain or introduce more stringent protective measures. The Directive does not regulate measures concerning the procedural part of criminal law or the powers of prosecutors and judges.[102]

The role of criminal law in environmental protection has developed in EU as well as international. However, it varies in importance according to which area. Some acts, such as pollution, are so serious in nature that they are considered to only be dealt with as criminal acts and thus treated with criminal penalties. In other areas an administrative system appears more appropriate.[103] What is the case for IUU fishing?

3.2.3 Criminal Sanctions and IUU fishing

For more than a decade now the use of criminal sanctions and heavy monetary penalties as a deterrent against involvement in IUU fishing operations, has gained widespread acceptance.[104] As earlier mentioned, the EU is leaving it up to the Members States to choose between criminal and administrative sanctions when sanctioning serious infringements. The IUU Regulation is outlining a number of administrative sanctions to be applied, but still leaves it up to the Members States to decide their own criminal sanctions. It is most likely the result of the careful development of harmonization of criminal sanctions as reviewed in earlier Chapters.[105] In 2003, FAO published a report of selected fisheries legislation from all around the world. The study reveals that a majority of countries provides for administrative sanctions and out-of-court settlement, rather than the use of criminal sanctions. There are still some Members States in EU that treat violations of fisheries law as criminal offences, hence criminal sanctions are used. This is the case for Belgium, Finland, Sweden, the Netherlands, Ireland and the United Kingdom.[106] The other Members States have chosen a system with only administrative sanctions (or mixture).

Spain is the country in EU with the largest commercial fishing fleet. Their sanctioning system is predominantly relying on administrative sanctions. For facilitating enforcement and control responsibilities, the competence is

[101] Hedemann-Robinson (2007), p 520f.
[102] Directive 2008/99/EC.
[103] Heine and Prabhu (1997), p 22.
[104] Erceg (2004), p 176.
[105] Chapter 3.2.1 and 3.2.2.
[106] FAO (2003).

divided between the central state authorities and Autonomous Communities. The sanctions fall into different categories and range from warnings and fines to confiscation of the vessel. In 2001, a new law was adopted which establishes the sanctioning system for the marine fishing matters. The Law confirms that all infringements are of administrative nature and thus administrative fines are applicable. These can be combined with alternative sanctions like suspension, withdrawal or non-renewal of fishing authorization; making the offender ineligible to fish for a specific period; and seizure of fishing gear or catch or both.[107]

Portugal made a fundamental amendment in 1998, when the switch from a system with criminal sanctions (monetary penalties) to administrative fines with additional sanctions, took place. The additional sanctions varies from confiscation of catches and gear to suspension of licences. The power of issuing sanctions is divided between the harbour authorities and the Fisheries Inspectorate. The decisions can be appealed to the Maritime court or to the general courts, depending on the illegal act. The procedure in these courts follows the general rules of criminal procedure.

Germany is another country with only administrative sanctions. As in Portugal the sanctions constitutes of fines and additional penalties such as the confiscation of catches and gear. The procedure and court vary depending on the illegal act but is most of the times handled by local administrative courts.

Greece has a mixed system where serious cases are brought before the criminal courts and minor infringements are treated under administrative procedures. The Hellenic Coast Guard has the authority to directly sanction offenders. Fishermen may appeal to the Fisheries Board, if sanctioned by administrative means.

France is primarily relaying on a criminal sanctioning system but lately also administrative means have entered the arena. Beside fines, the competent authorities may "*suspend or withdraw a fishing authorization or impose additional monetary penalties where no genuine economic link can be established between the fishing vessel and France*".[108] The value of the monetary penalties is set after the amount of illegal fish taken by the fishing vessel (per 100kg). The representative of the State in the Region is also authorized to suspend (for maximum 3 months) the rights and prerogatives conferred upon "*any masters of fishing vessels who have violated the fisheries law as well as the fishing authorizations granted to such fishing vessels*".[109] France also has an out-of-court settlement known as "transaction" in French. This procedure is similar to the procedures in a common law system. In other words, it is the duty of competent authority to determine, on a case by case basis, taking into account the circumstances and the gravity of the violation as well as the offender's previous record, which transactional proposal to make. After the proposal is made it is

[107] FAO (2003), Chapter 2.1.
[108] FAO (2003), Chapter 2.1.
[109] FAO (2003) Chapter 2.1.

submitted for approval to the public prosecutor, which may approve or disapprove. It is important that the transactional proposal is containing the reasons warranting it's being initiated, otherwise it may be disapproved and go through a normal legal proceeding instead. The sum of money to be paid cannot be less than one-third of the minimum fine specified in law.[110]

As stated in the beginning of this Chapter, the sanctioning system in EU is moving towards an administrative system rather than harmonizing criminal penalties. Why the current legislation is pointing is this direction might be better explained by reviewing the potentials and limits with administrative sanctions and criminal law in particular.

3.3 Limits and Potentials

3.3.1 Criminal Sanctions

Limitations
The increased popularity of using criminal sanctions in environmental protection has given rise to a debate concerning the appropriateness and effectiveness of the same. There are several challenges and limits of the instrument which may speak for the use of administrative means instead.

The Definition of Environmental Crimes: There is today a certain level of agreement on international level concerning how to define an environmental crime. However cultural problems do exist and the view is not always the same. One difference is the view of the persons and bodies violating the laws. Even if the violators are quite aware of the consequences of their action, there is still a reluctance of regarding them as criminals in the traditional sense. By changing the term "environmental crime" to "crime against environment", the view could be more harmonized. This is also consistent with other criminal law concepts such as "crimes against the person" and "crimes against property". Another definition issue is the problem of drawing a clear and practically feasible line between crimes against the environment on the one hand and legitimate use of resources on the other. The definition of an environmental crime must take into account a number of interests, including ecological, industrial and commercial. Finding the right balance and making "sustainable" decisions is a hard task and often some interests are stronger than others.[111] Common pool resources such as fish may be particularly sensitive for this reasoning since they normally are regarded as quite free to take and use (tragedy of the commons).[112]

The Relationship between Administrative and Criminal Law: *"it is feared that criminal law will be inflated and its value thereby diminished since both murder and mere disobedience of administrative orders is defined as*

[110] FAO (2003), Chapter 2.1.
[111] Heine and Prabhu (1997), p 22f.
[112] Ostrom (1999), p 493f.

criminal".[113] This is one of the biggest issues and similar concerns have been raised regarding the danger of selective prosecution and lenient and inefficient sentencing practices. Another problem is the lack of strict standards in criminal law which may transform the instrument to soft and malfunctioning. This is not the case with administrative laws which often has a good interaction between the administrative agency and the subject. All these factors could in fact lead to the derogation of criminal law.[114]

Efficiency: So far this study has been concentrated on the effectiveness criteria. While effect is connected to the outcome of the result, i.e. how well the illegal fishing is decreasing due to criminal deterrent measures; efficiency is connected to the cost of achieving the same. Naturally, efficiency constitutes one part of the effectiveness criteria, but it is no excuse for a Member State not to take appropriate measures. However, when choosing the appropriate sanction, it is always a matter of balancing the interests. The high cost involved in the use of criminal sanctions might therefore have a negative effect on the use of the same. Developing countries often lack resources which are needed to implement the criminal measures. If there are appropriate and effective administrative alternatives, these may be used instead.[115]

The Higher Onus of Proof and Evidence: In order to achieve the successful prosecution and imprisonment of individuals for IUU fishing there is a need for strong supporting evidences. Even with evidence, it may be difficult to proof intent or provide evidence of quilt to the criminal standard "beyond reasonable doubt". By changing the burden of proof, a Member State could address this limitation. For example, on inspection of a fishing vessel, the onus would be on the master to prove that fish were caught legally and not the other way around. An alternative could be the use of strict liability, which would require a lower burden of proof and increase the likelihood of prosecution. The issue of gathering sufficient and correct evidences can be better addressed by the use of electronic data. This approach has gained greater acceptance in recent times but may still has its limitations.[116]

Control and Enforcement: The latter issue leads us into the need of control and enforcement in order for the criminal sanction to work. This is a crucial factor and the whole criminal sanction may be undermined by a lack of the same. Usually this is also the problem with administrative sanctions but since criminal measures normally require higher burden of proofs, it is even more necessary in a criminal system. In order to address this limitation a Member State can create special control and enforcement programs. In the end it is a matter of resources and without financial support it may be difficult to fulfill the effectiveness criteria.[117]

[113] Heine and Prabhu (1997), p 23.
[114] Heine and Prabhu (1997), p 24.
[115] Heine and Prabhu (1997), p 24.
[116] Erceg (2004), p 177.
[117] Doelle (2007), p 6-21f.

Priorities of Environmental Crimes in Proceedings**:** In addition to a costly process and the requirement of stronger evidences, there is also the issue of a lower level of prioritizing environmental crimes in national courts. This might not be so strange considering the fact that they are running through the same procedure as other criminal offences. A crime against a person is most likely considered of higher priority than a crime against the environment. Often, national systems are already highly overloaded with other crimes and IUU fishing offences risks ending at the end of the pile.[118]

Variations in National Law and Acceptance of Harmonization: The current system in EU, which relies on Member States choices of criminal sanctions, may be a delimiting factor. Significant variations in national law may create "fish-paradises" (instead of tax-paradises) with higher penalties in some places and the other way around. Maybe the entry into force of the Lisbon treaty can lead to an improvement and better harmonization; however a critical point is also the acceptance from the Member States. Despite recently advances in the development of a Community criminal law, there might still be a lot of reluctance on this matter.[119]

There are more limitations to criminal law than above mentioned, but these factors seem to be the most highlighted ones in the literature.

Potentials

There are also potentials and advantages of using criminal law, which is the reason behind the increased harmonization in EU.

The Deterrent Effect: This is one of the objectives to the choice of measures in the IUU Regulation. Heine and Prabhu are highlighting the potentials of criminal sanctions before administrative by arguing that "*the deterrent effect of exposure to conviction of a criminal offence can be perceived as greater than exposure to merely civil liability, particularly given the growing range of innovative sanctions which might be imposed*".[120] Moreover, Abbot is adding that for some environmental offences, criminal law seems to be the only sanction deterrent enough. This statement is based on her analysis of current trends regarding pollution control. However, she is also questioning whether or not this is the only way to achieve the deterrent effect.[121]

The Level of Sanctioning: the latter discussed phenomenon relies to a great extent of the form of the criminal sanction. Criminal sanctions are known for striking the offender harder by permitting the use of imprisonment and higher monetary penalties. In the case of IUU fishing, as earlier explained, imprisonment is very rare due to the international agreement of the UN. Still, criminal sanctions may impose higher penalties than administrative. Faure and Heine conducted a study of the effects of both criminal and administrative sanctions. When it comes to environmental criminal

[118] Dir. 2006:53.
[119] Heine and Prabhu (1997), p 25.
[120] Heine and Prabhu (1997), p 25.
[121] Abbot (2009), p 152.

sanctions, the trends are moving towards lower fines in general. This might be a problem for the objective of being deterrent.[122] However, a better harmonized system which regulates this trend may change it in the EU. It still remains to be seen.

The Enforcement of Self-responsibility and the Establishment of Norm-obedience: The positive effects of establishing a moral and then strengthen it with criminal means, is a very powerful deterrent. Nevertheless, this benefit would be lost if the chance of detection and prosecution was negligible. However, some directions believes that this could be fixed with sufficiently sever sanctions.[123]

In Accordance with the Principle of Legality: Another strength highlighted by Heine and Prabhu, is that "*offences could be clearly defined in conformity with substantive and procedural domestic law and hence ensure the compliance with the principle of legality*".[124] Moreover, this could benefit the prevention of illegal acts having transboundary effects, by having extraterritorial application of the domestic laws.

Stronger at a Regional Level: *The more the merrier*. This expression is only true for the use of criminal sanctions if harmonized in the right way. If it happens at a regional level, the Member States has the possibility to reach a better agreement on common definitions of the elements of the offence and the applicable measures, which may increase the deterrent effect. This may also lead to a more effective transboundary performance.[125]

In order to be more specific there will be an assessment in Chapter 4 of the Swedish system and their view on potentials and limits related to the criminal sanctioning system. First follows a general review of the administrative system.

3.3.2 The Administrative System

In the above-mentioned Study of the criminal enforcement of environmental law in the European Union, there was also a review of the administrative sanctions and their fulfilling of the effectiveness criteria. The approach chosen in the questionnaire was to examine the effectiveness of administrative sanctions as deterrent. The deterrence perspective is frequently mentioned in EU but Faure and Heine underlines the importance of sanctions taking other perspectives as well. It is not once and for all established that the deterrent approach is the best for preventing environmental crimes from happening. In line with the discussion of criminal penalties in doctrine and reports, this study shows that from a strict deterrence perspective, administrative sanctions are as effective as criminal penalties. For example, Germany has imposed a possibility to fine

[122] Faure and Heine (2005), p 56.
[123] Heine and Prabhu (1997), p 25.
[124] Heine and Prabhu (1997), p 25-26.
[125] Heine and Prabhu (1997), p 26.

environmental offenders with a maximum of 1 m. DM (usually 100,000 DM in practice) with their administrative system. In another case study from Italy, it is mentioned that administrative sanctions are in principle even more effective since they can affect offenders' wealth directly.[126]

A limitation of monetary sanctions and thus the administrative approach, is that as soon as the expected fine exceeds the offenders capital and insolvency problems arises, the effect of the monetary sanction will be undermined. This can in theory be regulated with imprisonment in a criminal system. However, the administrative system must choose another approach. Depending on the illegal act, there are various administrative means to choose from. In IUU fishing, this can be the confiscation of necessary equipment, catch, or the withdrawing of a person's licence to operate. At first sight, there are therefore various advantages of applying administrative means.[127]

In addition, there are also several drawbacks having to do with both fairness and effectiveness. Regarding the fairness concept, it is important to remember that some administrative sanctions can have a very severe effect to the offender, equally the ones in the criminal system. This is the case with very high fines, as well as the shutdown of a specific installation or withdrawing of licence. The system with criminal sanctions is aiming at guaranteeing the defendant a fair trial, which releases higher protection for the offender in the criminal procedure. The administrative system lacks this system and the only requirement of today is that the measures have to be in line with the European Convention on Human Rights (ECHR). This means that many advantages of the administrative procedure, such as reduced time and effectiveness, are lost.[128]

When it comes to efficiency, many law and economic scholars have claimed an advantage in favour of administrative sanctions. Criminal procedures are often very costly due to the necessary legal process. This justifies applying criminal sanctions when administrative sanctions are very harsh (see last paragraph), but not in situations when only monetary sanctions, such as fines, are at stake. From an economic perspective, it makes more sense to use the cheaper administrative system in case of minor offences and reserve the more costly procedure for more serious infringements.[129]

3.4 Other Perspectives on a Punishment

3.4.1 Deterrence, Retribution and Rehabilitation

Identify limits and potentials of sanctions as well as studying other countries and adjusting to the current trends in EU is one way of finding the

[126] Faure and Heine (2005), p 77.
[127] Faure and Heine (2005), p 78.
[128] Faure and Heine (2005), p 78.
[129] Faure and Heine (2005), p 79.

appropriate punishment to IUU fishing. Another way is to questioning the perspective of the punishment itself.

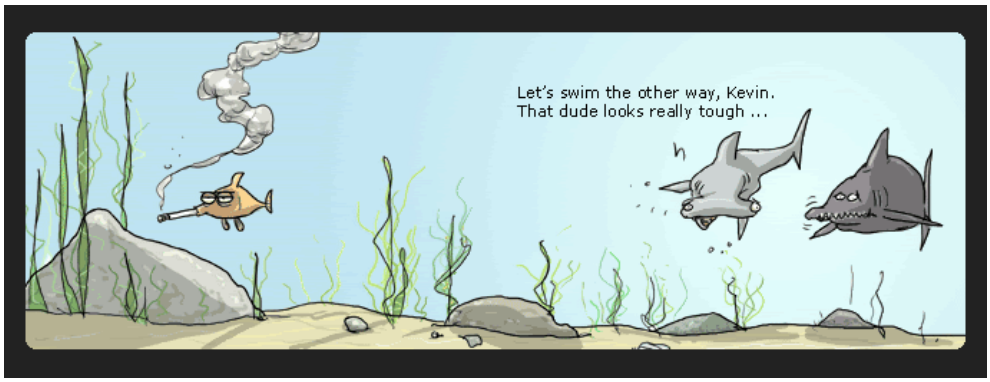

Figure 3-2 Wulff and Morgenthaler (2007)[130]

"While criticism or fear of punishment may restrain us from doing wrong, it does not make us wish to do right."

(Bettelheim, 1987)[131]

The little fish in the picture is illustrating the deterrence in a sanction, but as the quotation is implying, the deterrence in itself doesn't perhaps change the mentality of the violators. The infringement may happen another time and in another place, just as the sharks are saying "Let's swim the other way"…

Three major directions are highlighted in the literature when it comes to deciding when a punishment is justified and its purpose. They are by far means not the only ones, but they are the main theories. The three positions are *Deterrence*, *Retribution* and *Rehabilitation*.[132]

Deterrence is an approach represented by two well-known philosophers namely Cesare Beccaria (*On crime and Punishment, 1764)* and Jeremy Bentham (*The Principles of Moral and Legislations, 1781*). They both argued that punishment in itself is something tyrannical or evil, but can be justified "*in virtue of its beneficial overall consequences, in particular its capacity to deter future rule breaking.*[133]" In other words, a person shall only be subject to a sanction if it produces some outweighing amount of good, and the utility of that is larger than disutility and the utility of feasible alternatives.[134] The purpose of the "evil act" is to harm the rule breakers and make them worse off. This is the only way to deter a person from committing the same illegal act again. If people instead would like the punishment and not suffer, there is no point of having it. The purpose of the sanction is to be deterrent enough.[135]

[130] Wulfmorgenthaler (2007).
[131] Bettelheim (1987).
[132] Duus-Otterström (2007), p. 15.
[133] Duus-Otterström (2007), p. 13.
[134] Duus-Otterström (2007), p. 12.
[135] Duus-Otterström (2007), p. 17.

Retribution is probably one of the oldest theories of punishment, hence its controversial approach. The earliest role models for this perspective were Kant and Hegel. Other supporters are philosophers such as Robert Nozick, Jeffrie Murphy, and J. Angelo Corlett. The idea is that a punishment is justified "*if, when, and to the extent that, it is morally deserved*."[136] This sounds a bit similar to the eye-for-an-eye and tooth-for-a-tooth concept, since it is taking a backward-looking approach, but is slightly different. Retributivism justifies a punishment when it gives the rule breaker what he or she deserves in comparison to his or her actions.[137] An appropriate punishment is the same as for the deterrentists, it shall aim to harm the rule breakers and make them worse off. However, this position does not necessarily set the correlation between punishment and treatment when it comes to setting the ribbon. A punishment must involve harm; no empirical study about efficiency by other means can change this. Wrongdoers shall experience pain and deprivation and most important of all, it must contain a certain emotional tone. It is a form of moral sanctioning; to punish someone is to make them feel blameworthy.[138]

Rehabilitation is a position that emerged in the 19th Century. One of the representatives is Karl Menninger (*The Crime of Punishment, 1959*).Their definition of punishment is similar to the two former positions that it is something evil. However, the rehabilitionalists believe that the evil is happening in a different way. A penal policy should "*eradicate the causes of crime within offenders, not scare them into compliance or subject them to publicly sanctioned revenge*."[139] Their softer approach emerges from a different theory on why a person commits a crime: "*offenders engage in crime because they suffer from some disorder or the like, whether it be social, economic, psychological, genetic (or whatever) in origin*."[140] A punishment is justified if it makes the rule breaker transform into a law-abiding and well-functioning citizen.[141] What is then the appropriate form of punishment for a rehabilitionalist? In opposite to deterrence and retribution, rehabilitation seeks to make the rule breakers better off instead of harming them. It is better to give them treatment and education on how to behave in future situations.[142]

The current sanctioning system in EU has more in common with the two first approaches than with the latter. However, there are places in the world where a rehabilitionistic approach is more evident. This is the case in the U.S. The National Oceanic and Atmospheric Administration, more known as NOAA, authorize settlement by mutual agreement of the parties at any stage of the proceedings (happens in more than 90% of NOAA cases). This opens up the possibility to agree to settlement conditions well beyond those

[136] Duus-Otterström (2007), p. 14.
[137] Duus-Otterström (2007), p. 14.
[138] Duus-Otterström (2007), p. 18.
[139] Duus-Otterström (2007), p. 13.
[140] Duus-Otterström (2007), p. 13.
[141] Duus-Otterström (2007), p. 13.
[142] Duus-Otterström (2007), p. 17.

specifically outlined by statutes. NOAA tries to design sanctions that are meaningful and tailored to a particular case. Unlike the "transaction" in France, which only concerns monetary adjustments, this approach goes further and can even use education or other methods. Some of the conditions used in their settlements have been including such things as:

- "*public service videos, advertisements in newspapers or trade publications taken out by violators where the violator explains to his peers what he has done wrong and tries to help them benefit from his mistakes;*

- *community service in a task related to the violation;*

- *installation and use of vessel monitoring systems where it is not otherwise required;*

- *sale of vessels; and*

- *permanent surrender of permit*".[143]

Maybe this approach could be something for EU to include in their IUU- and Control Regulations for obtaining more effectiveness in the result.

3.4.2 The Development of Alternative Criminal Sanctions

If only looking at the economic analysis of enforcement, criminal sanctions appear rather ineffective and limited. However, one must remember that criminal sanctions are usually used as a last resort and in combination with many other measures, such as administrative, financial and civil instruments. When a modest criminal sanction is combined with other instruments, it may be as well as effective. Therefore, an alternative to use either administrative or criminal sanctions is actually to combine them and get the best out from the both systems 8if combined in the right way).[144]

Another possibility is to change the character of current criminal sanctions. The possibility of closing down an installation was earlier reviewed and criticised for being too harsh as an administrative sanction. Perhaps this sanction could be moved into the criminal system and hence make the problem related to unfairness and the administrative system, disappear. It would be sad to take it away, since the literature specifically highlights these sanctions of being very effective in controlling environmental crimes.[145]

[143] FAO Study (2003), Chapter 2.2.4.
[144] Faure and Heine (2005), p 58.
[145] Faure and Heine (2005), p 59.

4 Sweden as a Case Study

The 1st of February, 2006, Sweden was criticized for not fulfilling the effectiveness criteria (as defined by the EU) when it comes to their sanctioning system for combating IUU-fishing. Sweden is one of the countries in EU that still have a system with both criminal and administrative sanctions, hence the relevance of this case study. In order to provide a better background, this Chapter will start with a review of the critic followed by an overview of their current sanctioning system and legal framework. In order to answer Research Question number two, chapter 4.3 will identify a number of strengths and shortcomings of criminal sanctions. Moreover, a discussion of the main findings and some recommendations will be summarized in Chapter 4.4.

4.1 Critic of the Sanctioning System

During the years (from 2006-2009) the statistics of reported violations against the Swedish Fishery Regulation (Fiskelag 1993:787) has increased. It started with 579 reported crimes in 2006 and reached the number of 887 by the end of 2008.[146] Persons reported and persons found guilty are a big difference and the statistics for the persons found guilty of criminal offences in 2008 was only 162 out of these 887. Only 71 out of 162 persons got monetary penalties (which is the highest criminal sanction for illegal fishing in Sweden).[147] The statistics indicates that something is wrong with the system and as earlier mentioned, Sweden got serious complaints from the European Commission in 2006. According to them the Swedish sanctioning system was not being effective enough and not fulfilling the purpose of deterring sanctions. The complaint concerned the very small proportion of offenses against the CFP that was giving rise to a penalty. The Commission found that the legal proceedings are lengthy, and that fishery violations are not of a very high priority for the police, nor for the prosecutors. This leads to very low probability that a person who breaks the law also is punished with a sanction. The Commission therefore stressed the fact that Sweden needs to adapt quick, effective and powerful measures or sanctions.[148]

The question whether or not Sweden fulfill their obligations towards the CFP and the Control Regulation was earlier treated in a court case against the European Commission (C-271/02). The court found Sweden guilty for not prosecuting or sanctioning any of the infringements of the CFP during the years 1995-1996. This was in December 16, 2004.[149] In accordance to Article 228 of the EU Treaty, Sweden was obliged to take immediate measures which lead to a comprehensive review of the sanctioning system. The measures resulted in a higher maximum penalty for serious

[146] Brottsförebyggande rådet, (2006-2008).
[147] Brottsförebyggande rådet, (2006 -2008).
[148] Dir. 2006:53.
[149] C-271/02 court case.

infringements and the introduction of more administrative sanctions, such as possibilities to recall licences for fishing and for operating a vessel.[150]

The critic from the European Court and the European Commission was backed up by several authorities in Sweden such as the Swedish Board of Fisheries, Swedish Coast Guard and National Police Board, as well as by prosecutors and judges who handle cases of violations of fisheries legislation. The representatives confirmed that there are substantial shortcomings in the current sanctions regime. They also agreed to the statement made by the European Commission concerning lengthy legal proceedings, low priority of fishery violations and thus low probability of penalty for offenders.[151]

The assessment of the sanctioning system revealed that much of the ineffectiveness is connected to the current criminal penalty system. Violations against the CFP have lower priority than many other criminal acts in Sweden, for example illegal acts against people. Due to the system being overcharged with many types of criminal acts, it is not strange that violations of higher culpability go first. There is a need for unburden the procedural system with alternative measures. This is why Sweden has slowly started to lean more towards administrative sanctions.[152]

4.2 The Current System

When it comes to combating illegal fishing, all the regulations from the European Union is applicable. The most relevant national legislation is however the Swedish Fishery Regulation (Fiskelag 1993:787). 40 § is the main paragraph that is talking about illegal fishing and identifies monetary penalties as the only possible criminal punishment (referring to 41 §) for sanctioning illegal fishing within the Swedish EEZ.[153] In August 2008 it became possible for the Swedish Board of Fisheries to directly issue administrative sanctions to offenders. The most important instruments for this cause are the use of administrative fines and the temporary recapture of licence to operate.[154] The Swedish Fishery Regulation did recently change due to the entry into force of the new Control Regulation (on 1 January 2011).[155] The purpose of the new Control Regulation is to harmonize the control system of IUU fishing in EU and improve the old Regulation which was criticized for being too ineffective, complex and expensive to implement. In general terms, the new Control Regulation did not lead to any substantial changes for Sweden. New for this year is a requirement of electronic reporting of information, better harmonization of Member State control, as well as a new point system for keeping track of infringements.[156]

[150] SOU 2007:20, p 102ff.
[151] SOU 2007:20, p 103.
[152] SOU 2007:20, p 103f.
[153] Fiskelag 1993:787, § 40 and 41.
[154] Fiskeriverket Promemoria (2009).
[155] Fiskeriverket (2011).
[156] Fiskeriverket (2011).

The Swedish Board of Fisheries did criticize the new regulation due to the fear of higher costs for the authorities, related to stricter control and information measures.[157] It still remains to see the effects of the new Control Regulation.

4.3 Assessment of Criminal Sanctions

The critic from EU resulted in a comprehensive review of the Swedish sanctioning system. There were a number of factors found which has influenced the development and the effectiveness. Below follows some of the more highlighted aspects:

The System: The purpose of criminal law is that it should work preventive and deterrent. The system in Sweden is not achieving that purpose due to the fact that there are too few cases that actually enters the court room and results in a criminal penalty. The reason behind the low statistic is that fishing crimes are rarely prioritized at the police station neither at the prosecutor. The Swedish priorities goes in line with the general tendency in the whole European Union, that criminal offences against a person tend to be more important than environmental crimes in general.[158] This is an obstacle that needs to be addressed in order for the system to work in an appropriate manner.

Efficiency: When it comes to costs, criminal sanctions need control and enforcement in order to work efficient. High cost factors are involved in the use of criminal law for environmental protection and there has to be a balance between the costs and the effect of the sanction. Criminal sanctions can be very effective, but very in-efficient if the costs for enforcement and control exceeds the effects of the reduced IUU fishing.[159] The current system in Sweden, which got criticized by the Commission, was not very efficient, nor effective. If only a small amount of reported violations leads to prosecution and monetary penalty, the costs are definitely exceeding the positive effect.

Monitoring: Criminal law needs monitoring in order to function. Without monitoring there will be no proofs, nor possibilities to condemn a person for a crime. The monitoring is done by the Swedish Board of Ministry and the National Coast Guard. Isabella Lövin is highlighting the difficulties of monitoring in her book *"Tyst Hav"*. Among other things there have been difficulties for the Swedish Board of Ministry to enter the vessels due to ongoing conflicts between fishermen and the government.[160] The system expects to be better monitored with the new IUU Regulation thanks to a new

[157] SOU 2007:20, Chapter 4.4.
[158] Heine and Prabhu (1997**)**, p. 23ff.
[159] Heine and Prabhu (1997), p. 23ff.
[160] Lövin (2007).

catch certification scheme and an alert system to detect the most suspect cases.[161] The result and its effects remain to be seen.

Acceptance: Acceptance amongst the public is very important for an instruments success. The ongoing debate concerning the use of administrative and criminal sanctions might influence the future of criminal law.[162] In Sweden, criminal law is viewed as a necessary deterrent sanction against illegal fishing and so far the administrative sanctions should only be applied for minor infringements. The fact that the Control Regulation is still allowing the Member States to alternatively use appropriate deterrent criminal sanctions instead of administrative means ensures Sweden's position.[163] However, if the trend is turning and administrative sanctions are shown to be more effective for all kinds of serious infringements, the opinion might change even in Sweden. The critic against Sweden may also influence the general opinion about criminal sanctions in EU. The system has to work both effective and efficient. In an interview with Staffan Westerlund it is also highlighted that acceptance is closely related to the level of the criminal sanction as per se (i.e. how serious is the monetary penalty?) and on the number of prosecutions.[164]

Alternatives: Which are the alternatives and how effective is criminal law compared to the latter?

The criminal sanction system is being compared to a system with only administrative sanctions or a system where both of the sanctions are active at the same time. Some opinions are that the administrative system is much easier to monitor and therefore achieves a more direct effect due to the fact that the sanctions doesn't have to wait long for prosecution. It is up to the monitoring authority to handle the administrative sanctions, which also leads to quicker results.

Staffan Westerlund believes in a system with administrative sanctions rather than one with criminal. In order for a sanction to work deterrent it has to be economical severe for the fisherman not the other way around. The system with criminal sanctions is not effective enough and seldom leads to a severe punishment. An effective system with administrative sanctions and possibilities to take the licence (in case of serious infringements) would be to prefer.[165]

4.4 Lessons Learned from Sweden

One of the most important lessons from Sweden is that the whole system around criminal sanctions has to work in order for the sanction to be effective and efficient. A criminal sanction in itself can be both deterrent

[161] Europa, Press (2009).
[162] Heine and Prabhu (1997), **p** 23ff.
[163] Council Regulation (EC) No 1224/2009**,** Ingress (38).
[164] Westerlund (2010-03-13).
[165] Westerlund **(**2010-03-13).

and preventive, but when the system is failing to go from theory to practice, the use of criminal sanctions will cost a lot of money for the society and become rather ineffective. What happened in Sweden was that the number of prosecuted crimes was far too low compared to the number of reported violations. This was due to the low priority of fishing crimes at police stations prosecutors. A criminal offence against a person is naturally prioritized prior to a criminal offence against the environment, which is very important to keep in mind when treating all crimes in the same system.

The fact that fishing crimes are not highly prioritized for investigation requires a change in the structure. A new agency that only deals with these matters could be to prefer. It could also be wise to combine administrative and criminal sanctions even more. The administrative sanctions should then only be applied to minor violations so that the burden of the court system is eased. Only the most serious infringements should be treated with criminal law and procedures in court. This is currently the case in Sweden but perhaps there is a need to treat even more infringements under the administrative system than they do today. The question is then, which infringements shall be decriminalized and thus moved to the administrative system?

Another problem with the Swedish system is the short time frames for "making" statute-barred ("preskribera") of a crime. When the violation is not prioritized in the court order, the crime might get dropped before even reaching a trial. This was the case in Sweden and ones again we have to think about the system as per se and not only the sanction. Hardly, the nature herself would go to court and push for a trial, which surely a person would do if being subject to a criminal act.

The burden of proof is another complex problem and without enough evidences, a case won't get very far. Here we can identify the need and importance of a strong and sound enforcement and control system in order for the criminal sanctions to function. It is also a matter of costs and the efficiency has to be measured and compared with the system of administrative sanctions. If the result is more efficient and effective with the use of administrative sanctions than by the use of criminal, the country should consider changing either sanctions or the system.

The fact that criminal sanctions are viewed as very deterrent by the society might be an indication for using the instrument. However one has to keep in mind what is the underlying problems connected to illegal fishing and what is the most deterrent effect for a fisherman? A bottom up approach is necessary to find out the results and create a better system.

5 Analysis

The structure of this Chapter will be to first address the two research questions (Chapter 5.1 and 5.2) and their objectives. Then a discussion of the identified research problem will take place in Chapter 6.

In order to answer my Research Questions the following objectives were used:

1. *Provide an overview of IUU fishing and legal measures taken in the EU.*
2. *Present an overview of the effectiveness criteria and the existing sanctioning system in EU.*
3. *Identify current trends in EU when it comes to using Criminal Law as a sanction.*
4. *Explore the advantages and drawbacks for using criminal law as a tool to reinforce Sustainable Fishery Management, instead of administrative sanctions and the differences between the two systems in terms of penalties.*
5. *Identify alternative ways of developing criminal sanctions in order to improve the effectiveness.*

5.1 Why are we Heading Towards an Administrative System?

Why are we heading towards an administrative system in IUU fishing rather than harmonizing with the use of criminal sanctions?

5.1.1 Background

One of the objectives, in order to answer the first research question, was to describe the trends in EU criminal law and its correlation to IUU fishing. In order to understand the big picture it is important to first understand the drivers. After first reviewing the trends of criminal law as a general instrument for all kinds or infringements, one can conclude that the growth is striking in the last decade. From being an untouched field for the Community, it gradually opened up by first becoming a partly restricted area (intergovernmental) and then recently very harmonized with the entry into force of the Lisbon treaty and the abolishment of the former EU three-pillar-system. Driving factors for the evolution may be traced back to the 80s when the security threat of drug trafficking lead to judicial cooperation

amongst Member States. The cooperation intensified over the years due to other forms of transboundary threats, namely organized crimes in the 90s and terrorism in 2000. This resulted in a need to harmonize even criminal law and influenced both control making and the legislative process. A number of harmonization measures were taken such as the adoption of; the 1990 Schengen Implementing Convention for harmonizing immigration, asylum, border controls and police cooperations; the Maastricht treaty which introduced the three pillar system; the Amsterdam treaty which revamped and change the third pillar by moving certain intergovernmental matters to the Community pillar (matters concerning immigration, asylum, borders and civil law); the Treaty of Nice which strengthened the role of Eurojust and enhanced cooperation and then finally; the Lisbon Treaty which abolished the third pillar system and adopted the so called community method instead of restricting many powers to the national governments.

Important drivers for this development have also been the development of an EU internal market law and the goal of free movement which lead to an abolition of internal frontiers, as well as the fear of a criminal wave hitting the Western Europe after the fall of the Berlin Wall and the collapse of the Soviet bloc. Au contraire, one can see that the reasons to why it took so long are indicative of the policy of EU criminal law, which is a field with significant consequences for State sovereignty. This was earlier ensured by the three-pillar-system but changed with the Lisbon treaty.

The harmonization possibilities of criminal sanctions are much greater in the environmental field after the entering into force of the Directive 2008/99/EC on the protection of the environment through criminal law. Nowadays there is a list of environmental offences that must be considered as criminal offences by all Member States and thus punishable with criminal sanctions. However, there is still a big harmonization gap since the Member States are aloud to maintain or introduce more stringent and protective measures. In the important judgment by ECJ in September 2005, the Court held that EU institutions are competent to enact EC legislation that is designed to harmonise certain aspects of criminal law. However, which specific criminal sanctions to use were still left up to the Member States. Whether this will be changed as a result of the Lisbon Treaty remains to be seen, but theoretically, it is possible.

In despite of current trends in criminal law, there is a greater push towards the use of administrative sanctions in IUU fishing offences in EU. One of the reasons behind may be the slowly development of harmonization of criminal sanctions, as outlined above. Other drivers for this trend may depend on the benefits of the administrative system as well as the limitations of the criminal.

5.1.2 Drivers for the use of Administrative Sanctions

In the above-mentioned Study of the criminal enforcement of environmental law in the European Union conducted in the Member States, Faure and Heine is highlighting that an administrative system is regarded as deterrent as the use of criminal measures. For example, Germany which only has an administrative system, has imposed a possibility to fine environmental offenders with a maximum of 1 m. DM (usually 100,000 DM in practice). Moreover, in another case study from Italy it is mentioned that administrative sanctions are in principle even more effective since they can affect offender's wealth directly.

When it comes to efficiency, many law and economic scholars have claimed an advantage in favour of administrative sanctions. Criminal procedures are often very costly due to the necessary legal process. This justifies applying criminal sanctions when administrative sanctions are very harsh, but not in situations when only monetary sanctions, such as fines, are at stake. From an economic perspective, it makes more sense to use the cheaper administrative system in case of minor offences and reserve the more costly procedure for more serious infringements.

The case study of Sweden highlighted similar benefits with the administrative system as the general opinions in EU, such as being faster, condemning more offenders, and being more efficient when it comes to costs. From the conducted interviews, one can see the opinions that administrative sanctions may be deterrent to fishermen and thus better in line with the effectiveness criteria. The method used in the Swedish criminal system is exclusive monetary penalties. Administrative sanctions is apart from fines also enabling temporary withdrawal of licence to operate and fish, which is sometimes viewed as a more effective deterrence.

It is not only the potentials of administrative sanctions that have driven the direction towards its current position. The limitations of criminal sanctions are another driver. This is the case when it comes to difficulties in agreeing on a common definition of environmental crimes; the fear that criminal law will be inflated and its value thereby diminished since both murder and mere disobedience of administrative orders is defined as criminal; the high costs of the criminal procedure and the higher onus of proof and evidence required for ensuring the principle of fairness in trials; the heavy dependency on control and enforcement for gathering the latter; as well as the many variations in national law and reluctance to acceptance of a harmonized criminal method.

One of the most important lessons from Sweden is that the whole system around criminal sanctions has to work in order for the sanction to be effective and efficient. A criminal sanction in itself can be both deterrent and preventive, but when the system is failing to go from theory to practice, the use of criminal sanctions will cost a lot of money for the society and

become rather ineffective. What happened in Sweden was that the number of prosecuted crimes was far too low compared to the number of reported violations. This was due to the low priority of fishing crimes at police stations prosecutors.

Another problem with the Swedish system is the short time frames for "making" statute-barred ("preskribera") of a crime. When the violation is not prioritized in the court order, the crime might be dropped before even reaching a trial. The higher burden of proof was also underlined as a complex issue and its dependency to gather sufficient evidence by effective control. In the end, it is also a matter of costs and the efficiency has to be measured and compared with the system of administrative sanctions. If the result is more efficient and effective with the use of administrative sanctions than by the use of criminal, the country should consider changing either sanctions or the system.

5.1.3 Sanctions and IUU Fishing

The characteristics of the resource (being considered as common good) may be the biggest influencing factor of them all. In order to choose an appropriate sanction one has to understand the difficulties in managing the resource. So far, the control and management of the seas are limited due to lack of resources and data. In order to ensure the burden of proof by effective control, the Member State may have to pay a lot of money. However, this problem does not only arise in the criminal system, this is also necessary for the administrative system to work. However, the higher burden of proof may be a bigger limitation for the criminal process.

All these factors have contributed to the trend towards a more detailed harmonization of administrative law rather than using criminal sanctions. This leads us into the second Research Question, concerning a possible improvement of criminal sanctions in order to become more popular.

5.2 How could Criminal Sanctions be Improved?

What are the shortcomings in the criminal system and how could it become more effective?

5.2.1 The Effectiveness Criteria in EU

In order for a criminal sanction to be applicable it has to fulfill the requirements of being effective, proportional and dissuasive. The IUU regulation is in its ingress highlighting the need of deterrent sanctions in

order to handle the serious infringements. However, the framework is not giving much guidance on the definition. This leaves much open for the ECJ to interpret, which has an important role in deciding the trends of sanctions in EU. From a case between the Commission and Greece, the Court stated that the basic criteria which must be taken into account in order to ensure that penalty payments have coercive force and Community law is applied in an effective way is the "duration of the infringement, its degree of seriousness and the ability of the Member State to pay". Other criteria to take into consideration are if the serious infringement is endangering the human health or harming the environment in a serious way.

In the case study of Sweden and by reviewing the critic from the European Commission one can interpret the importance of the relation between offenses detected and offenses given rise to penalty. The Commission highlighted that the legal proceedings are lengthy and that fishery violations are not of a very high priority for the police, nor for the prosecutors. Consequently, this leads to very low probability that a person who breaks the law also is punished with a sanction. The effectiveness criteria are therefore also including these factors.

5.2.2 Needed Changes

The assessment of the sanctioning system in Sweden revealed that much of the ineffectiveness is connected to the current criminal penalty system. Violations against the CFP have lower priority than many other criminal acts in Sweden, for example illegal acts against people. Due to the system being overcharged with many types of criminal acts, it is not strange that violations of higher culpability go first. There is a need for unburden the procedural system with alternative measures. This is maybe why Sweden has slowly started to lean more towards administrative sanctions. Moreover the case study revealed the need of a strong and sound enforcement and control system; perhaps a new agency that deals with investigations and sanctions in order to ease the burden of unprioritized crimes on the police and prosecutors tables; the need to better combine administrative and criminal sanctions in order for them to coop. The fact that criminal sanctions are viewed as very deterrent by the society might be an indication for using the instrument. However one has to keep in mind what is the underlying problems connected to illegal fishing and what is the most deterrent effect for a fisherman? A bottom up approach is necessary to find out the results and create a better system.

Other than that the challenges of defining environmental crimes on an international level needs to be addresses, as well as the reluctance of Member States to harmonize criminal sanctions. These are matters that must be addressed on a community level.

5.2.3 What should a Sanction Address in order to be Effective?

Looking at the benefits of both criminal and administrative law, there are a number of benefits which could be good to keep for fighting IUU fishing. One must not forget that these are two different systems and the most appropriate usage of the both would be when they generate more benefits than limitations, if used separately. They could also be combined but then there is a need to also investigate the new effect emerged from that combination. It does not always have to lead into better and more effective ways of sanctioning. Two pros can lead to a big minus and the other way around. Nevertheless, in order to provide some suggestions on improvement for criminal law, I find it appropriate to also highlight the existing benefits of the two systems.

Heine and Prabhu were highlighting the potentials of criminal sanctions before administrative by arguing that "*the deterrent effect of exposure to conviction of a criminal offence can be perceived as greater than exposure to merely civil liability, particularly given the growing range of innovative sanctions which might be imposed*". Moreover, Abbot was adding that for some environmental offences, criminal law seems to be the only sanction deterrent enough. However, one must keep in mind that the deterrent effect is depending to a great extent on the form of the criminal sanction. Criminal sanctions are known for striking the offender harder by permitting the use of imprisonment and higher monetary penalties. But, in the case of IUU fishing, imprisonment is very rare due to the international agreement of the UN. Still, criminal sanctions may impose higher penalties than administrative. If the criminal sanction is appropriate enough for its purpose, the deterrent effect is a good potential. Even administrative sanctions may achieve the same effect by fulfilling the same purpose.

Another strength highlighted by Heine and Prabhu, is that offences could be clearly defined in conformity with substantive and procedural domestic law and hence ensures the compliance with the principle of legality. Moreover, this could benefit the prevention of illegal acts having transboundary effects, by having extraterritorial application of the domestic laws. The principle of legality was also discussed in the use of certain harsh administrative measures. There is a need also here to be able to ensure individuals a fair trial relying on protective principles, when using very powerful sanctions.

The administrative system has also the benefits of being quicker; less proof demanding and more efficient when it comes to costs for the procedural process. This is an important complement to the "more principle ensuring" criminal process.

5.2.4 Suggested Changes

In Chapter 3.5 there was also some elaboration of alternative approaches to criminal sanctions. The positions of deterrence, retribution and rehabilitation were further investigated. In my opinion, the rehabilitionistic approach was the more appealing one. Deterrence is already one of the main principles of IUU sanctions in the EU, but maybe there is a need for another approach as well? Often sanctions could be compared to "end-of-pipe" solutions, meaning that they aim regulating the final step of the process. What if they also could be preventive in the beginning of the process and not only used as a deterrent?

In the FAO report about global trends of sanctions, the NOAA had an interesting approach which is more in line with the rehabilitionistic position. They used the possibilities of settlement in order to impose other measures than the ones regulated by written laws. One of the possibilities was to condemn the offender to community service. Another possibility was to agree on an educational program for the offender. As the quotation was highlighting in Chapter 3.5, the sanctions may not make the wrongdoers to wish to do right. Sometimes education and other innovative measures are the only means in order to improve the real problem. Since fish is a common good resource, the biggest issue lies within the management of the same. If offenders also could be educated in how to fish better and why to do so, this could become a valuable contribution to the management of the resource and provide a preventive effect to the problem. With this said an important research gap is identified, namely: "*How could a rehabilitionistic approach in sanctioning be used in order to fulfill the effectiveness critera and contribute to a better IUU management?*"

My idea of introducing a new approach of the criminal sanction does not mean that I consider the other approaches to be of less importance. They are also needed along with a comprehensive toolkit of other applicable sanctions. Other alternatives are the combination of criminal and administrative sanctions as well as changing some of the harsh administrative sanctions, such as the possibility of closing down an operation, and perhaps move them to the criminal system instead in order to ensure the principle of fairness.

5.3 Shall we keep Criminal sanctions?

Should we keep criminal sanctions as a choice in the current harmonization of sanctions for combating IUU fishing?

In this Study there has been a focus on several factors in order to answer above mentioned problem. The answer is not evident and depends on a how people weigh and compare the latter to the alternatives. By looking at the

resource, I could conclude that there are difficulties in the management, which may affect the ease of control and enforcement to a great extent. This may also affect the use of criminal sanctions since they are more dependent on accurate evidences since there is a higher burden of onus. By harmonising the control system, this could be better regulated and the gap bridged. However, the possibility of controlling international waters may not be so realistic with today's technique and resources. For developed countries with more resources and already developed control mechanisms, this may be possible to achieve within their EEZ. Developing countries are more dependent on cooperation and contribution from other Member States. However, this is a global problem and in order to address the whole problem there is needs to not only see to one's own backyard.

The other factor to take into consideration was the potentials and limitations of the criminal sanction and its alternatives. By reviewing them both I find both drivers and barriers for their usage. I do not think this should be a question whether or not we should go with one alternative. I think it is important that EU is harmonizing even criminal sanctions and thus create a better toolkit for the member states to use. They can still leave the possibility of choosing between the systems up to the Member States. By harmonising more, I think that EU may bridge the problem of "fishing paradises" and better ensure the achievement of the effectiveness critera when it comes to the sanctions. Another process that is needed to review and harmonise in a flexible manner is the implementation of the same. The failure of effectiveness can also depend on the failure of implementation due to the countries administrative or criminal system. It may not be possible to provide the same legal implementation method for all Member States, but there is a possibility to provide guidelines and concrete help by using regional implementation bodies. This is another question that also needs to be more elaborated in another study.

The current trends are pointing towards an administrative system. The reason behind is most likely the reluctance of Member States to give up their sovereignty and accept criminal law as an issue for the Community. However, the Lisbon treaty did recently open up this restriction and it remains to be seen whether or not criminal law will be more harmonised in the case of combating IUU fishing. The current trend is moving towards an administrative system and some people claim the administrative sanctions to be deterrent and more effective on offenders. However, there are still benefits with the criminal system that may be important to guard. This is maybe the reason to why some Member States are still using them.

The review of the alternatives gave me some interesting ideas on improving criminal law. There is a need to further investigate and review the possibilities but if shown effective, this could also be a reason for keeping the criminal system.

With this said, I come to the conclusion that criminal sanctions is to be considered appropriate and in line with the effectiveness criteria for

combating IUU fishing, if and only if, the system it relies upon is working in that Member State. This is the same conclusion for the administrative system. Since I have found both limitations and potentials of them both, my opinion is that EU should harmonize criminal sanctions even more but still leave it flexible and up to the Member States to choose which system the coop with best.

6 Conclusions

Should we keep criminal sanctions as a choice in the current harmonization of sanctions for combating IUU fishing?

The main problem identified in this thesis (box) was analysed by the use of two research questions. These will be summarized in Chapter 6.1 followed by some identified suggestions on further research.

6.1 Summary of the Findings

Question 1: Why are we heading towards an administrative system in IUU fishing rather than harmonizing with the use of criminal sanctions?

The current trends in the harmonisation of criminal sanctions in EU have taken major steps in the last decade. From being restricted to Member States only, the entry into force of the Lisbon treaty, abolished the three-pillar-system and nowadays permit the EU to handle criminal matters under Community law. The trends of enforcement of criminal law in environmental matters have also taken major steps since the entry into force of the Directive 2008/99/EC on the protection of the environment through criminal law, which aims at harmonising the control and sanctions used for environmental protection in crimes against the nature. The ECJ has also been heavily involved in criminal matters and today constitutes one of the most important instruments for influencing the future use of criminal law.

When it comes to IUU fishing and criminal sanctions, the trend has been the reverse. The harmonization of sanctions are here leaning towards a comprehensive system of administrative measures whilst criminal sanctions are only an alternative and thus left up to the Member States to regulate. This might depend on the slowly progress of Member States of accepting criminal law as a competence of the Community. It is possible that the Lisbon treaty will change this trend however, the review of administrative measures showed them to be as effective as criminal ones, if not more in certain cases. The greater advantages of the administrative measures are the faster procedure compared to the criminal process, the alternatives of withdrawing the licence to operate, as well as the lower costs of the entire process. Criminal sanctions have been heavily criticised for not fulfilling the effectiveness criteria due to few penalties in relation to reported offences. The disadvantage of the criminal law is the lengthy processes, the higher onus of proof, the costs for the latter as well as the low prioritization amongst police and prosecutors. This was the case in Sweden, which lead to a slightly shift in to the administrative direction after being criticised by the European Commission.

Another driver of the trend towards an administrative system in IUU fishing is the characteristics of the resource. Being considered as a common pool resource, many issues are emerging already in the management phase. The sanctioning system is actually a form of "end-of-pipe" solution and therefore heavily dependent on the management, control and enforcement to work. This is a challenge for both criminal and administrative sanctions but might perhaps be even a greater barrier for the criminal system due to the high onus of proof and evidence required in the process.

The driving factors for an administrative system are rather comprehensive and do not tend to shift in the first place. Perhaps the Lisbon treaty may lead to even a greater harmonization of criminal penalties but it remains to be seen. It is still a question whether or not criminal sanctions can be regarded as effective enough. This brings me to the second Research Question as outlined below.

Question 2: What are the shortcomings in the criminal system and how could it become more effective?

The effectiveness criteria is very much focusing on how well the sanctioning system functions and particularly looks at the relation between reported offences and condemned penalties. The measures have to be effective, proportionate and dissuasive if applicable. There is not much guidance in the legal framework concerning the latter, leaving much power left to the ECJ to form a praxis.

In order to analyze how the criminal system could change and become more effective, this study focused on the limitations of criminal law, the benefits of both criminal and administrative approaches, as well as other alternatives to a punishment. The findings showed that criminal sanctions may be preferable over administrative when the latter is extremely harsh in nature. This is due to the criminal procedure, ensuring fairness of trial, which does not exist in the administrative process.

The question regarding how criminal sanctions could change in order to become more effective could be addressed by changing approach on the criminal sanction itself. This study elaborated the approach of rehabilitation, which is an alternative to being deterrent. Their softer approach emerges from a different theory on why a person commits a crime: "*offenders engage in crime because they suffer from some disorder or the like, whether it be social, economic, psychological, genetic (or whatever) in origin*". A punishment is therefore only justified if it makes the rule breaker transform into a law-abiding and well-functioning citizen. In opposite to deterrence and retribution, rehabilitation seeks to make the rule breakers better off instead of harming them. They highlight the importance of giving the offenders treatment and education, rather than "sticks".

In the FAO report about global trends of sanctions, the NOAA had an interesting approach, which is more in line with the rehabilitionistic

position. By using the possibility of settlement, NOAA has imposed other measures than the ones regulated by written laws. One of the possibilities was to condemn the offender to community service. Another possibility was to agree on an educational program for the offender. As the quotation was highlighting in Chapter 3.5, the sanctions may not make the wrongdoers to wish to do right. Sometimes education and other innovative measures are the only means in order to improve the real problem. Since fish is a common good resource, the biggest issue lies within the management of the same. If offenders also could be educated and encouraged to use better fishing practices, this could become a valuable contribution to the management of the resource and provide a preventive effect instead of only being an "end-of-pipe" solution. With this said an important research gap is identified, namely: *How could a rehabilitionistic approach in sanctioning be used in order to fulfil the effectiveness critera and contribute to a better IUU management?*

Another alternative to today's characteristics of the criminal sanction is the combination of criminal and administrative sanctions. As shown, there are strengths and shortcomings with the both positions. By combining the two, these shortcomings could be transformed into strengths. However, the combination of the latter must be well thought through so that two plusses does not transform into one big minus, which could be the case if combined in the wrong way. One possibility is also to change character of some of the harsh administrative sanctions, such as the possibility of closing down an operation, and perhaps move them to the criminal system. This could ensure the principle of fairness and enable other protective legal principles for individuals accused for violating the law.

My idea of introducing a new approach to criminal sanctions does not mean that I consider the other approaches to be of less importance. They are also needed along with a comprehensive toolkit of other applicable sanctions and measures. One must not forget that the reason for violating the Common Fishery Policy do vary from person to person, hence the importance of a toolkit. If we want sanctions to be more effective there is a need to being able to better adapt to specific situations.

The Answer to the problem definition

To the question whether or not we should keep criminal sanctions as alternative to administrative sanctions in the prevention of IUU fishing, my answer is yes. The crucial thing in my opinion is to keep the word "alternative" in Regulation. As proven, both systems have strengths and shortcomings and some systems are more suitable for certain cultures than others are. The harmonization process in EU is an important work in order to ensure similar fishing practices, uphold the goals of the New Common fishery Policy, as well as protect the sensitive marine ecosystem from total degradation. As important it is to harmonize the rules it is according to my opinion equally important to keep a certain amount of flexibility. The law has to adapt to the existing systems of the Member States, not the other way around. We could of course try the other way around, but I doubt the

process to be fast enough. The current state of the marine ecosystem can hardly wait for old systems, taken centuries to build up, to change over a night. With this said I believe the best way would be to continue the harmonization but also go longer with the criminal sanctions. A good solution could be the creation of a comprehensive toolkit connected to specific offences, mixed of alternatives with both criminal and administrative sanctions as well as combinations of the two.

By conducting this Research, I could not help reflecting over how to take my findings one step longer. The suggestions, as outlined in figure 6-1, are a result from my findings. However, they need to be further elaborated and empirical investigated in order to become reliable recommendations. This leads to my final Chapter: *Suggestions on further research*.

6.2 Suggestions on Further Research

As the scope and delimitations in Chapter one of this Research indicates, there are several limitations with this study. The limitations are related to the chosen approach and design of the Research problem, as well as to the data collection. In order to invite and contribute to succeeding research I will hereby summarize my findings on further questions and research gaps.

Measures to take	Further Research needed
Regulate Flexible Harmonization – Create a comprehensive toolkit of sanctions to choose between, connected to specific infringements. This should be a mixture of both administrative and criminal sanctions.	How could this toolkit be designed? Which sanctions shall be connected to which infringements? How do you ensure the alternatives to be equally burdensome? Pros&cons with flexible harmonization
Alternative Criminal Sanctions – Elaborate the criminal sanctioning system and develop more alternatives to prison and monetary penalties.	Which alternatives are applicable to regualate common pool resources? How can a rehabilitionistic approach contribute and look like?
The Creation of a Comprehensive Implementation Plan – Harmonize already existing good initiatives and organisations working towards better implementation of IUU fishing.	Could we use the similar model as they do in Global Reporting Initiative (G3 guidelines) for sustainable reporting when harmonising the implementation measures?

Figure 6-1 Suggestions on Further Research

Supplement A – Questionnaire for semi structured interviews

1.) Vad är din uppfattning om hur straffrättsliga sanktioner fungerar idag inom Sverige för illegalt fiske? Vilka är dem? Anser du att sanktionen i sig är effektiv? På vilket sätt är den effektiv i så fall (resultat, avskräckande syfte, acceptans…)? På vilket sätt är den inte effektiv? Hur tillämpas de straffrättsliga sanktionerna i Sverige idag (domstol, statistik?)? Fungerar detta system bra? Vad är du inte nöjd med?

Svar:

2.) Bör man harmonisera straffrättsliga sanktioner enligt dig inom EU? Ser att de redan tenderar att harmonisera och reglera vilka administrativa sanktioner som man skall använda, men dock inte specificerat de straffrättsliga.

Svar:

3.) Bör man bara använda administrativa sanktioner inom EU för att reglera frågan illegalt fiske? Varför? Varför inte?

Svar:

4.) Hur skulle det optimala sanktionssystemet se ut enligt dig? En kombination av de båda instrumenten?

Svar:

5.) Vad är viktigt att tänka på om EU skall harmonisera straffrätten som sanktion för medlemsstaterna, vilka lärdomar kan vi dra från Sverige?

Svar:

6.) Hur tror du att en framtida utveckling inom sanktionssystemet kommer att se ut i och med den nya kontrollförordningen?

Svar:

7.) Vad anser du om den nya kontrollförordningen när det kommer till sanktioner? Tror du att den kommer att bidra till en bättre utveckling?

Svar:

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