

Galapagos at risk: and Legal options for it's protection under international environmental law

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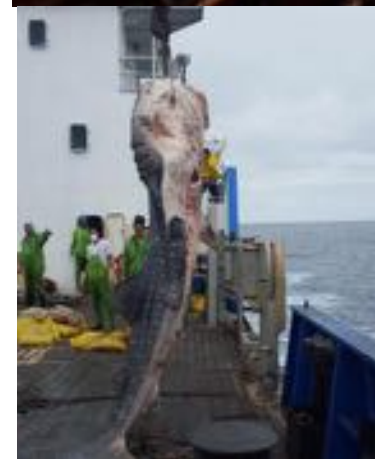


PROTECTING BIODIVERSITY AND GALAPAGOS ISLANDS

- Ecuador ratified the **Convention on Biological Diversity (CBD)** in March 1995. And in 1998 issued the **Special Regime for Galapagos** to provide the Archipelago with an *in situ* conservation framework consistent with the provisions of this convention and others to protect over 3,000 species from which 500 are endemic with a marine reserve of 40 miles. In 2008 the new ecuadorian constitution implemented in article 258 a special regime for the conservation of the Archipelago and abundant environment provisions, including nature's rights. Additionally in 2016 a shark sanctuary was created, one of the largest in the world. Other Agreements: CITES, Convention on Migratory Species are part of the Ecuadorian legal framework.
- In November 2012, Ecuador ratified the United Nations Convention on the Law of the Sea (UNCLOS). Following the accession, the country began to abide by the parameters established in this convention.
- Since then, foreign fishing fleets are assiduous visitors the South Pacific, undertaking fishing operations outside the Insular Exclusive Economic Zone (IEEZ), but close to the edge of the Galapagos National Park, one of Humanity's natural heritage declared by UNESCO.



THE CASE OF THE FU YUAN YU LENG 2017-2018





The impact of Illegal Fishing: A case of industrial shark finning in the Galapagos Marine Reserve

- From the total of the fish seized as born individuals (there were also embryos) **77.32%** were shark species and **22.68%** white fish.
- 12 different **sharks** varieties **were identified**, 9 were catalogued as vulnerable, 7 were listed in Appendix II of CITES, 2 under threat, and 1 seriously under threat.
- A total of **7,207** sharks were accounted for, (Silky Sharks, the most abundant variety with **52.71%** of total shark catch) Followed by the Blue Shark (o Tintorera) representing **20.36% of total catch**.
- A total of **1,191** shark fins sacks fin were found. Along with embryos, Blue shark chest and fish entrails.



The limitations of national legislation to face international threats

Enforcement of Article 247 the Organic Criminal Code (COIP- 2014) → Art. 247

Crimes against wild flora and fauna: the person who hunts, fishes, catches, collects, extracts, **has possession of**, transports, traffics, benefits, exchanges, trades specimens or its parts, its constitutive elements, products or by products of wild flora or fauna, terrestrial, maritime or species under threat, in danger of extinction or migratory listed at the national level by the environmental authority, as well as in international conventions or treaties ratified by the State, will sanctioned with imprisonment of one to three years. If concurrent with the following circumstances, the maximum of the penalty will apply:

- 1) If the crime is committed in a period or reproductive zone or area of nesting, incubation, delivery, breeding, or growth of the species, or if
- 2) If the crime was committed within the National Protected Area System.

- Article 256 COIP refers back to a technical provision issued by the National Environment Authority Through Ministerial Accord No. 84

- Despite the blank criminal rule there were difficulties with the burden of the proof and enforcement in cases like this one.

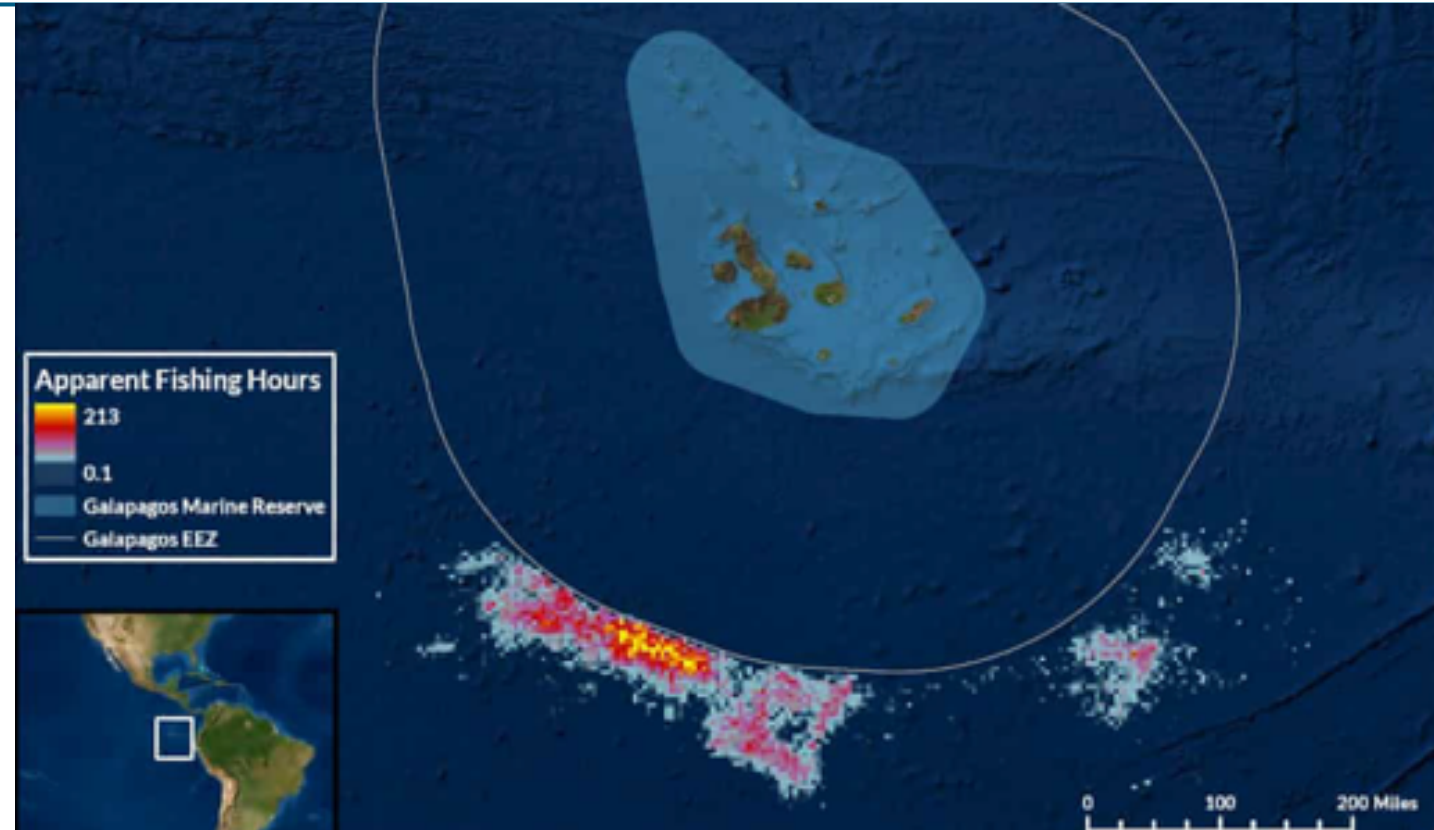


March – September 2020 : More chinese industrial fishing near Galapagos Ecosystem

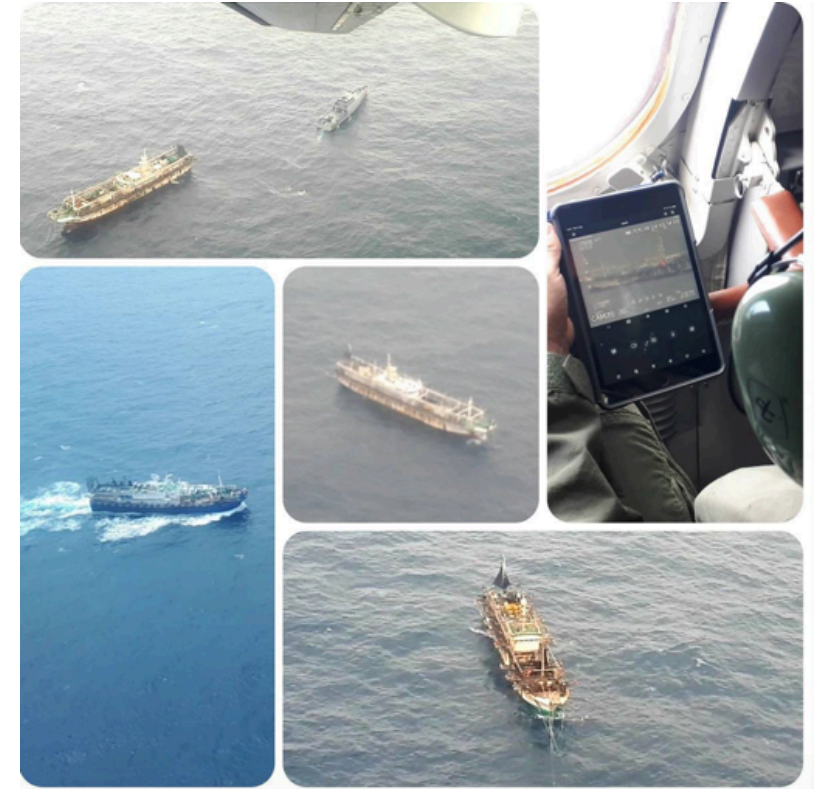
Recently the Ecuadorian National Navy established the presence of more than 260 Chinese flag ship stationed in the jurisdictional limits of the Galapagos National Park and the EEZ.

The Navy detected three Chinese fishing fleets at 356 nautical miles from Isabela Island in the Galapagos, outside the local demarcation.

They declared they were fishing jumbo flying squid.



- Defense Ecuatorian Minister Oswaldo Jarrín declared that the chinese fleet close to Galapagos deactivated the automatic identification system (transponders) to block localization. When this was acknowledged by the Ecuatorian Navy, the fleet increased from 260 to 340.
- These practices make it harder to trace their trajectory and it is beleived these practices are frequent.
- The capacities for sea monitoring exceed largely our national capacity, and there is the need for cooperation and joint operations between countries.
- Today organizations such as global fishing watch that can be allies in sending alerts.
- Fishing traseability needs to become the new legal standard in fisheries globally. There is the need to enforce commitments of the regional fisheries management organizations that include conservation measures, enforce FAO´s code of conduct por responsible fisheries, and enforce global fishing geolocalization to increase transparency.
- The European Commission continues its action to fight illegal fishing worldwide and has requested Ecuador to step up its actions (yellow card) in the fight against illegal, unreported and unregulated (IUU) fishing.



FOTOS: Diario Universo Sobrevuelo





Food security and a the race for the ocean resources: “the tragedy of the commons”

The Fisheries Chamber has announced their interest in fishing jumbo flying squid (calamar gigante - *Dosidicus gigas*) since Ecuador is part of SPRFMO, due to its high value in international market. This is a highly migratory species and food of tuna, sword fish, snapper, whales and dolphins, very important in the marine ecosystem.

They require to adapt the legal framework to enable the ecuadorian fishing fleet to start fishing jumbo flying squid in national waters and measures under SPRFMO for international waters. This implies modifying the previous ministerial accord, which limited the activity in ecuadorian waters.



Source: MAAE, 2020.



High ecosystemic connectivity in the South East Pacific



The need to connect the south east Pacific marine ecosystems has become a top priority for international organizations and civil society groups. This international initiative conveys countries like – Ecuador (Galapagos), Costa Rica (Cocos), Colombia (Malpelos) and Panama (Las Perlas).



FOTOS: Diario Universo 29 julio 2020

There is the need to prevent sharks mantas, turtles and even birds, to be incidentally killed or intensively fished by big fishing fleets.

Peñaherrera-Palma C., Arauz R., Bessudo S., Bravo-Ormaza E., Chassot O., Chinacalle-Martínez N., Espinoza E., Forsberg K., García-Rada E., Guzmán H., Hoyos M., Hucke R., Ketchum J., Klimley A.P., López-Macías J., Papastamatiou Y., Rubin R., Shillinger G., Soler G., Steiner T., Vallejo F., Zanella I., Zárate P., Zevallos-Rosado J. y A. Hearn. 2018. "Justificación biológica para la creación de la MigraVía Coco-Galápagos".

Ecuadorian Government and Civil society initiatives:

- GOVERNMENT / CIVIL SOCIETY: CMAR – Corredor Marino Pacifico Oriental (Ecuador Costa Rica, Colombia y Panama).
- GOVERNMENT: Global Ocean Alliance – 26 Países (Gran Bretaña) Costa Rica y Ecuador.
- GOVERNMENT announced measures for responsible fishing and conservation to fight IUU fishing with the Latin American Alliance for Food Security through Sustainable Fishing (ALPESCA) and an information exchange network from Latin American and Caribbean.
- GOVERNMENT Meetings at the South Pacific Permanent Commission (CPPS) with Chile, Peru and Colombia.
- CIVIL SOCIETY: MAS Galapagos – Civil Society Initiative to increase Marine Reserve to 100 miles.



Fuente: MAAE 2020



(i) Can we invoke the precautionary approach?

ECUADORIAN CONSTITUTION has a precautionary approach:

“Article 73. “The State shall apply precautionary and restrictive measures on activities that might lead to the extinction of species, the destruction of ecosystems and the permanent alteration of natural cycles.”

GALAPAGOS SPECIAL STATUTE:

“Art. 3. “ Principles, policies, plans, regulations and actions public and private in Galapagos Province and its protected areas, pursue sustainability and equilibrium between the State, the society and the economy” (...) Which will be governed by the following principles: **1.) Precautionary Principle:** “When there is danger of grave or irreversible damage, the lack of absolute scientific certainty will not be used by public competent authority to delay the adoption of any effective measure to impede the environment degradation”.



(ii) Can we invoke the precautionary approach?

Protective measures can be adopted towards the protection of migratory and transboundary species through regional initiatives (i.e. CMAR) in coordination with the South Pacific Regional Fisheries Management Organisation (SPRFMO) and the The Inter-American Tropical Tuna Commission (IATTC) that have jurisdiction in international waters to control and reduce IUU fishing.

But Ecuador as part of New York Declaration can also help protect big pelagic species, as well as tunids and sharks in the South East Pacific and protect other species and marine ecosystems, like the Galapagos Islands: (i) expanding the marine reserve and connecting with “Cocos Islands” in Costa Rica, and increasing the EEZ from 200 to 350 miles to connect to Galapagos ZEE to the continent creating a national corridor. The studies will be finished around 2026 to be filed before UNCLOS.

There is also the need to strengthen national efforts to fight IUU fishing and expand the scope of the FAO’s Code of Conduct and responsible fisheries strategies



Precautionary Approach in international Law

The precautionary principle adopted in the Rio Declaration art. 15 has been explicitly accepted in several international instruments, but fundamentally in the preamble of the Montreal Protocol where it begins to be seen as the principle that makes sustainable development operational.

The precautionary principle has already been defined many times as a customary law principle in various courts. There is evidence that the implementation of the precautionary principle has become a necessity for countries that today face the challenge of conservation.

States today face the urgent challenge of protecting biodiversity resources outside their territories and their capacity for action and direct control in many cases where the proposed system that regulates these rights and obligations is not enough.

Therefore, there is enough evidence to invoke the precautionary principle as a principle of customary international law that can be proposed to carry out conservation actions within the context MEAs implementation when promoting conservation of biodiversity, including marine biodiversity, even when the framework of action is not limited to a action within the territory or jurisdiction.

Recommended actions:

1. Strengthen regional commitments towards the control of Illegal, unreported and unregulated fisheries work. (in the light of the new initiatives CMAR)
2. Participating actively in the Intergovernmental Conference on an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. Inserting Precautionary Approach criteria into de negotiation agenda. Until then increase control, form alliances for monitoring until negotiation of BNJ is completed. South East Pacific countries should analyze the possibility of preparing joint proposals, to strengthen their initiatives.
3. In the light of article 21 of the New York Declaration enforce regional and sub regional cooperation for monitoring and surveillance.
4. In the light of article 23 of the New York Declaration Port Authorities states will have the righth and obligation to adopt measureas in accordance with international law to boost the efficacy of global, regional and subregional measures for management and conservation.
5. Take active part in the World Trade Organization (WTO) on fisheries subsidies
6. **In the case of Galapagos** the invocation at the international level of the precautionary principle and the extra jurisdictional application of protection and conservation measures should be examined due to the relevance of the Galapagos Archipelago.

THANK YOU FOR YOUR ATTENTION

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