HOLES IN THE NET

Application of Marine Insurance Law Principles to Claims by IUU Fishing Vessels

By Rebecca Prentiss Pskowski

I. Introduction[1]

Marine insurance has developed, over centuries, to manage the risk of some of humanity's oldest, and most hazardous, economic endeavors. Fishing vessels carry protection and indemnity (P&I) and hull coverage, like their cargo-carrying sisters, but the economic and occupational risks in the fishing industry remain exceptionally high.[2] Among the risks for fishing vessel insurers are those particularly associated with illegal, unreported, and unregulated fishing (IUU fishing). [3]

In recent years, a coalition of academics, environmentalists, and insurers have begun to study and address the role of marine insurance in IUU fishing operations, and to propose policies to minimize IUU vessel operators' access to insurance. This paper examines an evident gap in the current research on this topic by analyzing international case law to assess the probability (or, at least, *possibility*) of known or suspected IUU fishing vessels actually recovering on insurance claims. This anecdotal survey shows that the barriers to recovery by illegal fishing operators are not as high as even the informed practitioner might assume.

II. IUU Fishing & Marine Insurance: The Problem

In recent decades, nation states and international bodies have taken steps to prevent global fish stocks from falling prey to the tragedy of the commons, as have many regional fisheries. In response to increased regulation, parallel sophistication has occurred in the shadow economy of IUU fishing.

The problem of IUU fishing is inherently difficult to quantify, but a 2009 study put the annual global catch from illegal and unreported fisheries at some eleven to twenty-six metric tons, valued at $10 to $23.5 billion.[4] The problem is truly global, touching every ocean and the coastal waters of all seven continents.[5]

Assessing the prevalence of insurance coverage for IUU vessels is, likewise, not easy. Globally, the fishing sector has a low rate of vessel insurance.[6] Commentators have sometimes assumed, without evident empirical basis, that insurance is unavailable or unattractive to IUU operators.[7]

In 2016, an interdisciplinary team of researchers published the results of their survey of publicly available coverage data in an article entitled *Cutting a Lifeline to Maritime Crime*.[8] After searching commercial insurers and P&I clubs' web databases for 480 known or suspected IUU vessels, and for a "control" group of non-IUU licensed fishing vessels, the team identified sixty-seven covered IUU vessels, affiliated with seventeen different insurers.[9] There was no statistically significant difference in the rates of coverage, as between IUU and non-IUU vessels.[10] A subsequent legal analysis summarized the findings: "in practice, the owners of fishing vessels which have had previous involvement in IUU fishing activities have little difficulty in obtaining liability

insurance from the market."[11] As recently as October 2018, the known IUU fishing vessel Cape Flower (IMO number 7330399) was covered by UK insurer Carina.[12]

III. Efforts to Restrict IUU Fishing Vessels' Access to Insurance Cover

In 2017, the environmental NGO Oceana teamed with the United Nations Environment Programme's Principles for Sustainable Insurance Initiative (UNEP PSI Initiative)[13] to enlist the marine insurance industry in efforts to obstruct IUU fishing. The initiative produced an "industry statement," pledging to "not knowingly insure or facilitate the insuring of vessels that have been officially blacklisted for their involvement in IUU fishing."[14] A public document, titled *Risk Assessment and Control of IUU Fishing for the Marine Insurance Industry* enumerates the risks posed to insurers who issue cover to IUU fishing vessels, and encourages the adoption of preventative measures out of self-interest, as much as altruism.[15]

Risk Assessment & Control identifies five discrete risks presented by IUU fishing vessels to insurers: (1) increased likelihood of claims; (2) increased possibility of association with other crimes; (3) increased exposure to fraud; (4) exposure to direct legal liabilities; and (5) possibility of losses due to reputation damage.[16] The first three can be called risks intrinsic to the cover; arguments that IUU vessels are bad underwriting risks, as compared to comparable, law-abiding vessels. Cited IUU fishing practices include flag of convenience registry, improper AIS use, cost-cutting, and a general disinclination to follow rules and regulations, including safety regulations.

The fourth and fifth risks can be characterized as extrinsic: costs which adhere to the insurer itself, as a consequence of doing business with an IUU fishing vessel, (as opposed to the intrinsic costs which result from bad underwriting outcomes). Potential

extrinsic legal liability includes “criminal, civil, or administrative sanctions and asset recovery actions.”[17] This is a particular concern for insurers resident in the European Union, where Article 39(1) of the EU Regulation to prevent, deter and eliminate IUU fishing states that “[n]ationals subject to the jurisdiction of Member States . . . shall neither support nor engage in IUU fishing”.[18] Finally, reputation damage may result should an insurer’s business relationship with IUU fishing vessels become public knowledge, as IUU fishing “increasingly becom[es] a topical issue.”[19]

A companion piece to *Cutting a Lifeline* was published the following year by three of the same authors, including maritime law scholar Barış Soyer.[20] *Tackling IUU Fishing* proposes a legal response to the problems identified by *Cutting a Lifeline*. In apparent contrast to the Oceana/PSI Initiative industry guidelines, which argue that insurers covering IUU fishing vessels will suffer disproportionately negative underwriting outcomes, *Tackling IUU Fishing* asserts that IUU vessels will have great difficulty in actually recovering on any claims for loss.[21] To support this assertion, Soyer et al. cite (1) P&I club rules, which generally contain an express exclusion for losses caused by the assured’s illegal activity; (2) the implied warranty of legality in commercial insurance policies; and (3) failure of the IUU assured to disclose material circumstances relating to the risk in its application for insurance.[22] The authors note, “[t]hose who are more cynical might even suggest that liability insurers are tempted to offer cover to [IUU fishing] vessels on the basis of a superficial risk assessment in the knowledge that they would be able to deny liability under the policy if and when such liability arose.”[23]

This paper examines case law to assess whether or not IUU fishing vessel operators will be reliably barred from recovering under their insurance policies, as

posited by *Tackling IUU Fishing*, or whether *Risk Assessment & Control* is correct to caution insurers as to the intrinsic risks of issuing policies to IUU fishing vessels. [24]

IV. Litigation Case Studies: Prospects for IUU Fishing Vessels' Insurance Claims[25]

a. Express warranties: *The Morning Star*

On April 9, 1983, the fishing trawler *Morning Star* got underway from Durban, South Africa, bound for fishing grounds off the coast of Mozambique. [26] The *Star* was insured, at a value of 300,000 rand, under a hull policy and a "war risks" policy, both issued by Incorporated General Insurance.[27] Both policies carried an express warranty: "Warranted engaged in commercial fishing no further than 500 nautical miles north and south of Durban and not exceeding 100 nautical miles offshore within these limits but all vessels warranted to include legal fishing within Mocambique territorial waters."[28]

The *Star* arrived at her fishing grounds on April 11, and commenced trawling for prawns.[29] The following day, the *Star* was trawling some twelve to thirteen miles off the coast of Mozambique when she was intercepted by two fishing vessels, and ordered to haul in her nets.[30] This the skipper did, under duress, and he was then prevailed upon to follow the intercepting vessels to the Maputo harbor.[31] On the way in, the *Star* was able to contact the vessel's owner and the South African Navy by radio, and the skipper was advised to attempt an escape by steaming at full speed to the south.[32] This effort was unsuccessful, the *Star* was again intercepted, and made fast to one of the arresting vessels for the remainder of the trip to Maputo.[33] There the skipper and engineer of the *Star* were prosecuted and convicted for illegal fishing operations, by a Mozambican tribunal.[34] The men were assessed a fine, equivalent to 167,000 rand, and advised that, if the fine were not paid in fifteen days, the *Star* would be confiscated by the

government of Mozambique.[35] Neither man had the resources to pay the fine, nor did the vessel's owner back in Durban.[36] The owner asked the insurer to pay the fine, in order to redeem its insured interest, but the insurer refused, asserting that there was no coverage for such a seizure under either the hull or war risks policy.[37] The vessel remained in Maputo, the skipper and crew were released, and coverage litigation commenced.[38]

At trial, the judge applied the Roman-Dutch law of South Africa, though he considered English law, including the Marine Insurance Act, to be "of great persuasive authority."[39] Consequently, the English implied warranty of legality, codified at section 41 of the Marine Insurance Act of 1906, did not apply. The trial court first considered whether the *Star* had been in breach of the policies' fishing warranty. The vessel was undisputedly within the navigational warranty, having been less than 500 nautical miles north and south of Durban and less than 100 nautical miles offshore at the time of her arrest.[40] Further, the trial judge found it to be "reasonably clear that the plaintiff's vessel was in fact fishing illegally; that it did so in contravention of some or other Mocambican statutory provision."[41] Finding that the *Star* had been fishing more than twelve nautical miles off the coast, in Mozambique's exclusive economic zone (EEZ), rather than its territorial sea, the trial court held that the *Star*, illegally fishing in Mozambique's EEZ, was not in breach of the policies' express warranty that the vessel would not engage in illegal fishing *within* Mozambique's territorial waters.[42]

The court then turned to the insurer's alternative defense, that, as the insurer "had not undertaken to insure the [owner] against losses resulting from his illegal or unlawful activities," no recovery was warranted for a loss proximately caused by the

vessel's illegal fishing—essentially a common-law formulation of the implied warranty of legality.[43] Judge Friedman conceded that "it *may* be contrary to public policy to recognise a claim which has resulted from the commission by the insured of a crime."[44] However, in light of the court's judgment that the vessel's owner was probably ignorant of the statutes which rendered the *Star*'s conduct illegal, the trial court rejected the insurer's defense as to illegality: "even assuming that the activities of the plaintiff [owner] himself (as opposed to those of his employees) were illegal and that such illegality brought about the arrest and subsequent detention of the vessel, it would not, in my view, be contrary to public policy to allow him to recover in this case."[45] Judgment was therefore entered for the *Star*'s owner, in the sum of 300,000 rand.[46]

On appeal, the Appellate Division (then the highest court in South Africa) reversed, on the alternative ground that the vessel's confiscation by Mozambican authorities was not a covered peril.[47] The decision on appeal also departed from the trial court's dismissal of the Mozambican legal process which led to the conviction of the skipper and engineer. The trial court was skeptical of the legitimacy of this foreign judicial process, referring to the Maputo "trial" in scare quotes, observing "that the court was staffed, not by trained lawyers, but by three officials from the Mocambican Department of Fisheries," and concluding that "there is probably much to be said for the view that the continued detention and confiscation of the vessel was not the result of ordinary judicial process at all, but rather the result of the actions of officials forming part of the executive branch of the Mocambican Government."[48] Justice Galgut, by contrast, upon examination of the Mozambican fishing legislation, and evidence of the Maputo

trial, found himself "unable to agree that the evidence shows that the tribunal was not constituted in terms of the Mozambican legislation."[49]

While this case is somewhat dated, and does not reflect modern attitudes towards IUU fishing practices, the trial court's lack of concern as to the legality of the *Star*'s fishing (completely untouched on appeal) is remarkable, and alarming to the marine insurer who relies on express warranties or exclusions to bar recovery for losses caused by the assured's illegal activity. One possible explanation for Judge Friedman's blasé attitude may be his evident general distrust of Mozambican rule of law. Analogous legal provincialism, justified or otherwise, is still a problem for those who would assert the legitimacy of regional or national fishing restrictions in foreign courts.

b. Implied warranty of legality: *The Northern Challenge*

In the summer of 2001 the Canadian fishing vessel *Northern Challenge II* was fishing for snow crab out of St. John's, Newfoundland.[50] The *Challenge* had been inspected by the Canada Steamship Inspection Agency (CSI) and carried a Class II Certificate, authorizing the vessel to engage in fishing voyages no more than 120 nautical miles off the east coast of Canada.[51] The *Challenge* was insured under a hull policy, by Allianz AGF, for $420,000 (Canadian).[52] While her CSI Certificate was expressly limited to waters within 120 miles of the coast, the vessel routinely fished further out, sometimes as far as 200 nautical miles offshore.[53] Once, during the 2001 season, the *Challenge* broke down 170 miles offshore, and had to be towed in by the Coast Guard.[54] On her final voyage, the *Challenge* left from St. John's to harvest crab from the gear she had left in the water at a point some 170 nautical miles off the coast.[55] On August 2, 2001, the *Challenge* was steaming home when, some forty miles

off St. John's, the vessel caught fire and sank, resulting in a total loss.[56] Allianz denied the owner's claim for breach of the implied warranty of legality.[57]

The trial court ruled for the insurer, finding that, 1) "on its final voyage the Vessel was being operated contrary to its CSI certification in that it operated beyond the 120 nautical mile limit," and 2) "the voyage in which it was engaged commences when the Vessel starts to undock and leave port and ends when it returns to port, docks and makes fast," and therefore holding that "the last voyage of the Vessel was, in its entire[t]y, a breach of the CSI geographical limits condition and therefore illegal."[58]

The Court of Appeal reversed, finding that the Canada Shipping Act's definition of "voyage"—to include a "passage or trip and any movement of a ship from one place to another or from one place and returning to that place,"—should be read to include a movements between "places" offshore.[59] The court drew the rather remarkable conclusion that "in circumstances where the vessel steams beyond the limits specified in her certificate, that voyage commences when the vessel 'is about to proceed' beyond the geographic restriction specified in the certificate she holds, and would end when the vessel returned to waters for which the owner holds a valid certificate."[60] Thus, in the case of the *Challenge*'s fateful last trip, "a voyage that may be termed unlawful, in the sense that the owner could have been charged with an offence, commenced when the vessel proceeded beyond 120 miles offshore and ended when the vessel returned to a place within 120 miles."[61] Concerning the implied warranty of legality, "that the marine adventure insured is lawful and, in so far as the insured has control, will be carried out in a lawful manner," with "marine adventure" defined as "any situation where insurable property is exposed to maritime perils," the appellate court held that, "when the vessel

was lost, she was not more than 120 miles offshore, and had a valid Class II CSI certificate. During that time she was exposed to maritime perils and was acting lawfully. It follows that the implied warranty [of legality] is satisfied."[62]

Outside the 120-mile line, the *Challenge* was operating illegally, with regards to her certification, but there is no evidence in either opinion that she was in violation of any Canadian or regional *fisheries* law or regulation. Still, the case is a troubling one. The appellate court's remarkable *sui generis* definition of the term "voyage" lacks any meaningful limiting principle. The court's formulation allows for the infinite subdivision of any marine expedition into legally convenient "voyages." This construction allowed the court to hold that even repeated, knowing illegal conduct, which appreciably increases the risk of loss, will only bar recovery for losses occurring during the commission of that illegality. This holding casts significant doubt on the assertion, in *Tackling IUU Fishing*, that IUU vessels will not be able to recover for losses suffered while not actively violating fishing laws or regulations.

c. *Uberrimae Fidei*: *The Oceana*

Under the principle of *uberrimae fidei*, most often translated as "utmost good faith," an assured's contract for marine insurance may be voided by the insurer on the basis of the assured's material misrepresentation.[63] A misrepresentation is "material" where it would influence the reasonable insurer's decision as to whether or not to accept the risk.[64] *Uberrimae fidei* imposes no causation requirement: under English marine insurance law, a material misrepresentation will void the policy, even where the loss is unrelated to the misrepresentation.[65] Under the American doctrine of *Wilburn Boat*, federal courts may look to state statutes to determine whether a causal

connection is required to void a marine insurance policy for material misrepresentation.[66]

Dean Pesante was a commercial fisherman, operating the thirty-eight-foot gill-netter *Oceana* out of Rhode Island.[67] In early 2001, faced with rising insurance premiums, Pesante contacted insurance agent Philip Christopher, of Christopher & Regan Insurance (C&R), in search of a new insurer for his vessel.[68] Through Christopher, Pesante submitted an application to Commercial Union Insurance.[69] Crucially, the application identified the *Oceana* as a "lobster boat."[70] Commercial Union faxed Christopher an insurance quote, which listed the *Oceana* as a thirty-eight-foot lobster boat, and quoted a premium of $1,550.[71] Christopher responded by fax, requesting several changes to the policy, and again identifying the *Oceana* as a lobster boat.[72] On April 5, 2001, Commercial Union issued a policy to Pesante, containing the express warranty that "the only commercial use of the insured vessel(s) shall be for lobstering."[73] Uncontested evidence would later show that, had Commercial Union known that the vessel was used for gill-netting, the premium would have been twenty-five percent higher, because gill-net vessels pose a higher risk of loss.[74] Pesante continued to gill-net for the 2001 and 2002 seasons.[75] He never lobstered off the *Oceana*, and described the two fisheries as "radically different."[76]

On September 25, 2002, the *Oceana* was on her way back to port after a gill-netting voyage when she collided with a twenty-one-foot Boston Whaler.[77] Occupants of the Whaler were seriously injured, and brought claims against the *Oceana*.[78] Several months after the accident, Pesante belatedly attempted to correct his policy: "He crossed out 'lobstering' on the form and sent it to C&R along with a handwritten note

stating that he had never done lobstering and did not intend to engage in lobstering in the future."[79] Christopher sent these documents on to Commercial Union and Commercial issued a denial of coverage based on Pesante's misrepresentation and breach of the policy's express warranty.[80]

In May of 2003, Commercial filed suit in the district of Rhode Island, seeking a declaratory judgment of its rights and responsibilities under the policy.[81] The court considered Commercial's position in ruling on a motion for summary judgment, and found no causal relationship between Pesante's breach of warranty and the losses suffered, because the *Oceana* had been steaming back from her fishing grounds (not actively gill-netting) at the time of loss. Therefore, the court held "there is no federal maritime rule that negates coverage," denying Commercial's motion for summary judgment.[82] Evidently, Commercial's misrepresentation argument at summary judgment was somewhat confused, and the trial court did not squarely address whether Pesante's misrepresentations as to the use of his vessel voided the policy, under the doctrine of *uberrimae fidei*.[83] Following Judge Torres' summary judgment ruling, the parties filed a joint motion for entry of final judgment, stipulating that there were no longer any factual disputes to be resolved at trial.[84] The trial court entered final judgment for Pesante, and Commercial Union appealed.[85]

On appeal, the First Circuit focused its review on Commercial Union's argument that Pesante's application for insurance contained a material misrepresentation, rendering his policy voidable by the insurer.[86] The panel declined to decide whether *uberrimae fidei* is "entrenched federal maritime law," sufficient to displace state

insurance law under *Wilburn Boat*, because it found Pesante's misrepresentation would void his policy under either *uberrimae fidei* or Rhode Island insurance law.[87]

There is no indication that Pesante's gill-net fishery was illegal, unregulated, or unreported. But the type of misrepresentation which he committed—misidentifying the nature of his fishery so as to secure a lower insurance premium—is of a kind with the risks of misrepresentation that the Oceana/UNEP position paper, *Risk Assessment & Control*, identifies as inherent to insurers of IUU vessels.[88] Pesante's success at the district court, and the appellate panel's reluctance to apply *uberrimae fidei* under the *Wilburn Boat* analysis, illustrate the real possibility that IUU fishing vessel operators who have made material misrepresentations (such as misrepresentations of the nature of their fishery) may be able to recover for insurance claims.

Soyer et al. contend that "[t]he prospects of recovery under a liability policy or P&I cover are bleak if a vessel with previous involvement in IUU fishing activities incurs a liability, even when she is not involved in IUU fishing at the time," on the theory that failure to disclose a vessel's IUU fishing activities would be a failure to disclose material circumstances, in breach of the obligation of *uberrimae fidei*.[89] *Quaere* how to distinguish this proposition from the circumstances of Pesante's claim, made on a loss incurred on the way home from the fishing grounds, where he used his "lobster boat" to gill-net? One difference is that the Soyer article assumes the application of English law, where the principle of *uberrimae fidei* is more entrenched than in the American maritime law.[90] However, the fact that Pesante was able to prevail at the district court, despite clear evidence of his misrepresentation, including his post facto attempt to amend his policy after the collision, is remarkable.

d. Failure to disclose material circumstances: *The Pacific Queen*

Our last case implicates both the doctrine of *uberrimae fidei* and the implied warranty of legality. The fishing vessel *Pacific Queen* was rendered a total constructive loss by gasoline explosion, killing one member of her crew, on September 17, 1957. [91] The *Queen* was insured by a hull policy for $325,000. The policy covered explosion as an agreed peril, conditioned on due diligence by the owners or manager of the vessel.

As came to light in the subsequent Coast Guard investigation, the diesel-driven *Queen*, a former Navy salvage vessel used in the Alaska gill-net fishery, had been recently retro-fitted—without the knowledge of her underwriters—to carry 8,000 gallons of gasoline.[92] Under U.S. Fish and Wildlife Service (USFWS) regulation, only vessels thirty-two feet in length or less could participate in the Bristol Bay salmon fishery.[93] The *Queen* functioned as a mother ship for twenty of these smaller, gas-driven boats, freezing and transporting their catches, and providing them with gasoline.[94]

The federal Tanker Act[95] required inspection and certification for any vessel carrying *bulk* gasoline—gasoline other than the vessel's own "fuel or stores."[96] Some of the gasoline carried by the *Queen* was for the use of her own twelve gill-net boats, under common ownership.[97] However, during the 1957 fishing season, the *Queen* sold gasoline to independent fishermen and, further, provided gasoline, through a joint venture agreement, to gill-net boats under separate ownership.[98] The trial court held that this violated the Tanker Act, and that, since the owners had actual knowledge of the Tanker Act, such violation "constituted negligence or a want of due care and diligence."[99] Under the policy, that lack of due diligence barred recovery for the fatal explosion.[100]

However, the owners' knowing violation of the Tanker Act did *not* render the entire adventure illegal, because "[t]he hauling of gasoline in bulk in violation of the Act was not a primary purpose of the voyage but merely an incident thereof."[101] Therefore, despite the manifestly illegal intent of the owners in sending the *Queen* off, laden with 8,000 gallons of gas, more than half of which was intended for sale or barter, in violation of the Tanker Act, no breach of the implied warranty of legality was found.

Presumably, violation of a fishing regulation rather than a tanker statute might have a different result. If the 173-foot *Queen* had set out with the intention of gill-netting, the entire adventure would have been illegal, in violation of the warranty of legality. Perhaps the available alternative ground of lack of due diligence influenced the court's decision to hold the adventure a legal one. But the *Queen*'s knowing, unlicensed carriage of bulk gasoline was in direct furtherance of her fishing aim; had the carriage been conducted in a safe, though unlicensed and illegal manner, and the loss of the *Queen* occasioned by some other covered peril, the insurer might well have been liable.

V. Conclusion

To explain the relative ease of voiding marine coverage, for what may seem, to modern eyes, incidental dishonesty or inconsequential regulatory breaches, theorists of insurance law point to the origins of marine insurance, a time before modern weather routing, vessel-tracking websites, satellite phones, VHF radios, or submarine cables:

> *In earlier times . . . [t]he risks of sea transportation were quite high and, unlike the insured subject in non-marine insurance policies. . . once the vessel was out of the port, the insurers were unable to contact the vessel effectively or to control the risks of the adventure . . . . [I]n order to encourage insurers to engage in this high risk industry, the courts needed to provide effective defences . . . and to set strict liabilities. . . .*

> *[B]ecause of the lack of supervision . . . it was possible for the assured to commit an illegality at any time. . . . It was not possible for the courts or the insurers to know accurately the time the illegality was committed, and the categories of illegality which could be committed by the assured were also unpredictable. Therefore, for the convenience of commercial activities, the courts needed to establish a piece of law which was not accurate but which covered a wide range of situations*[102]

While technology has greatly increased the modern marine insurer's scope of knowledge regarding the conduct of the assured, the case of IUU fishing is a reminder of the continuing distinction between maritime ventures and almost any other insured interest. Insurers of fishing vessels cannot rest easy, confident that they will not be liable for increased risk of loss incurred through illegal, unregulated, and unreported fishing. On the wide and trackless sea, fishing vessels still commit illegalities, "at any time," and insurers may need every traditional marine insurance defense to resist coverage.

---

[1] Rebecca Prentiss Pskowski is a civilian attorney-advisor at United States Coast Guard headquarters, in Washington, D.C. Rebecca received her LL.M. in Admiralty from Tulane University Law School in 2019, and her J.D. from Harvard Law School in 2015. She clerked for the Honorable Charles S. Haight, Jr. of the Southern District of New York, in 2017 and 2018. Rebecca is also a merchant mariner, and currently holds a 1600-ton Oceans Mate's license. She can be reached at rpskowski@tulane.edu. The views expressed in this article are those of the author and should not be construed as reflecting the views of the Department of Homeland Security or the U.S. Coast Guard.

[2] *See, e.g.*, Dino Drudi, *Fishing for a Living is Dangerous Work*, COMPENSATION & WORKING CONDITIONS, Summer 1998, at 3; Stephen Kasperski & Daniel S. Holland, *Income Diversification and Risk for Fishermen*, 110(6) PROC. NAT'L ACAD. SCI. U.S.A. 2076 (2013).

[3] For the formal definition of IUU fishing, *see* FAO, International Plan of Action to Prevent, Deter and Eliminate IUU Fishing (2001), paras. 3.1-3.3, available at: http://www.fao.org/3/y1224e/Y1224E. pdf (last visited Dec. 15, 2018).

[4] D.J. Agnew et al., *Estimating the Worldwide Extent of Illegal Fishing* 4 PLOS ONE, 1, 4 (2009).

[5] *See* Rachel Baird, *Illegal, Unreported and Unregulated Fishing: An Analysis of the Legal, Economic and Historical Factors Relevant to its Development and Persistence*, 5 MELB. J. INT'L L. 299, 303 (2004).

[6] FAO Fisheries and Aquaculture Technical Paper No. 510, *Review of the Current State of World Capture Fisheries Insurance* (2009) (by Raymon van Anrooy et al.) at 12 ("the number of fishing vessels worldwide is around 4 million, of which only some 12 percent are currently covered by insurance").

[7] *See, e.g.,* Anastasia Telesetsky, *Laundering Fish in the Global Undercurrents: Illegal, Unreported, and Unregulated Fishing and Transnational Organized Crime*, 41 ECOLOGY L.Q. 939, 997 (2014) ("Maintenance costs and insurance costs are not included since few IUU vessels take anything beyond minimum safety measures.").
[8] Dana D. Miller et al., *Cutting a Lifeline to Maritime Crime: Marine Insurance and IUU Fishing* ("*Cutting a Lifeline*"), 14(7) FRONTIERS ECOLOGY & ENV'T 357 (2016).
[9] *Id.* at 358-59.
[10] *Id.* at 360. The researchers note that not all insurers make their coverage lists publicly available, and that vessels on their lists may be insured by such providers.
[11] Barış Soyer, George Leloudas & Dana Miller, *Tackling IUU Fishing: Developing a Holistic Legal Response*, 7:1 TRANSNT'L ENVTL. L. 139, 145 (2018).
[12] Press Release, Oceana, *Oceana Calls Out Insurer to Cancel Contract with Pirate-Fishing Ship* (Oct. 16, 2018), available at https://eu.oceana.org/en/press-center/press-releases/ oceana-calls-out-insurer-cancel-contract-pirate-fishing-ship (last visited Dec. 17, 2018).
[13] *See, generally, About the UNEP FI Principles for Sustainable Insurance Initiative*, PRINCIPLES FOR SUSTAINABLE INSURANCE (PSI) - UNEP FI (PSI INITIATIVE), http://www.unepfi.org/psi/vision-purpose/ (last visited Dec. 12, 2018).
[14] Oceana & UNEP PSI Initiative, *Assisting Ocean Stewardship Through Marine Insurance* (Aug. 2018) available at https://eu.oceana.org/sites/default/files/oceanapsi_marine_ insurance_ statement_with_ signaries_and_supporting_institutions_aug2018.pdf (last visited Dec. 15, 2018).
[15] Oceana & UNEP PSI Initiative, *Risk Assessment & Control of IUU Fishing for the Marine Insurance Industry* ("*Risk Assessment & Control*") (2018) at 2, available at https://eu.oceana.org/sites/default/files/oceana _insurance_guidelines_0.pdf (last visited Dec. 15, 2018).
[16] *Id.* at 3-5.
[17] *Id.* at 4.
[18] *Id.*
[19] *Id.* at 5.
[20] Soyer et al., *supra* note 11.
[21] *Id.* at 145-46, 148 ("if . . . a vessel incurs liability while involved in IUU fishing, the law would preclude recovery in most instances"; "prospects of recovery under a liability policy or P&I cover are bleak if a vessel with previous involvement in IUU fishing activities incurs a liability, even when she is not involved in IUU fishing at the time").
[22] *Id.* at 145-48.
[23] *Id.* at 150. The authors do not, however, give much credence to this cynicism; they "have no evidence to suggest that risk assessment carried out by liability insurers with regard to fishing vessels is inadequate or slapdash. In fact, most P&I clubs pride themselves on their commitment to conducting their business based on ethical, legal and transparent standards." *Id.* This line of logic also raises the question as to why IUU vessel operators would pay insurance premiums, when they are so unlikely to succeed on claims for loss. The authors suggest one prime motivator is the compulsory nature of certificates of insurance for certain classes of fishing vessels. *Id.* at 149. Additionally, the certificate of insurance may serve as a relatively inexpensive document of legitimacy, aiding IUU fishing vessels in escaping detection.
[24] The contrast between *Risk Assessment & Control*'s caution to insurers, and *Tackling IUU Fishing*'s rather brief dismissal of the same risk is especially interesting considering that Oceana Marine Scientist and Policy Advisor Dana Miller was both the lead drafter of the industry-oriented Oceana/PSI guidelines, and one of three authors of the more academic legal article.
[25] Not all of the cases analyzed herein would meet the modern definition of "IUU fishing." They have been chosen, rather, to illustrate some of the characteristic hazards that IUU fishing operations present to insurers, and to assess the capacity of canonical principles of marine insurance law to counter claims by legally and/or ethically suspect assureds. Some of these principles were identified by Soyer et al. in *Tackling IUU Fishing*, *supra* note 11, as probable bars for IUU vessels' recovery, and it is the intent of this analysis to see whether courtroom recovery for claims, analogous if not identical to claims IUU vessels might bring, is as difficult as those authors assume.

[26] Shooter's Fisheries v. Incorp. Gen. Ins. Ltd. 1984 (4) SA 269 (D) at 271; *rev'd* 1987 (1) SA 842 (A).
[27] *Id.*
[28] *Id.* at 279.
[29] *Id.* at 271.
[30] *Id.*
[31] *Id.*
[32] *Id.*
[33] *Id.* at 271-72.
[34] *Id.* at 272.
[35] *Id.* at 272.
[36] *Id.*
[37] *Id.*
[38] *Id.* Mozambique eventually sold the *Star*, to "the Spaniards." 1987 (1) SA (A) at 856.
[39] 1984 (4) SA at 273-75.
[40] 1984 (4) SA at 280.
[41] *Id.* at 284.
[42] *Id.*
[43] *Id.* at 282.
[44] *Id.* (emphasis added).
[45] *Id.* at 284.
[46] *Id.* at 287.
[47] 1987 (1) SA (A) at 863. Justice Galgut reasoned that, while the interception and arrest of the *Star* may have been a covered peril, the intervening proximate cause of the vessel's loss was the failure to pay the fine, a peril covered by neither the hull nor the war risks policy. *Id.*
[48] 1984 (4) SA at 280.
[49] 1987 (1) SA (A) at 861.
[50] Ocean Masters Inc. v. AGF M.A.T., 2006 NLTD 140, para. 4 (Can. Nfld. S.C.), *rev'd*, 2007 WL 1448023 (Nfld. C.A. May 16, 2007).
[51] *Id.* paras. 4-5.
[52] *Id.* para. 2.
[53] *Id.* paras. 11, 14.
[54] *Id.* para. 11.
[55] *Id.* para. 9.
[56] *Id.* para. 1.
[57] *Id.* para. 3.
[58] *Id.* para. 27.
[59] 2007 WL 1448023, para. 24 (Nfld. C.A. May 16, 2007).
[60] *Id.*
[61] *Id.* para. 26.
[62] *Id.* paras. 33, 34.
[63] Albany Ins. Co. v. Anh Thi Kieu, 927 F.2d 882, 887 (5th Cir. 1991) ("Under the *uberrimae fidei* doctrine, an assured's material misrepresentations invalidate the policy of insurance ab initio.").
[64] *See* Commercial Union Ins. Co. v. Pesante, 459 F.3d 34, 38, 2006 AMC 2113 (1st Cir. 2006).
[65] Nicholas J. Healy, *The Hull Policy: Warranties, Representations, Disclosures and Conditions*, 41 TUL. L. REV. 245 (1967).
[66] *Id. See* Wilburn Boat Co. v. Fireman's Fund Ins. Co., 348 U.S. 310, 321, 1955 AMC 467(1955). *See also, e.g., Anh Thi Kieu,* 927 F.2d at 889-90.
[67] 459 F.3d at 35.
[68] *Id.*
[69] *Id.*
[70] *Id.* Pesante asserted that his agent, Christopher, was responsible for the erroneous characterization of the vessel and that he, Pesante, did not notice the mistake. *Id.* n. 2.

[71] *Id.* at 35.
[72] *Id.*
[73] *Id.* at 35-36.
[74] *Id.* at 38.
[75] *Id.* at 35-36.
[76] *Id.*
[77] Commercial Union Ins. Co. v. Pesante, 359 F. Supp. 2d 81, 82, 2005 AMC 1473 (D.R.I. 2005), *rev'd*, 459 F.3d 34 (1st Cir. 2006).
[78] 459 F.3d at 36.
[79] *Id.*
[80] *Id.*
[81] *Id.*
[82] 359 F. Supp. 2d at 84.
[83] *Id.* ("Commercial Union's alternative argument is difficult to fathom. . . . Commercial Union seems to be making a hybrid claim that seeks to convert a breach of warranty occurring after the policy was issued into a reason why the breach affected the issuance of the policy.") *See also* 459 F.3d at 37 n. 3 ("There appears to have been some confusion as to Commercial Union's [misrepresentation] argument below.")
[84] 459 F.3d at 36.
[85] *Id.*
[86] *Id.* at 37. As noted *supra*, this argument was not fully addressed by the trial court. Normally a failure to raise an argument at the district court will forfeit the issue, resulting in appellate review only for plain error. *Id.* at 37 n. 3. Here, the appellate panel held "that, while Commercial Union could have been clearer about its argument below, it adequately raised the issue so as to avoid plain error review." *Id.*
[87] *Id.* at 38. In 2015, First Circuit held that *uberrimae fidei* is entrenched federal maritime law, supplanting state insurance law under *Wilburn Boat*. Catlin at Lloyd's v. San Juan Towing & Marine, 778 F.3d 69, 72, 2015 AMC 694 (1st Cir. 2015).
[88] *See Risk Assessment & Control, supra* note 15 at 3-4.
[89] Soyer et. al, *supra* note 11, at 148.
[90] *See* Healy, *supra* note 65.
[91] Pacific Queen Fisheries v. Atlas Assurance Co., 1961 WL 102106, 1962 AMC 574, at *3 (W.D. Wash. 1961).
[92] *Id.* at *3-5.
[93] *Id.* at 4.
[94] *Id.*
[95] 46 U.S.C. § 391a.
[96] 1961 WL 102106 at *13.
[97] *Id.*
[98] *Id.* at *10-11.
[99] *Id.* at *14.
[100] *Id.* at *13-14. Even absent the statutory violation, coverage would be defeated because the owners "provided improper and unsafe gasoline discharge facilities for the *Pacific Queen*." *Id.* at *13.
[101] *Id.*
[102] Feng Wang, *Illegality in Marine Insurance Law*, at 139-40 (2017).