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Preventing Wildlife crimes: A “case studies” approach.



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- Case studies are an **in-depth and multi-faceted investigation** of one specific complex topic. They encompass a range of qualitative and quantitative research tools to investigate underlying principles of an occurrence within a real-life environment.
- They give the opportunity to gain a greater understanding of wildlife crimes in hand and **reduce the potential for any preconception**. Case studies can extend experience or add strength to the existing knowledge through previous research.
- Significant case studies often select and carefully examine the existing positions in the research tools at disposal, with the objective of **raising the study and evidences validity**.
- The value of the case study approach is well recognised in the fields of law.





- The SWiPE project, thanks to the contribution of the National reports, provided an overview of cases regarding different crimes happened and still happening within the partnership area.
- Each case is characterized by the diversity and intensity of the sanctions imposed, and sometimes also in the conduct by which the crime is committed.
- SWiPE cases are useful to better address the attention on the international relevance of the environmental victimization and the importance to establish a casual chain from the harmful behavior and the harm itself caused by such crimes, framing victims and offenders.





2. The illegal killing of wild birds



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Introduction

The illegal killing, taking and trading of wild birds is a problem that occurs in many countries in the wider Mediterranean region. **Wild birds are mainly killed, traded and taken illegally for food (to be eaten as a delicacy), sport and for use as cage birds or hunting decoys.** Furthermore, **nest robbery** (the taking of eggs or nestlings for falconry or bird keeping purposes) has, historically, contributed to the decline of many bird species.

According to BirdLife International (October 2021), **1 out of 5 bird species in Europe is threatened or near threatened by extinction.** Seabirds, wildfowl, waders, and raptors are the most threatened and fastest declining groups of birds in Europe. 71 species (13%) are Threatened (CR, EN, VU) in Europe.

The Mediterranean/Black Sea Flyway is one of three Palearctic-African flyways connecting Europe with Africa. Collectively, these constitute the world’s largest bird migration system. The scale of the avian movement is immense with over 2 billion passerines and near-passerines, 2.5 million ducks and 2 million raptors migrating from their breeding grounds in Europe and central and western Asia to winter in tropical Africa



Introduction

- One of the main concerns in regard to bird crime is the fact that several countries in the region have problems in effectively implementing the International Environmental Agreements relevant for nature and fauna conservation (such as CITES, CBD, Bern and Bonn Convention). Even in 2022, the level of effective implementation of international agreement obligations and national wildlife related legislations significantly varies.
- Italy, Spain, Serbia and Bulgaria for example, as accession countries to the central/north of Europe, provides interesting cases for study. The geographic location of the country places it in a suitable position for international illegal trafficking according to the EU standards.
- The report “*The killing 2.0*”, in 2017, stated that **the death toll for birds killed** illegally across Northern Europe, Central Europe and the Caucasus **is estimated at 0.4-2.1 million individual birds per year**. The killing comes despite the fact that 28 of the countries recently assessed are parties to the legally binding Bern, and 19 are also Member States of the European Union (**sentence June 22nd, 2022, n. 661/20, Court of Justice**).
- The following map shows how SWiPE countries are strongly affected by this unstoppable crime.



2. The illegal killing of wild birds





Facts

In 2012, an Italian hunter, while hunting, **shot two specimens of *Waldrapp Ibis***, a migratory bird found in barren, semi-desert or rocky habitats, often close to running water, a species particularly protected by international conventions.

The birds were migrating from Germany to Tuscany (Orbetello) thanks to a specific project. The *Waldrappteam* project planned to give birth to birds in captivity and then monitoring them during their migration from Germany to Italy, using GPS detectors and the presence of researchers who prepare the route on board ultralight aircraft that the Ibis recognizes as adoptive parents.

The latest IUCN data shows that 15 species of Ibis are dwindling in numbers.

Clearly, the *Waldrapp Ibis* enjoys the highest level of protection, being simultaneously protected under the Birds Directive (BD) and under the international and EU CITES protection.

The hunters was immediately arrested by the former “*Corpo Forestale dello Stato*”, after a ballistic test and a deep GPX track check of the bird.



2. The illegal killing of wild birds





Issues

The questions in the case study mostly target the legal regulation and practice in SWiPE project's countries and the opinion of an individual judge or a prosecutor. Therefore, the answers may vary across the countries, and as a rule, none can be easily ruled out as incorrect.

The *Ibis* killed in 2012 belonged to that precious colony, the heart of an EU-funded project for German, Austrian and Italian researchers. They had crossed the Alps, traveled a thousand kilometers to finish shot in the skies of San Vincenzo, in the province of Livorno, Tuscany. Not an isolated case. In fact, in 2016 three others were killed and two were injured.

However, at least the **EU Directive 2008/99/EC** of the European Parliament and of the Council on the protection of the environment through criminal law provides the common framework for all the Member States, determining the common playground for further considerations. We report the Italian judiciary answer to the described case.

In Italy, the main EU related legal framework has been well received. Despite everything, the enforcement capacity is still weak and soft.



Holdings

Article 3 of Directive 2008/99/EC stipulates that the Member States shall ensure that several types of conduct constitute a criminal offence. Out of these, two are of a particular importance as regards the case study:

- *(f) the killing, destruction, possession or taking of specimens of protected wild fauna or flora species, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species;*
- *(g) trading in specimens of protected wild fauna or flora species or parts or derivatives thereof, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species.*

The directive covers only protected species. Definition of “protected wild fauna and flora species” is provided by Art. 1 (b) of the Directive: (i) for the purposes of Article 3(f), those listed in: – Annex IV to Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, – Annex I to, and referred to in Article 4(2) of, Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds; (ii) for the purposes of Article 3(g), those listed in Annex A or B to Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein.



Holdings



Member States should have introduced national regulation which constitute killing of the birds a crime (not merely an administrative offence). In this respect, it is important to determine whether these birds have been shot in compliance with the national law on hunting or not.

With judgment provided in 2016 the Court of Livorno has sentenced the hunter to the penalty of Euro 2.000 of fine, beyond the payment of the procedural costs, for having, **in violation of the L. n. 157 of 1992, article 2, letter c), killed during the hunt two specimens of Waldrapp Ibis, a species particularly protected by international conventions.**

The court, however, granted the suspended sentence and did not mention the sentence in the criminal record.

In 2017, The Supreme Court confirmed the sentence with pronunciation n. 56428, after the accused had appealed



2. The illegal killing of wild birds



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Rationale

Implementing Directive 2008/99/EC requires states to undertake two primary tasks: First, the state must introduce the offenses listed in Article 3 of the Directive into its criminal code. Second, the state must ensure that the criminal sanctions attached to these offenses are “*effective, proportionate, and dissuasive.*”

Many states have introduced environmental crimes into their criminal codes but do not have the capacity to enforce them. Commentators on the Environmental Crime Directive have noted that failure of a Member State to successfully prosecute these crimes could be interpreted as infringement of EU law.

The “*Ibis case*” demonstrated how the correct application of the European legislation and the presence of evidences that cannot be refuted may can bring justice in wildlife crimes. However, **the timing of justice and the tenuousness of the punishment still represent unresolved problems**. A multi-disciplinary approach can offer up a range of alternative legislative options to explore all angles of the criminal scenario, according to EU and national legislation.

Granting the suspended sentence, the Court emphasized the distance perceived from the gravity of the fact.

@Jovanovic



Rationale

- All the 28 countries assessed are Parties to the Bern Convention and 19 are EU member States. As signatories of these treaties, these countries must provide strong national provisions for the conservation of birds and are required to transpose international obligations into national legislation.
- The effectiveness of implementation by signatories is a fundamental and important issue.
- Important issues that influence the effectiveness of the Bern Convention and the EU Birds Directive are the inadequate enforcement measures and inadequate environmental education and public awareness programs, specially addressed to judiciary.
- The “*Ibis case*” demonstrated that national governments have a key role to play in recognizing and tackling illegal killing and taking of birds within their borders. However, **in most of SWiPE project’s countries there will be multiple stakeholders who can work successfully together to address the shared problem of illegal killing of wild birds.**



Rationale

Ways to improve compliance:

- ❑ **Specialized wildlife enforcement bodies** with expertise regarding wild species and competences of police are necessary to tackle such wildlife crime;
- ❑ These enforcement bodies should be **able to conduct investigations**;
- ❑ The system of public monitoring of illegal activities needs to be strengthened. Most of the responsible institutions, authorities and Task Forces in the area need **better equipment**. The end goal is to eliminate illegal activities or to reduce them to tolerable levels;
- ❑ There is also a need for capacity building in law enforcement through a priority programme that includes the purchasing and use of improved technical facilities and equipment, international and national field training and educational seminars, developing better cross-border controls,



3. Illegal fishing



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Introduction

Illegal fishing is a huge problem that threatens the sustainability of fisheries around Europe. Illegal fishing may also trigger structural disruption of the food chain and even damage the entire marine ecosystem. Policy makers and fishery managers usually rely on the imposition of strict sanctions and intensive monitoring and enforcement programs to increase the costs of illegal conduct, trying to contrast it.

SWiPE project's countries are particularly affected by this crime as reported by the project European Report. The most straight-forward trigger in the context of illegal fishing is the **profit**. Therefore, there are often significant financial benefits associated with illegal fishing which may be challenging to address through “behavioral” interventions. Another motive is represented by **tradition**, making fishermen resistant to changing their behavior in the face of regulations and prohibitions.

Illegal fishing often occurs in communities dealing with **poverty**. Fishers violate rules to meet the basic needs of their families and native communities.

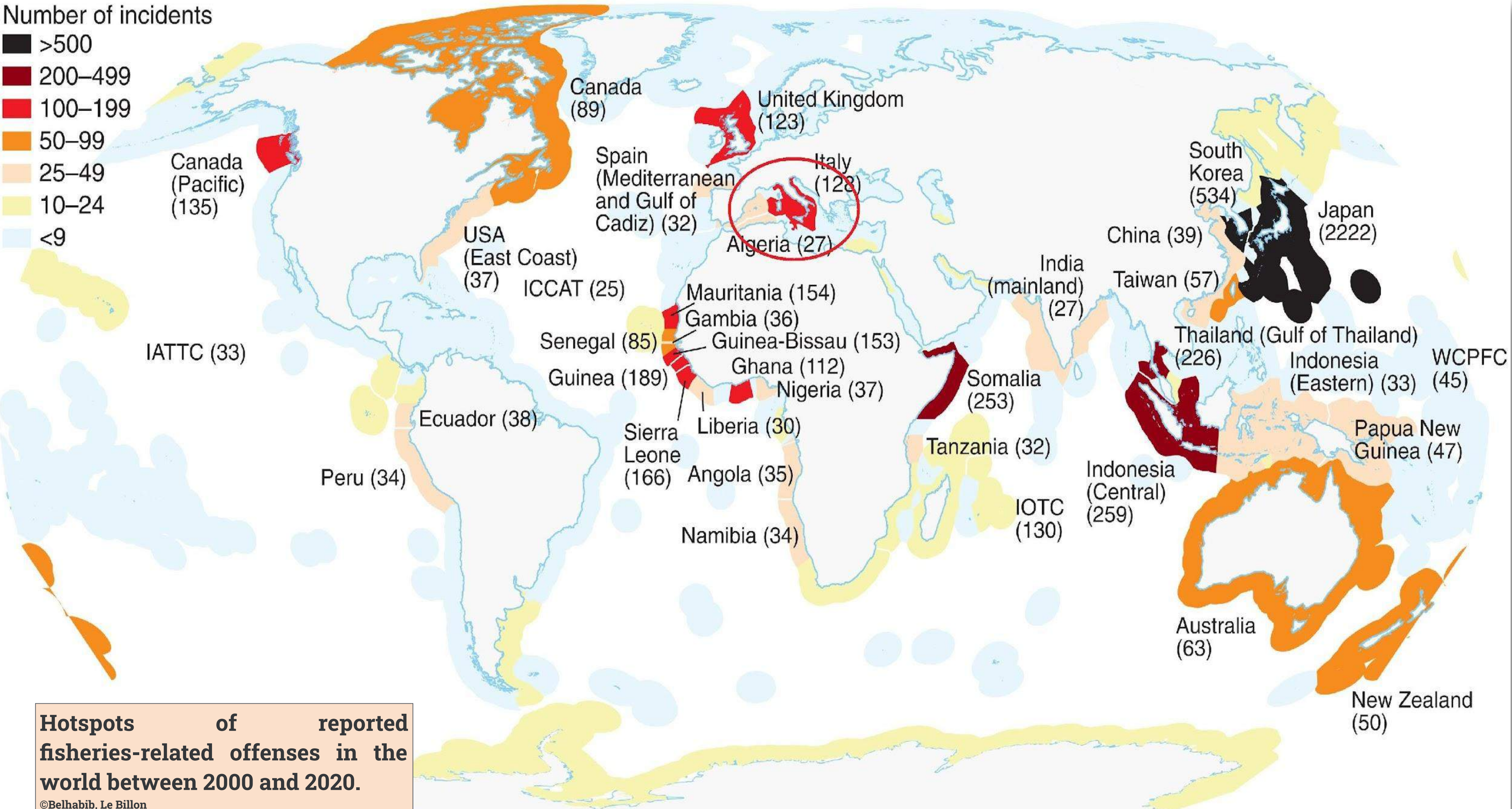


Introduction

- Many different measures have been implemented by member states to deter and prevent illegal fishing. These mainly include coastal surveillance and policing, policies and regulation, and sometimes education.
- The environmental damage caused by illegal fishing is vast. Some fishers use destructive fishing methods such as explosive or cyanide fishing, both of which damage the marine environment and are unsustainable fishing practices.
- According to the UN Food and Agriculture Organization (FAO, 2021) illegal, unreported and unregulated (IUU) **fishing activities are responsible for the loss of 11–26 million tonnes of fish each year**, which is estimated to have **an economic value of US\$10–23 billion**.



3. Illegal fishing





Introduction

- The United Nations Convention on the Law of the Sea (UNCLOS) is the legal framework that outlines the legal parameters of states’ activities within their ocean boundaries. It establishes a universally agreed framework for the determination of boundaries.
- Council Regulation 1005/2008, establishing a Community to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/ 2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94, contributed to establish a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.



3. Illegal fishing



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Facts

As well reported by the Croatian Swipe report, in 2015, six members of an organised crime group have been arrested after being caught illegally **harvesting date mussels** along the **Pula coastal area and the Lim Bay in Istria**. The amount of stolen dates was estimated in more than 500kilos.

The main purpose of the action is represented by the **black-market restaurants**. Suffice it to say that 1kg of date mussels can reach up to 70 euros.

The illegal fishery of the date mussel has been recognized as one of the most destructive practices for shallow rocky reefs. Fishermen must destroy the rocky substrate in order to reach and capture the bivalve.

This is not an isolated case. In 2010, a criminal organization responsible for smuggling around 2300 kg of date mussels from Croatia to Slovenia and Italy, with an estimated commercial value of 143,000 euros, was stopped (OECD, 2012).



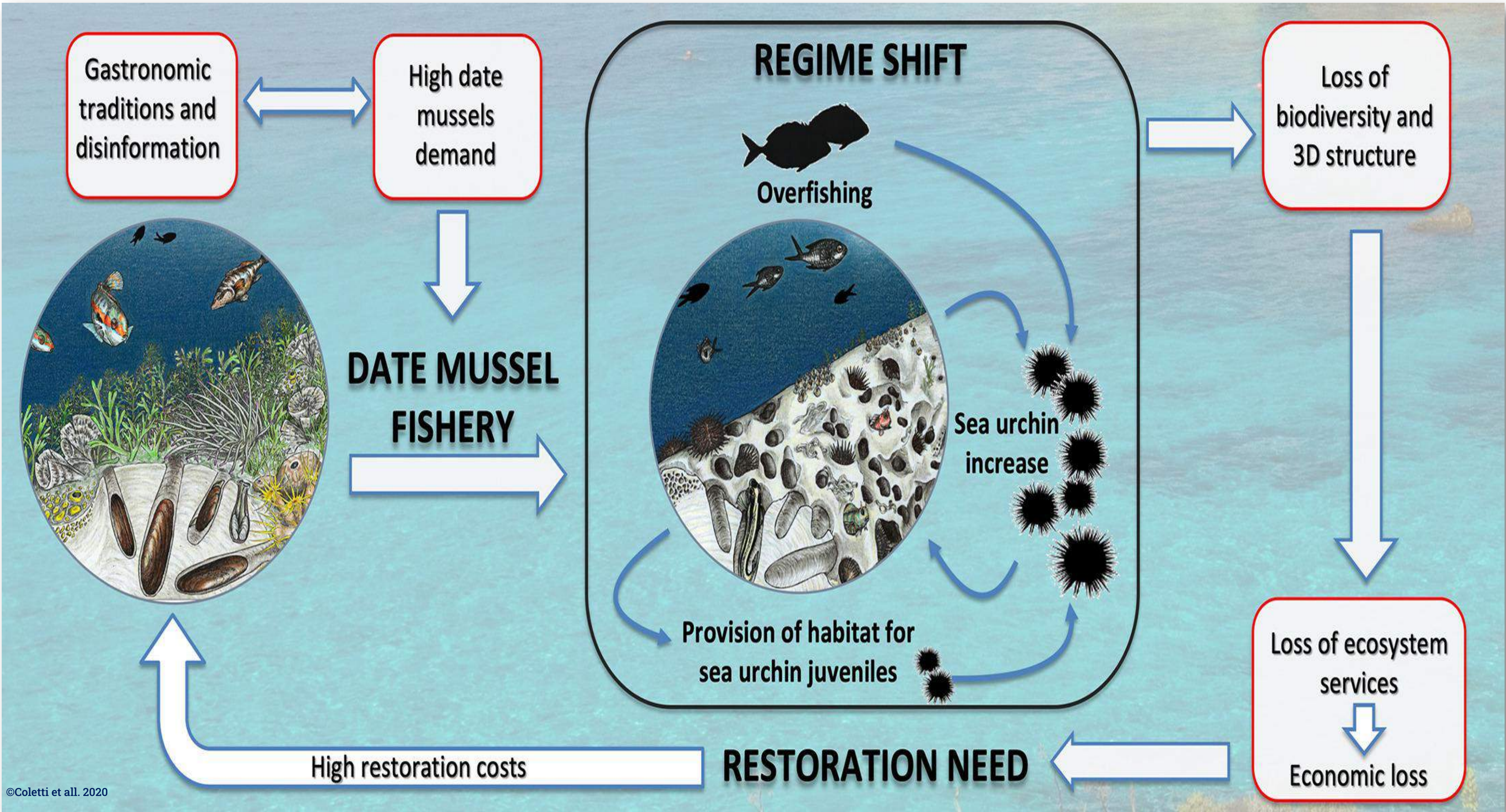
Facts

Along the Bosnia and Herzegovina coast date mussels were frequently harvested in Neum Bay, and they were sold at the Sarajevo seafood market.

In Italy date mussel fishery is still of high concern for the environmental impact caused. In 2022, the Court of Naples has condemned the responsible for the illegal fishing and selling of date mussels to up to **six years’ imprisonment**, as well as the confiscation of vehicles and vessels and the payment of court costs.

Date mussel fishery occurs also in Western Europe: harvesting, trade and consumption of date mussel are widespread along the whole Spanish Mediterranean coast, especially in the Balearic Archipelago (Mallorca and Menorca), along the coast of south Catalonia. In July 2022, 10 people, including Croatian and Italian citizens, were arrested in Dalmatia for illegally fishing and selling protected marine species. The arrests were carried out in the morning in several areas of Dalmatia following an investigation carried out by special prosecutors to fight organized crime (AnsaMed).

This practice can lead to the desertification of wide stretches of coast that, originally dominated by macroalgae, shift to a barren state (Bevilacqua et al., 2006). Once damaged by this illegal fishery, hard substrates can require **several decades to recover**, and, at present, there is no evidence of full recovery of the habitat diversity in pre-disturbed conditions.





Issues

The questions in the Croatian case study target different conducts and problems related to such a kind of crime. Date mussel is strictly protected under international directive and conventions in all Mediterranean countries. Since, to date, the species is not at risk of extinction, these special conservation measures are designed to prevent damages to the habitat due to the destructive practice described above.

The mussel date is a species **protected by the EU Habitats Directive** and other international agreements. Relevant are the legally binding international agreements, CITES, CBD and Annex II of the Bern Convention. Even more importantly, **EC Regulation 1967/2006**, concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea, put in place the Action Plan for the Mediterranean Sea as part of the Common Fishery Policy.

With this Regulation, new rules were established for the protection and conservation of Mediterranean resources in reference not only to commercial species but also to protected species and sensitive habitats.



Issues

The recommendations of the General Fisheries Commission of the Mediterranean (GFCM) and the International Commission for the Conservation of Atlantic Tuna (ICCAT) as well as the measures of species protection and habitat conservation reported in the Habitat Directive (92/43/EEC) and in the Barcelona Convention are included in the Regulation.

EC Regulation 1967/2006 also acknowledges that the biological, social and economic characteristics of the Mediterranean fisheries require the Community to establish a specific management framework (EC Reg. 1967/2006).

The **regulation of fishing effort** is the main measure to favor sustainable fishing in the Mediterranean considering the differences in the distribution of living resources between the various geographic areas and the consequent different fishing techniques and traditions.

The crime is differently regulated according to national legal systems.



3. Illegal fishing





Holdings

- According to **article 328 of the Croatian criminal code** (*Zločinačko udruženje*), anyone who set up or leads a criminal organization shall be punishable by imprisonment for a **term of six months to five years**. Furthermore, whoever participates in the association referred to in paragraph 1 of article 328, without having yet committed a single criminal offense for that association or undertakes an action that is not a criminal offense, but which he knows contributes to the achievement of the goal of the criminal association, either financially or otherwise way supports a criminal association, shall be punished by imprisonment for **up to three years**.
- According to **article 329** (*Počinjenje kaznenog djela u sastavu zločinačkog udruženja*), whoever, knowing the purpose of a criminal association or its criminal activities, commits a criminal offense as part of such an association or incites another to commit a criminal offense as part of such an association shall be punished for a criminal offense for which the upper limit of the sentence is prescribed is three years **with a prison sentence of six months to five years** (329-1).



Holdings

- According to **article 214** (*serious crimes against the environment*), if the perpetrator causes a significant damage to the environment can be also punished with a substantial fine or, again, imprisonment.
- According to **article 202** (*wildlife trade*), anyone who trades, imports, exports or transports a live or dead individual of a wild species, its parts or products obtained from it, contrary to the regulations on the protection of wild species, will be punished by a prison sentence of six months to five years.
- According to **article 200(1)** (*destruction of protected parts of nature*), whoever kills, destroys, owns, captures or takes an individual of a strictly protected species or another protected part of nature in violation of the regulations, will be punished by imprisonment for up to three years.



Holdings



- In view of this, regarding the Croatian case, two defendants were sentenced to **4.5 years of unconditional imprisonment** for having established and run a criminal association (Art. 328 of the CC). The third and the fourth defendants have been sentenced **to 3 years and 2 years** of unconditional imprisonment respectively, and the others were given **suspended prison sentences** for using a criminal association to illicitly kill and possess specimens of strictly protected wild animal species, as well as to illicitly trade in, export and transport dead specimens of strictly protected animal species, which caused significant damage (Art. 200 and Art. 202 of the CC).
- The criminal offences described and judged against protected species have been characterized as **serious environmental criminal offences (Art. 214 of the CC)**, with the damage in the amount of HRK 2.7 million (360k euros) being caused. Criminal offences constitute serious environmental criminal offences if significant damage was caused (HRK 60,000 - 8000 euros ca). For serious environmental criminal offences, a stricter punishment of 1 to 8 years in prison is laid down.



3. Illegal fishing



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Holdings

- The investigations have been conducted by the Croatian State Prosecutor's Office for the Suppression of Organized Crime and Corruption (USKOK) , relying on special investigative techniques such as wiretappings, undercover surveillance, and house searches.
- Date mussels have been confiscated from the perpetrators included the equipment used to commit the criminal offence and the vessel used to transport the loot.
- For the damage cause to the Republic of Croatia, the court applied a fine of HRK 2.7 million to be paid jointly by all the defendants.
- Pursuant to the provision of Article 10 of the Ordinance on the Criteria for Setting the Compensation for the Damage Caused to Fish and Other Marine Organisms (NN 101/02, 96/05, 30/07, 131/09), adopted pursuant to Article 54, paragraph 2 of the Marine Fisheries Act, the compensation for the damage caused by illegal harvesting, possession and/or placing on the market of date shells shall amount to HRK 5,000 per kilogram of date shells.



Rationale

The Croatian Court applied significant sentences to the defendants, an important step forward in considering such crime of most importance. However, when the fine is too low, guilty companies ignore it. This is the emblematic case of the Croatian case, if we consider that many similar cases happened from that case on.

Even if the Court well evaluated and properly judged the conduct, sentences imposed do not reached the purpose of preventing such organized crime. There is **an urgent need to reduce illegal fishing, especially in fisheries where illegal fishing may be threatening livelihoods and food security in dependent communities** (Battista, Romero, 2020).

A deep understanding of the target communities is fundamental to better understand the source of any so-called crime. Drivers are complex and often far away from judiciary dynamics. Nevertheless, **the impact of this crime on the environment is huge and catastrophic.**



Rationale

- Illegal fishing is a complex event that should be studied in different dimensions because of the involvement of a combination of drivers (poverty, corruption, black market restaurant, traditions, traffic of drugs, governance).
- Combining behavioral interventions with increased surveillance to increase detection probability, for example, may be highly effective for reducing illegal fishing because both the monetary and non-monetary drivers of the illegal behaviors are targeted (Hønneland, 2000).
- It is the responsibility of SWiPE countries to not only detect illegal fishing but to strengthen the governance approaches, **laws and regulations** that exist in order to effectively mitigate and deter instances of non-compliance and the operation of legal loopholes in order to avoid state responsibility for illegal fishing.
- It is the responsibility of all **judiciary systems to provide coordinated responses across levels of government, through consistent and concrete actions/decisions** and a significant investment of resources, significantly larger than the environmental loss and monetary damage caused by illegal fishing activities.