

EXECUTIVE SUMMARY

Beyond Adoption: Closing the Gaps in the WTO Fisheries Subsidies Agreement

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SUMMARY The Mercatus Center at George Mason University and the Center for Governance and Markets (CGM) at the University of Pittsburgh joined forces in 2023 to tackle the problem of global overfishing. Motivated by the World Trade Organization's recent Agreement on Fisheries Subsidies and inspired by the research of Nobel Prize-winner Elinor Ostrom on governing the commons, Mercatus and CGM convened experts from various fields in an interdisciplinary, solutions-oriented workshop to take up these concerns. The workshop's exchange of ideas resulted in the creation of over a dozen issue briefs aiming to inform the debate and implementation of the WTO agreement, balancing top-down governance with bottom-up management practices. This summary highlights key points from those briefs.

Visit the [workshop](#) landing page for future updates.

The World Trade Organization (WTO) Agreement on Fisheries Subsidies, adopted at the WTO's 12th Ministerial Conference on June 17, 2022, is the most ambitious global initiative to date to curb unsustainable fishing practices fueled by government subsidies. In this summary, we draw upon insights from experts worldwide who participated in the workshop jointly hosted by the Mercatus Center at George Mason University and the Center for Governance and Markets at the University of Pittsburgh. These discussions identified loopholes that require attention in forthcoming negotiations as well as bottom-up solutions, including local engagement with coastal communities, that will be crucial for the agreement's effective implementation.

FUTURE ROUNDS OF NEGOTIATIONS MUST FOCUS ON OVERFISHING

Future negotiations must address subsidies contributing to overfishing, not just those that are linked to overfished stocks. While *overfished* denotes the current biomass

status compared to a past point reflecting maximum sustainable yield, *overfishing* signifies a fishing level leading to future overfished conditions.

The WTO agreement currently prohibits subsidies for overfished stocks rather than overfishing itself. This exclusive focus on overfished stocks, however, risks repeating past mistakes because overfished stocks are not the cause of the problem but a symptom. Allowing governments to comply with the agreement's letter while subsidizing unsustainable fishing levels means neglecting overfishing until it reaches crisis levels. In numerous examples of fishery collapse, such as the Norwegian sprat spawning herring collapse or the Atlantic cod collapse, fisheries endured years of overfishing before being labeled *overfished*.

If prompt action focused on overfishing had been taken, like imposing lower catch rates or moratoriums, these stocks could have survived. But recovery attempts came too late, the stocks did not survive, and the fishers were ultimately left with little or no fish to catch. Expanding the WTO agreement to cover subsidies related to overfishing is paramount, as post-overfishing recovery is often impossible.

THE FUTURE OF THE AGREEMENT DEPENDS ON IMPLEMENTATION

Once the WTO agreement enters into force, it will be ultimately up to the members—the national and local governments and their communities—to implement it. Several key factors should be in place for successful implementation.

Existing international agreements should be leveraged

The WTO agreement will not exist in a vacuum. [Elizabeth Mendenhall](#) explains the importance of leveraging other existing international agreements, like the Biodiversity beyond the National Jurisdiction Agreement and the International Law of the Seas. Regional fisheries management organizations (RFMOs) are another important leveraging instrument as they cover approximately 90 percent of the world's oceans. Mendenhall suggests ways for states to craft foreign policies that promote RFMO membership and improve coordination among members, using existing forums for coordination and support of marine protected areas (MPAs), and prioritization of harmonizing legal frameworks.

The primary international legal framework to govern the world's oceans, including global fisheries, the United Nations Convention on the Law of the Sea (UNCLOS), has evolved in a way such as to reinforce the autonomy of RFMOs. The Agreement on Fisheries Subsidies requires coordination and cooperation with RFMOs and other instruments. Mendenhall explains how the international Law of the Sea offers both opportunities and challenges as policymakers seek to solve the problem of global overfishing.

Many coastal states are developing countries and will need assistance with enforcement and the development of tracking systems

In explaining India's fisheries situation, the piece by [M. Krishnan and Badri Narayanan Gopalakrishnan](#) demonstrates how a successful WTO agreement could be particularly useful for developing countries

that are also coastal nations. India, like many other coastal and developing nations, suffers from large-scale foreign vessels that are subsidized and engage in illegal, unreported, and unregulated (IUU) fishing in or around their exclusive economic zones (EEZs). The authors describe how India has been struggling under the impact of overfishing and IUU fishing and as a result declining catch-to-effort ratios. The consequences include reduced export earnings, food security concerns, and challenges for poverty alleviation. In this way, the WTO agreement can be seen as a helpful tool in the economic development of developing countries like India.

[Kerrlene Wills](#) highlights the challenges for countries in the Caribbean Community (CARICOM). The Food and Agriculture Organization (FAO) of the UN has reported that the Western Central Atlantic Region, which includes the Caribbean, is among the world's top five overexploited fisheries. IUU fishing in that region is estimated to account for 20 to 30 percent of the total reported harvest. Enforcement of existing regulations is weak and small-scale and artisanal fishers often lack systems that monitor the movement of fishing vessels and the subsidies. Technical assistance should aim to design interagency systems and digital databases. These efforts would aid in conservation management but could also be used to generate a list of vessels and operators that have been determined to commit IUU fishing in accordance with the notification requirement under Article 8.2 of the WTO agreement. Wills says that CARICOM should leverage existing operations to aid these efforts including closer coordination with US Southern Command (USSC).

Wills also explains why policymakers in CARICOM countries, where data on domestic fishing is limited, will need to amend both fisheries management and fisheries subsidy regimes to ensure subsidies are not provided to local IUU fishing vessels and operators.

Also, she cautions that there may be an incentive for coastal states to overreport IUU fishing vessels if the flag is not their own. But monitoring, tracking, and reporting should be designed and carried out in such a way that any fishing vessel determined to be engaging in IUU fishing will be reported, regardless of the vessel's flag. (In some cases, the subsidizing member and the flag state of the fishing vessel are the same, in other cases different.) The coastal state should ensure the information is communicated to the subsidizing member for the prohibition to work.

Finally, to ensure compliance with the agreement, Article 3.7 requires WTO members to have regulations in place before the agreement goes into effect. Wills calls for all WTO member policymakers, especially coastal states, to review all subsidies currently in place, redesign them if necessary, and prepare subsidies recipients in advance of the change.

Fisheries access agreements should be transparent

Coastal nations often sign access agreements with foreign fleets which allows the fleets to fish stocks inside the nation's EEZs. When the foreign fleet has better fisheries infrastructure and capacity than the host fleet, an access agreement can help the host nation to recoup lost profits while providing

additional fishing opportunities to the foreign fleet. These access agreements would appear to be equitable for all parties involved. But the terms of those access agreements are rarely made publicly available. [Mark Godfrey](#) explains that transparency on these access agreements is essential because they cover government-to-government payments that enable overfishing activity and that opacity can conceal poor outcomes for the host nation, its fishing communities, and sustainability of the host nation's stocks.

[Andrew Johnson](#) writes that while most fishery access agreements are bilateral, the stocks upon which many fisheries rely are highly migratory, moving in and out of the waters of different coastal nations. The access agreement that one nation negotiates can have direct effects on the fish stocks of another nation.

Johnson notes that government corruption within host nations can further worsen outcomes. Coastal nations can be lured by large payments, and agreements are often signed irrespective of the potential ruinous impacts they have on local ecosystems and communities, with any benefits from the agreements going to only a few. Greater transparency on the specifics of fisheries access agreements, including provisions on IUU fishing, would benefit the citizens of coastal nations, promote the sustainability of fisheries stocks, and improve the effectiveness of the WTO agreement.

Management of small-scale fishing should be bottom-up

Small-scale fishing accounts for 40 percent of global fish catch and the WTO agreement will only be effective if small-scale fishers are a key part of implementation. Plus, as [Paige Roberts](#) explains, small-scale fishers are often both victims and perpetrators of overfishing, but they also know that overfishing does not serve them in the long run. Roberts recommends a collaborative approach as part of the EEZ management strategy that includes both a top-down approach (where competition and conflict from foreign subsidized fishing is regulated and limited from the top down) and bottom-up (where local fishing is made more economically and environmentally sustainable with participatory management from the bottom up that includes small scale fishers).

Roberts says governments need to assure small-scale fishers that large subsidized foreign fleets will not be allowed to overfish the EEZs. At the same time, though, governments must make it clear that the new subsidy rules will apply to everyone, both large foreign fleets and local small-scale fishers.

The challenge for governments in designing requirements for monitoring and enforcement is to leverage technology in a way that prevents loopholes from being exploited while minimizing the burden on small-scale fishers.

With enough local collaboration, sometimes even minimal data input can work. Roberts showcases a Somali example in Bander Beyla, Puntland, where a collaborative effort among the community, government, and nonprofit organizations manages the spiny lobster fishery. This effort was driven by concerns of overfishing as local fishers faced declining catch sizes and longer fishing days. The community,

through the Bander Beyla Fisheries Co-Management Association, proposed regulations like closed seasons and restrictions on catching certain lobsters, aiming to safeguard the fishery's future. This grassroots approach demonstrates the effectiveness of bottom-up management in safeguarding small-scale fishing despite limited data availability. What's more, as [D. G. Webster](#) explains, is that bottom-up solutions can help to narrow the disconnects between companies and consumers, thereby creating the political will for change.

Indigenous fishing communities must be integrated into the implementation and enforcement of the agreement

Around half of the 140 countries that have active fishing communities also have active Indigenous fishing communities. A significant issue for these countries is ensuring meaningful collaboration between Indigenous communities within the WTO framework. [Courtney Carothers](#) has studied how Indigenous fisheries reflect deep knowledge systems and culturally important relationships between people and fish. Carothers argues that current approaches to the governance of Indigenous fisheries often fail to consider the root causes of overfishing and run the risk of dispossessing Indigenous fishers of both livelihood and culture.

She makes three key recommendations for a path forward. First, adopt a political ecology framing to understand the problem of overfishing and its solutions. This means recognizing that overfishing is not simply a problem of individual self-interest, but also one of industrialization and capitalization, with links to colonialism. Second, uplift Indigenous, small-scale fisheries and fishing-dependent places. This means protecting and encouraging these fisheries, which have existed for millennia and have a proven track record of sustainability. Third, consider Indigenous fisheries, knowledge systems, and sovereignty in new global fisheries governance. This means respecting the full sovereign rights of Indigenous nations and including their knowledge systems in international negotiations.

Carothers concludes by calling for a transformative approach to global fisheries governance that confronts the status quo. She argues that new agreements should address the uneven flow of benefits and costs of past fisheries development policies, make space for Indigenous nations as rights holders, and protect community small-scale fisheries and fishing-dependent places.

[Adam Crepelle](#) considers how three federally recognized tribes in northern California established the first US Indigenous marine stewardship area (IMSA) to protect culturally significant marine species. The effectiveness of IMSAs in California remains uncertain due to limited tribal jurisdiction over non-Indians and potential preemption by state and federal regulations. Crepelle's policy recommendations include urging the WTO to explicitly acknowledge indigenous fishing rights, promoting compacts between tribes and states, and advocating for sharing license taxes and fees with indigenous people. He sees the collaboration between California and tribes as a positive step towards effective resource management with the potential for fruitful shared governance arrangements. One goal for the WTO might be to provide a more robust framework for such collaboration.

LOOPHOLES THREATEN THE SUCCESS OF THE SUBSIDIES AGREEMENT

The WTO agreement has the potential to be a huge step forward, but there are some loopholes built into the agreement. WTO members will have a choice to either exploit those loopholes or remove them from the agreement. Following are five design implementation strategies for closing the loopholes.

Design mechanisms that would trigger an investigation in certain circumstances

In their brief, [Bradley Soule and Christine McDaniel](#) note that there is nothing in the agreement that obligates members to initiate IUU fishing investigations or make IUU fishing determinations. They note that without an investigation, there is no determination. So national governments should consider putting in place mechanisms that will trigger an investigation at the right time.

Put in place rules on withdrawing subsidies upon an IUU fishing determination

When a determination of IUU fishing is made, Soule and McDaniel note, it will be up to the members to withdraw the prohibited subsidies. Given the industry and political pressure on national and local governments, there will likely be ample pushback on any move to reduce or withdraw subsidies. States must design clear rules and procedures on what will happen to government funds if IUU fishing has been found to occur.

Build a consensus on the definition of IUU fishing

An ongoing challenge for implementation is that there is not yet a commonly accepted definition of IUU fishing. [Mercedes Rosello](#) explains that a relatively straightforward approach would be for WTO to adopt a set of voluntary guidelines for states and international organizations that deploy market mechanisms to curb IUU fishing. Such guidelines could contain a process-based methodology to ensure that market measures are linked to clear definitions and parameters and specific standards of conduct.

Specific IUU fishing–related obligations within existing international treaties should be identified, clarified, and defined, where appropriate, or otherwise be subjected to a transparent process of public review. Voluntary guidelines might not necessarily change the powers of key market actors or the outcomes of their decisions, but they could help strengthen the objectivity and acceptance of the WTO subsidy prohibitions.

Develop in-country network approaches that involve industry, science, and policy

What looks good on paper may not be realistic or practical for industry. [Matt Fass](#), a global producer and distributor of seafood based in Newport News, Virginia, and participant in the workshop, points out that profit margins in the industry are often thin, and while many seafood buyers want their catch to come from sustainable fishing, their capacity for dealing with regulations is limited. That is where a network approach comes in. [Pablo Obregon](#) of Conservation International demonstrates how a network

team of non-governmental organization staff are stationed in coastal nations and how industry, science, and policy, as well as proceeds from donors, can be leveraged to fund and support the in-country work. This approach, termed *jurisdictional* can be seen in action in Fiji regarding the tuna catch. There, the in-country network team works with the Fiji government, the Fiji Fishing Industry Association, and large seafood buyers to achieve sustainable fisheries management and commercial practices.

Keep in mind three words: transparency, transparency, transparency

[Bubba Cook](#) calls for a major transition to a transparent model of data accessibility. He explains how confidentiality and trade secrecy laws have contributed to a lack of transparency across the fishing sector. A system that applies the best available technology and assumes that fisheries data should be publicly available by default would be transformative. Technology like vessel monitoring systems (VMSs) and the Automated Identification System (AIS) would provide decision-makers with the best information available to make it easier to hold the fishing industry accountable for its practices. The WTO members, he argues, should impose discrete transparency requirements on vessels that receive subsidies to combat illegal fishing and ensure the sustainability of global fisheries.

FUTURE FISHERIES MANAGEMENT IS A SHARED CONCERN

Recognizing the nature of the problem of overfishing is to recognize that this is essentially a global commons problem. Even without subsidies, as [Rashid Sumaila](#) points out, overfishing would likely persist. It is a textbook case of the tragedy of the commons. If you catch it before me, then it's yours. But if I catch it before you, then it's mine. If a common resource is left unmanaged, individuals acting in their own interest will ultimately deplete the resource. As countries implement the WTO fisheries agreement, they must embrace the reality of this chain of causality. Sumaila argues that governments should take up all harmful subsidies and redirect them into good subsidies, such as conservation and proper management of this common resource.

[Ilia Murtazashvili](#) makes explicit the link to the work of Nobel-laureate Elinor Ostrom. Ostrom's insights demonstrated that governments are often not able to effectively monitor and enforce rules. She found that governance of commons is most successful when it is jointly provided by public, private, and non-profit entities, including those at the local level.

This is why, as Murtazashvili writes, the design of a subsidies agreement is critical. One of Ostrom's themes is proper diagnosis of the problem. To that end, it is important to determine what constitutes overfishing and overfished, and to recognize that there is a diversity of ways to address the overfishing problem. Buyback programs, as [Nick Loris](#) examines, where fishers are paid not to fish, are just one of dozens of policies available to improve the sustainable governance of fisheries.

A successful WTO agreement, though, will be no panacea. [Pablo Paniagua and Veeshan Rayamajhee](#) explain that panacea thinking can doom efforts to manage the commons. The WTO policy, with its monolithic focus on subsidies and its emphasis on actions by national governments as a solution, could

be described as offering panaceas. But in countries where legal opportunities to fish or participate in political processes are lacking, community-based institutions and local knowledge can be leveraged to devise de facto rules for assigning rights and responsibilities.

There's a significant problem with information regarding existing loopholes in the agreement: there's not enough of it. Who is exploiting the loopholes, and who is working to close them? What is working? What loopholes were unanticipated? Ostrom's view was that governance intended to address complex problems must be multilayered to be effective and contribute to socially desirable outcomes. Ostrom's ideas require us to recognize that humans can create institutions that align incentives and facilitate knowledge communication so that we avoid the tragedy of the commons. When people are given the space to be creative, they can often find multifaceted solutions to complex, global problems.

There is also a procedural issue when it comes to Indigenous communities. The WTO agreement focuses on governments at the country level. What of the many sovereign Indigenous nations, with their own sovereign governments, that can and should be a part of negotiations? For example, there are 574 federally recognized tribal governments in the United States, and many of them are dependent on fishing; hence, their participation is critical to the agreement's success.

Finally, global overfishing is a shared global responsibility. While the WTO is a significant institution, it is not the only governmental or multilateral institution important in responding to the ongoing challenge of overfishing, and solutions to the problem will not come from high-level institutions alone. Finding solutions requires the collaboration of fishers, governments, nonprofits, and individuals working toward a more sustainable fisheries future.

In closing, we must note that when dealing with a complex topic, the lines between informing and advocating policy are often challenging. Our aim for this summary and for this entire project is to inform policy as well as offer a framework for advocating for policies to improve global fisheries governance. It is our hope that this body of work can help policymakers better understand the challenges that come with the WTO agreement (e.g., preventing exploitation of loopholes) and better demonstrate innovative ways the agreement can be successfully implemented.

ABOUT THE AUTHORS

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Ilia Murtazashvili is professor of public policy and political economy and co-director of the Center for Governance and Markets at the University of Pittsburgh. He is also an affiliate scholar at the Mercatus Center at George Mason University. His books include *Toward a Political Economy of the Commons: Simple Rules for Sustainability* (Edward Elgar, 2022).