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## Discussion Document on Protecting and Incentivizing Whistleblowers to Combat Fisheries Crimes<sup>1</sup>

### 1. Background

This discussion document is based on the 15<sup>th</sup> webinar in a series of Blue Justice Forum webinars facilitated by the Blue Justice Initiative Secretariat in conjunction with the UNDP Blue Resilience project.

The theme for the webinar was the **‘Protecting and Incentivizing Whistleblowers to Combat Fisheries Crimes’**.

The webinar was presented by John Kostyack, former Executive Director, National Whistleblower Center; Kelsey Condon, Attorney/Advisor, Environmental Protection, Kohn, Kohn & Colapinto; Mark Worth

Executive Director, Whistleblowing International; and Stephen M. Kohn, Chair, National Whistleblower Center. A total of 25 participants joined the webinar from 12 countries (Austria, Barbados, Chile, China, Finland, France, Germany, Greenland, Norway, Sri Lanka, United Kingdom, United States). The webinar was moderated by Marit Svålas from the Blue Resilience Project.

### 2. Topics in Focus

**‘Protecting and Incentivizing Whistleblowers to Combat Fisheries Crime’** - Stephen M. Kohn, Chair, National Whistleblower Center.

1. Whistleblowers are key for the detection of crimes. For a whistleblower law to be effective, it needs to be backed by the following components: confidentiality, legal support, protection, rewards and honest law enforcement.
2. U.S. whistleblower law is based on the concept of Qui Tam, or “The Lincoln Law”. It gives a whistleblower/citizen the power to initiate a law enforcement investigation, and if their investigation leads to a sanction, the whistleblower gets a percentage of the sanction they triggered. There is no budgeting from government, and it incentivizes high-quality reporting.

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<sup>1</sup> The webinar was held on 21 January 2021, 15:30 CET. Views expressed herein are of the presenters and are not necessarily those of Blue Justice or UNDP.

3. Reward-based laws such as Qui Tam can theoretically easily be applied to organized crime in fisheries, where it might prove an effective tool in addressing crimes such as illegal fishing (if it is criminalized in the relevant jurisdiction), bribery, money laundering, tax crime, customs violations, reporting violations, and/or corruption.
4. As an example of the potential scope and impact of such laws, 4,538 non-U.S. citizens have filed claims and become whistleblowers under the Foreign Corrupt Practices Act (FCPA) since 2011. These laws are thus transnational in scope, needing no particular connection to the U.S. in terms of the crime itself and its location, the whistleblower or company nationality.
5. Records show that the U.S. laws primarily have been utilized in English-speaking countries. A challenge for the future is to spread the word in non-English speaking countries.
6. U.S. reward-based laws currently include: 1) False Claims Act, 2) Foreign Corrupt Practices Act, 3) Securities and Exchange Act, 4) Commodity Exchange Act, 5) Act to Prevent Pollution from Ships, 6) Fish and Wildlife Improvement Act, 7) Endangered Species Act, and 8) The Lacey Act.

**‘Protecting and Incentivizing Whistleblowers to Combat Fisheries Crimes’** - Mark Worth  
Executive Director, Whistleblower International and Rainer Winters, Whistleblower Herz.

7. Laws are usually passed in a response to public demand or cultural changes. In the case of illegal fishing, whistleblower protection laws are already in place, while the public demand and cultural change remains short.
8. Fisheries crime, which refers to serious offences along the fisheries value and supply chain, may or may not have whistleblower protection laws depending on the criminalization (or not) of the offences in the particular jurisdiction.
9. Since 2010, the EU commission has investigated over 200 cases of illegal fishing, involving vessels from 27 countries. There were only 50 vessels sanctioned however, with penalties amounting to 8 million Euros only. These numbers show that current law enforcement practices are not effective in disincentivizing IUU fishing.
10. By involving the general public, whistleblowing might prove an effective tool to improve current law enforcement in this area.
11. By extension, whistleblowing might be a useful tool to improve enforcement against crimes in the fisheries sector.
12. The whistleblower case ‘Fishrot’ concerned a grand money laundering scheme related to illegal fishing procedures in Namibia and other countries. Potential offences included violation of fishing rules and crimes carried out in relation to the fishing operations. An employee of a big Icelandic firm who came across this information and spoke up about it was allegedly poisoned. This speaks to the major financial interests and correlated crime in the fishing industry.

**‘Applying U.S. whistleblower laws to help stop fisheries-related corruption around the world’** -  
John Kostyack, Executive Director, National Whistleblower Center.

13. People witness corruption every day that threatens their forests, fisheries, and wildlife, but law enforcement agencies in most countries do not adequately protect whistleblowers.

14. The long-term solution to this challenge would be to strengthen whistleblower programs in home countries. A short-term solution can be to report under U.S. laws with track records of offering confidentiality, investigating reports and providing awards in successful cases.
15. U.S. reward laws apply to a wide array of potentially corrupt decisions across fisheries' supply chains.
16. Bribery is commonplace in government authorization processes regarding fishing licenses, quotas and transshipment in many parts of the world. Unless one interrupts that bribery and make responsible people stand up against such corrupt practices, there will be little progress in terms of law enforcement in the industry.
17. Key Foreign Corrupt Practices Act provisions include:
  - It prohibits publicly traded corporations from paying bribes to foreign officials and mandates proper financial recordkeeping.
  - It establishes U.S. jurisdiction for bribes paid in foreign countries by foreign nationals.
  - Whistleblowers can obtain financial rewards even if they are not U.S. citizens.
18. U.S. False Claims Act rewards whistleblowers who help prosecute fraud in connection with U.S. government contracts and permits. In the fisheries sector, the law is relevant with regards to US government procurement of seafood and permits and leases issued by the U.S. government.
19. The Lacey Act is the most powerful whistleblower reward law addressing illegal trade in fish, wildlife and plants. Civil and criminal sanctions are imposed when fish are taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the U.S., any Indian tribal law, or any foreign law.
20. The Dodd-Frank Act rewards whistleblowers for helping prosecute defrauding of shareholders. If publicly-traded companies make false or misleading claims about the sustainability of their seafood products, for example, they may be liable for shareholder fraud under this law.

**'The EU Whistleblower Directive: Relevance to Fisheries Crime'** - Kelsey Condon, Attorney/Advisor, Environmental Protection, Kohn, Kohn & Colapinto.

21. In October 2019 the EU passed a directive designed to protect persons that report violations of EU law. 26 countries must now adopt individual whistleblower protection laws by late 2021. It is relevant to EU IUU fishing law but also to crime in the fisheries sector.
22. Corruption and criminal networks are key facilitators of fisheries crimes, which serve as a money-making venture to entrench existing illegal avenues and further existing goals which work against good governance.
23. Whistleblower laws are imperative in addressing fisheries crime as well as IUU fishing, providing a crucial source to information and providing a window into secretive and often sophisticated networks which law enforcement otherwise do not have. This is especially true when individuals can make more money for reporting crimes rather than participating in them.
24. Similar to the U.S. whistleblower laws, the directive applies to any person, irrespective of them being EU citizens or not.
25. The upcoming provisions should include anonymous reporting, remedies for retaliation, rewards and whistleblower office.
26. These protections are particularly poignant in the fishing and shipping industry where reporting wrongdoings may result in an individual being blacklisted in the entire industry.

27. Protection of illegal fishing whistleblowers is crucial, not only to building a successful whistleblowing programme, but in implementing and enforcing the EU IUU fisheries laws.
28. Protection of whistleblowers concerning crimes taking place in the fisheries sector is arguably crucial to enforce EU criminal codes and provisions in the context of the fisheries sector.
29. A strong monetary incentive to blow the whistle does motivate people with information to come forward. Whistleblower programs have proven highly effective in law enforcement in the U.S. Best practices learned here can successfully be applied elsewhere, such as in the EU.

## **In sum:**

1. Whistleblowers are key for the detection of crimes. For a whistleblower law to be effective, it needs to be backed by the following components: confidentiality, legal support, protection, rewards and honest law enforcement.
2. The U.S. whistleblower law is based on the concept of Qui Tam, or “The Lincoln Law”. It gives a whistleblower/citizen the power to initiate a law enforcement investigation, and if their investigation leads to a sanction, the whistleblower gets a percentage of the sanction they triggered. There is no budgeting from a government, and it incentivizes high-quality reporting.
3. Reward-based laws can easily be applied to fisheries crime, where it might prove an effective tool in addressing crimes such as bribery, money laundering, tax crime, customs violations, reporting violations, and/or corruption.
4. People witness corruption every day that threatens their forests, fisheries, and wildlife, but law enforcement agencies in most countries do not adequately protect whistleblowers.
5. The long-term solution to corruption within the fisheries sector is to strengthen whistleblower programs in home countries. A short-term solution, however, can be to report under U.S. laws with track records of offering confidentiality, investigating reports and providing awards in successful cases.

## **General discussion**

Discussion themes included:

1. The confidentiality of individuals and NGOs in using U.S. whistleblower laws.
2. The importance of gathering credible evidence in whistleblowing cases.