

LOWERING THE FLAG

ENDING THE USE OF FLAGS OF CONVENIENCE
BY PIRATE FISHING VESSELS



A REPORT BY THE



Protecting People and Planet

in collaboration with the
Foundation for International Environmental
Law and Development (FIELD) and Kalipso



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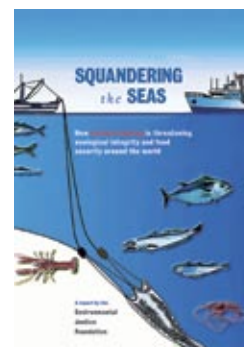
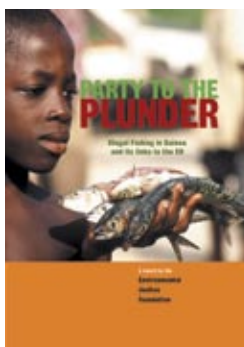
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LOWERING THE FLAG

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GLOSSARY

CHOGM	Commonwealth Heads of Government Meeting	IMO	International Maritime Organisation
CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources	IOTC	Indian Ocean Tuna Commission
DfID	Department for International Development (UK)	IPOA	International Plan of Action
DG Mare	Directorate-General for Maritime Affairs and Fisheries (European Commission)	ITF	International Transport Workers Federation
DWFN	Distant Water Fishing Nations	ITLOS	International Tribunal for the Law of the Sea
EC	European Community	IUU	Illegal, Unreported and Unregulated (Fishing)
EEZ	Exclusive Economic Zone EU - European Union	LSFV	Large Scale Fishing Vessels
FAO	United Nations Food and Agriculture Organisation	MCS	Monitoring, Control and Surveillance
FoC	Flag of Convenience	MRAG	Marine Resources Assessment Group
FONC	Flag of Non-Compliance	OECD	Organisation for Economic Co-operation and Development
ICCAT	International Commission for the Conservation of Atlantic Tuna	PoC	Port of Convenience
ILO	International Labour Organisation	RFMO	Regional Fisheries Management Organisation
		UNCLOS	United Nations Convention on the Law of the Sea
		UNFSA	United Nations Fish Stocks Agreement
		VMS	Vessel Monitoring System

EXECUTIVE SUMMARY

Illegal, Unreported and Unregulated (IUU) or 'pirate' fishing is plundering fish stocks, devastating marine environments and stealing from some of the poorest people of the world. IUU is the term given to any fishing activity that contravenes national or international laws, such as using banned fishing gears; targeting protected species; operating in protected or reserved areas or at times when fishing is prohibited; or operating without any form of permit or license to fish. IUU fishing vessels cut costs to maximise profits and use a variety of means, including Flags of Convenience to avoid detection and penalty for wrongdoing.

- Globally, pirate fishing accounts for US\$10 – 23.5 billion a year, representing between 11 and 26 million tons of fish. It is a highly profitable activity being driven by the enormous global demand for seafood, threatening the future of world fisheries. The impacts are social, economic, and environmental. Many IUU operators deliberately target poor developing countries.
- While international law specifies that the country whose flag a vessel flies is responsible for controlling its activities, certain states operate 'open registries' that allow foreign-vessels to fly their flag for a relatively tiny fee. Known as Flags of Convenience (FoC), many of these countries lack the resources or the will to monitor and control vessels flying their flag, allowing pirate fishing operations to avoid fisheries regulations and controls.
- FoC are notoriously easy, quick and cheap to acquire, obtainable over the internet for just a few hundred dollars. Vessels can re-flag and change names several times in a season, a practice known as "flag hopping". Backed by shell companies, joint-ventures and hidden owners, FoC reduce the operating costs associated with legal fishing, and make it extremely difficult to identify and penalise the real owners of vessels that fish illegally.
- Available data indicates that there are currently 1061 fishing vessels equal to or longer than 24 metres registered with FoC. Globally a further 8.5% of fishing vessels are listed as 'flag unknown', although it is likely that some of these are flying FoC. Regional Fisheries Management Organisation (RFMO) blacklists are dominated by vessels registered to FoC or flag unknown. While some RFMO whitelists of authorized vessels do contain a number flagged to FoC, total RFMO lists added together do not approach the total number of FoC fishing vessels - leaving open the question of how and where these vessels are operating.
- As well as fishing vessels, refrigerated transport vessels (known as 'reefers') flying FoC have been widely implicated in IUU fishing operations; in West African field investigations undertaken by EJF virtually all IUU reefers were documented flying FoC. Reefers allow IUU fishing vessels to tranship their catches, restock on food and bait, refuel and re-crew without having to make the lengthy (and costly) journey to port. 700 reefers are currently registered with FoC; Panama, Bahamas and Liberia account for 70%. Even those reefers whitelisted by RFMOs favour FoC; 86% of Fish Carriers on ICCAT lists are taking advantage of FoC registration
- European Union (EU) and East Asian companies dominate the ownership of FoC vessels. Taiwanese, South Korean, Chinese and Japanese companies are significant, while overall EU ownership of fishing vessels flying FoC has increased by 9% since 2005. There has been a recent large shift in ownership of vessels flying FoC to Panamanian companies, however it is likely that many of these are shell companies registered in Panama by foreign, and hidden, beneficial owners.
- Economically the benefits to FoC States of registering fishing vessels are minimal. Annual revenues are estimated to accrue US\$3-4 million to the major FoC registries from flagging fishing vessels, a tiny amount when compared to the millions of dollars lost by individual countries and the billions lost globally to IUU fishing.
- Among FoC States further economic losses are now likely as a result of trade sanctions by RFMOs, as well as the incoming EU-IUU regulation, due to be implemented in January 2010. This will target non-cooperative States, leaving FoC countries that depend on fisheries exports extremely vulnerable to losing access to the largest seafood market in the world.
- In light of the current crisis facing global fisheries, failure to end the exploitation of FoC by IUU fishing operations will undermine efforts to achieve sustainable fisheries management, marine ecological security and the development of many, primarily developing, coastal States. Closing open registries to fishing vessels offers an efficient and cost-effective measure to combat IUU fishing. This report therefore calls for action to end the granting of Flags of Convenience to fishing vessels, and those vessels that support fishing activities, by individual States, RFMOs, and bodies such as the European Union, Commonwealth and United Nations.

INTRODUCTION

'Flags of Convenience are the scourge of today's maritime world. This practice affects both fisheries and transport, although oil spills, given their spectacular dimension, mobilise public opinion more easily than the pernicious damage done to the marine environment by fishing vessels.'

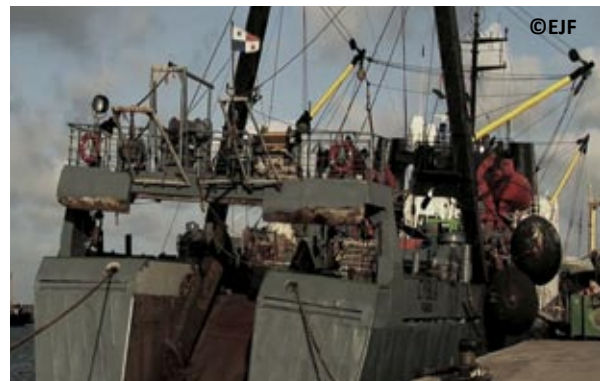
Franz Fischler, former EU Commissioner for Fisheries (2004)¹

Globally, Illegal, Unreported and Unregulated (IUU) 'pirate' fishing operations are undermining attempts at sustainable fisheries management, causing extensive damage to the marine environment, and jeopardising livelihoods and food security, particularly in developing countries. Pirate fishing vessels exploit a variety of loopholes resulting from weak regulatory and legal frameworks, limited capacity for fisheries management and poor enforcement of controls, allowing unscrupulous businesses to maximise catch and minimise cost.

Although international law specifies that the country whose flag a vessel flies is responsible for controlling its activities, certain States allow foreign vessels to fly their flag for a relatively tiny fee and then ignore any offence committed. These so-called Flags of Convenience, with open registries, often lack the resources or the will to monitor and control vessels flying their flag, allowing pirate fishing operations to avoid fisheries regulations and controls.

FoC are notoriously easy, quick and cheap to acquire, obtainable over the internet for just a few hundred dollars. Vessels can re-flag and change names several times in a season, a practice known as "flag hopping". Backed by shell companies, joint-ventures and hidden owners, FoC significantly reduce operating costs for illegal fishing operations, and make it extremely difficult to identify and penalise the real owners of vessels that fish illegally. For example, if a Chinese-owned vessel, flagged to Panama operates illegally in Sierra Leone, it is very difficult for local enforcement agencies to penalise the true beneficial owners and deter future wrongdoing.

This report presents the case for a global prohibition on the use of Flags of Convenience for fishing vessels. Only an estimated 7-15% of the global total FoC vessels are involved in fisheries², and ending the use of FoC by all vessels involved in fishing and seafood transport represents an economically and logistically viable measure towards an end to pirate fishing. If achieved, this measure will enhance incentives for responsible and legal fishing operations and assist in achieving sustainability for fisheries at local, national and international levels.



FLAGS OF CONVENIENCE AND IUU FISHING WINNERS

IUU operators – significantly lower operating costs; large profits; hidden identities; difficult to prosecute.

LOSERS

Global Community – US\$10-23.5 billion lost to IUU fishing / yr; 80% of global fish stocks fully or over-exploited or depleted.

Marine Environments – overfishing; destructive fishing; high bycatch levels.

Developing States – specifically targeted due to limited MCS capacity; loss of livelihoods for artisanal fishers; reduced crucial food security; loss of Government landing – licence fees and taxes; loss of ancillary employment in related industries; wider social impacts.

Legitimate Fishers – unfair competition; loss of catches; higher costs and reduced revenues; stigma that all fishers are 'bad'.

Fisheries Management Authorities – incomplete catch data leading to more optimistic assessment of the status of fish stocks than is actually the case; high costs associated with control and enforcement.

FoC States dependent on Fisheries – limited revenue accrued from flagging IUU fishing vessels; economic loss due to trade sanctions and listing as a Non-Cooperative State; domestic IUU fishing losses.

Consumers – inability to be assured that fish consumed is sustainable and ethical.

WHAT IS IUU FISHING?



Illegal ‘pirate’ trawler in Sierra Leone. IUU fishing operations often target developing countries that have little monitoring and control capacity ©EJF

Illegal, Unreported and Unregulated (IUU) is any fishing activity that contravenes national or international laws, such as using banned fishing gears; targeting protected species; operating in protected or reserved areas or at times when fishing is prohibited; or operating without any form of permit or license to fish. IUU fishing vessels aim to maximise profits by cutting costs, and use a variety of means, including Flags of Convenience to avoid detection and penalties for wrongdoing.

The UN Food and Agriculture Organisation (FAO) defines IUU fishing as the following³:

ILLLEGAL FISHING

refers to fishing activities:

- conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations;
- conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or
- in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.

This includes, but is not limited to: fishing out of season; harvesting prohibited species; using banned fishing gear; catching more than the set quota; fishing without a licence.

UNREPORTED FISHING

- has not been reported, or has been misreported, to the relevant national authority or regional fisheries management organisation in contravention of national laws, regulations or reporting procedures.

UNREGULATED FISHING

refers to fishing activities:

- in the area of application of a relevant regional fisheries management organization that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization; or
- in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.

This includes fishing conducted by vessels without nationality, or flying the flag of a State not party to the regional organization governing the particular fishing region or species. It also relates to fishing in areas or for fish stocks where there is a lack of detailed knowledge and therefore no conservation or management measures in place.

WHAT ARE FLAGS OF CONVENIENCE?

“Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flags.” UNCLOS⁴

Vessels that fish illegally do so primarily to minimise expenses associated with legal fishing methods. Flags of Convenience allow vessels to avoid government regulations and cut operating costs. As such they represent one of the simplest and most common ways in which unscrupulous fishing vessels can operate, avoiding detection and penalty. As global fishing efforts have expanded, and marine resources have declined, FoC are increasingly used as a means of avoiding legal measures designed to manage fisheries and conserve fish stocks.

Flag States – the countries that issue the flags that all maritime vessels are required to fly - are responsible for enforcing a range of international rules and standards on marine environment protection against vessels listed in their registry⁵. These rules are set out in various international laws and by regional fishing bodies, and cover all aspects of vessel governance including ship standards, working conditions, and fisheries management. The key premise is that the Flag State is primarily responsible for ensuring that all vessels within its registry abide by the rules, and administer penalties whenever there are violations⁶. However, while the flag of a vessel certifies its nationality, it does not necessarily identify the nationality of the vessel's owners - making the enforcement of laws designed to protect the maritime environment extremely problematic.

In general, FoC States operate 'open registries' that allow foreign-owned vessels to fly their flag. Around 44 registries have been recognised by a variety of bodies as 'open', and can therefore be identified as FoC^{7,8,9}. The International Transport Workers Federation (ITF), which has been campaigning against FoC since 1948, identifies that *'where beneficial ownership and control of a vessel is found to lie elsewhere than in the country of the flag the vessel is flying, the vessel is considered as sailing under a flag of convenience'*¹⁰. The ITF assess the extent that there is a genuine link between the Flag State and the owners of the vessels, as required by Article 91 of United Nations Convention on the Law of the Sea (UNCLOS).

FoC are used extensively by various maritime sectors as a means of minimising operating costs, the majority of which are part of the merchant marine; in fact fishing vessels constitute a minority of the total vessels registered to FoC, estimated at between 7-15% of the global total¹¹. However, while there are some poor actors in the merchant marine area, these tend to be far more regulated than fishing vessels. In addition, there are arrangements by which those who want to do business with merchant marine vessels flagged to FoC are able to investigate current standing and history¹². This is very different when it comes to fisheries sector, where there is a lack both of significant international agreements, as well as a specific system that allows the identification and monitoring of fishing vessels.

FoC States are a haven for vessel owners who do not wish to comply with costly regulations, whether it applies to fisheries management, taxation, conservation measures or crew conditions. FoC are relatively easy, quick and cheap to acquire. Re-flagging a ship can cost as little as \$1,000¹³ (mostly in legal fees), and take as little as 24 hours¹⁴. Documents can be submitted remotely, which means that vessels don't even need to dock to acquire a new flag. Vessels can re-flag and change names several times in a season, a practice known as 'flag hopping'. Backed by shell companies, joint-ventures, and hidden owners, FoC constrain efforts to combat IUU fishing as they make it extremely difficult to track individual vessels, and identify and penalise the real owners of vessels that fish illegally.

In addition, a State can only be bound to legal requirements if it has ratified the necessary international instruments, and many States have not. Others have ratified but have done nothing to implement the necessary domestic legislation to allow it to enforce those requirements. While a small number of open register countries have taken positive steps to fulfil international flag obligations relating to fisheries¹⁵, the majority have yet to engage in the process, and as such present a continuing problem.

“A flag state shall authorize the use of flag state vessels for fishing on the high seas only where it is able to exercise effectively its responsibilities in respect of such vessels....” UNFSA¹⁶

LEFT: Flags of Convenience are easy, quick and cheap to acquire. The process can be done online via websites such as www.flagsofconvenience.com and can take only 24 hours

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FLAG OF CONVENIENCE STATES



TONGA
ITF|FAO|▲|●



VANUATU
ITF|FOC.COM
FAO|▲|●



COOK ISLANDS
FAO|▲



MARSHALL ISLANDS (USA)
ITF|FAO|●



TUVALU
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BELIZE
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JAMAICA
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▲|●



CAYMAN ISLANDS (UK)
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NETHERLANDS ANTILLES
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ITF|●



BERMUDA
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ST. VINCENT AND THE GRENADINES
ITF|FOC.COM
FAO|▲|●



GIBRALTAR (UK)
FAO|●|▲



MAURITANIA
FAO



SIERRA LEONE
FAO|▲



ISLE OF MAN
ITF|FAO|●



MORROCCO
FAO



LIBERIA
ITF|FAO|●



SAO TOME AND PRINCEPE
ITF|FAO

Currently, 32 countries and international ship registries are considered FoC by the International Transport Workers Federation (ITF)¹⁷. The website www.flagsofconvenience.com, a company facilitating the purchase of FoC, and a 2002 report for the Food and Agriculture Organization identify a further 8 states.

N.B. Not all vessels flying the flags will be under foreign ownership; some may be operated by nationals. Equally not all fisheries vessels flying FoC will be engaged in IUU operations.

“All States have the duty to take, or to cooperate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of the living resources on the high seas.” UNCLOS¹⁸

©NASA



ITF Considered FoC by ITF
FAO Considered FoC by FAO (2002)
FOC.COM Advertised as FoC by www.flagsofconvenience.com
 ● Facilitates Owner Anonymity
 ▲ Commonwealth Member

HOW FLAGS OF CONVENIENCE FACILITATE IUU FISHING

In their efforts to maximise profits IUU operators disregard tax laws, environmental and safety regulations. To avoid detection and penalty for wrongdoing, they seek to hide vessel identity and true, beneficial ownership - all facilitated by Flags of Convenience. As a result illegal operators are able to perpetuate a highly profitable activity – at the expense of legal operators, marine resources and poor countries.

FoC REDUCE OPERATING COSTS

FoC allow vessel owners to avoid paying for fishing licences; management costs and research to underpin sound management decisions; monitoring, control and surveillance including vessel monitoring systems (VMS); as well as avoiding regulations requiring insurance, labour laws, crew training and the purchase of safety gear.

FoC PROVIDE ANONYMITY BY HIDING THE IDENTITY OF VESSEL OWNERS, AND MAKE PROSECUTION OF WRONGDOERS ALMOST IMPOSSIBLE

Prosecution of IUU vessels flying FoC is complicated by international law. While vessels illegally fishing within an Exclusive Economic Zone (EEZ) can be boarded by the coastal State¹⁹, except for a few specific circumstances vessels on the high seas may only be boarded by the authorities of the Flag State²⁰ (with the exception of within certain RFMOs). Any State or RFMO which suspects a vessel of IUU fishing violations is advised to report the vessel to the flag state, which is responsible for addressing violations²¹. However FoC states rarely appear to do so, frustrating attempts to effectively enforce existing regulations.

Establishing the ownership of a vessel can be difficult, and backed by shell companies, joint-ventures and hidden owners, the identities and nationalities of the true beneficial owners of an IUU fishing vessel can be neatly hidden by FoC registries. Some registries actually advertise anonymity in order to entice ship owners; a report by the OECD identified 33 countries as having registration requirements that could facilitate anonymity, including several assuring no disclosure of beneficial ownership²².

As such, FoC impede the ability of enforcement authorities to prosecute the owners of illegal fishing vessels. The ease by which most registries operate means that if a FoC fisheries vessel is arrested for illegal fishing, the owners can avoid legal and penalty costs by 'flag hopping', i.e. quickly changing vessel name and the flag it is registered to²³. Many registries, despite their international obligations, do not appear to investigate or take into consideration whether a fisheries vessel has a history of IUU fishing. As long as fisheries vessels

can easily re-flag regardless of IUU history, FoC states will continue to attract many fisheries vessels who seek protection from regulatory compliance.

That IUU operators are able to exploit FoC to change and hide vessel identities is further facilitated by the current lack of a global system by which fishing vessels are identified and monitored. A significant number of fishing vessels are operating without IMO numbers, and recent research on RFMO blacklisted vessels found that the visibility of IUU vessels is limited due to significant gaps in documentation and communication of data²⁴. Efforts to end the use of FoC by IUU vessels need to be complemented by urgent action to significantly improve information about IUU vessels and their movements.

IUU VESSELS UNDERMINE REGIONAL FISHERIES MANAGEMENT ORGANISATION EFFORTS TO COMBAT IUU FISHING

During the 1970s, the United States passed regulations requiring vessels fishing for tuna to put measures into place to prevent the killing of dolphins. Between 1981 and 1985, thirty-four ships were reflagged to other countries where they would no longer be bound by these regulations, and thus carried on using techniques dangerous to marine mammals²⁵. This technique continues to be used by vessels seeking to evade fisheries control measures.

While individual nations manage fish stocks within their own waters, the UN Fish Stocks Agreement states that if a fish stock exists on the high seas, and/or straddles one or more EEZ, then States are obliged to conserve the stock by cooperating with relevant RFMOs. Cooperation is deemed as either becoming a member of the RFMO, or by implementing its conservation measures²⁶. However gaps in the current international framework, particularly UNCLOS, means that on

RIGHT: Flags of Convenience allow illegal fishing operators to avoid fisheries management regulations. Both fishing vessels and specialised refrigerated cargo vessels (reefers) exploit these registries ©EJF



the high seas IUU/FoC vessels are not forbidden to fish, even if an RFMO is in place. Even where they undermine existing fisheries management arrangements, penalty options against IUU/FoC vessels are limited, and dramatically reduce the potential effectiveness of sanctions²⁷. Therefore, if a vessel re-flags to a State that is not a party to these agreements - and often FoC countries are not members of RFMOs or other fishing agreements - then it can fish with total disregard for agreed management measures. This makes it very attractive for fisheries vessels that would otherwise have to comply with such measures to buy a FoC from an open registry State²⁸.

RFMOs manage fisheries by determining participation rights and catch allowances, creating standards for responsible conduct, making sure that national agencies comply with its decisions, and by monitoring and enforcing fishing regulations²⁹. Contracting States can board and inspect fishing vessels operating in an area of the high seas governed by the RFMO, as long as there is sufficient evidence to suspect that vessel of engaging in IUU fishing³⁰; this is the only exception to the flag state authority exclusivity on the high seas. Finally, following inspection, the inspecting state can follow up enforcement and pursue sanctions. However, a key component of a RFMO Contracting State's ability to board and prosecute a vessel is that permission must be given by the relevant Flag State³¹.

FoC States can undermine this process by refusing to allow RFMOs to board or penalize their vessels, and by providing a way for vessels to 'flag in' or 'flag out' of RFMO control measures whenever it is convenient. Even if they are members of RFMOs, FoC States may carry out poor enforcement to maintain revenue brought in by flagged vessels; IUU vessels are unlikely to stay flagged to a registry that imposes controls, and if they reflag they take their revenue with them³².

FoC states have been identified by various RFMOs as of great concern in efforts to sustainably manage stocks³³. The size and impact of FoC fleets fishing on the High Seas is difficult to estimate, as vessels frequently and easily change flags and names, and move between fisheries. Further complicating the situation is that in recent years some FoC countries have become members of RFMOs, and up to a point do abide by regulations.

It is not only FoC States that do not join RFMOs, or can be guilty of not implementing relevant regulations. FONC States can and do frequently frustrate the development and implementation of sound management and enforcement to ease the financial costs of the requirements on them and their fleets³⁴. Until all Flag States are rewarded for acting responsibly and penalized for not doing so, IUU fishing will continue to be a problem on the high seas.

FLAG OF NON-COMPLIANCE (FONC)



In addition to FoC States, there are many countries that while not having an open registry are nonetheless notorious for failing to enforce Flag State obligations – particularly in high seas and distant water fisheries. Countries that lack the resources or intent to monitor and control vessels fishing on the high seas and flying its flag are more generally known as Flags of Non-Compliance (FONC).

Countries that do not operate FoC registries, but have been documented as FONC include China³⁵, South Korea³⁶, and Taiwan³⁷ - all major Distant Water Fishing Nations (DWFN). All FONC countries should exercise authority and implement their international responsibilities as flag states to ensure that fishing vessels and companies involved in distant water fleets are fishing legally. Standards for doing so are defined in the FAO International Plan of Action to deter, prevent and eliminate Illegal, Unreported and Unregulated Fishing³⁸, and the Code of Conduct for Responsible Fisheries³⁹.

The FAO is currently examining the potential to develop some type of regulatory framework with the objective of setting criteria for flag State performance and identifying actions that can be taken if these criteria are not met⁴⁰. Negotiations are likely to start in 2010, though it is currently not known whether the end regulation will be a binding treaty or voluntary agreement. EJF believes it is crucial that these discussions develop into official negotiations towards a binding treaty on Flag State Performance that not only closes open registries to fisheries vessels, but ensures that all current non-compliant nations are made to abide by requirements.

WHO IS RESPONSIBLE?

“Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.” UNCLOS⁴¹

In order to understand how Flags of Convenience undermine fishing regulatory efforts, it is helpful to examine how fisheries vessels are currently governed. The key component of the various instruments, voluntary and binding, is that the flag state is primarily responsible for all vessels within its registry, and to administer penalties whenever there are violations⁴².

Under international law all ships must be flagged (registered) to a country. The responsibilities of flag states in regards to fisheries are defined in a variety of the international instruments (both binding and non-binding), and cover all aspects of vessel governance including ship standards, working conditions, and fisheries management. For example the United Nations Convention on the Law of the Sea (UNCLOS), and the Agreement for the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (United Nations Fish Stocks Agreement or UNFSA) are both legally binding international instruments, and require (amongst other things) flag states to comply and enforce conservation and fisheries management measures. However, while the flag of a vessel certifies its nationality, it does not necessarily identify the nationality of the vessel's owner.

Almost all FoC countries are bound by UNCLOS, which lays down a comprehensive set of rules amongst states on all aspects of the use of the sea and its resources. UNCLOS provides that “[e]very State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flags”⁴³, and contains a general obligation for states to protect and preserve the marine environment⁴³ – unfortunately leaving implementation very open to State interpretation. Flag states therefore have the responsibility to enforce the applicable international rules and standards on marine environment protection against vessels listed in their registry⁴⁵. UNCLOS is a framework agreement, and open to progressive development through additional legal instruments.

The UNFSA – an UNCLOS implementation agreement – and the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Sea (“Compliance Agreement”) further define the flag state responsibilities (such as the authorisation of fishing vessels, their control and sanctions under national law)⁴⁶. The Compliance Agreement is important as it establishes the connection between the right to fly a State's flag, and the right to fish on the high seas, providing a means for States to control vessels flying its flag⁴⁷. The Agreement establishes a list of serious violations which, upon detection, would require punishments administered by the flag state⁴⁸. Violations include fishing without a license, within a prohibited area or time, using illegal gear or failing to maintain adequate catch records.

To secure the effective implementation of the duties of the flag state it is required that there must be a “genuine link” between the state and the ship⁴⁹. However what precisely constitutes a “genuine link” is unclear, presenting one of the greatest challenges to effective action to address the use of FoC in IUU fisheries, and has largely been left for the nation states to determine. A joint FAO/IMO working group tasked by the General Assembly with establishing the criteria for a genuine link did not manage to do so, deciding to focus instead on addressing the key issues of what might constitute effective Flag State control of a fishing vessel⁵⁰. As a result links between a vessel and its flag state are often very weak.

It is also worth noting that there is significant difference between the number of States that have ratified UNCLOS - 159, and those that have ratified the UNFSA – 76. While the UNFSA does not impose any new duties on States, it does amplify State obligations. The Compliance Agreement, which goes further to define the connection between Flag and right to fish, has had even less uptake with only 39 ratifications. The marked reluctance to ratify the UNFSA and Compliance Agreement would seem to indicate that some States prefer a situation whereby regulation of fishing vessels is open to a level of ambiguity.

Other instruments such as the United Nations Code of Conduct for Responsible Fisheries, and the United Nations International Plan of Action prevent, deter and eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU)⁵¹ are voluntary agreements, however are important as they are based on relevant rules of international law. They provide a framework for the implementation of relevant instruments at the country level, and are formulated to be interpreted and applied in conformity to relevant rules of international law. For instance all flag states are required to maintain a record of fishing vessels under their registration. Flag states must record and report fishery data, and establish adequate monitoring and surveillance services to make sure that rules are not violated. Uptake has again been slow, with very few nations having developed and implemented National Plans of Action on IUU fishing.

The International Maritime Authority (IMO) is responsible for regulation of the maritime industry, and has created a number of legal instruments in relation to safety, environmental concerns, legal matters and maritime security. High ratification and implementation of the International Convention for the Safety of Life at Sea, for example, means that 99 per cent of the world's transport fleet are protected by this Convention⁵¹. The IMO has struggled, however, to create this kind of stable legal framework for the fishing industry. Specific Conventions for Fishing Vessels have not been ratified, and there has been a failure to ensure that significant numbers of fishing vessels are carrying IMO numbers, which are assigned to a ship for identification purposes.

FISHING VESSELS FLAGGED TO FoC STATES

In 2005 Gianni and Simpson assessed the top 14 FoC registers as relevant to fishing vessels $\geq 24\text{m}$, finding 1267 registered vessels⁵². By international agreement vessels equal to or longer than 24 metres are defined as Large Scale Fishing Vessels (LSFV), and are subject to conservation measures set by RFMOs, as well as IMO crew and safety requirements.

A follow up report in 2008 found that these 14 states had 1053 registered fishing vessels, a decrease of 17%⁵³. This was largely due to Belize and Honduras making significant cuts to their fleets (between them, they deregistered 322 vessels between 2005 and 2008). During that time however Cambodia, Georgia, Panama, Sierra Leone and Vanuatu all increased the number of fishing vessels in their registries. The authors noted that it was likely that as some registries de-registered vessels suspected of violations, vessels reflagged to other FoC countries⁵⁴.

Data from 2009 shows that the overall trend of a decrease in the number of fishing vessels flagged to FoC states has stopped and even reversed, with a 1% increase from 2008 to 1061 vessels⁵⁵. Cambodia in particular continues to increase the number of fishing vessels flying its flag. Other FoC registers have also become significant; both the Comoros Islands (18 vessels) and Sri Lanka (16 vessels) are now in the top 14 countries. Also of concern is that 8.5% of total fishing vessels globally were recorded as ‘flag unknown’ in 2008⁵⁶. It is likely that some of these vessels are flagged to open registries; assessment of a random sample of 30 vessels with unknown flags in 2005 found that eight were flying FoC⁵⁷. Unknown flags figure significantly on RFMO blacklists; for example all but two of the vessels currently listed on the ICCAT blacklist have unknown flags⁵⁸.

Not all vessels flagged to FoC countries will be engaged in IUU fishing. Some countries have vessels which are listed on the whitelists of RFMOs; for example of 5054 fisheries vessels (fishing and reefers) on ICCAT’s whitelist, the reporting flag of 142 is a top 14 FoC country, roughly 3% of the total⁵⁹. Other RFMOs also have vessels that fly FoC on their whitelists, yet the combined numbers of these do not appear to come close to the total number of fisheries vessels known to fly FoC - raising the question of where and how these vessels are fishing. It should also be noted that listing by an RFMO does not eliminate the possibility of illegal activities; IUU fishing in the Bluefin Tuna fishery governed by ICCAT is frequently documented⁶⁰.



TABLE 1 FISHING VESSELS REGISTERED TO 14 FOC STATES $\geq 24\text{M}$ IN 2005, 2008, 2009

FoC	2005 ⁶¹	2008 ⁶²	2009 ⁶³
Belize	241	52	55
Bolivia	16	6	1
Cambodia	47	127	176
Cyprus	27	16	18
Equatorial Guinea	39	30	28
Georgia	60	65	38
Honduras	416	283	293
Marshall Islands	7	4	5
Mauritius	24	24	26
Netherlands Antilles	20	15	12
Panama	222	265	283
St Vincent & Grenadines	74	49	49
Sierra Leone	27	55	44
Vanuatu	47	62	33
TOTAL	1267	1053	1061

WHY FoC COUNTRIES FAIL TO FULFIL THEIR FLAG STATE RESPONSIBILITIES

FLAG STATES MAY FAIL IN THEIR FISHERIES RESPONSIBILITIES BECAUSE THEY ARE EITHER *UNWILLING OR UNABLE* TO OVERSEE AND MONITOR THE VESSELS THAT BEAR THEIR FLAG.

Many States lack the resources or capacity to undertake adequate fisheries monitoring and enforcement⁶⁴; this is particularly difficult for distant water fleets, which at a minimum requires the maintenance of an accurate vessel database and effective monitoring and control systems. These initiatives are expensive to implement and maintain; for FoC nations, the costs almost certainly outweigh any revenue brought in by registering ships in the first place. Yet in the absence of these measures, FoC vessel owners can operate without any regulation or control⁶⁵.

Effective monitoring by Flag States also requires good infrastructure and communication between ship registries, the government and other regulatory bodies, requirements that are often lacking. For example, the landlocked nations of Mongolia and Bolivia both have open registries, and are considered FoC. Their distance from the sea and lack of coastlines make the practicality and intent of either country to carry out inspections questionable.

The issue is further complicated by the fact that some open ship registries are run by private companies based in other countries⁶⁶. It appears that private companies actively approach developing countries with the proposal to set up an open registry⁶⁷, and many operate on a commission basis - a further incentive to make registration a simple process for potential clients. Poor communication between government and company has been reported, with governments at times not being supplied with up-to-date lists of the vessels that are flying their flag⁶⁸.

Finally, effective control also requires countries to remain up to date with legal changes. This is a difficult challenge for administrations as international rules affecting vessels are often complex, and changes will only be effective if they are actually incorporated into domestic law - with violations followed up by prosecution and effective penalties. This can be difficult, especially where there are political backlogs or a lack of legal expertise. Maritime administrations can therefore find it difficult to adapt to a constantly changing legal backdrop, especially if they have limited resources.



FISHERIES SUPPORT VESSELS

WHY THE USE OF FoC

BY REEFERS MUST BE ADDRESSED



FLAG STATES ARE NOT ONLY RESPONSIBLE FOR FISHING VESSELS; THEY ARE ALSO RESPONSIBLE FOR ALL SUPPORT, REFUELLING AND TRANSHIPMENT VESSELS WITHIN THEIR REGISTRY.

Commonly known as 'reefers', these vessels provide logistical support to distant water fishing fleets. Of particular relevance to fisheries operations are refrigerated cargo vessels that store huge amounts of fish destined for market; these reefers are often the property of the same companies that own fishing vessels. Traveling between ports and fishing grounds, a single reefer can service and support a large number of fishing vessels⁶⁹. According to Lloyd's Register of Ships, 700 reefers are currently registered with FoC (see Table 2). Panama (37%), Bahamas (17%) and Liberia (16%) dominate, accounting for 70% of the total⁷⁰.

Reefers allow fishing vessels to tranship their catches, restock on food and bait, refuel and re-crew without having to make the lengthy (and costly) journey to port - allowing illegal fishing vessels to stay out at sea for long periods of time. Transhipment is often illegal, and is particularly prevalent in the waters of countries with weak surveillance capacity. Reefers will also often load a combination of legal and illegal catches, mixing the two as part of an effective fish 'laundering' process that gets fish into the marketplace⁷¹.

While there is some difficulty identifying those reefers that are specifically used for fisheries operations, there is little doubt that many are either completely or partly dedicated to a fisheries role (reefers can also be utilised to carry other perishable foodstuffs). A disproportionate number of reefers fly Flags of Convenience; for example almost all fish carrier vessels that EJF has documented engaged in IUU fishing operations in West Africa have been registered to a FoC State⁷². Even those reefers whitelisted by RFMOs appear to favour FoC; of 174 fish carriers listed by ICCAT, 138 (79%) report a current flag identified by the ITF as a FoC⁷³; another 12 (7%) are registered to Singapore⁷⁴ considered FoC by FAO sources⁷⁵. Combined this means an incredible 86% of Fish Carriers on ICCAT lists are taking advantage of FoC registration.

LEFT: The 'Elpis' illegally transshipping fish at sea off the coast of West Africa. This vessel was deflagged by Belize for fisheries violations, and has flag-hopped to Panamanian registration.

© Greenpeace / Pierre Gleizes

FISHERIES SUPPORT VESSELS

The difficulties of identifying the true identity and ownership of a reefer flying a FoC, and therefore the ability to identify and prosecute the beneficial owners in cases of IUU fishing, is witnessed by an investigation by Marie-Hélène Aubert, French MEP and Rapporteur for the 2007 Draft Report on the EU plan of action against IUU fishing⁷⁶, precursor to the new EU-IUU Regulation⁷⁷. A refrigerated reefer flying the FoC of Panama was spotted in Spain's Las Palmas harbour with the name *Lian Run* painted on the bows (a number of *Lian Run* vessels are active off West Africa⁷⁸); embossed behind the painted name *Lian Run* was another, the *Sierra Grana*.

The port authorities had no record of a vessel under either name, and claimed the vessel was called the *Lian Run 21*, even though this name did not appear in the port database either. A later search of the vessel's displayed IMO number gave a fourth name, the *Timanfaya*⁷⁹. The vessel was unloading fish that had been caught by 15 different vessels⁸⁰, among them some that EJF had observed fishing illegally in West Africa just a few weeks previously. The captain presented the MEP delegation with a declaration saying the fish had been caught in Guinea; however the delegation included a Guinean Fisheries inspector who claimed she knew nothing of the *Lian Run*⁸¹.

BELOW: The Binar 4 in Las Palmas harbour. Flying the flag of FoC state Panama, this reefer was documented by EJF illegally transshipping fish off West Africa from IUU fishing vessels

©Greenpeace / Pierre Gleizes



As the services provided by fisheries support vessels play such a crucial role in IUU fishing, it follows that one way of reducing IUU would be to prevent support vessels from servicing fishing vessels. However, due to the role, reefers play in some distant water legal fisheries, there is resistance to an international law to this effect. A non-binding recommendation set out by the FAO International Plan of Action calls for Flag States to ensure that ‘...their fishing, transport and support vessels do not support or engage in IUU fishing. To this end flag States should ensure that none of their vessels re-supply fishing vessels engaged in such activities or tranship fish to or from these vessels...’⁸². However as FoC States often demonstrate little capacity and/or will to do so, addressing the key role reefers play in IUU fishing in future measures to address Flag State responsibilities (including banning the registry of reefers with FoC), would be highly effective. As long as reefers are able to support IUU fleets and facilitate the access of illegal fish to market, it will be extremely difficult to achieve adequate enforcement.

TABLE 2
FoC STATES WITH REGISTERED REEFERS⁸³

FoC	No. of reefers ≥24m	FoC	No. of reefers ≥24m
Panama	245	Cyprus	10
Bahamas	116	Bermudas	9
Liberia	109	Honduras	9
Malta	28	Georgia	8
Belize	26	Barbados	6
Netherlands Antilles	26	Sierra Leone	6
Cambodia	24	Vanuatu	4
Marshall Islands	15	Bolivia	2
St Vincent	15	Tonga	2
Comoros	11	Lebanon	1
Antigua & Barbuda	10	Mauritius	1
Cayman Islands	10	TOTAL	700

CASE STUDY - REEFERS, FoC, AND IUU FISHING IN WEST AFRICA

EJF INVESTIGATIONS OFF THE COAST OF WEST AFRICA HAVE DOCUMENTED THE KEY ROLE THAT REEFERS FLYING FLAGS OF CONVENIENCE PLAY IN IUU FISHING.

In 2006, in partnership with Greenpeace International, EJF documented the refrigerated cargo vessel *Elpis* off the coast of West Africa receiving boxes of fish from three fishing boats. Two of the vessels were authorised to fish in Guinean waters (although one of them, the *Sakoba 1*, was later spotted fishing illegally in the coastal zone reserved for artisanal fishing), but Guinean fisheries legislation requires fish to be landed or transhipped in the port of Conakry – a rule they were clearly breaking. In addition to illegal transhipping, the third fishing vessel did not possess a license to fish. Subsequent investigations in Las Palmas in Spain’s Canary Islands documented the *Elpis* unloading boxes of frozen fish featuring names of several IUU vessels EJF and Greenpeace had observed operating in Guinea. Las Palmas port records indicated the *Elpis* was a regular visitor to Las Palmas⁸⁴, known as a notorious Port of Convenience.

Also observed by EJF and Greenpeace was the *Binar 4*, operating in international waters just beyond the Guinean EEZ. This reefer was in the process of illegally receiving fish from two Chinese boats – the *Lian Run 24* and *Lian Run 27*

– whilst a further two fishing vessels – the *Lian Run 28* and *Lian Run 29* – were nearby waiting to tranship. These were not the only *Lian Run* vessels operating in Guinean waters, several of which were observed IUU fishing. When the reefer and fishing vessels realised that they were being observed, they separated – the *Binar 4* fled north towards Las Palmas, while the fishing vessels headed in the direction of the Guinean fishing grounds.

The Chinese-owned reefer *Hai Feng 896* was documented by EJF unloading boxes of fish labelled CNFC from West Africa in the Spanish port of Las Palmas in 2006 without going through customs. *Hai Feng 896* is the property of the China National Fisheries Corp. (CNFC), a State-owned company and the largest fishery enterprise in China⁸⁵. Various CNFC vessels have been documented by EJF conducting IUU activities off West Africa⁸⁶.

At the time of observation all three reefers were flying FoC. *The Elpis* was flying that of Belize, while the *Binar 4* and *Hai Feng 896* were both registered to Panama. The *Elpis* was subsequently delisted by Belize for fisheries violations⁸⁷; in a classic case of ‘flag-hopping’ the vessel has been renamed *Somang* and re-flagged to Panama⁸⁸. The *Hai Feng 896* continues to be registered to Panama⁸⁹, while the *Binar 4* was listed as flag unknown until September 2009, when it was renamed *Lucky 101* and reflagged by Sierra Leone⁹⁰.

The Binar 4 illegally transshipping in West Africa; the Chinese trawlers had earlier been documented engaging in IUU fishing. At the time of the photo the Binar 4 was flagged to FoC state Panama, but has been recently renamed the Lucky 101 and reflagged to Sierra Leone's open registry. While the owners of this vessel are unknown, the trawlers in the image are Chinese flagged and owned, and part of a fleet of vessels from this country that have been widely documented in IUU fishing activities in West African waters. China does not have an open registry, but due to repeated failings to fulfil international flag state responsibilities can be considered a Flag of Non-Compliance. ©EJF



WHO BENEFITS?

By the very nature of FoC, it is extremely difficult to identify the true owners and beneficiaries of IUU fishing vessels exploiting FoC registries. It is possible however to get a snapshot of some ownership of FoC fishing vessels from Lloyds Register of Ships. In 2005 Gianni and Simpson analysed the 14 most significant FoC States in regards to fishing vessels, and found that most were owned or managed by companies based in either the EU or Taiwan⁹¹. Within the EU, Spain (including the Canary Islands) accounted for roughly half of the EU share⁹². Companies based in FoC States Honduras, Panama and Belize also accounted for many vessels; however the true beneficial ownership is difficult to identify as IUU fishing businesses are often required to set up shell companies to which their vessels are then attributed. Hence many of the companies located in Honduras, Panama and Belize may actually be fictitious with their true owners residing in the EU, Taiwan or elsewhere.

Current analysis of the same 14 FoC States reveals that EU and East Asian companies still dominate the ownership of FoC vessels⁹¹ (see Table 3). Taiwanese, South Korean, and Japanese companies are significant, along with the important addition of Chinese operations. China is now considered to have the largest fishing fleets globally⁹⁴, and Chinese vessels have frequently been linked to IUU fishing activities in various parts of the world⁹⁵; it is perhaps unsurprising that Chinese fishing operations have begun to take advantage of the FoC system. Overall EU ownership of fishing vessels flying FoC has increased by 9% since 2005, although Spanish-based interests (including the Canary Islands) have decreased from 87 vessels to 58, a reduction of around 33%.

The most significant change since 2005 is the number of FoC vessels registered to companies based in Panama – from 96 to 212 – an enormous increase of 220%. It is unlikely that the beneficial owners of many of these companies are Panamanian in nationality; as regulations are developed in regions such as the EU to address the role nationals of Member States such as Spain play in IUU operations, it may be that shell companies are being increasingly registered in Panama by foreign, and hidden, beneficial owners.



ABOVE: Vessels owned by the China National Fisheries Corp. (CNFC), illegally transshipping fish in Guinean waters. CNFC is a state-owned company and the largest fishery enterprise in China, and has several vessels flagged to FoC states.

© Greenpeace / Pierre Gleizes

**TABLE 3
TOP COUNTRIES LISTED AS COUNTRY OF RESIDENCE OF OWNER, OPERATOR, OR MANAGER
OF FISHING VESSELS FLAGGED TO ONE OF THE TOP 14 FOC COUNTRIES 2005 AND 2009**

Top countries/areas of residence of vessel owner, manager or group	No. of fishing vessels ≥24m in 2005 flagged to top 14 FoC ⁹⁶	% of all fishing vessels 24m or longer flagged to one of top 14 FoC countries in 2005	Rank 2005	No. of fishing vessels ≥24m in 2009 flagged to top 14 FoC ⁹⁷	% of all fishing vessels 24m or longer flagged to one of top 14 FoC countries in 2009	Rank 2009
Taiwan	142	11.2	1	117	10.4	3
Honduras	111	8.8	2	119	10.6	2
Panama	96	7.6	3	212	18.9	1
Spain	87	6.9	4	58	5.0	6
Belize	74	5.8	5	71	5.3	5
South Korea	43	3.4	6	93	8.3	4
Japan	32	2.5	8	29	3.6	7
China	N/A	N/A	N/A	56	5.0	6
EU	170	13.4		187	16.7	

WHO BENEFITS?

DO FoC STATES BENEFIT FINANCIALLY FROM FLAGGING FISHING VESSELS? ECONOMIC ANALYSIS

ASSESSMENTS OF THE TOTAL INCOME FOC STATES GAIN FROM REGISTERING FOREIGN-OWNED VESSELS IS COMPLEX, AS MANY ARE NOT TRANSPARENT WITH EITHER THE COSTS ASSOCIATED WITH REGISTERING A VESSEL OR WITH THE TOTAL NUMBER OF VESSELS REGISTERED.

A 2002 report for the FAO reviewed the revenue that 21 FoC States gained from fishing vessels, as a percentage of revenue gained from all vessels registered. Between them, these States flagged 1,335 fishing vessels, equal to 7% of all vessels flagged to these registers. The revenue gained from fishing vessels was estimated at US\$3,083,100 (4.9% of the total revenue gained from registering all types of vessels)⁹⁸. This value was considered to be an underestimate of actual revenue, as it only consists of registration revenue and did not include money gained from franchise/royalty fees or tonnage taxes. However, the report highlighted that the proportion of fishing vessel revenue to total vessel revenue is likely to be more accurate, and thus shows that the revenue gained registering fishing vessels is only a small percentage of the total gained from registering all ships⁹⁹.

A total of US\$3 million is a surprisingly small amount for 21 FoC States to be gaining from flagging fishing vessels. Yet a study conducted by the Marine Resources Assessment Group (MRAG) on behalf of the UK's Department for International Development (DfID) also indicated similar low income generation for open registries. Using an estimated generated annual revenue average of US\$2200 per fishing vessel, MRAG calculated that 20 FoC registries were obtaining total combined revenues of approximately US\$3.5 million each year¹⁰⁰.

Using MRAG's figure of US\$2200 annual revenue per vessel, estimates for 28 FoC States (based on 2009 fishing vessel figures¹⁰¹) show an approximate income of US\$2.5 million. Reefer revenues for the same countries were estimated at around US\$1.5 million, with a total combined estimated income of approximately US\$ 4 million.

The US\$3-4 million values found by the various studies are dwarfed when compared to total global economic losses to IUU fishing, which a 2009 report estimated at between US\$10 and 23.5 billion each year¹⁰⁴. Furthermore, many of the FoC States themselves are estimated to have domestic losses to IUU fishing that far out-value any income derived from the sale of their FoC to foreign fishing operators. For instance Liberia and Sierra Leone, with estimated revenues from flagging fishing vessels of US\$250,800 and US\$107,800, are believed to suffer losses of US\$12 and US\$29 million to IUU fishing each year¹⁰⁵. To recover these losses, Liberia and Sierra Leone would have to register an unlikely 5454 and 13,181 vessels respectively.

The studies highlight that revenues accrued by nations operating FoC registers appear to be far outweighed by losses to IUU fishing, and disproportionately benefit IUU fishing vessels. On this evidence alone the argument can be made that granting fishing and support vessel FoC makes little economic sense for those nations involved, or the wider international community.



FoC states accrue tiny revenues from flagging foreign-owned vessels, particularly when compared to the estimated costs of IUU fishing ©FAO

TABLE 4
ESTIMATED ANNUAL REVENUE DERIVED BY FLAG OF CONVENIENCE COUNTRIES
FROM REGISTERING FISHING VESSELS

FoC State	Total # of fishing vessels $\geq 24\text{m}^{102}$	Assumed Annual revenue fishing vessels US\$ (\$2200/yr/vessel)	Total # of reefers $\geq 24\text{m}^{103}$	Assumed annual revenue reefers US\$ (\$2200/yr/vessel)	Total assumed annual revenue fishing vessels US\$
Antigua & Barbuda	1	2200	10	22000	24200
Bahamas	1	2200	116	255200	257400
Barbados	0	0	6	13200	13200
Belize	55	121000	26	57200	178200
Bermuda	1	2200	9	19800	22000
Bolivia	1	2200	2	4400	6600
Cambodia	176	387200	24	52800	440000
Cayman Islands	0	0	10	22000	22000
Comoros	18	39600	11	24200	63800
Cyprus	18	39600	10	22000	61600
Equatorial Guinea	28	61600	0	0	61600
Georgia	38	83600	8	17600	101200
Honduras	293	644600	9	19800	664400
Jamaica	5	11000	0	0	11000
Lebanon	1	2200	1	2200	4400
Liberia	5	11000	109	239800	250800
Malta	10	22000	28	61600	83600
Marshall Islands	5	11000	15	33000	44000
Mauritius	26	57200	1	2200	59400
Mongolia	3	6600	0	0	6600
Netherlands Antilles	12	26400	26	57200	83600
Panama	283	622600	245	539000	1161600
Sierra Leone	44	96800	6	13200	110000
Saint Tome & Principe	4	8800	0	0	8800
St Vincent	49	107800	15	33000	140800
Sri Lanka	16	35200	0	0	35200
Tonga	5	11000	2	4400	15400
Vanuatu	58	127600	4	8800	136400
TOTAL	1156	2543892	692	1522400	4068492

FLAGS OF CONVENIENCE AND THE EXPLOITATION OF CREWS

While Flags of Convenience widely facilitate IUU fishing, they also allow unscrupulous owners to ignore regulations and laws requiring insurance, training of crew, and the purchase of safety gear. The International Transport Workers Federation (ITF) believes that the fishing industry is home to some of the worst examples of abuse in the workplace¹⁰⁶, and with their lack of regulation and monitoring, FoC vessels are often characterised by the lowest standards of working conditions¹⁰⁷. The unfair, illegal treatment that workers face includes incarceration, unsafe working conditions, and physical abuse. The worst cases of exploitation aboard IUU/FoC vessels are tantamount to ILO definitions of forced labour¹⁰⁸.

While the withholding of pay at the end of a voyage is the most common complaint, on-board conditions on IUU vessels have also been found to be consistently poor. EJF has documented crew members packed on decks or in fish holds, often sharing bunks in windowless rooms, sleeping on cardboard or wooden planks¹⁰⁹. Some vessels lack basic facilities, with crew forced to relieve themselves over the side and told to 'shower' in the waves by standing on deck^{110,111}. Investigations have also uncovered incidences where crew have been given rotten food to eat¹¹², or left for prolonged periods with insufficient provisions^{113,114}. Crews are often confined on board for months or years at a time and can have their passports and travel documents confiscated¹¹⁵.

Many crew members are threatened with, and fall victim to, systematic physical abuse. Crews have reported punching, beatings with metal rods, sleep deprivation, imprisonment without food or water, and individuals forced to continue working after injury has been reported¹¹⁶. Crews working on FoC/IUU vessels can be placed at risk of serious harm from unsafe working conditions¹¹⁷, earning some FoC vessels the nickname 'floating coffins'. The failure of the international community to ratify conventions aimed at establishing minimum safety requirements for fishing vessels coupled with poor enforcement of existing regulations, enables ship owners to allow the deterioration of the vessel to the point of not being seaworthy, and to fail to provide safety equipment¹¹⁸.

The deadly reality of this situation was demonstrated when fourteen crew members died from drowning and hypothermia as the fishing vessel *Amur* sank while illegally fishing for Patagonian toothfish (Chilean Sea Bass) in sub-Antarctic waters¹¹⁹. Flagged to FoC state Sao Tome & Principe, structural modifications had made the vessel unseaworthy and most crew members had neither proper contracts nor insurance cover¹²⁰. Life-saving equipment on board did not function, there was an absence of fire-extinguishers, and escape-routes were blocked by sleeping bunks¹²¹.

BELOW: EJF investigations have revealed widespread exploitation of crews, and unsafe working conditions aboard IUU fishing vessels ©All EJF



FoC STATES FACE ECONOMIC LOSS

NEW REGULATIONS AND TRADE SANCTIONS



As international efforts to address IUU fishing increase, FoC States will potentially suffer economic losses as a result of trade sanctions levied by regional fisheries bodies, individual nations, and multinational bodies. RFMOs have increasingly attempted to reduce IUU fishing by asking their compliant members to refuse to accept imports from any States which remain outside of the regulatory framework; for example ICCAT has prohibited tuna imports from a number of countries¹²².

Yet perhaps the greatest economic concern FoC States potentially face will be loss of European market access. The largest market in the world in terms of both volume and value, the EU consumed seafood worth over €55bn in 2005¹²³. For many nations, particularly developing countries, maintaining fish sales to the EU is of vital importance; this includes many FoC States.

In response to the FAO IPOA-IUU, and in acknowledgement that market demand in Europe was driving IUU fishing internationally, the EU adopted *Council Regulation (EC) No 1005/2008 establishing a Community System to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* in late 2008¹²⁴. Once implemented in January 2010, all fish entering the EU market will be closely scrutinised for legality.

ABOVE: Under the new EU-IUU regulation, FoC states face being listed as non-cooperative, resulting in loss of access to the enormous and lucrative European seafood market. ©EJF

FURTHER ECONOMIC LOSS

As the regulation sets out to minimise the imports of IUU-caught fish as key objectives, it will directly affect third countries that wish to export their fisheries products to the EU market¹²⁵. The regulation will focus on four key areas, all of which will have direct relevance for any FoC state that relies on the EU market for fisheries exports¹²⁶. These are:

- 1) **Catch Certification Scheme** – this will require validation first from the Flag State of the vessel catching the fish, and is coupled with a Community Port State control system for fish being imported into the EU. The certification scheme focuses on Flag State responsibilities for certifying the legality of catches, including any transshipping, direct and indirect imports, and processing¹²⁷. The certification system includes mechanisms for refusing landings in EU ports, and fisheries products from vessels/States unable to provide evidence of legality or suspected of irregularities will find fish products refused entry. FoC states with little information of where and when fishing vessels might be operating will find it hard to prove legality of catches, or demonstrate that they are in control of flagged vessels.
- 2) **EU IUU fishing ‘blacklist’** – this list will include all vessels currently on RFMO lists (most of which are FoC or flag unknown), and those found by the EU itself to be engaged in IUU fishing. The EU will place vessels on the list if Flag States are found not to have taken ‘immediate enforcement action’ (for third States) against any vessel found to be illegally fishing. Listed vessels face a range of potential sanctions, and being monitored for further infringements.
- 3) **Control over EU nationals** – The EU-IUU regulation establishes that no EU Member State nationals should engage or be associated with IUU fishing activities, whether inside or outside of EU waters. Where nationals are found to be guilty of IUU fishing infractions, prosecution under criminal law will take place. As many IUU vessels flagged to FoC nations originate in Europe, FoC registries are likely to come under far greater scrutiny.
- 4) **Identification and listing of Non-cooperating Third Countries (States of Non-Compliance)** – under the EU-IUU regulation, a State may be identified as a non-cooperating third country if it fails to discharge its duties under international law as a Flag State (also as a Port, Coastal or Market State). The listing of such states will be based on the measures that the State is taking to combat IUU fishing, its participation in RFMOs, cooperation with the EU, and ratification of international treaties – essentially all those IUU fishing issues that FoC are currently implicated.

Those nations with FoC registries are without doubt the most vulnerable to the EU-IUU regulation, and will need to ensure proper monitoring of their fleets and execution of their Flag State responsibilities if they are to avoid sanction. The economic damage of not doing so is potentially huge; along with the prohibitive costs of monitoring fishing fleets around the world (that often go to great lengths not to be monitored), the potential loss of export revenues from the EU market could be devastating for national fishing operators and wider fisheries revenue (taxes etc.). For those nations that have important export fisheries the EU-IUU acts as a very strong argument to close FoC registries to foreign-owned fisheries vessels.

CASE STUDY: MAURITIUS

Located in the Indian Ocean, the Small-Island State of Mauritius encompasses a land area of only 1865km²; however it is surrounded by an enormous EEZ of 1.9 million km²¹²⁸. The sheer size of this area makes it extremely difficult to adequately monitor and control, and combined with rich tuna resources leaves the country vulnerable to IUU fishing operations. IUU fishing levels in the wider Western Indian Ocean (FAO Catch Area 51) have been recently estimated at 18% over recorded catches¹²⁹.

Domestically Mauritius has a combination of artisanal, semi-industrial and industrial fisheries. Artisanal and semi-industrial fisheries generally target reef and demersal species for the domestic market. However due to over-capacity, these sectors are increasingly being trained to fish in offshore waters, including around Fish Aggregation Devices (FADs) that are maintained by the Mauritian government. The industrial fleet in Mauritius is small, with a total of two domestically owned tuna long-liners¹³⁰.

Despite the small size of its domestic fleet, fisheries are of vital economic and social importance in Mauritius, directly and indirectly employing nearly 12,000 people¹³¹ and providing 25% of the country's animal protein intake¹³². The offshore fishery is based on tuna and the tuna-like species that are widely distributed in the Exclusive Economic Zone (EEZ) and adjoining waters, which are managed by the Indian Ocean Tuna Commission (IOTC).



Beside being a considerable source of food for the island, the value of the fishery lies in two main areas – firstly, the licensing of foreign vessels to fish in the EEZ and secondly, the use of Port Louis as a centre for offshore vessels and the associated onshore processing and service industry. The sale of licenses to foreign vessels, access agreements and the promotion of Port Louis as a seafood hub for trading, warehousing, processing, distribution and re-export of seafood products contributes significantly to GDP; a recent economic study of the benefits accruing to Mauritius indicates that earnings from services and, to a lesser extent, licenses, amount to €200-250 million annually¹³³.

As these benefits are dependent on the ability of Mauritius to both sustainably manage its fishery, and maintain access to international seafood markets, it is the interest of the country to ensure that it is not involved in the facilitation of IUU activities. Historically Port Louis was once notorious for its association with the illegal Patagonian Toothfish trade; in 2000 CCAMLR estimated that about 50% of IUU caught toothfish taken that year were landed in Mauritius¹³⁴. However, in 2004 Mauritius became a member of CCAMLR, and since this period the government has taken active steps to close the island to IUU fishing vessels; it is considered that no known transshipment of illegal Patagonian toothfish has occurred recently¹³⁵.

Mauritius is however considered internationally to operate a Flag of Convenience¹³⁶ and significantly offers lower rates for fishing vessels to register than other types of vessels; this registration costs only a few hundred US dollars¹³⁷. According to Lloyds Register of Ships 26 fishing vessels and one reefer are registered to the Mauritian flag¹³⁸. As only one vessel is recorded as having Mauritian ownership, the majority would appear to be under foreign beneficial ownership.

While no Mauritian-flagged fishing vessels currently appear on RFMO blacklists, the links between FoC and IUU fishing activities represent a real threat to Mauritius and the benefits it accrues from its fisheries. This is particularly true in regards to maintaining the country's vital export earnings in light of the EU-IUU regulation due to be implemented in January 2010 (see page 24). Having demonstrated successful action in regards to port controls, it is crucial that Mauritius now shuts its FoC registry to foreign-owned fishing vessels. Action to do so will fulfil international obligations, eliminate possible complicity in IUU fishing operations, and protect vital export income.

LEFT: Fish provide a significant source of export revenue and food security in Mauritius. While the government has taken significant steps to close its port to IUU operators, foreign-owned fishing vessels flying the country's Flag of Convenience, if implicated in IUU fishing activities, could threaten Mauritian access to export markets and should be de-flagged.

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CURRENT STATUS OF IUU FISHING



ABOVE: Pirate trawlers in Sierra Leone fish illegally within a few hundred metres of the shore and in the river estuary – reserved for local fishers and crucial fish breeding areas ©EIF

ILLEGAL, UNREPORTED AND UNREGULATED (IUU) FISHING OCCURS GLOBALLY, AND HAS BECOME A SYMPTOM OF A WIDER CRISIS IN WORLD FISHERIES – IUU FISHING IS NOW CONSIDERED BY LEADING EXPERTS AS ONE OF THE MOST SERIOUS THREATS TO THE ACHIEVEMENT OF SUSTAINABLE FISH STOCKS.

Accurate data on the scope and scale of IUU fishing is hard to come by, as it is in essence a clandestine activity and therefore extremely difficult to accurately assess. Nonetheless it has been recently estimated that illegal fishing accounts for a significant proportion of catches worldwide, with a value of US\$10 – 23.5 billion per year and representing between 11 and 26 million tons of fish¹³⁹.

The Food and Agriculture Organization of the United Nations (FAO) has now estimated that 80% of the world's fish stocks are fully or overexploited¹⁴⁰. Mismanagement and fleet overcapacity have resulted in plummeting fish stocks in many regions of the world, a fall that has coincided with an ever-increasing global demand for seafood. To fulfil this demand, illegal fishing operators have looked further afield. IUU fishing is widespread, and while in some areas is being reduced, there are certain regions of the world where it is particularly prevalent and on the rise.

Increasingly the countries bearing the greatest costs of illegal operations are those in the developing world, which may have abundant fish stocks but often lack the resources, institutional capacity, expertise and/or political will for monitoring and regulating activities in their coastal waters; indeed, a 2009 study unsurprisingly demonstrated the strong relationship between IUU fishing and World Bank governance indicators, highlighting the fact that developing

countries are more vulnerable to illegal activities conducted by both local fishers and foreign fleets¹⁴¹. The fact that many of the latter are often responsible for IUU fishing in the waters of developing countries demonstrates a lack of control by both flag as well as Coastal States, particularly vessels registered with Flags of Convenience¹⁴².

In Sub-Saharan Africa the total value of illegal fish caught has been estimated at US\$1 billion per year¹⁴³, and this is likely to be a low figure*. The Eastern Central Atlantic (corresponding to coastal West Africa) has been estimated to have the highest levels of IUU fishing in the world, 40% higher than reported catches¹⁴⁴. The value of this fish is between 265 and 506 million US\$¹⁴⁵, a potential source of development income that is being lost by nations ranked as some of the least developed in the world¹⁴⁶.

IUU fishing has been implicated in a wide variety of environmental, economic and social impacts, and as with many illegal international enterprises, the impacts disproportionately affect those who depend most on the natural resource that is stolen. IUU fleets specifically target commercially valuable species¹⁴⁷; nonetheless IUU fishing can also decimate far less lucrative stocks that provide very important food sources and employment opportunities, particularly in developing countries. Lack of controls and the use of de-

'When the trawlers come, they take everything in the sea. Once they have it on board, they keep only the valuable fish. Everything else they dump over the side, you can see it out there, dead fish floating everywhere.'
Local fisherman in Sierra Leone

destructive fishing gear damages marine habitat and reduces fish numbers, size and distribution. IUU operations can also result in high levels of bycatch which is discarded, including marine mammals, seabirds, juveniles, and species considered to have no commercial value to illegal operators. However, quantifying the ecosystem effects of IUU fishing and distinguishing from those of legitimate fishermen is often extremely difficult, not least because the environmental damage inflicted by some legitimate fishing can also be significant.

The economic impacts include the direct loss of the value of catches that could be taken by legitimate (often artisanal) fishers, as well as wider revenue that could be taken in the form of landing and licence fees, taxes, and ancillary employment in related industries. Artisanal fishing communities throughout the world consistently report decreased numbers and sizes of fish, threatening their livelihoods and basic food security¹⁴⁸. In some regions IUU vessels directly threaten and attack artisanal fishers, resulting in injuries and deaths¹⁴⁹. Loss of income is having serious social impacts for many of these communities, including threatened food security, loss of livelihoods, decreased health, and access to education. There is growing evidence that IUU fishing and its impacts are likely contributing to illegal and dangerous migration attempts to Europe¹⁵⁰ from Africa, and is perhaps a contributor to the widely reported expansion of piracy in regions such as Somalia¹⁵¹.

However, IUU fishing is bad news for legitimate fishermen everywhere, not only those in the developing world. Under-reporting of catches by authorised fishers, and unreported illegal catches, mean that the catch data collected by fisheries managers is incomplete and likely to give a more optimistic assessment of the status of fish stocks than is actually the case. Therefore if management decisions are made they are likely to be inadequate, and will fail to conserve stocks as intended. In extreme circumstances this can lead to the collapse of a fishery, or seriously impair efforts to rebuild stocks that are already depleted. Fish caught by both IUU and legitimate fishers are sold on the same markets, but legitimate fishers pay higher operating costs from supporting fisheries management and conservation measures. IUU fishers are free riders that benefit from the sacrifices made by others, thereby undermining legitimate fishers and encouraging them to disregard the rules as well, thereby creating a destructive downward spiral.

The significance of IUU fishing led to the adoption of the UN FAO International Plan of Action (IPOA) to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated (IUU) Fishing in 2001¹⁵². The response to this was slow; with a few notable exceptions action by the international community to date has been inadequate, and on a global scale poor performance on the control of illegal fishing has been found to be widespread. In an assessment of compliance with illegal and unreported



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‘When I was a young boy, we used to get a lot of fish. But now there is no good catch, we only get small fish. The reason for this is the trawlers’
Local fisherman in Sierra Leone

fishing in the FAO’s Code of Conduct for Responsible Fisheries¹⁵³ over half of the top fishing countries (30/53) failed the grade¹⁵⁴. Only a quarter achieved a ‘passable’ grade of 6/10 or more.

** The figure of almost US\$ 1 billion dollars (from MRAG’s Review of Impacts of Illegal, Unreported and Unregulated Fishing on Developing Countries – FINAL REPORT¹⁵⁵) is from 2005. The same report also provides MRAG’s global estimate for IUU fishing at approximately \$9 billion/year. However, recent assessments by Agnew et al¹⁵⁶ raise the estimate for global levels of IUU fishing to between US\$10-23.5 billion, an increase of between 1.1 and 2.6 times the previous \$9 billion figure. Although reviewed estimates for Sub-Saharan Africa were not made at the same time, applying similar ratio increases projects that the region could in fact be losing between \$1.1 and \$2.6 billion to IUU each year, and as the same report shows that Sub-Saharan Africa has some of the highest IUU fishing rates in the world, the figures could be even higher.*

ADDRESSING FLAGS OF CONVENIENCE

ADDRESSING THE ROLE PLAYED BY FLAGS OF CONVENIENCE IN IUU FISHING OPERATIONS REQUIRES URGENT ACTION AND THE COMBINED EFFORTS OF THE INTERNATIONAL COMMUNITY. WHILE SPECIFIC RECOMMENDATIONS ARE MADE AT THE END OF THE REPORT, THIS SECTION EXAMINES SOME OF THE MEASURES THAT CAN BE TAKEN, AND IDENTIFIES THOSE BODIES THAT COULD AND SHOULD TAKE ACTION.



UN: USING THE LAW OF THE SEA TO ADDRESS FLAGS OF CONVENIENCE

The United Nations Convention on the Law of the Sea (UNCLOS) contains an elaborate system for the peaceful settlement of disputes between the parties to the Convention. When a dispute concerning the interpretation and application of the Convention arises parties have to exchange views on its settlement expeditiously¹⁵⁷. Unless they have already agreed on a process in advance, parties shall then proceed to settle the dispute by means of their own choice – for example further negotiations, conciliation or judicial procedures.

If parties fail to reach a solution any dispute must be submitted to UNCLOS dispute settlement procedures entailing a binding decision. Possible fora are the International Court of Justice, the International Tribunal for the Law of the Sea (ITLOS) or an arbitral tribunal. To which body the dispute goes depends on the choice of the parties on or after signature of the Convention. Where the parties have not accepted the same procedure it goes to arbitration.

As part of the dispute settlement procedures under UNCLOS a State can claim reparation for damage caused by an internationally wrongful act of another State¹⁵⁸. Repara-

tion should wipe out all the consequences of the illegal act, and may take the form of monetary compensation for economically quantifiable damage¹⁵⁹. If and to the extent the practise of granting of Flags of Convenience to fishing boats is found to be in violation of international law, States with open registries may be financially liable for the damage caused through IUU fishing of their vessels (although to date no such cases have been undertaken).

The International Tribunal for the Law of the Sea (ITLOS) was established to provide parties with a permanent and specialised forum to settle differences related to the meaning of UNCLOS provisions. When applying the Convention to specific cases the Tribunal can help to clarify the law and contribute to the development of international law through a dynamic reading of the Convention in light of present day conditions.

A court of tribunal to which the dispute has been submitted may order provisional measures. If the case will be heard by an arbitral tribunal that has not yet been constituted, ITLOS also has jurisdiction to prescribe provisional measures. Such measures may be ordered to preserve the rights of the parties or to “prevent serious harm to the marine environment”¹⁶⁰. Whilst it is disputed whether provisional measures indicated by the International Court of Justice are binding, UNCLOS explicitly states that parties shall comply promptly with provisional measures¹⁶¹.

While a trust fund to assist developing States in settling disputes through the Tribunal has been set up by the Secretary-General of the United Nations¹⁶², a major hurdle is that pursuing cases under ITLOS is extremely expensive, potentially off-putting or even excluding many countries.

INDIVIDUAL COUNTRIES: CLOSING FoC REGISTRIES TO FISHING AND SUPPORT VESSELS

In many of the nations that have open registries and are considered to be Flag of Convenience States, fisheries play an important social and economic role; this is often particularly true for developing states, a number of which are losing significant annual revenue streams and face food security threats due to IUU fishing. The costs and challenges associated with successful monitoring and management of fisheries are enormous; even the European Union has recently been assessed as unable to achieve adequate standards in European waters¹⁶³. For many developing FoC States the challenges posed by a lack of resources and particularly monitoring, control and surveillance (MCS) capability means that they cannot effectively police EEZs for illegal fishing activities, and the difficulties and costs of monitoring distant water fleets are much higher. Ways and means to effectively and economically address IUU fishing must be sought.

As this report demonstrates, FoC facilitate pirate fishing operations; unscrupulous ship-owners are using FoC to evade fishing regulations, tax rules and safety standards. FoC severely constrain efforts to combat IUU fishing, as they make it extremely difficult to locate and penalise the real owners of vessels that fish illegally. Illegal fishing operations are taking place in waters around the world; FoC nations themselves can become the victims of IUU fishing. Flags of Convenience therefore represent a clear target whereby individual nations can take both beneficial and cost-effective action to combat IUU fishing.

EJF believes that FoC nations have an opportunity and responsibility to address IUU fishing and benefit wider global fisheries issues. In fact, closing their registries to foreign-owned fisheries vessels (fishing and reefers) for many FoC States the action would be relatively easy, due to the small numbers of vessels involved. There are several strong arguments and advantages of doing so, some of which have been previously discussed in this report. Summarised, they include:

- **Economic:** FoC registers are likely deriving a tiny combined income of between US\$3-4 million annually from fisheries vessels¹⁶⁴, which only constitute around 15% of the total number of vessels flagged with FoC¹⁶⁵. When compared to the losses suffered by individual nations to IUU fishing, and the wider global annual estimated loss of US\$10-23.5 billion¹⁶⁶, it would appear that the financial benefits accrue not to nations, but IUU operators. Further economic losses

can be expected by FoC nations as a result of trade sanctions, particularly via the upcoming EU-IUU Regulation, which should not only close market access to IUU-caught fish but also penalise non-cooperative countries.

- **Membership of International Bodies:** Many high seas fisheries are governed by regional fisheries bodies, to which membership allows access to fish stocks. Membership of these organisations is dependent on Member States abiding by agreed Management and Conservation Measures, and being able to control the fishing activities of vessels flying its flag. Failure to do so can result in loss of membership and/or a loss in quota and market access. Vessels that are listed on RFMO 'blacklist' for IUU fishing highlight the Flag State, and increasingly being listed by one region means being immediately listed in other regions. This will include the planned European Union blacklist, which will directly contribute to European assessment of non-cooperating country status.
- **Development of Domestic Fisheries:** For many FoC nations the fisheries export market represents a crucial source of income, and key to this is the ability to exploit high-value species such as tuna. Eliminating foreign-owned fisheries vessels from FoC registries will allow government to concentrate on developing the capacity and enforcing the activities of domestically-owned vessels that should be far easier to control, thereby greatly decreasing the likelihood of IUU activities.
- **International Support:** Any one of the FoC nations currently has the opportunity to make an international precedent and undertake a significant leadership role by becoming the first nation to publically close their registry to fisheries vessels. This action will demonstrate to the international community that the country is willing to take all steps available to it to combat IUU fishing at the international level. For developing States in particular, it could also potentially provide a platform to attract international support to address capacity limitations, IUU fishing and wider fisheries management within the country itself.

Delisting foreign-owned fisheries vessels (fishing vessels and Refrigerated Fish Transport Vessels) and closing FoC registries to future fishery vessel applicants offers a simple and cost effective action to combat IUU fishing. EJF strongly believes that on multiple levels – economic, fishery development, market access, and international recognition and support – the measure will be of immediate and lasting benefit to international and domestic efforts to end IUU fishing, and support the development of beneficial fisheries and markets for many of the nations involved.

ADDRESSING FLAGS OF CONVENIENCE



COMMONWEALTH ACTION TO ADDRESS FLAGS OF CONVENIENCE

The use of Flags of Convenience (FoC) by fisheries vessels to conduct IUU fishing operations is particularly relevant to the Commonwealth, due to the high proportion of Member States with Open Registries. In fact of the 32 FoC identified by the International Transport Workers' Federation (ITF), an incredible 15 (47%)* are individual Commonwealth nations or overseas territories¹⁶⁷. A further six Commonwealth Nations and territories** have been identified as FoC by other sources^{168,169}. Of further significance is the vital importance of fisheries to the economies and food security of many Commonwealth countries, the majority of which are coastal or Small Island States¹⁷⁰. IUU fishing has been identified as a critical problem, particularly in the waters around Africa^{171,172}, and in the Indian and Pacific Ocean regions^{173,174}.

The Commonwealth therefore presents a highly pertinent and appropriate forum within which to address the use of and elimination of FoC in IUU fishing in line with the stated aims of the Harare Declaration '*promoting democracy and good governance, human rights and the rule of law, gender equality and sustainable economic and social development*'¹⁷⁵. The Commonwealth could also further strengthen and develop the commitments to action made in the 1989 Langkawi Declaration on the Environment¹⁷⁶ including support for activities related to the conservation of biological diversity and genetic resources; restricting non-sustainable fishing practices; participation in relevant international agreements and the promotion of new and innovative instruments¹⁷⁸.

The Commonwealth Heads of Government Meetings (CHOGM) is the highest decision making forum of the Commonwealth, and could initiate action on FoC in a number of ways. Member states should be encouraged to ensure they fulfil their responsibilities as Flag States, including joining relevant agreements and take measures for their national implementation. The Secretariat's Legal and Constitutional Affairs Division could be mandated to develop best practice guidelines and model laws culminating in a Common-

wealth-wide agreement to end the granting of FoC to foreign-owned fisheries vessels. A commitment to discontinue the granting of FoC flags to foreign Fishing vessels and Fish Carriers / Refrigerated Transport Vessels by Commonwealth nations will also set a precedent that can then be used in international legal efforts to end FoC in fisheries globally.

A recent publication by the Commonwealth Fisheries Programme presented the current extensive challenges facing fisheries in the Commonwealth ahead of CHOGM 2009, and recommended the establishment of a Commonwealth Ministerial Task Force to examine and recommend practical fisheries policies¹⁷⁷. Key focus areas for this Task Force were identified; significantly these included a review of those Commonwealth Nations that currently offer Flags of Convenience.

* *Antigua and Barbuda, Bahamas, Barbados, Belize, Bermuda (UK), Cayman Islands, Cyprus, Gibraltar (UK), Jamaica, Malta, Mauritius, St Vincent, Sri Lanka, Tonga, Vanuatu*

** *Dominica, Isle of Man, Seychelles, Sierra Leone, Singapore and Tuvalu*





EUROPEAN UNION

The contributing role of Flags of Convenience in IUU fishing has been acknowledged by the EU for some time. As long ago as 2001 the European Parliament drew up a *European Parliament resolution on the role of flags of convenience in the fisheries sector (2000/2302(INI))*¹⁷⁸. Some of the measures proposed have been addressed by EU (2008) Council Regulation (EC) No 1005/2008. This EU-IUU regulation will, if effectively introduced and enforced, have a significant impact on the ability of IUU operators using FoC in terms of market access, as well as address those European nationals who engage in IUU fishing operations overseas, including those utilising FoC.



FoC registers will also likely be impacted by the measures designed to address non-cooperating States.

However, the EU is now in a strong position to further explore negotiations on an international legally-binding convention to end FoC, and should take steps to do so. The European Commission, via DG Mare, should additionally engage those EU Member states that are considered to have open registries, or that have dependent territories that do so*. These registers should be targeted by a specific EU agreement that closes them to foreign-owned fisheries vessels, that can be used as a benchmark for a wider international instrument.

*Cayman Islands (UK), Cyprus, Slovak Republic, French International Ship Register, German International Ship Register, Gibraltar (UK), Isle of Man (UK), Malta, Netherlands Antilles (Netherlands), Kerguelen Islands (France)



UK

The United Kingdom was a strong supporter of the development and adoption of the EU-IUU regulation, and has supported various fisheries studies and global initiatives contributing to the wider international effort to eliminate IUU fishing, including chairing the High Seas Task Force¹⁷⁹. While the UK ship's register itself is not considered FoC, several of the country's dependent territories are, including Bermuda, Cayman Islands, Gibraltar and the Isle of Man.

While these registers currently flag limited numbers of fishing vessels, the UK government should take steps to ensure that these registers are closed to foreign-owned fishing vessels completely, leaving only those that can be substantiated to have local beneficial ownership. The UK government should, in addition, continue support of international measures to address IUU fishing, including an internationally binding convention to end FoC.

LEFT: Fisheries is of vital importance to the economies and food security of many Commonwealth countries. ©EJF / S Schulman

CONCLUSIONS



The scale and severity of IUU fishing globally requires urgent action. Flags of Convenience greatly facilitate IUU fishing, allowing pirate fishing vessels (including specialised refrigerated transport vessels/reefers) to circumvent management and conservation measures, and avoid penalties for IUU fishing. FoC registration also greatly reduce operating costs for vessel owners - they do not have to pay for fishing licences; fisheries management such as monitoring, control and surveillance including vessel monitoring and catch documentation systems, and can avoid regulations requiring insurance, labour laws, crew training and the purchase of safety gear. FoC are notoriously easy, quick and cheap to acquire, allowing IUU vessels to re-flag and change names several times in a season to confuse management and surveillance authorities. Backed by shell companies, joint-ventures and hidden owners, FoC severely constrain efforts to combat IUU fishing, as they make it extremely difficult to locate and penalise the real owners of vessels that fish illegally. Effective initiatives to end the use of FoC by fishing vessels therefore need to be developed.

Flag State responsibilities in regards to fisheries have been addressed by a range of both binding and non-binding instruments, yet to date lack of ratification and loopholes have failed to address the FoC system. In particular the lack of a definition for the condition of a 'genuine link' between vessel and Flag State has been significant, and many FoC registers are able to not require the disclosure of beneficial

ownership, attracting clients of dubious operations. Many FoC States have been either unwilling, or unable, to fulfil their defined role as responsible Flag States and new global controls are required.

Economically the benefits to FoC States of registering fisheries vessels are minimal. Combined annual revenues are estimated to accrue US\$3-4 million to the major FoC registries, a tiny amount when compared to the millions of dollars lost by individual countries and the billions lost globally to IUU fishing. Among FoC States further economic losses are now likely as a result of trade sanctions by RFMOs as well as the incoming EU-IUU regulation, due to be implemented in January 2010. This will target non-cooperative States, leaving FoC countries that depend on fisheries exports extremely vulnerable to losing access to the largest seafood market in the world.

EJF strongly contends that in light of the current crisis facing global fisheries, failure to end the exploitation of FoC by IUU fishing operations will undermine efforts to achieve sustainable fisheries management, marine ecological security and the development of many, primarily developing, coastal States. This report therefore calls for action to end the granting of Flags of Convenience to fishing vessels and those vessels which support fishing activities by individual States, RFMOs, and bodies such as the European Union, Commonwealth and United Nations.

RECOMMENDATIONS

1. AN END TO THE USE OF FLAGS OF CONVENIENCE BY FISHING VESSELS AND REFRIGERATED FISH TRANSPORT VESSELS

Flags of Convenience often result in an extremely tenuous, or even non-existent, link between fishing vessel and Flag State. As a result there is little oversight of the activities of both FoC nations and flagged vessels to ensure that they are complying with international regulations. It is therefore vital that FoC States are persuaded to stop issuing FoC to fishing vessels and fulfil their obligations as responsible Flag States.

EJF calls on:

- All Flag States to ratify all existing international conventions in regards to fisheries responsibilities, in order to provide a comprehensive legally binding framework. This includes the development of minimum enforceable standards for parties to international agreements and ensuring compliance by all contracting parties to international agreements, if necessary by the use of legal procedures.
- International bodies and governments to initiate national and international negotiations leading to a global end to the exploitation of Flags of Convenience by Fishing vessels and Refrigerated Fish Transport Vessels. This should include a new, and binding, implementing agreement to the UN Law of the Sea framework that sets out enforceable measures to ensure that flag States fulfil their responsibilities under UNCLOS (and other existing instruments). The agreement should establish criteria for a 'genuine link' between vessel and Flag State; define enforceable measures to prevent States from operating vessel registers in breach of international agreements; and prevent States from flagging foreign-owned fishing and fishing support to national registers.
- All FoC nations to immediately delist foreign-owned Fishing vessels and Fish Carriers / Refrigerated Transport Vessels, and develop a legal framework that disallows the granting of flags to this sector.
- A responsible Flag State, or group of States that are parties to an RFMO, to initiate legal action to seek compensation for the costs incurred from FoC (i.e. IUU) fishing, by taking a FoC State to the International Tribunal for the Law of the Sea (ITLOS) under the compulsory dispute-settlement provisions of the United Nations Convention on the Law of the Sea (UNCLOS). If such a test case proved successful, FoC States would be faced with the prospect of paying substantial sums in compensation to other States for their failure to regulate their fishing fleets, thereby constituting a significant and cost effective deterrent to IUU operations.
- All Flag States to ensure that vessels seeking to enter their registries have no history of IUU fishing, and are not affiliated with companies that do so.
- States take measures to prevent their nationals from flagging fishing and fishing support vessels to FoC registers.
- Port States to ban the entry and landing of fish from vessels flying FoC. Communication and cooperation should be developed to ensure FoC vessels are also effectively barred by neighbouring States at the regional level.
- RFMOs to introduce the wider use of trade sanctions to address vessels that engage in IUU fishing, including a ban on all vessels operated by FoC registries unless a genuine link to the Flag State can be established; this includes all fish carrier / reefers. Wider authority should be given to RFMO Contracting Parties to arrest and prosecute IUU vessels.
- The Private Sector to introduce full track and trace systems in place for all fish products, and implement policies barring the trade in fish caught / transported by FoC States.

2. THE ESTABLISHMENT OF AN INTERNATIONAL REGISTRY AND VESSEL IDENTIFICATION SYSTEM FOR FISHING VESSELS BOUND BY INTERNATIONALLY AGREED REGULATIONS.

- There is an urgent need for the development and implementation of a system that provides greater transparency in the identification of fishing vessels. In particular, as acknowledged by current FAO initiatives, mandatory and unique vessel identification numbers must be established. To successfully monitor fishing vessels, as well as identify and prosecute labour, safety and wider IUU fishing violations, it is vital that information on current and previous vessel names and flags, beneficial owners, country of ownership, call sign, tonnage, and other relevant information is collated and made publicly available. This information should be monitored and shared by national and international bodies as a global record of fishing vessels, using revenue from registered vessels.

3. VESSEL BLACKLISTS

- The international community should strengthen its technical and financial support of developing coastal States and RFMOs, giving them the capacity to more effectively control national and international waters. In particular, where they do not exist, there should be the creation of publically available 'blacklists' of vessels involved in IUU fishing, which can be used to expose unscrupulous operators, and deny them access to fishing grounds, licences, port facilities and flag registration. All blacklists should be compiled by a central register that provides RFMO secretariats with up-to-date information, allowing for improved tracking and evaluation of IUU vessels. For companies that own multiple vessels, increased scrutiny by RFMOs and States once a history of IUU fishing has been established would act as a further deterrent to IUU fishing activities.

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