SPOTLIGHT ON

THE USE OF AFRICAN FLAG REGISTRIES BY HIGH-RISK FISHING OPERATORS

in cooperation with

I.R. Consilium

SPOTLIGHT ON

THE USE OF AFRICAN FLAG REGISTRIES BY HIGH-RISK FISHING OPERATORS

According to Article 91 of the United Nations Convention on the Law of the Sea (UNCLOS), '...Ships have the nationality of the State whose flag they are entitled to fly...'[1] This fundamental principle of maritime law applies to fishing vessels as much as it does to merchant ships. While concerns have been raised and discussed for many years about the 'genuine link' between the flag state and the beneficial owners and/or operators of vessels[2], broader flag-related concerns continue to emerge around fishing vessels in particular that indicate a growing relationship between the flag of the vessel and high-risk fishing practices. These practises are particularly acute in Africa, where some fishing vessel owners and operators exploit African flags to escape effective oversight and to fish unsustainably and illegally both in sovereign African waters and areas beyond national jurisdiction.

Fundamentally, these problematic flag-related practices are about the pursuit of legal impunity. High-risk fishing vessel owners are looking to create a situation where they can harness the resources of a State without any meaningful restrictions or management oversight. Challenges with maritime governance and limited fisheries enforcement capacity across the continent of Africa - combined with the relative health of African fisheries - makes the continent an ideal venue for high-risk fishing operators to test a variety of tactics for evading accountability while milking the benefits of the marine environment, frequently in an unsustainable manner. Recognizing this phenomenon is a critical first step in discerning what can be done about it.

This Spotlight brief therefore examines how foreign fishing operators are accessing and exploiting the use of African flags for their fishing vessels, and how there exist in some African States weaknesses in the flagging regimes that provide opportunities for this exploitation. The report examines in particular two distinct high-risk flagging processes: 1) 'flags of convenience', the use of African open registries to fish in waters beyond the national jurisdiction of African nations, and 2) 'flagging-in', the use (and abuse) of various local rules to flag a foreign-owned and operated vessel into domestic African register and fish in African waters. Both these processes afford high-risk foreign fishing operators the opportunity to more easily fish illegally and unsustainably, which in turn undermines the sovereign rights of coastal African States.

The good news is that for any State facing 'flags of convenience' and/or flagging-in challenges and that cares about its sovereignty and reputation, there are several ways to curtail opportunities for high-risk actors to appropriate and subsequently misuse its flag. These opportunities are examined, enabling readers to better understand and address the challenges posed by the exploitation of African flags by high-risk fishing operators.

> For this brief 'high-risk' fishing is defined as those operations that are at risk of engaging in illegal, unreported, and unregulated (IUU) fishing, unsustainable and/or destructive fishing practices, and/or those involving broader forms of associated crimes.

SPOTLIGHT SERIES

The Spotlight series has been developed to shine a light on the operational practises, legal loopholes and enforcement gaps that can be and are exploited by illegal fishing operators to access fishing resources, ports and markets, and to evade sanctions. Each Spotlight showcases scenarios based on the analysis of actual operations and illegal fishing cases, utilising TMT's extensive field experience tackling illegal fishing and associated crime internationally. Developed to support all maritime and fisheries stakeholders, each Spotlight briefing gets to the heart of the issues, exposing where risks lie in fisheries operations towards closing enforcement gaps and increasing transparency in global fisheries. The Spotlight briefs are developed by TMT, in cooperation with relevant partners.

1 https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf
2 e.g. Egiyan, G. S., 1988. The Principle of Genuine Link and the 1986 Un convention on the Registration of ships. Journal of Marine Policy. / Churchill, R. & Hedley, C., 2000. The Meaning of the "Genuine Link" Requirement in Relation to the Nationality of Ships, Cardiff: International Transport Workers Federation.

THE EXPLOITATION OF FLAGS BY FISHING OPERATORS

While it is not entirely accurate, a useful way to think of the flag of a vessel is to imagine that the ship becomes a floating piece of the territory of the State whose flag it is flying. As the United Nations Office on Drugs and Crime's (UNODC) Manual for Criminal Justice Practitioners explains, '...The jurisdiction of the flag State is the primary jurisdiction that operates on board any vessel lawfully flying that State's flag...'[3] In other words, a Liberian-flagged vessel sailing in the Pacific is still governed by Liberian law, despite operating on the opposite side of the world.

Importantly, however, UNCLOS also specifies that '...There must exist a genuine link between the State and the ship'[4]. In practice, this statement has come to hold little meaning, as many countries operating 'open' vessel registries require anything more than a (often very weak) contractual link between their registry, the vessel and the vessel owner. Unfortunately, however, for a growing number of African States there is an increasingly clear link between the use of their flags and the involvement of those vessels in high-risk fishing operations.

UNCLOS ARTICLE 91. NATIONALITY OF SHIPS[5]

1. Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. 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.
2. Every State shall issue to ships to which it has granted the right to fly its flag documents to that effect.

3 https://www.unodc.org/documents/Maritime_crime/19-02087_Maritime_Crime_Manual_Second_Edition_ebook.pdf
4 https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf
5 https://www.imo.org/en/OurWork/Legal/Pages/Registration-of-ships-and-fraudulent-registration-matters

FLAG STATE RESPONSIBILITY

Volumes of literature have been published on the concept of flag state responsibility as a general matter applicable to ships of all types. In the fisheries context, the literature is growing rapidly, as are the number of international instruments that describe these responsibilities. A 2019 fact sheet by The Pew Charitable Trusts provides a useful list of the key documents that touch on flag State responsibility over fishing vessels that fly their flag[6].

The substantive point is that flag States have principal control over fishing vessels that fly their flag – their activities, their restrictions, and the harm they may cause. Under many Regional Fisheries Management Organisation (RFMO) rules, this principle continues to apply, even when a vessel has been chartered out to fish under another coastal State's quota and supervision[7] (a practise that renders effective Flag State monitoring and supervision even more difficult).

Considering this reality, the Food and Agriculture Organization (FAO) of the United Nations (UN) has stated unequivocally that: '...flag States may generally be said to have the primary responsibility for preventing, deterring, and eliminating illegal, unreported and unregulated IUU fishing. The extent of IUU fishing in the world today indicates that flag States are not fulfilling this responsibility adequately. Indeed, lack of effective flag State control has been cited as the primary cause of IUU fishing'[8] Significantly, this criticism is not limited to just those countries that operate open vessel registries.

6 https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2019/08/how-to-end-illegal-fishing-the-role-of-the-flag-state
7 See for instance: IOTC Resolution 19/07 On Vessel Chartering in the IOTC Area of Competence
8 http://www.fao.org/3/y3536e/y3536e07.htm

MODALITIES OF CONCERN IN THE FISHERIES SECTOR

While several African States have come under pressure for a failure to execute general flag State responsibilities regarding their merchant fleets, the fishing context is becoming particularly challenging in regard to two distinct modalities of behaviour:

1) **African open registries: Foreign-owned or distant water fishing vessels using open vessel registries in Africa – 'flags of convenience' - to engage in fishing:**
   a. In waters under national jurisdiction of coastal African nations; and
   b. In other parts of the world, including areas beyond national jurisdiction.

2) **'Flagging-in': Foreign vessel owners or companies engaging in various practices to 'flag-in' their vessels into national African vessel registries and thereby domesticate their vessels, gaining rights as a 'local' owner or company to fly the flag of an African State and potentially obtain the right to fish:**
   a. In waters under the national jurisdiction of that African State;
   b. In the Exclusive Economic Zone (EEZ) of neighbouring States; and
   c. In other parts of the world, including areas beyond national jurisdiction.

AFRICAN OPEN REGISTRIES

Article 91(1) of UNCLOS acknowledges the right of every State to '...fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag.' Each country has the right to set its own laws and regulations on the registration of ships, including whether or not to establish an open registry that allow foreign-owned or controlled vessels to use their flag. There is currently no binding international framework to regulate the registration process itself, so countries are free to set these standards themselves. Open registries are generally set up as a government revenue generator, a strategy that has been very successful for countries such as Liberia, Panama and the Marshall Islands.

Open vessel registries or flags of convenience should not, in principle, be problematic with regard to high-risk fishing. In practice, however, many States with open vessel registries are not exercising their responsibilities with regard to controlling the fishing vessels that fly their flag. Out of the 42 States currently recognized by the International Transport Workers Federation (ITF) as being flags of convenience, nine of them are in Africa. These are Cameroon, Comoros, Equatorial Guinea, Liberia, Mauritius, São Tomé and Príncipe, Sierra Leone, Tanzania (Zanzibar) and Togo. Many fisheries and broader maritime law enforcement officials from around the world can tell stories about the challenges of interdicting vessels from most of these flag States. Contacting flag State vessel registries to confirm vessel registrations as well as obtain waivers of jurisdiction has proven to be particularly challenging.

Compounding these challenges, many African flag State vessel registries are often actually managed and maintained by private companies located outside of Africa, who may not have regular contact with the relevant administration of the African country they are representing. As a result, there may be few or even no African nationals involved in the management and operation of a registry.

The low cost and limited administrative burden to a vessel owner of using an open registry vessel to obtain that State's flag is often a very quick and simple online transaction. When combined with limited governmental oversight of many open vessel registries, it is unsurprising that these registries are used as havens by actors who demonstrate little interest in abiding by international laws and norms. Without direct monitoring and enforcement by the flag State of fishing vessels that fly their flag, there is often little that can be done to stop high-risk fishing practices.

The flag of the vessel – and robust oversight of its operations – matters in most of the world's ocean space. Within the territorial sea of a State (out to 12 nautical miles from the shore) the coastal State has sovereign territorial jurisdiction, meaning it has the authority and jurisdiction to stop any vessel from any country for violating its national laws. Between 12 miles and 200 miles is the maritime region known as the exclusive economic zone (EEZ), where the coastal State has sovereign jurisdiction over the living and non-living marine resources within this maritime region. This means that the State can, under its own national laws, regulate fishing and enforce those regulations. It does not, however, mean that the coastal State has jurisdiction over all fishing vessels operating within their EEZ. If a fishing vessel for example engaged in human trafficking at 50 nautical miles offshore, the coastal State would not have any jurisdiction to take enforcement action against the vessel unless the vessel was flagged or licensed to fish in the waters of that coastal State. Anywhere on the high seas responsibility falls to the Flag State.

As a practical matter, many African coastal States lack the capacity and resources to monitor their EEZs, much less effectively enforce their fisheries regulations out to the 200 nautical mile limit. When combined with the unlikelihood that some flag State will ever enforce the law against the vessel owner for documented non-compliance by the vessels, this means that these fishing vessels can potentially conduct IUU fishing activities in many EEZs and on the high seas around the world with little concern about being caught and subject to flag State enforcement action. If there is a case where a specific vessel is suspected of potential illicit activity, open vessel registries facilitate the ability for the vessel owner to quickly reflag the vessel under a different flag of convenience to mask the vessel's true identity and possible infractions.

WHAT VESSELS ARE INVOLVED

Industrial fishing vessels of various types have been documented flagging into Africa open registers. These include mid-water (pelagic) trawlers, longliners, and gillnetters, as well as a limited number of reefers and fisheries support vessels.

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OPEN REGISTRIES OUTSIDE AFRICA

While this report focusses on the use of African open vessel registries, it should be noted that open vessel registries in countries outside Africa are also being used to flag vessels conducting high-risk fishing operations within African waters. The same concerns about impunity and limited enforcement capacity apply, and so distant water fleets are able to engage in IUU fishing with relative confidence that the flag State under which their vessel operate will not take any enforcement action or cooperate with African authorities. Unsurprisingly therefore several fishing vessels operating in African waters and flying the flags of known open vessel registries have been linked to high-risk fishing activities. While some open vessel registry countries such as Panama and Belize have improved their oversight, management, and control of fisheries vessels in recent years, in general the use of an open vessel registry to obtain a flag and operate a fishing vessel is potentially high-risk to the country that it applies to fish in. Coastal states in Africa could therefore consider not licensing any fishing vessel flying the flag of a known flag of convenience.

Case Study – Privatization of the Comoros Registry

When the European Union (EU) issued a yellow card against Comoros in October 2015 under its IUU Regulation, it referred to weaknesses of the small island developing State to cooperate in the fight against IUU fishing – both as a flag and as a coastal State. Management of the country's vessel register had been delegated to a series of companies in third countries, with the result that the maritime authorities in Comoros had very limited oversight over vessels flying the Comorian flag, and that the fisheries authority had no control over Comorian flagged fishing vessels operating outside Comoros waters.

This situation was not a recent development – the Comorian government had signed contracts with several offshore companies and individuals as of 2000. Comoros has been identified as a flag of convenience by the International Transport Workers Federation, and fishing vessels and reefers flying the Comorian flag had been reported to be fishing illegally in West Africa. At the time of EU yellow carding, an individual in Dubai was contracted to manage the vessel register; this contract was supposedly terminated in late 2015 by the Comorian government[9]. However, it was reported that the individual continued to sell access for vessels to fly the Comorian flag after that date – suggesting that what had originally been a weak link between the authorities in Comoros and vessels flying its flag had now become fully broken.

In 2017, the EU identified Comoros as a non-cooperating party in the fight against illegal fishing and the country was issued a red card, due to lack of progress to address these issues and the continued involvement of Comorian-flagged vessels in illegal fishing operations. Following the red card there was a decrease in the number of fishing vessels that flew the Comoros flag; at present, the number of fishing vessels registered to the Comoros remains small, and those that were originally engaged in illegal fishing in West Africa have moved on to fly other high-risk flags. However, two fishing vessels owned by a company registered in the Republic of the Marshall Islands were flagged to Comoros in 2021 – both of which have in the past operated in Mauritania, suggesting that the potential for high-risk fishing in African waters by fishing vessels flying the flag of Comoros continues.

A vessel with suspected Russian ownership fishing in West Africa under the Comoros flag

9 http://www.africaintelligence.com/ION/business-circles/2015/12/04/vrs-contract-terminated-by-presidential-order,108115649-BRE

Case Study – Complexity of the Tanzania Flag

In the United Republic of Tanzania (URT), there are currently two ship registries, Tanzania (Mainland) and Tanzania (Zanzibar). This is because according to the URT's constitution, issues related to maritime administrations and ship registrations are not part of union matters, thus leaving both parties with a mandate to operate a maritime administration. The main difference between the two registries is that the Mainland registry is limited to Tanzanian nationals, while the Zanzibar registry is an open registry that also caters to vessels owned by foreign individuals and companies[10]. While it is not uncommon for flag States to have different registries, it is more uncommon to have two separate administrations within a single country. This situation has created issues in maritime and fisheries law enforcement matters for authorities in other countries, who are often pointed back and forth between the two administrations in Tanzania when trying to resolve issues of non-compliance tied to a specific vessel flying the Tanzania flag.

The Tanzania (Zanzibar) open vessel registry is a recognized flag of convenience. It ranks third in the Paris MOU blacklist[11], and has over the years been tied to several vessels engaged in illicit and controversial activities, including drugs and arms smuggling[12]. In fisheries, there have been several examples of vessels using the Tanzania (Zanzibar) flag that have been implicated in high-risk fishing activities. This includes a number of IUU-listed vessels known to have poached toothfish in the Southern Ocean (as discussed later in this brief), as well as vessels fishing in jurisdictions as far afield as South America[13].

An example is the vessel originally called DONG BANG No. 139, which has since 2004 used 13 separate names and reflagged 13 times, including to African registries – Togo (twice), Sierra Leone, and Tanzania (twice). In 2015, under the name YONGDING, the vessel was IUU listed by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), and subject to an INTERPOL Purple Notice. The vessel was identified in Cabo Verde in 2017 using the name ATLANTIC WIND and displaying Zanzibar as home port. Following an alert to the Tanzanian authorities, positive action was taken, and the vessel was delisted by Tanzania in September 2017. This is to be commended, but as an IUU listed vessel it was very high-risk to flag at all.

The IUU list vessel ATLANTIC WIND in Cabo Verde on 18 September 2017, indicating Tanzania (Zanzibar) registration. Following alerts that this was the vessel IUU listed by CCAMLR as the YONGDIN, the vessel was deregistered by Tanzania (Zanzibar) soon after.

10 https://commons.wmu.se/cgi/viewcontent.cgi?article=2147&context=all_dissertations
11 https://www.parismou.org/detentions-banning/white-grey-and-black-list
12 https://www.maritime-executive.com/article/tanzania-closes-its-open-registry
13 https://www.TM-Tracking.org/post/2017/09/26/notorious-toothfish-vessel-deflagged-by-tanzania

Beyond the EEZ, vessels operating on the High Seas have traditionally been subject exclusively to flag State jurisdiction. This has changed in certain areas as some Regional Fisheries Management Organizations (RFMOs) have begun to establish boarding and inspection schemes for their member flag States, which provide for differing degrees of inspection powers over fishing vessels operating on the high seas by designated inspection vessels flagged to another member. While these inspections are designed to ensure the vessels operate in compliance with the management measures established by an RFMO, it is important to note that enforcement actions against the vessel for any serious violations documented by these inspections remain the responsibility of the flag State of the fishing vessel involved.

However, there are only a few regions where these RFMO boarding and inspection schemes have been implemented, and most flag States whose fishing fleets fish on the high seas rarely exercise high seas fisheries enforcement patrols and inspections. As such, a vessel owner can easily choose a flag State that is known not to enforce the law with regards to fishing vessels flying its flag, especially on the high seas, allowing the risk-reward calculation to fall squarely in favour of high-risk fishing behaviour.

It is in this context that foreign and distant water fleets have been increasingly drawn to African flags of convenience. Furthermore, some of these open vessel registries have gone a step further at times and, much like the example of Tanzania and Zanzibar, acted in ways that provided even greater benefit to those operations that choose to conduct illegal fishing activities.

Case Study – African Flags, African Ports

The vessel originally IUU listed under the name RAY provides a good example of a fishing vessel that has used African open registries to change flag – along with other identifiers – to hide high-risk operations and ownership. The vessel was IUU listed in 2012 by the South East Atlantic Fisheries Organisation (SEAFO) following a previous listing by CCAMLR in 2006. The vessel has subsequently:

1) changed name at least 4 times - from RAY, to YELE, to HAI LUNG, to current JINZHANG
2) changed flag from Belize, to Sierra Leone, to Equatorial Guinea
3) changed call sign and flag at least 3 times
4) changed hull colour at least 3 times
5) rarely transmitted on Automatic Identification System (AIS) but when it did, it shared the Maritime Mobile Service Identity (MMSI) with another vessel, providing a very unclear picture of location

TMT identified that the vessel may be in the West Africa region in early 2016 and alerted regional States through the West Africa Task Force[14]. The vessel was identified in Togo in July 2016 by TMT staff working with the Togolese authorities. The vessel was inspected and based on its IUU listing denied port entry and requested to leave national waters. The vessel subsequently attempted to enter port in Cote d'Ivoire, Nigeria and Liberia, where it was detained in the latter two countries, inspected, and then also denied port entry. The Togolese, Nigerian and Liberian inspections provided updated vessel identity and flag data that was not available in any other known data source, thereby providing new identity information that was updated into the TMT Combined IUU List[15]. The vessel subsequently arrived in Freetown in late 2018 under the name JINZHANG and with an Equatorial Guinea flag, where it is being monitored by TMT but has remained at anchor and inactive to the current date.

The IUU listed vessel originally listed as RAY, under the name YELE (Sierra Leone flag and green hull) in Togo in 2016, and then the under the name JINZHANG (Equatorial Guinea flag and blue hull) in Sierra Leone in 2019.

FLAGGING-IN

In contrast to flagging to an open vessel registry, many fishing owners and operators have begun the practice of 'flagging-in' to domestic African registries (sometimes known as 'closed' registries). National registries generally have more extensive domestic ownership requirements that local companies and individuals own the vessel that is being flagged. However, through various nationally dependent practices, foreign companies can effectively become local companies within an African State and then flag their vessels in that country.

A previous TMT Spotlight, 'The Exploitation of Company Structures by Illegal Fishing Operators[16]' explored the various structures that are utilised to make this happen. This includes the set up of shell companies, front companies, or joint venture agreements with local companies. While there may be manning and other requirements to ensure that a number of employees in the localised entity are in fact local nationals, these complex company structures are frequently used by fisheries operators to mask the actual foreign beneficial owners, making the company and vessel appear to be locally owned, and therefore eligible for a local flag.

In addition, local requirements are often not enforced, and there have been reports in many countries that individuals with significant political ties appear to be involved in these arrangements. In other words, political actors may either be owners of local joint venture companies or may grant a waiver to any localisation requirements. This means that many of the foreign-owned vessels that are flagged to African States and are ostensibly considered part of the domestic fleet of that African State in fact may have little to no local ownership, and may not actually have nationals onboard or otherwise involved in the fishing operations.

The benefits to a DWF vessel of 'flagging-in' vary from country to country and can include access to fishery resources, reduced license fees, and lower levels of inspection. These benefits may not only be in the waters of the flag the vessel is flying; if the vessel gains a license in a neighbouring country, there may be less of an interest in inspecting or interdicting that vessel by that country for fear of creating regional tensions. This can obscure high-risk fishing, both within the flag State waters, as well as in the wider region. Again, impunity and a favourable risk-reward calculation are major drivers for this practice.

CAPACITY TRANSFER

One of the drivers of 'flagging-in' is the concept of capacity transfer, whereby distant water fishing (DWF) vessels are re-flagged to developing coastal States driven by available fishing capacity vs available fishing quota. This practise mostly relates to fishing vessels targeting tuna within RFMO quotas, and between a DWF nation and a developing coastal State that are both members of that RFMO. It is driven primarily by overcapacity in DWF fleets, and the imbalance of fishing capacity between DWF nations and developing coastal States who may not be able to fish their quota allocation.

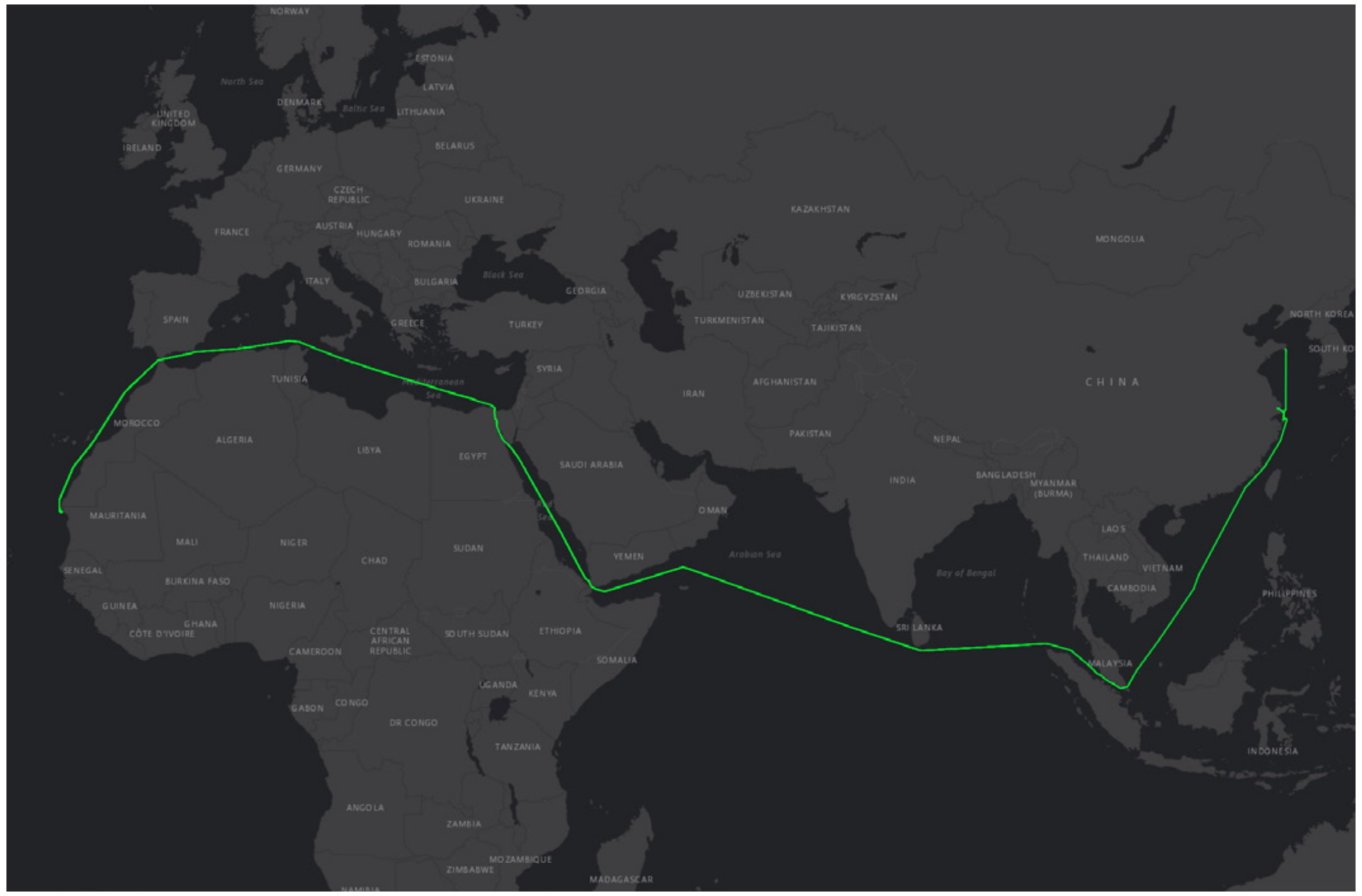
14 See https://fcwc-fish.org/about-us/west-africa-task-force
15 The Combined IUU List is maintained by TMT as a public service to provide an updated and consolidated real time listing of all the main RFMO IUU vessel lists. See www.iuu-vessels.org
16 See https://www.TM-Tracking.org/post/illegal-fishing-operators-exploit-company-structures-to-cover-up-illegal-operations

WHO ARE THE ACTUAL OWNERS?

The challenges of identifying the ultimate beneficial ownership (UBO) of a fishing vessel, particularly one that uses complex company structures and open registries to mask its legal ownership structure, is discussed in the TMT Spotlight on the Exploitation of Company Structures by Illegal Fishing Operators[17]. Nonetheless, in most cases where the UBO has been identified in known foreign-owned vessels flagged to an African state, the owners are nationals of one of the major distant water fishing nations. Nationals and companies from Taiwan, Russia, South Korea, Thailand, Spain, France, Portugal, Italy, Greece, and Turkey have all been associated with ownership of African-flagged fishing vessels.

However, the overwhelming majority of vessels with African flags that have known or suspected foreign ownership originate in China. Since the 1980s the presence of Chinese-owned fishing vessels operating in Africa has grown year on year, and more recently many of these vessels are flagging into African coastal States. In many countries, particularly those with significant trawler fleets, the majority (or sometimes all) of the fishing vessels are owned by Chinese companies, some of them State-owned enterprises. There are indications that at least some of these vessels still benefit from Chinese subsidies despite not carrying the Chinese flag.

While historically many of the vessels operated elsewhere before coming to Africa, and were Chinese flagged before re-flagging to an African registry, more recently newly built fishing vessels in China are being directly flagged into African coastal States and/or depart from the shipyard in China directly to fishing operations in Africa. For example, in the visualisation below, a group of newly built fishing vessels can be seen departing their shipyard in China in March 2020 flagged to China, and then sail directly to Mauritania in Northwest Africa. After arriving to their destination in mid-May 2020, they remained inactive in port for a short time, before being flagged to Mauritania as their flag State. A few weeks later, the vessels were observed on AIS engaging in presumed fishing activities in Mauritania. Under the initial Chinese flag a Chinese owner could be identified; however, once the vessels were flagged to Mauritania the beneficial ownership became unknown. Based on other similar fishing operations in that country, however, it can be presumed that true beneficial control and ownership still is in China.



AIS tracks of fishing vessels going straight from shipyard in China to Mauritania

17 Available at https://www.TM-Tracking.org/post/illegal-fishing-operators-exploit-company-structures-to-cover-up-illegal-operations

Case Study – Not Your Normal Vessel Registration

In both the international maritime and fisheries sectors, the flag of Cameroon has been increasingly used, and increasingly linked to high-risk operations. In the fisheries sector several vessels linked to possible IUU fishing operations have recently been flagged to this country, including vessels that are currently IUU listed. These include vessels that are not only operating in African waters, but also vessels that are operating internationally in areas beyond national jurisdiction, far from any realistic operational control and management oversight by Cameroon authorities.

An example is a case detailed in a 2020 report by the Environmental Justice Foundation (EJF) which highlights the various mechanisms of using flags of convenience to perpetrate or obscure IUU fishing[18]. In one example, the report discusses how the WISDOM SEA REEFER was arrested in Thailand in 2019 after the vessel had 'hopped' from one flag to another across four registries to evade law enforcement authorities. It notes that at the time the vessel was arrested, it was flagged to Cameroon and renamed the UTHAIWAN.

It is however not only the proliferation of the use of the Cameroon flag by high-risk fishing owners and operators such as those running the WISDOM SEA REEFER that are of concern. Normally, a registration is 'at large' – it applies to the vessel anywhere, indefinitely. However, in this case, in addition to the points raised by EJF it has been further identified that the vessel was registered by Cameroon for a point-to-point voyage, and that the registration certificate only applied for a 'Single voyage in ballast condition' from Cambodia to Bangladesh within a specific time period. The vessel however kept using the flag beyond the period defined by the certificate.

While this is not the first known instance of such a registration that is both route and time bound, it is part of a growing trend that seems to be becoming more common and is frequently used as a cover to conduct broader operations. This approach for short-term registrations may create a new series of opportunities for criminal behaviour in the fisheries space in addition to the already highly permissive environment of open vessel registries.

REPUBLIQUE DU CAMEROUN
Paix – Travail – Patrie
MINISTERE DES TRANSPORTS
DELEGATION REGIONALE DU SUD
CIRCONSCRIPTION MARITIME, FLUVIALE ET LACUSTRE DU SUD ET DE L'EST

REPUBLIC OF CAMEROON
Peace – Work – Fatherland
MINISTRY OF TRANSPORT
SOUTH REGIONAL DELEGATION
MARITIME AND INLAND WATERWAYS DISTRICT OF THE SOUTH AND EAST

CERTIFICAT D'IMMATRICULATION
Des navires et engins flottants
(Décret n° 62-DF-325 du 06 septembre 1962)

N° Matr.: K -36/IP/2019
N° of Regis.:

REGISTRATION CERTIFICATE
Of ships and floating Materials
(Decree n° 62-DF-325 dated September the 6th, 1962)

Conformément aux dispositions de l'article 10 du décret n°62-DF-325 du 06 septembre 1962
According to the provisions of Article 10 of decree n° 62-DF-325 dated September the 6th, 1962

(JORFC du 15 septembre 1962 page 1054) de l'Arrêté n° 140-MTMPT du 22 octobre 1962
(federal Gazette of Sept. The 15th, 1962 page 1054) and other n° 140-MTMPT of October the 22nd, 1962

(JORFC du 1er novembre 1962 page 1279) le navire ci-après désigné
(federal Gazette of november the 1st, 1962 page 1279) the under mentioned ship

Nom / Name: UTHAIWAN — Type: REEFER CARRIER
Coque / Hull: STEEL — Puissance / Power: 2208 KW
Longueur / Length: 93.10 m — Largeur / Width: 14.00 m — Creux / Depth: 8.00m
Jauge Brute / G.R.T (Gross Registered Tonnage): 2989 — Jauge Nette / N.R.T (Net Registered Tonnage): 1555

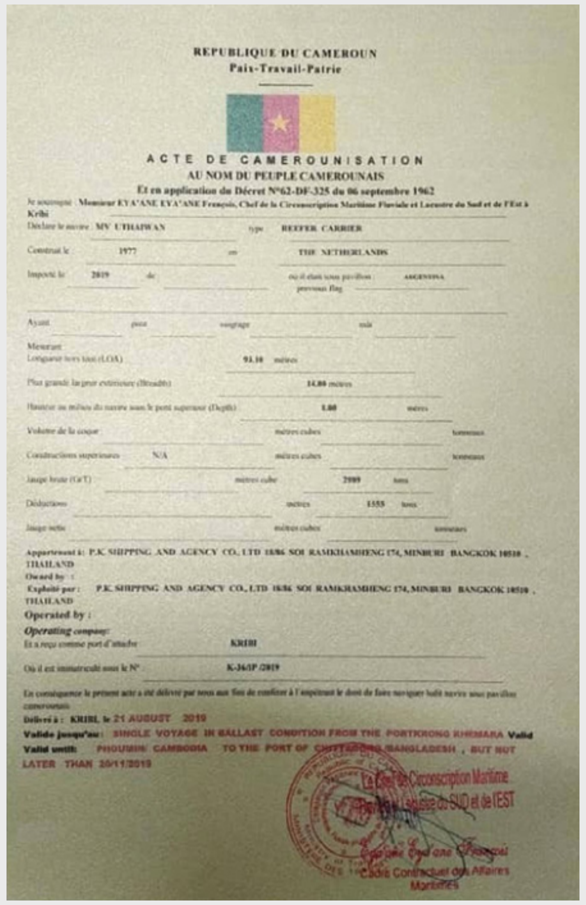
Appartenant à / Owned by: P.K. SHIPPING AND AGENCY CO., LTD 18/86 SOI RAMKHAMHENG 174, MINBURI BANGKOK 10510, THAILAND
Exploité par / Operated by: P.K. SHIPPING AND AGENCY CO., LTD 18/86 SOI RAMKHAMHENG 174, MINBURI BANGKOK 10510, THAILAND

A été immatriculé sur le registre des bâtiments de la Circonscription Maritime du: SUD et de L'EST à KRIBI
Has been registered on the Ships register of Maritime District of

Sous le N° / Under N°: K- 36/IP/2019 — Valable jusqu'au / Valid until: SINGLE VOYAGE IN BALLAST CONDITION FROM THE PORT KRONG KHEMARA PHOUMIN CAMBODIA TO THE PORT OF CHITTAGONG BANGLADESH BUT NOT LATER THAN 20/11/2019

Fait à / Issued at: KRIBI le 21/08/2019

Le Chef de la Circonscription Maritime ... du SUD et de l'EST
Cadre Contractuel des Affaires Maritimes



REPUBLIQUE DU CAMEROUN
Paix-Travail-Patrie

ACTE DE CAMEROUNISATION
AU NOM DU PEUPLE CAMEROUNAIS
Et en application du Décret N°62-DF-325 du 06 septembre 1962

Déclare le navire: MV UTHAIWAN — type: REEFER CARRIER
Construit le: 1977 — en: THE NETHERLANDS
Importé le: 2019 — previous flag: ARGENTINA
Longueur hors tout (LOA): 93.10 mètres
Plus grande largeur extérieure (Breadth): 14.00 mètres
Hauteur (Depth): 8.00 mètres
Constructions supérieures: N/A
Jauge brute (GRT): 2989 tons
Déductions: 1555 tons

Appartenant à / Owned by: P.K. SHIPPING AND AGENCY CO., LTD 18/86 SOI RAMKHAMHENG 174, MINBURI BANGKOK 10510, THAILAND
Exploité par: P.K. SHIPPING AND AGENCY CO., LTD 18/86 SOI RAMKHAMHENG 174, MINBURI BANGKOK 10510, THAILAND
Operated by:
Operating company:
Et a reçu comme port d'attache: KRIBI
Où il est immatriculé sous le N°: K-36/IP /2019

Délivré à: KRIBI, le 21 AUGUST 2019
Valide jusqu'au / Valid until: SINGLE VOYAGE IN BALLAST CONDITION FROM THE PORTKRONG KHEMARA PHOUMIN CAMBODIA TO THE PORT OF CHITTAGONG BANGLADESH, BUT NOT LATER THAN 20/11/2019

Le Chef de la Circonscription Maritime ... du SUD et de l'EST
Cadre Contractuel des Affaires Maritimes

18 EJF (2020) OFF THE HOOK – how flags of convenience let illegal fishing go unpunished https://ejfoundation.org/resources/downloads/EJF_Off-the-hook_2020_final.pdf

WHAT VESSELS ARE INVOLVED?

Industrial fishing vessels of all types have been documented flagging into Africa domestic registers, including purse seiners, longliners, and pole and line, as well as a limited number of reefers and fisheries support vessels. The majority however are trawlers, including vessels deploying both bottom (demersal) and mid-water (pelagic) trawl.

WHAT'S IN A NAME

Indications a vessel has 'flagged in' is sometimes an obvious phenomenon in terms of the origin of the vessel and/or its owners and operators. For example, the vessels named the 'LONG TAI 1' or the 'HAI LU FENG 5' are unlikely to be of Ghanaian origin despite flying the Ghana flag. Not surprisingly, both vessels are in fact beneficially owned by Chinese companies, regardless of what the localized arrangement may be[19]. Conversely, the PANOFI FRONTIER or the PANOFI MASTER could be Ghanaian-named vessels, but are in fact owned by a localised South Korean company.

Other indicators that a vessel with an African flag is not in fact locally owned can include the nationality of the crew (particularly senior officers); a particular foreign market for the catch; the presence of the vessel on a foreign government's inspection or ownership list; the receipt of foreign subsidies; and others including identifiers on the vessel. Many Chinese owned vessels for example, even when locally registered, continue to fly a Chinese flag somewhere on the vessel.

Flagged in' fishing vessels frequently display various physical markings that indicate continued strong Chinese links. ©TM-Tracking

WHAT COUNTRIES ARE AT RISK?

Looking around the African continent, both open vessel registries and flagging-in uses of African flags have become common. Importantly, while they are distinct issues, they are not always mutually exclusive. Some States offer open vessel registries and have foreign-owned fishing vessels flagged in to the domestic register, creating multiple challenges or concerns for exercising proper flag State responsibility. The following table provides an overview of African States known to have been recently operating open vessel registries or to have allowed foreign owned fishing vessels to flag in; this list should not be considered exhaustive.

State	Open Registry	Flagging-in
Angola		X
Cameroon	X	X
Comoros	X	
Republic of Congo		X
Cote d'Ivoire		X
Dijbouti		X
Equatorial Guinea	X	
Ghana		X
Guinea-Bissau		X
Kenya		X
Liberia	X	X
Libya		X
Madagascar		X
Mauritius		X
Morocco		X
Mozambique		X
Namibia		X
Nigeria		X
São Tomé and Príncipe	X	
Senegal		X
Seychelles		X
Sierra Leone	X	X
Somalia	X	X
Tanzania	X	X
The Gambia		X
Togo	X	

19 For in depth analysis of the ownership of the Ghanaian trawler fleet, see https://ejfoundation.org/resources/downloads/EJF_At-What-Cost_-2021_final.pdf)

CASE STUDIES

Examples of high-risk fishing vessels utilising African flags are widespread.

MARIO NO. 11 (Senegal, Tanzania)

A Senegal-flagged longliner that was IUU listed by the International Commission for the Conservation of Atlantic Tuna (ICCAT) in 2020. It was sighted by a US Coast Guard vessel in the western Atlantic with approximately 250 shark fins drying on deck, in breach of the ICCAT ban on shark finning at sea. The vessel was ICCAT authorised, although Senegal reported that it was not licensed to fish on the high seas and was operating in violation of Senegal national law. MARIO NO. 11 and its sister ships were previously flagged to Tanzania and operated in the Western Indian Ocean. Although the beneficial ownership of these vessels is unknown, it is strongly suspected to reside outside Africa and there are indications that it has remained the same through the vessel's periods under Tanzanian and Senegalese flag.

LABIKO 2 (Guinea, Liberia)

This vessel was IUU listed by NEAFC in 2007 whilst operating under the name MAINE and flying the flag of Guinea. Renamed LABIKO 2, but still flagged to Guinea, the vessel was detained by Liberia in 2017 for fishing with unauthorised gear – it was found to be fishing with gillnets and targeting demersal sharks, in contravention of its license terms, which were for longlining only. Incidentally, this is the same gear type and species that the vessel was targeting when it was fishing illegally in the north Atlantic in 2007. It has been reportedly sold and is now flagged to Liberia.

NEW BAI I NO. 168 (Liberia)

A former tuna longliner, reconfigured to operate as a carrier vessel ('mini reefer'), that was IUU-listed by ICCAT in 2016. The vessel had operated out of the port of Dakar, in Senegal, for several years, with indications that it was beneficially owned in Taiwan. At the time of listing it had received provisional registration in Liberia and was conducting transhipment at sea despite not being on the ICCAT authorised vessel list. The vessel has a history of identity fraud and misuse of registration documents – paperwork submitted to Liberia in support of its registration application included a forged Indonesian registration.

BOTTOM TRAWLERS

Fishing vessels that are IUU Vessel listed by an RFMO are a small proportion of all fishing vessels with a demonstrated history of non-compliance. For example, bottom trawlers flagged to several African States, with beneficial ownership in a variety of external countries but primarily China, have been documented by the authors or other sources engaging in high-risk fishing activities in the majority of sub-Saharan African coastal States – including **Benin, Cameroon, Cote d'Ivoire, Gabon, the Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Liberia, Madagascar, Mauritania, Mozambique, Nigeria, Republic of Congo, Senegal, Sierra Leone, Somalia, and Tanzania.**

SAGE (Seychelles, Tanzania, Liberia, Gambia)

IUU-listed by the Inter American Tropical Tuna Commission (IATTC) in 2005 under the name CHIA HAO NO. 66, this vessel was operating under the flag of the Philippines at the time and had previously used a number of known open registries. After IUU listing it shifted operations to the Indian Ocean, changed name to SHYANG CHYANG NO. 889 and was reflagged to the Seychelles – the lack of an IMO number on the original IUU list enabled it to shift operations and identity without its IUU history becoming known. In 2016, the vessel was renamed SAGE, shifted its operations again to the Atlantic and underwent a series of flag changes – reflagging first to Tanzania, then Liberia and finally to the Gambia. As of 2019, it was identified by TMT as one of several former longliners that had been converted to operate as a 'mini-reefer' carrier vessel and appeared to be engaged in illegal transhipments in the ICCAT area. In 2020, the vessel was sighted in Indonesia with indications that it was destined to be scrapped.

CHOTCHAINAVEE 35, MARWAN 1, SEA VIEW, SEA WIND, PROGRESO (Somalia, Djibouti, Cameroon)

Five Thai-owned vessels that were IUU listed by the Indian Ocean Tuna Commission (IOTC) in 2018 and 2019 for unauthorised fishing in the IOTC area. The listings related to illegal fishing in the EEZ of Somalia, for which vessel owners were convicted and charged in Thailand. There were also indications of forced labour on board. The vessels operated in the region under the flags of Thailand, Djibouti and Somalia. In 2019, two of the vessels were documented in Bangladesh having been renamed and flying the flag of Cameroon.

Toothfish vessels: AMORINN, ASIAN WARRIOR, ATLANTIC WIND, BAROON, CHALLENGE, GOOD HOPE, LIMPOPO, NORTHERN WARRIOR, PERLON, PESCACISNE 1/ PESCACISNE 2, SEA URCHIN, STS-50 (Togo, Tanzania, Sierra Leone, Equatorial Guinea, Nigeria, Seychelles, Ghana, Angola, Mauritania and Gambia)

Many toothfish vessels that have been IUU-listed by CCAMLR have used African flags – in some cases the original offence that triggered IUU listing was committed while the vessel was operating under an African flag, and in many cases vessels have reflagged to one or more African registries after the IUU-listing. It is interesting to note that this list includes not only known flags of convenience but also several closed registries, indicating that closed registries are also targeted by high-risk operators.

WAYS FORWARD

Impunity for high-risk fishing is unsustainable; inevitably it will contribute to degradation and potentially the collapse of global fisheries. To combat this problem both in African waters and within African flag registries, a combination of actions by several actors are needed to close the opportunities currently being afforded to high-risk fishing owners and operators.

To that end, the following actions should be considered:

Inter-agency Oversight of all Fishing Vessel Flagging Decisions

It has been identified by the authors and many actors, including INTERPOL[20], that there is a lack of effective cooperation in many countries between the maritime agency which is responsible for flagging a vessel, and the fisheries agency which is responsible for overseeing flagged fishing vessel operations (and is often in a better position to determine the risk associated with flagging a fishing vessel). Ensuring an inter-agency approach is taken on all fishing vessel flagging decisions is crucial to ensuring that vessels that are flagged can be effectively managed, receive proper oversight, and can be incorporated into national fisheries management plans and sustainable fisheries practices.

Effective Risk Assessment

Flagging decisions should take a precautionary approach and consider the cost-benefit of flagging a particular vessel based on its operational history before a flag is granted. Conducting a robust due diligence process to identify any risks is crucial.

Close Open Vessel Registries to Fishing Vessels

Fishing vessels are inherently more difficult to manage than the broader international merchant fleet and are subject to fewer international legal frameworks. In addition, the fishing sector is small and represents a very limited opportunity for flagging revenue when balanced against the reputational risk and management cost when fishing vessels get involved in illegal or unsustainable operations. A decision to close open vessel registries to fishing vessels is a simple and effective approach to helping solve this problem.

Strengthen Oversight of Private Company Involvement in Open Vessel Registries

Currently many of the private companies that manage open registries are entitled to make decisions without any or very limited consultation with the actual flag state. Even when there is interaction between the company and the state it is usually with the Maritime agency only. If open registries are kept open to fishing vessels, States should require that all flagging decisions related to fishing vessels are referred to the inter-agency team for due diligence and final decision.

De-flag Bad Actors

A growing number of fisheries bodies around the world maintain lists of known high-risk fishing operators and vessels involved in IUU fishing[21]. To avoid reputational harm and to show a commitment to the rule of law, African flag registries should de-flag all vessels known to be associated with or engaged in IUU fishing, and refuse flags to any such vessels that apply.

Strengthen Application and Compliance Requirements, particularly for open registries

Even minimal requirements for applicant vessels to document and demonstrate compliance with the law, as well as to make an affirmative commitment not to engage in IUU fishing, may be helpful in dissuading operators from applying to an open vessel registry (or flagging into a coastal State). As this enhanced burden may dissuade operators from using the open vessel registry altogether – thereby depriving the State of potential revenue – those African States may want to consider making this a uniform requirement across all African open vessel registries as a way of showing shared commitment to defending African sovereignty.

Establish and Enforce Flag State Penalties

Flag registries are within their rights to penalize vessel owners for effectively tarnishing the reputation of their State by the owners' vessels engaging in illicit activity. When vessels have been penalized for engaging in IUU fishing or associated crime while flying their flag, the flag State can levy an additional penalty to both remedy some of the harm done, recoup related costs, and deter future misconduct.

Create Communication and Cooperation Channels with Beneficial Ownership States

Cooperation with those States where the beneficial ownership of a fishing vessel sits can assist in determining the risk associated with a vessel during the decision on whether to flag it or not, or in cases where enforcement actions are required. A slowly increasing number of countries, particularly those with distant water fishing fleets, are introducing laws governing the involvement of their nationals in foreign fishing operations, and illegal fishing activities – a practise which is highly encouraged. This provides further opportunity to create an environment where owners and flagged vessels operate in compliance with both flag and beneficial ownership State legal requirements.

Call Out IUU Fishing by Flagged-In Vessels

One of the problems with flagging-in is that it creates a blanket of protection. Some of that protection is political, as it is often difficult to call out a flagged-in vessel within the flag State on account of high-level protection of the vessel and the foreign entity. Some of that protection may also be diplomatic, as regional tensions can be created when one State effectively accuses a neighbouring State of engaging in or otherwise supporting the conduct of IUU fishing. Thus, external States and credible external entities need to use their voices to identify these practices and shine a light on the efforts to cloak high-risk practices by hiding behind a local flag.

International Oversight of Open Vessel Registry Exploitation

While African States can exert control over their own open vessel registries, only an international effort will help to curtail the use of foreign open vessel registries to facilitate the conduct of IUU fishing operations in Africa. While some progress in this area is being made, more cooperation between the IMO and FAO to establish new guidance on what 'genuine link' means for flagging a fishing vessel and what flag State responsibilities must be exercised is required.

Expose New Issues

It is incumbent on experts and operators from around the world to continually identify and expose the new tactics being used to pursue impunity. This includes revealing issues like point-to-point registrations, reflagging at sea, sharing vessel identities, and mismatching IMO numbers, spoofing MMSI numbers and falsifying call signs, as well as helping States to recognize the indicators that there may be manipulation afoot.

Criminals are both opportunistic and creative, but they are always mindful of cost-benefit calculations. The global fishing market is projected to be worth $194 billion by 2027[22], so there is ample financial reward to be gained by fishing illegally. It is thus incumbent on every flag State to exercise its flag State obligations and do what it can to ensure that its vessel registries do not become a means of reducing or eliminating risk for high-risk fishing operators. Vessel registries that see short-term gain in failing to exercise their flag State responsibilities and/or exclude high-risk fishing vessels from their flags are in fact setting themselves up for long-term pain, as those actions are unequivocally detrimental to the State they involve. As Africa turns to face challenges in the maritime domain, addressing this practice is a critical step to securing the waters of Africa for the legitimate and sustainable enrichment of coastal States and the betterment of life throughout the continent.

20 See the INTERPOL brief 'Fraudulent abuse of Flag State Registries for fishing vessels' available at www.interpol.int/Crimes/Environmental-crime/Fisheries-crime
21 For example see the TMT Combined IUU Vessel List www.iuu-vessels.org
22 https://www.statista.com/statistics/821023/global-seafood-market-value/

Glossary of terms

AIS	Automatic Identification System
CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
DWF	Distant Water Fishing
EJF	Environmental Justice Foundation
EU	European Union
EEZ	Exclusive Economic Zone
FAO	United Nations Food and Agriculture Organization
FoC	Flag of Convenience
IATTC	Inter American Tropical Tuna Commission
ICCAT	International Commission for the Conservation of Atlantic Tunas
IMO	International Maritime Organisation
IOTC	Indian Ocean Tuna Commission
ITF	International Transport Federation
IUU	Illegal, Unreported and Unregulated (Fishing)
MMSI	Maritime Mobile Service Identity
NEAFC	North East Atlantic Fisheries Commission
RFMO	Regional Fisheries Management Organisation
SEAFO	South East Atlantic Fisheries Organisation
TMT	Trygg Mat Tracking
UBO	Ultimate Beneficial Ownership
UN	United Nations
UNODC	United Nations Office on Drugs and Crime
UNCLOS	United Nations Convention on the Law of the Sea
URT	United Republic of Tanzania

Spotlight series

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