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**IUU FISHING AND THE COST TO FLAG OF CONVENIENCE COUNTRIES**

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## IUU FISHING AND THE COST TO FLAG OF CONVENIENCE COUNTRIES?<sup>1</sup>

1. The problem of IUU fishing and related infrastructure must be tackled from a number of different angles. Many of the measures debated to date have centered on taking action to deter individual vessels from engaging in IUU fishing. However, one approach worth considering might be to pursue compensation from flag of convenience states for the costs incurred by other states as a result of FOC/IUU fishing. Whether or not there is a genuine economic link between the flag state and the IUU vessels or fleets flying its flag, the flag state bears the ultimate responsibility for the activities of the vessel in relation to compliance with relevant international instruments including the conservation and management measures adopted by regional fisheries management organizations (RFMOs).

2. One could argue that legitimate flag states, which are members of, participate in, and contribute to the activities of a regional fisheries management organization, should have the right to derive long-term benefit from sustainably managed fishing in the region, commensurate with the effectiveness of conservation measures agreed by the organization, provided they ensure that vessels under their jurisdiction abide by the rules. The conservation and management of the fisheries and the measures undertaken by a state with respect to monitoring, compliance and enforcement all come at a cost.

3. Conversely, a state whose vessels consistently operate in a region in contravention of the rules adopted by the relevant regional fisheries management organization should be liable for a portion of the costs incurred by responsible flag states. While an FOC state may not be compelled to join a regional management organization, it does have a clear duty under UNCLOS to cooperate with other states in the conservation and management of the fisheries in the region. Should it fail to do so while 'allowing', either willfully or by clear negligence, its vessels to consistently fish in the region, then the state should be liable for the costs incurred by responsible members of the RFMO associated with the failure of the FOC state to either cooperate with the regional management organization or to exercise control over the activities of its fishing fleets operating in the area of competence of the organization.

4. The costs could be measured in a number of ways. Amongst the short-term, or annualized costs to the legal operators in the fishing industry that could be considered are lost revenue resulting from lower quotas, higher catch per unit effort costs as a result of overfishing by IUU operators, and lower prices as a result of excess supply of IUU caught fish on the market. Costs to governments might be calculated on the basis of factors such as the expense of extra research resulting from scientific uncertainties arising from lack of good information on the catch and biological characteristics of the species caught in IUU fisheries, the increased cost of monitoring, surveillance and enforcement at sea and port and market based inspection schemes to combat IUU fishing, and the costs associated with dues and participation at annual meetings of an RFMO and its various committees. Longer term costs could also be factored into the equation, in particular the loss of long-term benefits to the economy because of the lower productivity of overfished stocks as a result of IUU fishing, loss of future earnings from more sustainable fisheries, and the loss of tax revenue or income to the state.

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5. Given the significant cost of IUU fishing to responsible governments and industry operators, what are the benefits to the states involved in issuing flags of convenience? Clearly unscrupulous operators themselves benefit financially from the freedom to engage in IUU fishing on the high seas with the impunity conferred by the flags of convenience system. But are there economic benefits to FOC States that might argue for the legitimacy of the FOC system?

6. The information contained in a 2002 UN FAO report on open registries in relation to fishing suggests that the benefits derived by FOC states in flagging large-scale fishing vessels are relatively small. Based on information in the report, the total revenue derived from registering fishing vessels by 20 countries operating open registries (flags of convenience) was slightly more than 3 million USD per year in recent years.<sup>2</sup> The reports states that the top four FOC countries – Belize, Honduras, Panama, and St. Vincent and the Grenadines – had a combined total of 1,148 large-scale fishing vessels registered to fly their flags. These same four countries generated approximately \$2,625,000 USD in revenue from registration fees and related charges from the fishing vessels on their registries. They earned, on average, less than \$2,500 USD per year for each fishing vessel registered to fly their flag. The report states that the figures are almost certainly underestimates of the total revenue derived from registering fishing vessels. However, even if the figures are off by 100% or 200% of gross revenue, it is clear that the income derived by FOC countries from flagging fishing vessels is still quite small.

7. It is further interesting to note, in the FAO report, the frequency and type of enforcement actions taken by the government of Belize against fishing vessels flying its flag operating outside of Belize waters. From the period 1997 through 2001, Belize reported that it took enforcement action 17 times against fishing vessels on its registry. In only five instances were the fishing vessels actually fined. Most of the fines levied were in the vicinity of \$20,000 USD but only one of these vessels was actually reported to have paid the fine. Belize reported that the most common means of penalizing an offending vessel was to delete (deflag) the vessel from the Belize registry. This, however, would have been at best a minor inconvenience for the vessels concerned. A fishing vessel can obtain a flag of convenience easily, with provisional registration being granted by some flag states within 24 hours of application. Many vessels change flags often, a phenomena known as ‘flag hopping’, taking advantage of the ease in obtaining a flag of convenience.

8. This history of enforcement is remarkably limited and virtually ineffective considering that several hundred large-scale fishing vessels flew the flag of Belize during the same period of time. Belize was in the top two FOC countries flagging large-scale fishing vessels in 1999 and 2001, according to an analysis prepared by Gianni and Simpson for WWF.<sup>3</sup> The number of large-scale fishing vessels registered to Belize in 1999 and 2001 was 409 and 455 vessels respectively. The average tonnage of the fishing vessels on the registry for both years was 853 GT and 768 GT respectively. These are large vessels by fishing industry standards (the FAO reports the average tonnage of large-scale fishing vessels in 2000 was 370 GT<sup>4</sup>). According to the FAO report, Belize flagged vessels were reported by RFMOs to be engaged in IUU fishing in the Atlantic, Pacific, and Indian Oceans as well as the Southern Ocean around Antarctica. To its credit, the government of Belize at least provided information to the author of the FAO report and appears to have significantly reduced the number of fishing vessels on its registry since 2001, although the number still on the registry is high. All of the other countries with open registries and substantial numbers of fishing vessel on their registries ignored the request for information by the author of the FAO report.

<sup>2</sup> Swann, J. Fishing Vessels Operating Under Open Registers And The Exercise Of Flag State Responsibilities: Information And Options. FAO Fisheries Circular No. 980, Rome 2002.

<sup>3</sup> Gianni M., Simpson W. *Flags of convenience, transshipment, resupply and at-sea infrastructure in relation to IUU fishing: Management implications and recommendations for international action arising from a case study prepared for WWF.* OECD Workshop on Illegal, Unreported and Unregulated Fishing Activities. Paris 19-20 April 2004.

<sup>4</sup> FAO State of World Fisheries and Aquaculture 2000. United Nations Food and Agriculture Organisation. Rome, 2001.

9. Clearly, States that operate flags of convenience in the fisheries sector externalize the costs of their failure to regulate 'their' fishing fleets. Other countries must pay these costs in terms of scientific uncertainty in stock assessments, reduced quotas and lost revenue for legitimate operators, and the additional costs of enforcement, among other things, as well as the depletion of fish stocks and ecosystems associated with flag of convenience fishing. The costs to legitimate operators and responsible flag states are likely to far outweigh the revenue derived by FOC states in registering large-scale fishing vessels.

10. An important legal question arises: Does a State has the right to enjoy the privileges of being a flag state, however little these privileges may confer to the state in terms of economic benefits, while evading most, if not all, of the responsibilities associated with being a flag state, no matter how costly this evasion of flag state responsibility may be to other States and the international community as a whole?

11. Given the large number of IUU fishing vessels flying flags of convenience, it seems clear that the most cost effective means of eliminating the problem of IUU fishing will be to eliminate the flag of convenience system for fishing vessels. Countries which cannot or will not exercise control over fishing vessels operating outside of their EEZs should be discouraged or prevented from registering large-scale fishing vessels (e.g. fishing vessels greater than or equal to 24 meters as per the international standard defined by the FAO Compliance Agreement) except under strictly defined circumstances or criteria. Ultimately, what may be needed is a clear ruling from the International Tribunal for the Law of the Sea designed to further strengthen the definition of flag state responsibility under international law and ultimately render the state practice of issuing flags of convenience for fishing vessels effectively illegal.

12. However, until the flag of convenience 'loophole' in international law is closed, one option available to responsible flag states may be to explore the possibility of seeking compensation from FOC states for the costs incurred by responsible states as a result of IUU/FOC fishing. It would be well worth considering a means or method to document and/or reasonably estimate the costs incurred by responsible flag states as a result of FOC fishing. Then, on this basis, seek compensation, through international mechanisms available, from specific FOC states whose vessels are fishing in a region in contravention of the measures established by a relevant fisheries management organization to the detriment of responsible flag states' fleets and interests.

13. Whether or not there is a genuine economic link between the flag state and the IUU fishing vessels or fleets flying its flag, the flag state bears responsibility for the activities of the vessels. If an FOC state is faced with prospect of paying substantial compensation to other states for its failure to regulate its fishing fleets, this could act as a disincentive to the registration of fishing vessels by the FOC state. The prospect of paying potentially large sums in compensation for the failure to exercise control over fishing vessels could potentially serve as a significant deterrent to FOC/IUU fishing in ways that could complement port state controls, market restrictions, enhanced monitoring, control and surveillance and other measures adopted thus far by states and regional fisheries management organizations. The OECD can play a role in assisting OECD members in comprehensively estimating the cost to responsible flag states of fishing by vessels flying flags of convenience.