

**FISHING VESSELS OPERATING UNDER OPEN REGISTERS AND  
THE EXERCISE OF FLAG STATE RESPONSIBILITIES**

**INFORMATION AND OPTIONS**



# **FISHING VESSELS OPERATING UNDER OPEN REGISTERS AND THE EXERCISE OF FLAG STATE RESPONSIBILITIES**

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## PREPARATION OF THIS CIRCULAR

This Circular was prepared within the framework of the Regular Programme as part of the on-going activities of the FAO International Institutions and Liaison Service (FIPL) aimed at providing information to FAO Members and FAO and non-FAO Regional Fishery Bodies on the activities of fishing fleets with open registries, and in particular those activities that result from States not exercising effective flag State control over those fleets.

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### ABSTRACT

The number of fishing vessels operating under open registers is increasing. A related concern is to secure the effective control of fishing vessels by the flag State. This concern is evidenced by a range of post-United Nations Conference on Environment and Development (UNCED) international instruments that progressively include clearer and more thorough duties of the flag State. The purpose of this paper is to review activities relating to the fishing fleets of countries with open registries and, in particular, those activities that result from countries not exercising effective flag State control over those fleets. It is based on information available in the public domain and communications with officials in States, Regional Fisheries Management Organizations and international organizations and agencies.

The current interpretation of the provision on the need for a "genuine link" between a ship and its flag is *to secure more effective implementation of the duties of the flag State*. An aim of this paper is to report on how and where this is being achieved. Flag State responsibilities in relation to fishing vessels are reviewed as they appear in the recent international instruments: the 1982 Convention, the FAO Compliance Agreement, the UN Fish Stocks Agreement, the FAO Code of Conduct for Responsible Fisheries and the FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.

The rationale for maintaining or using open registries is discussed from the point of view of the open registry State, the shipowner and the fishing vessel owner. National policy, legislation and administrative arrangements for open registries are explained. The varying degrees of control and compliance implemented by the flag State are noted, and the effect of these on fishing fleets flying its flag is observed.

This paper also contains many useful details about open registry procedures, including national contacts, administration, application information and procedures. Measures taken by some open registry States to improve the application process and deregister, fine or otherwise deal with offending vessels are reported.

Actions taken by Regional Fishery Management Organizations to implement flag State compliance are detailed, noting some compelling successes. Many offenders are open registry ships, and their nationality is noted where information is available.

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### List of Acronyms

|             |  |
|-------------|--|
| COFI        | FAO Committee on Fisheries                               |
| CSD         | Commission on Sustainable Development                    |
| FAO         | Food and Agriculture Organization of the United Nations  |
| FOC         | Flag of Convenience                                      |
| GRT         | Gross Registered Tons                                    |
| ICJ         | International Court of Justice                           |
| IMO         | International Maritime Organization                      |
| IPOA        | International Plan of Action                             |
| ITF         | International Transport Workers Federation               |
| ITLOS       | International Tribunal on the Law of the Sea             |
| IUU fishing | Illegal, unreported and unregulated fishing              |
| RFMO        | Regional fishery management organization or arrangements |
| UN          | United Nations   |
| UNCED       | United Nations Conference on Environment and Development |
| UNCTAD      | United Nations Conference on Trade and Development       |

### List of Acronyms for Regional Fisheries Management Organizations

|           |  |
|-----------|--|
| APFIC     | Asia-Pacific Fisheries Commission                                    |
| CCAMLR    | Commission for the Conservation of Antarctic Marine Living Resources |
| CCSBT     | Commission for the Conservation of Southern Bluefin Tuna             |
| CSRP      | Commission sous-régionale des pêches                                 |
| FFA       | South Pacific Forum Fisheries Agency                                 |
| GFCM      | General Fisheries Commission for the Mediterranean                   |
| IATTC     | Inter-American Tropical Tuna Commission                              |
| IBSFC     | International Baltic Sea Fishery Commission                          |
| ICCAT     | International Commission for the Conservation of Atlantic Tuna       |
| IOTC      | Indian Ocean Tuna Commission   |
| IPHC      | International Pacific Halibut Commission                             |
| IWC       | International Whaling Commission                                     |
| NAFO      | Northwest Atlantic Fisheries Organization                            |
| NASCO     | North Atlantic Salmon Conservation Organization                      |
| NEAFC     | North-East Atlantic Fisheries Commission                             |
| NPAFC     | North Pacific Anadromous Fish Commission                             |
| OLDEPESCA | Latin American Organization for the Development of Fisheries         |
| PSC       | Pacific Salmon Commission  |
| SEAFO     | Southeast Atlantic Fisheries Organization                            |
| SPC       | Secretariat of the Pacific Community                                 |

### List of Acronyms for International Instruments

|                          |  |
|--------------------------|--|
| FAO Code of Conduct      | Code of Conduct for Responsible Fisheries, 1995  |
| FAO Compliance Agreement | Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, 1993  |
| FAO IPOA-IUU             | FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, 2001   |
| UN Fish Stocks Agreement | The Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995 |
| 1958 Geneva Convention   | The Geneva Convention on the High Seas, 1958   |
| 1982 Convention          | The United Nations Convention on the Law of the Sea, 1982  |
| 1986 Convention          | The United Nations Convention on Registration of Ships, 1986   |

## I. INTRODUCTION

The “Post-UNCED”<sup>1</sup> decade, since 1992, has ushered in a new era of responsibility for States in respect of their fishing fleets. The rules requiring them to secure compliance by fishing fleets flying their flags with national laws, treaties and international conservation and management measures have multiplied and solidified in a range of international instruments. The term “flag State responsibility” has taken on some compelling new dimensions.

The reason for this was growing global concern about the state of the world’s fish stocks and the associated problem of poorly controlled fishing fleets. Action was needed to address irresponsible fishing activity, both in areas of national jurisdiction and on the high seas. Practices undercutting sustainable management included reflagging vessels to evade controls, undermining international conservation and management measures, illegal fishing in areas of national jurisdiction and unreported fishing.

The action taken by the international community to address the alarming situation caused by these activities rested on two complementary pillars: strengthened law, and strengthened management over the resource.

The way forward for such action was identified:<sup>2</sup> for strengthened law, to enhance the requirements of the 1982 United Nations Convention on the Law of the Sea (the 1982 Convention) in new international legal instruments; and for improved fisheries management to identify agreed new approaches in instruments developed under the auspices of the Food and Agriculture Organization of the United Nations (FAO).

The 1982 Convention had itself adopted and in some respects enhanced many of the provisions of an earlier convention - the 1958 Geneva Convention on the High Seas (1958 Geneva Convention) relating to flag State rights and responsibilities on the high seas.<sup>3</sup> First among these was freedom of the high seas, including freedom of fishing.<sup>4</sup> This was a basic tenet of the 1958 Geneva Convention, regarded as codifying existing international law but which never entered into force.

The historic right of each State to sail ships under its flag on the high seas first appeared in the 1958 Convention.<sup>5</sup> The ship was subject to the exclusive jurisdiction of the flag State on the high seas.<sup>6</sup> The retention – or loss – of nationality was to be decided by the State from which nationality was derived.<sup>7</sup> The duty of the flag State to “effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag,”<sup>8</sup> also appeared under both Conventions.

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<sup>1</sup> United Nations Conference on Environment and Development.

<sup>2</sup> The genesis of the international instruments are identified in Part II of this paper. Note especially references to Agenda 21, Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, vol. 1, Resolutions Adopted by the Conference (United Nations publication, Sales No. E.93.I.8 and corrigendum), Resolution 1, Annex II, and proceedings of the FAO Committee on Fisheries (COFI).

<sup>3</sup> See discussion in Part II for further detail on the provisions in the 1982 Convention.

<sup>4</sup> Article 2: freedom of the high seas, including the right to fish, must be exercised with reasonable regard to the interests of other States in their exercise of the freedom of the high seas. This appears in Article 87 of the 1982 Convention.

<sup>5</sup> Article 4 in the 1958 Geneva Convention; Article 90 in the 1982 Convention.

<sup>6</sup> Article 5 in the 1958 Geneva Convention, with the qualification that international law or agreement does not provide otherwise. Article 92 of the 1982 Convention.

<sup>7</sup> This requirement is clear in: Article 5.1, that each State is 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; and Article 18, that a ship or aircraft may retain its nationality even though it has become a pirate ship or aircraft. The retention or loss of nationality is determined by the law of the State from which such nationality was derived. See Articles 94.1 and 104 of the 1982 Convention.

<sup>8</sup> Article 5.1 in the 1958 Geneva Convention, Article 94 of the 1982 Convention.

This was the basic legal framework upon which the post-UNCED legally binding international instruments were built. These core “rulebooks” contain a range of requirements relating to flag State responsibilities, duties, compliance and enforcement and are the:

- 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (the FAO Compliance Agreement);
- 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the 1995 UN Fish Stocks Agreement);

The post-UNCED international instruments that are voluntary, and management-oriented, were formulated to be interpreted and applied in conformity with the relevant rules of international law. They address threats to the long-term sustainability of fisheries and contribution of fisheries to food supply, including over-exploitation of important fish stocks, modifications of ecosystems, significant economic losses and international conflicts on management and fish trade. Irresponsible fishing activity that directly undermines management efforts is clearly identified, together with flag State and other measures that should be taken to counter such activity. They are the:

- 1995 Code of Conduct for Responsible Fisheries (FAO Code of Conduct);
- 2001 International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing<sup>9</sup> (FAO IPOA-IUU).

Information relating to the development and provisions of these instruments is described in Part II.

Other agreements and documents to implement the above instruments on regional, sub-regional and bilateral levels have been developed.<sup>10</sup> In addition, many regional fisheries management organizations or arrangements (RFMOs) are implementing these instruments according to their mandates, and States are incorporating the requirements into their national laws.

The number of instruments incorporating flag State responsibility reflects the considerable international concern about the proportions of the problem, but the operative question is – are these instruments effective; in particular, are they effective in view of the operation of open registers by an increasing number of States?

A State that operates an open register will accept vessels owned by nationals from other States, which will then fly the flag of the open registry State.<sup>11</sup> The 1982 Convention<sup>12</sup> provides that the flag State assumes jurisdiction in respect of administrative, technical and social matters concerning the ship, as well as other matters such as labour conditions and seaworthiness. The flag State is responsible for the diplomatic and naval protection of its flag vessels. And, under the post-UNCED international instruments, the flag State is responsible for the vessel's compliance with applicable laws and international fisheries conservation and management measures, including on the high seas.

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<sup>9</sup> Adopted by the FAO Committee on Fisheries (COFI) at its Twenty-fourth Session in March 2001.

<sup>10</sup> For example, the 2000 Convention on the Conservation of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean and the FAO Technical Guidelines for implementation of the FAO Code of Conduct.

<sup>11</sup> The relevant international instruments do not provide a legal definition for “open register” or “flag of convenience”. In the experience of IMO, FAO and UNCTAD there are no legally accepted definitions of these terms, but both are widely used and have in a sense been “defined by usage”. UNCTAD’s working approach considers that an open register is the one including vessels owned by nationals of other countries. If the percentage owned by nationals of other countries is very high, above 99%, then one speaks of a flag of convenience. If the percentage owned by nationals of the country is high, above 80-90%, then the register is an international one.

<sup>12</sup> Article 94.



However, for many States, open registers are just another way to make money. While some States that operate open registers have taken positive steps to fulfill international flag State compliance responsibilities in respect of fishing vessels, others have yet to engage in the process, and do not exercise these responsibilities. Most of these States do not belong to, or cooperate with, any RFMO that has adopted international conservation and management measures. This makes it very attractive for fishing vessels that would otherwise have to comply with such measures to buy a “flag of convenience” (FOC) from an open registry State that does not exercise effective flag State compliance responsibilities over fishing fleets.<sup>13</sup>

While use of the term “flag of convenience” is widely used and recognised, whether a flag is “convenient” is a matter of interpretation. Some States operating open registers have adopted laws and administrative practices that are not as relaxed, or convenient to shipowners, as others. Some flags are considered to be FOCs by common consent,<sup>14</sup> and a more extensive list has been established by the International Transport Workers Federation (ITF).<sup>15</sup> However, although a vessel may fly what is considered a FOC, it may be genuinely owned and operated by nationals of the flag country.

Countries maintaining open registers that currently include or may have included fishing vessels are indicated in APPENDIX 1.

What is the scope of the “flag of convenience” problem? One view was expressed cogently at the Commission on Sustainable Development (CSD 7)<sup>16</sup>, during the review of oceans and seas at its Seventh Session in April 1999. The Chair of CSD 7 stated that:

“ . . . fishing activities continue to take place in contravention of the applicable regional conservation regimes and States are not meeting their obligations under the Law of the Sea Convention to control the activities of their flag vessels. Even more problematic is the use of flags of convenience. When fishing companies based in countries that have signed fisheries agreements and conventions then design arrangements that allow ships under their control to go to sea and ignore those agreements under cover of the flag of a non-signatory they make a mockery of the agreement. Governments have to respond.”<sup>17</sup>

This concern followed swiftly on the heels of a March 1999 report by the ITF that the flag of convenience fishing fleet was growing dramatically – from 11 open registers in 1980 to 29 in 2000<sup>18</sup> and the EU reports that the 392 fishing or fish transport vessels flagged outside the EU are distributed among 48 different registers.<sup>19</sup>

On a global level, estimation of the size and impact of the open register fleets can be difficult as they are very fluid, with vessels changing names and flags easily and frequently, moving from fishery to fishery and using a series of “shell” companies to conceal the real identity of their owners.<sup>20</sup> It has, however, been estimated that fishing vessels operating under open registers represent less than 10 per cent of the world fishing fleets.<sup>21</sup> Although their numbers are relatively low, these vessels have a disproportionately negative impact on fisheries conservation and management measures.<sup>22</sup>

<sup>13</sup> See European Parliament Committee on Fisheries, Working Document 1 on the role of flags of convenience in the fisheries sector, 11 April 2001; rapporteur Patricia McKenna, hereafter “McKenna Report”.

<sup>14</sup> They are, for example, Panama, Belize and St. Vincent & the Grenadines. Australia, Canada and Norway are considered not to be FOC States. McKenna Report, op. cit. n. 13.

<sup>15</sup> This is based in large part upon social criteria such as ratification of the ILO conventions, safety record, respect for human and trade union rights, etc. Countries so classified include Barbados, Liberia, Mozambique, Netherlands, Antilles, Sierra Leone and Vanuatu. McKenna Report, op. cit. n. 6.

<sup>16</sup> Commission on Sustainable Development, Seventh Session, New York, 19-30 April 1999.

<sup>17</sup> Simon Upton, Chair, Second London Oceans Workshop, December 1998.

<sup>18</sup> In addition to these, ITF considers a number of other registries are also on the rise including Mongolia, Equatorial Guinea, Bolivia and Jordan.

<sup>19</sup> McKenna Report op. cit. n. 13, Revised Working Document 3 on the role of flags of convenience in the fisheries sector, 21 October 2001. The report notes that the most important registers are Mauritania and Belize (51 vessels in each), Panama (47), Morocco (35), Honduras (29) and St. Vincent & the Grenadines (27).

<sup>20</sup> See [www.seaweb.org](http://www.seaweb.org).

<sup>21</sup> Lloyd's Register – Fairplay Limited World Fleet Statistics 2001. Lloyd's Maritime Information Service has listed over 1300 fishing vessels greater than 24 metres in length flying flags of convenience. This does not include the

The majority of open registry States are not bound by the many international instruments that require the exercise of flag State control over fishing vessels,<sup>23</sup> nor do they exercise flag State control on a voluntary basis. Therefore, some fishing vessel owners are able to circumvent international requirements by flagging their vessels in non-party States that do not exercise flag State responsibility.<sup>24</sup>

The CSD<sup>25</sup> review highlighted the issue of flag State responsibilities and the need for FAO and the International Maritime Organization (IMO) to cooperate on solving problems related to IUU Fishing. Significantly, port State responsibilities were also included in the review; i.e. States where a port is located and a fishing vessel registered in another State is geographically located at a given time. Further, the UN General Assembly urged IMO, FAO and regional fisheries organizations and other relevant organizations to collaborate in defining the concept of a “genuine link” between fishing vessels and the flag State.<sup>26</sup>

Agreement on a clear definition of what constitutes a “genuine link” between the vessel and the flag State could assist in the implementation of Article 91 of the 1982 Convention regarding the nationality of ships. This gives a State the right to fix the conditions for the:

- grant of its nationality to ships;
- registration of ships in its territory; and
- right to fly its flag.

In this context, Article 91 also provides that “...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.”<sup>27</sup>

The fact that the State has the right to fix the conditions noted above, including the grant of nationality to ships, provides the basis for the flag State’s right to grant nationality to the ship. But this right is accompanied by the requirement that a genuine link must exist between the State and a ship. The purpose of the genuine link requirement has been in issue especially because many open registry States do not require any such link, and its scope is not defined. In fact, the difficulties of defining the scope are compounded by the reality that a ship can, and often does leave a trail of nationalities in its wake – of the owner, operator, charterers, corporate headquarters and others

At issue is whether the purpose of the genuine link requirement to ensure that effective flag State control can be exercised,<sup>28</sup> or to set the conditions for recognition of the nationality of ships by non-flag States – States other than the State of registration?

In fact, the development of the concept of genuine link in international law is deeply rooted in the nationality of persons.<sup>29</sup>

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large network of refrigerated cargo vessels (reefers) and fuel tankers which support the FOC fishing fleets at sea and allow them to avoid port control measures implemented by some countries. See [www.seaweb.org](http://www.seaweb.org).

<sup>22</sup> Troubled Waters, Fishing Pollution and FOCs, Major Group Submission for the 1999 CSD Thematic Review: Oceans and Seas by International Confederation of Free Trade Unions, Trade Union Advisory Committee to the OECD, International Transport Workers’ Federation and Greenpeace International, March 1999.

<sup>23</sup> See Part III, 1 and 3.

<sup>24</sup> *Op cit* n. 16.

<sup>25</sup> During the review of oceans and seas at its seventh session in April 1999, as noted in above text.

<sup>26</sup> United Nations General Assembly Resolution 54/32 19 January 2000, para 8.

<sup>27</sup> In this context, one interpretation is that the ship is “awarded” nationality by the State, which – because Article 91 gives the State the right to determine various conditions – appears to also have implicitly given the right to determine whether a “genuine” link exists.

<sup>28</sup> As required in Article 94, and Article 217. The latter appears under the Enforcement Section respecting the marine environment, and requires that the flag State shall: effectively enforce applicable international rules and standards irrespective of where the violation occurs; prohibit vessels flying its flag from sailing until they can proceed to sea in compliance with the requirements of international rules and standards; investigate violation of international rules and standards and where appropriate institute proceedings irrespective of where the violation occurred; and provide by laws and regulations penalties of adequate severity to discourage violations of applicable international minimum rules and standards, wherever they occur.”

In the mid-1950's, the International Court of Justice (ICJ)<sup>30</sup> considered whether a State's grant of citizenship to a person who had a tenuous connection to it would entitle it to represent his claim against another State – and require that other State to recognize the grant of nationality. In concluding that the other State was not obligated to recognize the grant of nationality, the ICJ described nationality as a “legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties.”<sup>31</sup>

This decision was handed down shortly before the 1958 Geneva Convention on the High Seas (1958 Convention) required a ship to have a genuine link to the flag State,<sup>32</sup> in language identical to the current requirement in Article 91 of the 1982 Convention.<sup>33</sup>

More recently the International Tribunal on the Law of the Sea (ITLOS) concluded<sup>34</sup> that the purpose of the provisions of the 1982 Convention<sup>35</sup> on the need for a genuine link between a ship and its flag State is to *secure more effective implementation of the duties of the flag State* and not to establish criteria by reference to which the validity of the registration of ships in a flag State may be challenged by other States. The Tribunal also found no support in the 1986 Convention on the Conditions for the Registration of Ships (not yet in force) that a State could refuse to recognize the right of a vessel to fly the flag of a State on the ground that there is no genuine link between the ship and the flag State.

It therefore does not appear productive to focus on what constitutes a “genuine link” as a prerequisite for vessel registration; instead, current jurisprudence views flag State duties and responsibilities as a consequence of the grant of ship's registration. As noted above, the genuine link requirement was imported from the relationship between individuals and States, and the situation between ships – with their trail of nationalities - and States is dramatically different.

Indeed, the Joint FAO/IMO Ad Hoc Working Group tasked by the General Assembly<sup>36</sup> with establishing the criteria for defining a genuine link did not do so. They agreed there was little benefit in attempting to define the concept of “genuine link” between a vessel and the State whose flag it flies and instead addressed the key issues that might constitute effective flag State control of a fishing vessel.”<sup>37</sup> In addition, the FAO IPOA-IUU simply provides that: “A flag State should ensure, before it registers a fishing vessel, that it can exercise its responsibility to ensure that the vessel does not engage in IUU fishing.”<sup>38</sup>

This approach, applying to all flag States, indicates it is not just the open registry flag States that avoid responsibilities. In fact, some of them are taking positive steps towards effective flag State control.

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<sup>29</sup> The Conference for the Codification of International Law, held at The Hague in 1930, inserted in Article I of the Convention relating to the Conflict of Nationality Laws, a provision that the law enacted by a State for the purpose of determining who are its nationals “shall be recognized by other States in so far as it is consistent with . . . international custom, and the principles of law generally recognized with regard to nationality.” In the same spirit, Article 5 of the Convention refers to criteria of the individual's genuine connections for the purpose of resolving questions of dual nationality which arise in third States.

<sup>30</sup> *Liechtenstein v. Guatemala*, 1955 ICJ Rep 4.

<sup>31</sup> *Ibid.* In that case, informally called the Nottebohm case, addressing the nationality of an individual, the judgment of the International Court of Justice reads in part as follows: According to the practice of States, to arbitral and judicial decisions and to the opinions of writers, nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties. It may be said to constitute the juridical expression of the fact that the individual upon whom it is conferred, either directly by the law or as the result of an act of the authorities, is in fact more closely connected with the population of the State conferring nationality than with that of any other State. Conferred by a State, it only entitles that State to exercise protection vis-a-vis another State, if it constitutes a translation into juridical terms of the individual's connection with the State which has made him its national.

<sup>32</sup> Article 5(1).

<sup>33</sup> Article 91.

<sup>34</sup> “M/V Saiga” (No.2), International Tribunal for the Law of the Sea 1999.

<sup>35</sup> And the 1958 Geneva Convention on the High Seas, Article 5.

<sup>36</sup> See footnote 26.

<sup>37</sup> The Report of the Joint FAO/IMO Ad Hoc Working Group on Illegal, Unregulated and Unreported Fishing and Related Matters, Rome, Italy, 9-11 October 2000 para. 24.

<sup>38</sup> Paragraph 35.

The purpose of this paper is to review activities relating to the fishing fleets of States that operate open registers, and in particular to assess the extent to which flag State control measures are being implemented by those States.

The post-UNCED international instruments reflect the increasing international consensus that the effective exercise of flag State responsibilities is key to the future of the global fisheries resource. The 1982 Convention and the 1995 UN Fish Stocks Agreement are in force and binding upon ratifying States, and others are not yet in force or are voluntary, as indicated in Table 1.<sup>39</sup> A review of the provisions in the international instruments relevant to the exercise of flag State responsibility follows in Part II.

The rationale for the operation of open registers is addressed in Part III, noting the interests of – and benefits to – open registry States, shipowners and fishing vessels.

Part IV addresses effective flag State control. For open registry States, general information relating to registration procedures is set out, and national policy, laws and administrative arrangements described, with a view to assessing the effectiveness of flag State control. The experience of key RFMOs with fishing activities by open registry flag vessels, and open registry States is presented, noting the sanctions and enforcement action that has been taken against open registry States and fishing vessels. Available information on offences by vessels operating under open registers, and their disposition by the flag State and the RFMOs is also described.

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<sup>39</sup> All tables referred to in the document are presented in Appendix 9.

## II. POST-UNCED INTERNATIONAL INSTRUMENTS

### 1. Introduction

The responsibilities for flag State compliance with laws, treaties and international fisheries conservation and management measures has deep historical roots predating the 1982 Convention.

The rules regulating the conduct of ships on the high seas have long been regulated by customary international law, supplemented by bilateral and multilateral treaties and conventions relating to specific issues. The preamble to the 1958 Convention, the first attempt at establishing a comprehensive legal regime for the high seas, recognized that the provisions adopted were generally declaratory of established principles of international law.

As noted above, flag State responsibilities appearing in the 1958 Convention<sup>40</sup> and 1982 Convention<sup>41</sup> both require States to fix the conditions for the:

- grant of nationality to its ships;
- registration of ships within its territory; and
- right to fly its flag.

Both Conventions also provide that ships have the nationality of the State whose flag they are entitled to fly and require a genuine link to exist between the State and the ship.

As noted above, the concept of “genuine link” as it applies to flag States and ships has not been defined in international law or practice, and has come to signify the duty of a flag State to effectively implement its responsibilities.

The requirement for a State to effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag is found in both the 1958 and 1982 Conventions.<sup>42</sup> However, the provisions are considerably expanded in the 1982 Convention, especially with respect to safety at sea and qualifications of masters and crew.

Subsequently, the 1986 United Nations Convention on Registration of Ships (1986 Convention) expanded the role of flag States respecting the registration of ships. It adopts the language of the 1982 Convention respecting the freedom of navigation and granting of nationality to ships,<sup>43</sup> but also requires a State to ensure that ships flying its flag have, at the very least, a representative who can meet the shipowner’s responsibilities in accordance with the laws of the flag State.<sup>44</sup> Requiring an implementing “body” is important, but moves the focus to whether, and to what extent, the national laws in fact implement flag State responsibilities.

The 1993 FAO Compliance Agreement adds specificity to the flag State’s responsibilities set out in the 1982 Convention. It relates to fishing vessels on the high seas, and identifies clear responsibilities for flag States, including to:<sup>45</sup>

- allow high seas fishing only pursuant to specific authorization;
- only authorize fishing vessels where the flag State can effectively exercise its responsibilities (considering the links with the vessel); and
- take effective measures against vessels undermining international conservation and management measures.

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<sup>40</sup> Article 5.1.

<sup>41</sup> Article 91.

<sup>42</sup> 1958 Convention: Article 5.1, “... the State must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.” 1982 Convention Article 94. See discussion below.

<sup>43</sup> Articles 1 through 5.

<sup>44</sup> Article 10.1 and 10.2.

<sup>45</sup> Article III.

The Compliance Agreement also encourages the strengthening of international cooperation and increased transparency through the exchange of information on high seas fishing.

The 1995 UN Fish Stocks Agreement elaborates the flag State responsibilities of the 1982 Convention, but only for straddling fish stocks and highly migratory fish stocks primarily in areas beyond national jurisdiction.<sup>46</sup> Significantly, this instrument progressed beyond the concept of not undermining conservation and management measures, to requiring flag vessels to comply with them.<sup>47</sup>

The FAO Code of Conduct and FAO IPOA-IUU are voluntary instruments and apply to all fishing activity both within and beyond zones of national jurisdiction. The Code of Conduct contains the same flag State provisions that are similar in scope to the other international instruments. The objective of the FAO IPOA-IUU is to deal with the increase in IUU fishing, and the need for flag States to exercise responsibilities over their fishing fleets.<sup>48</sup>

Cross-cutting areas showing common or related provisions in the instruments are described below, followed by a brief description of the law contained in each instrument.

## **2. Cross-Cutting Areas**

Each instrument is important, with its own purpose and application. However, there are some cross-cutting areas for flag State responsibility, made stronger by near-universal recognition of such requirements in all documents. A synopsis of the instruments and their common flag State responsibilities is shown in Table 2.

## **3. The Instruments**

### **3.1 The 1982 Convention**

Underlying the 1982 Convention was the notion that all activities connected with ocean space are closely interrelated and need to be addressed as a whole. The Convention is widely recognised as providing the framework for further development of specific areas of the law of the sea. It entered into force on 16 November 1994.<sup>49</sup>

Flag State responsibility forms an important component of Part VII of the 1982 Convention. This Part is concerned with both the freedom of the high seas and the responsible exercise of those freedoms. All States enjoy the traditional freedoms of navigation, overflight, scientific research and fishing on the high seas,<sup>50</sup> but are also obliged to take or cooperate with other States in taking measures for their respective nationals to for the conservation of the living resources of the high seas.<sup>51</sup> States whose nationals exploit the same living resources, or resources in the same area, are to enter into negotiations with a view to taking such conservation measures.<sup>52</sup>

Duties of the flag State<sup>53</sup> are an essential component of the legal regime for the high seas, with other components including the:

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<sup>46</sup> Article 3, on Application, provides that the Agreement applies to these stocks beyond areas under national jurisdiction except that this is qualified for Articles 6 and 7 relating to the precautionary approach and compatibility of measures. In addition, coastal States are bound to apply the general principles set forth in Article 5 in managing straddling fish stocks and highly migratory fish stocks within areas under their national jurisdiction.

<sup>47</sup> Article 18.1.

<sup>48</sup> Part I, paragraph 2.

<sup>49</sup> The Convention was opened for signature on 10 December 1982 in Montego Bay Jamaica, marking the culmination of more than 14 years of work involving participation by more than 150 countries representing all regions of the world, all legal and political systems and the spectrum of socio-economic development. At the time of its adoption, the 1982 Convention embodied in one instrument traditional rules for the uses of the oceans and at the same time introduced new legal concepts and regimes and addressed new concerns

<sup>50</sup> Article 87.1.

<sup>51</sup> Article 117.

<sup>52</sup> Article 118.

<sup>53</sup> Article 94.

- right of navigation;<sup>54</sup>
- nationality of ships;<sup>55</sup>
- status of ships,<sup>56</sup> and
- jurisdiction and control of ships.

The right of navigation gives every State the right for ships flying its flag to sail on the high seas. The nationality of ships is important as it determines the laws which will apply to that ship and its crew. The ship's nationality is determined by the flag it flies, but the ship must meet the conditions set by the flag State. As noted above, the 1982 Convention requires the flag State to fix conditions for the following:

- granting its nationality to ships;
- registration of ships in its territory; and
- the right to fly its flag.<sup>57</sup>

To be granted the right to fly the flag of a State, there must exist a genuine link between the ship and the State.<sup>58</sup> The 1982 Convention does not define a genuine link. However, this provision in combination with the requirement that a State effectively exercise its jurisdiction and control in respect of administrative, technical and social matters over ships flying its flag<sup>59</sup> mirrors the requirements of the 1958 Convention.<sup>60</sup>

The 1982 Convention also requires flag States to:

- effectively enforce applicable international rules and standards irrespective of where the violation occurs;
- prohibit vessels flying its flag from sailing until they can proceed to sea in compliance with the requirements of international rules and standards;
- investigate violations of international rules and standards and where appropriate institute proceedings irrespective of where the violation occurred; and
- provide by laws and regulations penalties of adequate severity to discourage violations of applicable international minimum rules and standards, wherever they occur.<sup>61</sup>

It seems logical therefore that a genuine link requires that there be located within the flag State an entity which can be made responsible for the actions of the ship.<sup>62</sup> When the flag State gives a ship the right to fly its flag, it must issue documents to that effect,<sup>63</sup> and must maintain a register of ships which fly its flag.<sup>64</sup>

For legal and practical reasons, it is important that ships have a single nationality only. To allow otherwise would raise issues respecting conflict of laws and could allow ships to evade the jurisdiction of all nations. To address this concern, the 1982 Convention requires that ships sail under the flag of one State only and be subject to that State's exclusive jurisdiction on the high seas.<sup>65</sup>

The 1982 Convention also addresses management responsibilities for fish that occur both on the high seas and in areas under national jurisdiction. Articles relating to straddling fish stocks and highly migratory species required States to cooperate either directly or through appropriate regional, subregional or international organizations to ensure conservation and promote the objective of optimum utilization of these species.<sup>66</sup> Although flag State responsibilities for management of these

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<sup>54</sup> Article 90.

<sup>55</sup> Article 91.

<sup>56</sup> Article 92.

<sup>57</sup> Article 91.1

<sup>58</sup> Article 91.

<sup>59</sup> Article 94.

<sup>60</sup> Article 5.

<sup>61</sup> Article 217.

<sup>62</sup> See discussion in Part I.

<sup>63</sup> Article 91.

<sup>64</sup> Article 94.

<sup>65</sup> Article 92.

<sup>66</sup> Articles 63 and 64.

stocks on the high seas are not designated in those Articles, they clearly signalled the need for cooperation in management. This was followed up by the UN Fish Stocks Agreement, which expressly include flag State responsibility as an essential management pillar.

### 3.2 The 1986 Convention on the Registration of Ships

The 1986 Convention on the Registration of Ships (1986 Convention) provides for the registration of ships and sets out the conditions for the establishment and operation of a Shipping Register.<sup>67</sup> The 1986 Convention was concluded under the auspices of the United Nations Conference on Trade and Development (UNCTAD), and because it is directed towards trade, fishing vessels are excluded. It has not entered into force after nearly two decades,<sup>68</sup> but provides sound precedent for registration requirements and flag State responsibilities. It could form the basis for any future initiative by FAO to provide guidelines for the registration of fishing vessels under the Code of Conduct. This could be done in collaboration with IMO and, as indicated in section III.1, below, could include further study on whether measures which have been used to improve the management of open registers for commercial shipping could be adapted to those for fishing vessels.

An objective of the 1986 Convention is to strengthen the implementation of the genuine link responsibilities between a State and ships flying its flag. Its provisions require flag States to exercise effectively their jurisdiction and control over their ships with regard to identification and accountability of shipowners and operators, and administrative, technical, economic and social matters.<sup>69</sup>

The 1986 Convention adopted the nationality provisions from the 1982 Convention:<sup>70</sup> a ship has the nationality of the flag it flies<sup>71</sup> and shall sail under the flag of one State only.<sup>72</sup> No ship shall be entered on the register of ships of two or more States at a time.<sup>73</sup>

To properly implement the provisions of the 1986 Convention, a flag State must have a competent and adequate national maritime administration which exercises jurisdiction and control<sup>74</sup> over the vessels registered under its flag. The maritime administration is required to ensure that ships comply with national laws and regulations and applicable international rules and standards respecting registration of ships and safety of ships and persons on board and prevention of polluting to the marine environment.<sup>75</sup>

Flag States must also implement applicable international rules and standards concerning the safety of ships and persons on board and the prevention of pollution of the marine environment.<sup>76</sup>

Full identification and accountability is an important element in ensuring flag State control. To achieve this, the State of registration must obtain information<sup>77</sup> on ship's owner(s) and operator(s)<sup>78</sup> to ensure that the owner(s) and/or operator(s) or any other person can be held accountable for the management and operation of ships flying its flag and can be easily identified.<sup>79</sup>

The requirements for ownership of ships should be catered for in a State's laws,<sup>80</sup> which are to include appropriate provisions for participation by that State or its nationals as owners – or in the

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<sup>67</sup> For the purposes of the Convention "Ship" means any self-propelled seagoing vessel used in the international seaborne trade for the transport of goods, passengers or both with the exception of vessels of less than 500 gross registered tons. Article 2.

<sup>68</sup> Entry into force requires that 40 States with a combined tonnage of 25 per cent of world tonnage become Contracting Parties.

<sup>69</sup> Article 1.

<sup>70</sup> Articles 91 and 92 of the 1982 Convention.

<sup>71</sup> Article 4.2.

<sup>72</sup> Article 4.3.

<sup>73</sup> Article 4.4.

<sup>74</sup> Article 5.1.

<sup>75</sup> Article 5.3.

<sup>76</sup> Article 5.2.

<sup>77</sup> Article 5.4.

<sup>78</sup> Article 6.1.

<sup>79</sup> Article 6.2.

<sup>80</sup> Article 8.1.



ownership - of its flag ships. These laws must be sufficient to permit the flag State to exercise effectively its jurisdiction and control over ships flying its flag.<sup>81</sup>

The State of registration, before entering a ship in its register, must ensure that the shipowning company or a subsidiary of such company is established and/or has its principal place of business within its territory in accordance with its laws.<sup>82</sup> Alternatively, the flag State shall ensure that the shipowning company has a representative or management person who shall be a national of or domiciled in the flag State. This representative must be available for any legal process and to meet the shipowner's responsibilities in accordance with the laws of the State of registration.<sup>83</sup>

A State of registration must establish a register of ships flying its flag, and ships are to be entered in it under the name of the owner(s) or the bareboat charterer, if appropriate.<sup>84</sup> The register is to record: the name of the ship and previous name and registry if any; the place or port of registration or home port and official number or mark of identification; international call sign; name of builders, place and year of build; name, address and nationality of owner(s), bareboat charterers and, or operators, as appropriate; date of deletion or suspension of previous registration.<sup>85</sup>

To prevent vessels from flag-hopping, a State must assure itself that the previous registration, if any, is deleted<sup>86</sup> before it registers a vessel on its register. This is a significant measure to assist States in monitoring the activities of fishing vessels.

### 3.3 The 1993 FAO Compliance Agreement

The Nineteenth Session of the FAO Committee on Fisheries (COFI), held in March 1991, recommended the development of new approaches to fisheries management which would embrace conservation, environmental, social and economic considerations. FAO embarked on the process which ultimately resulted in the Code of Conduct for Responsible Fisheries. In this process, at the Twentieth Session of COFI, held in March 1993, FAO was requested to prepare on a "fast track" basis, as part of the Code, proposals to prevent re-flagging of fishing vessels which affect conservation and management measures on the high seas. This resulted in the FAO Conference, at its Twenty-seventh Session in November 1993, adopting the FAO Compliance Agreement which is an integral part of the Code.<sup>87</sup>

The primary objective of the FAO Compliance Agreement is to deal with the problem of fishing vessels re-flagging into flags of convenience to avoid compliance with agreed conservation and management measures. It applies to fishing vessels that are used for fishing on the high seas,<sup>88</sup> and after entry into force will be legally binding in respect of accepting States.<sup>89</sup>

The FAO Compliance Agreement sets out in more detail than does the 1982 Convention the responsibilities of the flag State.<sup>90</sup> While the 1982 Convention simply provides that States must seek to agree upon the necessary conservation measures, the FAO Compliance Agreement requires States to take measures to ensure that fishing vessels entitled to fly its flag do not engage in any activity that undermines the effectiveness of international conservation and management measures.<sup>91</sup>

The FAO Compliance Agreement, for the first time, makes a connection between the right to fly a State's flag and the right to fish on the high seas. This is an important advance in flag State control as it provides a means for States to control vessels flying its flag. Each Party is required:

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<sup>81</sup> Article 8.2.

<sup>82</sup> Article 10.1.

<sup>83</sup> Article 10.2.

<sup>84</sup> Article 11.1.

<sup>85</sup> Articles 11.2 and 11.3.

<sup>86</sup> Article 11.4.

<sup>87</sup> FAO Conference Resolution 15/93.

<sup>88</sup> Article II.1.

<sup>89</sup> Twenty-two of the required twenty-five instruments of acceptance have been deposited with the Director-General of FAO [as at 8 January 2002](#) in accordance with Article X.1 of the Compliance Agreement.

<sup>90</sup> The key provisions are contained in Article III.

<sup>91</sup> Article III.1.

- to take measures to ensure that its fishing vessels do not engage in any activity that undermines the effectiveness of international conservation and management measures;<sup>92</sup>
- not to allow its vessels to be used for fishing on the high seas unless authorized to do so by the appropriate authorities of the flag State;<sup>93</sup> and
- to be satisfied that it can effectively exercise its responsibilities under the Compliance Agreement before it authorizes any fishing vessel to fish on the high seas.<sup>94</sup>

Authorizations to fish may be subject to conditions<sup>95</sup> and will be deemed cancelled if a vessel is no longer entitled to fly the flag of the authorizing State.<sup>96</sup>

The freedom of vessels with a poor compliance record to reflag is limited by preventing them from reflagging into another State that is a Party to the Compliance Agreement while it is subject to suspension. Parties are to authorize these “non-compliant” vessels to fish only if they are satisfied that the vessels will abide by fisheries conservation and management measures.<sup>97</sup>

These provisions are bolstered by requirements on monitoring, control and surveillance (MCS). Parties must ensure that their flag vessels comply with vessel marking standards,<sup>98</sup> and provide information that allows the Party to fulfill its obligations under the Compliance Agreement.<sup>99</sup> Parties are required to take enforcement measures against vessels that contravene the Agreement, including creating offences and under national legislation and imposing sanctions to enforce compliance.<sup>100</sup> Sanctions should deprive offenders of the benefits accruing from their illegal activities and may result in the refusal, suspension or withdrawal of the authorization to fish on the high seas.<sup>101</sup>

Parties are required to maintain records of their fishing vessels authorized to be used for fishing on the high seas.<sup>102</sup>

Flag State control measures are overlaid by the requirement that Parties work together to take proactive measures to authorize, monitor and inspect vessels flying the flag of other Parties.<sup>103</sup> FAO plays a significant role in the collection and exchange of information, including the establishment of a database of vessels authorized to fish on the high seas which will facilitate vessel monitoring and help track reflagging of vessels.<sup>104</sup>

The FAO Compliance Agreement also encourages the strengthening of international cooperation on a global, regional, subregional or bilateral basis and increased transparency through the exchange of information on high seas fishing.<sup>105</sup> This strengthening of cooperation has significant implications for improving fisheries management.

### 3.4 The 1995 UN Fish Stocks Agreement

The 1995 UN Fish Stocks Agreement arose out of a call by UNCED that States should take effective action to ensure that high seas fisheries are managed in accordance with the 1982 Convention.<sup>106</sup> Agenda 21 called for an intergovernmental conference to be convened under United Nations auspices on straddling fish stocks and highly migratory fish stocks.<sup>107</sup> On 17 December 1992, the Second Committee of the United Nations General Assembly adopted a resolution convening such

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<sup>92</sup> Article III.1.

<sup>93</sup> Article III.2.

<sup>94</sup> Article III.3.

<sup>95</sup> Article III.2.

<sup>96</sup> Article III.4.

<sup>97</sup> Article III.5.

<sup>98</sup> Article III.6.

<sup>99</sup> Article III.7.

<sup>100</sup> Article III.8.

<sup>101</sup> Article III.8.

<sup>102</sup> Article IV.

<sup>103</sup> Article VI.

<sup>104</sup> Article VI.

<sup>105</sup> Article VII.

<sup>106</sup> Agenda 21, paragraph 17.49.

<sup>107</sup> Ibid.

a conference for 1993.<sup>108</sup> The Conference was tasked with identifying and assessing the existing problems related to the conservation and management of straddling fish stocks and highly migratory fish stocks, considering means of improving fisheries cooperation among States and formulating appropriate recommendations.

The United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks adopted the UN Fish Stocks Agreement on 4 August 1995. It was open for signature until 4 December 1996, at which time it was signed by 59 States and entities. The requirements for entry into force of the Agreement were met on 11 November 2001 when the Minister of Foreign Affairs of Malta deposited the thirtieth instrument of accession. The Agreement entered into force on 11 December 2001.

The UN Fish Stocks Agreement elaborates the provisions of the 1982 Convention, and is applied in the context of and consistently with the Convention.<sup>109</sup> Its objective is “to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through effective implementation of the relevant provisions of this Convention”.<sup>110</sup>

The UN Fish Stocks Agreement provides a comprehensive framework for cooperation in the conservation and management of those fish stocks. It addresses conservation and management of straddling fish stocks and highly migratory fish stocks,<sup>111</sup> sets out mechanisms for international cooperation,<sup>112</sup> provides for non-members and non-participants in regional fisheries organizations or arrangements,<sup>113</sup> specifies the duties of the flag State<sup>114</sup> and provides for compliance and enforcement.<sup>115</sup> Requirements of Developing States<sup>116</sup> and dispute settlement<sup>117</sup> are additional important matters falling within its framework.

The UN Fish Stocks Agreement applies to the conservation and management of straddling fish stocks and highly migratory fish stocks beyond areas under national jurisdiction, with certain exceptions – application of the precautionary approach, compatibility of conservation and management measures and application by the coastal State of the general principles for conservation and management.<sup>118</sup>

The UN Fish Stocks Agreement imposes more stringent duties on flag States than does the 1982 Convention or the FAO Compliance Agreement by requiring that their vessels that fish on the high seas *comply* with subregional and regional conservation and management measures, in addition to the requirement that vessels do not engage in any activity which undermines the effectiveness of these measures.<sup>119</sup>

States are not permitted to authorize the use of their flag by vessels fishing on the high seas unless they are able to effectively exercise responsibility over such vessels for the purpose of the 1982 Convention and the UN Fish Stocks Agreement.<sup>120</sup>

States must take several measures in respect of vessels flying its flag<sup>121</sup> including:

- control of such vessels by means of fishing licences, authorizations or permits;

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<sup>108</sup> UN General Assembly Resolution A/C.2/47/L.62.

<sup>109</sup> Article 4.

<sup>110</sup> Article 2.

<sup>111</sup> Part II.

<sup>112</sup> Part III.

<sup>113</sup> Part IV.

<sup>114</sup> Part V.

<sup>115</sup> Part VI.

<sup>116</sup> Part VII.

<sup>117</sup> Part VIII.

<sup>118</sup> Article 3.

<sup>119</sup> Article 18.1.

<sup>120</sup> Article 18.2.

<sup>121</sup> Article 18.3.

- establishment of regulations to - apply terms and conditions to such licences, authorizations or permits; prohibit fishing without an authorization on the high seas and within areas under the national jurisdiction of other States; require vessels fishing on the high seas to carry licence, etc at all times and produce it on demand for inspection; and to ensure that vessels flying its flag do not conduct unauthorized fishing within areas under the national jurisdiction of other States;
- establishment of a national record of fishing vessels authorized to fish on the high seas;
- marking of fishing vessels and gear for identification;
- recording and timely reporting of vessel position and relevant fisheries data;
- catch verification through observer programmes, inspection schemes, supervision of transshipment and monitoring of landed catches and market statistics; and the monitoring, controlling and surveillance of such vessels.
- regulation of transshipment on the high seas to ensure effectiveness of conservation and management measures is not undermined; and
- regulation of fishing activity to ensure compliance with subregional, regional or global measures.

Where a subregionally, regionally or globally agreed system of MCS is in effect, flag States must ensure that the measures they impose are compatible with that system.<sup>122</sup>

A flag State must also ensure compliance by its vessels with regional conservation and management measures.<sup>123</sup> To enforce such measures, flag States may investigate any alleged violations, and if sufficient evidence is available, institute proceedings against the offending vessel.<sup>124</sup> Non-compliant vessels are prohibited from fishing on the high seas until any relevant sanctions have been complied with.<sup>125</sup>

There is an obligation on the flag State to carry out all investigations and judicial proceedings expeditiously and to ensure that sanctions are severe enough to secure compliance and discourage violations. Sanctions may deprive offenders of the benefits of their illegal activities and refuse, withdraw or suspend authorizations of masters and officers on such vessels.<sup>126</sup>

Similar to the FAO Compliance Agreement, the UN Fish Stocks Agreement encourages States to cooperate to ensure compliance with and enforcement of conservation and management measures.<sup>127</sup> Cooperation may be direct or through relevant subregional or regional fisheries management organizations or arrangements. Information on any investigations shall be provided to all States having an interest in, or affected by, the alleged violation.

Subregional and regional cooperation in enforcement is spelled out in impressive detail, including procedures for boarding and inspection.<sup>128</sup> While most of these procedures are directed towards action taken – or authorized - by flag States, the situation is also contemplated where action is taken by States other than the flag State in respect of vessels having engaged in activities contrary to subregional or regional conservation and management measures.<sup>129</sup> Such action is to be proportionate to the seriousness of the violation.

In addition to describing the duties of flag States and compliance and enforcement, the UN Fish Stocks Agreement sets out requirements for States that are not members of an RFMO or regional fisheries management arrangement; this of course would include many open register States. They are not discharged from the obligation to cooperate in the conservation and management of the relevant fish stocks.<sup>130</sup>

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<sup>122</sup> Article 18.4.

<sup>123</sup> Article 19.1.

<sup>124</sup> Article 19.1.

<sup>125</sup> Article 19.1.

<sup>126</sup> Article 19.2.

<sup>127</sup> Article 20.

<sup>128</sup> Articles 21 and 22.

<sup>129</sup> Article 21.11.

<sup>130</sup> Article 17.1.

Non-members and non-participants are not to authorize its flag vessels to fish for stocks that are subject to conservation and management measures.<sup>131</sup> Members are to request the non-members/participants whose vessels are fishing in the area to cooperate fully, in which case the latter may enjoy benefits.<sup>132</sup> Members are to exchange information and take measures to deter activities of non-members which undermine the effectiveness of the measures.<sup>133</sup> This has been successfully achieved in some RFMOs, as described in Part IV, below.

### 3.5 The 1995 FAO Code of Conduct

COFI at its Nineteenth Session in March 1991 called for the development of new concepts which would lead to responsible fisheries. Subsequently, the International Conference on Responsible Fishing, held in 1992 in Cancun (Mexico) requested FAO to prepare an international Code of Conduct to address these concerns. The outcome of this Conference, particularly the Declaration of Cancun, was an important contribution to UNCED, in particular Agenda 21. Subsequently, the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks was convened, to which FAO provided important technical back-up.

Noting these and other important developments in world fisheries, the FAO Governing Bodies recommended the formulation of a global Code of Conduct for Responsible Fisheries which would be consistent with these instruments and, in a non-mandatory manner, establish principles and standards applicable to the conservation, management and development of all fisheries.

The Code was unanimously adopted on 31 October 1995 by the FAO Conference.<sup>134</sup> It provides a framework for national and international efforts to promote responsible exploitation of aquatic living resources in harmony with the environment.<sup>135</sup>

The Code is global in scope; it covers all fishing activity both within and beyond zones of national jurisdiction and, as such, is broader in scope than the UN Fish Stocks Agreement. It embraces a wide range of subjects leading to better conservation and management of fisheries including the gross overcapacity of the global fishing fleet, the inadequate control of vessels by flag States, the inadequate provision of fishery data to both flag States and coastal States, and trade restrictions intended to achieve environmental protection.

Although voluntary, the Code of Conduct applies to all States and entities and to all fishers. Since its adoption in 1995, it has influenced countries to modify their fisheries laws to facilitate the Code's implementation.<sup>136</sup>

The objectives of the Code are to establish principles and criteria for national and international legal and institutional arrangements and to provide standards of conduct for persons involved in the fishery sector. FAO is preparing technical guidelines to support the implementation of the Code.

Flag States have similar roles under the Code as they do under other international instruments. Flag States should ensure that fishing vessels entitled to fly their flag do not fish on the high seas or under the jurisdiction of other States unless they have obtained both a Certificate of Registry and an authorization to fish.<sup>137</sup>

A framework for vessel MCS requirements is provided in the Code; flag States should maintain records of these fishing vessels, indicating details of the vessels, their ownership and the

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<sup>131</sup> Article 17.2.

<sup>132</sup> Article 17.3.

<sup>133</sup> Article 17.4.

<sup>134</sup> FAO Conference Resolution 4/95.

<sup>135</sup> Annex 2 to the Code of Conduct.

<sup>136</sup> Extract from the Report of the Twenty-fourth Session of the Committee on Fisheries, FAO Headquarters, Rome, 26 February - 2 March 2001, concerning the Code of Conduct for Responsible Fisheries is as follows: Progress Report on the Code of Conduct for Responsible Fisheries and related international Plans of Action; Code of Conduct for Responsible Fisheries: Development and Implementation Considerations. D.J. Douman, July 2000. See also [www.fao.org/fi/agreem/codecond/codecon.asp](http://www.fao.org/fi/agreem/codecond/codecon.asp).

<sup>137</sup> Article 8.2.2.

authorization to fish.<sup>138</sup> Fishing vessels and their fishing gear should be marked in accordance with an internationally recognizable marking system<sup>139</sup> and in accordance with national legislation.

The Code encourages States to accept the FAO Compliance Agreement and to adopt laws and regulations to implement it.<sup>140</sup>

Flag States may enforce compliance by vessels flying their flag through national legislation and through the imposition of sanctions which may deprive offenders of the benefits accruing from their illegal activities and may result in the refusal, suspension or withdrawal of the authorization to fish.<sup>141</sup>

The Code also urges flag States to ensure protection of its vessels and their crew through compliance with international accepted safety standards, or the adoption of appropriate safety requirements where vessels are not covered by such standards.<sup>142</sup> It encourages access to insurance coverage by owners and charterers of fishing vessels sufficient to protect the crew and their interests, indemnify third parties and protect their own interests.<sup>143</sup> Flag States should ensure that crew members are entitled to repatriation.<sup>144</sup>

### 3.6 The FAO IPOA on IUU Fishing (FAO IPOA-IUU)

Adopted by the COFI at its Twenty-fourth Session in March 2001,<sup>145</sup> the FAO IPOA-IUU is the most recent international instrument in response to the growing concern about the state of the world's fish stocks. The FAO IPOA-IUU refers to the ineffectiveness of existing international instruments addressing IUU fishing due to lack of political will, priority, capacity and resources to ratify or accede to and implement them.<sup>146</sup>

The FAO IPOA-IUU is a voluntary instrument elaborated within the framework of the FAO Code of Conduct.<sup>147</sup> However, some of its provisions reflect obligations which many States have accepted as binding, either through global instruments, or in RFMOs.

It also serves as a checklist for flag States; a comprehensive "toolbox" providing the options for dealing with IUU fishing for a range of situations. In turn, it is anticipated that this checklist should be useful as part of the biennial reporting process by States and RFMOs required by the FAO IPOA-IUU.<sup>148</sup> For example, States and RFMOs may report whether and how they have successfully implemented certain items on the checklist, and why they may have decided that other items, or "tool", were not appropriate.

The Code applies to the interpretation and application of the FAO IPOA-IUU and its relationship with other international instruments.<sup>149</sup> The FAO IPOA-IUU responds to fisheries specific issues and nothing in it prejudices the positions of States in other fora.

COFI was concerned<sup>150</sup> about information presented indicating increases in IUU fishing, including fishing vessels flying "flags of convenience". Shortly afterwards, an FAO Ministerial Meeting on Fisheries in March 1999 declared that, without prejudice to the rights and obligations of States

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<sup>138</sup> Article 8.2.1.

<sup>139</sup> Article 8.2.3 and 8.2.4.

<sup>140</sup> Article 8.2.6.

<sup>141</sup> Article 8.2.7.

<sup>142</sup> Article 8.2.5.

<sup>143</sup> Article 8.2.8.

<sup>144</sup> Article 8.2.9.

<sup>145</sup> The FAO IPOA-IUU was endorsed on 23 June 2001 by the Hundred and Twentieth Session of the FAO Council.

<sup>146</sup> Part I, paragraph 1.

<sup>147</sup> FAO IPOA-IUU, paragraphs 4 and 5, and Article IV of the FAO Code of Conduct. It follows other IPOAs on Seabirds, Sharks, and Capacity which were also developed in compliance with the Code of Conduct, adopted by the twenty-third Session of the FAO Committee on Fisheries in February 1999 and endorsed by the FAO Council in November, 2000.

<sup>148</sup> Paragraph 87.

<sup>149</sup> In particular Articles 1.1, 1.2, 3.1, and 3.2

<sup>150</sup> At its Twenty-third Session in February 1999.

under international law, FAO "will develop a global plan of action to deal effectively with all forms of illegal, unregulated and unreported fishing including fishing vessels flying "flags of convenience" through coordinated efforts by States, FAO, relevant regional fisheries management bodies and other relevant international agencies such as the International Maritime Organization (IMO), as provided in Article IV of the Code of Conduct. and thus the need for flag States to exercise responsibilities over their fishing fleets.<sup>151</sup>

The objective of the IPOA is to prevent, deter and eliminate IUU fishing by providing all States with comprehensive, effective and transparent measures by which to act, including through appropriate regional fisheries management organizations established in accordance with international law.<sup>152</sup>

Implementation measures to prevent, deter and eliminate IUU fishing are provided in Part IV of the FAO IPOA-IUU, including internationally agreed market-related measures, research and the role of the regional fisheries management organizations. Responsibilities are addressed to all States: flag, coastal and port States. It is significant that the FAO IPOA-IUU also provides a checklist or "toolbox" for coastal and port States of actions, within their respective jurisdictions, that would allow them to impose an obligation on the flag State. Together with requirements relating to State control over nationals,<sup>153</sup> this checklist opens the way for indirect checks on the flag State by other States, and could be useful in the biennial reporting process.<sup>154</sup>

Flag State responsibilities comprise a significant portion of the whole FAO IPOA-IUU<sup>155</sup> and are divided into the following subheadings, described below in section 3.6.1:

- Fishing Vessel Registration;<sup>156</sup>
- Record of Fishing Vessels;<sup>157</sup>
- Authorization to Fish.<sup>158</sup>

### 3.6.1 Fishing Vessel Registration

Fishing vessel registration is important, because it is the first step in preventing the flagging of vessels with a history of non-compliance. It also enables flag States to monitor their vessels, should they opt to do so. The overall objective of requirements for fishing vessel registration is that States ensure that fishing vessels flying their flag do not engage in – or support – IUU fishing. To achieve this, a flag State must ensure before it registers a fishing vessel, that it can exercise its responsibilities respecting vessels entitled to fly its flag.<sup>159</sup>

Consistent with the FAO Compliance Agreement,<sup>160</sup> flag States are to avoid flagging vessels with a history of non-compliance.<sup>161</sup> The IPOA goes further than the FAO Compliance Agreement, however, by encouraging all States involved in a chartering arrangement, including flag States and all other States that accept such an arrangement, to take measures to ensure that chartered vessels do not engage in IUU fishing.<sup>162</sup>

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<sup>151</sup> Part I, paragraph 2.

<sup>152</sup> Part III, paragraph 8.

<sup>153</sup> Paragraphs 18, 19.

<sup>154</sup> For example, in the case of coastal States, an example is Paragraph 51.4 of the FAO IPOA-IUU where the coastal State is able to check that flag States are maintaining the records of vessels provided for in Paragraph 42. Similarly, the second sentence of Paragraph 45 provides for a coastal State to check that the flag State has issued an authorisation to fish. This provision in turn links back to Paragraph 41, where the flag State is encouraged to ensure that where its vessels fish in waters under the jurisdiction of another State, that coastal State has issued an authorisation to fish. In the case of port States, Paragraph 55 of the FAO IPOA-IUU provides for the port State to check the authorisation to fish before allowing port access.

<sup>155</sup> 17 of 93 paragraphs; almost 20%.

<sup>156</sup> Paragraphs 34-41.

<sup>157</sup> Paragraphs 42- 43.

<sup>158</sup> Paragraphs 44-50.

<sup>159</sup> Paragraphs 34, 35.

<sup>160</sup> Compliance Agreement, Article III.5.

<sup>161</sup> Paragraph 36.

<sup>162</sup> Paragraph 37.

Reflagging and “flag-hopping” are serious problems. Flag hopping is the practice of repeated and rapid changes of a vessel’s flag for the purposes of circumventing conservation and management measures or provisions adopted at a national, regional or global level or of facilitating non-compliance with such measures or provisions.<sup>163</sup> Reflagging and flag-hopping allow shipowners to shop around for a flag State which is unable or unwilling to assume responsibility for the vessels it flags and thereby allowing vessels to avoid compliance with conservation and management measures.<sup>164</sup>

The FAO IPOA-IUU encourages States to deter vessels from reflagging and flag-hopping for the purposes of circumventing or non-compliance with conservation and management measures or provisions.<sup>165</sup> Further, actions and standards flag States adopt should be uniform to avoid creating incentives for vessel owners to reflag their vessels to other States.<sup>166</sup>

Where the functions of registration of a vessel and issuing an authorization to fish are separate, problems may occur in the ability of the State to monitor the activities of its fishing vessels. It may be easier for a vessel to engage in IUU fishing and more difficult for a State to monitor such activities where a vessel can register without providing evidence of a fishing authorization.

States are encouraged to consider conducting these functions in a manner which ensures each gives appropriate consideration to the other. Flag States should ensure appropriate links between the operation of their vessel registers and the record those States keep of their fishing vessels. Where such functions are not undertaken by one agency, States should ensure sufficient cooperation and information sharing between the agencies responsible for those functions.<sup>167</sup>

The FAO IPOA-IUU also encourages a State to consider making its decision to register a fishing vessel conditional upon its being prepared to provide to the vessel an authorization to fish in waters under its jurisdiction, or on the high seas, or conditional upon an authorization to fish being issued by a coastal State to the vessel when it is under the control of that flag State.<sup>168</sup>

### 3.6.2 Record of Fishing Vessels

Consistent with the FAO Compliance Agreement and the FAO Code of Conduct, the IPOA encourages record keeping, and provides a suite of essential information which should be kept. Standard information required includes name of the vessel, registration number, previous names and port of registry, previous flag, International Radio Call Sign, name and address of owner(s), where and when built, type of vessel, name and address of the operator(s), type of fishing method(s), dimensions of the vessel, renames, addresses and nationalities of the natural or legal persons in whose name the vessel is registered, who is responsible for managing the operations of the vessel, and who is the beneficial owner(s).<sup>169</sup>

In addition to this information, and in promoting the objectives of preventing vessels from reflagging, the FAO IPOA-IUU also requires the name and ownership history of the vessel, including the history of non-compliance and a picture of the vessel.<sup>170</sup> This information will assist a flag State in monitoring vessels entitled to fly its flag and may make it more difficult for vessels with a history of non-compliance from re-flagging.

### 3.6.3 Authorization to Fish

As required under the UN Fish Stocks Agreement and the FAO Compliance Agreement, and in line with the FAO Code of Conduct, the FAO IPOA-IUU requires that States ensure no vessel be allowed to fish without an authorization.<sup>171</sup> Vessels that are entitled to fish outside waters under the

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<sup>163</sup> Paragraph 39.

<sup>164</sup> See European Parliament Committee on Fisheries, Report on the role of flags of convenience in the fisheries sector, 20 November 2001; rapporteur Patricia McKenna.

<sup>165</sup> Paragraphs 38 and 39.

<sup>166</sup> Paragraph 38.

<sup>167</sup> Paragraph 40.

<sup>168</sup> Paragraph 41.

<sup>169</sup> Paragraph 42.

<sup>170</sup> Paragraph 42.

<sup>171</sup> Paragraph 44.



sovereignty or jurisdiction of the flag State need an authorization from the flag State and where a coastal State issues an authorization to fish, it should ensure that no fishing in its waters occurs without an authorization to fish issued to that vessel by the flag State.<sup>172</sup>

These provisions provide a “checks and balance system” where the coastal State and the flag State both are charged with the responsibility of ensuring vessels fishing under their jurisdiction obtain the appropriate authorizations to fish. The authorization, which should include specified information such as vessel name, area for fishing, species to be fished and gear to be used, may be required to be carried on board.<sup>173</sup>

Flag States or coastal States may impose conditions on the authorization to fish including the requirement for vessel monitoring systems, catch and transshipment reporting conditions, observer coverage, maintenance of fishing and related log books, navigational equipment, compliance with applicable international conventions and national laws and regulations, and unique marking and identification of vessel and gear.<sup>174</sup>

This provision bolsters the flag State's ability to more closely monitor the activities of vessels which fly its flag.

Flag States should 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 transship fish to or from these vessels, except where appropriate for humanitarian purposes including the safety of crew members.<sup>175</sup>

Flag States should also ensure that all of their fishing, transport and support vessels involved in transshipment at sea have a prior authorization to do so issued by the flag State. Flag States should report to the national fisheries administration or other designated institution and make aggregated information from catch and transshipment available to relevant regional and international organizations, including FAO, taking into account confidentiality requirements.<sup>176</sup>

#### **4. Summary**

The international initiatives surrounding flag State responsibility over fishing vessels build upon and reinforce one another. The rights and responsibilities of flag States, codified half a century ago in the 1958 Geneva Convention on the High Seas, have progressively become more detailed with subsequent instruments, binding and voluntary. They have shifted from a focus on the rights of the flag States, to a multitude of duties and responsibilities, including administrative duties, enforcement obligations, duties to cooperate and ensure compliance, and duty to comply with management measures of RFMOs.

The global and repeated recognition of the significance of these duties and responsibilities is encouraging, but more can still be achieved through broader acceptance and implementation. The number of fishing vessels on open registers continues to grow, and while some positive steps have been taken to implement flag State responsibilities in respect of some open register vessels that do not comply with conservation and management measures, further action is needed to strengthen compliance by many other vessels.

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<sup>172</sup> Paragraph 45.

<sup>173</sup> Paragraph 46.

<sup>174</sup> Paragraph 47.

<sup>175</sup> Paragraph 48.

<sup>176</sup> Paragraphs 49 and 50.

### III. RATIONALE FOR THE OPERATION OF OPEN REGISTERS

The rationale for the operation of open registers can be described in terms of the benefits to the open registry State and the shipowner. Not surprisingly, these benefits are, for the most part, economic. But may be too simplistic to describe the rationale for open registers simply in terms of cash: two other undercurrents influence the operation of open registers by States: one is the political will of States to comply with international requirements, and the other, for those that are not inspired by such a will, is the cost of non-compliance in terms of trade and related sanctions.

Therefore, even if the rationale for operating open registers is largely based on economic benefits for both open registry States and shipowners, it can be tempered to varying degrees by compliance with international instruments and standards. The rationale underlying such compliance is also a significant factor in assessing options for the way forward.

#### 1. Operation of Open Registers by States

Approximately 29 States maintain open registers that include fishing vessels.<sup>177</sup> Whether an open register is State owned<sup>178</sup> or franchised out to a commercial entity,<sup>179</sup> a compelling rationale for the operation of open registry systems is the economic benefits they bring to the flag State.<sup>180</sup> Economic benefits could be realized in the following ways:

- tonnage taxes and registration fees;
- franchise and/or royalty fees; and
- reduced government expense due to outsourcing.

Secondary, although much less significant, benefits may be sourced from the revenue arising from incorporation, taxes and other fees associated with meeting residency requirements<sup>181</sup> and potential job creation.<sup>182</sup>

Data from Lloyd's Maritime Information Services in APPENDIX 9, Table 3 shows revenue received from all vessels by 21 States operating open registers. Of the 21 open registry States, with a total of 1335 fishing vessels (representing 7% of all vessels registered in these States), the revenue from fishing vessels totals US\$ 3 083 100 or 4.9% of the gross revenue from all vessels.

Even considering that these values are most certainly underestimates,<sup>183</sup> the data demonstrates that the percentage of revenue from fishing vessels is relatively small but revenue received from all vessels by open registry States is not insignificant.

Some States have introduced offshore, or international registers in order to give their national fleet owners access to the same conditions of trade that are enjoyed by the open registers, without diverting their business to another flag State.<sup>184</sup> The offshore registers generally have less stringent conditions than the national registers, but are a responsible response to the flag of convenience alternative.

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<sup>177</sup> See Appendix 1.

<sup>178</sup> e.g. Cyprus and Malta.

<sup>179</sup> e.g. Liberia, Marshall Islands, St. Vincent and the Grenadines and Vanuatu. Also, International Registries Inc. (IRI) is a U.S.A.-based company which administered the Liberian register until Liberia transferred the operation of its shipping registry to a newly formed company also located in the USA, the Liberian International Shipping Registry (LISCR).

<sup>180</sup> Note that registers include fishing vessels with the merchant fleet, and do not exclusively cater for fishing vessels. Information is not available that indicates the extent of additional costs, if any, of including fishing vessels on the register. If they are small, it could be that the revenues would appear relatively large to the open registry State, even though the number of fishing vessels on the register is proportionately low.

<sup>181</sup> e.g. incorporation of shipowning companies and establishing domicile in State of registration.

<sup>182</sup> e.g. for the crew, and administration of the shipowning company.

<sup>183</sup> FAO Fisheries Circular FIIT/C949 An Analysis of the Vessels over 100 Tons in the Global Fishing Fleet, FOA Rome 1999. Also note that the revenue estimates as derived from the annual registration fee alone could represent approximately half of what would be collected from the supply of other documentation.

<sup>184</sup> For example, Norway, Denmark, Faeroes, Spain and Portugal.

Some international registers operate as businesses designed to make a profit and can be bought and sold just like any other business. These businesses operate on market economies – the more vessels registered the cheaper the administration cost. It can result in a win-win situation for the register and the shipowner.<sup>185</sup>

However, the realization of profit doesn't always mean investment in an effective control system. There can be an economic downside because some open registry States lack the means, will or resources to put in place effective control systems for fishing vessels. Some practical difficulties have been experienced by some countries that have decided to establish a separate register for fishing vessels include the lack of expertise and capacity in fisheries administrations that are tasked with operating a ship's register.

In addition, maritime administrations must cope with a constantly changing legal landscape in respect of all vessels. The implementation of changes to international rules, particularly those impacting seafarers welfare, ship safety and marine pollution,<sup>186</sup> the increasingly complex application of these rules<sup>187</sup> and the often vague technical requirements<sup>188</sup> to apply these rules make it difficult for these administrations, small and large, to keep abreast of developments.

For these changes to be effective, national lawmaking systems must also keep pace. This can be difficult where backlogs and procedural quagmires exist in national legislatures. With limited resources, maritime administrations, particularly smaller ones, are often not able to keep pace with changes and meet new international standards.<sup>189</sup> One result is that a State may avoid the morass by not participating in the relevant conventions.

The increasing regulatory burden extends to fisheries conservation and management measures. For example, implementation of the UN Fish Stocks Agreement requires States to take certain measures regarding their vessels that fish on the high seas, including with respect to licensing and enforcement.

In summary, the operation of open registers by States may be profitable but there are two limiting factors in relation to fishing fleets:

- the revenue from fishing vessels appears to be relatively small compared to that from the merchant fleet; and
- the operation of open registers is subject to a range of changing requirements, including those applicable to fishing vessels, which may lead to an increase in administrative costs and a need for capacity-building.

## 2. Use of Open Registers by Shipowners

The rationale for use of open registers by shipowners is both legal and economic. Stringent regulatory requirements and the burden of social charges on employers are clear factors contributing

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<sup>185</sup> For example, Liberia International Ship Registry Corporation and International Registries Inc.

<sup>186</sup> For example, SOLAS Convention has undergone changes from 1948 through 1960, though 1974 and various subsequent amendments to the 1974 Convention. Therefore, for example, in the case of an older ship, parts of the 1960 Convention will apply, parts of the 1974 Convention will apply and parts of the various amendments and Protocols adopted since 1974 will apply.

<sup>187</sup> For example, some provisions apply to existing vessels, some to new ships, some to all ships, some to ships meeting certain conditions and some only to certain ship types.

<sup>188</sup> For example, the 1998 Maritime Safety Committee issued Circ. 847 entitled "Interpretations of Vague Expressions and other Vague Wording in SOLAS Chapter II-2", MSC/Circ. 847 dated 12 June 1998 Maritime Safety Committee 69<sup>th</sup> Session.

<sup>189</sup> But it is possible that the non-participation by States may change in the future, regarding safety at sea with the creation of the IMO Whitelist. The Whitelist lists States deemed to be giving full effect to the revised International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW 95). A position on the Whitelist entitles other Parties to accept, in principle, that certificates issued by or on behalf of the Parties on the Whitelist are complying with the STCW 95.

IMO Maritime Safety Committee 73<sup>rd</sup> Session 27 November – 6 December 2000.

to the growth of the use of open registries.<sup>190</sup> Having the choice of flag, and therefore nationality, allows vessel operators to control operational costs of the vessel.<sup>191</sup>

Benefits to shipowners of using an open register are, for the most part, economic in nature and derive from:

- low or no vessel restrictions;
- favorable tax environment;
- low administration and registration fees;
- no or easy to meet nationality requirements;
- quick and efficient registration process;
- flexible manning requirements;<sup>192</sup>
- lower operational costs of the vessel.<sup>193</sup>

Some of the benefits advertised to shipowners of registering in open register States are illustrated in Appendix 9, Table 4<sup>194</sup>.

### 3. Use of Open Registers by Fishing Fleets

The principal rationales underlying the use of open registers by all shipowners, discussed above, would also apply to shipowners of fishing fleets: the impressive range of economic and administrative incentives to sharpen their competitive edge and simplify their business obligations. Recent trends show an increasing use of open registers by fishing fleets of all sizes,<sup>195</sup> and these and other possible rationales are discussed below.

#### 3.1 Increase in Number of Fishing Vessels on Open Registers

There is an increasing number fishing vessels registered on open registers, but no figures are available to show if this also represents an increasing proportion of the global fishing fleet. Table 5 in Appendix 9 describes the number of fishing vessels on some open registers from 1997 and 2001. It shows an increase of 208 fishing vessels registered in that period, bringing the total to just over 1500 vessels. The number of vessels registered with individual open registers has shifted dramatically in some cases. With more information, this could afford some indication as to the rationale for registration. Unfortunately, information regarding the origin of any reflagged vessels is not available. Some observations between 1997 and 2001 are:

- the number of fishing vessels on Belize's register has more than tripled in size to 481 vessels (an increase of 332%);<sup>196</sup>
- the decrease of fishing vessels on Panama's register was about 54% by number and about 70% by percentage;
- Honduras' register changed little;

<sup>190</sup> Fishing in Europe Fact File #6 February 2001.

<sup>191</sup> Note that a comparison of registration costs between open registry States and other States does not appear in this paper. While it would be useful in determining economically-based motivation in some cases, it would be very difficult to draw general conclusions. Variable factors would include the policies, laws and administrative practices of each State of registry, whether open or not, specific benefits being sought by the shipowner (e.g. low registration fee, avoidance of legal obligations), and the specific States of registry that are options for specific shipowners. Information available in the public domain does not assist in defining the motivation or options of individual shipowners.

<sup>192</sup> ITF considers that many shipowners register in open registry States as a result of those State's reduction in manning requirements and flexibility in the choice of the nationality of the crew. ITF Troubled Waters.

<sup>193</sup> For example, the USA requires that crew on USA flagged vessels are supplied locally, where employment-related costs impose higher financial burdens on vessel owners than employing crew from another State that does not have such obligations. The Netherlands Antilles is one such State that has no nationality or employment requirements for crew members and non-resident crew members are not subject to any national income or wage taxes or social security premiums.

<sup>194</sup> Not all the States in the table register fishing vessels, but it illustrates some benefits offered to shipowners of registering any vessel in an open registry State.

<sup>195</sup> Lloyds Maritime Information Services and Lloyd's Register - Fairplay Ltd. World Fleet Statistics 2001.

<sup>196</sup> Based Lloyd's Register - Fairplay Ltd. World Fleet Statistics 2001 which differs from the number of 402 provided by Belize in response to the questionnaire. Either figure places Belize at the top of the open register list.

- the number of fishing vessels on the registers of Saintt Vincent and the Grenadines, Cyprus, Vanuatu, and Netherlands Antilles increased with a corresponding increase in the percentage of fishing vessels registered;
- there was little or no change in the smaller registries: Malta, Bahamas, Barbados, Singapore, Liberia, Isle of Man, Antigua and Barbuda, China, Hong Kong, Special Administrative Region (SAR), Gibraltar.<sup>197</sup>

### 3.2 Vessel Size

There does not seem to be a correlation between vessel size and use of an open register by fishing vessel owners. For vessels between 100 and 1 000 GRT, there are between 100 and 300 vessels registered in each of the five divisions shown in Table 6, and there are almost 100 registered in the 1 500 to 4 000 GRT category. This shows a relatively even distribution of registered vessels, not size-dependent.

Unfortunately the information does not show the proportion this represents of fishing vessels worldwide in each category, so it is not possible to deduce whether a rationale for registration depends on the vessel size.

The opposite conclusion might be drawn: size is probably not a factor, especially when compared to “all vessels” in Table 7, which shows that the bulk of all registered vessels ranges from 1500 to more than 30 000 GRT.<sup>198</sup> This reflects the larger size of merchant vessels, but also ties in with notions of maximum returns for big investments, moreso than the information in Table 6.

### 3.3 Possible Rationales

A possible rationale for fishing vessels to migrate to, or enter an open register is the freedom of unregulated fishing because of the absence of any flag State control. Some factors which should be considered in assessing this rationale are whether the originating or national State is party to international instruments and/or RFMOs, and implements its obligations on the one hand, and the open registry State is not party to such instruments or RFMOs and does not implement any provisions or requirements.

#### 3.3.1 Originating State Party to International Instruments

In order to assess whether the rationale for migrating to an open register is because the originating State – or State of registration prior to migration - is party to relevant international instruments, it is useful to review the ratification “scorecard”. While most States, even most open registry States,<sup>199</sup> are party to the 1982 Convention, many vessels that re-flag to open registry States originate in States that are not party to the UN Fish Stocks Agreement or the FAO Compliance Agreement. For example, vessels originating in Greece, Spain, Germany, France and Portugal, which have signed, but not ratified the UN Fish Stocks Agreement and have not signed the Compliance Agreement, are apt to re-flag to open registry States.<sup>200</sup>

#### 3.3.2 Open Registry State Party to International Instruments

<sup>197</sup> In response to the questionnaire (February 2002) Antigua and Barbuda, Gibraltar, and Liberia stated that there were no fishing vessels on their registers.

<sup>198</sup> The fishing fleets constitute a relatively small proportion of the vessels on the larger open registers, with the exception of Honduras and Belize. This is indicated in Tables 6 and 7, and the revenue table supports this conclusion.

<sup>199</sup> Twenty-eight of the States listed in Appendix 1 have ratified the 1982 Convention. The States which have not are: Cambodia, Liberia, Morocco, and Tuvalu.

<sup>200</sup> McKenna Report *op cit*. Signatures and ratifications as of January 8, 2002. In total, the McKenna Report states that 392 fishing vessels or fish transport vessels are flagged outside the EU, or over 10% of the total EU – owned fleet. Almost 30% of the Greek-owned fishing fleet is flagged outside the EU and 19% of the Spanish fleet. The other three, Germany, France and Portugal, each have 8-11% of their fleet flying non-Community flags.

A number of open registry States have either ratified or signed the UN Fish Stocks Agreement: eight have ratified,<sup>201</sup> and nine have signed.<sup>202</sup> Four open registry States have accepted the FAO Compliance Agreement.<sup>203</sup>

Notably, Belize, Panama and Honduras, three of the largest fishing registers, have not ratified the UN Fish Stocks Agreement (although Belize has signed it) or the FAO Compliance Agreement. Morocco, with the third largest number of fishing vessels on its register, has not signed the 1982 Convention but has accepted the FAO Compliance Agreement.

No firm conclusions can be drawn establishing a motivation by the shipowner to select an open register State based on the State's ratification, or not, of international instruments.

### 3.3.3 Implementation of International Instruments by Open Registry States

Would a shipowner move away from an originating or open registry State that implements the instruments, even if it is not party?

Practical implementation of compliance measures is discussed in Part IV in relation to actions taken by open registry States and RFMOs. As a result of these actions, open register States such as Belize, Malta, Vanuatu and Panama have been active in encouraging flag State compliance through strategies such as deregistration and prosecution for offences. But still, the number of fishing vessels on open registers continues to grow.

It would seem that practical implementation of the instruments by the flag State, whether or not it is party, may not, in some cases, be a contributing factor to the shipowners' choice of flags.

### 3.3.4 Avoidance of International Conservation and Management Measures of RFMOs to which the originating State is Party

Membership in RFMOs by the originating State may provide the rationale for originating States to flag into open registers. Based on EU data,<sup>204</sup> France, Germany, and Spain are members of CCAMLR,<sup>205</sup> France is also a member of IATTC, IOTC and GFCM.<sup>206</sup> As discussed in Part IV, CCAMLR has been proactive in implementing conservation and management measures and encouraging flag State control. IATTC and IOTC have also implemented compliance measures for flag States. This suggests that, at least for vessels from originating States which are members of RFMOs and which fish in the relevant Convention Areas, there may exist a rationale for its vessels to flag under a State which is not a member of the relevant RFMO and thereby avoid compliance requirements.

This analysis, however, does not hold true in all cases. For example, the majority of Spanish vessels which flag out are flagging into Honduras, Panama and Morocco which are members of ICCAT and are required to implement the conservation and management measures under ICCAT.

This situation suggests that some originating States are not re-flagging to avoid the implementation of compliance provisions of conservation and management measures of RFMOs.

### 3.3.5 Reregistration after Deregistration of Vessels by Originating States to Reduce Capacity

Fishing fleets that exceed set limits will suffer economically if required to reduce capacity. To circumvent this problem, where some States deregister their vessels to reduce capacity, the vessels are re-registered on an open register that is not subject to the same capacity requirements.

<sup>201</sup> As of January 8, 2002, Bahamas, Barbados, Cook Islands, Malta, Mauritius, Samoa, Seychelles, Tonga have ratified the UN Fish Stocks Agreement.

<sup>202</sup> As of January 8, 2002, Bahamas, Belize, Marshall Islands, Mauritania, Morocco, Netherlands, Seychelles, Tonga and Vanuatu have signed or declared the UN Fish Stocks Agreement.

<sup>203</sup> As of August 14, 2001, Barbados, Cyprus, Morocco, Seychelles have deposited instruments of acceptance.

<sup>204</sup> McKenna Report, Revised Working Document 3.

<sup>205</sup> Greece is a party but not a member of the Commission.

<sup>206</sup> This excludes France on behalf of St. Pierre and Miquelon.

The extent of this process is not known and therefore its basis as a rationale for reflagging is also not known. However, it is known that EU vessels receive public aid to leave the EU Community register and often re-flag to a flag of convenience. Exactly how many vessels receive subsidies for this purpose is not known, but preliminary investigation found that at least one Member State which re-flagged to the Côte d'Ivoire received Euro 1.1 million. Its current flag is Belize but the owner is the same.<sup>207</sup>

Currently, there is no provision to prohibit the granting of subsidies for transfer to FOCs. However, a new proposal by the EC would prohibit public funding from being used for transfer of EU-flagged vessels to countries which are not Contracting or Cooperating Parties to the relevant regional fisheries organization, and which have been identified by such organizations as permitting fishing in a manner which jeopardizes the effectiveness of international conservation measures. This proposal would discourage reflagging to avoid capacity limitations and would build on regional efforts to identify the States that do not exercise effective flag State control.

### 3.3.6 Other Possible Rationales

Other motivations for fishing vessels to use open registers may include:<sup>208</sup>

- the realization of short term profit offered by certain fisheries;<sup>209</sup>
- the avoidance of financial difficulties fitting vessels with regulatory gear;
- securing a return on major investment; and
- the perceived weight of tradition where such fishing has taken place for generations.

A fishing vessel's competitiveness, the source of its income, is improved by greater access to resources and avoiding constraints imposed in a vessel's originating State. These benefits are even more important to a participant in those fisheries where fishing capacity exceeds the resource.

The growing percentage of fishing vessels in open registers is perhaps the best evidence of the benefits underpinning the rationale for registration – whether they are based on considerations of safety, labour, or freedom to fish. There appears to be no specific rationale that would apply to all vessels which use open registers. The rationales may be linked directly to fisheries, including the avoidance of fisheries conservation and management measures under international instruments implemented by the originating State or by RFMOs to which an originating States belongs. Alternatively, the rationale may relate to operational costs of owning and/or operating a ship which are generally lower in open registry States, or to the fact that many open registry States are attractive tax havens. It is likely a combination of any one or all of the rationales discussed which motivates vessels to use open registers.

## 4. Economic Motivations for Open Registry States to Implement Flag State Compliance Measures

If the rationale behind maintaining an open register is largely economic, it would follow that open registry States are motivated to implement their compliance responsibilities when they are economically adversely affected. Several economic-related initiatives have been implemented which have encouraged some open registry States to take compliance action.

For example, ICCAT restricted international market access for catches from vessels engaging in IUU fishing in the Convention Area. ICCAT collected information on illegal fishing activities based on market data, vessel sightings and other relevant data and implemented import bans into all ICCAT Contracting Parties for<sup>210</sup>:

- bluefin tuna from Belize, Equatorial Guinea and Honduras;
- swordfish from Belize and Honduras; and

<sup>207</sup> McKenna Report, Revised Working Document 3.

<sup>208</sup> Fishing in Europe Fact File #6 February 2001.

<sup>209</sup> For example, Patagonian toothfish and Atlantic tuna fisheries.

<sup>210</sup> European Parliament Committee on Fisheries, Report on the role of flags of convenience in the fisheries sector, 20 November 2001; rapporteur Patricia McKenna.

- bigeye tuna from Belize, Cambodia, Equatorial Guinea, Honduras and St. Vincent & the Grenadines.

This tactic has proven effective; a range of actions has been taken by States which have been warned that they may be subject to import bans if they do not control their fishing fleets. These include initiating control programs, taking actions against some offending vessels and canceling fishing licenses. Panama and Honduras joined ICCAT and Panama rectified the situation sufficiently to have its import ban on bluefin lifted.

Other positive steps taken by open registry States include:

- Honduras requires international fishing vessels to sign an affidavit not to fish for tuna before being registered;
- Belize requires a fishing vessel data form to be filed with an application for registration, and has also taken initiatives to “clean up” its register;<sup>211</sup> and
- Malta requires its vessels to have a fishing authorization prior to registration.

Some States, including Honduras and Belize, have removed vessels from their register. Without additional action, the act of deregistration alone simply exports the problem as those vessels re-flag in another more lenient State.

Similar trade-related actions have been taken by CCAMLR and CCSBT which also produced successful compliance results.<sup>212</sup>

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<sup>211</sup> “Belize flag weeds out 668 ships to polish tarnished image” Lloyds List January 16, 2002.

<sup>212</sup> See Part IV.



## IV. EFFECTIVE FLAG STATE CONTROL

### 1. Introduction

The purpose of this Part is to evaluate the effect of fishing vessels from open registry States on fisheries management when effective flag State control is and is not applied.

To assist in this evaluation, questionnaires were distributed to open registry States and RFMOs. The extent of implementation of flag State responsibilities as agreed in international instruments and the effectiveness of existing flag State control measures were assessed through responses to these questionnaires. The objectives of the questionnaires were to describe the:

- i. activities that result from States not exercising effective flag state control over fishing fleets; and
- ii. extent and effectiveness of implementation of flag State control measures prescribed under international instruments.

Responses to the questionnaire provide an idea of the scope for strengthened flag State control and a realistic basis for future action to achieve the objective of long-term sustainable use of the fisheries resource.

Copies of the questionnaires appear in Appendixes 2 and 3.

For information, a table of fishing vessel registration by national register is in Appendix 4. Approximately 8 per cent by number, or 11% of registered fishing vessels over 100 GRT operate under open registers.<sup>213</sup> Of the 11 largest fishing registers in the world, 3 are operated by open registry states.

### 2. Open Registry States

The extent of flag State control by open registry States is influenced by a number of factors including the type of fishery, presence of international pressure exerted through other States<sup>214</sup> or RFMOs, and whether the State is a member of an RFMO. It is difficult to draw any conclusions linking the shipowner's selection of an open register State with that State's ratification, or not, of international instruments. However, the implementation and enforcement of international conservation and management provisions by States directly or through RFMOs may influence the register a vessel owner chooses.

Input on effective flag State control was sought from 25 open registry States in the form of a questionnaire. A summary of the States polled appears in Appendix 5. Contact information for the open registry States that register fishing vessels is provided in Appendix 6.

States identified as operating an open register<sup>215</sup> were asked to comment or provide information on the following:

- general information on registration procedures;
- national policy, legislation and administrative arrangements; and
- international instruments and agreements.

<sup>213</sup> Antigua and Barbuda, Bahamas, Belize, Cambodia, China, Hong Kong, SAR, Equatorial Guinea, Honduras, Liberia, Malta, Marshall Islands, Mauritania, Mauritius, Morocco, Netherlands Antilles, Cook Islands, Panama, Samoa, Sao Tome and Principe, Seychelles, Sierra Leone, Singapore, Togo, Tonga, United Kingdom (Bermuda, Gibraltar, Isle of Man), Vanuatu.

<sup>214</sup> Canada was successful in concluding bilateral agreements on flag State control with open register States such as Panama in the mid-1990s, but Canadian officials did not provide the relevant information when requested.

<sup>215</sup> Information regarding the States that operate open registers was received from FAO, ITF, RFMOs and various websites. The list may be incomplete. Not all States on the list were contacted.

Responses were received from 12 States, eight of which indicated that they do not register fishing vessels.<sup>216</sup> Belize, Cook Islands, Malta and Vanuatu provided substantive information in response to the questionnaire. Limited information on other open registry States<sup>217</sup> was obtained from public sources and is included where available.

## 2.1 General Information on Registration Procedures

The States were asked to provide information on the following subjects respecting the requirements for vessel registration:

- a) What are the requirements for vessel registration?
- b) Are there any restrictions on registration?
- c) Can a vessel be de-registered for violating the law?
- d) What information is required for an application?
- e) How are applications received and processed?
- f) What is the timing and how is a decision made to approve an application?

A summary of their responses is provided in Appendix 9, Table 8.

Currently, there are 6 fishing vessels registered and 10 under review for registration on Cook Island's register, 88 on Malta's register, 122 on Vanuatu's register and 402 on Belize's register, making Belize among the ten largest fishing vessel registries worldwide (Appendix 4).

All four States have administrative arrangements and legislation in place to manage the registration process for fishing vessels. The Cook Islands Registry has undergone some recent changes and in May 2001 was taken over by the Cook Islands Maritime & Shipping Registry (CIMSRL). If the application and accompanying documents are in order, registration can be accomplished in less than a day<sup>218</sup> but may take up to three weeks.<sup>219</sup>

Prior to awarding permanent registration, some open registry States require an applicant to provide a certificate or other evidence that the vessel has been deleted from its previous register.<sup>220</sup> A certificate of deletion is an important means of ensuring vessels are not registered on more than one registry.

However, to be effective, all States should require them. If a State does not require a deletion certificate, then it becomes much easier for vessels to flag-hop – i.e. be flagged in more than one State and avoid a State's enforcement measures. For example, Belize has found that vessel owners are not obtaining deletion certificates from Belize, implying the vessel is flag-hopping. This imposes constraints on Belize's enforcement activities.

All four registers have restrictions as to the age of the vessel which may be registered. Some registers refuse to accept vessels over a certain age (e.g. Belize)<sup>221</sup> while others may subject the older vessels to conditions prior to registration (e.g. Cook Islands).<sup>222</sup>

Two of the registers also have nationality requirements respecting ownership of the vessels.<sup>223</sup>

Two of the registers have special requirements for fishing vessels. Belize requires a Fishing Vessel Data Form to be completed as part of application process and Malta requires that a fishing

<sup>216</sup> Antigua and Barbuda, Barbados, Bermuda, Cayman Islands, Gibraltar, China, Hong Kong, SAR, Liberia, and Singapore.

<sup>217</sup> Antigua and Barbuda, Cambodia, Cayman Islands, Honduras, Netherlands Antilles, Panama and Saint Vincent and the Grenadines, obtained from [www.flagsofconvenience.com](http://www.flagsofconvenience.com).

<sup>218</sup> Belize, Cook Islands and Malta.

<sup>219</sup> Vanuatu.

<sup>220</sup> Belize, Cook Islands, Malta, Vanuatu. Cambodia and Honduras (See [www.flagsofconvenience.com](http://www.flagsofconvenience.com))

<sup>221</sup> Belize does not accept vessels over 30 years old.

<sup>222</sup> Cook Islands requires special process for vessels over 15 years old. Malta and Vanuatu also have inspection requirements for older vessels.

<sup>223</sup> Malta and Vanuatu, but note that Malta's nationality requirements are easy to meet. Vanuatu's nationality requirements can be waived if there is an absolute and genuine need (not defined). Establishment of a company in Vanuatu is a relatively simple and quick process.

vessel be licensed to fish prior to registration.<sup>224</sup> Prior to registering an international fishing vessel, the Honduras registry requires that the vessel submit an affidavit not to fish tuna.<sup>225</sup> This requirement is in accordance with a resolution adopted by ICCAT. If the affidavit is not presented, a clause prohibiting fishing for tuna will be included at the back of the certificate for registry.

Belize, Malta and Vanuatu have legislative provisions regarding the deregistration of vessels for non-compliance.

In Belize, registration may be cancelled if a vessel is:

- registered in another State without the consent of IMMARBE (Belize's registry);
- engaged in illegal activity or in the event of violation of International Convention ratified by Belize; or
- in serious violation of bilateral or multilateral agreements to which Belize is a signatory or cooperating party.<sup>226</sup>

In response to international pressure, mostly exerted through ICCAT, Belize has de-registered vessels for illegal fishing in conservation areas. Belize has also deregistered vessels for non-compliance with safety regulations, not responding to requests for inspections, and drug trafficking. The deregistration process is part of Belize's quality initiatives.<sup>227</sup>

Malta's "Closure of Registry" provisions allow the deregistration of vessels where "it is in the national interest or in the interest of Maltese shipping".<sup>228</sup> No specific language requires deregistration in the event of failure to comply with fisheries conservation and management measures or relevant international agreements. In practice, however, in the past two years, three fishing vessels have been de-registered due to administrative reasons.

In Vanuatu, vessels can be deregistered for violations of the Maritime Act<sup>229</sup> or other international agreements relating to fishing. Deregistration may be based on requests by owners, but also may be implemented for violations of fishing agreements or failure to respond to inquiries from the registry.

Although no vessels have been de-registered since May 2001 when CIMSRL took over the Cook Islands registry, CIMSRL recognizes there is a gap in the legislation in this respect and reports it is attending to the matter.

In response to a letter of complaint by ICCAT that Honduran flagged vessels were fishing for tuna in contravention of the ICCAT Convention and from pressure due to import restrictions imposed on Honduras by ICCAT, the Merchant Marine of Honduras took immediate steps to cancel the registration of all international fishing vessels denounced by ICCAT.<sup>230</sup> Further, the General Directorate of Honduras took the irrevocable decision of canceling or suspending all the international fishing vessels included in its registry. Up to October 2000, of a total of 269 vessels included in the Honduran fleet, 228 vessels have been cancelled and 41 have been suspended.<sup>231</sup>

The Merchant Marine of Honduras will maintain a registry closed to international fishing vessels while the pertinent authorities of Honduras takes measures towards compliance with the ICCAT Convention. The Merchant Marine also made a formal commitment not to proceed to the registration of any international fishing vessels without first informing the competent body of ICCAT and assuring that those vessels that are registered comply with ICCAT Convention.<sup>232</sup>

<sup>224</sup> However, only fishing vessels 6 metres and over must be registered.

<sup>225</sup> [www.marinemercante.hn/registry2.html](http://www.marinemercante.hn/registry2.html)

<sup>226</sup> Registration of Merchant Ships (Disciplinary) Regulations, 1999-S.I. Number 56.

<sup>227</sup> See Part IV, 2b.

<sup>228</sup> Merchant Shipping Act, Articles 28 and 29, "Closure of Registry".

<sup>229</sup> CAP 131.

<sup>230</sup> Of the 101 vessels denounced by ICCAT, 61 were included on the Honduran registry.

<sup>231</sup> Report of the 9<sup>th</sup> Meeting of the Permanent Working Group for the Improvement of ICCAT Statistics and Conservation Measures (PWG), November 2000.

<sup>232</sup> Ibid. Appendix 6 to Appendix 10.

## 2.2 National Policy, Legislation and Administrative Arrangements

The States were asked several questions respecting the existence of national policies, legislation and administrative arrangements that implement international requirements, and enable flag State control to be exercised over vessels listed on the registry. States were also asked to provide information on their involvement, if any, in RFMOs.

### 2.2.1 Policy

All four responding open registry States have some form of policy, official or otherwise, and legislation respecting flag State control. Malta did not provide any details on its policy.

Belize derives its policy respecting flag State control from the 1982 Convention<sup>233</sup> and other international agreements. The policy statement is contained in the Registry's ISO 9002 approved Quality Manual. In addition, on November 1, 2001, Belize introduced a multi-phase Action Plan<sup>234</sup> in an attempt to "clean up its ship register's tarnished image."<sup>235</sup> As a result of this initiative, 668 ships were deregistered from Belize's books in 2001.

The Cook Islands does not have official government policy respecting flag State control, however, CIMSRL intends to become a desirable flag for the registration of high quality fishing vessels. To this end, CIMSRL is currently undergoing a legislative review with the intention of introducing legislation to enable the Cook Islands to seek accreditation for EUR1 certificates of origin. CIMSRL has also an internal policy to exert maximum control over its fleet. CIMSRL intends to achieve this by dealing with vessels only through its own staff for purposes of registration and appointing its own independent inspectors to act for it.

Vanuatu does not have a policy in place, but does have new draft fisheries legislation which covers flag State responsibilities, including the monitoring of vessels by use of transponders.

### 2.2.2 Legislation

The legislation for all four States provides for offences and enforcement action for non-compliance. In Belize, enforcement includes prohibition from sailing, fines up to US\$ 50 000, deregistration, and notification to IMO.<sup>236</sup>

Cook Islands legislation<sup>237</sup> provides for various offences, including failure to meet safety standards, which are punishable, if convicted, by fines.<sup>238</sup> Compliance is enforced through inspectors who are located in ports where Cook Island vessels operate. No enforcement actions have been taken since CIMSRL took over the registry. No information was available on Cook Island's sanctions

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<sup>233</sup> Article 94.

<sup>234</sup> Elements of the Immarbe Action Plan include:

Introduction of tonnage tax reductions of 25% for vessels operating safely for 12 months and 35% for two years' safe operation, the criteria being based on port state control detentions.

For vessels over 7 500 tons, only those classed by members of the International Association of Classification Societies would be acceptable.

Requirement for third party liability insurance

Requirement that vessels had to be ISM compliant

Phase III to address improving quality below 7 500 tons; expected to be in place in June 2002

Phases IV and V to address quality and environmental concerns, plus the formation of a Belize Owners' Advisory Council.

The register is to continue talks with Japan, European Union, Canada and the U.S. over fishing issues with a view to seeing sanctions against Belize lifted by the end of 2002.

The register intends to introduce a raft of International Maritime Organization Conventions, International Labour Organization codes and guidelines "in order to improve the quality of ships on the register and to render it more acceptable to quality owners, their lawyers, and bankers."

<sup>235</sup> Lloyd's List Registers Wednesday January 16, 2002 "Belize flag weeds out 668 ships to polish tarnished image".

<sup>236</sup> Registration of Merchant Ships (Disciplinary) Regulations, 1999-S.I. Number 56 and Registration of Merchant Ships (Fishing Vessels of 24 metres in length and above) Safety Regulations, 1995, section 27(1).

<sup>237</sup> Shipping Amendment Act 2000, No. 21, Part III.

<sup>238</sup> Legislation not provided.

to secure compliance with international conservation and management measures as this matter is not within CIMSRL's jurisdiction.<sup>239</sup>

Enforcement action by Malta includes deregistration and fines.<sup>240</sup>

In Vanuatu, enforcement is provided in draft legislation and action will be carried out by the Ship Registry and Vanuatu Maritime Authority.

All States identified constraints to taking enforcement action. For Belize, the problem is vessels re-flagging to another registry without seeking a deletion certificate from Belize's registry and thereby avoiding Belize's penalties and enforcement measures. Malta identified the need to improve the monitoring of fishing vessels' operators.<sup>241</sup>

In its attempts to introduce higher standards to the small fishing register, CIMSRL is experiencing resistance mostly in the form of objections associated with the cost of meeting the standards. Since CIMSRL's involvement in the registry, more vessels have been refused registration than accepted.

Vanuatu indicated that enforcement may be hampered by geographic isolation of the fishing vessels from Vanuatu and/or the Registry. Accurate reporting and positive identification are critical and in some cases have not been provided to the Registry in the past from enforcement agencies.

Sanctions are imposed according to legislation, which may include fines and deregistration. In Belize fines range up to \$50 000 USD and in Malta they range from 200 to 25 000 liri.<sup>242</sup> All States indicated that deregistration is a potential measure to address non-compliances.

### 2.2.3 Administrative Arrangements

All responding States have administrative arrangements in place that implement flag State responsibilities. In the Cook Islands, the new CIMSRL administers registration and safety standards and the Ministry of Marine Resources administers fisheries matters. Belize has several administrative arrangements including: General Safety Inspectors, Deputy Registrars, Recognized Organizations, Director-General, Solicitor General/Attorney General, Ministry of Foreign Affairs. The Merchant Shipping Directorate of Malta Maritime Authority (a Government agency) performs the duties of a Maritime Administration in Malta. New legislation in Vanuatu, aimed at implementing flag State responsibilities, will include inspections and important electronic monitoring of fishing fleets using transponders. A new tuna management plan has been drafted and implemented for Vanuatu as a first start on a local basis. It provides that Vanuatu flag vessels will not be considered local for the purposes of fishing licence issuance unless they fulfil ownership criteria.<sup>243</sup>

All responding States are involved in RFMOs: the Cook Islands is a member of the FFA, Belize is currently an observer in ICCAT, but intends to join as a cooperating member in the near future,<sup>244</sup> Malta is a member of two RFMOs and Vanuatu is a member of a number of RFMOs and regional arrangements.<sup>245</sup>

<sup>239</sup> This matter falls within the jurisdiction of the Ministry of Marine Resources, which was unable to provide input to the questionnaire responses prior to the deadline for incorporation into this paper.

<sup>240</sup> Merchant Shipping Act (Cap. 234), particularly Articles 28 and 29 on "Closure of Registry" and the Fisheries Conservation and Management Act (Cap 425), 2001.

<sup>241</sup> Malta indicated that steps are being taken to address this issue.

<sup>242</sup> Fisheries Conservation and Management Act, CAP 425, 2001.

<sup>243</sup> Ownership criteria in the Tuna Management Plan require that the vessel is "wholly owned and controlled by any company, society or other association of persons incorporated or established under the laws of Vanuatu, of which at least 51% of the shares are owned by citizens of Vanuatu".

<sup>244</sup> Malta is a member of the General Fisheries Commission for the Mediterranean and ICCAT. Belize participates as an observer on ICCAT and expressed an intention to become a cooperating member in the near future.

<sup>245</sup> CCAMLR, IATTC, Palau Arrangement, and the FSM Arrangement.

## 2.2.4 International Instruments and Agreements

The States were asked whether they had ratified, accepted or acceded to and implemented the 1982 Convention, the 1995 UN Fish Stocks Agreement, the FAO Code of Conduct, the FAO Compliance Agreement and the FAO IPOA-IUU. The States were asked to identify any other arrangements or agreements they were party to.

All 4 responding States have accepted and implemented the 1982 Convention. The Cook Islands, Malta and Vanuatu have accepted and implemented the 1995 UN Fish Stocks Agreement. Belize is in the process of introducing new legislation and ratifying the 1995 UN Fish Stocks Agreement.<sup>246</sup> Belize's new legislation will also implement the FAO Compliance Agreement and the FAO IPOA-IUU. Malta recently passed legislation implementing the 1982 Convention, the 1995 UN Fish Stocks Agreement and the FAO Code of Conduct.<sup>247</sup> Malta has ratified the FAO IPOA-IUU and is in the final stages of ratifying the FAO Compliance Agreement.<sup>248</sup> Vanuatu has agreed to the FAO Compliance Agreement as well as several other regional agreements.

## 2.3 Summary

Some open registry States are being proactive in implementing effective flag State control over their fleets, as follows.

- Belize:
  - Action Plan to raise the quality of its register.
  - Deregistration of several vessels found to be engaging in activities contrary to international conservation and management measures.
- Cook Islands:
  - New registry administration in place which is actively working towards raising the quality of its register as well.
- Malta and Vanuatu
  - New legislation to implement international fisheries conservation and management measures.
- Honduras
  - Deregistration or suspension of all international fishing vessels on its register.
  - Implementation of a requirement that each vessel registered sign an affidavit not to fish for tuna.

To a great extent, actions taken have responded to pressures created by the previously unregulated activities of their fishing fleets, but they also are proactive in encouraging compliance by their fleets with international, regional and subregional fisheries conservation and management measures.

## 3. Regional Fisheries Management Organizations

RFMO Secretariats and members are increasingly active in promoting compliance with their respective international conservation and management measures, and implementation of the international instruments. Effective flag State control measures have been implemented by several of the RFMOs. These range in degree according to the RFMO and the problems experienced.

The following activities of RFMOs have served to promote effective flag State control:

- implementation by RFMOs of conservation and management measures through their Conventions,<sup>249</sup>
- implementation by RFMO Members of international instruments,<sup>250</sup>

<sup>246</sup> Belize has ratified and enforces the Fishing and Conservation of the Living Resources of the High Seas Convention 1958. Belize also follows the conservation policies of ICCAT, IATTC, CCAMLR, IOTC, NAFO, NEAFC.

<sup>247</sup> Fisheries Conservation and Management Act (Chapter 425) adopted 4 June 2001.

<sup>248</sup> Malta participated in both the Technical Consultations on the issue of IUU fishing and has agreed to the adoption of the IPOA at the COFI meeting held in March 2001.

<sup>249</sup> See details on responses to questionnaire.

- membership in RFMOs by open registry States;<sup>251</sup>
- encouragement by RFMOs of non-Contracting Parties to adopt laws and regulations consistent with the provisions of the implementing Convention and/or international, regional or subregional conservation and management measures;
- RFMO rules requiring authorizations to fish, e.g., the IBSFC Fishery Rules<sup>252</sup> provide that all fishing can only take place with an authorization of a Contracting Party;<sup>253</sup> and
- exchange of information between RFMOs and non-Contracting Parties, including those from open registry States.<sup>254</sup>

Input was sought from RFMOs on the actions they took to address the issues associated with the activities of fishing fleets of open registry States was sought from RFMOs by questionnaire (Appendix 3). A list of the RFMOs polled is in Appendix 7. RFMOs were asked to provide information relating to the following general areas:

- fishing activities by open registry flag vessels;
- open registry States and the RFMO;
- sanctions and enforcement against open registry fishing vessels.

Of the 16 organizations that responded,<sup>255</sup> 10 provided information for use in this review,<sup>256</sup> 5 indicated that the issue was not of concern to their organization at this time,<sup>257</sup> and one response was not accessible.<sup>258</sup> The input from the ten responding RFMOs is summarized below.

### 3.1 Fishing Activities by Open Registry Flag Vessels

The RFMOs were asked to comment on the following matters respecting fishing activities by open registry flag vessels:

- Identify activities of open registry vessels that are of concern to the organization.
- Indicate whether such activities undermine conservation and management measures.
- Identify the flags flown by open registry vessels.

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<sup>250</sup> NAFO states that currently there are no open registry vessels fishing in NAFO Area and that such activity is not anticipated to occur on a large scale in the near future due to actions by NAFO as well as the application of international instruments developed by UN FAO.

<sup>251</sup> For example, IOTC, IATTC.

<sup>252</sup> Fishery Rules of the IBSFC, Rule 2.1 "Vessels flying the flag other than the one of the Contracting Party in whose waters they are fishing, outside of fisheries agreement between Contracting Parties or with a third country, shall have a specific authorization for a defined fishing activity from the official authorities of that Contracting Party and the flag state. The relevant authorities of the Authorizing Contracting Party under whose quota the fishing shall take place shall, prior to the commencement of the fishery, communicate to the IBSFC Secretariat the conditions under which this fishery can take place, specifying: the species, the quantities in live weight, the period of the fisheries, the name(s) of the vessel(s). A reference to the written authorization must be made in the logbook. When landing the catch the written authorization to fish in that Contracting Party's zone must be shown on request to the competent control authorities."

<sup>253</sup> The authorization must be within the Contracting Party's quota and specify the species, quantity, period of fishing and name of vessel. Reference to the authorization must be made in the logbook and produced upon request by control authorities. By this method, IBSFC controls and monitors fishing activity. According to IBSFC, there have been no reports of violations of fisheries conservation and management measures by vessels registered in open registry States.

<sup>254</sup> e.g. IOTC.

<sup>255</sup> CCSBT, CCAMLR, FFA, IATTC, IBSFC, ICCAT, IOTC, IPHC, IWC, LVFO, NAFO, NAMMCO, NASCO, NPAFC, PSC, SEAFO, SPC.

<sup>256</sup> CCAMLR, CCSBT, FFA, IOTC, NAFO, and NPAFC responded to the specific questions in the questionnaire. IBSFC, IATTC, ICCAT and NASCO provided information in various forms including a letter, resolutions, papers and/or electronic responses.

<sup>257</sup> IPHC, IWC, LVFO, NAMMCO, PSC. IWC indicated that a moratorium on commercial whaling has been in effect since 1986. The moratorium will not be lifted until a revised management scheme is in place which scheme will include provisions for inspection, observation and vessel registers.

<sup>258</sup> SEAFO's electronic response was provided, but could not be accessed. No additional responses were provided.

- d) Provide, if available, information on fleet size and vessel type.
- e) Indicate whether fleet activities would be affected by the exercise of flag State responsibilities.
- f) Indicate examples of effective flag State controls being exercised by open registry States over fishing vessels.

Seven of the responding RFMOs indicated an ongoing concern arising from vessels flagged in States operating an open registry.<sup>259</sup> The concerns include those activities which undermine fisheries conservation and management measures, including IUU fishing,<sup>260</sup> increasing volumes of fish being taken,<sup>261</sup> unlicensed fishing, unreported catches, lack of control of by-catch, and fishing in excess of allocations.<sup>262</sup> Failure to comply with international safety and marine pollution prevention measures also created ongoing concerns.<sup>263</sup>

CCAMLR reports that over the past five years the percentage of catch that is unreported has been as high as 98%. The extent of the problem in the CCAMLR Convention Area, which reports that flags of ten open registry countries fish in the Area, is shown in Appendix 9, Table 9.<sup>264</sup>

Six respondents identified the flags flown by open register vessels of concern to their region.<sup>265</sup> Belize, Honduras and Panama were cited by five of the respondents as fishing illegally, St. Vincent was cited by four respondents, Seychelles and Vanuatu by three respondents, and Cambodia, Cayman Islands,<sup>266</sup> Malta, Sao Tome and Principe, and Singapore<sup>267</sup> by two respondents. Fishing vessels operating under the following open register States were cited by the respondents as fishing illegally: Bolivia, Equatorial Guinea, Liberia, Mauritania, Mauritius, Morocco, Netherlands Antilles, Sierra Leone, Togo, and Venezuela.

Six organizations provided information on fleet size and/or type of fishing vessels that are of concern to that organization's area.<sup>268</sup> The type of vessels of greatest concern are longliners<sup>269</sup> and purse seiners.<sup>270</sup>

All responding RFMOs indicated that fleet activities would be affected by the effective exercise of flag State responsibilities. Five respondents identified Belize, Panama, Seychelles, and Vanuatu as open registry States which exercise flag State control.<sup>271</sup> Seychelles, Panama and Vanuatu are members of RFMOs<sup>272</sup> and Belize is considering joining an RFMO.<sup>273</sup>

<sup>259</sup> CCAMLR, CCSBT, FFA, ICCAT, IATTC, IOTC, NPAFC. NAFO and NASCO indicated that there had been problems in the past, but that there were no current concerns. IBSFC did not indicate any issues concerning the activities of open registry vessels.

<sup>260</sup> CCAMLR, ICCAT, IOTC, NASCO, NPFAC.

<sup>261</sup> CCSBT.

<sup>262</sup> NAFO.

<sup>263</sup> FFA.

<sup>264</sup> CCAMLR reported the flags of Belize, Bolivia, Honduras, Panama, Sao Tome and Principe, Seychelles, St. Vincent and the Grenadines, Vanuatu, and Togo.

<sup>265</sup> CCAMLR indicated the flags of Belize, Bolivia, Honduras, Panama, Sao Tome and Principe, Seychelles, St. Vincent and the Grenadines, Vanuatu, and Togo.

CCSBT indicated flags of Belize, Cambodia, Equatorial Guinea, and Honduras.

IATTC indicated the flags of Belize, Honduras, Panama, St. Vincent, and Vanuatu.

ICCAT indicated flags of Belize, Honduras and Panama.

IOTC indicated that flags of Cambodia, Cayman Islands, Belize, Liberia, Malta, Netherlands Antilles, Panama, Seychelles, Singapore, St. Vincent, and Vanuatu.

NAFO indicated that in the 1980s and 1990s the flags of concern were from Belize, Cayman Islands, Honduras, Malta, Mauritania, Morocco, Panama, Sao Tome and Principe, Sierra Leone, Vanuatu, and Venezuela.

<sup>266</sup> Cayman Islands responded to the questionnaire that it does not register fishing vessels.

<sup>267</sup> Singapore responded to the questionnaire that it does not register fishing vessels.

<sup>268</sup> CCAMLR, FFA, IATTC, ICCAT, IOTC, NAFO.

<sup>269</sup> CCAMLR, IATTC, IOTC, ICCAT.

<sup>270</sup> FFA, IOTC.

<sup>271</sup> IATTC, ICCAT, IOTC, NAFO, NASCO.

<sup>272</sup> Seychelles is a member of IOTC. Panama and Vanuatu are members of IAATC.

<sup>273</sup> IOTC indicated that Belize and Vanuatu are considering joining IOTC and are then expected to exercise flag State control.



Respondents reported that flag State control was exercised where RFMOs exerted pressure on an open registry State or its fishing vessels, including the imposition of trade measures and fines. For example, ICCAT and CCSBT implemented trade measures which pressured open registry States to comply with the respective RFMOs' conservation and management measures.<sup>274</sup>

Actions were also taken by Panama in 1993 against Panama-flagged vessels on the basis of evidentiary material provided by NAFO. Panamanian authorities imposed fines of approximately \$2000 CDN against 11 Panamanian flagged vessels that had been sighted in the NAFO Area. Eventually, the Panamanian Government withdrew registration of these vessels.

### 3.2 Open Registry States and the RFMOs

The organizations were asked to respond to the following questions respecting the interaction between RFMOs and open registry States.

- a) Do member States operate open registries?
- b) Does the organization require the exercise of flag State responsibilities in its Convention or other establishing instrument?
- c) Does the organization support the implementation among its members of the relevant international instruments?
- d) Does the organization seek ways of cooperating with open registry States to work towards more effective flag State control?
- e) Has the organization taken measures in relation to open registry States such as adoption of resolutions, refusal of allocations or implementation of sanctions if there is no effective flag State control?

Four of the RFMOs had member States that operate open registers.<sup>275</sup>

Nine of the responding organizations require the exercise of flag State responsibilities in its Convention or other establishing instrument.<sup>276</sup> For example, NPAFC's Convention Article V-1 provides that "*Each Party shall take all necessary measures to ensure that its nationals and fishing vessels flying its flag comply with the provisions of this Convention.*" And in Article IV-3, "*Each Party shall take appropriate measures aimed at preventing vessels registered under its laws and regulations from transferring for the purpose of avoiding compliance with the provisions of this Convention.*"

Seven of the responding RFMOs also support the implementation among its members of the relevant international instruments.<sup>277</sup> Two RFMOs did not answer this question directly<sup>278</sup> and one RFMO indicated that it supported the implementation of the substance of the international agreements, although the organization itself had not implemented any of the identified international instruments.<sup>279</sup>

Seven of the responding RFMOs indicated ways they cooperate with open registry States to work towards more effective flag State control.<sup>280</sup> Six organizations have taken measures in relation to open registry States. Examples of these cooperative measures include:

<sup>274</sup> See Part IV, Section 3(c).

<sup>275</sup> FFA (Marshall Islands, Vanuatu, Tonga, Samoa, Tuvalu, Cook Islands), IOTC (Seychelles), IATTC (Panama, Vanuatu), ICCAT (Barbados, Bermuda, Equatorial Guinea, Honduras, Morocco, Panama, Sao Tome and Principe).

<sup>276</sup> CCAMLR, CCSBT, IBSFC, ICCAT, IATTC, IOTC, NAFO, NASCO, NPAFC.

<sup>277</sup> CCAMLR, FFA, ICCAT, IOTC, NAFO, NASCO, NPAFC.

<sup>278</sup> IATTC and IBSFC.

<sup>279</sup> CCSBT notes that although it has not yet formally adopted any of the relevant instruments, there is broad consistency between the Code of Conduct, the UN Fish Stocks Agreement and the CCSBT Convention.

<sup>280</sup> CCAMLR, CCSBT, FFA, ICCAT, IOTC, NAFO, NASCO.

- the implementation of action plans;
- the passage of resolutions or the creation of committees to promote compliance;
- the implementation of programs to encourage effective flag State control; and
- communication with the open registry States to provide information and data on the relevant fishery.<sup>281</sup>

Six RFMOs also regularly invite open registry States to participate in the RFMO.<sup>282</sup> Two RFMOs<sup>283</sup> indicated that cooperation with open registry States was not an issue.

### 3.3 Sanctions and Enforcement against Open Registry Fishing Vessels

The RFMOs were asked to provide information on sanctions and enforcement where effective flag State control is not exercised. The questions appear below.

- a) Has the organization adopted any policies, resolutions or sanctions in respect of open registry fishing vessels where there is no effective flag State control?
- b) Does the organization have any information on enforcement measures that have been taken in relation to offences committed by open registry fishing vessels?

Five organizations identified sanction measures they had implemented against open registry States not exercising effective flag State control.<sup>284</sup> Sanctions included trade related measures<sup>285</sup> and diplomatic actions.<sup>286</sup> The trade-related actions implemented by CCAMLR, CCSBT and ICCAT have had significant positive impacts in securing compliance with respective Convention conservation and management measures. These are briefly reviewed below.

In 1999 CCAMLR introduced an innovative catch certification system<sup>287</sup> to address the increasingly serious illegal fishing of Patagonian toothfish.<sup>288</sup> The system “traces” the Patagonian toothfish from the moment it is caught until it is bought by the consumer. This compulsory labeling is monitored and validated at every step of the process. If it is not in conformity, the RFMO Member States are required to reject the product.

Data provided to CCSBT indicated that up to 1999 there had been significant and increasing volumes of southern bluefin tuna (SBT) (up to 15% of the catch) being taken by open registry vessels. To deter this IUU fishing, the CCSBT implemented a Trade Information Scheme (TIS)<sup>289</sup> which denies access to markets for SBT.

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<sup>281</sup> CCAMLR, ICCAT, IOTC, and NASCO have adopted resolutions; CCSBT has adopted a Tuna Statistical Document Program (CCSBT TIS) and the CCSBT Action Plan. IOTC has also adopted a certificate program for bigeye tuna traded internationally. NAFO has legal provisions and Conservation and Enforcement Measures as well as “the Scheme to Promote Compliance by non-Contracting Party Vessels with the Conservation and Enforcement Measures Established by NAFO” 1997.

<sup>282</sup> CCAMLR, CCSBT, FFA, ICCAT, IOTC, NAFO. All coastal States within the NASCO Convention Area with Atlantic salmon interests are Parties to NASCO except St. Pierre and Miquelon. The issue of whether or not to invite France (in respect of St. Pierre and Miquelon) to become a Contracting Party to NASCO is under consideration (CNL(01)68).

<sup>283</sup> NASCO (see footnote 101) and NPAFC.

<sup>284</sup> CCAMLR, CCSBT, ICCAT, NAFO, NASCO.

<sup>285</sup> CCAMLR, CCSBT, ICCAT.

<sup>286</sup> NAFO established a Standing Committee on non-Contracting Party Activities which develop diplomatic demarches to Non-Contracting Party vessel Governments fishing in the NAFO Area. All Contracting Parties undertake their diplomatic contacts to those Governments. NASCO also uses diplomatic channels to address activities of non-Contracting Parties. ICCAT also sends diplomatic demarches to countries that do not cooperate with ICCAT measures.

<sup>287</sup> Conservation Measure 170/XX Catch Documentation Scheme for *Dissostichus* spp.

<sup>288</sup> The problem is exclusively associated with longliners of which there have been over 130 sightings since 1997. Non-Contracting Parties whose vessels have been sighted and/or reported fishing in the Convention Area include: Belize, Bolivia, Honduras, Panama, Sao Tome and Principe, Seychelles, St. Vincent and the Grenadines, Vanuatu, Togo.

<sup>289</sup> June 2000.

The TIS provides that all members of the CCSBT maintain requirements for all imports of SBT to be accompanied by a completed CCSBT Statistical Document.<sup>290</sup> Shipments not accompanied by this form must be denied entry by the member country. All exports of SBT from countries and entities without responsibilities as flag State into member countries of CCSBT are basically refused by the import country. Considering that Japan is a Member State and is effectively the only importing country in the world, this is a very effective management system for SBT. The volume of trade from the countries identified by the CCSBT has declined significantly since the introduction of the TIS.

ICCAT has taken non-discriminatory and non-restrictive trade measures against non-Contracting<sup>291</sup> and Contracting Parties.<sup>292</sup> In 1993 and 1994 ICCAT established a Bluefin Tuna Statistical Document (BTSD) Program which requires that all bluefin tuna imported into a Contracting Party must be accompanied by a BTSD, validated by an authorised government official.<sup>293</sup> ICCAT has been able to compile considerable information on unreported catches through this program.<sup>294</sup>

These measures and other associated measures<sup>295</sup> (Appendix 8) have had considerable impact. The BTSD identified all bluefin tuna caught illegally by flag. The trade measures resulted in many impacted States initiating measures to monitor and control the vessels registered to them. For example, Panama has cancelled all the licences of fishing vessels for tuna and new licences are only granted to those that obtain an international fishing licence from Panamanian authorities. The Panamanian Government has also prohibited the catch of bluefin tuna.

These ICCAT measures have also resulted in increased membership in ICCAT and investigation by flag States whose vessels appeared in ICCAT's IUU list.

Three organizations provided information on enforcement measures taken against vessels which had committed offences.<sup>296</sup> This information is reproduced under Part IV.4, below, "Offences".

### 3.4 Summary

IUU fishing activities by open registry vessels undermine the conservation and management measures of many RFMOs. Effective flag State control would significantly improve the situation. To this end, RFMOs have taken a number of actions over the past decade to address the problems posed by flag of convenience vessels and IUU fishing. They are well positioned to do this both as a Secretariat and through its members.

Key pressures imposed by RFMOs which activated flag State control include trade-related measures,<sup>297</sup> deregistration<sup>298</sup> and the imposition of fines.<sup>299</sup> These have successfully persuaded States to become members of RFMOs or comply with conservation measures.<sup>300</sup> The trend of

<sup>290</sup> The document must be endorsed by an authorized competent authority in the exporting country and include extensive details of the shipment, including name of fishing vessel, gear type, area of catch, and dates of catch.

<sup>291</sup> As of 1999, prohibitions of imports of products of the pertinent species from Belize, Honduras and Panama. The sanctions were lifted against Panama when Panama demonstrated it had taken appropriate effective measures. See footnote 108.

<sup>292</sup> As of 1999, actions have been taken against Equatorial Guinea. See footnote 108.

<sup>293</sup> The signature and seal of this government official must have been previously registered with ICCAT.

<sup>294</sup> Case Study: How ICCAT is Combating IUU Fishing Activities, by Peter Miyake, PhD, ICCAT Assistant Executive Secretary, reproduced in European Parliament Committee on Fisheries Working Document 2 on the role of flags of convenience in the fisheries sector, 11 April 2001; rapporteur Patricia McKenna.

<sup>295</sup> Other measures associated with BTSD: Adoption of Port Inspection Scheme (1997); Establishment of a Vessel Sighting System to report IUU activities (1994, 1997); A vessel registry system (large pelagic longliners: 1994); A scheme to monitor the landings and transshipments of foreign vessels (1997)

<sup>296</sup> CCAMLR, ICCAT, NAFFC.

<sup>297</sup> e.g. the imposition of trade certificate programs by CCAMLR and CCSBT have pressured open registry States to exercise effective flag State control and comply with the conservation and management measures of the relevant Convention.

<sup>298</sup> e.g. deregistration of vessels in response to ICCAT pressure.

<sup>299</sup> e.g. the imposition of fines by Panama against Panama-flagged vessels and the eventual withdrawal of these vessels from Panama's register.

<sup>300</sup> e.g. as a result of ICCAT measures, Panama joined ICCAT. CCAMLR and CCSBT expressed similar positive results.

increasing cooperation among RFMOs is particularly effective in the campaign to prevent and deter the undermining of conservation and management measures.<sup>301</sup>

#### **4. Enforcement Measures**

Recipients of both questionnaires – open registry States and RFMOs - were asked to provide information on enforcement measures taken in respect of offences committed by open register fishing vessels during the period 1995-2001. All responding open registry States and three RFMOs provided the information described below.

##### **4.1 Open Registry States**

A summary of offences for Belize, Cook Islands and Vanuatu is provided in Appendix 9, Table 10. It shows seventeen offences by Belize vessels, one each by a vessel from the Cook Islands and three flying the Vanuatu flag. Unfortunately, in most cases information was not submitted on the type of fishing vessel involved. Most vessels were found guilty of violating fishing regulations or measures (and one for drug trafficking), in various locations. Fifteen of Belize's vessels and all three of Vanuatu's were deregistered.

Significantly, where fines were imposed, they ranged from \$10 000 to \$30 000, which may be relatively modest in relation to the value of the resource fished.

Malta reported that during 1995-2001 there were no reports of offences in respect of Maltese fishing vessels.

##### **4.2 Regional Fishery Management Organizations**

###### **4.2.1 CCAMLR**

The enforcement measures taken by CCAMLR in relation to offences committed by open register vessels appear in Appendix 9, Table 11. Belize deregistered four vessels that engaged in IUU fishing, and issued a warning to one other.

CCAMLR issued several submissions to Panama on IUU fishing activities by its flag vessels, and Panama provided CCAMLR with a list of all its vessels licensed to fish on the high seas in the Southern Oceans. Panama advised that no licences had been issued for the CCAMLR Convention Area.

CCAMLR advised Vanuatu of sightings of Vanuatu-flagged vessels in the Convention Area in 1997 and 1998, and Vanuatu notified CCAMLR that vessels proved to have committed an offence will be considered for suspension or deletion from its registry.

###### **4.2.2 NPFAC**

NPFAC reported illegal fishing by a Honduran flagged vessel in 2000. The vessel was seized by the US Coast Guard with the Honduran Government's cooperation and forfeited under the U.S. District Court decree. The crew was repatriated and the vessel was ordered to be sold at a public auction.

###### **4.2.3 FFA**

Information on reported violations of fisheries legislation held in the FFA Violations and Prosecutions (VAP) database provides an indication of the level and type of violations that have

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<sup>301</sup> e.g. the certificate programmes adopted by CCSBT and IOTC have resulted in the exchange of information which assists in improving management of relevant fisheries. Also, the many resolutions passed by CCAMLR, IOTC, ICCAT and NASCO, the Action Plan adopted by CCSBT, and Conservation and Enforcement Measures adopted by NAFO encourage cooperation among States to better conserve and manage the relevant fisheries through information sharing and effective flag State control.

occurred over the past 20 years in the EEZs of member countries.<sup>302</sup> It also indicates the relative success of the combination of legal and technical elements of fishing vessel administration and monitoring in creating a strong compliance environment in the Western and Central Pacific Ocean region.

If the number of reported violations has fluctuated with the rise and fall of fishing activity in recent years, it appears that the compliance environment that has been created in the region has had a positive effect in reducing the illegal activities of fishing vessels in the waters of FFA member States. Throughout this period, it also appears that the background level of IUU fishing, while low, has been relatively constant.<sup>303</sup>

The number of recorded violations for the period 1978-2001 is dominated by Taiwanese vessels (40 per cent), particularly longliners. Japanese longliners (14%) and Korean (9%) and Taiwanese (8.5%) purse seiners also figure prominently. FOC vessels (Belize, Panama, Honduras) do not contribute significantly to the total number of violations.<sup>304</sup>

However, the percentage rate of violations (number of violations by flag compared with the size of each fleet active in the region) shows that some of the smaller fleets, such as Belize, have a higher percentage violation rate than the larger fleets of Japan and China. For example, in 1995, 30% of Belize's fleet and 20% of Vanuatu's fleet were involved in violations compared to 3.8% of Korea's and 1.8% of China's fleets.

A summary of violations by flag and type of violation<sup>305</sup> indicates that illegal fishing accounts for 64% of the recorded violations, while non-compliance with licences accounts for 25%. Breach of national law and international law account for 9% and 0.6% respectively.

At least USD12.4 million has been received during the period 1978-2001 in fines by FFA members.<sup>306</sup> Approximately 7.5% of these fines were paid by vessels operating under the open registers of Belize, Honduras, Marshall Islands and Panama.

## 5. Summary

Of the 20 offences described by open registry States, 16 resulted in deregistration of the offending vessel(s), five resulted in fines up to \$50,000, four resulted in fines and deregistration, and two had no follow-up action. RFMOs reported that open registry States took similar actions (i.e. deregistration and payment of fines) for violations in the relevant Convention Areas. In the FFA region, a higher proportion of fleets registered in open registry States were cited for violations compared to other fishing fleets.

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<sup>302</sup> Reported Fisheries Violations in the EEZs of FFA Member Countries, 1978 – 2001: An Analysis of the Violations and Prosecutions Database, FFA Report No. 01/18.

<sup>303</sup> An analysis of the VAP database illustrates a steady increase in the total number of recorded violations from 1992 to 1994, coinciding with the influx to the region of small longliners from China and the implementation by FFA members of the Harmonised Terms and Conditions For Foreign Fishing Vessel Access (MTCs).<sup>303</sup> The marked decline in the number of violations after 1995 could be due to the departure from the region of small Chinese longliners and the existence in the region of a more effective compliance environment, including the development and implementation of the FFA members countries' vessel monitoring system. The rapid increase in recorded violations from 1992–1994 and the subsequent decline in the following years also coincides with the fluctuations in numbers of vessels, mainly longline vessels, in good standing on the Regional Register during this period. Also, an estimate of the level of IUU fishing in the indicates that the number of vessels not in good standing at the time of the violation remained relatively constant from 1992 to 2000, despite the relatively high total number of violating vessels from 1992-1995. This suggests that there has existed, and continues to exist, a low and constant level of IUU fishing in the region during this period.

<sup>304</sup> Reported Fisheries Violations in the EEZs of FFA Member Countries, 1978–2001: An Analysis of the Violations and Prosecutions Database, FFA Report No. 01/18.

<sup>305</sup> i.e. illegal fishing, breach of national law, licence non-compliance, breach of international law.

<sup>306</sup> The fines range from USD126 to USD1 400 000.

## V. CONCLUSION

The United Nations Open-Ended Consultative Process on developments in ocean affairs concluded in its April, 2002 discussion on IUU fishing that:<sup>307</sup>

despite a decade of progress in establishing instruments and programmes related to oceans, the international community continues to confront urgent and serious challenges and sustainable fisheries is a further action for priority action, owing to the fact that approximately 75 per cent of the world's fisheries are either fully exploited or over-exploited.

The progress in establishing instruments and programmes related to oceans in the post-UNCED era is considerable. These instruments have progressively agreed on a tighter weave relating to the duties and responsibilities of the flag State in respect of its fishing vessels. An important objective of these instruments in this regard, reinforced by recent jurisprudence of the ITLOS, is to secure more effective implementation of the duties of the flag State.

Considering the rising number of fishing vessels on open registers, and States that operate open registers, the real issue is whether the instruments available provide an adequate framework for flag State control, what are the consequences of open registry States that fail to exercise their duties and what more can be done to avoid unwanted consequences?

The 1982 Convention, incorporating much of the 1958 High Seas Convention, consolidated the rights and duties of the flag State. The subsequent instruments elaborating on these rights and duties address the issues in an interdependent manner, but with differing emphasis and requirements.

- The FAO Compliance Agreement was the first instrument to directly address the problem of vessels reflagging, and to require that vessels of flag States not engage in activities undermining international conservation and management measures.
- The UN Fish Stocks Agreement went further in requiring flag States to ensure compliance by its vessels with subregional and regional conservation and management measures for straddling and highly migratory fish stocks, and contains elaborate provisions regarding authorization, information and monitoring, control and surveillance.
- The FAO Code of Conduct provides standards of conduct as well as technical guidelines and applies to all States and entities and fishers.
- The FAO IPOA-IUU most directly addresses IUU fishing and the problem of FOCs, especially in the context of RFMOs.

In addition, the 1986 Convention on the Registration of Ships, while not applicable to fishing vessels, provides valuable precedent for future guidelines relating to the implementation of existing instruments.

While these instruments provide the legal mechanism to achieve effective flag State control, a central issue is whether their implementation by some States provides an impetus for vessels to operate under open registers; do the legal and practical realms converge, or are they separate?

In the legal realm, the adoption of international instruments by flag States in itself does not appear to be the primary motivating force behind the use of open registers by fishing fleets. In addition, in many cases the actions of open registry States do not appear to be directly related to adoption or implementation of international instruments, or participation in the work of RFMOs.

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<sup>307</sup> United Nations Open-Ended Consultative Process Established by the General Assembly in its Resolution 54/33 in order to Facilitate the Annual Review by the General Assembly of Developments in Ocean Affairs, Draft Report April, 2002, para. 78.

A more likely rationale underlying the choice of registers – open, or not - is the implementation of the international instruments, including through trade sanctions and other measures adopted by RFMOs and their member States. It is clear that the international instruments provide a comprehensive foundation for the exercise of flag State responsibilities by the international community, including open registry States. They way ahead may depend on identifying how to encourage effective implementation of those responsibilities.

Ratification or adoption of the international instruments and implementation in national law would be an obvious first step. In addition, initiatives being taken by open registry States, RFMOs and non-flag States serve as useful precedent on a practical level. Some open registry States are requiring compliance by their vessels with the international instruments and international conservation and management measures. Their actions include:

- implementing requirements of international instruments in national legislation;
- establishing an application process which requires an authorization to fish;
- deregistration of vessels for non-compliance;
- implementation of fines or other sanctions for non-compliance; and
- membership or participation in RFMOs.

RFMOs are taking significant steps involving communications with non-member open registry States including to cooperate and participate in the organization. They are implementing strategies through their members to secure compliance with international conservation and management measures. Some successful strategies noted above in Part IV involve port access, trade-related measures, fines and deregistration.

Action taken by non-flag States to discourage unregulated activities of open registry vessels can include:

- restricting the fishing companies registered within their jurisdiction from owning and operating open register fishing vessels;
- conducting rigorous inspections of open register vessels when landing their catch or resupplying; and
- imposing trade or other sanctions if they are the ultimate destination of fish caught by the open register fleets.

It is evident that the overriding benefits of open registers – and therefore the rationale for their establishment and use – are largely economic for the open registry States and the fishing vessel owners. However, as noted in section III.1, the economic benefits for the open registry States to include fishing vessels on their registers appears to be limited, while the incentive that some open registers provide for IUU fishing is great. This situation could provide an impetus for serious efforts to control the registers in respect of fishing vessels. Such efforts could be made by FAO-IMO collaboration, in accordance with the FAO IPOA-IUU,<sup>308</sup> and might include:

- further study on whether measures that have been used to improve the management of open registers for commercial shipping could be adapted to fishing vessels;
- additional measures that States should take to deter business between their insurers, bankers, service suppliers, etc. and vessels identified as engaged in IUU fishing, as provided in the FAO IPOA-IUU.<sup>309</sup>
- consideration of extending to fishing vessels, for compliance purposes, an IMO initiative that would require a “continuous synopsis” record to be carried on board vessels for safety purposes - the record would show the complete history of the owners and flags of the vessel, but the issue of requiring such private sector information to be publicly available may arise.

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<sup>308</sup> Paragraph 90.

<sup>309</sup> Paragraph 73.

In addition, guidelines for fishing vessel registration and compliance mechanisms could be developed by FAO under the Code of Conduct, in collaboration with IMO and other agencies. Relevant provisions of the 1986 Convention on the Registration of Ships could provide precedent for such guidelines, as well as successful policy, administrative and legal practice of States and RFMOs.

Collaboration could take into account the genuine link requirement (that States ensure that they can exercise their responsibilities effectively before registering a fishing vessel, and authorizing it to fish), and tools developed to date such as an effective information and data base, application process, fishing authorization process and cost-effective monitoring, control and surveillance strategies. Significant fines and other penalties such as deregistration could be reviewed.

The implementation of flag State responsibilities in the international instruments represents "work in progress", including for open registry States in respect of their fishing fleets. Positive steps to elaborate and implement existing provisions could assist in meeting the urgent challenges in achieving sustainable fisheries.



### OPEN REGISTRY STATES

Following are 32 States operating open registers that include or have included fishing vessels, as sourced in March, 2002.

Antigua and Barbuda  
 Bahamas  
 Barbados  
 Belize  
 Bermuda  
 Cambodia  
 Cayman Islands  
 Cook Islands  
 Cyprus  
 Equatorial Guinea  
 Gibraltar  
 Honduras  
 China, Hong Kong, SAR  
 Isle of Man  
 Kerguelen  
 Liberia  
 Malta  
 Marshall Islands  
 Mauritania  
 Mauritius  
 Morocco  
 Netherlands Antilles  
 Panama  
 Samoa  
 Sao Tome and Principe  
 Seychelles  
 Sierra Leone  
 Singapore  
 Saint Vincent and the Grenadines  
 Tonga  
 Tuvalu  
 Vanuatu

Sources: Communications from FAO, responses to Questionnaires, ITF website ([www.itf.org.uk](http://www.itf.org.uk))

Note: The following States responded to the questionnaire that they do not currently register fishing vessels:

Antigua and Barbuda  
 Barbados  
 Bermuda  
 China, Hong Kong, SAR  
 Liberia and Singapore

but had fishing vessels registered as of December 31, 2001 (Lloyd's Register Fairplay – World Fleet Statistics 2001).

See also Appendix 5 for table of States which indicated registration of fishing vessels.

### QUESTIONNAIRE SENT TO OPEN REGISTRY STATES

- Please provide information in the space allocated in the right column.
- If the answers to these questions are confidential, please indicate "confidential" in space provided.
- If information requested is available as a law, regulation or other instrument, respondents may wish to provide the text, if available, in lieu of relevant responses in this questionnaire.

#### 1. GENERAL

| NAME OF COUNTRY  |   |
|--|---|
| Full contact details of the administrator of the Open Registry                   | Name:<br>Ministry/Agency:<br>Address:<br>Phone:<br>Fax:<br>Email: |
| Requirements for Vessel Registration   |   |
| Restrictions to registration, if any (e.g. age of vessel)                        |   |
| Can a vessel be de-registered, e.g. for violating the law?                       |   |
| APPLICATION PROCESS  |   |
| Information required (please provide a copy of the application form if possible) |   |
| How are applications received?   |   |
| How are applications processed?  |   |
| How long does the application process take?                                      |   |
| How is the decision to approve registration taken?                               |   |
| FISHING VESSELS  |   |
| How many fishing vessels are currently registered?                               |   |
| What type of fishing vessels are registered?                                     |   |
| Have any fishing vessels been de-registered? If so please give reasons.          |   |

|  |  |
|--|--|
| <p>Have any fishing vessels committed an offence for the period 1995–2001?</p> <p>If so, please provide available information.</p> | <p>Flag:</p> <p>Fishing vessel type:</p> <p>Nature of offence:</p> <p>Location of offence:</p> <p>Action taken:</p> <p>Results of the offence or any action taken:</p> |
| <p>Please provide information on any activities of the fishing vessels in your registry that might be helpful to this review.</p>  |  |

## 2. NATIONAL POLICY, LEGISLATION AND ACTION

Please comment as appropriate to assist our understanding.  
If a question is not applicable, please check N/A.

|  | Yes | No | N/A | Comment |
|--|-----|----|-----|---------|
| <p><b>Is there a policy on flag State responsibilities?</b></p>  |     |    |     |         |
| <p>Is there <b>legislation</b> enabling flag State responsibilities to be exercised?</p> <ul style="list-style-type: none"> <li>• If yes, please provide reference, and a copy of legislation if possible.</li> <li>• If no, please describe constraints if any</li> </ul> |     |    |     |         |
| <p>Does legislation provide for <b>offences</b> for non-compliance by vessels? If so, please describe.</p>   |     |    |     |         |
| <p>Is <b>enforcement action</b> taken in respect of offending vessels? If so, please describe.</p>   |     |    |     |         |
| <p>Are there practical or other <b>constraints</b> to taking <b>enforcement action</b> in respect of offending fishing vessels? If so, please describe.</p>  |     |    |     |         |
| <p>Are <b>sanctions</b> imposed to secure compliance with international conservation and management measures? If so, please describe.</p>  |     |    |     |         |
| <p>Are <b>administrative arrangements</b> in place that implement flag State responsibilities? If so, please describe them and how they were operationalized.</p>  |     |    |     |         |
| <p>Is your State a member of, or does it participate in any <b>Regional Fisheries Management Organizations</b>? If so, please identify.</p>  |     |    |     |         |

### 3. INTERNATIONAL INSTRUMENTS AND AGREEMENTS

| Instrument   | Is it ratified,<br>accepted or<br>acceded?<br><br>Yes – Y<br>No - N | Is it<br>implemented?<br><br>Yes – Y<br>No - N | Please provide comments as<br>appropriate, including constraints,<br>future plans, etc. |
|--|---|--|---|
| UNCLOS   |   |  |   |
| UN Fish Stocks<br>Agreement  |   |  |   |
| FAO Code of<br>Conduct   | (N/A) <sup>310</sup>  |  |   |
| FAO Compliance<br>Agreement  |   |  |   |
| International Plan<br>of Action on IUU<br>Fishing                  |   |  |   |
| Other, including<br>bilateral<br>arrangements<br>(please identify) |   |  |   |

<sup>310</sup> As a voluntary instrument, the Code of Conduct is not subject to ratification, acceptance or accession. But questions relating to its implementation are relevant.

## QUESTIONNAIRE SENT TO RFMOS

- Please respond with any information which may be available.
- We would welcome any further references or suggestions for obtaining information.
- You may wish to provide us with appropriate documents or references in lieu of responding to relevant questions

|   |  |
|---|--|
| <b>NAME OF ORGANIZATION:</b>  |  |
| <b>FISHING ACTIVITIES BY OPEN REGISTRY FLAG VESSELS</b>   |  |
| <b><i>Please respond to the questions below if any fishing activities of Open Registry flag vessels are of concern to your organization and/or its members.</i></b> |  |
| Please describe the activities of the Open Registry flag vessels that are of concern – including past, current and potential as appropriate.                        |  |
| Please indicate whether the vessels undermine conservation and management measures agreed by your members, and if so the extent and frequency.                      |  |
| Please indicate if possible the flags flown by the Open Registry flag vessels.  |  |
| Please provide available information on the fleet size and type of vessels.   |  |
| Would the fleet activities likely be affected by the effective exercise of flag State responsibilities?   |  |
| <b><i>Please respond to the questions below if some fishing activities by Open Registry flag vessels are not of concern to your organization</i></b>                |  |
| Please describe why activities of the Open Registry flag vessels are not of concern to your organization.   |  |
| Please indicate if possible any examples of effective flag State controls being exercised by Open Registry States over fishing vessels in your area of competence.  |  |
| <b>OPEN REGISTRY STATES AND YOUR ORGANIZATION</b>   |  |
| Do any of your member States operate Open Registries, if so please provide any commentary that would be appropriate for this review.                                |  |
| Does your organization require the exercise of flag State responsibilities in its Convention or other establishing instrument?                                      |  |
| Does your organization support implementation among its members of the relevant international instruments? Please provide details as appropriate.                   |  |

|  |  |
|--|--|
| <p>Does your organization seek ways of cooperating with Open Registry States to work towards more effective flag State control, such as -</p> <ul style="list-style-type: none"> <li>• inviting the participation of Open Registry States in your organization, or</li> <li>• encouraging bilateral agreement between members and the Open Registry States?</li> </ul> |  |
| <p>Has your organization taken measures in relation to Open Registry States, such as adoption of resolutions, refusal of allocations or sanctions if there is no effective flag State control? If so, please describe.</p>   |  |
| <p><b>SANCTIONS AGAINST OPEN REGISTRY FISHING VESSELS WHERE THERE IS NO EFFECTIVE FLAG STATE CONTROL</b></p>   |  |
| <p>Has your organization adopted any policies, resolutions or sanctions in respect of open registry fishing vessels where there is no effective flag State control? Please describe.</p>   |  |
| <p><b>ENFORCEMENT AGAINST OPEN REGISTRY FISHING VESSELS</b></p>  |  |
| <p>Does your organization have any information on enforcement measures that have been taken in relation to offences committed by Open Registry fishing vessels? If so, please provide as much of the following detail as possible for the years 1995-2001.</p>   | <p>Flag:</p> <p>Fishing vessel type:</p> <p>Nature of offence:</p> <p>Location of offence:</p> <p>Action taken:</p> <p>Results of the offence or any action taken:</p> |

## FISHING VESSELS REGISTERED ON NATIONAL REGISTERS

| Country of Registration       | # Fish Catching Vessels | # Other Fishing Vessels |
|-------------------------------|-------------------------|-------------------------|
| ARUBA                         | 1                       |                         |
| ALBANIA                       | 2                       |                         |
| ALGERIA                       | 23                      |                         |
| ANGOLA                        | 89                      | 1                       |
| ANTIGUA & BARBUDA..           | 1                       |                         |
| ARGENTINA                     | 395                     | 4                       |
| AUSTRALIA                     | 263                     | 3                       |
| AZERBAIJAN                    | 11                      | 3                       |
| BAHAMAS                       | 6                       |                         |
| BAHRAIN                       | 7                       |                         |
| BANGLADESH                    | 47                      |                         |
| BARBADOS                      | 5                       |                         |
| BELGIUM                       | 95                      |                         |
| BELIZE                        | 464                     | 17                      |
| BENIN                         | 2                       |                         |
| BOLIVIA                       | 11                      |                         |
| BRAZIL                        | 80                      | 1                       |
| BRUNEI                        | 1                       |                         |
| BULGARIA                      | 21                      | 2                       |
| CAMBODIA                      | 21                      | 2                       |
| CAMEROON                      | 49                      |                         |
| CANADA                        | 298                     | 13                      |
| CAPE VERDE REPUBLIC           | 9                       |                         |
| CHILE                         | 336                     | 2                       |
| CHINA                         | 384                     |                         |
| CHINA, HONG KONG, SAR         | 1                       | 66                      |
| MACAO, SAR                    | 1                       |                         |
| TAIWAN, PROVINCE OF CHINA     | 279                     | 13                      |
| COLOMBIA                      | 33                      |                         |
| CONGO                         | 15                      |                         |
| CONGO (DEMOCRATIC REPUBLIC)   | 7                       |                         |
| COSTA RICA                    | 6                       |                         |
| COTE D'IVOIRE                 | 23                      | 1                       |
| CROATIA                       | 33                      | -                       |
| CUBA                          | 44                      |                         |
| CYPRUS                        | 50                      | 11                      |
| DENMARK                       | 276                     |                         |
| DENMARK DIS                   | 2                       | 4                       |
| FAEROES                       | 111                     |                         |
| FAEROES (FAS)                 | 1                       | 3                       |
| DJIBOUTI                      | 2                       |                         |
| DOMINICA                      | 3                       |                         |
| DOMINICAN REPUBLIC            | 2                       |                         |
| ECUADOR                       | 119                     |                         |
| EGYPT                         | 7                       |                         |
| EL SALVADOR                   | 10                      |                         |
| EQUATORIAL GUINEA             | 51                      |                         |
| ESTONIA                       | 77                      | 4                       |
| FIJI                          | 6                       |                         |
| FINLAND                       | 23                      |                         |
| FRANCE                        | 308                     |                         |
| FRENCH ANTARCTIC<br>TERRITORY | 4                       |                         |

|  |      |     |
|--|------|-----|
| GABON                                      | 24   |     |
| GAMBIA                                     | 3    |     |
| GEORGIA                                    | 39   | 7   |
| GERMANY                                    | 115  | 6   |
| GHANA                                      | 164  | 4   |
| GREECE                                     | 85   | 1   |
| GRENADA                                    | 1    |     |
| GUATAMALA                                  | 5    |     |
| GUINEA                                     | 22   |     |
| GUINEA-BISSAU                              | 14   |     |
| GUYANA                                     | 31   |     |
| HAITI                                      | 1    |     |
| HONDURAS                                   | 385  | 11  |
| ICELAND                                    | 297  | 4   |
| INDIA                                      | 211  |     |
| INDONESIA                                  | 334  | 4   |
| IRAN                                       | 64   |     |
| IRAQ                                       | 7    |     |
| IRISH REPUBLIC                             | 119  | 1   |
| ISRAEL                                     | 1    |     |
| ITALY                                      | 177  |     |
| JAPAN                                      | 1562 | 113 |
| KAZAKHSTAN                                 | 8    | 4   |
| KENYA                                      | 8    |     |
| KIRIBATI                                   | 2    |     |
| KOREA (DEMOCRATIC PEOPLE'S<br>REPUBLIC OF) | 31   | 5   |
| KOREA (REPUBLIC OF)                        | 1085 | 62  |
| KUWAIT                                     | 69   |     |
| LATVIA                                     | 98   | 4   |
| LEBANON                                    | 1    |     |
| LIBERIA                                    | 1    | 3   |
| LIBYAN ARAB JAMAHIRIYA                     | 62   |     |
| LITHUANIA                                  | 77   | 3   |
| MADAGASCAR                                 | 68   |     |
| MALAYSIA                                   | 20   | 2   |
| MALDIVE ISLANDS                            | 5    |     |
| MALTA                                      | 8    |     |
| MARSHALL ISLANDS                           | 9    | 1   |
| MAURITANIA                                 | 136  | 2   |
| MAURITIUS                                  | 23   |     |
| MEXICO                                     | 360  |     |
| MICRONESIA                                 | 1    |     |
| MOROCCO                                    | 394  | 1   |
| MOZAMBIQUE                                 | 113  | 1   |
| MYANMAR                                    | 32   | 3   |
| NAMIBIA                                    | 117  | 4   |
| NETHERLANDS                                | 349  |     |
| NETHERLANDS<br>ANTILLES                    | 24   | 2   |
| NEW ZEALAND                                | 93   |     |
| COOK ISLANDS                               | 4    |     |
| NICARAGUA                                  | 22   |     |
| NIGERIA                                    | 161  | 2   |
| NORWAY                                     | 594  | 55  |
| NORWAY (NIS)                               | 3    | 1   |
| OMAN                                       | 2    | 1   |
| PAKISTAN                                   | 5    |     |



|                           |              |            |
|---------------------------|--------------|------------|
| PANAMA                    | 202          | 27         |
| PAPUA NEW GUINEA          | 19           |            |
| PERU                      | 682          | 1          |
| PHILIPPINES               | 432          | 12         |
| POLAND                    | 240          | 2          |
| PORTUGAL                  | 208          | 1          |
| QATAR                     | 4            |            |
| ROMANIA                   | 40           |            |
| RUSSIAN FEDERATION        | 2013         | 232        |
| SAINT HELENA              | 1            |            |
| SAINT VINCENT             | 160          | 5          |
| SAMOA                     | 1            |            |
| SAO TOME AND PRINCIPE     | 6            |            |
| SAUDI ARABIA              | 22           | 1          |
| SENEGAL                   | 175          | 1          |
| SEYCHELLES                | 13           |            |
| SIERRE LEONE              | 29           | 1          |
| SINGAPORE                 | 4            |            |
| SLOVENIA                  | 6            |            |
| SOLOMON ISLANDS           | 9            |            |
| SOMALI REPUBLIC           | 8            |            |
| SOUTH AFRICA              | 137          | 3          |
| SPAIN                     | 1065         | 5          |
| SPAIN (CSR)               | 1            |            |
| SRI LANKA                 | 15           |            |
| SWEDEN                    | 111          | 2          |
| TANZANIA (UNITED REP. OF) | 12           |            |
| THAILAND                  | 48           | 2          |
| TOGO                      | 6            |            |
| TONGA                     | 9            | 2          |
| TRINIDAD AND TOBAGO       | 15           |            |
| TUNISIA                   | 18           |            |
| TURKEY                    | 13           | 1          |
| TURMENISTAN               | 9            | 2          |
| UKRAINE                   | 204          | 24         |
| UNITED ARAB EMIRATES      | 2            |            |
| UNITED KINGDOM            | 487          | 7          |
| ANGUILLA                  | 1            |            |
| BERMUDA                   | 1            |            |
| BRITISH VIRGIN ISL        | 2            |            |
| CHANNEL ISL               |              |            |
| FALKLAND ISL              | 3            |            |
| GIBRALTAR                 | 27           | 1          |
| ISLE OF MAN               | 1            |            |
| TURKS & CAICOS            | 1            | 1          |
| UNITED STATES OF AMERICA  | 3261         | 23         |
| URUGUAY                   | 59           |            |
| VANUATU                   | 55           |            |
| VENEZUELA                 | 90           | 1          |
| VIET NAM                  | 58           | 2          |
| YEMEN                     | 11           |            |
| UNKNOWN                   | 1349         | 26         |
| <b>WORLD TOTALS</b>       | <b>23106</b> | <b>842</b> |

## OPEN REGISTRY STATES POLLED

| State                  | Response<br>Yes/No | Fishing Vessels Registered <sup>1</sup> |
|------------------------|--------------------|---|
| Antigua and Barbuda    | Yes                | No                                      |
| Bahamas                | No                 |   |
| Barbados               | Yes                | No                                      |
| Belize                 | Yes                | Yes                                     |
| Bermuda                | Yes                | No                                      |
| Cambodia               | No                 |   |
| Cayman Islands         | Yes                | No                                      |
| Cook Islands           | Yes                | Yes                                     |
| Cyprus                 | No                 |   |
| Gibraltar              | Yes                | No                                      |
| Honduras               | No                 |   |
| China, Hong Kong, SAR  | Yes                | No                                      |
| Isle of Man            | No                 |   |
| Liberia                | Yes                | No                                      |
| Malta                  | Yes                | Yes                                     |
| Marshall Islands       | No                 |   |
| Morocco                | No                 |   |
| Panama                 | No                 |   |
| Samoa                  | No                 |   |
| Sierra Leone           | No                 |   |
| Singapore              | Yes                | No                                      |
| St. Vincent            | No                 |   |
| Tonga                  | No                 |   |
| Tuvalu                 | No                 |   |
| Vanuatu                | Yes                | Yes                                     |
| <b>Total</b> <b>25</b> | <b>Yes = 12</b>    | <b>Yes = 4</b>                          |

<sup>1</sup> Status of fishing vessel registration based on States' responses to questionnaire. Note that Lloyd's Register - Fairplay, World Fleet Statistics 2001 provides fishing vessel registration for the those States which did not receive or respond to the questionnaire. See Appendix 4.

## AVAILABLE CONTACT INFORMATION FOR OPEN REGISTRY STATES THAT REGISTER FISHING VESSELS

| State                        | Contact   | Address  | Fax            | Phone          | e-mail   |
|------------------------------|---|--|----------------|----------------|--|
| <b>Bahamas</b>               | N/A   |  |                |                |  |
| <b>Belize</b>                | Angelo Mouzouropoulos, FICS<br>FCI Arb<br>Director General<br>International Merchant Marine<br>Registry of Belize | Marina Towers, Suite 204,<br>Newtown Barracks<br>Belize City, Belize, C.A. | (501) 2 35048  | (501) 2 35026  | <a href="mailto:immarbe@btl.net">immarbe@btl.net</a>               |
| <b>Cambodia</b>              | Cambodia Ship Registry<br>Operational Headquarters<br>C/o Cambodia Shipping<br>Corporation Pte Ltd.               | 10 Anson Road #25-15<br>International Plaza<br>Singapore 079903            | (65) 323 7773  | (65) 225 1115  | <a href="mailto:csrship@singnet.com.sg">csrship@singnet.com.sg</a> |
| <b>Cook Islands</b>          | Cook Islands Maritime &<br>Shipping   | P.O. Box 514<br>Rarotonga, Cook Islands                                    | (+682) 23843   | (+682) 23848   | <a href="mailto:cimsrl@registry.co.ck">cimsrl@registry.co.ck</a>   |
| <b>Cyprus</b>                | N/A   |  |                |                | <a href="mailto:pioxx@cytanet.com.cy">pioxx@cytanet.com.cy</a>     |
| <b>Equatorial<br/>Guinea</b> | N/A   |  |                |                |  |
| <b>Honduras</b>              | General Directorate<br>Merchant Marine of Honduras  | N/A  | (504) 236-8866 | (504) 221-0721 | <a href="mailto:hondumarine@newcom.hn">hondumarine@newcom.hn</a>   |
| <b>Isle of Man</b>           | N/A   |  |                |                | <a href="mailto:shipping@dti.gov.im">shipping@dti.gov.im</a>       |
| <b>Kerguelen</b>             | N/A   |  |                |                |  |
| <b>Malta</b>                 | Mr. Lino Vassallo<br>Executive Director Merchant<br>Shipping<br>Malta Maritime Authority                          | Maritime House<br>Lascaris Wharf<br>Valletta VLT 01                        | +356 21 241460 | +356 21 250360 | <a href="mailto:lcvassallo@mma.gov.mt">lcvassallo@mma.gov.mt</a>   |
| <b>Marshall<br/>Islands</b>  | James Myazoe<br>Deputy Commissioner<br>Republic of the Marshall islands<br>Maritime Administrator                 | P.O. Box 1405<br>Majuro, RMI MH 96960                                      | (692) 247-3017 | (692) 247 3018 |  |

| State                        | Contact   | Address                                  | Fax             | Phone        | e-mail   |
|------------------------------|---|--|-----------------|--------------|--|
|                              | Registrar of Ships for the Republic of the Marshall Islands                                 | Reston, VA                               |                 |              |  |
| <b>Mauritania</b>            | N/A   |  |                 |              |  |
| <b>Morocco</b>               | Morocco Department of Ocean Fisheries   |  | 212 37 68 81 35 |              |  |
| <b>Netherlands Antilles</b>  | N/A   |  |                 |              |  |
| <b>Panama</b>                | The Panama Registry   |  |                 |              |  |
| <b>Samoa</b>                 | Maselino Tominiko<br>Assistant secretary<br>Marine<br>Ministry of Transport                 | P.O. Box 1607<br>Apia, Samoa             | 685 21900       | 685 23700    | <a href="mailto:Maselinot@samo.ws">Maselinot@samo.ws</a>       |
| <b>Sierra Leone</b>          | N/A   |  |                 |              | <a href="mailto:cocsl@sierratel.sl">cocsl@sierratel.sl</a>     |
| <b>Sao Tome and Principe</b> | N/A   |  |                 |              |  |
| <b>St. Vincent</b>           | N/A   |  |                 |              |  |
| <b>Tonga</b>                 | Captain S. Tu'itupou Fotu<br>Secretary for Marine and Ports<br>Ministry of Marine and Ports | P.O. Box 397<br>Nuku'alofa<br>Tonga      | 676 26234       | 676 22555    | <a href="mailto:marine@kalianet.to">marine@kalianet.to</a>     |
| <b>Tuvalu</b>                | Uale Sinipati<br>Acting Director of Marine<br>Ministry of Works and<br>Communications       | Funafuti, Tuvalu                         | 688 20722       | 688 20054    | <a href="mailto:marine@tuvalu.tv">marine@tuvalu.tv</a>         |
| <b>Vanuatu</b>               | Don Sheetz<br>Executive Vice President<br>Vanuatu Maritime Services<br>Limited              | 42 Broadway<br>New York, New York<br>USA | 212 425-9652    | 212 425-9600 | <a href="mailto:vmsync@attglobal.net">vmsync@attglobal.net</a> |

## REGIONAL FISHERIES MANAGEMENT ORGANIZATIONS POLLED

| RFMO      | Response                               |
|-----------|--|
| APFIC     | No                                     |
| CCAMLR    | Yes                                    |
| CCSBT     | Yes                                    |
| CSRP      | No                                     |
| FFA       | Yes                                    |
| IATTC     | Yes                                    |
| IBSFC     | Yes                                    |
| ICCAT     | Yes                                    |
| IOTC      | Yes                                    |
| IPHC      | Yes*                                   |
| IWC       | Yes*                                   |
| NAFO      | Yes                                    |
| NASCO     | Yes                                    |
| NEAFC     | No                                     |
| NPAFC     | Yes                                    |
| OLDEPESCA | No                                     |
| PSC       | No                                     |
| <b>16</b> | <b>12</b><br><b>(10 used in paper)</b> |

\* Did not complete the questionnaire as the issues were not of concern to their organization at the time of writing.

### ICCAT RECOMMENDATIONS & RESOLUTIONS RELATING TO COMPLIANCE

The years shown on the left are those when the Recommendation or Resolution entered into force. The two-digit year shown in ( ) refers to the year of adoption and for reference purposes.

- 1993** Bluefin Tuna Statistical Document Program (BTSD) for frozen fish (Sept. 1)  
(92-1)
- 1994** Bluefin Tuna Statistical Document Program (BTSD) for fresh fish (June 1)  
(93-3)  
High-seas vessels registration required (94-8)
- 1995** Action Plan to Ensure the Effectiveness of the Conservation Program  
for Atlantic Bluefin Tuna (94-3)  
"Co-operating Parties" defined (94-6)  
Encourage satellite tracking vessel monitoring system (Recommended in 1995) (95-3)  
Vessel sighting, report sighting of fishing vessels operating not complying regulatory  
measures (94-9)
- 1996** Action Plan to ensure the effectiveness of the conservation program for Atlantic swordfish  
(95-13)
- 1997** BFT and SWO compliance in the North Atlantic (96-14)  
Monitoring foreign vessels landings and transshipments at national ports  
(Adopted in 1997) (97-12)  
Prohibition of large-scale pelagic driftnet fishing (96-15)  
Prohibit imports of BFT from Belize and Honduras, following the Action Plan (96-11)  
Clear definition on status of Co-operating Parties (97-17)  
Vessels sighting report for illegal fishing (97-11)
- 1998** SWO Compliance in the South Atlantic (objected by Brazil, Uruguay & S. Africa) (97-8)  
Prohibit imports of BFT from Panama, following the Action Plan (96-12)  
Revised ICCAT Port Inspection Scheme (97-10)  
Transshipment or transfer of ICCAT species at sea only from Contracting Parties  
or Co-operating Parties/Entities/Fishing Entities (97-11)
- 1999** Ban on landings and transshipments of vessels from non-Contracting Parties  
identified as having committed a serious infringement (98-11)  
Pilot program for vessels monitoring (10% or ten tuna fishing vessels over 24m, whichever  
larger should have VMS starting in 1999) (97-12)  
Unreported and unregulated catches of tunas by large scale LL in Convention Area  
(requesting import countries to report information on such operations (98-13)  
Exchange of information of BET tuna fishing vessels (98-2)  
Collection of information on catch and landing of IUU large scale longline  
vessels (98-18)
- 2000** Prohibit imports of SWO from Belize and Honduras, following SWO Action Plan (99-4)  
Prohibit imports of BFT from Equatorial Guinea, according to 96-14 (99-10)  
Lifting of import prohibition of BFT regarding Panama (96-12) (99-8)  
Ensure vessels not engage in IUU activities and urge importers, transporters and  
other concerned business people to refrain from transaction of tunas from IUU vessels (99-12)  
Endorse FAO IPOA Fishing Capacity (99-13)

## TABLES

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Table 1: Post-UNCED International Instruments

| Instrument   | In Force         | Legal Status | Signature/Ratification <sup>311</sup> |
|--|------------------|--------------|---------------------------------------|
| 1982 Convention                                      | 16 November 1994 | Binding      | 157S<br>137R                          |
| 1993 FAO Compliance Agreement                        | Not in Force     | Binding      | 22 of 25 required acceptances         |
| 1995 UN Fish Stocks Agreement                        | 11 December 2001 | Binding      | 59S<br>30R                            |
| 1995 FAO Code of Conduct                             | Voluntary        | Non-Binding  |                                       |
| 2001 FAO International Plan of Action on IUU Fishing | Voluntary        | Non-Binding  |                                       |

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<sup>311</sup> As of 8 January 2002

**Table 2: Key Flag State Responsibilities in International Instruments**

| <b>Provision in five agreements</b>   | <b>Instrument</b>  | <b>Reference</b>                        |
|---|--|---|
| Maintain a register or record of fishing vessels  | UN Fish Stocks Agreement<br>1982 Convention<br>Compliance Agreement<br>Code of Conduct<br>IPOA-IUU | 18.3(c)<br>94.2(a)<br>IV<br>8.2.1<br>42 |
| <b>Provisions in four agreements</b>  | <b>Instrument</b>  | <b>Reference</b>                        |
| Ensure that vessels do not undermine effectiveness of conservation and management measures.   | UN Fish Stocks Agreement<br>Compliance Agreement<br>Code of Conduct<br>IPOA-IUU                    | 18.1<br>III.1(a)<br>6.11<br>34, 48      |
| Authorize vessels for fishing where it is able to exercise effective flag State control to ensure proper application of international instruments   | UN Fish Stocks Agreement<br>Compliance Agreement<br>Code of Conduct<br>IPOA-IUU                    | 18.2<br>III.3<br>6.11<br>35, 44         |
| Cooperation among States to ensure compliance with and enforcement of conservation and management measures.   | UN Fish Stocks Agreement<br>1982 Convention<br>Compliance Agreement<br>Code of Conduct             | 20.1<br>118<br>V.1<br>6.12, 7.1.3       |
| <b>Provisions in three agreements</b>   | <b>Instrument</b>  | <b>Reference</b>                        |
| Ensure that vessels comply with subregional and regional conservation and management measures.  | UN Fish Stocks Agreement<br>1982 Convention<br>Code of Conduct                                     | 18.1<br>117<br>6.10                     |
| Licensing or authorizations to fish required  | UN Fish Stocks Agreement<br>Code of Conduct<br>IPOA-IUU  | 18.3(a)<br>8.1.1, 8.2.2<br>45           |
| Marking fishing vessels and fishing gear  | UN Fish Stocks Agreement<br>Compliance Agreement<br>Code of Conduct                                | 18.3(d)<br>III.6<br>8.2.3, 8.2.4        |
| Recoding and reporting of fisheries data  | UN Fish Stocks Agreement<br>Compliance Agreement<br>Code of Conduct                                | 18.3(e)<br>III.7<br>6.11, 8.1.3         |
| Enforcement measure to include sanctions of sufficient severity to secure compliance and discourage violations, deprive offenders of benefits accruing from illegal activities and may permit refusal, withdrawal or suspension of fishing authorizations if appropriate. | UN Fish Stocks Agreement<br>Compliance Agreement<br>Code of Conduct                                | 19.2<br>III.8<br>8.2.7                  |
| Establish effective mechanisms for monitoring, surveillance, control and enforcement to ensure compliance with conservation and management measures   | UN Fish Stocks Agreement<br>Code of Conduct<br><br>IPOA-IUU  | 18.3(g)<br>7.1.7, 7.7.3,<br>8.1.4<br>51 |
| <b>Provisions in two agreements</b>   | <b>Instrument</b>  | <b>Reference</b>                        |
| Restrictions on reflagging vessels  | Compliance Agreement<br>IPOA-IUU   | III.5<br>36, 38, 39                     |
| Adopt laws, regulations or policies re fisheries management on high seas or in zones of other States  | UN Fish Stocks<br>Code of Conduct  | 18.3(b)<br>6.13, 7.7.1                  |



**Table 3: Registration revenue received by some open registry States from fishing and merchant vessels.<sup>312</sup>**

| State                 | Fishing Vessels # | All Vessels # | Gross Revenue (all) | Gross Revenue (Fishing) | Fishing Revenue as % |
|-----------------------|-------------------|---------------|---------------------|-------------------------|----------------------|
| Antigua and Barbuda   | 1                 | 556           | 1,696,600           | 2,200                   | 0.13                 |
| Bahamas               | 6                 | 1284          | 4,424,100           | 13,200                  | 0.3                  |
| Barbados              | 5                 | 77            | 229,400             | 11,000                  | 4.8                  |
| Belize                | 211               | 1124          | 2,840,300           | 498,700                 | 17.56                |
| Bermuda               | 2                 | 148           | 535,400             | 4,400                   | 0.82                 |
| Cayman Islands        | 2                 | 141           | 412,200             | 4,400                   | 1.07                 |
| Channel Islands       | 7                 | 29            | 63,800              | 15,400                  | 24.14                |
| Cyprus                | 35                | 1625          | 5,661,800           | 95,600                  | 1.69                 |
| Equatorial Guinea     | 55                | 73            | 163,000             | 121,000                 | 74.23                |
| Gibraltar             | 0                 | 28            | 79,900              | 0                       | 0                    |
| Honduras              | 486               | 1462          | 3,400,900           | 1,075,800               | 31.63                |
| China, Hong Kong, SAR | 0                 | 392           | 1,163,300           | 0                       | 0                    |
| Isle of Man           | 1                 | 221           | 730,700             | 2,200                   | 0.3                  |
| Liberia               | 2                 | 1736          | 6,473,300           | 5,000                   | 0.08                 |
| Malta                 | 9                 | 1418          | 4,991,900           | 23,400                  | 0.47                 |
| Marshall Islands      | 11                | 200           | 657,200             | 30,200                  | 4.6                  |
| Netherlands Antilles  | 14                | 137           | 423,200             | 35,000                  | 8.27                 |
| Panama                | 321               | 6155          | 19,918,700          | 732,900                 | 3.68                 |
| Singapore             | 4                 | 1683          | 4,923,600           | 8,800                   | 0.18                 |
| St Vincent            | 130               | 1341          | 3,945,300           | 317,800                 | 8.06                 |
| Vanuatu               | 33                | 287           | 782,000             | 86,100                  | 11.01                |
| <b>Total</b>          | <b>1335</b>       | <b>20117</b>  | <b>63,516,600</b>   | <b>3,083,100</b>        | <b>4.85</b>          |

<sup>312</sup> Expressed in US dollars, and gross amounts and as a percentage of total vessel registration revenue.

**Table 4: Benefits Advertised to Shipowners of Registering in some Open Registry States.**<sup>313</sup>

| Registration advantage                                     | Antigua and Barbuda | Belize | Cambodia | Cayman Islands | Costa Rica | Honduras | Malta | Marshall Islands | Neth. Antilles | Panama | St. Vincent |
|--|---------------------|--------|----------|----------------|------------|----------|-------|------------------|----------------|--------|-------------|
| Limited or no vessel restrictions (age, class, size, type) | Y                   | Y      | Y        | Y              | Y          | Y        | Y     |                  |                | Y      | Y           |
| Exemptions   | Y                   |        |          |                |            |          |       |                  |                |        | Y           |
| Favourable Tax   | Y                   |        | Y        | Y              | Y          |          | Y     |                  | Y              |        |             |
| Low registration & administration fees                     |                     |        | Y        | Y              |            |          | Y     |                  | Y              | Y      |             |
| No, or easy to meet, nationality requirements              |                     | Y      | Y        |                |            | Y        | Y     | Y                | Y              | Y      | Y           |
| Quick & efficient registration procedure                   | Y                   | Y      | Y        | Y              |            | Y        |       | Y                | Y              |        |             |
| Flexible manning requirements                              |                     |        |          |                | Y          | Y        | Y     |                  |                |        | Y           |
| Bareboat charter registration                              |                     |        |          |                |            |          | Y     | Y                |                | Y      |             |

**Table 5: Number of Fishing Vessels, Fishing Vessels as percent of all Vessels on some Open Registers for 1997 and 2001.**<sup>314</sup>

| State                            | 1997              |                                     | 2001              |                                     |
|----------------------------------|-------------------|-------------------------------------|-------------------|-------------------------------------|
|                                  | # Fishing Vessels | Fishing vessels as % of all vessels | # Fishing Vessels | Fishing vessels as % of all vessels |
| Honduras                         | 423               | 33.2                                | 396               | 33.5                                |
| Panama                           | 422               | 5.2                                 | 229               | 3.7                                 |
| Belize                           | 145               | 18.8                                | 481               | 31.7                                |
| Saint Vincent and the Grenadines | 130               | 9.7                                 | 165               | 12.5                                |
| Eq. Guinea                       | 55                | 75.3                                | 51                | 85.0                                |
| Cyprus                           | 35                | 2.2                                 | 61                | 4.3                                 |
| Vanuatu                          | 27                | 11.5                                | 55                | 17.4                                |
| Neth Antilles                    | 14                | 10.2                                | 24                | 13.6                                |
| Marshall Islands                 | 11                | 5.5                                 | 10                | 2.8                                 |
| Malta                            | 9                 | 0.6                                 | 8                 | 0.6                                 |
| Channel Islands                  | 7                 | 24.1                                | 3                 | 42.9                                |
| Bahamas                          | 6                 | 0.5                                 | 6                 | 0.5                                 |
| Barbados                         | 5                 | 6.5                                 | 5                 | 7.4                                 |
| Singapore                        | 4                 | 0.2                                 | 4                 | 0.2                                 |
| Liberia                          | 2                 | 0.1                                 | 4                 | 0.3                                 |
| Bermuda                          | 2                 | 1.4                                 | 1                 | 0.8                                 |
| Isle of Man                      | 1                 | 0.5                                 | 1                 | 0.4                                 |
| Antigua & Barbuda                | 1                 | 0.2                                 | 1                 | 0.1                                 |
| China, Hong Kong, SAR            | 0                 | 0                                   | 1                 | 0.2                                 |
| Gibraltar                        | 0                 | 0                                   | 1                 | 1.3                                 |
| <b>Total</b>                     | <b>1299</b>       |                                     | <b>1507</b>       |                                     |

<sup>313</sup> Information for this table was obtained from the following websites: [www.flagsofconvenience.com](http://www.flagsofconvenience.com) and [www.marinemerchant.com](http://www.marinemerchant.com) as well as responses to questionnaires.

<sup>314</sup> Lloyd's Maritime Information Services 1997 and Lloyd's Register - Fairplay Ltd. World Fleet Statistics 2001.

Table 6: Tonnage Range of Fishing Vessels under some Open Registers.<sup>315</sup>

| Size Range (GRT) | 100-149    | 150-199    | 200-299    | 300-499    | 499-1000   | 1000-1500 | 1500-4000 | 4000-10000 | 10000-30000 | > 30000  |
|------------------|------------|------------|------------|------------|------------|-----------|-----------|------------|-------------|----------|
| Panama           | 66         | 42         | 62         | 63         | 48         | 12        | 25        | 3          | 0           | 0        |
| Honduras         | 140        | 36         | 79         | 128        | 92         | 2         | 9         | 0          | 0           | 0        |
| Belize           | 33         | 23         | 41         | 30         | 37         | 10        | 30        | 7          | 0           | 0        |
| St. Vincent      | 49         | 11         | 18         | 8          | 12         | 3         | 15        | 14         | 0           | 0        |
| Vanuatu          | 3          | 0          | 1          | 2          | 9          | 11        | 4         | 3          | 0           | 0        |
| Marshall Islands | 1          | 0          | 0          | 0          | 0          | 1         | 9         | 0          | 0           | 0        |
| Liberia          | 0          | 1          | 0          | 0          | 0          | 0         | 1         | 0          | 0           | 0        |
| <b>Total</b>     | <b>292</b> | <b>113</b> | <b>201</b> | <b>231</b> | <b>198</b> | <b>39</b> | <b>93</b> | <b>27</b>  | <b>0</b>    | <b>0</b> |

Table 7: Tonnage Range of All Vessels under some Open Registers.<sup>316</sup>

| Size Range (GRT) | 100-149    | 150-199    | 200-299    | 300-499     | 499-1000    | 1000-1500  | 1500-4000   | 4000-10000  | 10000-30000 | > 30000     |
|------------------|------------|------------|------------|-------------|-------------|------------|-------------|-------------|-------------|-------------|
| Panama           | 156        | 210        | 262        | 405         | 375         | 246        | 925         | 1245        | 1294        | 1037        |
| Honduras         | 191        | 149        | 168        | 416         | 274         | 110        | 125         | 25          | 4           | 0           |
| Belize           | 65         | 96         | 105        | 184         | 223         | 125        | 219         | 67          | 38          | 2           |
| St. Vincent      | 71         | 36         | 92         | 75          | 155         | 125        | 302         | 250         | 197         | 38          |
| Vanuatu          | 15         | 4          | 24         | 13          | 89          | 52         | 22          | 20          | 34          | 14          |
| Marshall Islands | 7          | 3          | 6          | 7           | 27          | 7          | 27          | 6           | 34          | 76          |
| Liberia          | 2          | 3          | 6          | 3           | 26          | 32         | 71          | 218         | 699         | 676         |
| <b>Total</b>     | <b>507</b> | <b>501</b> | <b>663</b> | <b>1103</b> | <b>1169</b> | <b>697</b> | <b>1691</b> | <b>1831</b> | <b>2300</b> | <b>1843</b> |

<sup>315</sup> Lloyds Maritime Information Services, 1998.<sup>316</sup> Lloyds Maritime Information Services, 1998.

**Table 8: Summary of Responses to Questionnaire by Belize, Cook Islands, Malta and Vanuatu**

| Question  | Belize  | Cook Islands   | Malta   | Vanuatu  |
|---|---|--|---|--|
| <b>No. of fishing vessels on register<sup>317</sup></b> | <b>402</b>  | <b>6</b>   | <b>88</b>   | <b>122</b>   |
| <b>Agency</b>   | International Merchant Marine of Belize   | Cook Islands Maritime & Shipping Registry Limited (CIMSRL)       | Malta Maritime Authority  | Vanuatu Maritime Services Ltd.   |
| <b>Legislation</b>                                      | Registration of Merchant Ships  | Shipping Act 1989, as amended                                    | Merchant Shipping Act   | Maritime Act   |
| <b>Application Process</b>                              | Yes <sup>318</sup>  | Yes <sup>319</sup>   | Yes <sup>320</sup>  | Yes <sup>321</sup>   |
| <b>Any restrictions?</b>                                | Age of Vessel<br>Vessel must be wholly owned by Maltese citizens or Maltese bodies corporate <sup>322</sup> | Age of vessel and classification society requirements            | Age of Vessel   | Age of vessel<br>Ownership Vessel <sup>323</sup><br>Vessel must be safe and seaworthy            |
| <b>Special requirements for Fishing Vessels</b>         | Complete a fishing vessel data form as part of application process  | No   | Must be licensed to fish prior to registration; only vessels 6 metres and over must be registered | No   |
| <b>Deregistration for non-compliance</b>                | Yes   | No   | Yes   | Yes  |
| <b>Types of Fishing Vessels Registered</b>              | Fishing vessels, fish factory and fish freezer vessels  | High seas factory trawlers, coastal trawlers, surface longliners | Mostly small artisanal fishing vessels  | Longliners, purse seiners, shrimpers, crabbers, factory trawlers/processors and research vessels |

<sup>317</sup> As of February 15, 2002 (Belize and Malta), March 28, 2002 (Cook Islands), March 29, 2002 (Vanuatu).

<sup>318</sup> Applications are received by the Deputy Registrar at the head office in Belize or a Designated Overseas Office and processed within 3 days.

<sup>319</sup> Applications (original documents required) are processed in consultation with the Registrar, Head of Inspections and any relevant third party. Provisional registration can be obtained in 24 hours. Permanent registration must be received within 3 months.

<sup>320</sup> Applications are received by the Merchant Shipping Directorate and processed in a timely fashion if all documents are in order.

<sup>321</sup> Applications are processed by the New York office of the Registry and approvals can be obtained in 2-3 weeks. Original documents required.

<sup>322</sup> With no nationality requirements for shareholders or directors, the formation of a Maltese company is straightforward.

<sup>323</sup> Vessels must be owned by a national of Vanuatu or a Vanuatu corporation.

**Table 9: Estimated Unreported Catch as a Percentage of Estimated Total Catch in the CCAMLR Convention Area.**<sup>324</sup>

| Years   | Subarea or Division |              |                 |                 |              |
|---------|---------------------|--------------|-----------------|-----------------|--------------|
|         | Subarea 58.6        | Subarea 58.7 | Division 58.5.1 | Division 58.5.2 | Subarea 48.3 |
| 1996/97 | 98                  | 84           | 30              | 90              | 0            |
| 1997/98 | 91                  | 62           | 71              | 74              | 0            |
| 1998/99 | 49                  | 41           | 10              | 3               | 7            |
| 1999/00 | 74                  | 23           | 30              | 24              | 8            |
| 2000/01 | 31                  | 17           | 39              | 48              | 8            |

**Table 10: Summary of Offences by Belize Flagged Vessels**

| State  | Offence   | Type of Vessel              | Location                                       | Action Taken   |
|--------|---|-----------------------------|--|--|
| Belize | Non-compliance with fishing regulations (IATTC)             | Fishing Vessel Dec 10, 1997 | N/A  | Deregistration   |
| Belize | Non-compliance with fishing regulations (IATTC)             | Fishing Vessel Dec 10, 1997 | N/A  | Deregistration   |
| Belize | Non-compliance with fishing regulations (IATTC)             | Fishing Vessel Dec 10, 1997 | N/A  | Deregistration   |
| Belize | Illegally fishing protected toothfish                       | Fishing                     | Australia's EEZ                                | \$50,000 fine  |
| Belize | Illegally fishing protected toothfish                       | Fishing February 8, 1999    | Mauritius                                      | \$30,000 fine followed by deregistration                   |
| Belize | Violation of fishing regulations in EEZ Kerguelen           | Fishing                     | French territories of Australia and Antarctica | Deregistration   |
| Belize | Repeated violations of fishing regulations                  | Fishing                     | France   | Seized by French authorities, deregistered                 |
| Belize | Violation of fishing regulations in protected area          | Fishing                     | 7 nm outside Australia EEZ                     | \$15,000 fine, subsequent suspension and deregistration    |
| Belize | Longline fishing for tuna in violation of ICCAT regulations | Fishing                     | 780 nm west of Luanda, Angola                  | \$20,000 fine, reduced to \$10,000 and vessel deregistered |
| Belize | Violation of ICCAT regulations                              | Fishing                     | 400 nm west of Angola                          | \$15,000 fine Fine paid and subsequently deregistered      |

<sup>324</sup> Table of Catches by subarea and year for reported, estimated unreported and estimated total catches (tonnes) of *Dissostichus eleginoides* provided by CCAMLR in response to questionnaire.

|              |  |                 |                                  |   |
|--------------|--|-----------------|----------------------------------|---|
| Belize       | Illegal fishing in CCAMLR area   | Fishing         | CCAMLR statistical sub-area 48.3 | Deregistration after reports that vessel re-flagged to another registry without consent of IMMARBE                                  |
| Belize       | Illegal fishing for orange roughy in South Tasman Rise conservation and management area              | Fishing         | South Tasman Rise                | Deregistered  |
| Belize       | Drug trafficking   | Fishing         | Miami, USA                       | Deregistered  |
| Belize       | Non-compliance with Administration's repeated requests for general inspection of the vessel          | Fishing         | N/a                              | Deregistered  |
| Belize       | Non-compliance with Administration's repeated requests for general inspection of the vessel          | Fishing         | N/a                              | Deregistered  |
| Belize       | Illegal fishing reported by CCAMLR   | Fishing         | N/a                              | None – no official report   |
| Belize       | Illegal fishing reported by CCAMLR   | Fishing         | N/a                              | None – no official report   |
| Belize       | Non-compliance with Administration's repeated requests for general inspection of the vessel          | Fishing         | N/a                              | Deregistered  |
| Cook Islands | Several offences including certification and safety violations, and general poor condition of vessel | Coastal Trawler | New Zealand                      | Vessel detained until all matters remedied. Vessel still detained and under negotiation to be sold. Owners have 3 months to remedy. |
| Vanuatu      | Operating in restricted area   | N/A             | CCAMLR Toothfish Area            | 3 vessels de-listed and removed from registry.  |

**Table 11: Enforcement measures by CCAMLR.**

| <b>Open Registry State</b> | <b>CCAMLR Action</b>   | <b>Outcome</b>  |
|----------------------------|--|---|
| Belize                     | Advised Belize of sightings of five fishing vessels in the Convention Area and of their failure to comply with CCAMLR Conservation Measures. | Belize deleted four IUU vessels from its registry and warned fifth vessels of deregistration.   |
| Panama                     | Issued several submissions on IUU fishing activities   | Panama provided CCAMLR with a list of all its vessels licensed to fish on the high seas in the Southern Ocean. Panama also advised that no licences have been currently issued to any of their vessels for fishing in waters in the CCAMLR Convention Area. |
| Vanuatu                    | In 1997 and 1998 CCAMLR advised Vanuatu of sightings in the Convention Area of three Vanuatu-flagged fishing vessels.                        | Vanuatu stated that vessels which are proved to have violated the CCAMLR Convention will be considered for suspension or deletion from the Vanuatu registry. In 2001, Vanuatu acceded to the CCAMLR Convention.   |