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DRAFT CHAPTER 2 -- FRAMEWORK FOR MEASURES AGAINST IUU FISHING ACTIVITIES

This paper is work in progress by the OECD Secretariat and is submitted to the IUU Workshop as background documentation.

Comments and suggestions by Delegates are welcome.

Note that this is work in progress and is not for quotation.

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DRAFT CHAPTER 2 -- FRAMEWORK FOR MEASURES IN PLACE AGAINST IUU FISHING ACTIVITIES

1. Introduction

1. This paper outlines existing frameworks for measures in place against IUU fishing activities on the high seas as well as in national EEZ, recalling that the scope of study on IUU fishing activities in the national EEZs is limited only to IUU fishing by foreign flagged fishing vessels. The main objective of this study is to identify frameworks for current and possible future measures against IUU fishing activities in the national, regional and international levels.

2. This document also provides an inventory of measures against IUU fishing activities in the national, regional and international perspectives on the basis of literature review and the results of questionnaire provided by OECD member countries. In particular, this paper synthesises the inventory of national measures in place in terms of legal, economic and social aspects. This paper also covers other related issues regarding IUU fishing activities such as OECD instruments, open register issue, safety of vessels and crews, and regulations on vessel registration.

3. With regard to the definition of IUU, this paper follows the one articulated by FAO International Plan of Action on IUU as agreed by the COFI. According to this definition, the scope and possible types of IUU can be described as activities in Table 1. Shaded cells indicate the combination between IUU actors and possible types of IUU fishing activities according to the area of sea (within EEZs and on the high sea) and whether RFMOs exist.

Table 1. The Scope and Possible Types of IUU

Area	EEZs	High seas			
		With RFMOs			Without-RFMOs
Actors	Foreigners	Party	Cooperating States	Non-party	All
Illegal					
Unreported					
Unregulated					

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2. International Frameworks on the High Seas Fisheries

4. Although the high seas are open to all states (whether coastal or land-locked), freedom of the high seas and governance of high seas fisheries are subject to the basic conditions set out in the 1982 United Nations Convention on the Law of the Sea (LOS Convention). High seas fisheries are often targeting stocks living permanently in the high seas, highly migratory resources and straddling stocks. These resources are usually managed through regional fisheries management organizations with the relevant international cooperation. In addition to the LOS Convention, the current international instruments related to high seas fisheries are:

1993 FAO Compliance Agreement (Compliance Agreement)
1995 UN Fish Stock Agreement (Fish Stock Agreement)
1995 FAO Code of Conduct for Responsible Fisheries (the Code)
2001 FAO International Plan of Action on IUU fishing (IPOA-IUU)

5. Among existing instruments, the Compliance Agreement and UN Fish Stock Agreement are legally binding international instruments and contain a range of requirements relating to flag State responsibilities, compliance and enforcement. On the other hand, the Code and the IPOA-IUU are voluntary and management oriented instruments. They were formulated to be interpreted and applied in conformity with the relevant rules of international law.

6. Although somewhat different in their focus and scope, each instrument has the same goal *i.e.* to ensure long-term, sustainable use of fisheries resources. These instruments are also essentially complementary in nature to achieve their objective toward sustainable and responsible fisheries. The Compliance Agreement and UN Fish Stock Agreement are based on the LOS Convention. The IPOA-IUU has been elaborated within the framework of the FAO Code of Conduct for Responsible Fisheries which itself is based on LOS Convention. OECD member countries' status with respect to major international agreements has shown in Appendix 1.

7. One of the main causes of IUU fishing is considered to be a lack of effective flag State control. If only there is full and effective flag State control, the incidence of IUU fishing would be greatly reduced. However, the real world is not perfect and some States, after authorizing vessels to fly their flags, fail to meet their obligations under international law with respect to the supervision and control of these vessels. Furthermore, some States do not provide proper authorizations for their vessels to fish once they assume the State's flag. As a result, this lack of supervision and authorization to fish enables such vessels to engage in IUU fishing with impunity.

8. Therefore, the focus of this part will be placed on the responsibilities of flag States over fishing vessels flying their flags on the high seas. 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. 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 regional fisheries management organizations (RFMOs).¹ The notion, "genuine link", is regarded as a basis for securing more effective implementation of the flag State responsibilities. Table 2 shows major flag State responsibilities embodied in the international instruments (shaded cells indicate the provisions taken by international instruments).

¹ FAO Fisheries Circular No. 980, Fishing vessels operating under open registers and the exercise of flag State responsibilities, 2002

Table 2. Major Flag State Responsibilities in International Instruments

Provisions	LOS Convention	Compliance Agreement	Fish Stock Agreement	The Code	IPOA-IUU
Maintain a register/record of fishing vessels					
Authorize vessels for fishing under exercising effective control					
Licensing or authorizations to fish					
Marking fishing vessels and fishing gear					
Recording and reporting of fisheries data					
Enforcement measures ²					
Establishing effective MCS mechanism					
Restrictions on re-flagging					

9. It should be noted that United Nations General Assembly again emphasized IUU fishing issues at its 58th Session, calling upon flag and port States to take all measures consistent with international law necessary to prevent the operation of substandard vessels and IUU fishing activities. The General Assembly also urged States to develop and implement national (or regional) IPOA-IUU plans of action to put into effect by 2004.³

2.1. 1982 LOS Convention

10. The LOS Convention establishes a comprehensive framework for management and conservation of all living marine resources and includes all relevant issues regarding the utilization, management and authority over the marine living resources. The most important component is the establishment of a 200-mile EEZs. Within the 200-mile EEZs, the LOS Convention recognizes broad coastal State sovereign rights for conserving and managing the living resources (Article 62 (2)).

² It includes sanctions of sufficient severity to secure compliance and discourage violations, deprives offenders of benefits accruing from illegal activities and may permit refusal, withdrawal or suspension of fishing authorizations if appropriate.

³ United Nations General Assembly, 58th session Agenda item 52(b), November 2003

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11. On the high seas, the LOS Convention emphasizes the role of regional fishery bodies for the management of straddling and highly migratory fish stocks. The LOS Convention also provides that the States concerned should seek, through appropriate RFMOs, to agree upon the measures necessary to coordinate and ensure the conservation and development of stocks (Article 63). The responsibilities of a flag State are an essential component of the legal regime on the high seas.

The Responsibilities of Flag State

12. With regard to a ship's nationality, the LOS Convention recognizes that every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. The LOS Convention also obliges the flag State to ensure that a "genuine link" exist between the State and the ship. (Article 91)

13. Under the LOS Convention, ships sailing on the high seas are subject to the exclusive jurisdiction of the flag State. Except in exceptional situations, it is only the flag State which has the right to board or otherwise inspect a ship on the high seas (the Coastal State assumes that right and duty in its EEZs).

14. Regarding enforcement on the high seas, the LOS Convention gives exclusive jurisdiction over a vessel on the high seas to the flag State on the basis of the principle of nationality. The flag State has the right to board and inspect a ship on the high seas. It's thus the flag State's responsibility to enforce all aspects of international law on the high seas, including conservation and management measures taken by regional fisheries management organizations (Article 92).

15. Article 94 of LOS Convention also sets out the duties of the flag State. Paragraph 1 states that every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

2.2. 1993 FAO Compliance Agreement

16. The Compliance Agreement reaffirms the provisions of the LOS Convention that flag States must exercise effective control over their vessels fishing on the high seas. It elaborates this obligation by requiring that all such vessels be licensed to conduct such fishing, that the licenses be conditioned on the vessel abiding by internationally-agreed conservation and management measures. The agreement applies to all fishing vessels over 24 meters in length. The primary objective of the Agreement is to deal with the problem of fishing vessels re-flagging into flags of convenience (FOC) to avoid compliance with agreed conservation and management measures. The Agreement, for the first time, underlined the right to fly the State's flag and the right to fish on the high seas. The Agreement is legally binding and in effect since entering into force on 24th April 2003 with 25 accepting States.

The Responsibilities of the Flag State

17. The Compliance Agreement sets out the responsibility of flag States in more detail than the LOS Convention. While the LOS Convention says that States must try to agree upon the necessary conservation measures, the Compliance Agreement provides that:

"Each Party shall take such measures as may be necessary 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" (Article III paragraph 1a)

18. The Agreement seeks to ensure that flag States exercise effective control over their vessels while fishing on the high seas by requiring an authorization to engage in such fishing. In this way the Agreement

would deter unauthorized vessels from high seas fishing and hence from not complying with conservation and management measures that have been agreed by competent regional fisheries management organizations. The Agreement seeks also to ensure the transparency of all high seas fishing operations through the collection and dissemination of data. The Agreement requires each flag State to maintain a record of vessels entitled to fly its flag and authorized to fish on the high seas (Article IV).

19. Under the Compliance Agreement, flag States should not grant fishing authorizations to vessels that have previously been registered in another state that has undermined the effectiveness of conservation measures. Each state should also undertake to enforce the provisions of international conservation and management measures through criminal sanctions against flag vessels. These sanctions should include refusal, suspension or withdrawal of authorization to fish (Article III paragraph 8).

2.3. 1995 UN Fish Stock Agreement

20. The UN Fish Stock Agreement provides an implementation regime for the LOS Convention with regard to straddling and highly migratory fish stocks and a framework for international cooperation in the conservation and management of those fish stocks. It principally applies to the high seas fisheries, but some provisions are applying exceptionally to EEZs. It also establishes the role of RFMOs as the major vehicle for cooperation. As a result, the UN Fish Stock Agreement confers considerable powers on RFMOs, including the establishment of programme for the control and surveillance of vessels on the high seas.

21. As a management regime, the Agreement introduces new principles and concepts to fisheries management including the precautionary approach, vessel monitoring systems (VMS), compatibility of conservation and management measures, transparency of activities within sub-regional and regional fishery management organizations, high seas boarding and inspection, and port State measures. This Agreement entered into force in December 2001.

The Responsibilities of Flag State

22. Compared to the FAO Compliance Agreement, the UN Fish Stock Agreement imposes much stronger obligations on the flag States under Article 18 paragraph 1:

A State whose vessels fish on the high seas shall take such measures as may be necessary to ensure that vessels flying its flag comply with subregional and regional conservation and management measures and that such vessels do not engage in any activity which undermines the effectiveness of such measures.

23. It may be noted that in the FAO Compliance Agreement, a State is not to authorize a vessel to fish on the high seas “*unless it is satisfied that it is able, taking into account the links that exist between it and the fishing vessel concerned, to exercise effectively its responsibilities under this Agreement in respect of that fishing vessel*”. Whereas, the UN Fish Stock Agreement puts the point more directly by providing that: “*States shall authorize the use of vessels flying its flag for fishing on the high seas only where it is able to exercise effectively its responsibilities in respect of such fishing vessels under the Convention and this Agreement*”.

24. The UN Fish Stock Agreement extends the rights of coastal States to react to unauthorized fishing outside the EEZs. Under the Agreement, States assume a much greater responsibility for effective monitoring, control, and surveillance of fishing to implement and enforce conservation and management efforts in international waters. State parties to the Agreement have the rights to board and inspect flag

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vessels of other party States with a view to verify compliance with the rules of the regional fisheries organizations.

2.4. 1995 FAO Code of Conduct for Responsible Fisheries

25. The FAO Code of Conduct for Responsible Fisheries provides a framework for national and international efforts to promote the responsible exploitation on living aquatic resources in harmony with the environment. The Code was formulated to be consistent with the LOS Convention, Agenda 21 of Chapter 17 of UNCED, the Compliance Agreement, and the UN Fish Stock Agreement. Among them, the Compliance Agreement is an integral component of the Code. The Code is global in scope and it covers all fishing activities both within EEZs and on high seas. 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. The Code is non-binding in nature.

The Responsibilities of Flag State

26. Under the Code, 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. Flag States are required to maintain records of these fishing vessels, indicating details of the vessels, their ownership and the authorization to fish. Fishing vessels should be marked in accordance with internationally recognizable vessel marking systems such as the FAO Standard Specifications and Guidelines for Marking and Identification of Fishing Vessels.

27. The Code also notes that flag States should take enforcement measures regarding violation of conservation and management measures. Sanctions should be adequate in severity to be effective in securing compliance and to discourage violations wherever they occur and should deprive offenders of the benefits accruing from their illegal activities. Such sanctions may, for serious violations, include provisions for the refusal, withdrawal or suspension of the authorization to fish.

2.5. FAO IPOA 2001 on IUU fishing

28. The International Plan of Action on IUU fishing (IPOA-IUU) was adopted in March 2001 to resolve the problem of fishing by FOC vessels. The purpose of the IPOA-IUU is to prevent, deter and eliminate IUU fishing by providing all States with a set of comprehensive, effective and transparent measures on the basis of which they may act either directly or through the relevant RFMOs. In doing so, IPOA-IUU seek to address IUU fishing in a holistic manner and provide a comprehensive “toolbox” as a checklist so that States can select those measures that are most relevant to their particular situations. The implementation of the IPOA-IUU focuses on the elaboration of national plans of action on seven types of measures such as coastal State measures, port State measures, and market related measures. Under the IPOA, a national plan of action would be developed by June 2004 on a voluntary basis.⁴

29. Though this is a voluntary instrument, it provides international support for countries other than the flag State to take various types of action against fishing by FOC vessels. Under the Plan, in addition to detailed requirements for the flag State, there are provisions for port States to collect specified information on fishing activities and possibly to deny the landings or transshipment of catch to IUU fishing vessels. States can impose trade-related measures such as import bans, as well as adopt legislation making it an

⁴ According to the FAO, around forty-one countries world-wide are expected to have national plans in place in the near future. Among them, only 18 member countries reported to FAO that they would be completed before the 2004 deadline (FAO C 2003/21). As of March 2004, four countries (EU, Spain, United States and Japan) have submitted their national plan to the FAO

offence to trade in fish caught by IUU fishing vessels. The IPOA also urges countries to adopt multilateral catch documentation and certification requirements as a means of eliminating trade in fish derived from IUU fishing. By the same token, coastal States are to implement effective control and surveillance programme in their waters, including over transshipment at sea.

The Responsibilities of Flag State

30. Flag State responsibilities are a significant element of the IPOA-IUU. This includes requirements to adhere to a system of fishing vessel registration, a record of fishing vessels and an authorization to fish. The IPOA-IUU encourages States to deter vessels from re-flagging and flag-hopping for the purpose of circumventing or non-compliance with conservation and management measures or provisions adopted at a national, regional or global level. States shall take all practical steps, including denial to a vessel of an authorization to fish and the entitlement to fly that State's flag, to prevent "flag hopping". It 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.

31. Consistent with the Compliance Agreement and the Code, the IPOA-IUU encourages keeping of records including information such as vessel name, registration number, previous flag, and so on. In addition to this information, it also requires the name and ownership history of the vessel, including the history of non-compliance and a photo of the vessel. 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. The IPOA-IUU requires that States ensure no vessel be allowed to fish without an authorization. Flag State or coastal State may impose conditions on the authorization to fish including the requirement for vessel monitoring system, catch and transshipment reporting conditions, observer coverage, and unique marking and identification of vessel and gear.

2.6. Summary and key issues

32. Some observers have pointed out that the most effective measure to curb IUU fishing on the high seas would be the earliest possible adoption or ratification of, or accession to relevant international fisheries instruments, including UN Fish Stock Agreement and the Compliance Agreement and full implementation of the Code, by all States and entities engaged in fishing.⁵ While these major instruments have now been entered into force, one challenge remains i.e. how to overcome a major loophole in international law: which is that a country not adhering to a treaty is not bound by its provisions.

33. With the full and effective implementation of flag State control, the development of complementary port State control would possibly also contribute to a reduction in IUU fishing on the high seas. In this sense, the IPOA-IUU would play an important role in addressing IUU fishing activities if only all countries gets involved actively in implementing this instrument. However, the IPOA-IUU does not have feedback mechanism to follow up or put pressure with regard to the implementation of national measures; this remains another loophole in international instruments

3. Synthesis of Inventory on National Measures

34. This section provides an inventory of national measures in place against IUU fishing activities. As a core part of the study, the Committee decided to develop an inventory of national measures in place

⁵ FAO (2003), Progress Report on the Implementation of IPOA-IUU, November 2003 (C2003/21)

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against IUU fishing activities in terms of legal, economic and social aspects. On the basis of country notes⁶ with answers to the questionnaire (see Appendix 2), this section also categorizes and summarizes OECD Member countries' measures in place. Full text of country responses will be published as a separate document.

3.1. Main issues in the questionnaire survey

3.1.1. National legal measures and regulations

35. First, this part focuses on the rules and regulations dealing with national flagged vessels' fishing activities within other country's EEZs and on the high seas. It also includes extra-territorial application of its regulatory measures. Here, the synthesis will seek to compare differences across member countries' responses. It will include requirements and obligations to fishing vessels engaging in IUU fishing activities as well as sanctions against them. This information will make it possible to assess capabilities to control and effectively monitor national flagged vessels' fishing activities outside national EEZs and perhaps help identifying best practice.

36. Second, regulations on foreign fishing vessels' activities within national EEZs will be analysed. The emphasis is on the responsibilities of foreign flagged vessels (such as installation of VMS, catch reporting etc.) when engaging in fishing activities within other nation's EEZs, and also includes an overview of the penalty structures with regard to IUU fishing activities as well as financial burdens (fines), confiscation of catches and vessels, and the detention of vessels and crews.

37. Finally, regulations on fishing vessel registration will be discussed. This issue relates to general requirements of fishing vessel registration, possible restrictions on the registration of fishing vessels that previously have engaged in IUU fishing activities, rules regarding genuine link (or economic link) of registering vessel, and whether prior government's permission for re-flagging of national flagged vessel is needed.

3.1.2. Economic measures

38. In this category, the synthesis will discuss investment rules regarding fishing vessel ownership, stressing more importantly outward investment rules than inward ones. Trade rules on fish and fish products of IUU origin are discussed on the basis of an RFMO arrangements and unilateral measures as well. This section also includes a description of measures such as catch documentation and certification requirements as well as import and export controls or prohibitions of IUU catches.

39. Restrictions on foreign direct landings (including use of ports) and transshipments from foreign fishing vessels are also included. This synthesis is looking for information on specific rules for fishing vessels that have been identified to be engaged in IUU fishing activities. With regard to penalties applicable to IUU fishing vessels and fishers, the paper will address if differential penalty structure or treatment according to nationality of vessels and fishing permit holders vs. non-permit holders is a way forward.

3.1.3. Other measures

40. This category focuses on moral/ethical measures to prevent IUU fishing activities. These include largely non-economic and social mechanisms that discourage engagement in IUU fishing activities or the

⁶ As of March 2004, twenty-one member countries have submitted their national measures and 5 countries' (Canada, Finland, Ireland, Italy, and United Kingdom) measures are not included in this analysis.

provision of services (banking, satellite services, insurance etc.) to vessels that have been engaged in IUU fishing operations.

3.2. Overview of national measures

3.2.1 National legal measures and regulations

Fishing activities by national vessels within other countries' EEZs and on the high seas

41. Most OECD countries apply their national measures to national flagged fishing vessels when they are engaged in fishing activities on the high seas as well as in the EEZs of third countries without distinction. Controlling and monitoring national flagged fishing vessels' activities are carried out by using tools such as fishing permits, catch quotas, reporting obligations on catch data and vessel position, VMS on board and maintenance of logbook etc. In Turkey, on the other hand, there is no regulation in place to control its national flagged fishing vessel's activity outside its EEZs.

42. New Zealand requires a high seas fishing permit as well as an additional authorisation to control New Zealand flagged vessels fishing activities on the high seas. To engage in trawling or other demersal fishing in the high sea area of the South Tasman Rise, all people using New Zealand flagged vessels must hold a high seas fishing permit and an additional authorisation issued under the Fisheries Regulations (2000). Fishing within CCAMLR area is required to hold a high seas fishing permit and a permit issued under the Antarctic Marine Living Resources (AMLR) Act 1981.

43. Among control tools, VMS is considered to be an effective tool for monitoring and controlling of national fishing vessels activities outside of national waters. Iceland obliges VMS installation for all vessels that engage in fishing operations outside its waters. In Japan, monitoring activities using VMS is also carried out in major fishing grounds. Korea applies this obligation for deep-sea fishing vessels targeting highly-migratory species. The United States and Australia use VMS and observer coverage. Norway and EU member countries implement VMS system for vessels above 24 meters in length. In the EU, this requirement will apply to vessels over 18 meters as from 2004 and vessels over 15 meters as from 2005. Mexico is also considering the use of satellite tracking system on fishing vessels in tuna, swordfish, sharks and shrimp fisheries from 2004. All New Zealand flagged vessels fishing on the high seas are required to carry and operate an automatic location communicator at all times.

44. Illegal fishing activities outside of nation's EEZs may bring about fines (see Table 3) or imprisonment including suspension or withdrawal of license, confiscation of catches, fishing gear and vessels, etc. In Japan and Korea, illegal activities without license may face up to 3 year imprisonment (and/or USD 16 949 and 16 806, respectively). Fish, fishing gears and vessels may also be confiscated. Korea may also assess simultaneously the penalties of the States and RFMOs when Korean fishing vessel violates both laws set by a coastal State and RFMOs. Germany has a fine up to USD 84 270 and the possible withdrawal of the license against infringement. In Sweden, illegal fishing might lead to a reduction of fishing ration or to a withdrawal of the special permit for a certain period of time. New Zealand has a fine up to USD 14 450 and confiscates the fish (or proceeds from sale), fishing gear, and the vessel. If a person is convicted more than once within 7 years for specified serious offences, the "banning provision"⁷ applies for 3 years. It is also considered offending history of IUU fishing in the process of high seas fishing permit and AMLR permit. Australia has a penalty up to USD 35 483, which can apply to the master and each of the crew members.

⁷ It includes banning from (i) holding any license, approval, or fishing permit obtained under the Fisheries Act, (ii) engaging in fishing authorised under the Fisheries Act, (iii) deriving any beneficial income from fishing related activities under the Fisheries Act.

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Table 3. Penalty (Fines for Offences by National Flagged Vessels(USD)⁸

Belgium	Germany	Australia	Japan	Korea	New Zealand
112 360	84 270	35 483	16 949	16 806	14 450

45. Norway prohibits carrying out fishing activity on the high seas without first obtaining authorisation to register the fishing vessel. It is valid for only one calendar year. Regarding examples of national actions taken against IUU fishing of national vessels, Norwegian authorities have withdrawn the permit to fish in the CCAMLR-area for a Norwegian registered vessel, because the owner previously had extensively violated fisheries regulations.

46. Regarding the extra-territorial application of domestic sanctions to citizens engaging in IUU fishing, Spain has a regulation on the application of penalties to Spanish nationals employed on FOC vessels. New Zealand also controls the fishing activities of its nationals on foreign flagged vessels. No New Zealanders may use a foreign flagged vessel to take or transport fish on the high seas unless they do so in accordance with an authorisation issued by a party state of UN Fish Stock Agreement (including a signatory state), FAO Compliance Agreement. Thus, only two OECD countries have made it an offence for its nationals to engaging in IUU fishing.

Fishing activities by foreign vessels within national EEZs

47. Foreign vessels' fishing activities is only possible subject to obtaining a fishing license from third countries or under bilateral fisheries agreements. In most cases, the license specifies the type of fishing, type of species etc. and government may levy a license fee. The fishing activities are usually controlled and monitored by catch quotas, mandatory reporting, using VMS, use of observer and maintenance of logbook. In case of fishing activities under bilateral agreements, vessels are obliged to obey measures based on reciprocal principle.

48. In the EU, the Community has exclusive competence to negotiate and conclude fisheries agreements with third countries. Fishing activities by foreign vessels can be possible under bilateral agreements with those third countries. Member countries are responsible for implementing control measures and for introducing procedures for prosecution and punishment of IUU fishers within their national EEZs. Norway has an extensive system of agreements with other states and a large licensing program for foreign vessels, with approximately 1 200 licenses granted annually. In Korea and Japan, foreign fishing vessels can conduct fishing activities within their EEZs subject to obtaining a license from government or under bilateral agreements.

49. In the New Zealand EEZs, two types of foreign flagged vessels' fishing are available – fishing under a charter arrangement with a New Zealand company and fishing under a foreign licensed access arrangement. There are currently 48 vessels registered under charter arrangements and only United States purse seine vessels are entitled to fish under a foreign licensed access arrangement. Foreign fishing access to the Australian EEZs is strictly regulated and limited to negotiated government and government

⁸ National unit per US Dollar used in this paper is based on the estimated rate of the year 2003 set by OECD *Economic Outlook* No. 74

agreements. In the process of granting foreign fishing license, Australia takes into account previous IUU fishing offences by vessel and crew, the history of flag State, the ‘genuine link’ between the vessel and the flag State. In particular, the vessel master must also hold a foreign master fishing license issued by Australian government.

50. On the other hand, Turkey does not allow foreign vessels to fish within its EEZs. No foreign vessels may fish in the United States EEZs unless the flag State has concluded a “Governing International Fishery Agreement” with the United States, with the exception of US-Canada treaty governing the Pacific albacore tuna fishery.

51. In relation to penalties for illegal fishing by foreign fishing vessels within national EEZs, it includes fines (see Table 4), confiscation of catches, equipment and vessels, detention of vessels and crews. The maximum penalty has a wide range according to national laws, saying USD 84 745 (Japan), USD 3 600 (Turkey), USD 5 056 (minimum in Netherlands), USD 84 034 (Korea), USD 112 360 (Belgium), USD 84 270 (Germany), USD 289 017 (New Zealand), USD 22 472 for vessel operator and USD 8 989 for captain (Poland) and USD 532 258 (Australia). Mexico, Australia, Korea and Japan have measures on detention of vessels (including their crews) and application of sureties. Detained ships and their crews will be released immediately upon deposit of a surety or other guarantee. The wide range of fines can be explained by the range of perceptions on the IUU problem; both Australia and New Zealand have undertaken a major effort to combat IUU while the problem may be perceived as a lesser “evil” by others.

Table 4. Penalty (Fines) for Offences by Foreign Flagged Vessels

(US Dollars)

Australia	New Zealand	Belgium	Japan	Germany	Korea	Poland	Turkey
532 258	289 017	112 360	84 745	84 270	84 034	22 472	3 600

52. With regard to examples involving IUU fishing activities by foreign vessels and national actions taken, Australia apprehends over a hundred foreign vessels for IUU fishing within the Australian fishing zone each year (138 illegal fishing vessels in 2003). IUU fishing in the Australian EEZs is of two distinct types: artisanal level illegal fishing (mainly targeting reef shark in northern Australia) and industrial scale illegal fishing (targeting Patagonian toothfish in the southern Ocean). Australia has made a penalty against fishing vessel masters taking dolphin. Two masters were sentenced to two months jail for their offences, and a further three months jail for failing to pay fines in 2003.

Registration of fishing vessels

53. Generally, to be registered as a fishing vessel, (i) a certain size (ex, 5 net tonnes, 5 meters in length etc.), (ii) fishing license, and (iii) the fulfilment of additional requirements set by national laws are required. For vessel registration, many countries require the similar nationality of owners of fishing vessels or provide an economic connection (link) with the country. In this regard, it is considered to be difficult for foreigners to register their vessels in OECD countries due to very strict requirements. Required information on the registration normally includes (even though it differs country by country): ownership and the name of vessel, gross tonnage, the date of construction, former flag, the name and place of the vessel’s construction company.

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54. EU Member States must inform the European Commission of all data relating to the life of a fishing vessel in cases where such data is recorded in their national database. Since January 2003, the name and address of agent and the place of construction of a vessel whose overall length is 15 meters or more or whose length between perpendiculars is 12 meters or more must be notified to the EU. With regard to the name and address of the owner, the applicable limits are an overall length of 27 meters and a length between perpendiculars of 24 meters. It will be mandatory to supply such data for all vessels as from 2004.

55. Japan has established the fishing vessel registration scheme which sets the upper limit of the total number (and/or total gross tonnages) of fishing vessels. In Sweden, only active fishing vessels are listed in the National Board of Fisheries register (with permits issued by NBF). The requirements for a fishing vessel permit are: (i) listed in the Swedish Maritime Administrations register of shipping, (ii) economic connection to Sweden, (iii) that a fisher with a valid fishing license can be registered as permit holder/ship operator of the vessel. In Portugal, the owners of fishing vessels must as an annual basis provide a proof of economic link with Portugal.

56. In New Zealand, fishing vessels have two registration processes on the basis of registration under the Ship Registration Act (over 24 meters in length) and registration under the Fisheries Act. For foreign flagged charter vessels and for New Zealand flagged vessels where the operator of the vessel is a foreigner, specific consent from government is required in the process of fishing vessel registration. Australia's application for vessel registration includes a declaration of ownership and nationality⁹, evidence of ownership, call sign license and marking requirements. And all Australian-owned fishing vessels must be registered in order to fish beyond territorial sea.

57. All vessels of five net tons or greater that are owned by a US citizen or a corporation are required by US law to be federally documented through US Coast Guard's National Vessel Documentation Center (NVDC) if the vessels are to be used in the fishery trade. US-flagged fishing vessels greater than five net tons must be US-built and wholly owned by a US citizen, or by a US corporation or partnership that is at least 75% US owned.

58. Regarding the re-flagging of national flagged fishing vessels, in most countries, government permission is not needed except in Norway. In Norway a permission is required if a particular vessel has been involved in schemes for adjustment of fishing capacity.

59. As a general conclusion it can be said that, in most OECD countries with the exception of Australia and New Zealand, there is no clear mechanism to control fishing vessels that have a history of IUU fishing activities in the registration process. However, New Zealand considers offending history of its national flagged vessels only when vessel operator is an overseas person. Australia also considers the ship's history of compliance and IUU fishing in its vessel registration.

3.2. Economic measures

Investment rules

60. With respect to inward investment, fishing vessel ownership is subject to certain restrictions such as nationality, economic links, specific consent and share of capital. In reality, most countries have very strong restrictions on vessel ownership and flying their flag. Foreign investment in fishing company can only be within the certain share of capital stock (Mexico, Korea, and Greece up to 49%; the US and

⁹ It is required a strong genuine link to be registered in Australian vessels. Only Australian owned vessel is authorized to fish under fishing permits or statutory fishing rights.

Iceland up to 25%). While there is foreign investment in New Zealand fishing companies, there are limits (up to 24.9%) on the degree of foreign ownership of companies that own fishing quotas.

61. In outward investment, there are no restrictions for most member countries to invest in the fishery sector of foreign countries. Foreign investment is not restricted in Spain, but national investment in third countries is regulated, especially when government aids to reduce the fishing effort can be obtained. In Japan, foreign investment in the fishing area is subject to a report to the government. New Zealand has a rule that impose restrictions on the ownership of foreign flagged fishing vessels by its nationals. No New Zealanders may use a foreign flagged vessel to take or transport fish on the high seas unless they do so in accordance with an authorisation issued by a party state of UN Fish Stock Agreement (including a signatory state), FAO Compliance Agreement.

Trade rule – Catch and Trade Documentation

62. Many countries require statistical and catch documents in accordance with the rules set by the relevant RFMOs as a mean to prohibit the flow of IUU catches. Japan and Korea require the submission of catch and statistical documents for import and export of bluefin tuna (ICCAT), southern bluefin tuna (CCSBT), bigeye tuna (CCAMLR), sword fish (ICCAT), and Patagonian toothfish (CCAMLR). The United States also implements a range of catch documentation and certification schemes through RFMOs such as ICCAT, CCAMLR and IATTC. New Zealand has also implemented trade measures consistent with their obligations under CCAMLR, CCSBT, ICCAT and IATTC.

63. Iceland is bound by trade documentation measures adopted by ICCAT and Norway has implemented catch documentation scheme for Patagonian toothfish (CCAMLR). Australia has implemented trade certification schemes set by CCAMLR, CCSBT and IOTC to prevent IUU fishing. Poland also applies agreed regulations of CCAMLR. The EU also supports the use of trade documentation measures made by the ICCAT and CCAMLR; in imports of bluefin tuna and exports of Patagonian toothfish, it must be accompanied by statistical or catch documentation. Portugal complies with catch documentation scheme for the species regulated by ICCAT and IOTC.

64. In Turkey, IUU fish are confiscated but subsequently sold in auction. In Netherlands, foreign parties placing fish on the market (auction, trade and processing) must provide the name of the vessel that caught the fish. When the vessel is not known, the fish is seized and confiscated. Meanwhile, Mexico does not support the application of trade sanctions on the reason that they are not a suitable and just means to promote the protection of species.

Rules regarding landings, transshipments and marketing

65. In the EU, the third countries' vessel owners are required to get a prior authorization (72 hours before landing) for landing fish in national ports and as a post-landing control measure, they should submit a declaration indicating the quantity of fish (by species) landed. To land fish caught on the high seas or in another jurisdiction from a foreign flagged vessel at a New Zealand port, government approval is required prior to the departure of fishing trip and a fee must be paid. The master of the vessel must notify the intention to bring the fishing vessel into internal waters before 72 hours. Maximum penalties for violations are up to USD 57 803 and the fish (or proceeds from sale), fishing gear and vessel may be confiscated. Australia also requires a port permit for foreign fishing vessels' landing and transshipment at its port. This port permit is issued subject to consideration of vessels' compliance and IUU fishing history.

66. Japanese fishing vessel owners should obtain general permit from the government for transshipment of tuna species or landing such species at foreign ports. The permit holders should report to the government the volume of fish, time and venue of transshipment or overseas landing in advance. In case

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of non-Japanese fishing vessels, they should obtain the landing permit, along with the port call permit, for their transshipment or landing any fish species at Japanese ports. The maximum penalty for violating those provisions is 3 year imprisonment and/or a fine of USD 33 898.

67. In Sweden, third country fishing vessels can land their catches only in 13 selected ports. No national regulations forbid reloading from foreign vessels. In Spain, the third countries' fishing vessels should obtain prior government authorisation to land or tranship as well as proof of the origin of the catches. In Mexico, foreign flagged fishing vessels need an authorisation from the government in case of disembarking fisheries products or transshipments, and when unloading commercial fisheries products in Mexican port from foreign vessels. Norway also prohibits landings of IUU catches taken regardless of their origin.

68. US law generally prohibits foreign vessels from landing or transshipping fish in US ports. The primary exceptions to this rule concern ports in the US territories in the Pacific Ocean and landings of Pacific albacore tuna under a US-Canada treaty. National Marine Fisheries Service (NMFS) boards some foreign vessels in US ports to examine and verify fish landings. The Coast Guard requires an advanced notice of arrival 96 hours prior to entry into US ports for all vessels greater than 300 gross tons. Foreign vessels operating fishing activities in the Korean EEZs under bilateral agreements shall obtain a permission from Korean government in order to transfer catches to another vessel or land catches in Korean ports. Violations of the provision result in fines of up to USD 84 033.

Penalties, fees and restrictions to GFTs

69. With regard to penalties (see Tables 3 and 4), there is no differential treatment between national and foreign vessels in Spain, Portugal, Iceland, Sweden, Belgium, Germany and Netherlands. The penalties cover fine, confiscation of catches and vessel, and detention of vessels and crews. On the other hand, Korea, Japan, New Zealand and Australia impose different penalty on national vessel and foreign vessel for illegal fishing activities depending on specific conditions. In OECD Member countries, Australia imposes the highest fines for foreign flagged vessels. The maximum penalty for Australian national is USD 35 484 and that for foreign fishing offences USD 532 258. Australia has recently increased the maximum penalty for foreign fishing offences from USD 354 838 up to USD 532 258 to differentiate the artisanal level IUU fishing and industrial scale one.

70. If the beneficiary of GFTs (such as fishery loan or tax-free petrol) has engaged in IUU fishing in Korea, National Federation of Fisheries Co-operative entrusted with GFTs from government can suspend or collect related GFTs. In the US, all federal loans or grants are subject to background checks including but not limited to credit bureau reports, fines and penalties review. A loan or grants can not be given if there is an outstanding fishing violation.

71. In relation to foreign fishing activities within nation's EEZs under bilateral agreements, some countries charge a fee. In the US, fees are charged when applying to fish (including tranship) in the EEZs (USD 380 per vessel) and a fee schedule is maintained for quite limited directed fishing possibilities in the Northwest Atlantic. Vessels conducting directed fishing and/or joint ventures are required to pay for observer coverage. New Zealand charges foreign fishing license fees for foreign flagged vessels fishing activities in its waters. The fees depend on the species of fish to be targeted.

3.3. Other measures

72. As a private sector initiative, the OPRT (Organization for Promotion of Responsible Tuna Fisheries) has been established in Japan to promote responsible tuna fishery. Members of OPRT include large-scale tuna long-line fishery organizations from China, Chinese Taipei, Indonesia, Korea and

Philippines, as well as Japanese importers, distributors, and consumer organisations. Main activities of the OPTTR are to disseminate information related to the IUU problems in tuna fisheries, to calculate the landing statistics of tuna for cross checking of reported catch data, and to implement a scrapping scheme for IUU vessels.

73. In Turkey, pressures from environment and nature groups, NGOs, press and media on fishing community are bringing more attention to IUU and over-fishing, damage to natural stocks, and threat of extinction of some species. The Korean government seeks to persuade such civil organisations as Deep-Sea Fishing Association to participate voluntarily in campaigns to prevent fishers from engaging in IUU fishing overseas.

74. The United States seeks to educate the US fishing industry about initiatives such as the International Monitoring, Control and Surveillance Network.¹⁰ A variety of methods are used to provide outreach to industry to increase understanding of the MCS requirements and need for them. Spain established the Fisheries Protected Zone (FPZ) in the Mediterranean Sea to control the activity of vessels of other flags beyond 12-mile limit. This FPZ makes it possible to supervise and deny the rights to fish in that area of vessels from non-EU countries.

75. The Norwegian Fishermen Association (with Norwegian Federation of Fish and Aquaculture) has initiated a project, which will give the fishermen an ethical focus as to resource utilization, towards fellow fishers, buyers and other stakeholders. The project is co-financed by public and private sector funds. The initiative seeks to explore the possibilities of establishing a certificate for fishers and/or fishing vessels that comply with a set of ethical standards, providing them “preferred customer status”. The Norwegian government and the various industry organisations have also signed a co-operation agreement on how to fight illegal activities.

76. Australia and New Zealand encourage their fishing companies to participate in international initiatives such as COLTO (the Coalition of Legal Toothfish Operators)¹¹. COLTO is comprised of industry members from several countries that have a direct commercial interest in the well-being of Patagonian toothfish. COLTO has launched an international ‘Wanted’ reward scheme in Brussels in May 2003. The Coalition is offering up to USD 100 000 for information leading to the conviction of illegal fishers. Australia and New Zealand also use greater media coverage to promote apprehensions of vessels suspected of IUU fishing to demonstrate their strong willingness to tackle IUU fishing issues.

3.4. Summary and key issues

77. Most OECD countries control and monitor national flagged fishing vessels activities by such tools as fishing permits, catch quotas, reporting obligations, high technology VMS and observer coverage. Increasingly, the information derived from VMS and catch reports is used to feedback into real-time fisheries management decisions. Only Spain and New Zealand apply domestic sanctions to extra-territorial fishing activities by their nationals and national flagged vessels. The penalties (especially fines) imposed by most member countries are considered to have little impacts on deterring IUU fishing activities, compared to the high values of IUU catches.

¹⁰ The International MCS Network is an arrangement of national organisations/institutions in charge of fisheries-related MCS activities, which have been authorized by their countries, to coordinate and cooperate in order to combat IUU fishing. Participation in the network is voluntary and 16 countries (including 9 OECD countries) are now participating as a member.

¹¹ COLTO currently has 28 member companies from ten countries and has applied for CCAMLR observer status to improve its capacity to work with and assist member governments

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78. OECD member countries also have very strict requirements for foreigners in the process of vessel registration. However, in that process, IUU history is not considered in most countries except in New Zealand and Australia. Therefore, it is noted that the registration process serves relatively limited filtering role in preventing IUU fishing activities and “hopping” of vessels from registry to registry. Increasingly, trade measures (such as CDS and Trade Documentation) made by RFMOs are supported by many member countries due to its success in curbing IUU fishing.

79. With some notable exceptions, most countries are not actively using other measures such as encouraging private sector movement, establishing non-economic and social mechanisms to discourage IUU fishing involvement by their nationals and national flagged vessels.

4. Inventory of RFMOs' Measures

4.1. Background (regional fisheries governance)

80. A recurring issue of international fisheries is that regional fisheries management organizations should play a key role in managing and conserving world fisheries resources through concerted sub-regional and regional cooperation. This is because many fish stocks are trans-boundary in character and cannot be managed by a single country.¹²

81. A number of RFMOs has been established since the adoption of UN LOS Convention. In Articles 116-120, the LOS Convention provides the basis for the role of RFMOs through cooperation of States in the conservation and management of living resources on the high seas. After the adoption of the UN LOS Convention, Chapter 17 of Agenda 21, 1995 UN Fish Stock Agreement, 1995 FAO Code of Conduct and the Compliance Agreement highlighted the role of RFMOs in implementing management measures for long-term sustainable fisheries. These international instruments encourage States to establish RFMOs where appropriate, and strengthen existing RFMOs in order to improve their effectiveness in establishing and implementing conservation and management measures.¹³

82. Among many international instruments, the 1995 UN Fish Stock Agreement places regional fisheries governance in a crucial position in terms of its implementation; this Agreement adopted the concept of precautionary approach and set out mechanisms for international cooperation on straddling and highly migratory fish species. It emphasizes that vessels flying the flag of non-members and non-participants should not be authorized to fish, and it also emphasizes cooperation between member and non-member states. It should be noted that the 1995 UN Fish Stock Agreement has brought about two new RFMOs. One is dealing with the management of straddling fish stocks in the Southeast Atlantic Ocean (SEAFO)¹⁴, the other is dealing with highly migratory fish stocks in the Western and Central Pacific Ocean (WCPFC).¹⁵

¹² According to the FAO, there are more than 500 maritime boundaries in the world between adjacent EEZs, and significant proportions of the world's fish stocks lie across these boundaries and are fished by two or more nations.

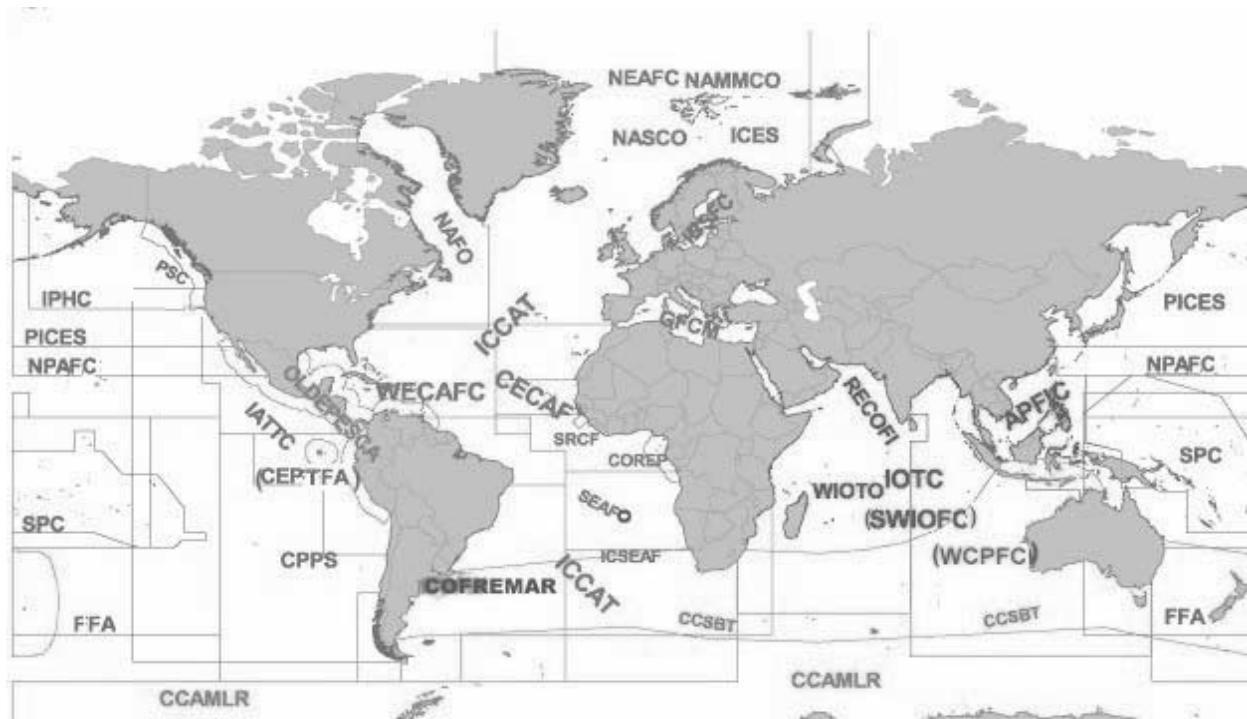
¹³ See **Appendix 3**, which provides the status of OECD countries involvement in major RFMOs

¹⁴ So far, seven States and EC signed. SEAFO will manage straddling stocks such as orange roughy, wreckfish and deepwater hake in the Southeast Atlantic Ocean (FAO Statistical Area 47). Key aspects of SEAFO Convention are the establishment of a commission, a secretariat and compliance and scientific committees.

¹⁵ The WCPFC Convention will enter into force from June 19, 2004.

4.2. Current situation of RFMOs

Figure 1. Current Situation of RFMOs



Source : FAO website

83. As the above map shows, there are over 30 RFMOs operating in world fisheries. They were established under the FAO Convention or by international agreements among Contracting Parties. As described in Table 5, RFMOs can be categorized as management bodies, advisory bodies, and scientific bodies according to their functions.¹⁶ The main focus of them is to enhance international cooperative management of shared resources among coastal States and those stocks occurring on the high seas. Recently, main issues and challenges faced by RFMOs can be summarized as conservation of resources, control of catches and effort, by-catch and discards, data collection and distribution, MCS and IUU fishing.

¹⁶ Management bodies (directly establish management measures), advisory bodies (provide members with scientific and management advice), and scientific bodies (provide scientific and information advice)

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Table 5. RFMOs by Type

Function	RFMOs
Management	CCAMLR, CEPTFA, CCSBT, GFCM, IATTC, IBSFC, ICCAT, IOTC, IPHC, IWC, WCPFC, NAFO, NASCO, NEAFC, PSC, SEAFO, SWIOFC
Advisory	AAFC, APFIC, BOBP, CARPAS, CECAF, CIFA, COPESCAL, COREP, CPPS, COFREMAR, EIFAC, FFA, LVFO, NAMMCO, MRC, OLDEPESCA, RECOFI, SRCF, WECAFC, WIOTO, SEAFDEC
Scientific	ACFR, CWP, ICES, NACA, PICES, SPC

Source: FAO

84. Among current issues, the IUU fishing problem has been recognized by many RFMOs as a high priority. With respect to the magnitude of IUU fishing, FAO has been informed that IUU fishing accounts for up to 30 percent of total catches in some important fisheries and IUU catches in some species could be as high as three times the permitted catch level.¹⁷ It is also recognized that IUU fishing activities have occurred by both Contracting and non-Contracting Parties to RFMOs, as well as flag vessels from open registers. As a result, it undermines the conservation and management measures of many RFMOs. In this context, many RFMOs have taken a number of actions over the past decade to address the problem of IUU fishing and a growing number of RFMOs are now promoting and implementing stronger management measures to curb IUU fishing activities.

85. Key pressures on IUU fishing vessels imposed by RFMOs include trade and trade-related measures, deregistration of vessels (e.g. Belize case in response to ICCAT pressure) and the imposition of fines (e.g. Panama case against Panama-flagged vessels and eventual withdrawal from register). A list of recent actions taken by some open register States can be found in Appendix 4. Such actions have had some success and persuaded States to become members of RFMOs or comply with conservation measures. For example, Panama joined ICCAT as a result of ICCAT measures.

4.3. Measures of major RFMOs

86. Among the many RFMOs, this section will review eight major RFMOs that have established management measures against IUU fishing activities. Main emphasis will be put on regulatory measures. It also deals with membership requirements with a view to assess whether it may be considered to be a cost accruing element for new comers. Major RFMOs with regulatory functions included in this paper are ICCAT, IATTC, CCSBT, IOTC, CCAMLR, NAFO, NEAFC and WCPFC.

¹⁷

FAO Press Release 01/08, February 2001

Table 6. Major RFMOs with Management Measures

Name	Established	No. of Members	Target Areas	Target Species	IUU Catch Assessments
ICCAT	1969	38 (EU)	Atlantic Ocean/ adjacent area	Tuna and tuna-like species	Significant impact (10% of major catches)
IATTC	1950	14	Eastern Pacific Ocean	Skipjack and yellowfin tuna	Possible, not important
CCSBT	1994	4	Southern hemisphere sea area at high latitudes	Southern bluefin tuna	Minimum 4000 tons, 1/3 of total annual catches (11750 tonnes in '99)
IOTC	1996	20 (EU)	Indian Ocean (FAO S.A. 51, 57) ¹⁸	Yellowfin, skipjack tuna, marlins and swordfish	10% of all tuna landings (120000-140000 tonnes)
CCAMLR	1982	24(EU)	The Antarctic (FAO S.A. 45, 48 and 88)	Antarctic marine living resources (euphausiid, toothfish, etc.)	25% (8418 tonnes) of total estimated catches
NAFO	1979	17(EU)	Northwest Atlantic Ocean	All marine living resources except salmon, tunas, whales, etc	Information is forthcoming
NEAFC	1982	6(EU)	Northeast Atlantic (FAO S.A. 27)	Redfish, mackerel, herring, blue whiting, deep sea species	Information is forthcoming
WCPFC	2000	20	Western and Central Pacific Ocean	All species of highly migratory fish stocks (except sauries)	Information is forthcoming

4.3.1 ICCAT (www.iccat.es)*Membership*

87. Presently, the ICCAT has 38 member countries including the European Community. Membership is open to any government which is a member of the UN, any specialized agency of the UN and to any inter-governmental economic integration organization constituted by States that have transferred competence over the matters governed by the ICCAT. Instruments of ratification and approval may be

¹⁸

FAO Statistical Area

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deposited with the Director General of the FAO, and membership is effective on the date of such deposit. Member countries should make a financial contribution to the budget according to a contribution scheme. The total budget for the year 2004 amounts to EUR 1.9 million.

IUU catches and stock assessments

88. It is estimated that the IUU catches are about 10% of the major Atlantic tuna species (bluefin, swordfish and bigeye) catches. The effect of these catches on the populations is considered to be of significant.

89. Stock assessment in ICCAT area is prepared by SCRS (Standing Committee on Research and Statistics). SCRS also advise on the need for specific conservation and management measures and held a meeting once a year.

Management measures

90. Regarding the Compliance Agreement, the ICCAT adopted a Resolution in 1994 which provides that the Contracting Parties should take necessary measures to maintain a register of all high seas fishing vessels greater than 24 meters in length and submit this information to ICCAT annually. ICCAT also encourages non-Contracting Parties to do the same. In 1999, it published a list of around 340 longline tuna fishing vessels claimed to be involved in IUU fishing and flagged to countries operating open registers.

91. The ICCAT has adopted an action plan for enforcing regulatory measures for those vessels fishing contrary to its conservation measures. This includes a step-by-step approach involving vessel sightings, formal warning to flag States and a request to rectify the situation and the prohibition of imports of bluefin tuna or swordfish. The ICCAT adopted a Resolution on vessel monitoring in 1995 encouraging satellite tracking and catch reporting systems under the responsibility of flag States; the ICCAT requires cooperation of non-Contracting Parties to adopt a similar system.

92. The ICCAT adopted two resolutions in 1998 concerning (i) landings and transshipments of vessels from non-Contracting Parties identified as having committed a serious infringement and (ii) the unreported and unregulated catches of tunas by large-scale longline vessels in the Convention area. Inter alia, it requires port inspections and prohibitions by Contracting Parties on landing or transshipments. The Commission is to request Contracting and co-operating importing Parties in which the products are landed to collect and examine import or landing data and associated information and submit specified information to the Commission each year.

93. For the first time in RFMOs, the ICCAT adopted the Trade Documentation Scheme (TDS) to address the problems caused by IUU fishing for bluefin tuna. In 2002, this scheme extended to include bigeye tuna and swordfish. It is believed that this scheme improved the reliability of data available to the ICCAT in determining the annual amount of exported products of them. However, the ICCAT faced new problems making this scheme non-effective in the process of implementation of a TDS, which was based on IUU-black list of longline vessels,. IUU vessels escaped easily from regulatory measures through tuna laundering and use of forged trade document. For these reasons, the ICCAT adopted in 2003 a new measure based on positive measure (white list approach). Now, the ICCAT has put in the public domain a list of approximately 100 IUU vessels operating in the ICCAT Convention area.

4.3.2. IATTC (www.iattc.org)*Membership*

94. Membership is open only to States subject to the approval of existing Parties. A Protocol to the Convention was adopted in 1999, to allow regional economic integration organizations, such as the European Community, to become members but so far progress towards the entry into force of the Protocol, which requires the approval of all State parties, has been slow. The IATTC member countries should contribute to their budget in accordance with payment schedule taking into account a fund formula. The contribution of any new member shall be determined on the same basis as that of existing members. The budget for the year 2004 amounts to USD 4.9 million.

IUU catches and stock assessments

95. The IATTC does not have an estimate of IUU catches, but suspects that they are not large in comparison to legal catches such as reported and monitored catches.

Management measures

96. In 1999, the secretariats of CCSBT, IATTC, ICCAT, IOTC and SPC decided that each commission should identify licensing requirements for tuna fishing vessels and establish a registry of such vessels active in their areas of competence, including documentation of licenses held by the vessels. Subsequently, the

97. The IATTC implemented plans to develop a register of longline fishing vessels authorized to fish in the Eastern Pacific Ocean in order to combat IUU fishing. In July 2003, the IATTC also adopted a resolution on the establishment of a positive list of longline fishing vessels over 24 meters authorised to operate in the Eastern Pacific Ocean. As of March 2004, 1 155 vessels were registered as authorized large longline fishing vessels.

98. The IATTC maintains an independent scientific staff and offices in major fishing ports to collect information directly from vessels, managers and processing facilities. It also monitors catch made by the surface gear fisheries, allowing for statistical collection. All large purse seiners carry an observer.

99. In March 2003, the IATTC introduced a bigeye tuna Statistical Documentation Program to assist its efforts in the elimination of IUU fishing activities by FOC fishing vessels. The IATTC recognizes that bigeye tuna is a main target species of FOC fishing operations and most of the bigeye harvested by such fishing vessels is exported to member countries, especially to Japan.

4.3.3 CCSBT (www.ccsbt.org)*Membership*

100. Membership of CCSBT is open to any State whose vessels engage in fishing for southern bluefin tuna or to any coastal State through whose EEZs or fishing zone the tuna migrates. Regional economic integration organisations are not allowed. Each member shall contribute to the budget in accordance with rules of Convention, i.e. 30% of the budget shall be divided equally among all members and 70% of the budget shall be divided in proportion to nominal catches of southern bluefin tuna. The year 2003 budget amounts to AUD 2.4 million.

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IUU catches and stock assessments

101. With regard to estimates of IUU catches (especially unregulated catch), the CCSBT stated in 1999 that the annual catches of southern bluefin tuna by non-members were estimated to be at least 4 000 tonnes, which was 1/3 of total allowable catches in 1999.¹⁹ Actions taken by the Commission to estimate these catches include monitoring Japan's fish import statistics, and collection and review of information on tuna landings at selected Indian Ocean ports, by representatives of Commission members.

102. Stock assessment in the CCSBT is conducted by SAG (Stock Assessment Group), which was established to separate the technical evaluation and advisory roles of its Scientific Committee. The CCSBT is scheduled to conduct a full stock assessment in September 2004.

Management measures

103. The CCSBT implemented a Trade Information Scheme (TIS) on 1 June 2000, to collect more accurate and comprehensive data on southern bluefin tuna fishing. The core of the TIS is the provision for all members of the CCSBT to require for all imports of southern bluefin tuna a completed CCSBT Statistical Document. The document must be endorsed by a competent authority in the exporting country. The document includes extensive details of shipment such as the name of each fishing vessel, gear type, area of catch, dates, etc. Member countries are also required to deny the landings in their ports of any tuna caught outside the zones or lacking appropriate documentation. Recently, the Scheme was amended to require the Document to include the country of destination and to set minimum standards for completion of TIS documents. The requirement to include destination country was made in the light of markets for southern bluefin tuna developing outside CCSBT members.

104. In the recent past, the CCSBT reported that significant and increasing volumes of southern bluefin tuna were being taken by flag of convenience vessels. This has been of major concern to the CCSBT where the stock needs to be carefully managed. The Commission has sought the cooperation of FOC countries in supporting their management and conservation measures. They have also been advised that if cooperation is not forthcoming, the Commission will consider measures, including trade restrictive measures, to be taken against them in accordance with the Action Plan adopted in 2000.

105. According to its adopted resolution in 2003, the CCSBT will publish a list of vessels over 24 meters which are authorised to fish for southern bluefin tuna on 1 July 2004. The list will include vessels from members and cooperating non-members and be updated as new vessels are notified. Members and non-members will not import southern bluefin tuna, which has been caught by a large scale fishing vessel not on the CCSBT approved list.

4.3.4. IOTC (www.iotc.org)*Membership*

106. Membership is open to States and regional economic integration organisations, subject to two-thirds approval by existing parties. Each member shall contribute to the annual budget in accordance with a scheme which the Commission shall adopt and can only be amended by consensus. The 2003 budget amounts to USD 1.2 million.

¹⁹ The CCSBT's agreed national catch limits for 2003-2004 are 14930 tonnes; members (14030 tonnes) and cooperating non-members (900 tonnes).

IUU catches and stock assessments

107. The IOTC estimated that between 120 000 and 140 000 tonnes (about 10% of all tuna landings) of tuna are taken in the IOTC area by IUU fishing. The IOTC also reported that IUU fishing had been made by approximately 140 large freezer longliners, a large number of small wetfish longliners and about ten purse seiners. Of special concern is the large longline fleet from Chinese Taipei.

108. The Scientific Committee of IOTC advises the Commission on research and data collection, on the status of stocks and on management issues. The Scientific Committee meets annually with the Commission.

Management measures

109. The IOTC adopted a recommendation in 1998 concerning registration and exchange of information on vessels, including flag of convenience vessels fishing for tropical tunas in the IOTC areas. It applies to vessels longer than 24 meters and on a voluntary basis to those under 24 meters. Contracting Parties must submit a list of all fishing vessels licensed to fish in their waters. In 1999, the IOTC adopted a resolution calling for actions against fishing activities by large scale open register longline vessels, including by denying fishing licenses and more effectively monitor and report such operations.

110. The IOTC introduced a bigeye tuna Statistical Documentation Program in 2001 and adopted a recommendation in 2002 concerning measures to prevent the laundering of catches by large-scale tuna longline IUU fishing vessels. Contracting Parties and co-operating non-Contracting Parties should ensure that their duly licensed large-scale tuna longline fishing vessels have a prior authorization of at sea or in port transshipment, and obtain the validated Statistical Document. They should also ensure that transshipments are consistent with the reported catch amount of each vessel when validating Statistical Document and the reporting of transshipment.

111. As a complementary measure, the IOTC adopted a resolution in 2002 concerning the establishment of an IOTC Record of vessels over 24 meters authorized to operate in the IOTC areas. Large-scale fishing vessels not entered into the Record are not authorized to fish for, retain on board, transship or land tuna and tuna-like species. Also in 2002, the IOTC adopted a resolution on establishing a list of vessels presumed to have carried out IUU fishing in the IOTC area. This applies to large-scale fishing vessels flying the flag of non-Contracting Parties, and is based on the information collected by Contracting Parties and co-operating non-Contracting Parties. The major measures by Contracting Parties and co-operating non-Contracting Parties against IUU fishing activities are:

- prohibition of the imports, landing, and transshipment
- prohibition of the chartering and refusal to grant their flag
- encouraging the importers, transporters and other sectors concerned, to refrain from transaction and transshipment of catches by IUU listed vessels.

4.3.5. CCAMLR (www.ccamlr.org)*Membership*

112. Membership is restricted to those States which participated in the 1980 Conference on the Conservation of Antarctic Marine Living Resources and other States or regional economic integration organizations, which are engaged in research or harvesting activities in relation to the living resources to

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which the Convention applies. In October 2003, the CCAMLR members agreed that the COLTO could be granted observer status at the CCAMLR. Each member countries contribute to the budget in accordance with the amount harvested. The budget for 2003 amounts to AUD 2.9 million.

IUU catches and stock assessments

113. The CCAMLR has a scientific committee to advise the Commission on harvesting levels and other management measures developed through consultation and the application of advanced scientific techniques. In 1999, the CCAMLR Scientific Committee had expressed grave concern over the virtual commercial extinction of some stocks of toothfish due to IUU fishing.

114. During the year of 1997-2000, the amounts of toothfish taken by IUU fishing (by Members and non-Contracting Parties) have been estimated to around 90 000 tonnes, which is more than twice the level of catches taken in CCAMLR-regulated area. No IUU catches by members reported in 2000. According to CCAMLR reports, the estimated IUU landings have fallen sharply from 68% (1997) to 25% (2000) and total annual estimated catches have also declined by 67% over the same period (see Table 7).²⁰ In some sense, this decline is attributed to CCAMLR's management measures including introduction of Catch Documentation Scheme in 1999. On the other hand, the CCAMLR recently estimated that IUU catches of toothfish (from both inside and outside of the CCAMLR zone) were around 22 000 tonnes for the period January to October 2003. This is a slight reduction over previous years, but is considered a significant concern.

Table 7. The Trends of Estimated IUU Landings (within zone)

	1997	1998	1999	2000
Total estimated catch (tones, A)	100 970	54 967	53 955	33 660
Estimated IUU landings (tones, B)	68 234	26 829	16 636	8 418
B/A (%)	67.6	48.8	30.8	25

Management measures

115. The CCAMLR has adopted comprehensive conservation measures to deter IUU fishing, including trade measures (catch documentation scheme), information exchange between Contracting Parties, political approaches such as diplomatic demarches to non-Contracting Parties and non-Parties, deployment of VMS and port State inspections.

116. Under Conservation Measure 118/VII, the CCAMLR requires that a non-Contracting Party vessels be inspected when it enters a port of any Contracting Party, and prohibits landings or transshipments without inspection. Information on the results of all inspections of non-Contracting Party vessels conducted in the ports of Contracting Parties, and on any subsequent action, is to be transmitted immediately to the Commission, which then transmits the information to all Contracting Parties and the flag State.

²⁰ TRAFFIC Bulletin offprint Vol. 19 No. 1 (2001), Patagonian toothfish, Are conservation and trade measures working?

117. The CCAMLR adopted the Catch Documentation Scheme (CDS) in 1999 which became binding on all members on 7 May 2000. This Scheme is designed to track the landings and trade flows of toothfish caught in the Convention Area and, where possible, adjacent waters. It includes mandatory VMS. It also determines whether the toothfish were caught in a manner consistent with CCAMLR conservation measures. For this, all landings, transshipments and importations of toothfish into the territories of Contracting Parties must be accompanied by completed catch documents containing information relating to the volume and location of catch, and the name and flag State of the vessel.

118. Enforcement of CCAMLR measures²¹ is undertaken through the system of observation and inspection, adopted in 1998, which is a nationally operated scheme whereby inspectors are appointed by and report to their own governments which, in turn, report to the Commission.

4.3.6 NEAFC (www.neafc.org)

Membership

119. Six countries (including EU) are members of the NEAFC. The Convention lists individual parties²² which are eligible to participate in the Convention and the Commission. Any State referred to in this list (except a member state of the EU) may accede to the Convention, subject to the approval of three-fourths of all Contracting parties.

IUU catches and stock assessments

120. The ICES (International Council for the Exploration of the Sea) is the official scientific advisory body to the NEAFC. ICES collects data through sampling landings of fish at fish markets, sampling the amount of fish discarded from fishing boats and by targeted surveys with research vessels. In 1999, the ICES expressed its concern about IUU fishing and its influence on the reliability of its assessment of fish stocks. Unreliable data due to IUU fishing make the ICES unable to provide reliable estimates of current stock sizes and forecasts that have been used to set TACs. In October 2003, the ICES gave more strong recommendations to the NEAFC to reduce fishing pressure to conserve fish stocks in North Sea area.

Management measures

121. The NEAFC adopted a Scheme of Control and Enforcement in respect of fishing vessels in areas beyond the limits of national fisheries jurisdiction in the Convention area in 1998. It involves satellite-based vessel monitoring and compulsory presence by Contracting Parties with more than 10 vessels in the relevant sea areas, as well as a specific follow-up to serious infringements. Contracting Parties have also agreed to permit inspection by a Contracting Party of the vessels of another Contracting Party on the high seas.

122. In 1999, a scheme of joint international inspection and surveillance was adopted, which closely followed the models provided by the UN Fish Stock Agreement and the NAFO. It sets out measures to deal with non- Contracting Party fishing in the area including prohibitions of landings of catches taken contrary to the NEAFC recommendations.

²¹ CCAMLR have taken several enforcement measures against violations made by FOC vessels. Belize deregistered vessels engaged in IUU fishing; Panama flag vessels, Panama provided CCAMLR with a list of all its vessels licensed to fish on the high seas in the Southern Oceans; Vanuatu notified that vessels proved to have committed an offence will be considered for suspension or deletion from its registry.

²² They include Denmark (in respect of the Faroe Islands and Greenland), the EU, Iceland, Norway, Poland and the Russian Federation.

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4.3.7 NAFO (www.nafo.ca)

123. The NAFO was set up under the 1978 Convention on Future Multilateral Cooperation in Northwest Atlantic fisheries. The NAFO is considered to be one of the most advanced RFMOs with a well developed institutional structure and a wide range of conservation and management measures. Despite this, the NAFO has been undermined in its operation by a number of problems such as overfishing by members, a lack of procedures for monitoring and controlling the fisheries, the absence of a dispute settlement procedure, and unregulated overfishing by non-members.

Membership

124. The membership is limited to parties which either participates in the fishing activities in the regulatory area, or which provide evidence that it is going to participate in such fisheries in the near future. Membership is reviewed annually by the NAFO's General Council.

IUU catches and stock assessments

125. In the NAFO, the Scientific Council conducts assessment of 20 fish stocks in the Regulatory Area and advises to Commission. According to stock assessment by the Scientific Council, most stocks in the NAFO Regulatory Area remain at low abundance, except for yellowtail flounder and northern Shrimp. In particular, the Scientific Council expressed concern with the Greenland halibut stock. As such, the Scientific Council has advised that a substantial reduction in catches is required in order to halt the decline in the biomass of this stock.

Management Measures

126. The NAFO maintains a register of all fishing vessels of more than 50 gross tonnes authorized to fish in the Regulatory Area. Fishing vessels not entered into this register are deemed to be unauthorized to fish. The NAFO deletes vessels in the register which have not been active for two consecutive years. Currently, there are 209 vessels in the NAFO registry.

127. The NAFO adopted its Scheme to Promote Compliance by non-Contracting Party vessels with its Conservation and Management Measures in 1997. The NAFO's 1997 Scheme presumes that a non-Contracting Party vessel engaging in fishing activities in the Regulatory Area is undermining conservation and management measures unless there is a proof to the contrary. It also requires port inspections prior to landing or transshipment.

128. The NAFO also has a Scheme of Joint International Inspection and Surveillance among Contracting Parties. Inspection and surveillance shall be carried out by inspectors of the fishery control services of Contracting Parties following their assignment to the Joint Inspection and Surveillance Scheme. In a decision of September 1999, it allows Contracting Parties to board and inspect a non-Contracting Party vessel sighted in the Regulatory Area and take further action as appropriate under international law. To this end, Contracting Parties are encouraged to review their domestic measures to exercise jurisdiction over such vessels.

129. In order to improve and maintain compliance with the conservation and enforcement measures in the NAFO regulatory Area, the NAFO has a Program for Observers and Satellite Tracking. This program is based on 100 percent observer coverage for vessels (at least one observer at all times) and requires all Contracting Parties fishing vessels operating in the Regulatory Area to be equipped with satellite tracking devices allowing the continuous tracking of positions.

4.3.8. WCPFC (www.ocean-affairs.com)

Background

130. After four years of complex negotiations between the coastal States of the Western and Central Pacific and States fishing in that region, the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean was opened for signature since September 2000. This Convention is considered to be one of the first regional fisheries agreements to be adopted since the conclusion in 1995 of the UN Fish Stocks Agreement.

IUU catches and stock assessments

131. The major management focus will put on the highly valuable and extensive tuna fisheries, considering around 40% of all tuna catches come from Western Central Pacific Ocean. The estimates of IUU catches in this Convention area are not reported yet. According to the Convention, the Scientific Committee will review stock assessments and advise the Commission.

Membership

132. The Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean opened for signature on 5 September 2000. As of February 2004, the Convention has been signed by 19 and ratified by 13 States. The Convention will enter into force from June 19, 2004. The Convention provides a balance between coastal States and distant water fishing nation's interests in the Western Central Pacific Ocean.

Management measures

133. Regarding management measures, the Convention provides for duties of the flag State, compliance and enforcement, a regional observer programme, boarding and inspection, port State measures, application of precautionary approach, and regulation of transshipment. It also anticipates that more detail regulatory and management measures are adopted after entry into force of the Convention.

4.4. Summary and key issues

134. Regionalisation of fisheries management through relevant RFMOs is considered to be an effective and cost saving measure towards management of the high seas resources. To make this trend more effective and efficient in combating IUU fishing, more harmonisation of legislation or creation of new regional initiatives such as vessel databases, or agreements on the minimum terms and conditions for the access of foreign vessels is needed.

135. With regard to port state control, it is pointed out that "open port loophole", which means that the countries with an open port tradition ('port of conveniences' states such as China, Singapore, Namibia, Kenya) are unable to inspect or have little willingness to control IUU trade effectively and thus contribute to make trade measures taken by RFMOs ineffective.²³

136. At present, only a few RFMOs have applied CDS and Trade Documentation measures, and only for a limited number of species. However, with the success of trade documentation in curtailing IUU fishing, these measures could profitably be applied by a greater number of countries and to a greater number of species.

²³ Rogues Gallery, The new face of IUU fishing for toothfish, COLTO, October 2003

5. Other Related Instruments that may be useful to Combat IUU Fishing

5.1. OECD instruments

5.1.1. OECD Guidelines for Multinational enterprises

137. The OECD Guidelines for Multinational Enterprises (the Guidelines) are recommendations addressed by governments to multinational enterprises. The Guidelines contain voluntary principles and standards for responsible business conduct, in such areas as human rights, disclosure of information, anti-corruption, taxation, labor relations, environment, and competition, consistent with applicable laws. The Guidelines ensure that the operations of these enterprises are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises. The guidelines are part of the OECD Declaration on International Investment and Multinational Enterprises.

138. The Guidelines express the shared values of the 37 countries (OECD member countries and 7 non-member countries) that have adhered to them. The adhering countries are the source of most of the world's foreign direct investment and are home to most major multinational enterprises. Although many business codes of conduct are now available, the Guidelines are the only multilaterally endorsed and comprehensive code that governments are committed to promoting.

139. The Guidelines contain a number of general corporate responsibility principles of potential relevance to the fight against IUU fishing activities. With regard to IUU fishing problem, the most obviously relevant part of the Guidelines is the environmental chapter, which broadly reflects the principles and objectives contained in the Rio Declaration on Environment and Development (in Agenda 21).

5.1.2. OECD Code of Liberalization of Capital Movements

140. The objective of the Code of Liberalization of Capital Movement (the Code), which was adopted in 1961, is to provide a basis for the progressive non-discriminatory liberalization of capital movements including the right of establishment in a foreign country for business purposes. The Code is a legally binding instrument of the OECD Member countries. It is also the only multilaterally binding instrument that seeks to further liberalize capital movement.

141. Under the Code of Liberalization of Capital Movements, direct investment is defined as "investment for the purpose of establishing lasting economic relations with an understanding such as, and, in particular investments which give the possibility of exercising an effective influence on the management thereof". Direct investment may take place in several forms, in particular the creation or extension of a wholly-owned enterprise, subsidiary or branch, or the acquisition or participation in a new or existing enterprise. In fisheries this is a regular practice, as vessels can be re-flagged easily and thus be the principal mobile capital investment.

142. The OECD Committee for Capital Movements and Invisible Transaction (CMIT) has earlier considered fisheries as well as other natural resource-based industries. The CMIT has concluded that, in addition to measures directly restricting foreign investments, restrictions in the sense of the Code also include measures restricting foreign ownership of real property including ships. In applying this rule, the CMIT has also considered "ships" to include "fishing vessels".

5.2. Open Registers (FOC)

143. The choice of flag is one of the most important decisions a ship owner can make. Some countries have established what are known as “open register”²⁴, accepting vessels from other countries without having a genuine link to the flag State. The problem is that these countries do not enforce the rules made by international instruments. Main incentives for flagging out by ship owners are related with low registration fees, tax evasion, reduced safety requirements and freedom to employ cheap labour. With the influence of globalisation, labour cost is considered to be a key consideration among incentives of open registers for ship owners.

144. Over the past decades, as RFMOs adopted more and more stringent measures on high seas fishing, many ship owners began to take advantage of open registers, knowing that the countries concerned had no intention (or no ability) of enforcing management measures. In most cases, these countries do not belong to the RFMOs and so are not bound by the regulations they adopt as a basic principle of international law is that if a country does not adhere to a treaty, it is not bound by its provisions. It is recognised as a loophole in international law itself. A list of countries maintaining open registers is given in Appendix 5 which also includes a list of tax haven jurisdictions for the comparison.

5.3. Regulations on ship registration (flagging and re-flagging)

145. Under the Article 91 of LOS Convention, States determine 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. The flying of a flag is evidence of the nationality. It should be visible whenever required for the purpose of identification. Nevertheless, international law does not set an obligation for the national flag to be flown at all times by vessels on the high seas. The lack of an obligation to do so, and poor maintenance of marks such as those indicating the port of registry and name or number, is a constraint to the identification of vessels for safety and fisheries management purpose. Due to the lack of international rules on a ship’s registration, as mentioned above, each State applies its own domestic rules to ship registration, although many apply the IMO standards and regulations.

146. In most countries, fishing vessels are registered in much the same way as cargo ships. The competent authority for the registration of ships is usually different from that responsible for fisheries management matters. Unlike cargo vessels having one authority, dual responsibilities can lead to problems in relation to fisheries management since the allocation of the flag precedes the granting of an authorization to fish. Furthermore, in many countries, small fishing vessels are not registered. They are often exempt from the provisions of national laws governing the registration of merchant ships. For this, some study points out that there is no universally accepted definition of small fishing vessels or what sizes should or should not be exempt from the registration process. This is a matter that needs further study since all sizes of fishing vessels are implicated in IUU fishing.²⁵

147. The maintenance of fishing vessels’ records is emphasized by the Code, the Compliance Agreement, UN Fish Stock Agreement, and IPOA-IUU. These instruments also stress the need for regional co-operation in this regard. However, there is no single and complete record of the fishing fleets of the world. The IMO draws on the data held by Lloyd’s Maritime Information Services for estimates of the number of fishing vessels in the world of 100 GT and over and the FAO uses the same information.

²⁴ As of July 2003, ITF have declared 28 countries as open registers or FOCs.

²⁵ John Fitzpatrick, “Measures to Enhance the Capability of a Flag State to Exercise Effective Control over a Fishing Vessels”, FAO Expert Consultation on IUU fishing, May 2000

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Although useful, it is not a complete record²⁶, and it is flawed in many respects as it does not store fisheries related information. To combat IUU fishing, information on fishing vessels and where they are authorized to fish is essential for effective flag State as well as port State control. Building effective vessel register that can be useful for combating IUU is thus an important avenue to be explored. The Compliance Agreement is specific in relation to how such records should be maintained and for the exchange of information.

Table 8. Fishing Fleet Statistics

	OECD	FAO	Lloyd
Source	National Fisheries Agency	National Fisheries Agency	National Ship Registers
Type of data	Aggregated statistics	Aggregated statistics	Individual vessels
Measurement	Length and GT	GRT but increasingly GT	GRT (90%), GT (10%)
Vessel Identifier	Not applicable	Not applicable	Lloyd's number
Size of vessel	All vessels	All vessels	Vessels above 100 GT ²⁷
History (e.g. reflagging)	No	No	Yes
Coverage	OECD member countries	Most FAO member countries	Weak data from some countries (China, etc.)
Total vessels	210 000 ²⁸ (2002)	4.1 million (1998)	22 900 (2001)

5.3.1. United Nations Convention on Conditions for Registration of Ships

148. The UN Convention on Conditions for Registration of Ships, which was amended in 1986, provides for the registration of ships and sets out the conditions for establishment and operation of a shipping register. This Convention was concluded under the auspices of the UN Conference on Trade and Development (UNCTAD), and because it is directed towards trade, fishing vessels are excluded.

²⁶ For example, fishing vessel statistics collected by OECD suggest that total 97% of fishing vessels are below 100 GRT or 24 meters in length

²⁷ The lower limit of 100 tons in the Lloyd's database is very convenient for fisheries purposes, as it is recognized that most vessels over this size are capable of operating beyond EEZ limits. These are the vessels that are most likely to be covered by the Compliance Agreement, the UN Fish Stock Agreement and to be involved in changes to the nationality of the vessel (FAO Fisheries Circular No. 949, p.2)

²⁸ Vessels with engine only

149. A key objective of the Convention is to strengthen the “genuine link” between a State and the ship flying its flag. However, a major drawback of Convention is that it is not in force. To enter into force the Convention requires ratification by 40 States, the combined tonnage of which amounts to at least 25% of world tonnage. While it has not entered into force yet, it provides a sound model for registration requirements and flag State responsibilities.

5.3.2. *FAO Compliance Agreement*

150. Article VI of the Agreement requires States to exchange information on vessels authorised by them to fish on the high seas, and obliges the FAO to facilitate this information exchange. The FAO had developed a prototype database (*HSVAR; High Seas Vessel Authorization Record*) and requested those States to provide data on vessel authorisations to facilitate testing. Presently only Canada, United States, Japan, Norway and 13 EU countries have provided such vessels authorization data. There are now 5517 vessels records available in the database.

5.3.3. *FAO Code of Conduct for Responsible Fisheries*

151. Article 8.2 (flag State duties) of the Code sets out obligations for States to maintain records of authorized fishing vessels include information on details of vessels and their ownership. Fishing vessels authorized to fish on the high seas should be marked in accordance with uniform and internationally recognizable vessel marking systems such as the *FAO Standard Specifications and Guidelines for Marking and Identification of Fishing Vessels*. Fishing gear also should be marked in accordance with national legislation in order that the owner of the gear can be identified. Gear marking requirements should take into account uniform and internationally recognizable gear marking systems.

5.3.4. *IMO 1974 SOLAS Convention*

152. The international Convention for the Safety of Life at Sea (SOLAS) Chapter XI-1²⁹ provides for a “Continuous Synopsis Record” to be carried on board each ship. This document includes details of the flag State, identification number, name of ship, classification society and registered owner. Any changes to these and other details need to be shown on this record, so that a history of the ship is developed. The flag State will be responsible for ensuring that it is kept up to date and be available for inspection at any time. In a further provision of the SOLAS, the company is made responsible for ensuring that information is available on board for port States to know the person responsible for appointing the members of the crew, the person responsible for deciding the employment of the ship and the parties to any charter party.

5.3.5. *IMO Ship Identification Scheme*

153. The IMO ship identification scheme was introduced in 1987 through the adoption of resolution A.600 (15), as a measure to enhance ship safety and security. It aimed at assigning a permanent number to each ship for identification purposes. That number would remain unchanged upon transfer of the ship to other flag and would be inserted in the ship’s certificates. Following adoption of new SOLAS Chapter XI in 1994, the implementation of this scheme became mandatory for all ships as of 1 January 1996.

29. All passenger ship over 100 GT and above, and all cargo ships of 300 GT and above shall be provided with identification number.

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5.4. Safety related issues

154. Under the LOS Convention, Article 94 (Duties of the flag State) provides that "Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag" (paragraph 1). It provides further safety issues saying that

"Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, inter alia, to: (a) the construction, equipment and seaworthiness of ships; (b) the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments; (c) the use of signals, the maintenance of communications and the prevention of collisions" (paragraph 3).

5.4.1. IMO Instruments*1974 SOLAS Convention*

155. International Convention for Safety of Life at Sea (SOLAS) specifies minimum standards for the construction, equipment and operation of ships compatible with their safety. Even though the SOLAS does not apply to fishing vessels except Chapter V, it is regarded as the most important of all international treaties concerning the safety of all vessels. Chapter V deals with safety of navigation and identifies certain navigation safety services that should be provided by contracting governments and sets forth provisions of an operational nature applicable in general to all ships on all voyages.

1977 Torremolinos Convention and 1993 Torremolinos Protocol

156. The Torremolinos International Convention for the Safety of Fishing Vessels was the first ever international Convention on the safety of fishing vessels. The Convention contains safety requirements for the construction and equipment of new, decked, seagoing fishing vessels over 24 meters in length, including those vessels also processing their catch. But the Convention has not received sufficient ratifications to enter into force. As such, IMO adopted in 1993 a Protocol to the 1977 Convention which included the requirements for protection of the crews.

*1995 STCW-F Convention*³⁰

157. The STCW-F Convention contains requirements concerning skippers and watchkeepers on vessels over 24 meters in length, chief engineers and engineering officers on vessels of 750 kw propulsion power or more, and personnel in charge of radio communications. Chapter III of Annex to the Convention includes requirements for basic safety training for all fishing vessel personnel with port State measures.

5.4.2. ILO Instruments

158. The ILO formulates international labour standards in the form of Conventions and recommendations, setting minimum standards of basic labour rights such as wages, working hours, safety, training and employment. Fisheries related ILO instruments include 5 *Conventions*; 1959 Minimum (Fishermen) Age Convention, 1959 Medical Examination (Fishermen) Convention, 1959 Fishermen's Articles of Agreement Convention, 1966 Fishermen's Competency Certificates and 1966 Accommodation of Crews (Fishermen) Convention and 2 *Recommendations*; 1966 Vocational Training (Fishermen) Recommendation and 1920 Hours of Work (Fishing) Recommendation.

³⁰ STCW-F Convention means "Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel Convention and it was adopted by IMO in 1995.

159. The ILO held a Tripartite meeting on “Labour Standards for Fishing Sector” in 2003 and is also considering of a new, comprehensive standards for the fishing sector on the reasons that the current ILO fishing instruments are insufficient to reflect social and technical changes in fishing sector since their adoption. To what extent this may improve social condition an IUU fishing vessels remains to be seen.

1966 Fishermen’s Competency Certificates Convention

160. The Convention provides for ratifying States to establish standards of qualification for certificates of competency entitling a person to perform the duties of a skipper, mate or engineer on board a fishing vessel above 25 GRT. It also prescribes the minimum age for the issue of a certificate, minimum years of sea service. Some of the principles contained in this Convention have also been included in the 1995 STCW-F Convention.

1966 Accommodation of Crews (Fishermen) Convention

161. This Convention sets out standards for the planning and control of crew accommodation (including plan approval, complaint procedures concerning non-compliance and inspections), crew accommodation requirements, and how these requirements apply to existing ships and new fishing vessels. In general, the Convention applies to vessels over 75 GRT or 24.4 meters in length.

1959 Minimum (Fishermen) Age Convention

162. The Convention stipulates that children under 15 years shall not be employed or work on fishing vessels.

5.4.3. FAO Instrument

1995 Code of Conduct for Responsible Fisheries

163. The FAO works to improve safety in the fishing industry through the adoption of its own code, through joint preparation with the ILO and the IMO of safety and health codes and guidelines. The Code includes provisions that clearly link responsible fishing to the safety and health of fishermen:

“States should ensure that fishing facilities and equipment as well as all fisheries activities allow for safe, healthy and fair working and living conditions and meet internationally agreed standards adopted by relevant international organizations” (paragraph 6.17), “Flag States should ensure compliance with appropriate safety requirements for fishing vessels and fishers in accordance with international conventions, internationally agreed codes of practice and voluntary guidelines” (subparagraph 8.2.5).

5.4.4. Joint Works of the IMO, ILO and FAO

FAO/ILO/IMO Code of Safety for Fishermen and Fishing Vessels-Part A and B

164. Part A of the Code (Safety and Health Practice for Skippers and Crews) aims to provide information with a view to promoting the safety and health of fishermen. It is intended to serve as a guide to those concerned with framing measures for the improvement of safety and health on board fishing vessels. Its scope is limited to basic information necessary for the safe conduct of fishing operations. Part B of the Code (Safety and Health Requirements for the Construction and Equipment of Fishing Vessels) provides information on the design, construction and equipment of fishing vessels with a view to promoting the safety of the vessel and the safety and health of the crew. It applies to new decked fishing vessels of 24 meters in length. Currently, joint works are conducting to revise Part A of the Code.

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FAO/ILO/IMO Document for Guidance on Training and Certification of Fishing Vessel Personnel

165. The Document for Guidance, prepared by a joint FAO/ILO/IMO Working Group in the early 1980s and published in 1985, takes account of the related ILO and IMO Conventions and FAO experiences and provides guidance for the institution, amendment or development of national programmes for the vocational training of any category of fishermen. The revision of the Document for Guidance is now processing to incorporate the provisions of the 1995 STCW-F Convention and the FAO Code of Conduct for Responsible Fisheries.

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LIST OF ACRONYMS

AAFC: Atlantic Africa Fisheries Conference
ACFR: Advisory Commission on Fisheries Research
AMLR Act: Antarctic Marine Living Resources Act (New Zealand)
APFIC: Asia Pacific Fishery Commission
BOBP: Bay of Bengal Programme
CARPAS: Regional Fisheries Advisory Commission for Southwest Atlantic
CCAMLR: Commission for the Conservation of Antarctic Living Resources
CCSBT: Commission for the Conservation of Southern Bluefin Tuna
CDS: Catch Documentation Scheme
CECAF: Fishery Commission for the Eastern Central Atlantic
CEPTFA: Council of the Eastern Pacific Tuna Fishing agreement
CIFA: Committee for Inland Fisheries of Africa
CMIT: Capital Movement and Invisible Transaction
COLTO: the Coalition of Legal Toothfish Operators
COPESCAL: Commission for Inland Fisheries of Latin America
COREP: Regional Fisheries Committee for the Gulf of Guinea
COFEREMAR: Joint Technical Commission for the Argentina/Uruguay Maritime Front
CPPS: South Pacific Permanent Commission
CWP: Coordinating Working Party on Fishery Statistics
EEZs: Economic Exclusive Zones
EIFAC: European Inland Fisheries Advisory Committee
FAO: Food and Agriculture Organization of the United Nations
FAO S.A.: FAO Statistical Area
FFA: South Pacific Forum Fisheries Agency
FOC: Flag of Convenience
FPZ: Fisheries Protected Zone
GFCM: General Fisheries Council for the Mediterranean
GFT: Government Financial Transfer
GRT: Gross Registered Tonnage
GT: Gross Tonnage
HSVAR: High Seas Vessel Authorization Record
IATTC: Inter-American Tropical Tuna Commission
IBSFC: International Baltic Sea Fishery Commission
ICCAT: International Commission for the Conservation of Atlantic Tunas
ICES: International Council for the Exploration of the Sea
ILO: International Labour Organization of the United Nations
IMO: International Maritime Organization of the United Nations
IOTC: Indian Ocean Tuna Commission
IPHC: International Pacific Halibut Commission
IPOA-IUU Fishing: International Plan of Action to Prevent, Deter and Eliminate Illegal, Unregulated and Unreported Fishing
ITF: International Transport Workers' Federation
IWC: International Whaling Commission
LVFO: Lake Victoria Fisheries Organization
MCS: Monitoring Control and Surveillance
MRC: Mekong River Commission
NACA: Network of Aquaculture Centers in Asia-Pacific

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NAFO: Northwest Atlantic Fisheries Organization
NAMMCO: North Atlantic marine Mammal Commission
NASCO: North Atlantic Salmon Conservation Organization
NBF: National Board of Fisheries (Sweden)
NEAFC: North-East Atlantic Fisheries Commission
NGO: Non Governmental Organization
NMFS: National Marine Fisheries Service (United States)
NVDC: National Vessel Documentation Center (United States)
OLDEPESCA: Latin American Organization for the Development of Fisheries
OPRT: Organization for Promotion of Responsible Tuna Fisheries
PICES: North Pacific Marine Science Organization
PSC: Pacific Salmon Commission
RECOFI: Regional Commission for Fisheries
RFMOs: Regional Fisheries Management Organizations
SAG: Stock Assessment Group (CCSBT)
SCRS: Standing Committee on Research and Statistics (ICCAT)
SEAFDEC: Southeast Asian Fisheries Development Center
SEAFO: Southeast Atlantic Fisheries Organization
SOLAS: the International Convention for the Safety of Life at Sea
SPC: Secretariat of the Pacific Community
SRA: Shipping Registration Act (New Zealand)
SRCF: Sub-Regional Commission on Fisheries
STCW-F: Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel Convention
SWIOFC: Southwest Indian Ocean Fisheries Commission
TAC: Total Allowable Catches
TDS: Trade Documentation Scheme
TIS: Trade Information Scheme (CCSBT)
UNCED: United Nations Conference on Environment and Development
UNCTAD: United Nations Conference on Trade and Development
VMS: Vessel Monitoring System
WCPFC: Western Central Pacific Fisheries Commission
WECAFC: Western Central Atlantic Fishery Commission
WIOTO: Western Indian Ocean Tuna Organization

Appendix 1.

**OECD Member Country Status with respect to
Three Major International Agreements (as of March 2004)**

OECD Member Country or Entity	LOS Convention	Compliance Agreement	UN Fish Stock Agreement	
Entering into force	16 November 1994	24 April 2003	11 December 2001	
	Ratified	Acceptance	Signed	Ratified
Australia	5.10.94	—	4.12.95	23.12.99
Austria	14.07.95	Yes	27.06.96	19.12.03
Belgium	13.11.98	Yes	3.10.96	19.12.03
Canada	11.07.03	Yes	4.12.95	3.08.99
Czech Republic	21.06.96	—	—	—
Denmark	—	Yes	27.06.96	19.12.03
European Community	1.04.98	Yes	27.06.96	19.12.03
Finland	21.06.96	Yes	27.06.96	19.12.03
France	11.04.96	Yes	4.12.96	19.12.03
Germany	14.10.94	Yes	28.08.96	19.12.03
Greece	21.07.95	Yes	27.06.96	19.12.03
Hungary	05.02.02	—	—	—
Iceland	21.06.85	—	4.12.95	14.02.97
Ireland	21.06.96	Yes	27.06.96	19.12.03
Italy	13.01.95	Yes	27.06.96	19.12.03
Japan	20.06.96	Yes	19.11.96	—
Korea	29.01.96	Yes	26.11.96	—
Luxembourg	05.10.00	Yes	27.06.96	19.12.03
Mexico	18.03.83	Yes	—	—
Netherlands	28.06.96	Yes	28.06.96	19.12.03
New Zealand	19.07.96	—	4.12.95	18.04.01
Norway	24.06.96	Yes	4.12.95	30.12.96
Poland	13.11.98	—	—	—
Portugal	3.11.97	Yes	27.06.96	19.12.03
Spain	15.01.97	Yes	3.12.96	19.12.03
Sweden	25.06.96	Yes	27.06.96	19.12.03
Switzerland	—	—	—	—
Turkey	—	—	—	—
United Kingdom	25.07.97	Yes	27.06.96	10.12.01
United States	—	Yes	4.12.95	21.08.96

NOT FOR QUOTATION

Appendix 2.**Questionnaire for Reporting on National Measures against IUU Fishing Activities**

As agreed at the 91st Session the Committee decided to include an inventory of national measures in place against IUU/FOC fishing activities [see AGR/FI/M (2003)1 and AGR/FI (2003)5]. To allow the Secretariat to prepare this inventory of national measures against IUU fishing activities, Member countries are asked to provide information on the following items. Domestic situations will vary from country to country and some flexibility is needed when answering. Also, some regulatory frameworks may not be mentioned explicitly in the following but you may find the information useful for subsequent analysis. If in doubt, it is more useful to include information which later may be deleted.

The questionnaire has been divided into:

1. Legal measures & regulations,
2. Economic measures, and
3. Other measures.

While it is recognised that there may be a certain overlap between the different categories (e.g. financial penalties on IUU is both a legal measure and an economic instrument) it is important that the answers are as comprehensive as possible.

1. Legal measures & regulations***a) Fishing activities by national vessels***

The issues raised relate to the rules and regulations that your country have in place dealing with national flagged vessels' activities outside domestic EEZ.

- Legal measures against vessels and fishers involved in IUU fishing activities within other countries' EEZ and on the high seas (including sanctions such as withdrawal of fishing permits and prohibition of new fishing permits to vessels and fishers having a record of IUU fishing activities, etc.). The question we need to answer is: "What, if any, legal measures do your countries have that regulate your flag vessels fishing activities outside your country's EEZ?" The question relates to fishing activities and not other formalities.
- Regarding national vessels' fishing outside national EEZs, what are the requirements (conferred by national law) on vessels and fishers engaged in fishing activities within other countries' EEZ and on the high seas (including implementation of MCS, installation of VMS, etc.), whether or not these vessels are engaged in IUU activities. This should provide background information to assess national authorities' capabilities to effectively control and monitor fishing activities of national flagged vessels outside national EEZs.
- Do you have examples (case material) involving IUU fishing activities by national vessels and national actions taken that could illustrate the situation?

b) Fishing activities by foreign vessels within EEZ

The issues raised relate to the rules and regulations that your country have in place dealing with foreign flagged vessels' activities inside domestic EEZ.

- What types of fishing activities (i.e. bilateral agreements, subject to fees, etc.) by foreign vessels are allowed within your country's EEZ, and under what conditions? The emphasis should be on fishing. Accessory activities (landings of fish, permission to seek harbour for fuel, etc.) will be covered under another question.
- What are the responsibilities of foreign vessels when engaging in fishing activities within your national EEZ (e.g. port calls for inspection, notification of entering and departing EEZ, catch reporting, installation of VMS, etc.)? Are these responsibilities also conferred on national vessels? This will help identify if there are additional costs levied on foreign fishing vessels as compared to national ones.
- What are the national legal measures against IUU fishing activities by foreign vessels and fishers? Is the treatment of fishing permit holders vs. non-permit fishing activities the same? And what are the penalties for non-complying foreign vessels? Note that this could also cover your country's measures for pursuing foreign flagged vessels' IUU activities outside your own EEZ.
- Do you have examples (case material) involving IUU fishing activities by foreign vessels and national actions taken that could illustrate the situation?

c) Registration of fishing vessels

The issues raised here relate to rules and regulations regarding vessel registration.

- What are the general requirements regarding the registering of fishing vessels in your country?
- Does your legislation include restrictions on vessels that knowingly have engaged in IUU fishing activities (i.e. denial of authorisation)?
- What are the rules regarding genuine link (ship owner/ship operator to your country of registry) to be registered as fishing vessels? And what are the implications?
- Is governmental permission needed for reflagging of national flagged fishing vessels to alternative registries outside your country?
- Are there measures in place to prevent flag hopping? What are they?

In considering these questions, you are encouraged to provide information concerning potential legal measures that are being considered within the framework of the development of a national plan of action on IUU/FOC fishing activities.

NOT FOR QUOTATION

2. Economic measures***a) Investment rules***

You are asked to submit information on investment rules regarding fishing vessel ownership including both inward and outward investment rules as applicable. With regard to inward investment rules, you are referred to the information submitted within the context of the Committee's work on "Liberalising Fisheries Markets: Scope and Effects". Perhaps more importantly, we are also looking for information, if applicable, regarding outward investment rules (ownership of foreign fishing vessels including vessel chartering).

b) Trade rules (including trade-related rules)

Countries are asked to submit information and describe trade measures that are presently applied or have been applied, on trade in fish and fish products of IUU origin; these measures may have been instituted unilaterally or on the basis of agreement under an RFMO. This section should also include a description of measures such as catch documentation and certification requirements as well as import and export controls or prohibitions that have a bearing on IUU fish.

c) Rules regarding landing, transhipments and marketing

You are requested to submit rules on your country's restrictions concerning foreign direct landings (including use of ports) and transhipments from foreign vessels; are there specific rules for fishing vessels that have been identified to be engaged in IUU fishing activities?

d) Penalties, fees and restrictions to GFTs

We are looking for information on:

- Penalties applicable to IUU fishing vessels and fishers; is there differential penalty structure/treatment according to nationality of vessel? Fishing permits vs. non-permit holders? (E.g. financial sanctions, confiscations etc.). It would be useful to have case study material submitted as well that could illustrate practice with regard to sanctions on IUU fishing activities, whether national or not.
- Does your country apply any fees on foreign fishing vessels activities within national EEZ? Which activities are included? (fishing, transhipments, harbour visits, etc.)
- When applying for financial transfers are national flag vessels being probed with regard to potential past and future IUU activities? If so, are there any restrictions on the provision of GFTs?

3. Other measures (including moral /ethical)

Countries are encouraged to provide information on moral/ethical measures to prevent IUU fishing activities. These include largely non-economic and social mechanisms that discourage engagement in IUU/FOC fishing activities or the provision of services (banking, satellite services, insurance etc.) to vessels that have been engaged in IUU fishing operations. In this regard you may include comments on what domestic industry organisations, on a voluntary basis, may have been put in place to discourage such activity.

NOT FOR QUOTATION

Appendix 3.**OECD Countries' Involvement in Major RFMOs
(As of March 2004)**

Countries (or Entity)	RFMOs (participation by Contracting Party)
Australia	CCAMLR, CCSBT, IOTC, WCPFC
Belgium	CCAMLR
Canada	ICCAT, NAFO, WCPFC
Denmark	NAFO, NEAFC
France	CCAMLR, IATTC, ICCAT, IOTC, NAFO
Germany	CCAMLR, NEAFC
Iceland	ICCAT, NAFO, NEAFC
Italy	CCAMLR
Japan	CCAMLR, CCSBT, IATTC, ICCAT, IOTC , NAFO
Korea	CCAMLR, CCSBT, ICCAT, NAFO, WCPFC
Mexico	IATTC, ICCAT
New Zealand	CCAMLR, CCSBT, ICCAT, WCPFC
Norway	CCAMLR, NAFO, NEAFC
Poland	CCAMLR, NAFO, NEAFC
Portugal	IOTC
Sweden	CCAMLR
Spain	CCAMLR, IATTC
Turkey	ICCAT
United Kingdom	CCAMLR, ICCAT, IOTC
Unite States	CCAMLR, IATTC, ICCAT, NAFO, WCPFC
EU	CCAMLR, ICCAT, IOTC, NAFO, NEAFC

NOT FOR QUOTATION

NOT FOR QUOTATION

Appendix 4.**Major Cases for actions taken by FOC States against offences**

Flag State	Offence	Location	Action
Belize	Non-compliance with ICCAT regulations	N/A	Deregistration
Belize	Illegal fishing protected toothfish	Australia's EEZ	USD 50 000 fine
Belize	Illegal fishing protected toothfish	Mauritius	USD 30 000 fine/deregistration
Belize	Longline fishing for tuna in violation of ICCAT regulations	780 NM West of Angola	USD 10 000 fine/deregistration
Belize	Illegal fishing in CCAMLR area	CCAMLR area	Deregistration after reports that vessel re-flagged to another registry without consent
Vanuatu	Operating restricted area	CCAMLR area	3 vessels delisted and removed from registry

Appendix 5.

Open Registers (FOC) and Tax Haven Jurisdictions³¹

1. Open Registers (FOC): 28

Antigua and Barbuda, Bahamas, Barbados, Belize, Bermuda (UK), Bolivia, Burma/Myanmar, Cambodia, Cayman Islands (UK), Comoros, Cyprus, Equatorial Guinea, German International Ship Register (GIS), Gibraltar (UK), Honduras, Malta, Marshall Islands (USA), Mauritius, Netherlands Antilles, Panama, São Tomé and Príncipe, St. Vincent and the Grenadines, Sri Lanka, Tonga, Vanuatu

2. Tax haven Jurisdictions (35)

Andorra, Anguilla (UK), Antigua and Barbuda, Aruba (Kingdom of Netherlands), Bahrain, Barbados, Belize, British Virgin Islands, Cook Islands (New Zealand), The Commonwealth of Dominica, Gibraltar (UK), Grenada, Guernsey/Sark/Alderney (dependency of the British Crown), Isle of Man (dependency of the British Crown), Jersey (dependency of the British Crown), Liberia, The Principality of Liechtenstein, Maldives, Marshall Islands (USA), The principality of Monaco, Montserrat (UK), Nauru, Netherlands Antilles, Niue (New Zealand), Panama, Samoa, Seychelles (France), St Lucia, The Federation of St. Christopher & Nevis, St. Vincent and Grenadines, Tonga, Turks & Caicos (UK), US Virgin Islands, Vanuatu

3. FOC and Tax Haven Jurisdiction (9)

Antigua and Barbuda, Barbados, Belize, Liberia, Marshall Islands, Netherlands Antilles, Panama, St. Vincent and Grenadines, Tonga

³¹ OECD, "Toward Global Tax Co-operation – Report to the 2000 Ministerial Council meeting and Recommendations by the Committee on Fiscal Affairs – Progress in Identifying and Eliminating Harmful Tax Practices", June 2000.