

OFF THE HOOK

| How flags of convenience let
| illegal fishing go unpunished



A report produced by the Environmental Justice Foundation



Protecting People and Planet



Protecting People and Planet

The Environmental Justice Foundation

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This document should be cited as: EJF (2020)

OFF THE HOOK - how flags of convenience let illegal fishing go unpunished

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OUR MISSION

Protecting People and Planet

EJF believes environmental security is a human right.

EJF strives to:

- Protect the natural environment and the people and wildlife that depend upon it by linking environmental security, human rights and social need
- Create and implement solutions where they are needed most – training local people and communities who are directly affected to investigate, expose and combat environmental degradation and associated human rights abuses
- Provide training in the latest video technologies, research and advocacy skills to document both the problems and solutions, working through the media to create public and political platforms for constructive change
- Raise international awareness of the issues our partners are working locally to resolve

Our Oceans Campaign

EJF's Oceans Campaign aims to protect the marine environment, its biodiversity and the livelihoods dependent upon it. We are working to eradicate illegal, unreported and unregulated fishing and to create full transparency and traceability within seafood supply chains and markets. We conduct detailed investigations into illegal, unsustainable and unethical practices and actively promote improvements to policy making, corporate governance and management of fisheries along with consumer activism and market-driven solutions.

EJF is working to secure sustainable, legal and ethical seafood.

Our ambition is to secure truly sustainable, well-managed fisheries and with this the conservation of marine biodiversity and ecosystems and the protection of human rights.

EJF believes that there must be greater equity in global fisheries to ensure developing countries and vulnerable communities are given fair access and support to sustainably manage their natural marine resources and the right to work in the seafood industry without suffering labour and human rights abuses.

We believe in working collaboratively with all stakeholders to achieve these goals.

For further information visit www.ejfoundation.org

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Abbreviations

EEZ	Exclusive Economic Zone
EITI	Extractive Industry Transparency Initiative
EU	European Union
FAO	Food and Agriculture Organization
FOC	Flag of Convenience
FONC	Flag of Non-Compliance
IOTC	Indian Ocean Tuna Commission
ITF	International Transport Workers' Federation
IMO	International Maritime Organization
IUU	Illegal, Unreported and Unregulated fishing
MCS	Monitoring, Control and Surveillance
RFMO	Regional Fisheries Management Organisation
UNCLOS	United Nations Convention on the Law Of the Sea



Executive summary

- Our seas and oceans are in a state of crisis, with 34% of stocks assessed by the United Nations Food and Agriculture Organization (FAO) found to be exploited at biologically unsustainable levels (“overfished”), and a further 60% maximally sustainably fished (formerly known as “fully fished”). Overfishing and illegal, unreported and unregulated (IUU) fishing risk pushing ocean ecosystems towards total collapse, with devastating consequences for the marine environment and the many millions of people who depend on it for food and income.
- The lack of transparency in the global fishing sector is a key enabler of IUU fishing and associated crimes such as human trafficking, forced, bonded and slave labour. In addition to the often remote nature of fishing, the opacity and complexity of operations in the industry make it difficult to identify the “actors” involved, including the fishing vessels themselves and their owners. The challenges in uncovering a vessel’s illegal activities, both current and past, mean that unlawful operators are at low risk of detection, capture and sanction by control authorities.
- The widespread use of “flags of convenience” (FoCs) by fishing vessels exacerbates the opacity of the fishing sector, hindering efforts to identify and sanction the ultimate beneficiaries of IUU fishing activities, providing them with an easy escape route.
- At the global level, there is no official or agreed definition or list of FoCs specifically in fisheries. Some countries operate as open registers and welcome any foreign vessels so long as they pay a fee. Other countries do not overtly operate as open registers, but have corporate laws that are permissive, or laxly enforced, with the result that their registered fleet may, in effect, be under foreign ownership.
- It is not the practice of registering foreign-owned vessels that is problematic *per se*. Rather, it is how FoCs facilitate secrecy in beneficial vessel ownership. In order to register to an FoC, a company may set up “shell companies” or other corporate arrangements that enable false registration as national entities. This serves to conceal



Ultimately, the use of FoCs in the fisheries sector must end. There are achievable and realistic steps that fishing FoC states should take now to leave the FoC system.

the identities of beneficial owners, precluding identification and sanctions where their vessels engage in illicit activities. These same, secretive corporate structures frustrate the investigations of tax authorities and other non-fisheries government agencies.

- The lack of implementation of basic flag state responsibilities, derived mostly from the United Nations Convention on the Law Of the Sea, coupled with the lack of transparency in the global fishing sector, are key weaknesses allowing fishing FoCs to provide a safe haven for IUU fishing offenders, who are able to escape detection. This is also compounded by the fact that "flag-hopping" allows vessels to change their identity regularly. Re-flagging to an FoC state can also assist vessel owners to escape sanctions for offences committed under a previous flag, particularly in cases where no cooperation mechanisms exist, where no adequate and workable enforcement systems are in place, or when political will lacks.
- In the global fight against IUU fishing, the escape route provided by FoCs in fisheries frustrates the efforts of flag states that are undertaking reforms to make their fleets more compliant in order to have more sustainable, legal and ethical fisheries. It undermines the deterrent effects of sanctions.
- This report, using compelling case studies from the field, demonstrates how FoC states are allowing IUU fishing to continue and are undermining global efforts to improve fisheries management and protect threatened marine ecosystems. In recent years, many have focused on FoCs' poor performance as flag states and failures to comply with international obligations. While those issues remain important, this report concentrates on how the opaque corporate structures used in FoCs undermine efforts to combat IUU fishing.
- Ultimately, the use of FoCs in the fisheries sector must end. There are achievable and realistic steps that fishing FoC states should take now to leave the FoC system. Other states, as well as the private sector, can also adopt measures grounded in increased transparency to close their waters, markets and supply chains to fish caught by vessels flying fishing FoCs.

Recommendations:

Damages caused by the FoC system and the lack of accountability that it creates for vessel owners have been debated in the fisheries sector for decades. Ultimately, the Environmental Justice Foundation's (EJF) strong view is that **all flags operating as FoCs should remove foreign-owned fishing vessels and fish carriers altogether from their registry.**

For many states operating as FoCs, this change will not happen overnight and in the meantime, EJF recommends that all flag states (regardless whether or not they operate as FoCs) have systems in place to be able to identify vessels' beneficial owners and enable owners to be held accountable in the case of IUU fishing or other offences that require sanctions. These should be adopted alongside measures designed to improve control over fishing vessels and strengthen fisheries legal frameworks.

All flag states should:

adopt the following operational measures:

- Require from all vessels registered, and as part of all applications for entering the fleet register, detail on ownership arrangements and records on the destination of profits from fishing activities. Unless there can be a clear assurance that a vessel's beneficial owner can be identified and held to account if needed, the flag state should remove the vessel from their registry or refuse registration.
- Carry out background checks on any person or company forming a new, or taking over an existing, corporate entity and that any proposed change to existing ownership arrangements is immediately notified to the flag state.
- Ensure that agencies responsible for flagging vessels and fisheries management work in close cooperation and that fisheries managers have substantive input on decisions on whether or not to flag a fishing vessel.
- Ensure that fisheries authorities and ship registration authorities from the former and the applicant flag state cooperate and exchange vessel information for any vessel before entrance into the fleet. Refrain from issuing deletion certificates to vessels which have failed to settle all fines and liabilities. Applicant flag states shall refuse applications of such vessels.
- Request a record of compliance with applicable laws for all vessels wishing to re-enter a flag state registry and scrutinise vessels with a history of flag-hopping to combat abusive reflagging.

publish online the following information:

- List of vessels registered to their flag and make the relevant information available through the FAO Global Record of Fishing Vessels, Refrigerated Transport Vessels and Supply Vessels ('FAO Global Record'), mandating International Maritime Organization numbers for all eligible vessels and national unique vessel identifiers for all other vessels.
- Information on foreign-flagged vessels owned by their nationals and vessels that have de-flagged to other nations.

Coastal, port and market states should:

- Coastal states should require details on the ownership systems behind vessels when reviewing fishing licence/authorisation applications. When it cannot be established with certainty who the beneficial owner is, these organisations should refrain from licensing those vessels. (See potential risk criteria in box 6).
- Port states should accede to the FAO Port State Measures Agreement and, in determining which vessels to inspect, also consider as "higher risk" vessels flying the flag of fishing FoC states or connected to opaque ownership systems (See potential risk criteria in box 6).
- Market states should establish trade-related measures requiring that imported seafood is caught and transported by vessels flagged to states that implement their obligations under international law; if need be, by closing their market to products stemming from countries, including fishing FoCs, that are not taking measures to ensure that the vessels they flag do not engage in IUU fishing.

All states should ensure that they:

- Amend domestic corporate regulations to strengthen legal provisions on beneficial ownership through the inclusion of minimum disclosure requirements.
- Adopt policies to require nationals to disclose beneficial interests in foreign flagged vessels in order to map where their nationals have registered the vessels they own and/or operate under FoCs.
- Adopt and implement sanctions against nationals responsible for, benefiting from, supporting or engaging in IUU fishing under a foreign flag to circumvent the protection provided by FoCs to IUU fishing vessel owners.
- Table and support ambitious proposals in Regional Fisheries Management Organisations and other regional fishery bodies, aiming at increasing transparency over beneficial ownership.
- Join forces at the global or regional level to carry out coordinated law enforcement actions targeting high-risk vessels with support from relevant organisations such as INTERPOL.

These measures, applied in addition to policies designed to improve flag state performance and increase transparency, would level the disproportionate, negative impact of the FoC system. Alongside this, the catching sector, importers, processors and retailers should:

- Set a near-term objective to refrain from purchasing seafood transported by or caught by vessels flagged to fishing FoCs, sourcing and marketing fishery products stemming from such countries and widely communicate this action to all actors across seafood supply chains.
- In the interim, evaluate and report on the exposure of fishing FoCs to their seafood supply chains, taking account of the identification of such states by NGOs, the EU carding scheme and the International Transport Workers' Federation. In risk assessment exercises, assign high levels of risk to supply chains that have FoCs and take mitigating measures, such as additional audits.

All actors, governmental and corporate, should support greater transparency in the global fisheries sector by adopting EJF's Charter for Transparency (See page 32). The charter includes EJF's 10 transparency principles and commits corporate actors to introduce due diligence measures designed to reduce the risk of supplying seafood that is not legal, ethical and sustainable.

Introduction

Our seas and oceans are in a state of crisis. 34% of stocks assessed by the United Nations Food and Agriculture Organization (FAO) are exploited at biologically unsustainable levels (“overfished”), and a further 60% are maximally sustainably fished (formerly known as “fully fished”)¹. Overfishing and illegal, unreported and unregulated (IUU) fishing risk pushing ocean ecosystems into a state of total collapse, with devastating consequences for the marine environment and those who depend on it.

IUU fishing is broadly defined as the use of fishing methods or practices that contravene fisheries laws, regulations or conservation and management measures. Examples include fishing in closed areas or during closed seasons, targeting protected species, using prohibited fishing methods and fishing without a valid licence. These practices threaten marine biodiversity, undermine effective management of fish stocks and are one of the main impediments to achieving sustainable world fisheries². It is in this context that IUU fishing is recognised worldwide as a major threat to the future of our oceans, and its eradication has been identified as a target of the United Nations Sustainable Development Goal 14 (life below water)³. In the face of climate change, protecting marine biodiversity and ecosystems is essential to build our oceans’ resilience⁴.

Overfishing and illegal, unreported and unregulated (IUU) fishing risk pushing oceans ecosystems into a state of total collapse, with devastating consequences for the marine environment and those who depend on it.



BOX 1 Human impact of IUU fishing

IUU fishing can occur in any fishery, from shallow coastal or inland waters to the high seas. However, it is often a particular issue in countries or areas where fisheries management is poorly developed, or where there are limited resources to enforce regulations. This commonly occurs in less developed regions, where fish can be the main source of animal protein and income for coastal communities⁵.

Across West Africa, one of the regions with the highest levels of IUU fishing (estimated to be as high as 37% of all catch)⁶, fish is a vital source of essential micro-nutrients, protein, vitamins and minerals. It accounts for over half of animal protein intake in countries such as Ghana and Sierra Leone⁷. Across the region, an estimated 6.7 million people depend directly on fisheries for food and livelihoods⁸. In the face of rising poverty, the coastal populations' reliance on fisheries for food and income is projected to increase in the coming years⁹.

With fish stocks diminishing and global demand at an all-time high, vessels are turning to illegal fishing to minimise costs and maintain profits. Driven by the desire to reduce operating costs, IUU fishing is also often associated with trafficked or forced labour to crew vessels. In Thailand, for example, decades of poor fisheries management resulted in massive overfishing and illegal activities, with catches falling by an average of almost 80% between the 1960s and 2014. In turn, this created economic pressures that drove the widespread use of forced, bonded and slave labour. Exhausted fish stocks meant that vessels had to remain at sea longer and travel further for ever-diminishing returns. In turn, operators used human trafficking networks to crew their vessels with cheap migrant labour. Slavery in the industry, fuelled by the impacts of overfishing, coincides with widespread pirate fishing, which is itself both a driver and a response to the overexploitation of fisheries¹⁰.



IUU fishing is highly lucrative, resulting in billions of dollars of illicit financial flows every year¹¹. It is also commonly associated with forgery, fraud, money laundering and other enabling crimes, as well as non-fisheries violations such as human trafficking (See box 1)¹². As such, fisheries value chains are increasingly looked at from the perspective of transnational organised crime¹³.

Tackling IUU fishing, therefore, requires a broad portfolio of measures, from increased monitoring, control and surveillance (MCS) to strengthened inter-agency cooperation and corporate due diligence. Being able to identify and sanction IUU fishing offenders and the networks behind illegal fishing operations is critical to effectively tackling the issue. It is only by tracing profits and increasing the likelihood of being identified and effectively sanctioned that IUU fishing will end. However, the endemic lack of transparency in the fisheries sector makes this very difficult, with illegally-caught fish able to access reputable markets and sanctions easy to evade as IUU fishing operations may span continents and oceans, involving players far removed from activities at sea.

Countries that make their flags available as “flags of convenience (FoCs)” to fishing vessels are at the heart of this opaque system that prevents the sanctioning of real beneficial owners of illicit fishing activities, and therefore allows them to continue “business as usual”. As an

entity, they enable the establishment of opaque corporate structures that conceal the identities of true beneficiaries, allowing them to profit from illegal fishing with low risk of ever being sanctioned.

This is in spite of international laws which give flag states the responsibility to sanction wrongdoers so as to “deprive offenders of the benefits accruing from their illegal fishing activities”¹⁴. This, in theory, should be facilitated through ensuring that there is a “genuine link” between the country of registration (flag state) and the vessel¹⁵. Nevertheless, in practice, some flag states are failing to do so by allowing vessels to enter their registers whilst not ensuring that they will be able (and in some cases, willing) to exercise their flag state responsibilities effectively and hold fishing vessel owners to account.

Becoming a network of flags, they give IUU fishing vessels the opportunity to re-flag and escape detection and sanctions. In the global fight against IUU fishing, the attitude of these flag states frustrates the efforts of reforming flag states by providing an escape route for IUU fishing offenders.

This report demonstrates the strong link between the use of FoCs and IUU fishing and provides clear recommendations that will reduce abusive flagging practices and build greater transparency in the fisheries sector.

Flags of convenience in fisheries: the 'who', 'what' and 'why'

1.1 The right of flag states to register vessels, any vessels

The “flag state” refers to the country where a vessel is registered. The concept plays a central role in international maritime law. The United Nations Convention on the Law of the Sea (UNCLOS), which sets the current international maritime legal framework, stipulates that flag states have rights to sail ships on the high seas, fix conditions for ships registered under their flag and to give their nationality to these ships. To do so, they need to have a “genuine link” with the vessel¹⁶; a controversial and poorly defined stipulation that originally intended that there must be sufficient connection with the vessel owner (social or economic) that allows the flag state to exercise its jurisdiction over the vessel in question¹⁷. “Genuine link” was reached as a compromise between states favouring nationality requirements for the owner or crew of ships as a condition of the grant of nationality of ships (traditional maritime states) and those rejecting such requirements (states operating as open registries)¹⁸.

However, this right to flag ships comes with responsibilities. Under UNCLOS, “every state shall effectively exercise its jurisdiction and control in administrative, technical, and social matters over ships flying its flag.”¹⁹ Flag state jurisdiction typically includes management of vessel registration; fishing authorisation; effective authority and control over vessels including inspection, detention and arrest as necessary; and ensuring vessel conformity to generally accepted international rules and standards²⁰.

Various initiatives and other legal instruments have provided further understanding of what is expected of flag state responsibility in relation to fisheries, especially as regards to both vessel registration and fishing authorisation as well as control, enforcement and sanctions²¹. It is worth noting that often different agencies of governments deal with these different responsibilities. The 1993 FAO Compliance Agreement and the 1995 UN Fish Stocks Agreement, two binding international instruments, require flag states to maintain a national record of fishing vessels²² and fishing authorisations²³. They should also ensure compliance by their vessels with conservation and management measures and take enforcement action where necessary, including a full and immediate investigation into alleged violations, referral to appropriate authorities for the institution of proceedings, and the imposition of appropriate sanctions²⁴.

Other non-binding instruments such as the FAO Voluntary Guidelines on Flag State Performance and the FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing have also provided further guidance for flag states on monitoring, control and surveillance activities²⁵ and information that should be recorded upon registration, including information on the beneficial ownership of the vessel²⁶.

However, in spite of these guidelines, in practice there tends to be no immediate consequences for a flag state that fails to implement them, and the conditions for registration and the degree of oversight and enforcement action by flag states vary widely²⁷.



1.2 What is a flag of convenience in the context of fisheries?

At present, there is no universally accepted and precise definition of what constitutes an FoC in fisheries. The original definition of FoCs as promoted by the International Transport Workers Federation (ITF) is **‘where beneficial ownership and control of a vessel is found to be elsewhere than in the country of the flag the vessel is flying’**²⁸. This means that the owner of the vessel that is flying the flag holds economic control and resides in a country that is not the same as the flag state.

Using the ITF original definition (not specific to the fishing sector), FoCs have also become commonly understood as flag states that operate an open register. These registers are “open” in the sense that they have flexible requirements for ship registrations, generally not based on nationality.

However, in the fishing sector, the term FoC has increasingly encompassed elements of flag state performance and is often used interchangeably with the term “flags of non-compliance” (FoNC), meaning a flag that exhibits a consistent pattern of failure with its international obligations²⁹. This shift can be associated with the difficulty of finding a generally acceptable definition of the “genuine link”, which pushed the international community to, in practice, refocus the discussion on specific performance requirements to be applied to flag states, and other ways of enforcing those obligations when flag state implementation is inadequate or ineffective³⁰. Their failure to comply with these obligations is, however, irrespective of the location of the vessel beneficial owner³¹.

This means that it has become accepted that when a fishing vessel owner chooses to use a flag other than their nationality and in addition, is a flag from a state considered “non-compliant” in relation to meeting its international obligations, the practice has generally been referred to as “using a flag of convenience”³².

1.3 Which flags should be considered as flags of convenience in fisheries?

The ITF - which focuses on labour issues - maintains a list³³ of FoCs, although it is worth noting that the list does not strictly adhere to its own definition. The ITF also considers factors that indicate a state’s willingness to comply with international standards when classifying a state as an FoC and does not limit classification to countries which operate open registers³⁴. However useful, the list has not been designed for the fisheries context: some of the registers in the list do not function as open registers for fishing vessels. Flag states that operate as open registers and which have a large number of fishing vessels in their fleets or a significant fishing fleet in terms of tonnage include Belize (50 fishing vessels), Vanuatu (92 fishing vessels) and Panama (382 fishing vessels)³⁵ but exclude Cayman Island, Lebanon, and Madeira.

Additionally, the list does not include states that are not open registers *per se* but where a high proportion of their fishing fleet is nonetheless foreign-owned. These countries often have a supposed “nationality requirement” when registering but in practice, have corporate laws that are permissive, or laxly enforced, with the result that their registered fleet may, in effect, be under close to total foreign ownership. In Ghana, for example, an estimated 90-95% of the industrial trawl fleet is believed to have some level of Chinese involvement³⁶. Typically, this is enabled through the use of joint ventures between a foreign company and local partner or government to gain access to specific fishing areas and resources. Vessels owned by joint ventures may be permitted to apply for fishing licenses in a given coastal state. These arrangements may also qualify them to register under a local flag despite being partially or even fully owned by foreign entities, with the local partner in the joint venture, in reality, acting as a local agent rather than a genuine co-owner³⁷.

Because most FoCs facilitate secrecy in beneficial ownership (see section 2), it is difficult to establish which flag states have such high levels of foreign ownership in their fishing fleet that would qualify them as FoC states from a fisheries perspective. As a result, there is not currently a complete list of “FoCs in fisheries”.



Bahamas
Saint Kitts and Nevis
Saint Vincent and the Grenadines
Belize
Curaçao
Panama
Sierra Leone
Liberia
Ghana
Cameroon

- Ghana
- Cameroon
- Liberia
- Sierra Leone
- Somalia
- Belize
- Cambodia
- Comoros
- Panama
- Saint Vincent and the Grenadines
- Vanuatu
- Bahamas
- Georgia
- Marshall Islands
- Moldova
- Mongolia
- Curaçao
- Kiribati
- Saint Kitts and Nevis

EJF has produced a non-exhaustive list of states that appear to have been used as fishing FoCs. This was informed by cases documented by EJF and presented in this report, states with presence of foreign ownership as identified under the EU IUU Regulation carding scheme³⁸ and by the ITF list³⁹. The relevance to the fishing sector of the latter list was corroborated using the database Sea-Web and EJF's expertise.



1.4 Rationale for the existence of flags of convenience

The rationale behind operating an FoC can be described in terms of the benefits to both the state and the shipowner. These benefits are, for the most part, economic⁴⁰, but can also be motivated by other operational advantages.

To a vessel owner, the ability to choose a flag from a pool of open registries provides an economic advantage. Economic benefits can include favourable tax environments, low administration and registration fees, and lower operational costs of the vessel due to lower compliance requirements⁴¹.

Operational reasons, such as access to resources, can also motivate the adoption of a foreign flag in the context of fisheries. Some coastal countries adopt policies in an attempt to generate more revenue from industrial fishing vessels that access their waters or to encourage the development of a domestic industrial fishing fleet. For long-distance water fleets wishing to operate in certain fishing grounds, the adoption of the coastal state's flag can sometimes be a condition of access.

Kenya, for example, banned most foreign vessels from its waters and opted to develop its domestic fishing industry and facilities to support it⁴². If a foreign fishing vessel operator has chosen to register under a local flag because it is a condition to gain access to fishing areas and resources, this strategy may be both perfectly legal and justifiable from a business perspective, although potentially problematic from a sustainability and fisheries management point of view⁴³.

Even if not a condition to access the resource, long-distance water fleets operating in coastal waters of foreign countries can also be incentivised by economic benefits to adopt the local flag, different from their original country of registration. For example, in Mozambique, license fees for foreign vessels were made nearly 100 times more than they were previously in an attempt to encourage joint venture partnerships with local companies and boost the local fishing industry⁴⁴.

Beyond economic and operational incentives (e.g. access to resources) for the vessel owner, the desire to avoid the burden of compliance with fisheries management rules and oversight is also an important motivation to choose a flag other than the vessel owner's nationality⁴⁵. Stringent



regulatory requirements and increasing fishing management measures are factors contributing to the growth of the use of FoCs, to the detriment of the marine ecosystems the management measures are meant to protect (See section 4).

From a state point of view, whether an open register is state-owned or franchised out to a commercial entity (known as “private flags”), the income brought by opening the registry to foreign vessels is a compelling rationale. Income can be raised through tonnage taxes and registration fees or franchise and/or royalty fees amongst other schemes⁴⁶. A 2002 study commissioned by the FAO demonstrated however that revenue from fishing vessels in 21 states operating as open registers was as little as 4.9% of the gross revenue from all vessels⁴⁷. In 2010, Sierra Leone, which was at the time operating an open register run privately in the United States and had about 50 fishing vessels, reported receiving about only \$10,000 in a four year period from providing this service to fishing companies⁴⁸. These figures demonstrate that the economic benefits of running an open register are disproportionately low in comparison with the negative reputational costs that can potentially incur as a result.

BOX 2 Labour and human rights abuses on FoC vessels

Another result of registering with a flag of convenience is the potential to outsource labour⁴⁹. By “flagging out”, ship owners can take advantage of less stringent labour regulations and the freedom to employ cheap labour from the global labour market⁵⁰. In practice, some vessel owners precisely choose to register in FoC states because they will not offer effective recourse for employees with grievances. This sustains a race to the bottom in effective legal protection among FoC states which provides opportunities for workers to be exploited⁵¹.



How FoCs provide a safe haven for IUU offenders

The process of registering with a fishing FoC often entails establishing opaque corporate structures that hide ownership information. This allows beneficial owners of fishing vessels to remain hidden, and therefore unaccountable in case of illegal fishing activities.

2.1 How corporate structures in FoC states are shielding the beneficial owner of illegal fishing activities

The existence of flag states that have flexible requirements for ship registration and turn a blind eye to the enforcement of any nationality requirement is legally questionable. Their legitimacy concerning the requirement for a “genuine link” between the flag of registration and the vessel as required by UNCLOS has been the subject of controversy⁵².

Moving beyond the legal debate of what constitutes a “genuine link”, it is not the practice of registering foreign-owned vessels that is problematic *per se*. Rather, it is the extent to which the use of FoCs facilitates secrecy in beneficial vessel ownership. It is a serious problem with specific ramifications in the fisheries context⁵³ as it can prevent the identification of the beneficial owner(s) of a fishing operation, meaning ‘the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity’⁵⁴ (See Box 3). In order to register to an FoC, a company may establish a corporate structure to, at least on paper, have a presence in that country to allow for registration. This can serve to conceal the identities of beneficial owners, precluding detection and sanction where their vessels engage in illicit activities. Opaque ownership corporate arrangements, and the problems that they present to global fisheries management, are at the heart of the fisheries FoC system.

Open registers and shell companies

In the case of many open registers, fishing vessels are registered to fictitious, or shell companies, often only nominally “located” in the FoC country that has issued the flag⁵⁵. Shares in the shell company may then be held by further shell companies, further concealing the identity of the real beneficial owners⁵⁶. Because this opaque ownership system enables the anonymity of the beneficial owner to be maintained, even if the flag state concerned wanted to exercise effective control over the vessel, or the national operating the vessel, the relevant person or company may well not be identifiable⁵⁷. These structures are often concealed and protected, under the law and regulations in the FoC state, which maintain the

secrecy of business⁵⁸. Indeed, states that operate open registers are often states which are also considered as tax havens. The secrecy that companies enjoy from their business in tax havens is used primarily for reducing their tax payments, by transferring money among jurisdictions to take advantage of low tax rates. Still, the lack of transparency also enables those wishing to do so to hide their environmentally destructive activities, such as in the case of illegal fishing. This overlap between vessels known to be operating in IUU fishing and flying flags of convenience from acknowledged tax havens was demonstrated in a 2018 study which found that 70% of the known IUU fishing vessels are, or have been, flagged under a tax haven jurisdiction⁵⁹.

Joint ventures used as “front” companies

Some flag states are not open registers *per se* but allow foreign ownership through permitting the establishment of joint ventures between national and foreign investors. Vessels owned by joint ventures may be permitted to apply for a local fishing licence, and these arrangements may also qualify them to register under a local flag despite being partially or fully owned by foreign entities.

In theory, joint ventures with the involvement of foreign investors are justifiable as they can allow coastal countries that lack capital, infrastructure and markets to develop their own industrial fishing industries with the support of foreign funds (See section 1.4 about rationale). “Legitimate” joint ventures are common, with a genuine share of control between the local partner and the foreign investor with a transfer of skills and technology.

However, the lack of transparency has also allowed many fictitious joint ventures to be created whereby the local partner acts only as a “front” or agent for the foreign investor that in reality owns the company. Major economic issues have emerged with such corporate structures, in particular when local partners are not treated as genuine owners, do not receive any transfer of knowledge or technology and are victim of financial manipulations to avoid receiving their supposed share of genuine profits⁶⁰.

A 2015 Greenpeace report demonstrated how the state-owned China National Fisheries Company (CNFC) owned 12 Senegalese-flagged vessels in Senegal by way of “joint-venture” (Senegal Armement S.A and Senegal Pêche). These vessels, allegedly by the Greenpeace report, have committed tonnage fraud⁶¹. It has been found that CNFC owned 100% of the shares⁶², with Senegal Armement being considered as a subsidiary of CNFC⁶³.

CASE STUDY 1: China's hidden fleet in Ghana

Ghana, presumably with the view to secure the financial benefits of fishing activities for Ghanaian nationals and to ensure these benefits contribute to Ghana's socio-economic development rather than being sent overseas, has banned foreign ownership from its trawl sector. This restriction applies to all local (i.e. Ghana-flagged) industrial and semi-industrial vessels, with an exception carved out for tuna vessels. By referring to "beneficial ownership" and therefore drawing the distinction between the registered owner and the beneficial owner, it is clear that both the spirit and letter of this provision in the 2002 Fisheries Act is to exclude foreign interests from the local industrial fleet.

The legislation should thus prohibit the use of "front" or "shell" companies that in reality are owned or controlled by foreign interests. Such "nationality criteria" may also be seen as a means by which Ghana can fulfil its flag state obligations under the UNCLOS, to ensure a "genuine link" between its territory and vessels applying for registration. However, in practice, it has been found that interests based in the People's Republic of China are widespread in the Ghanaian trawl sector⁶⁴.

According to available information, Chinese companies commonly operate through Ghanaian "front" companies to import their vessels into the Ghanaian fleet register and obtain a licence to fish. On paper, interests are entirely Ghanaian, including the Board of Directors of the registered corporate owner⁶⁵. Yet the reality is that 90-95% of the Ghanaian trawl fleet is connected to Chinese interests. Within this, it has been identified that eight Chinese companies beneficially own around 75% of the trawl fleet⁶⁶. The arrangements established may differ between companies and vessels, but in all cases are characterised by their opacity, shielding the foreign owner from external scrutiny. They may include hire purchase agreements, whereby the licence holder pays part of the purchase price of the vessel upfront and the remaining amount in instalments over a designated period of time⁶⁷.



| An industrial trawler operating in Ghana's waters. The image was taken by a local canoe fisher during a fishing trip in February 2020.

2.2 Failing to identify and hold to account beneficial owners of IUU fishing vessels

IUU fishing operations may span continents and oceans, involving players far removed from activities at sea. As already discussed in section 2.1, corporate structures in flags of convenience often conceal the identities of true beneficiaries. This means that in case of illegal fishing activities, beneficial owners are protected and can profit from illegal fishing with low risk of detection.

Despite international recognition of the problem of hidden beneficial ownership, both domestic and international law have maintained adherence to entity law, meaning that each structure within the corporate group is considered a separate legal entity. But for the purposes of IUU fishing, such doctrine protects the parent from the liability caused by the acts and activities of the subsidiaries, therefore avoiding responsibility for the illegal fishing activities of their companies⁶⁸.

Given the practical and legal challenges in identifying the ultimate beneficial owners, fisheries enforcement has traditionally targeted the registered owners and captains of fishing vessels. In the long run, failing to hold to account the recipients of profits prevents the dismantling

of networks behind illegal fishing operations. Notorious IUU offenders can assign new or fictitious individuals and companies to “front” for them as the registered owner in the country of registration, and continue their operations and evading sanction as the real beneficial owners who direct and profit from these illegal activities, therefore undermining all efforts to combat illegal fishing.

The lack of information on beneficial owners also entails that levels of sanctions are not necessarily “relevant”. According to international law, penalties for IUU fishing should be adequate in severity to discourage violations of fisheries rules and should deprive offenders of the benefits accruing from such activities⁶⁹. When considering the proportionality of sanctions for fisheries offences, one should consider the means available to the entity that is effectively controlling the vessel and profiting from illegal activities. It is, therefore, crucial to identify the true actors and companies behind fishing activities to ensure that sanctions deter future IUU fishing offences (see Case Study 2).

BOX 3 Who is the beneficial owner?

There is increasing recognition of the importance of transparency as a basis for good governance and the sustainable use of natural resources, particularly in the extractive industries and the forestry sector.

The Extractive Industry Transparency Initiative (EiTI) is a voluntary global standard that aims to promote open and accountable resource management in countries rich in oil, gas and mineral resources.

The 2016 EiTI Standard requires all implementing countries to establish a public beneficial ownership disclosure regime by January 2020. The standard defines the beneficial owner of a company as “the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity”⁷⁰.

The extractive industry sector has become aware of the need to identify beneficial owners decades ago. It is only recently that similar thinking has reached the fisheries sector.

Enforcement and regulatory approaches to IUU fishing have traditionally prioritised controlling the at-sea activity of fishing vessels. While assessing a vessel’s activity and maritime policing are critical components of addressing IUU fishing, the operations of a vessel are ultimately directed and sustained by ownership networks onshore. In recent years, it has become apparent that focusing on onshore ownership in addition to at-sea vessel activities is a key step toward targeting the ultimate owners and networks behind IUU fishing⁷¹.

CASE STUDY 2: “Proportionate and dissuasive sanctions” rely on identifying the true beneficial owners – the Meng Xin case in Ghana

A recent investigation by China Dialogue⁷² found that 35 trawlers operating across Ghana, Sierra Leone and Guinea are ultimately owned by a single Chinese state enterprise, Dalian Mengxin Ocean Fisheries. Seventeen of these vessels are registered to the Ghanaian flag even though Ghana’s 2002 Fisheries Act requires that trawlers fishing under local licences must be owned and controlled by Ghanaian nationals. The 17 trawlers operating in Ghana are registered to nine local companies, which essentially “front” for Dalian Mengxin. These Ghanaian companies are registered to PO boxes rather than street addresses.

The investigation found that the vessels are also registered in China, allowing them to seemingly secure access to benefits in both countries. This can include subsidies from China - as Dalian Mengxin is classified as a Chinese state enterprise – as well as fisheries access in Ghana thanks to their local registration.

Since 2016, the Meng Xin vessels have committed at least 16 illegal fishing offences in Ghana, including illegal trans-shipments at sea and catching juveniles. The fines imposed ranged from GHS 3,000 (approx. \$USD 500) to GHS 500,000 (approx. \$USD 85,000). The minimum fine for catching undersized fish under Ghana’s 2014 Fisheries Amendment Act is US\$1 million. This is in addition to the apparent illegality of their ownership structure.

In Ghana, sanctions are applied only to the registered owner of the vessel, and not the beneficial owner, which may be a much larger entity, often with the controlling interest in the vessel. As a result, sanctions fail to have a deterrent effect, resulting in systemic illegal fishing in the trawl sector. This highlights the need to consider the beneficial owner when determining the level of sanctions for fisheries-related violations, to ensure they reach the true beneficiaries of illegal fishing. In a number of cases, the Ghanaian registered owners of Meng Xin vessels have refused to pay the fines imposed yet their fishing licences have been renewed, allowing them to continue their operations.



How the FoC system lets IUU vessels off the hook through flag-hopping

IUU fishing vessels aim to create as much confusion as possible around their identities. Through concealing their identity, vessels are able to escape sanctions and hide their history of non-compliance when they apply to operate in new areas. Examples may include hiding a history of non-compliance to obtain a new fishing licence or to avoid blacklisting by a Regional Fisheries Management Organisation (RFMO), or duplicating the names of vessels within a fleet to use one fishing licence for multiple vessels to reduce costs⁷³. Changing flags frequently ("flag-hopping" or "abusive re-flagging") is central to this IUU modus operandi. Through changing names and flags regularly, IUU fishing vessels are able to operate under the radar and escape both detection and sanction.

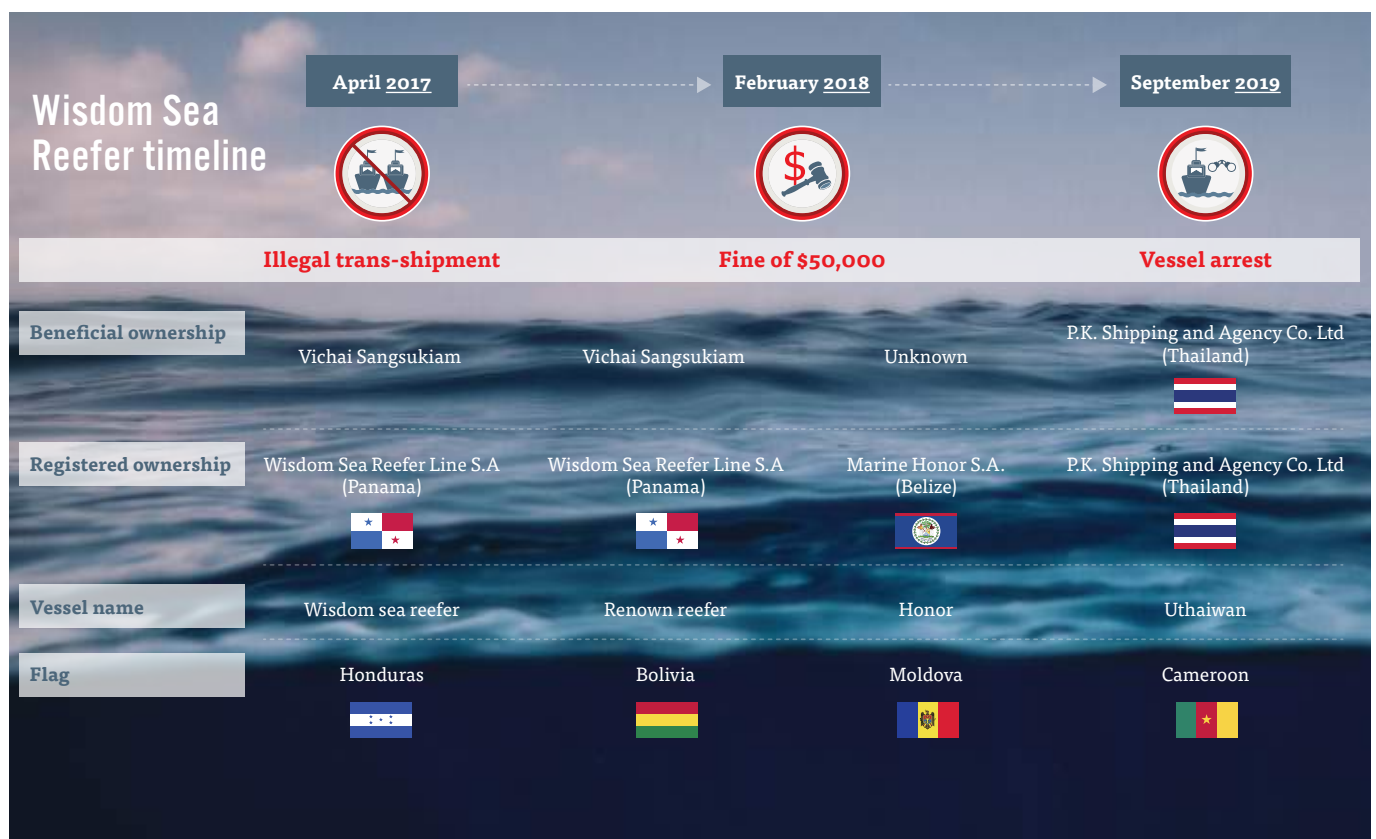
This is further facilitated by the lack of transparency in the global fishing sector. As only a few fishing vessels are mandated by their flag state to have a unique vessel identifier which stays with them from shipyard to scrapyards, it is challenging to keep track of these identity changes. The lack of publicly accessible information on vessel information (under the format of vessel registry or licence lists) and history of non-compliance (in the format of IUU blacklists or lists of sanctions) also frustrates attempts to verify a vessel's identity and its history of non-compliance⁷⁴.

It is therefore common for identified IUU fishing vessels to have a track record of identity changes, facilitated by FoCs which often have relatively easy registration processes for foreign vessels. A 2016 analysis by the Nordic Council of Ministers⁷⁵ found a strong correlation

between "flag hopping" and IUU fishing. The IUU Vessels Combined list⁷⁶ developed by Trygg Mat Tracking found that vessels used for illegal fishing activities with known flag states had, on average, re-flagged more than three times during their lifespan. More than a quarter of the vessels were registered in five or more flag states. This supports the view that flag-hopping is a technique used by ship owners and operators engaged in illegal fishing.

Case Study 3: End of the road for infamous flag-hoppers

In April 2018, the illegal fishing vessel STS-50 was arrested by Indonesia with support from Interpol. Officially stateless, it had managed to evade authorities by flying eight different flags (including Sierra Leone, Togo, Cambodia, the Republic of Korea, Japan, Micronesia and Namibia)⁷⁷. Its sister vessel, the fishing vessel M/V Nika, was arrested in July 2019 for illegal fishing operations. Since 2006, M/V Nika has changed its flag seven times⁷⁸. Both vessels are beneficially owned by a Russian company, operated from South Korea, but with registered owners in Belize and the Marshall Islands respectively⁷⁹.



CASE STUDY 4: Fleeing the law – the case of the Wisdom Sea Reefer

In April 2017, the fish carrier Wisdom Sea Reefer was sighted engaging in an at-sea trans-shipment in contravention of the rules adopted by the Indian Ocean Tuna Commission (IOTC)⁸⁰. At the time of the sighting, it was flying the flag of Honduras and purportedly owned by Wisdom Sea Reefer Line S.A. a Panama-based company linked to Thai nationals⁸¹.

Honduras promptly initiated legal proceedings to sanction the vessel. While these were ongoing, the Wisdom Sea Reefer succeeded, while still flagged to Honduras, in obtaining the nationality of Bolivia under the name of Renown Reefer. ITF lists Bolivia as an FoC⁸². The sanctioning process was concluded in February 2018 with the vessel being fined US\$ 50,000. The Honduran authorities also decided not to renew the vessel's shipping licence and not to issue any deletion certificate to the vessel before the fine was fully paid⁸³. However, the fish carrier was still at large, with Honduras calling on other countries to cooperate to allow for effective enforcement.

It took more than a year and a half until Honduras' request was fulfilled. On 13 September 2019, Thai authorities successfully arrested the vessel off of Phuket⁸⁴. The ship's identity had changed again. It was intercepted under the name of Uthaiwan, flying the flag of Cameroon and owned by a Thai company, P.K. Shipping and Agency Co. Ltd.,⁸⁵ whose owners claimed they were not aware of the ship's history of non-compliance and bought it for scrapping⁸⁶. Between the conclusion of sanctioning and arrest, authorities found that the vessel continued to "flag-hop", also flying the flag of Moldova, another FoC according to ITF, under the name Honor. It also changed ownership to a company incorporated in Belize, Marine Honor S.A.⁸⁷.

According to the information available, the ship is now to be scrapped. However, a letter sent by the Honduran authorities to authorities in Cameroon in November 2019 highlighted that the fine imposed on the vessel was still outstanding, together with US\$ 5,495 of unpaid taxes⁸⁸. As the Panama-based company Wisdom Sea Reefer Line S.A. was dissolved and the company incorporated in Belize turned inactive⁸⁹, it required tremendous effort on the part of the Honduran authorities and over two years to collect these outstanding amounts⁹⁰.

Through "flag-hopping" from one FoC to another, countless changes in names and corporate structures, the Wisdom Sea Reefer, its operators, owners and beneficiaries found an escape route and successfully escaped Honduran sanctions for years.



CASE STUDY 5: How transparency can combat FoC systems – The Mahawa case

In November 2018, EJF investigated the fishing vessel Mahawa, a 135 gross tonne trawler, operated by a Korean-owned company based in Sierra Leone but believed to be Guinean-flagged.

After being alerted by EJF, the Guinean authorities called the vessel back to port to investigate its activities. By sharing information with Sierra Leonean counterparts, they discovered that the vessel was operating under both Guinean and Sierra Leonean flags, which is illegal under international maritime law⁹¹. As a result, Mahawa's owners were sanctioned by the Guinean government.

Mahawa's story demonstrates how illegal operators use the lack of transparency in the fishing industry to their own ends. Had both countries' fishing vessel registries been public, the double-flagging could have been revealed sooner by cross-checking registries. Given that the vessel is eligible for an International Maritime Organization (IMO) number, had Sierra Leone or Guinea made IMO numbers mandatory and added their fleet to the UN Global Record of Fishing Vessels, the vessel's flag could have been verified with the click of a mouse.

In early 2020, fishers in Sierra Leone again documented Mahawa operating illegally in inshore areas, as well as covering its markings. At the time of writing, the vessel is reportedly flagged to Sierra Leone.



Photograph of the Mahawa taken in the waters of Sierra Leone.

Vessels may also change flag repeatedly to avoid the consequences of violations of conservation and management measures committed under a previous flag. The principle of exclusive jurisdiction of the flag state over their vessels as set out in international maritime law renders it difficult to take actions against vessels that are involved in IUU fishing if the newly adopted flag state is unwilling or unable to act⁹². Although some regulators,

such as the EU and Korea, have adopted measures to sanction nationals involved in IUU fishing, regardless of the flag, this is relatively uncommon⁹³. In many cases, the flag states will have sole jurisdiction to sanction vessels for illegal fishing activities. FoCs essentially provide a safe haven for these vessels and allow beneficial owners of IUU vessels to go unpunished and continue their illegal activities.

CASE STUDY 6: Flag-hopping to avoid detection

In October 2019, EJJ identified two suspicious vessels in Chittagong, Bangladesh. These vessels, named Sea View and Sea Wind, had entered Chittagong port a month and a half before, flying the flag of Cameroon.

Photo comparisons demonstrated that they were in fact vessels that had been added to the IUU vessel list of the (IOTC) in May 2018 for having engaged in activities contravening the conservation and management measures adopted by this RFMO⁹⁴. These activities took place in spring 2017 off the coast of Somalia where the vessels are also suspected to have engaged in human trafficking⁹⁵.

Like other IUU vessels, the Sea View and Sea Wind have a long history of flag-hopping. In recent years, they changed flags at least four times: from Thailand, to Djibouti, to Somalia, and finally Cameroon, and a period when their nationality could not be established. Name changes generally accompanied these operations^{96,97}.

The confusion surrounding the two vessels' identities and activities is an important factor in creating the conditions for them to be able to operate under the radar while being wanted by many, including through INTERPOL⁹⁸. This certainly helped them to access Chittagong port while Bangladesh, as a party to the FAO Agreement on Port State Measures⁹⁹ and the IOTC¹⁰⁰, could have refused them entry into any of its ports.



Photograph of the Sea Wind (under one of its former names) taken on 4 March 2017 in the EEZ of Somalia. Credit: European Union via Indian Ocean Tuna Commission.

How the FoC system perpetuates IUU fishing

Due to the FoC system, unscrupulous operators are able to make strategic decisions about their flag of registration through flag-hopping. In doing so, they are likely to choose a flag that would allow them to avoid scrutiny as far as possible and offer the most competitive advantages. A 2020 study found that “desirable flags” are flags of countries that are largely non-cooperative with international efforts to sustainably manage shared fish stocks and prevent IUU fishing, regardless of their ratification of major international agreements¹⁰¹. For many countries operating as FoCs, their registry is operating in a manner akin to a commercial enterprise. Such states could become incentivised to be as permissive as possible to attract customers.

If a fishing vessel operator has consciously chosen to register under a foreign flag to avoid rules and oversight, this strategy is likely to facilitate unsustainable or illegal fishing activities¹⁰². It is very attractive for IUU fishing operators that would otherwise have to comply with such measures to opt for an FoC state that lacks the will or ability to ensure that their vessels act lawfully¹⁰³.

The link between IUU fishing activities enabled by poor flag state control and FoCs has been demonstrated for decades. While some states that operate open registers have taken positive steps to fulfil their international responsibilities, the majority of open registry states are not bound by the many international instruments that require the exercise of flag state control over fishing vessels, nor do they exercise flag state control voluntarily¹⁰⁴. A 2014 study examining the variations in flag use between a subset of IUU fishing vessels and the global fleet of fishing vessels, found that IUU vessels were more prominent amongst FoC flags. These flags states also exhibited consistent patterns of failure in compliance with international obligations (FoNCs)¹⁰⁵. Often, these are the same - to the extent that in the fisheries sector, the difference between the terms FoCs and FoNCs have somehow become blurred (see section 1.2).

In addition, many flag states that operate as FoCs are developing countries that have low MCS capacity and weak enforcement infrastructure. Besides the secrecy offered by FoCs, the lack of enforcement capabilities in such flags provides further opportunities for unscrupulous vessels to fish illegally with a low risk of being detected¹⁰⁶.

Beyond poor flag state control, the willingness (or in some cases, laxness) of FoCs to open their registry to foreign-owned vessels seriously questions their determination to address IUU fishing.

Even if the flag state has the capacity and does exercise effective control and jurisdiction over the operation of the ship, it has been argued that there is the need to reinforce the safety net from the ownership and registration point of view. As discussed in section 2, the various mechanisms and corporate devices that enable the identity of beneficial ship owners to remain hidden, do not act as a deterrent against IUU fishing. Had criteria been pre-set regarding accountability and identification of vessel operators and beneficial owners, the probability of the risk of unlawful intention associated with the use of ships (such as IUU fishing) would have lessened¹⁰⁷. Recent studies have found that IUU fishing operators will therefore tend to choose a flag state that protects their privacy and cater to anonymous ownership¹⁰⁸.

Box 4 FoC states at the heart of the EU's combat against IUU fishing

To counteract the lucrative illicit trade of IUU fishing products, the EU IUU Regulation entered into force in 2010 to establish an EU-wide system to prevent, deter and eliminate the import of IUU fishery products into the EU market. The Regulation enables the European Commission to enter into dialogue with non-EU countries that are assessed as not combating IUU fishing in accordance with their obligations under international law and underperforming as a flag, coastal, port and market states¹⁰⁹. If these countries fail to put in place required reforms in a timely manner, the EU can impose sanctions, including a ban on the import of their fisheries products into its market. Out of the six states that are, or formerly were, designated by the EU as non-cooperating the fight against IUU fishing (also known as ‘red-carded’), ITF lists five as FoC states (Belize, Cambodia, Comoros, Sri Lanka and Saint Vincent and the Grenadines).

CASE STUDY 7: Are “private flags” even able to sanction IUU vessels? The case of Liberia

In some cases, flag states operating as open registers outsource the management of their registries to private companies (known as ‘private flags’). These companies are often located in a different country from the flag state. Such arrangements cast doubt on the very notion that the flag state would be able to exercise their flag state duties over the vessels in question. In addition to helping vessel owners remain anonymous, it was found that the ship register does not always provide the flag state administration with continuously updated information on the vessels it has on its register¹¹⁰. This means that it will be difficult for law enforcement officers in these flag states to exercise effective control over vessels as they may not know which vessels are flying the flag state’s flag, where the vessels are, or who owns or controls them¹¹¹. In addition, private flags, as a for-profit business, will tend to register large foreign-owned fleets without ensuring the country has the requisite resources and expertise to exercise their due diligence obligation over the fleet effectively.

This is the case in Liberia, a West-African coastal country that is the third-largest ship registry in the world¹¹². The European Commission, in its decision to warn Liberia that it may face sanctions if not more cooperative in the fight against IUU fishing, seriously questioned Liberia’s ability to monitor its vessels operating in external waters (See box 4).

The European Commission highlighted in its decision that the Liberian national authority in charge of vessel registration consults with the fisheries officials about the record of new fishing vessels that will operate in national waters. However, the entity in charge of the international vessel registry (Liberian Maritime Authority) did not consult the national fisheries authorities before registering any fishing vessel which will operate outside Liberian waters. National fisheries authorities did not have any information on Liberian fishing vessels operating beyond Liberian waters, nor did they monitor or control the 100 Liberian flagged fishing vessels (mostly fish carriers) operating beyond the Exclusive Economic Zone (EEZ). The apparent lack of cooperation between the Liberian Maritime Authority and the national fisheries authorities was considered to compromise Liberia’s ability to monitor the activities of its fleet, potentially allowing illegal operators to use the flag of Liberia without fear of sanction¹¹³. The IUU Fishing Index found Liberia to be the 7th “worst flag State”, having failed to ratify the FAO Compliance Agreement, being non-Compliant with RFMO flag state obligations and vulnerable to IUU fishing among its fleet due to the size of its fleet operating beyond national waters and in RFMOs¹¹⁴.

At the time of writing, we estimate that the fleet of fishing-related vessels of Liberia has decreased to 20. This estimate is made based on information published by RFMOs as Liberia has not entered its fleet data in the FAO Global Record of Fishing Vessels, Refrigerated Transport Vessels and Supply Vessels. Although the fleet has decreased in size since the EU’s warning, all remaining fishing-related vessels seem directly or indirectly connected to owners and operators located outside Liberia. This indicates that Liberia has not fully departed from its open registry policy. In addition to these 20 fishing-related vessels, two purse seiners entered the Liberian fleet at the end of 2019. These two fishing vessels, the Liberty Grace and Liberty Queen share the same registered owner and operator, which is a legal person located in Liberia. Nonetheless, further investigation suggests there may be foreign ownership interests in these purse seiners, with potential links identified to South Korean interests through a Ghanaian natural person.

FoCs, therefore, undermine efforts by states working to stop illegal fishing by providing an escape route to unscrupulous operators. For example, if a previously non-compliant flag state decides to clean and reform its register to improve compliance, it may inadvertently export the problem, as the vessel concerned can simply find a new, less responsible flag state¹¹⁵. Thus, this requires to be collectively, and in a coordinated way, addressed by the international community at the instigation of responsible fishing players - be they flag, coastal, port or market states.

BOX 5 Ending abusive re-flagging

The European Union has adopted new measures¹¹⁶ to stop “abusive reflagging”, as it was found that some European vessels would deregister from European flags and adopt foreign flags to circumvent conservation and management rules, such as quota¹¹⁷. Essentially, the EU’s new rule means that non-compliant vessels that have a history of flag-hopping are no longer able to re-register with a European flag. Such a measure is positive for the reforming flag state that is essentially deterring “flag-hopping” and preventing potential IUU vessels from re-entering their register. It is also favourable for legitimate fishers in the same registry who face unfair competition from other vessels circumventing the “burden of compliance” and limits on fishing.

BOX 6 How to detect FoC vessels?

States face regular situations where they need to assess fishing vessels information: for example when a fishing vessel applies for registration and a licence to fish, or when deciding whether or not to inspect a vessel according to a risk-based approach. In determining whether a vessel is an FoC vessel, and therefore higher-risk, authorities can take into account the following criteria:

- Impossibility to identify with certainty the beneficial owner
- Natural and legal persons involved in the management of the vessel are based in different countries
- The registered owner resides in a country considered a tax haven and/or a secrecy jurisdiction
- The address of the company is a PO box
- The flag state documentation has been issued in a different country and/or by a commercial entity
- The vessel has a history of abusive re-flagging
- Nationalities of the crew onboard the ship, especially the officers in command and the fishing master, are different from those of the persons operating and managing the vessel



CASE STUDY 8: How the Korean clampdown has pushed vessels to re-flag

South Korea has one of the world's largest distant water fishing fleets. In late 2013, the European Commission issued a formal warning ('yellow card') to Korea after numerous reports of IUU fishing by its distant water fleet (see box 4). In the years following the EU warning, Korea began dramatically strengthening control of vessels operating under the Korean flag, resulting in a significant number of unscrupulous operators leaving the Korean registry.

For instance, in 2014 EJF documented a fleet of four Korean-flagged trawlers (Butiyalo One, Butiyalo Two, Haysimo One and Haysimo Two) apparently fishing without a valid licence in Somali waters. They had been operating off the coast of the state of Puntland in apparent breach of the Somali Fisheries Law (number 29)¹¹⁸, as later confirmed by the Federal Somali and Puntland Government¹¹⁹.

In line with its new approach to fisheries management, Korea took action against the vessels and denied them the authority to export their catch. In response, rather than reforming their behaviour, the four vessels left the Korean registry and changed their names. In early 2015, they claimed to have changed their flags to Somalia. They were later joined by another vessel, the Butiyalo Three, while the Haysimo One was observed sinking in the Gulf of Aden¹²⁰.

According to the database Sea-Web, the registered owner of Butiyalo Three, Butiyalo One, Butiyalo Two and Haysimo Two is the Somali company North East Fishing Co., which is one of the subsidiaries of Al Jubail Group in the United Arab Emirates¹²¹. The latter three vessels are owned by Al Jubail Group and operated by Al Kaus Overseas Trading LLC since March 2015. Butiyalo Three was purchased by Al Jubail Group in March 2018 and has been operated by Al Kaus Overseas Trading LLC since. A Korean national allegedly owns the latter company¹²². In September 2019, EJF documented Butiyalo Three operating in Puntland inshore areas, as close as 0.3 nautical miles from shore. At the time of writing, the vessels are believed to continue operating off the coast of Somalia and reportedly still flying the flag of Somalia¹²³.





Conclusion

Our oceans are under threat. Over-fishing has driven many fish stocks to the brink, and some to total collapse. IUU fishing is a key cause of this. The endemic lack of transparency in the fisheries sector has been identified as one of the most important enablers of illegal fishing. Tackling IUU fishing requires a broad portfolio of measures which prioritize increasing transparency, including through improving means to identify and hold to account IUU offenders and the networks behind illegal fishing operations.

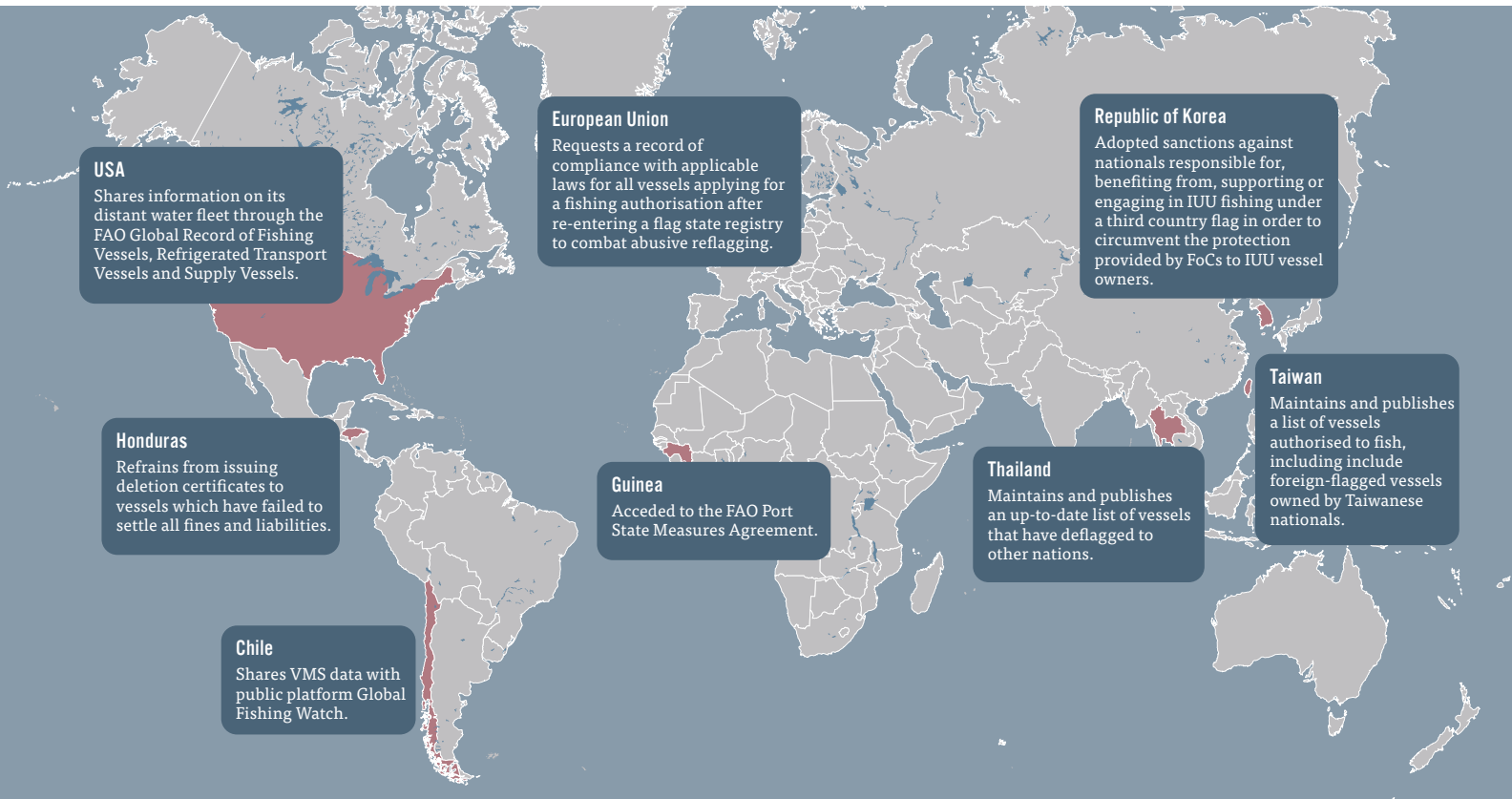
Efforts to increase transparency are frustrated by FoCs because they allow the “beneficial ownership and control of a vessel to be elsewhere than in the country of the flag the vessel is flying”. Often using opaque corporate structures, FoCs hinder the sanctioning of the true recipient of profit from illicit fishing activities, and allows them to continue “business as usual”. As a network of flags, the FoC system enables IUU operators to re-flag and escape detection and sanctions. In the global fight against IUU fishing, these flag states frustrate the efforts of reforming flag states by providing an escape route for IUU vessels and by often refusing to adhere to international efforts to manage shared fish stocks and prevent IUU fishing.

The world needs sustainable, legal and ethical fisheries management more than ever. Fishing FoCs undermine efforts to achieve this. Ultimately, their use must end. There are realistic and straightforward steps that states can take to address the disproportionate, negative impact of FoCs on global fisheries. The recommendations set out in this report are designed to do that.



Recommendations

Examples of best practice in fisheries governance targeting flags of convenience (non-exhaustive)



Damages caused by the FoC system and the lack of accountability that it creates for vessel owners have been debated in the fisheries sector for decades. Ultimately, the Environmental Justice Foundation's (EJF) strong view is that all flags operating as FoCs should remove foreign-owned fishing vessels and fish carriers altogether from their registry.

For many states operating as FoCs, this change will not happen overnight and in the meantime, EJF recommends that all flag states (regardless whether or not they operate as FoCs) have systems in place to be able to identify vessels' beneficial owners and enable owners to be held accountable in the case of IUU fishing or other offences that require sanctions. These should be adopted alongside measures designed to improve control over fishing vessels and strengthen fisheries legal framework.

Ultimately, all flags operating as FoCs should remove foreign-owned fishing vessels and fish carriers altogether from their registry.



Crew member holding the Panama flag of fishing vessel Isabel.

All flag states should:

adopt the following operational measures:

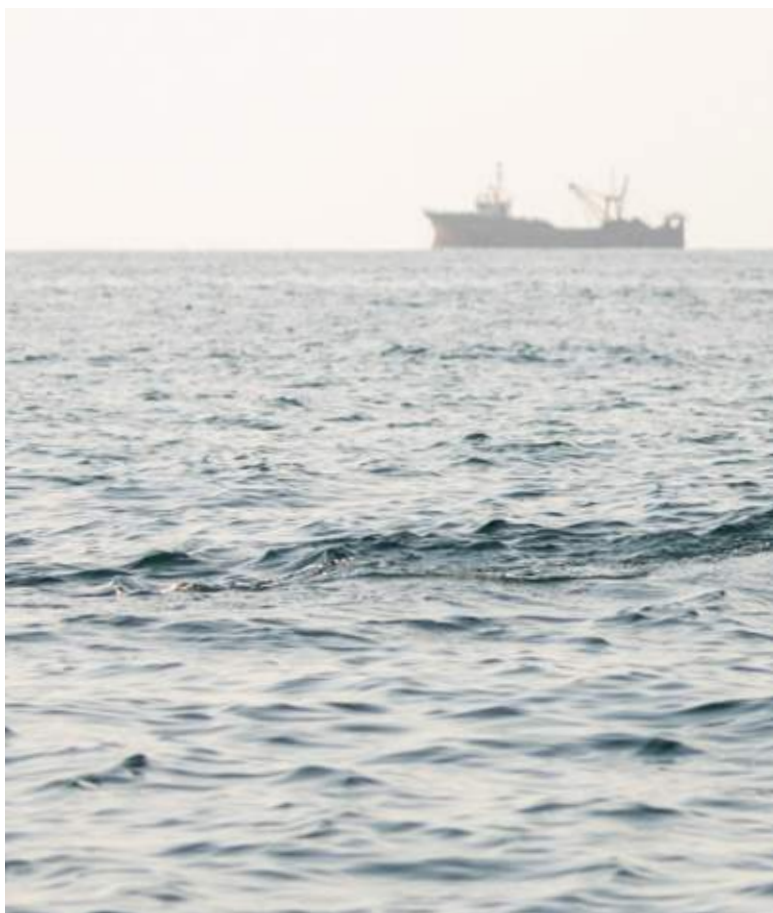
- Require from all vessels registered, and as part of all applications for entering the fleet register, detail on ownership arrangements and records on the destination of profits from fishing activities. Unless there can be a clear assurance that a vessel's beneficial owner can be identified and held to account if needed, the flag state should remove the vessel from their registry or refuse registration.
- Carry out background checks on any person or company forming a new, or taking over an existing, corporate entity and that any proposed change to existing ownership arrangements is immediately notified to the flag state.
- Ensure that agencies responsible for flagging vessels and fisheries management work in close cooperation and that fisheries managers have substantive input on decisions on whether or not to flag a fishing vessel.
- Ensure that fisheries authorities and ship registration authorities from the former and the applicant flag state cooperate and exchange vessel information for any vessel before entrance into the fleet. Refrain from issuing deletion certificates to vessels which have failed to settle all fines and liabilities. Applicant flag states shall refuse applications of such vessels.
- Request a record of compliance with applicable laws for all vessels wishing to re-enter a flag state registry and scrutinise vessels with a history of flag-hopping to combat abusive reflagging.

publish online the following information:

- List of vessels registered to their flag and make the relevant information available through the FAO Global Record of Fishing Vessels, Refrigerated Transport Vessels and Supply Vessels ('FAO Global Record'), mandating IMO numbers for all eligible vessels and national unique vessel identifiers for all other vessels.
- Information on foreign-flagged vessels owned by their nationals and vessels that have de-flagged to other nations.

Coastal, port and market states should:

- Coastal states should require details on the ownership systems behind vessels when reviewing fishing licence/authorisation applications. When it cannot be established with certainty who the beneficial owner is, these organisations should refrain from licensing those vessels (See potential risk criteria in box 6).
- Port states should accede to the FAO Port State Measures Agreement and, in determining which vessels to inspect, also consider as 'higher risk' vessels flying the flag of fishing FoC states or connected to opaque ownership systems (See potential risk criteria in box 6).
- Market states should establish trade-related measures requiring that imported seafood is caught and transported by vessels flagged to states that implement their obligations under international law; if need be, by closing their market to products stemming from countries, including fishing FoCs, that are not taking measures to ensure that the vessels they flag do not engage in IUU fishing.



All states should ensure that they:

- Amend domestic corporate regulations to strengthen legal provisions on beneficial ownership through the inclusion of minimum disclosure requirements.
- Adopt policies to require nationals to disclose beneficial interests in foreign flagged vessels in order to map where their nationals have registered the vessels they own and/or operate under FoCs.
- Adopt and implement sanctions against nationals responsible for, benefiting from, supporting or engaging in IUU fishing under a third country flag to circumvent the protection provided by FoCs to IUU fishing vessel owners.
- Table and support ambitious proposals in Regional Fisheries Management Organisations and other regional fishery bodies, aiming at increasing transparency over beneficial ownership.
- Join forces at the global or regional level to carry out coordinated law enforcement actions targeting high-risk vessels with support from relevant organisations such as INTERPOL.

These measures, applied in addition to policies designed to improve flag state performance and increase transparency, would level the disproportionate, negative impact of the FoC system. Alongside this, the catching sector, importers, processors and retailers should:

- Set a near-term objective to refrain from purchasing seafood transported by or caught by vessels flagged to fishing FoCs, sourcing and marketing fishery products stemming from such countries and widely communicate this action to all actors across seafood supply chains.
- In the interim, evaluate and report on the exposure of fishing FoCs to their seafood supply chains, taking account of the identification of such states by NGOs, the EU carding scheme and the International Transport Workers' Federation. In risk assessment exercises, assign high levels of risk to supply chains that have FoCs and take mitigating measures, such as additional audits.

All actors, governmental and corporate, should support greater transparency in the global fisheries sector by adopting EJF's Charter for Transparency (See page 32). The charter includes EJF's 10 transparency principles and commits corporate actors to introduce due diligence measures designed to reduce the risk of supplying seafood that is not legal, ethical and sustainable.



Global transparency principles

EJF's ten principles for states to adopt are:

- Immediately mandate IMO numbers for all eligible vessels and implement a national UVI scheme for non-eligible vessels, maintaining a vessel registry and providing all information to the FAO Global Record of Fishing Vessels (which ultimately includes all eligible vessels over 12 metres length overall).
- Require AIS for fishing vessels and/or make unedited VMS data public with regular transmission intervals sufficient to ensure vessels can be permanently tracked.
- Publish up-to-date lists of all fishing licences, authorisations and vessel registries.
- Publish information about arrests and sanctions imposed on individuals and companies for IUU fishing activities, human trafficking and other related crimes.
- Implement a ban on trans-shipments at sea unless they are pre-authorised and are subject to robust, verifiable, human and electronic monitoring.
- Close open registries to fishing vessels and stop the use of flags of convenience by vessels fishing in their waters or importing to their markets.
- Mandate and implement the near-term adoption of cost-effective digital tools that safeguard in a digital form key information on vessel registration, licenses, unloading records, catch location and information and crew documentation. These should be designed in such a way as to support a rapid move towards a universal, interoperable digital catch certification scheme.
- Publish information about beneficial ownership in all public lists and require companies to provide information on the true beneficial ownership when applying for a fishing licence, fishing authorisation or registration to their flag.
- Include provisions in legislation to identify where nationals are supporting, engaging in or profiting from IUU fishing, and implement deterrent sanctions against them. This effort can be aided by a register of vessels owned by nationals but flagged to other countries.
- Adopt international measures that set clear standards for fisheries vessels and the trade in fisheries products, including the FAO Port State Measures Agreement, the ILO Work in Fishing Convention (C188) and the IMO Cape Town Agreement.

These principles are primarily for states to implement, with the support, where relevant, of other stakeholders. They complement efforts needed in the private sector to increase due diligence throughout supply chains to identify and mitigate the risk of supplying illegal or unethical seafood to consumers. Through changing the opaque environment in which IUU fishing is able to thrive, we have a chance to advance sustainable, legal, and ethical global fisheries.





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