

How to stop illegal fishing:

FLAG STATES



stop illegal fishing



WHY ARE FLAG STATES IMPORTANT?

All fishing vessels operating internationally must be registered to a country, the flag State, and fly their flag. The ministry responsible for maritime affairs or transport will usually have the responsibility to register fishing vessels along with other commercial vessels. Countries may operate a national registry or an open registry or both and flag States enjoy almost exclusive jurisdiction over their vessels.

Flag States are responsible under international law to regulate and monitor the management and operations of their fishing vessels, including support and supply vessels for the fishing industry, to ensure their fleets are compliant. States that are members of regional fisheries management organisations (RFMO) are also obliged to ensure that their fishing vessels comply to their conservation and management measures (CMMs).

Illegal operators, target flags of non-compliance, also known as flags of convenience, attracted by their lax controls and ease of registration. But, these flags undermine global efforts to develop sustainable fisheries, grow blue economies, and stop illegal fishing.

Flag states play a critical role in controlling and monitoring the activity of their flagged vessels, and there is a significant opportunity for flag States to help stop illegal fishing.



WHAT CAN FLAG STATES DO TO STOP ILLEGAL FISHING?

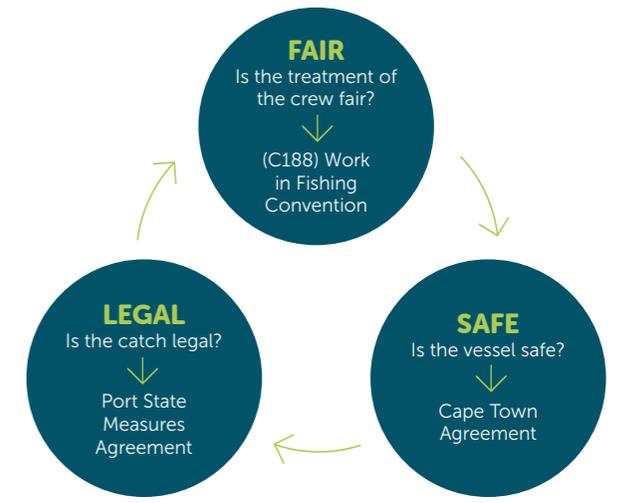
RATIFY AND IMPLEMENT INTERNATIONAL AGREEMENTS

A range of international instruments and agreements have built on The United Nations Convention on the Law of the Sea (UNCLOS) to establish a suite of powers, responsibilities and controls for flag States of fishing vessels. Whilst there are still significant differences in many safety and environmental requirements for fishing vessels compared to other ships, there are substantive steps flag States can take to stop illegal fishing.

Flag States committed to stopping illegal fishing should become party to and effectively implement the United Nations Fish Stocks Agreement (UNFSA), the Food and Agriculture Organization (FAO) Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas and the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate IUU Fishing (PSMA). Flag States should also implement the provisions set out in the FAO Voluntary Guidelines on Flag State Performance as the basis of international best practice for flag States.

The International Maritime Organization (IMO) Cape Town Agreement (CTA) will address safety of vessels and provide a cooperative framework for vessel inspections, while the International Labor Organization (ILO) Work in Fishing Convention (C188) addresses human trafficking in the fishing industry. Ratifying and implementing these instruments will strengthen a flag State's ability to ensure that their fishing vessels only participate in legal, safe and fair fisheries.

Improving governance in oceans, fisheries and on fishing vessels can be strengthened by cooperation between fisheries, maritime safety and labour sectors.





BUILD CONTROLS INTO FLAGGING REGULATIONS AND CONDITIONS

Flagging regulations and the issuance of fishing authorisations provide a powerful means of controlling fishing activity, and of increasing oversight of fishing activity. Measures to increase the easy identification of fishing and support vessels; such as mandatory IMO numbers and the requirement for vessels to transmit on Automatic Identification System (AIS) and Vessel Monitoring System (VMS) are essential.

Regulations can also be used to impose restrictions on transshipment and to ensure that catch data is shared with coastal States and RFMOs. Requiring vessels to install WIFI for use by the crew can help stop modern day slavery.

DEVELOP NATIONAL POLICIES THAT SUPPORT SUSTAINABLE PRACTICES

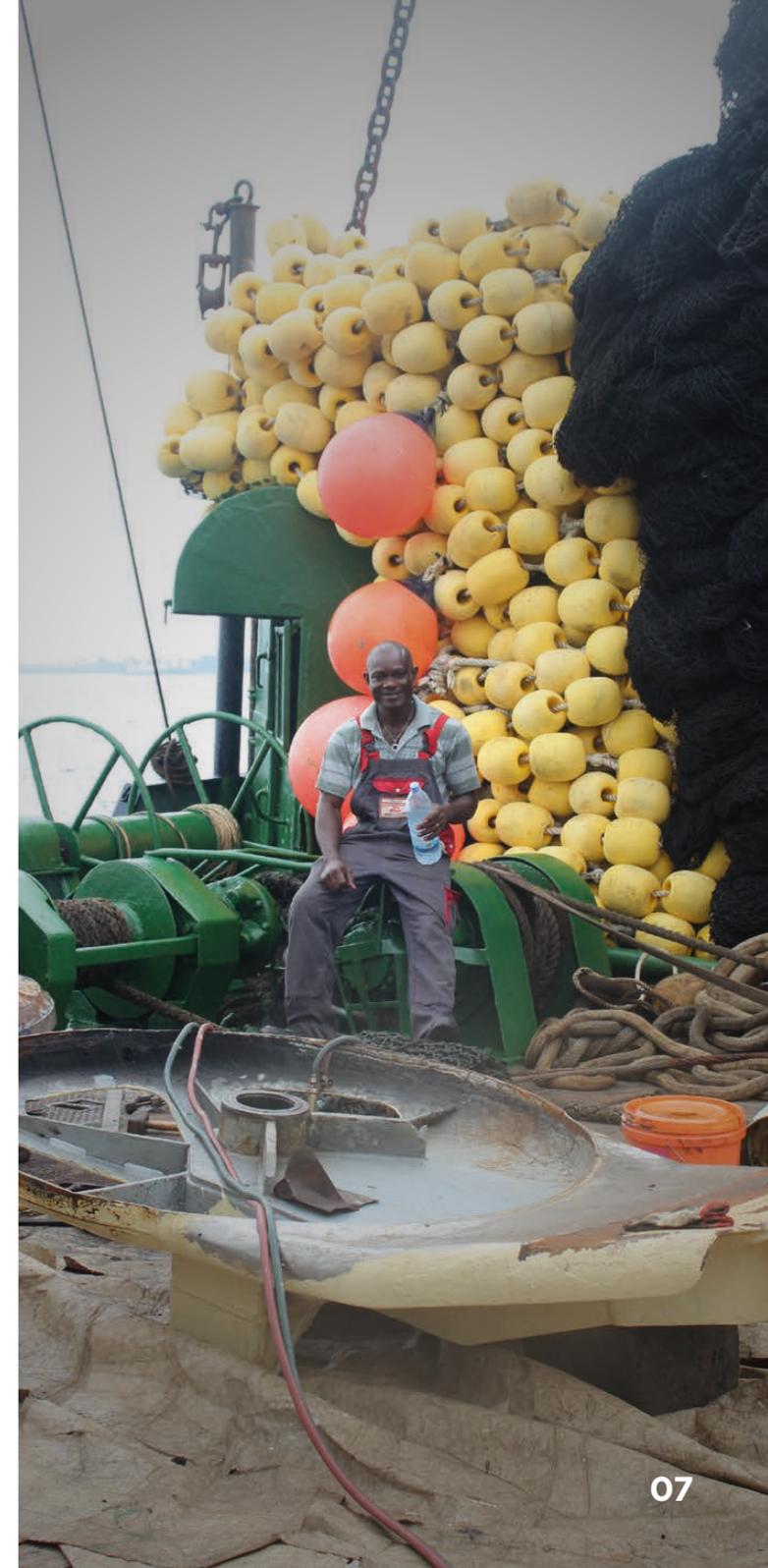
Strong and clear national fisheries policies that incorporate international standards for flag State performance are critical for enabling the development and implementation of legislation and procedures to support this. Increasing numbers of countries are developing ocean policies which offer another opportunity to draw the links between compliant and legal fishing vessels and operators and sustainable thriving fisheries and ocean economies.

Policies endorsing sound flagging practices will have an impact on safety and maritime security, reducing opportunities for illegal operators and networks to use fishing vessels as a vehicle for associated fisheries crimes, including drug, arms and human trafficking. Policies should require that sufficient resources are allocated to implement and enforce national and international law and that the institutions, infrastructure and human capacity needed to ensure adequate controls of fishing vessels flagged to the country are in place.

DEVELOP EFFECTIVE NATIONAL LEGISLATION

The 'genuine link' between flag State and fishing vessel is now considered to be assessed on whether the flag State is able to take effective measures in the case of non-compliance, this may include the ability to recover costs or apply sanctions. This will require a national legal framework that has domesticated international agreements and CMMs through the transfer of their provisions into domestic law.

In addition, the application of non-fisheries national and international legislation in the fisheries sector e.g. in respect to maritime safety and labour, will strengthen actions against crimes that support and enable illegal fishing. The ability to take effective action against non-compliance must be embedded into the legislative and regulatory framework with sanctions against illegal operators that are severe enough to be a significant deterrent; the legal authority to take control of vessels through e.g. recall to port or denial of sailing; and, the ability to de-register in response to non-compliance.





MAKE CAREFUL AND INFORMED FLAGGING DECISIONS

Granting a flag to a fishing or support vessel should only happen when the identity and history of the vessel and its owner have been confirmed. Flagging applications give an opportunity to identify operators and vessels that have engaged in illegal activities, deny them access to a flag or authorisation to fish, and to ensure that any outstanding sanctions have been settled. Flagging procedures should be open, accessible and transparent, to prevent corruption and use risk assessment procedures to identify high risk or illegal vessels, owners and operators.

It is critical that details of the beneficial owner are available, as shell companies or companies with registered addresses using PO boxes prevent effective action and sanctions being imposed if non-compliance occurs.

INTRODUCE SYSTEMATIC CONTROLS

Systematic checking is an effective tool to identify illegal vessels, activity and operators; this can be achieved by adopting standard procedures for processing applications and checking and verifying information. Use risk assessment processes to check on the identity, history and activity of the vessel and its owner and operator. Checking the authenticity and accuracy of documents and verifying this information with issuing States and external sources, as well as checking document information against the actual vessel will prevent vessel identity fraud, and disrupt illegal operators.

PROVIDE EFFECTIVE OVERSIGHT

Oversight can be provided through a combination of pre-registration inspections, satellite tracking, observer programmes, CCTV on vessels, and at-sea inspections. The requirement for vessels to transmit AIS and VMS data is fundamental, but the ability to monitor and understand the data is equally important.

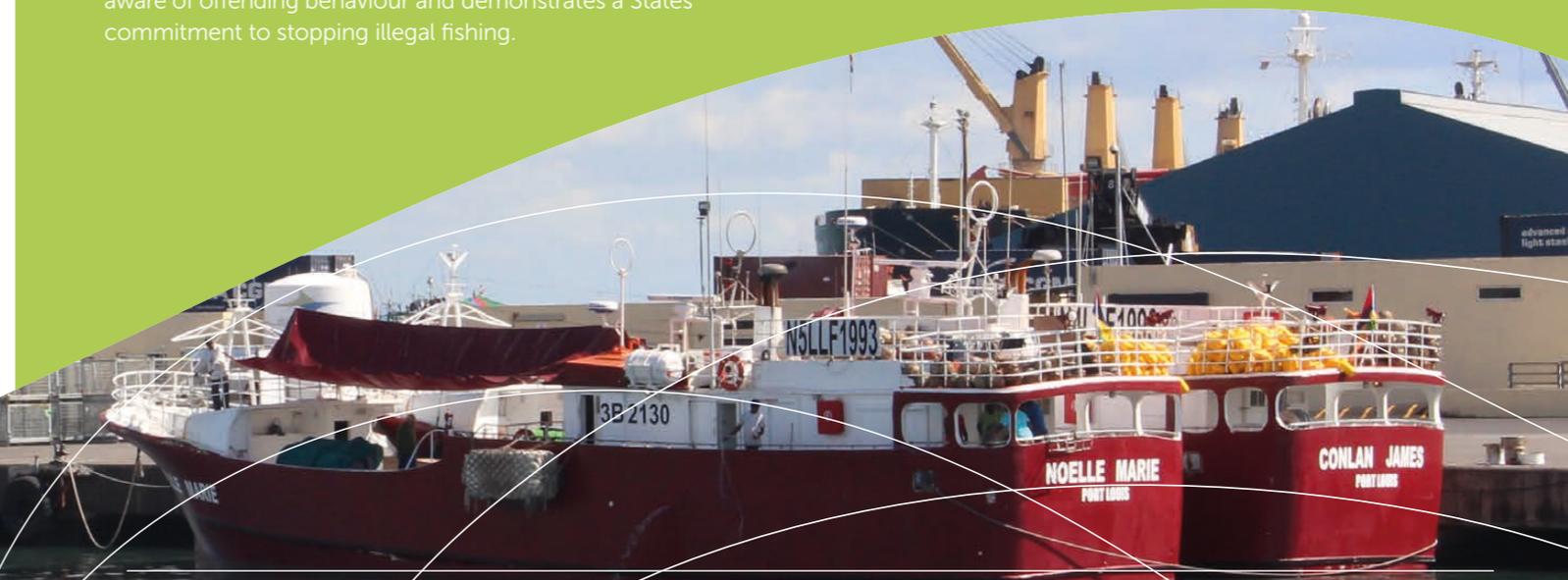
BE TRANSPARENT

Illegal operators have long taken advantage of the lack of public information available on fishing vessels and their activities and on cases of IUU activity. Contributing information on flagged vessels to the FAO's Global Record of Vessels to develop this as an internationally valuable resource is an important step to improving transparency. Countries can routinely make information easily accessible and publicly available via websites and this approach ensures that flag States actively undermine efforts to conceal illegal activity.

All efforts to make the registration process clear and transparent, and provide public access to information on flagged vessels, such as making VMS information publicly available will enable others to help monitor the activity of the vessels. Publicising cases of IUU fishing, using the vessel's name and IMO number helps to make others aware of offending behaviour and demonstrates a States commitment to stopping illegal fishing.

TAKE ACTION AGAINST NON-COMPLIANCE

Flag State support to coastal and port States when IUU fishing is identified is essential. Key actions include: the exchange of information and provision of mutual legal assistance in investigations and judicial proceedings; repatriation of crew from flagged vessels when human trafficking is identified; proposing vessels for IUU listing by RFMOs; and, publicising cases, even when sanctions cannot be applied, because making case information public helps build awareness.





COOPERATION AND AWARENESS

NATIONAL INTERAGENCY COOPERATION

Apply multi-agency due diligence for fishing vessels applying for registration, including cooperation between the fisheries authority and the authority in charge of vessel registration, including refusal of registration if the vessel or owner is deemed high-risk.

Build interagency cooperation to enable: the sharing, crosschecking and verification of information, sharing of resources and cooperation on risk assessment and due diligence checks and cases of illegal fishing. Developing MOUs and protocols for the exchange of information and coordination of activities among relevant national agencies and develop communications platforms between agencies for fast exchange of information, including requests and responses to queries.

REGIONAL INFORMATION SHARING

Join and participate in relevant RFMOs, or, if unable to become a full contracting party, adhere to the same standards of information sharing and activities of contracting parties. Work with relevant regional task forces of coastal and port States, and regional maritime security centres to increase awareness and knowledge of flagged fishing and support vessels, their activities and identities.

GLOBAL INFORMATION EXCHANGE

Increase systematic cooperation with flag, port and market States by making it easy for States to contact each other, and by responding quickly to requests for information. Provide information, documents, photographs and movement tracks to coastal, port and market States to support crosschecking and verification, and contribute information on flagged vessels to the FAO's Global Record of Vessels.

Participate in international organisations and fora; develop understanding of other States' needs; and, make evidence of violations available to enforcement authorities of other states and RFMOs. Share data on catch, effort, bycatch, landings, and transshipment with coastal States and RFMOs to support effective fisheries management.

PUBLIC ACCESS TO INFORMATION

Public information increases global oversight. Making information public helps to fight corruption and also provides civil society and non-governmental organisations with the opportunity to monitor vessel activity and identify potential illegal activity. Photographs of fishing vessels are highly useful for identification purposes, taking, sharing and storing photographs publicly can assist in identification of illegal vessel identify.

TRANSPARENCY



Be clear on the national interest in flagging vessels and the potential costs and benefits to the economy and national standing that flagging may incur.

Require transparency from vessel owners on their company structures and beneficial owners.

Do not flag vessels owned by shell companies.

Make it mandatory to use AIS, VMS and IMO numbers to help prevent vessel identity fraud and allow open monitoring of vessel activity.

Make information on flagged vessels publicly available.

Contribute vessel information to the Global Record of Vessels.

Make AIS mandatory and make VMS information publicly available, allows greater monitoring of vessel activity by civil society actors.

Publicise cases, even when sanctions cannot be applied making case information public helps build awareness.

Listing IUU vessels makes a lasting record of illegal activity.

FLAG STATE RESPONSIBILITY



LEGAL AND POLICY FRAMEWORK

Ratify and implement international instruments and agreements.

Adhere to the FAO Voluntary Guidelines on Flag State Performance.

Develop effective national laws to implement the FAO guidelines.

Build awareness and political will for responsible flagging.

Put legal frameworks in place to ensure appropriate investigation, enforcement action and penalties are imposed, creating a true deterrent effect.

Balance the need for economic growth with sustainability and equitable fishing.

FLAGGING CONDITIONS AND REQUIREMENTS

Build effective controls into flagging regulations and conditions.

Make AIS, VMS and IMO numbers mandatory requirements for all flagged industrial and semi-industrial vessels.

Combat modern day slavery by making crew accessible WIFI compulsory.

Ban unsupervised transshipment.

FLAGGING DECISIONS

Establish standard procedures, for greater transparency on decision making.

Only flag vessels that can be effectively monitored and controlled.

Conduct pre-registration inspections to verify vessel identity and history.

Conduct due diligence checks on the vessel, owner and operator.

Verify documents are genuine and that the information is correct.

Refuse to register vessels that have a history of using flags of non-compliance.

Require a deletion certificate from the previous registry to stop flag hopping and dual flagging or statelessness.

MONITORING, CONTROL AND SURVEILLANCE OF FLAGGED VESSELS

Establish 24/7 monitoring of positional data by fisheries experts.

Install CCTV cameras to monitor catch, by catch, fishing methods and crew treatment.

Place independent observers on board fishing vessels.

Conduct regular at-sea patrols in areas where your flagged vessels are known to operate.

Certify catch certificates only when adequate MCS has taken place to verify that the catch was caught legally.

TAKING ACTION AGAINST NON-COMPLIANCE

Fully support investigations into alleged non-compliance.

Repatriate crew from flagged vessels when human trafficking is identified.

Propose vessels for IUU listing by RFMOs where possible.

COOPERATION



Work with national authorities to build awareness and understanding of the risks involved in flagging fishing vessels, the damage caused by illegal fishing and the steps that can be taken to stop illegal fishing.

Build critical political will to tackle illegal fishing.

Develop close relations with allied agencies, particularly those involved in flagging fishing vessels to ensure good regulations and policies are adopted and implemented.

Build national interagency cooperation to share crosscheck and verify information and due diligence checks.

Always verify information with previous flag States.

Establish quick and accessible channels of communication so that flag, port and market States can verify information.

Cooperate with regional task forces of coastal States such as FISH-i Africa and the West Africa Task Force to establish ongoing information exchange.

Promote multi-agency engagement in joint exercises and fishing vessel inspections to increase awareness and ensure compliance with all legislation, inc. fisheries, maritime, labour and criminal legal frameworks.

Exchange information with other States and provision of mutual legal assistance in investigations and judicial proceedings.

FLAG STATE RESPONSIBILITY

Flag States are responsible under international law to regulate and monitor the management and operations of their fishing vessels, wherever they fish and to ensure their fleets are compliant.

They do this by issuing authorisations and licences for activities such as fishing outside of national waters or transhipping or by verifying that activities were undertaken legally, such as through catch documentation schemes.

Advances in information availability and sharing make IUU fishing history harder to hide and vessel-tracking technology makes vessel location and activity information easier to access.

These moves towards transparency and the sharing of information all support willing countries to become responsible flag States and through this to contribute towards their own blue growth and global efforts to meet sustainable development goal 14.4 to end IUU fishing.

KEY RECOMMENDATIONS



Ratify and implement relevant international instruments and agreements.



Be aware that subsidies and overcapacity of fleets can have devastating effects on developing coastal States and ocean health.



Build controls into flagging regulations and conditions, to include mandatory requirements for IMO numbers, AIS and VMS.



Refuse to register vessels that have a history of non-compliance or of high-risk behaviour (flag-hopping and multiple name changes).



Refuse to flag when there is an opaque ownership structure (shell companies or non-nationals).



Refuse to flag vessels that have previously used known flags of non-compliance.



Introduce systematic controls, including risk assessment, document verification and pre-registration inspections for vessels and their owners, operators and agents.



Provide effective oversight, through monitoring of positional data, inspections, observers, and at-sea patrols.



Be transparent and provide public access to registration information through access to national records and sharing through the FAO Global Record of Vessels.



Take action against non-compliance through sanctions, penalties, IUU listing and publicity.



Cooperate systematically at the national, regional and international level.



Respond quickly and fully to request from port and coastal States to support informed decision making on port access and licensing decisions.

The 'How to Stop Illegal Fishing' series aims to improve awareness and understanding of the roles and responsibilities of different actors in stopping illegal fishing. As with all of SIF publications, it targets the needs of African fisheries and countries, is based on evidence and analysis, and places legality in the fisheries sector as an essential element of sustainable development.

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Stop Illegal Fishing is working at a practical and policy level to support coastal, flag, port, market and crew States to take action against illegal fishing. This publication is part of our Flag State Toolkit, and should be cited as Stop Illegal Fishing (2019) How to Stop Illegal Fishing: Flag States. For more information on stopping illegal fishing visit:
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