

FISHING VESSELS OPERATING UNDER OPEN REGISTERS AND THE EXERCISE OF FLAG STATE RESPONSIBILITIES: INFORMATION AND OPTIONS¹

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EXECUTIVE SUMMARY

The purpose of this paper is to review activities relating to the fishing fleets of countries with open registers, especially where countries do not exercise effective flag State control over those fleets. It is based on information available in the public domain and communications with officials in States, regional fisheries management organizations and international organizations and agencies.

The number of fishing vessels operating under open registers is increasing. At the same time, international action to secure effective flag State control of fishing vessels is on the rise, as evidenced in a series of post-UNCED international instruments, both binding and voluntary-

- 1993 FAO Compliance Agreement
- 1995 UN Fish Stocks Agreement
- 1995 FAO Code of Conduct for Responsible Fisheries
- 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA – IUU)

These instruments have progressively strengthened flag State duties and responsibilities, including compliance with applicable laws and international fisheries conservation and management measures. They apply to fishing on the high seas and in areas of national jurisdiction, and respond to practices undercutting sustainable fisheries management such as reflagging vessels to evade controls, undermining international conservation and management measures, illegal fishing in areas of national jurisdiction and unreported fishing.

Their provisions extend to States maintaining open registers where fishing vessels, usually of a different nationality, may seek to obtain a “flag of convenience”. Most of these States are not bound by the international instruments, nor do they exercise flag State control on a voluntary basis. Most do not belong to, or cooperate with, a regional fisheries management organization (RFMO) that has adopted international conservation and management measures.

Although the number of fishing vessels operating under open registers is increasing, they represent less than 10 per cent of the world’s fishing fleets. Even at that level, they have a disproportionately negative impact on fisheries conservation and management measures.

The historic “genuine link” doctrine – calling for a connection between the vessel and the flag State - is currently regarded as a basis for *securing more effective implementation of the duties of the flag State*, rather than a condition for valid registration. This underscores the need to assess the activities of open register fishing fleets, the exercise of control by the flag State and the role of States, RFMOs and the international instruments.

¹ Swan, J. Fishing Vessels operating under open registers and the exercise of flag State responsibilities. Information and options. *FAO Fisheries Circular*. No. 980. Rome, FAO. 2002. 65p. The full text of this document is available in English only. Executive summaries are available in all the official FAO languages.

The “flag of convenience” issue has been considered in the Commission for Sustainable Development, which has highlighted the issue of flag State responsibilities and the need for FAO and the International Maritime Organization (IMO) to cooperate on solving problems related to illegal, unreported and unregulated fishing.

The first step is consideration of rationale for maintaining or using open registries is discussed from the point of view of the open registry State, the shipowner and the fishing vessel owner. There are many potential economic benefits for all concerned, but limiting factors for the open registry State include: the relatively small revenue compared to that from the merchant fleet; and increased administrative costs and need for capacity-building due to changing international requirements.

It is difficult to establish the motivation for the ship or fishing vessel owner to migrate to an open register. While advertised economic and related benefits are clear, it is less certain from information available whether influencing factors include the flag State’s ratification or practical implementation, or not, of international instruments.

Positive motivation for open register States to control their fishing fleets has been successful through the threat of trade sanctions adopted by members of RFMOs. Responses by flag States to the threat of sanctions have included initiating control programs, taking actions against offending vessels and canceling fishing licenses. National administrative arrangements, law and policy for open registers varies. Some examples of administrative and legal requirements include proof of deletion from the vessel’s previous register (to avoid flag-hopping, or double registration), vessel age, ownership, fishing vessel data forms, proof of fishing licences and affidavits that certain species will not be fished. For enforcement, some open register States have imposed fines and deregistration. Some States have adopted action plans to raise the quality of their registers. However, there don’t appear to be many States that have adopted relevant policies.

Details about registration procedures on open registers are presented, including national contacts, administration, application information and procedures.

Actions taken by some RFMOs to implement flag State compliance are detailed, noting some compelling successes. Specific measures successfully taken by RFMOs relate to port access and trade. Some RFMOs have adopted action plans or resolutions, created committees to promote compliance and implemented programs to encourage effective flag State control. The trend of increasing cooperation among RFMOs is particularly effective in the campaign to prevent and deter the undermining of conservation and management measures, including by open register vessels.

Some examples of the ways in which RFMOs have generally promoted effective flag State control are: implementation of conservation and management measures through their Conventions; implementation by members of the post-UNCED international instruments; membership by open register States; encouraging non-Contracting Parties to adopt laws consistent with the instruments and conservation and management measures; rules requiring authorizations to fish; and exchange of information with non-Contracting Parties, including those from open register States.

Action taken by non-flag States to discourage unregulated activities of open register vessels can productively complement the initiatives of open register States and RFMOs and can include: restricting the fishing companies registered within their jurisdiction from owning and operating open register fishing vessels; conducting rigorous inspections of open register vessels when landing their catch or resupplying; and imposing trade or other sanctions if they are the ultimate destination of fish caught by the open register fleets.

It is clear that the international instruments provide a comprehensive foundation for the exercise of flag State responsibilities by the international community, including open register States. The way ahead may depend on identifying how to encourage effective implementation of those responsibilities.

Ratification or adoption of the international instruments and implementation in national law would be an obvious first step. In addition, initiatives being taken by open register States, RFMOs and non-flag States serve as useful precedent on a practical level. Guidelines for fishing vessel registration and compliance mechanisms could be developed by FAO under the Code of Conduct, in collaboration with IMO and other agencies and in accordance with the FAO IPOA-IUU.

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

The economic benefits for the open register States to include fishing vessels on their registers appears to be limited, while the incentive that some open registers provide for IUU fishing is great. This situation could provide an impetus for serious efforts to control the registers in respect of fishing vessels, and address the situation cited by the UN Open-Ended Consultative Process on Developments in Ocean Affairs in April, 2002 that-

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