

How to End Illegal Fishing: The Role of the Flag State

Stopping illicit activity starts with implementing international policies—and enforcing strong domestic laws

Overview

Illegal, unreported, and unregulated (IUU) fishing is one of the greatest threats today to marine ecosystems and ocean health. IUU fishing accounts for up to 26 million metric tons of fish annually and damages the livelihoods of legal fishers, including by robbing subsistence fishers and their communities of the fish they need to survive. This illicit activity also threatens maritime security by serving as a pathway for other serious transnational crimes, such as human trafficking and drug and weapons smuggling.

Because commercial fishing is such a global enterprise—often involving a vessel owned by a resident of one country, flagged to another, fishing in the waters of a third State, and selling its catch to many others—governments have adopted policies and promoted practices to prevent, deter, and eliminate IUU activity and prevent illegally caught fish from entering ports and supply chains.

Effectively combating IUU fishing requires a holistic approach in which coastal, port, market, and flag States each play vital roles. This fact sheet focuses on the importance of the flag State as the primary authority for ensuring that fishing vessels are compliant with all relevant measures and laws wherever they go.

Flag State significance and role

A flag State is the country in which a vessel is registered, which means that State has exclusive legislative and enforcement authority over that ship on the high seas. The flag State also has exclusive control over the vessel's administrative matters, such as its registration; social elements, including labor standards and rights; and technical matters, such as ship safety, in all waters. With few exceptions, the sole entity responsible for policing a vessel, no matter where it is in the world, is its flag State. This is defined as flag State obligation.

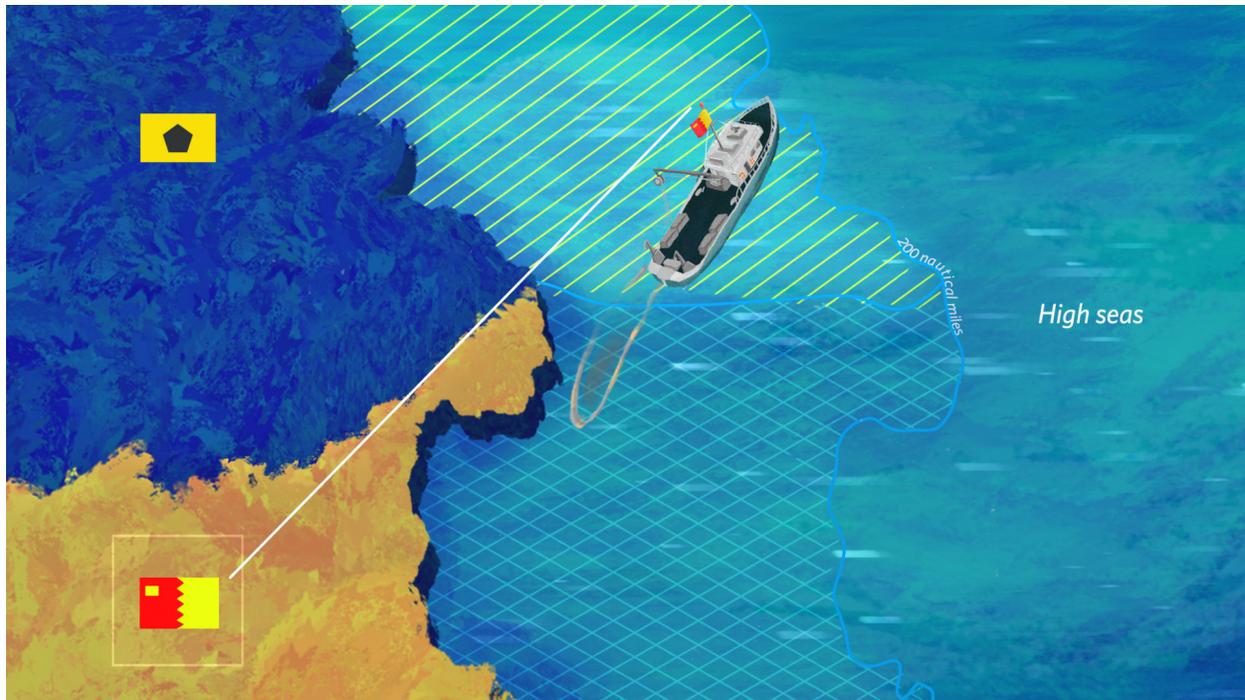
Every country has the right to be a flag State, regardless of whether it has a coastline,¹ and States can bring in significant revenue from registering vessels, including through taxes and fees for registration, annual inspections, fishing licenses, and other authorizations. Furthermore, in most countries, owners can register their ships independent of their nationality or residency—a setup that has fueled a small international industry around vessel flagging and generates a nationality for the vessel that is not always linked to that of the vessel's owners.

But ignoring the monitor-and-control duties of becoming a flag State can, and often does, allow illegal activity to take place, and many unscrupulous vessel owners and operators choose to flag their ships to nations with lax safety, environmental, or labor regulations, and/or deficient enforcement of laws and policy.

Here are the key roles of the four main types of States involved in commercial fishing:

- Coastal States are responsible for implementing the conservation and management measures needed to guarantee sustainable use of the resources under their jurisdiction or to which they have sovereign rights.
- Port States have the obligation of enacting port measures sufficient to detect illegally caught fish and stop vessels carrying them from entering or leaving port.
- Market States should ensure that seafood entering supply chains and being provided to consumers was caught legally.
- Flag States must ensure that regulations are in place and are enforced sufficiently to deter IUU fishing and associated crimes from occurring on their flagged vessels.

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A flag State acts as a vessel's nationality and has jurisdiction over the ship's administrative operations. No matter where the vessel goes, its flag State is responsible for policing it.

Duties of the flag State

Flag States have several international obligations that are fundamental to effectively controlling their fishing vessels. These obligations, contained in various international agreements and documents, range from monitoring and control of fishing activities and ensuring minimum labor standards on vessels to pollution prevention and maritime safety.

The key international instruments² establishing flag State obligations and standards to detect, deter, and eliminate IUU fishing are:

- Food and Agriculture Organization of the United Nations Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas.
- 1995 Fish Stocks Agreement.
- Port State Measures Agreement.
- United Nations Convention on the Law of the Sea.
- U.N. Food and Agriculture Organization's Code of Conduct for Responsible Fisheries.
- Voluntary Guidelines for Flag State Performance.
- International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.

Obligations and standards found in these instruments fall into distinct categories, each of which is critical to defining how the flag State can effectively fight illegal fishing. This breakdown shows that the scope of the responsibility of the flag State is broad and that only the flag State is legally bound to control the activities of a vessel.

Categories	Examples
Registration of vessel	Registration procedures must be public and transparent.
Record keeping	The country keeps a record of fishing vessels containing all relevant information (name of vessel, owners' information, inspection reports, etc.).
Issuance of authorizations and licenses	The authorization, license, or permit documentation must specify whether transshipment is permitted and under what circumstances.
Reporting from vessels	Domestic laws and regulations require persons responsible for conducting fishing to collect and report information on catches of target and nontarget species.
Monitoring, control, and surveillance	Domestic inspection programs must be established.
Infractions	The domestic legal framework must specify which fishing activities constitute infractions.
International cooperation	The flag State has clear protocols on how to communicate and work with other States and/or regional fisheries management organizations on matters concerning IUU fishing control in waters beyond national jurisdiction.

Conclusion

IUU fishing is a complex problem, crossing many jurisdictions, and tackling it will require all States to responsibly fulfil their duties and obligations. Illegal fishing begins its cycle on fishing vessels, and flag States are the primary entities responsible for regulating the activities of vessels flying their flags. Unscrupulous operators exploit loopholes in regulation by registering their vessels to States with lax implementation and little oversight and enforcement of laws.

Unless flag States effectively implement their international obligations and enforce their domestic policies, critical gaps allowing IUU fishing to occur will remain.

Endnotes

- 1 United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397.
- 2 U.N. Food and Agriculture Organization, "Illegal, Unreported and Unregulated Fishing" (2016), <http://www.fao.org/3/a-i6069e.pdf>.

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