



Pirate Fishing: Plundering West Africa

GREENPEACE

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I. INTRODUCTION

Pirate fishing by vessels flying Flags of Convenience (FOC) has become an issue internationally. They target primarily the high value species, such as shrimp, tuna, squid and others, and will fish anywhere in the world in order to catch them - on the high seas where there are no controls, in coastal waters of States which do not have the means of defending their waters against them. In several fisheries, such pirates are having a serious impact on the stocks, in some cases, it is estimated, making larger catches than the legitimate catches by vessels which participate in proper management regimes.

The international community has woken up to the dangers posed by these vessels and begun to take steps to rein them in. Among recent developments are:

- the adoption by the UN Food and Agriculture Organization (FAO) in March this year of an international plan of action to fight illegal fishing;
- the adoption of an import ban on big-eye tuna from certain FOC countries (Belize, Honduras, St. Vincent & the Grenadines and others) by members of the International Commission for the Conservation of Atlantic Tunas (ICCAT);
- the prohibition by South Africa of landing of fish by pirate vessels in all its harbours;
- a series of reforms of EU legislation proposed by the European Commission to fight pirate fishing, including a prohibition on the use of EU public funds to re-flag fishing vessels to FOC countries.

In 2000, Greenpeace successfully documented and took action against pirate longliners fishing for the highly prized big-eye tuna, along with their attendant reefers (fish transport and re-supply vessels), on the high seas of the Atlantic Ocean off Africa.

Another very important aspect of pirate fishing is poaching in waters of developing countries, many of which do not have the means of effectively patrolling their coastal areas. This is of great concern to the United Nations, the governments of the area as well as the local fishing communities, who see their fish stocks depleted and their income plummet.

The UN has adopted four resolutions over the previous four years calling for an end to "unauthorized" fishing on the high seas and in the Exclusive Economic Zones (EEZs) of developing countries.

In highlighting pirate fishing off the coasts of West Africa and its detrimental impacts, Greenpeace wants to encourage effective implementation of international instruments and a strong commitment from the United Nations, relevant regional and subregional organisations, coastal States and States

fishing in the region as well the market States to develop effective solutions to the problem.

II. ILLEGAL, UNREGULATED AND UNREPORTED (IUU) FISHING

World fishing fleets are in a situation of excess capacity in relation to available resources. Meanwhile, international instruments such as the UN Fish Stocks Agreement¹ and the FAO Compliance Agreement², as well as rules adopted by regional fisheries management organisations, are imposing more and more constraints on fishing operators in an attempt to conserve stocks.

The resulting exacerbated competition leads to abuses as fishing fleets and companies seek to keep or expand access to fishing grounds at all costs, particularly in developing countries. It is of great concern to Greenpeace that many companies and fishing vessels are turning to the use of “Flags of Convenience” to avoid being forced to comply with international laws.

Unscrupulous fishing vessel owners and companies, in collusion with certain countries, use flags of convenience to avoid international fisheries conservation and management regulations, as well as safety and labour standards. Not only do vessels flying flags of convenience routinely violate fisheries regulations on the high seas, they also regularly engage in “poaching” or fishing illegally inside the EEZs of developing countries, stealing fish that would otherwise provide needed food, employment or income.

The UN FAO recently reported an increase in the number of large-scale, industrialized fishing vessels that fly flags of convenience.

There are also strong indications that their catches are increasingly transshipped at sea, rather than offloaded in ports. This helps to conceal any connection between the fish and the vessel, so that by the time the fish arrives on the market, its true origin is unknown. Transshipping and re-supply at sea also allow FOC vessels to stay at sea and catch more fish rather than transit to port when their holds are full, where they could be confronted with port inspections or control of their activities.

¹ Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, concluded in New York on 4 August 1995. Text at http://www.un.org/Depts/los/convention_agreements/convention_overview_fish_stocks.htm

² Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, approved by the FAO Conference on 24 November 1993. Text at <http://www.fao.org/legal/treaties/012T-e.htm>

Based on an analysis of data from Lloyd's Maritime Services, Greenpeace estimates that there are some 1300 industrial-scale fishing vessels flying flags of convenience. Over 1000 of these vessels (approximately 80%) fly the flags of Belize, Honduras, Panama or St. Vincent & the Grenadines (though recent reports indicate that Panama and Honduras are making an effort to clean their vessel registries). The "registered" owners of these vessels are located in some 80 countries with most of them listed as based in Taiwan, the European Union (primarily Spain), Panama, Belize and Honduras.

Table 1. Top 10 countries where the owner companies of the FOC flagged fishing vessels are based (Country of 'Beneficial Ownership'). Source: Lloyd's Maritime Information Services 1999.

Country	Number of FOC Vessels owned by companies based in country
Taiwan	169
European Union*	168
Belize	145
Panama	121
Honduras	109
Singapore	62
South Korea	52
Japan	41
China	37
Equatorial Guinea	36

*** Spain (116), Portugal (12), Greece (11), UK (10), Denmark (4), France (4), Ireland (4), Netherlands (3), Italy (2), Finland (1), Sweden (1)**

Fishing by these FOC vessels makes a mockery of international efforts to regulate fisheries. Unless flags of convenience are eliminated, this loophole in international law will continue to undermine international efforts to conserve fish stocks and protect marine biodiversity from overfishing.

Just as Greenpeace uses the term "pirates" to describe fishing vessels that fly flags of convenience, so cargo ships servicing FOC fishing fleets at sea (for re-supply or transporting fish to market) should also be considered pirate vessels, as they ensure that FOC fishing vessels are able to continue to fish with impunity.

Intrusions by fishing vessels and reefers in the coastal zone (even sometimes almost up to the beach) are extremely destructive both from an environmental and human point of view and sometimes result in accidents causing the death of local fishermen. Coastal States lack the logistical and financial means to stop poaching in their waters.

The Sub-Regional Fisheries Commission (SRFC - based in Dakar, Senegal)³ and the Surveillance Operations Co-ordination Unit (SOCU - based in Banjul, Gambia) are in the process of developing a programme of Monitoring, Control and Surveillance (MCS) and co-operate in the fight against poaching and illegal fishing with the financial support of the government of Luxembourg.

Their achievements so far are positive considering their limited means, both financial and logistical, but much more needs to be done to eliminate the ongoing plunder of marine resources in the region.

III. STATUS OF FISH STOCKS AND MARINE ENVIRONMENT IN THE SUB-REGION

Fisheries in the West African Region

The waters off West Africa are characterized by a permanent upwelling in the north and a seasonal one further south, resulting in a very rich and diverse marine fauna in both the coastal zone and in deeper waters. Consequently, fish are very important in the region, both as a source of protein and of employment. The local population depends heavily on these fish for their food supply - per capita consumption in the coastal regions can be as high as 24 or even 28 kilos per year. Increasing populations in the coastal zone, due to both population growth and migration caused by the expanding Sahara, mean that fish resources will be even more important in the future.

Fisheries in the area are equally variable, with both artisanal and larger-scale boats from within the region as well as distant water industrial fleets from Europe and Asia exploiting the stocks. Artisanal fishers in canoes ('pirogues'), powered by small outboard motors and ranging from 3 to 25 metres in length, use a variety of gears, including lines, gillnets, beach seines, cast nets and traps. They are after such species as bonga, mullet, clupeids, sardines, sardinella, anchovy, octopus, barracuda, grunt, grouper, shrimp, snapper and many others. Both the target species and the gears vary seasonally and throughout the region. The industrial fleets pursue many of the same species: shrimp, sardinella, octopus, horse mackerel and black hake, using primarily trawls, seines and longlines. These vessels can be up to 100 metres in length or more.

Status of the Fish Stocks

As the FAO has pointed out repeatedly over the years, a great many fish stocks around the world are over-exploited. In its most recent analysis, the

³ SRFC member states: Cape Verde, Gambia, Guinea, Guinea-Bissau, Mauritania and Senegal. Sierra Leone is not a member but participates in the surveillance operations.

FAO concluded that 75% of the world's fish stocks for which data exist are either fully exploited, over-exploited or depleted⁴. In the Eastern Central Atlantic, which extends from Morocco to the Congo, over 80% of stocks are so described. The situation is getting worse - according to the FAO, in the tropical Atlantic, including the western Atlantic, the portion of stocks which are over-exploited or depleted (but not including fully-exploited stocks) has increased from less than 10% in 1975 to fully one third today.

Some highlights of individual stocks in the West African region:

Shrimp (Penaeus sp., Parapenaeus sp., Aristeus varidens) - Several species of shrimps are fished in West African waters, both coastally and offshore. Scientific accounts generally say that their status is unknown, but indications are that many of the stocks are either fully exploited or over-exploited, especially off Senegal and Guinea Bissau.

Octopus (Octopus vulgaris) - In Mauritania, this species is clearly over exploited and possibly in Senegal as well.

Sardinella (Sardinella aurita, S. maderensis) - Two species of sardinella are found in the region, fished by artisanal boats in Senegal and the Gambia and by industrial vessels in Mauritania. Their abundance and distribution fluctuate considerably, with a steep decline from 1992 to 1998 followed by an apparent increase the following year.

Horse mackerel (Trachurus trachurus, T. trecae) - There are also two species of horse mackerel, exploited in the same pattern as the sardinella, i.e. by artisanal boats in Senegal and by industrial vessels in Mauritania. The actual status of the two stocks is unknown, though indications are that one of the species has declined in the late 1990s.

Black hake (Merluccius senegalensis, M. polli) - Despite major fisheries for black hake spanning two decades, there has never been a scientific assessment of the status of the species.

Other finfish - A very wide variety of other species of fish are taken either as bycatch in the industrial fisheries, especially in Mauritania and Senegal, or by artisanal craft (possibly 100 or more species). When they are taken as bycatch, only those of commercial value are retained and the rest are discarded. The magnitude of these catches is unknown, as is the status of the stocks. According to a recent report by CECAF⁵, though, several species are

⁴ FAO used the level of Maximum Sustainable Yield, or MSY, as the criterion for its classification of stocks. Since MSY as a management objective has been widely discredited by scientists and managers as being too prone to over-exploitation, these figures are, in fact, an underestimate of the extent of over-fishing.

⁵ Samb, B. 2000. Etat d'exploitation des stocks halieutiques et aménagement des pêcheries dans la zone COPACE. Working paper presented to the meeting of CECAF, 30-31 October 2000, Abuja, Nigeria.

over-exploited, including grouper, bream, grunt in Senegal, sea bream in Sierra Leone and many others. In a description of the status of stocks in the region Mauritania-Senegal-Gambia, the same report states that "The abundance of demersal species [fish living on or just above the sea bed] has seriously declined and the future of the resources is worrying." For many, if not most, of these species it is recommended that the level of fishing must at least be prevented from increasing or, in many cases, decreased.

In summary, for many fish stocks no recent, reliable assessment is available of their status, or, in some cases, even of the catches being made. Those assessments which do exist are not reassuring, and many stocks are over-exploited.

In some parts of West Africa, sharks have formed an important part of their traditional fisheries, while in other areas fisheries have only developed in the past 20 to 30 years. More recently, effort directed at sharks has increased dramatically, owing to increasing populations, technical innovations in gear, demand for shark fins and a decrease in availability of more traditional species of fish. Catches have begun to decline in some areas due to over-fishing, at least in part to illegal, foreign industrial trawlers. Fishermen are forced to fish further afield.

Consequences for Coastal Communities

The Code of Conduct for Responsible Fishing⁶, adopted at the FAO, states that

States and subregional and regional fisheries management organizations should *apply a precautionary approach widely to conservation, management and exploitation of living aquatic resources* in order to protect them and preserve the aquatic environment, taking account of the best scientific evidence available. The absence of adequate scientific information should not be used as a reason for postponing or failing to take measures to conserve target species, associated or dependent species and non-target species and their environment. (Article 6.5, emphasis added)

Clearly, this is not being applied to the waters off West Africa. Large distant water fleets exploit many of the same species as the local, small-scale fisheries and, as noted above, several of them are over-exploited. Consequently, the small-scale fleets are having increasing difficulties in finding fish. Yet the Code also stipulates that

States should appropriately protect the rights of fishers and fishworkers, particularly those engaged in *subsistence, small-scale and artisanal*

⁶ text at <http://www.fao.org/fi/agreem/codecond/ficonde.asp>

fisheries, to a secure and just livelihood, as well as preferential access, where appropriate, to traditional fishing grounds and resources in the waters under their national jurisdiction. (Article 6.18, emphasis added)

IV. RELEVANT INTERNATIONAL INSTRUMENTS

A number of recent international instruments provide for new ways to address overfishing in general, and illegal, unregulated and unreported fishing in particular, including the UN Fish Stocks Agreement, the Compliance Agreement, the FAO Plan of Action on IUU Fishing and the FAO Code of Conduct.

The UN Fish Stocks Agreement

This is the most progressive international instrument to date which, when it enters into force, will bring major reforms in the way fisheries are managed. As of 31 August 2001, 29 States had ratified or acceded to the Agreement⁷ - it will enter into force 30 days after thirty ratifications or accessions. Of the six States belonging to the SRFC, Senegal has ratified (30 January 1997) and Mauritania and Guinea-Bissau have signed. To date, major fishing nations such as Japan and the European Union Member States have signed but not ratified.

Although the UN Agreement deals specifically with highly migratory and straddling fish stocks, it represents a considerable advance in fisheries management and should serve as a model beyond its formal remit. Certain provisions are of particular relevance to the problem of pirate fishing, and will help to develop effective solutions.

Article 3 states that certain provisions, notably on the application of the precautionary approach and the compatibility of conservation and management regimes, also apply to straddling and highly migratory stocks within areas under national jurisdiction, subject to the different legal regimes that apply. Further,

3.3 States shall give due consideration to the respective capacities of developing States to apply articles 5 [general principles], 6 [precautionary approach] and 7 [compatibility of measures] within areas under national jurisdiction and their need for assistance as provided for in this Agreement. To this end, Part VII [requirements of developing States] applies *mutatis mutandis* in respect of areas under national jurisdiction.

⁷ See UN Law of the Sea website at <http://www.un.org/Depts/los/index.htm>

Under Article 8.4,

Only those States which are members of such an organization or participants in such an arrangement, or which agree to apply the conservation and management measures established by such organization or arrangement, shall have access to the fishery resources to which those measures apply.

Article 10 defines the functions of regional and subregional organizations, including to

(h) establish appropriate co-operative mechanisms for effective monitoring, control, surveillance and enforcement;

Article 13 obliges States to co-operate in order to strengthen these subregional and regional fisheries management organizations.

The duties and responsibilities of the flag State are defined in Article 19, including to ensure that vessels flying its flag comply with the management measures adopted by relevant subregional and regional organizations.

International co-operation in enforcement of management measures is required under Article 20:

1. States shall co-operate, either directly or through subregional or regional fisheries management organizations or arrangements, to ensure compliance with and enforcement of subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks.

....

6. Where there are reasonable grounds for believing that a vessel on the high seas has been engaged in unauthorized fishing within an area under the jurisdiction of a coastal State, the flag State of that vessel, at the request of the coastal State concerned, shall immediately and fully investigate the matter. The flag State shall co-operate with the coastal State in taking appropriate enforcement action in such cases and may authorize the relevant authorities of the coastal State to board and inspect the vessel on the high seas. This paragraph is without prejudice to article 111 of the Convention.

7. States Parties which are members of a subregional or regional fisheries management organization or participants in a subregional or regional fisheries management arrangement may take action in accordance with international law, including through recourse to subregional or regional procedures established for this purpose, to deter vessels which have engaged in activities which undermine the effectiveness of or otherwise violate the conservation and management measures established by that organization or arrangement from fishing on the high seas in the subregion or region until such time as appropriate action is taken by the flag State.

Together, these and other articles not only oblige States to co-operate in the conservation of fish stocks both on the high seas and in coastal waters, but developed States must also recognize the difficulties of developing States to effectively manage the waters under their jurisdiction and provide them with assistance. Flag States must fully cooperate with the coastal States, including developing ones, in investigating any violation. These provisions will be legally binding and, when implemented, should give a considerable boost to the management of fishing activities around the world, including West Africa.

The FAO International Plan of Action (IPOA) on IUU Fishing

It is clear that there is no easy solution to effectively address the failure of certain States to exercise their responsibilities. A range of measures need to be adopted, calling on States to act in their capacity not only as flag State but also as port State, coastal State, market State and State of beneficial ownership. All measures should apply to all operations from the fishing vessel to the retailer.

Although the FAO IPOA⁸ agreed by some 114 countries is voluntary, if implemented, it will make it harder for pirate vessels to hide their ownership through fictitious names and companies, tranship their fish at sea and trade their catch. The FAO plan also calls on governments to make it illegal for banks, insurance companies, seafood buyers and suppliers to do business with fishing companies engaged in IUU activities.

The IPOA calls for the development of national, subregional and regional plans of action (Paragraph 9.2) and urges States to ratify both the Compliance Agreement and the UN Fish Stocks Agreement (Paragraph 11).

Paragraph 24 calls on States to "undertake comprehensive and effective monitoring, control and surveillance of fishing from its commencement, through the point of landing, to final destination". Necessary aspects include schemes for authorizing vessels to fish, vessel monitoring systems (VMS), observer programmes, storing and disseminating data and implementing

⁸ text at <http://www.fao.org/DOCREP/003/X6729e/X6729e00.HTM>

national and, where appropriate, internationally agreed boarding and inspection regimes.

States, both coastal and distant water such as the EU and Japan, are to co-operate, both directly and through regional organizations (Paragraph 28). Such co-operation should include the exchange of information on vessels authorized to fish and catch data, the transfer of expertise and technology and other mechanisms that allow rapid responses to IUU fishing. Paragraph 33 notes the importance of technical capacity in implementation of the IPOA and urges the establishment of special funds at the national, regional or global level.

Another requirement is the wide publication of full details about IUU fishing, as well as actions which have been taken to eliminate it (Paragraph 32).

An important paragraph is 51, which outlines the responsibilities of coastal States in combatting IUU fishing in their EEZs, including:

51.1 effective monitoring, control and surveillance of fishing activities in the exclusive economic zone;

51.2 co-operation and exchange of information with other States, where appropriate, including neighbouring coastal States and with regional fisheries management organizations;

51.3 to ensure that no vessel undertakes fishing activities within its waters without a valid authorization to fish issued by that coastal State;

....

51.6 to ensure that at-sea transshipment and processing of fish and fish products in coastal State waters are authorized by that coastal State, or conducted in conformity with appropriate management regulations;

....

51.8 avoiding licensing a vessel to fish in its waters if that particular vessel has a history of IUU fishing, taking into account the provisions of paragraph 36.

Paragraphs 78 through 84 describe the importance of regional and subregional organizations in fisheries management and the types of measures they should take. Possibly the most important is Paragraph 79, which states

As the co-operation of all relevant States is important for the success of measures taken by relevant regional fisheries management organizations to prevent, deter and eliminate IUU fishing, States which are not members of a relevant regional fisheries management organization are not discharged from their obligation to co-operate, in accordance with

their international obligations, with that regional fisheries management organization. To that end, States should give effect to their duty to co-operate by agreeing to apply the conservation and management measures established by that regional fisheries management organization, or by adopting measures consistent with those conservation and management measures, *and should ensure that vessels entitled to fly their flag do not undermine such measures.* [emphasis added]

Also important is paragraph 84:

When a State fails to ensure that fishing vessels entitled to fly its flag, or, to the greatest extent possible, its nationals, do not engage in IUU fishing activities that affect the fish stocks covered by a relevant regional fisheries management organization, the member States, acting through the organization, should draw the problem to the attention of that State. If the problem is not rectified, *members of the organization may agree to adopt appropriate measures, through agreed procedures, in accordance with international law.* [emphasis added]

The IPOA recognizes that developing countries may have difficulty in implementing some of these provisions, due to lack of resources or expertise.

85. States, with the support of FAO and relevant international financial institutions and mechanisms, where appropriate, should *co-operate to support training and capacity building and consider providing financial, technical and other assistance to developing countries*, including in particular the least developed among them and small island developing States, so that they can more fully meet their commitments under the IPOA and obligations under international law, including their duties as flag States and port States. Such assistance should be directed in particular to help such States in the development and implementation of national plans of action in accordance with paragraph 25. [emphasis added]

V. RESPONSIBILITIES OF STATES

Flag State Responsibility

Flagging Out

"States should discourage their nationals from flagging fishing vessels under the jurisdiction of a State that does not meet its flag State responsibilities." (IPOA Paragraph 19)

As noted in Table 1, Lloyds' data for 1999 reveal that 168 vessels flying the flag of one of the top 10 FOC countries are owned by companies registered in European Union. Taiwanese companies own a further 169 of these vessels, 52 FOC vessels are owned by South Korean companies and 41 by Japanese companies. Some of these companies may even have received substantial subsidies from their governments to build and flag their vessels to FOCs.

States should prevent the re-flagging of their vessels to countries which do not exercise their responsibilities, and most particularly FOC countries. Possible criteria could be countries with open registries, countries which are not party to or do not co-operate with regional fisheries organisations or have been identified as having vessels fishing in a manner undermining management and conservation rules of those organizations.

Currently, the EU does not prohibit the use of public funding to re-flag fishing vessels to FOC countries, so an EU boat owner is therefore entitled to request EU and Member State funding to transfer his vessel permanently to countries such as Belize or Honduras. However, the European Commission has recently proposed legislation which would aim at preventing the use of EU public funds for the transfer of fishing vessels to FOC countries. The Commission is proposing to deny subsidies to EU companies whenever they want to re-flag their vessels to countries that have been identified by the relevant fisheries organisations as countries that permit fishing "in a manner which jeopardises the effectiveness of international conservation measures". Greenpeace welcomes this proposal and urges the European Council of Fisheries Ministers to adopt it speedily.

Flagging In

"36. Flag States should avoid flagging vessels with a history of non-compliance except where:

"36.1 the ownership of the vessel has subsequently changed and the new owner has provided sufficient evidence demonstrating that the previous owner or operator has no further legal, beneficial or financial interest in, or control of, the vessel; or

"36.2 having taken into account all relevant facts, the flag State determines that flagging the vessel would not result in IUU fishing."
(IPOA Paragraph 36)

The original text of the draft IPOA mentioned measures to be taken and information to be required by a State prior to flagging/registering a vessel. The language was weakened on the basis of an EU proposal and in fact allows the "laundering" of pirate vessels .

Brazil is already using this loophole to flag FOC vessels under charter arrangements. Eleven fishing vessels registered in St. Vincent & the

Grenadines, a notorious flag of convenience country, are now fishing under the Brazilian flag. St. Vincent & the Grenadines has been identified by ICCAT as having vessels fishing in a manner undermining ICCAT conservation rules. The importation of bigeye tuna (patudo) from St. Vincent & the Grenadines is prohibited in all ICCAT Contracting Parties, giving an incentive to FOC boat owners to hide under the Brazilian flag in order to retain access to lucrative markets.

Brazil argues that it is better to have FOC vessels to fish under a "responsible" flag instead of continuing to be a pirate. But, in a situation of global excess fishing capacity, there is no place for vessels like that anywhere under any circumstances - FOC vessels should be on the priority list for elimination.

Repatriation and Scrapping

Flag State responsibility includes ensuring that vessels are not transferred to flags of countries which do not intend to or do not have the means to control their activities. Developing countries are often at the receiving end of such transfers which lead to the over-exploitation of much needed resources.

As a positive example, Japan and Taiwan have set up common programmes to scrap 62 Japanese-built/Taiwanese-owned FOC longliners by the end of 2002 and re-register 67 FOC longliners to Taiwan by the end of 2005 without Taiwan increasing the number of its tuna longline vessels currently in operation in the ICCAT area.

Controlling Vessels vs. De-registering Vessels

According to the statement delivered by the representative from Honduras at the last ICCAT meeting (13 to 20 November 2000), from a total of 269 fishing vessels in the Honduran fleet in October 2000, 228 have been cancelled and 41 have been temporarily suspended until Honduras adopts the necessary measures to ensure compliance with ICCAT conservation and management measures. Panama is also "cleaning" its register by getting rid of the vessels rather than facing their responsibilities as flag State. Unfortunately, the discarded vessels continue to fish, probably under another flag or without any flag at all. As one FOC register gets cleaner, another one is created. The whole system must be eliminated.

Port State Responsibility

Pirate fishing companies often use ports where they know the authorities will allow the use of their facilities to land fish and turn a blind eye to the origins of the catch and its environmental consequences. These ports then act as a gateway to the global market.

Greenpeace is urging governments to deny FOC fishing vessels and support vessels access to their ports. This is essential if the pirate fishing problem is to be effectively addressed. When in doubt, port States must conduct inspections of fishing vessels seeking to enter their ports, to verify any claims that they have not engaged in FOC fishing.

Some port States have taken steps in this direction. In July 2000, the South African government decided to prohibit landing by all vessels on the "black list" established by ICCAT of 345 FOC tuna longliners. South Africa has also strengthened its landing declaration requirements. On the other hand, the EU still has to take measures to ensure that its harbours are closed to FOC fishing vessels. The port of Las Palmas de Gran Canaria is particularly well known for supporting FOC fishing fleets operating in the Atlantic Ocean.

Market State Responsibility

Fish traders and importers in market countries continue to keep their doors open to FOC caught fish. FOC companies currently have little trouble in gaining access to markets in countries where there is a demand for their products. Quite often, fish traders and importers will pay high prices for popular fish species that have become subject to tight management controls due to overfishing. By continuing to buy fish from FOC fishing and transport vessels, they become the driving force behind pirate fishing and directly undermine international conservation and management efforts.

Greenpeace is calling on governments to close their markets to fish caught by vessels flying Flags of Convenience. Trade-related measures such as those adopted by ICCAT must be extended to other species and other ocean regions. In recent years, ICCAT members have banned the importation of bluefin tuna from vessels flying the flag of Belize, Honduras and Equatorial Guinea, as well as swordfish from Belize and Honduras. At the annual meeting in November 2000, ICCAT members agreed to extend the import ban and close their markets to all big-eye tuna caught by vessels flying the flags of Belize, Honduras, Equatorial Guinea, St. Vincent & the Grenadines and Cambodia. The European Union, Japan, the United States and China, amongst others, are members of ICCAT. These countries are major markets for fisheries products worldwide. An additional nine countries have been "identified" as having vessels fishing in a manner which diminishes the effectiveness of ICCAT's conservation and management rules: Kenya, Singapore, Philippines, Cambodia, Guinea-Conakry, Sierra Leone, St. Vincent & the Grenadines, Vanuatu and Trinidad & Tobago. Import bans could follow if these countries take no action to control their vessels.

The only effective means of cutting off the economic incentive that drives pirate fishing is to deny FOC vessels and companies the profits from their activities.

Greenpeace also wants to see fish trading and retailing companies to act responsibly as well – with or without government prodding.

Control of Nationals and Companies

One of the most difficult aspects of the FOC problem is tracking the true ownership of FOC fishing vessels.

Pirates regularly use “dummy” or “shell” companies to hide their true owners’ identity and nationality. This, in turn, makes it extremely difficult to find and penalize the owners of FOC vessels when these vessels are caught poaching or engaging in other illegal activities.

The FAO IPOA (Para. 18) states that

In the light of relevant provisions of the 1982 UN Convention, and without prejudice to the primary responsibility of the flag State on the high seas, each State should, to the greatest extent possible, take measures or co-operate to ensure that nationals subject to their jurisdiction do not support or engage in IUU fishing. All States should co-operate to identify those nationals who are the operators or beneficial owners of vessels involved in IUU fishing.

Moreover, UNCLOS Art. 117 and 118 require States to take measures relative to their nationals to ensure the conservation of marine living resources on the high seas.

Lloyd's Maritime Information Services lists hundreds of companies in over 70 countries as the registered owners of the 1323 FOC fishing vessels listed on Table 1, the majority registered in Taiwan, the European Union, Belize, Panama and Honduras. The EU pirate fishing companies are predominantly based in Spain. No doubt most of the companies based in Belize, Honduras and Panama on the Lloyd's list are not the true owners of the FOC vessels. Nonetheless, the information available from Lloyd's is an indication of the international scope of the problem, and that Spain and Taiwan in particular are major havens for pirate fishing companies. It also points to the clear need for concerted international action on the part of governments to determine the true identities of companies owning and operating FOC fishing vessels and to close, penalize or otherwise sanction those companies operating within their jurisdiction.

Despite hosting the majority of EU companies owning or operating FOC fishing vessels, Spain has begun to tackle the problem and has adopted new national legislation which allows the Spanish authorities to withdraw the licence of Spanish skippers involved in illegal, unregulated or unreported fishing, including FOC fishing⁹.

⁹ Spanish Law 3/2001 of 26 March on Maritime Fisheries. See especially Article 97 - Serious infractions, paragraph (i).

VI. CONCLUSIONS

Pirate fishing by vessels flying flags of convenience is clearly a serious problem. Instituting a viable and effective management regime is difficult enough with vessels which are subject to some sort of legal regime, with sanctions, penalties and responsibilities. When large numbers of vessels that pay no attention whatsoever to any conservation and management rules intrude upon a fishery, the situation becomes untenable. Apart from the damage these pirates inflict on the resource and the local communities, they also act as a disincentive for others to respect the rules.

A variety of means is required to combat this pervasive threat to fisheries. As described above, there are already several international legal instruments which, if properly implemented, would go far to ending the activities of these fleets, which have been called the "scourge of the oceans". All nations have a role to play.

The developed countries are the home to both the true owners of the FOC vessels as well as the market. So they bear primary responsibility for preventing their citizens and their companies from engaging in pirate fishing. Many of the ports which shelter FOC vessels are found in developed countries, such as Las Palmas in Spain. Use of these ports for re-supply and off-loading of fish must be more strictly controlled. The UN Fish Stocks Agreement and the FAO Plan of Action on IUU Fishing contain relevant provisions.

Developing countries also have responsibilities. In many cases it is their waters and resources which are being plundered and they have a vested interest in stopping it. Often, though, they simply lack the financial or technical means of doing so, and the distant water fishing nations of the developed world have an obligation under international law, as well as a direct interest, in providing aid to this effect. There are some things that developing countries can do on their own, such as more judicious selection of vessels which are allowed to fly their flag.

If all countries concerned by this problem were to implement the existing instruments, the use of flags of convenience would be made far more difficult and much less profitable. While there may still be gaps in international law, an effective beginning is possible now - it is simply a question of political will.

In order to effectively eliminate pirate fishing, governments need to:

- **close ports to FOC fishing and support vessels;**
- **close markets to FOC-caught fish;**
- **prevent companies and nationals from owning or operating FOC fishing and support vessels.**

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