



**New Zealand Plan of Action  
to Prevent, Deter and Eliminate  
Illegal, Unregulated & Unreported  
Fishing**

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**Prepared by the Ministry of Fisheries**



**MINISTRY OF FISHERIES**  
Te Taupaki i nga hua o Te Tangata



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## **EXECUTIVE SUMMARY**

This document outlines New Zealand's National Plan of Action to prevent, deter and eliminate illegal, unregulated and unreported (IUU) fishing. It has been developed in accordance with the International Plan of Action to prevent, deter, and eliminate IUU fishing adopted in 2001 by the Food and Agricultural Organisation of the United Nations.

The growing incidence of IUU fishing, globally, is of significant concern to New Zealand and other members of the international community. IUU fishing can occur in all capture fisheries, both in national jurisdictions and on the high seas. IUU fishing results in widespread environmental, social and economic consequences. It adversely affects target species as well as associated and dependent species and the wider ecosystem. It can seriously impair efforts to achieve sustainable fisheries and can ultimately lead to the collapse of a fishery. By distorting competition, IUU fishing jeopardises the economic survival of those who fish legitimately. Because of their lower operating costs, IUU fishers gain an unjust economic advantage over legitimate fishers. The impacts of IUU fishing undermine international, regional, and national efforts to effectively conserve and manage fish stocks and the impacts of fishing.

New Zealand's National Plan of Action to prevent, deter and eliminate IUU fishing closely follows the provisions of the International Plan of Action to prevent, deter, and eliminate IUU fishing. It contains general measures targeted at all States, as well as measures targeted specifically at flag States, coastal States and port States. It also contains market-related measures, measures to support the special requirements of developing countries, and measures to be taken by States through regional fisheries management organisations.

Many of the provisions in this document reflect obligations that New Zealand has accepted as binding, either through global instruments, or through regional fisheries management organisations. To a large extent the document is a record of actions already under way. Recommendations are made for actions that could enhance New Zealand's ability to address IUU fishing. New Zealand's National Plan of Action will be reviewed and revised periodically to ensure on-going effectiveness of New Zealand's efforts to address IUU fishing.

# 1 INTRODUCTION

## 1.1. Purpose

This document outlines New Zealand's National Plan of Action (NPOA) to prevent, deter and eliminate illegal, unregulated and unreported (IUU) fishing (NPOA-IUU).

New Zealand's NPOA-IUU has been developed in accordance with the International Plan of Action (IPOA) to prevent, deter, and eliminate IUU fishing (IPOA-IUU). The IPOA-IUU was adopted in 2001 by the Committee on Fisheries of the Food and Agricultural Organisation of the United Nations (FAO).

## 1.2. FAO International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unregulated and Unreported Fishing

The IPOA-IUU was developed as a voluntary instrument within the framework of the FAO Code of Conduct for Responsible Fisheries.

The objective of the IPOA is to prevent, deter and eliminate IUU fishing by providing all States with comprehensive, effective and transparent measures by which to act, including through appropriate regional fisheries management organisations (RFMOs) established in accordance with international law.

The IPOA-IUU calls on States to develop and implement NPOAs by June 2004, to further achieve the objectives of the IPOA and give full effect to its provisions as an integral part of their fisheries management programmes and budgets.

The IPOA serves as a comprehensive "toolbox" of measures to address IUU fishing in a range of contexts. The IPOA-IUU contains general measures targeted at all States, as well as measures targeted specifically at flag States, coastal States and port States. It also contains market-related measures, measures to support the special requirements of developing countries in their achievement of the objective of the IPOA-IUU, and measures to be taken by States through RFMOs. Some of the IPOA-IUU provisions reflect obligations that many States have accepted as binding, either through global instruments, or through RFMOs.

The IPOA-IUU incorporates the following principles and strategies:

Participation and coordination: To be fully effective, the IPOA should be implemented by all States either directly, in cooperation with other States, or indirectly through relevant RFMOs or through the FAO and other appropriate international organisations. The full participation of stakeholders in combating IUU fishing, including industry, fishing communities, and non-governmental organizations, should be encouraged.

Phased implementation: Measures to prevent, deter and eliminate IUU fishing should be based on the earliest possible phased implementation of NPOAs, and regional and global action in accordance with the IPOA.

Comprehensive and integrated approach: Measures to prevent, deter and eliminate IUU fishing should address factors affecting all capture fisheries. In taking such an approach, States should embrace measures building on the primary responsibility of the flag State and using all available jurisdiction in accordance with international law, including port State measures, coastal State measures, market-related measures and measures to ensure that nationals do not support or engage in IUU fishing. States are encouraged to use all these measures, where appropriate, and to cooperate in order to ensure that measures are applied in an integrated manner. The action plan should address all economic, social and environmental impacts of IUU fishing .

Conservation: Measures to prevent, deter and eliminate IUU fishing should be consistent with the conservation and long-term sustainable use of fish stocks and the protection of the environment.

Transparency: The IPOA should be implemented in a transparent manner in accordance with Article 6.13 of the Code of Conduct for Responsible Fisheries.

Non-discrimination: The IPOA should be applied without discrimination in form or in fact against any State or its fishing vessels.

### **1.3. Definition of Illegal, Unregulated and Unreported Fishing**

The IPOA-IUU defines IUU fishing according to the definition below. New Zealand also uses this definition in its NPOA-IUU.

Illegal fishing refers to activities:

- conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations;
- conducted by vessels flying the flag of States that are parties to a relevant RFMO but operate in contravention of the conservation and management measures adopted by that organisation and by which the States are bound, or relevant provisions of the applicable international law; or
- in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant RFMO.

Unreported fishing refers to fishing activities:

- which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or
- undertaken in the area of competence of a relevant RFMO which have not been reported or have been misreported, in contravention of the reporting procedures of that organisation.

Unregulated fishing refers to fishing activities:

- in the area of application of a relevant RFMO that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organisation, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organisation; or
- in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner

inconsistent with State responsibilities for the conservation of living marine resources under international law.

The IPOA notes that unregulated fishing may take place in a manner which is not in violation of applicable international law, and may not require the application of measures envisaged under the IPOA.

#### **1.4. Why is IUU Fishing a Problem?**

The growing incidence of IUU fishing, globally, is of significant concern to New Zealand and other members of the international community. It is a serious issue that is quickly moving to the forefront of the international fisheries policy agenda.

IUU fishing can occur in all capture fisheries, both in national jurisdictions and on the high seas. While the magnitude of the problem is difficult to quantify, the FAO indicates that in some major fisheries, up to 30% of the total catch is taken by IUU fishers<sup>1</sup>. Examples of IUU fishing activity include fishing on the high seas without authorisation by the flag State and failure to report catch.

Of particular concern is the recent emergence of sophisticated multi-national criminal networks carrying out & supporting large scale IUU fishing. The problem is compounded by the veil of corporate secrecy surrounding companies undertaking IUU fishing activities and the increasing integration and flexibility of fishing companies across State boundaries. These factors can make it unclear exactly which State has the responsibility, or the ability, to exert effective control over individuals or companies and, to some degree, undermines the effectiveness of international law which vests primary responsibility for control of vessels with the flag State.

IUU fishing results in widespread environmental, social and economic consequences.

Aside from its impact on sustainability of target species, IUU fishing adversely affects associated and dependent species and the wider ecosystem. IUU fishing undermines international, regional, and national efforts to effectively conserve and manage fish stocks, the impacts of fishing, and biodiversity. Ultimately IUU fishing can lead to the collapse of a fishery.

To avoid detection and to lower operating costs, IUU fishers often ignore safety standards. This can put their own crew, other vessels, and the environment at risk. Crew members on IUU fishing vessels are often denied fundamental rights regarding terms and conditions of labour, for example in relation to wages, hygiene standards, and working and living conditions. Food safety standards are frequently not met by IUU operators, ultimately putting the consumer at risk.

IUU fishing distorts competition and jeopardises the economic survival of those who fish legitimately. Because of their lower operating costs, IUU fishers gain an unjust economic advantage over legitimate fishers. They act as “free riders”, benefiting unfairly from the costs to legitimate fishers of adhering to conservation and management measures, vessel safety

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<sup>1</sup> Food and Agricultural Organisation of the United Nations. Fisheries and Aquaculture Issues Fact Sheet – Illegal, Unreported and Unregulated fishing. [www.fao.org/figis/servlet/Fred?ds=topic&fid=3195](http://www.fao.org/figis/servlet/Fred?ds=topic&fid=3195)

laws and labour laws. Their disregard for rules and standards impacts on the economic opportunities of legitimate fisheries and can encourage legitimate fisheries to also engage in IUU fishing.

Without a genuine commitment by States to fully and effectively implement the obligations of existing international agreements, the incentives to IUU fish are likely to continue. Fish and seafood products are among the world's most widely traded commodities. Many governments continue to subsidise their fishing industries, a factor that supports on-going overcapacity of the world's fishing fleet. The lower running costs of IUU vessels and the ability of IUU fishers to avoid the costs of insurance, meeting safety and maintenance standards, purchasing licenses, meeting vessel monitoring (VMS) requirements, and paying for observers, makes IUU fishing particularly economically viable. While the risk and consequences of detection affects those incentives, the probability of detection is low and the resulting penalties do not generally outweigh the benefits. Inefficient domestic fisheries management may also work as a driver for IUU fishing activities since the less economically efficient management is, the lower the fisher income will be, and the more incentive to IUU fish.

IUU fishing is a dynamic, multi-faceted problem which cannot be effectively addressed by any single strategy. A multi-pronged approach is required at international, regional and national levels, with buy-in from all stakeholders involved and affected.

There is increasing momentum at international, regional, and national levels to address IUU fishing and its consequences. Binding and non-binding measures have been established through international and regional organisations and implemented to varying degrees of effectiveness by their member States. Considerable effort is being made by some RFMOs to diversify and strengthen their measures to combat IUU fishing. International cooperation outside the ambit of formal regional and international organisations is increasing. Examples include through the establishment of the International Network for the Cooperation and Coordination of Fisheries-Related Monitoring, Control, and Surveillance Activities (International MCS Network), and the Round Table on Sustainable Development Ministerial Taskforce to address IUU fishing.

The IUU-IPOA contains a range of effective tools to address IUU fishing. Widespread implementation of the provisions contained in the IPOA-IUU presents an opportunity for States and RFMOs to reinforce existing measures and to implement new measures to address IUU fishing.

## **1.5. New Zealand Fisheries**

### **1.5.1. Profile of New Zealand Fisheries**

New Zealand's fisheries resources are valuable and of considerable interest to a wide range of New Zealanders. Maori have strong cultural ties with fisheries which are recognised through the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. Some 20% of New Zealand's population are recreational fishers. Fisheries matters attract considerable interest from environmentalists and the wider public.

The New Zealand exclusive economic zone (EEZ) is the fourth largest in the world at approximately 1.3 million square nautical miles. New Zealand's EEZ is largely surrounded by

high seas although meets with the Australian EEZ on the Norfolk and Macquarie ridges. A characteristic of the EEZ is its depth, with 72% in waters more than 1,000 metres deep, 22% between 200-1000 metres, and only 6% less than 200 metres. Consequently, fishing within the New Zealand EEZ is heavily reliant on species found in waters at depths ranging from 200-1200 metres, rather than species found in shallower waters.

The commercial fisheries sector is New Zealand's fourth largest export earner. In 2002, the export value from the fishing industry was NZ\$1.2 billion. Exports account for by far the largest proportion of seafood product with about 90% by value being exported. The New Zealand fishing industry is a large employer, involving some 26,000 people through direct and indirect employment. The New Zealand industry receives no government subsidies and, in addition, makes a contribution to the costs of fisheries management through cost recovery.

About 750,000 tonnes of seafood is harvested annually from New Zealand fisheries waters and 20,000 tonnes by New Zealand flagged vessels on the high seas. Within New Zealand fisheries waters, the deepwater species (hoki, hake, ling, orange roughy, oreos, squid, and silver warehou) as well as inshore species such as spiny red rock lobster, paua (abalone), and snapper dominate the fishing industry. The aquaculture sector is heavily based on Greenshell mussels. On the high seas, tuna, toothfish, and orange roughy are the major species harvested with broadbill, alfonsino, cardinal, and oreo dories increasingly being targeting.

New Zealand has 1547 registered fishing vessels, 1433 of which are less than 24 metres. Of New Zealand's registered fishing vessels, 48 are foreign flagged and operate under charter arrangements with New Zealand fishing companies within the New Zealand EEZ. 59 New Zealand flagged fishing vessels operate on the high seas. Most fishing on the high seas by New Zealand flagged vessels occurs in the western and central Pacific and the Southern Ocean.

### ***1.5.2. New Zealand's Fisheries Management Framework***

Since 1986, the major commercial fisheries in New Zealand fisheries waters have been managed through a quota management system (QMS) based on individual transferable quotas (ITQs). Within the QMS, fisheries sustainability objectives are achieved by setting a total allowable catch (TAC) that is consistent with the productivity of a fishery. TACs can be reviewed on an annual basis and a total allowable commercial catch (TACC) is then determined. The TACC for each fishery is then apportioned to quota holders as an annual catch entitlement according to the percentage of quota each company or individual holds for a fishery. Annual catch entitlements are widely traded during their period of validity to enable fishers to balance catches taken against quota held. Total catch limits are also set for some commercial fisheries not managed within the QMS. A fishing permit is required to fish for QMS and non-QMS species. There has been a moratorium on the issue of fishing permits for non-QMS species since 1992 to control the expansion of effort in these fisheries until they can be moved into the QMS.

There is an extremely limited amount of foreign licensed fishing within the New Zealand EEZ. The only vessels that currently fish in the New Zealand EEZ under a foreign license are US vessels fishing pursuant to the Multilateral Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America (US Tuna Treaty). Apart from US Tuna Treaty vessels, since 1997, the only foreign flagged vessels permitted to fish within the New Zealand EEZ are those operating under charter

arrangements with New Zealand fishing companies. Those vessels are subject to the same laws as other New Zealand vessels fishing in New Zealand fisheries waters.

New Zealand has ratified and implemented the provisions contained in the United Nations Convention on the Law of the Sea of 10 December 1982 (1982 UN Convention) and the 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 (1995 UN Fish Stocks Agreement). All fishing by New Zealand flagged vessels on the high seas must be authorised under a high seas fishing permit. The activities of New Zealand nationals fishing on the high seas are also controlled. This is done through prohibiting fishing by New Zealand nationals on foreign vessels flagged to States that have not agreed, through signing or ratification of international agreements, to control their vessels on the high seas.

New Zealand is a member of three regional organisations and arrangements that manage fisheries. These include the Commission for the Conservation of Southern Bluefin Tuna (CCSBT), the Commission for the Conservation of Antarctic Living Marine Resources (CCAMLR), and the Arrangement Between the Government of New Zealand and the Government of Australia for the Conservation and Management of Orange Roughy on the South Tasman Rise (South Tasman Rise Arrangement). In addition to strengthening the governance of these organisations and arrangements, New Zealand works to promote the development of robust conservation and management measures. New Zealand has implemented legislation and regulations to give effect to the conservation and management measures agreed by these organisations and arrangements. Specific authorisations are required for New Zealand flagged vessels and New Zealand nationals to fish in areas covered by these organisations and arrangements.

New Zealand is a party to the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific (WCPFC) which will enter into force in June 2004.

The New Zealand fisheries management regime is designed to achieve optimal compliance with the rules. It is also designed to maximise voluntary compliance by aligning fisher self interest with compliance and creating an effective deterrent through successful prosecution and deterrent penalties. Where courts consider that deterrent penalties in a commercial context are warranted, they are generally set at a level two to three times the benefit the offender would have obtained if the offending had not been detected. The key aim is to make sure the cost of offending outweighs the benefits.

## **1.6. The Impact of IUU Fishing on New Zealand**

There are two key threats posed to the fisheries management regime within New Zealand fisheries waters by IUU fishing. They are misreporting of catch, and illegal taking by people not authorised to fish (poachers). High value fish stocks, particularly of a more sedentary nature, are a target for illegal fishing. These types of activities threaten the integrity of the QMS as the QMS can only be effective if all harvest is recorded and considered in the setting of the total allowable catch. Consequently, fisheries sustainability is affected. This has flow-on economic and social impacts on the New Zealand fishing industry and the economy if fish stocks are affected such that the total allowable catch of a species is required to be decreased.

A number of prosecutions have proven links to other criminal activities of a serious nature. In some there have been cases proven of illegal export.

The main threat to New Zealand from IUU fishing on the high seas is posed by foreign flagged vessels carrying out IUU fishing within areas or for species covered by regional fisheries management organisations and arrangements to which New Zealand is party. Fishing of this nature is carried out by both members and non-members of these organisations and arrangements to which New Zealand is party.

This IUU fishing impacts upon fisheries sustainability, associated and dependent species e.g. seabirds, and can impinge upon economic and trade opportunities available to New Zealand fishers. It also undermines the integrity of the relevant organisations and arrangements in conserving and managing fish stocks and the value that New Zealand, and other members, add through participation in those organisations and arrangements. Examples include IUU fishing for toothfish within CCAMLR waters by vessels flagged to members and non-members, and unregulated fishing for southern bluefin tuna by non-members to CCSBT.

An additional threat to New Zealand is caused by illegal fishing for highly migratory species within national jurisdictions, particularly of Pacific Island States, and unregulated or unreported fishing for those species on the high seas. This type of IUU fishing affects sustainability of those species, which also occur in the high seas and within New Zealand fisheries waters. It impacts upon the economic opportunities available to New Zealand fishing industry and upon management of those species within New Zealand fisheries waters.

## **1.7. Scope of New Zealand's National Plan of Action**

New Zealand's NPOA-IUU closely follows the structure of the IPOA-IUU. Like the IPOA-IUU, New Zealand's NPOA-IUU addresses general measures targeted at all States, as well as measures targeted specifically at flag States, coastal States and port States. It also contains market-related measures, measures to support the special requirements of developing countries, and measures to be taken by States through regional fisheries management organisations. Most measures contained in the IPOA-IUU are addressed in the New Zealand NPOA-IUU. Note that the text in boxes indicates text derived or summarized from the IPOA-IUU.

IUU fishing, both within New Zealand fisheries waters and on the high seas, is addressed in New Zealand's NPOA-IUU. Because New Zealand has a well-established and effective fisheries management regime for fisheries occurring within its waters, the New Zealand NPOA-IUU is more focused on IUU fishing on the high seas, in which the management regime is less developed.

New Zealand's NPOA-IUU is, to a large extent, a record of actions already underway. At the end of each section is a list of recommendations for actions that will enhance New Zealand's ability to address IUU fishing. New Zealand will work towards implementation of these recommendations.

As suggested in the IPOA-IUU, the New Zealand NPOA-IUU will be reviewed and revised at least every four years to ensure on-going effectiveness of New Zealand's efforts to address IUU fishing.

## 2 ALL STATE RESPONSIBILITIES

### 2.1 International Instruments

The IPOA calls upon all States to give full effect to the relevant norms of international law in order to prevent, deter and eliminate IUU fishing. It encourages States to ratify, accept, or accede to, as appropriate, and to implement, the 1982 UN Convention, the 1993 FAO Compliance Agreement, the 1995 UN Fish Stocks Agreement, and the Code of Conduct and its related IPOAs, and to become members of, or cooperate to establish new, RFMOs where applicable.

New Zealand is in compliance with relevant norms of international law related to the conservation and management of marine living resources. New Zealand has ratified and implemented the provisions contained in the 1982 UN Convention and the 1995 UN Fish Stocks Agreement.

New Zealand's high seas permitting regime, which gives effect to obligations under the 1995 UN Fish Stocks Agreement, is also consistent with the 1993 FAO Compliance Agreement. The process is underway for New Zealand to ratify the 1993 FAO Compliance Agreement in the near future.

New Zealand has implemented the FAO Code of Conduct and has either implemented or is in the process of implementing the International Plans of Action associated with the Code of Conduct<sup>2</sup>.

New Zealand has taken measures to regulate the fishing activities of New Zealand nationals in the high seas.

New Zealand is a member of three regional organisations and arrangements that manage fisheries. They are the Commission for the Conservation of Southern Bluefin Tuna (CCSBT), the Commission for the Conservation of Antarctic Living Marine Resources (CCAMLR), and the Arrangement Between the Government of New Zealand and the Government of Australia for the Conservation and Management of Orange Roughy on the South Tasman Rise (South Tasman Rise Arrangement). In addition to strengthening the governance of these organisations and arrangements, New Zealand works to promote the development of robust conservation and management measures. New Zealand has implemented legislation and regulations to give effect to the conservation and management measures agreed by these organisations and arrangements<sup>3</sup>.

New Zealand is party to the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific (WCPFC) which will enter into force in June 2004, and is participating in the development of an agreement to conserve and manage fish stocks in the South West Indian Ocean.

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<sup>2</sup> Except for the IPOA for the Management of Fishing Capacity which New Zealand does not intend to implement.

<sup>3</sup> Antarctic Marine Living Resources Act 1981, Fisheries (South Tasman Rise Orange Roughy Fishery) Regulations 2000, and the Fisheries (Southern Bluefin Tuna Quota) Regulations 2000

Consistent with the 1995 UN Fish Stocks Agreement, New Zealand cooperates and acts in accordance with the conservation and management measures agreed by RFMOs to which it is not a member. As such, New Zealand flagged vessels are prohibited from fishing in these areas without an approval from the Ministry of Fisheries and any approval issued is subject to conditions that are consistent with the measures established by the relevant RFMO.

## 2.2 National Legislation

### 2.2.1 Legislation

The IPOA states that national legislation should address, in an effective manner, all aspects of IUU fishing.

The Fisheries Act 1996 (the Fisheries Act) provides the legislative framework for New Zealand fisheries management, within New Zealand fisheries waters<sup>4</sup> and for New Zealand flagged vessels and nationals on the high seas. The purpose of the Fisheries Act is to provide for utilisation of fisheries resources while ensuring sustainability. In giving effect to the purpose of the Act, decision makers are required to take into account environmental and information principles, and to act consistently with the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and international obligations.

Among other things, the Fisheries Act sets out New Zealand’s fisheries management regime; provisions relating to access to fisheries, including foreign licensed access; a high seas fishing regime; record keeping, reporting, and disposal of fish provisions; monitoring, control, and surveillance (MCS) provisions; and a system of offences and penalties.

Through the Fisheries Act and associated regulations, stringent controls are imposed on fishing activities within New Zealand fisheries waters and on New Zealand flagged vessels and nationals operating on the high seas. All New Zealand fishing vessels are required to be registered. All fishers operating within New Zealand fisheries waters, and on the high seas using a New Zealand flagged vessel, must be authorised by a fishing permit.

New Zealand’s high seas fishing regime is set out in Part 6A of the Fisheries Act. In addition to high seas fishing permit requirements, Part 6A also places controls on the high seas fishing activities of New Zealand nationals, provides for boarding and inspection of vessels on the high seas, controls port visits by foreign flagged vessels, and imposes a system of offences and penalties.

Other New Zealand legislation relevant to addressing IUU fishing includes the Antarctic Marine Living Resources Act 1981 and the Ships Registration Act 1992.

New Zealand legislation addresses IUU fishing in a comprehensive manner and is reviewed and amended on an ongoing basis to improve its effectiveness.

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<sup>4</sup> “New Zealand fisheries waters” means—

- (a) All waters in the exclusive economic zone of New Zealand;
- (b) All waters of the territorial sea of New Zealand;
- (c) All internal waters of New Zealand;
- (d) All other fresh or estuarine waters within New Zealand where fish, aquatic life, or seaweed that are indigenous to or acclimatised in New Zealand are found;

A table listing all New Zealand legislation that relates to addressing IUU fishing can be found in Annex 1.

New Zealand could benefit from a review of its implementation of Part 6A of the Fisheries Act to ensure that all of the relevant obligations of the 1995 UN Fish Stocks Agreement and the 1993 FAO Compliance Agreement have been effectively implemented.

The IPOA states that national legislation should address, *inter alia*, evidentiary standards and admissibility including, as appropriate, the use of electronic evidence and new technologies.

The Fisheries Act recognises the difficulties inherent in the detection and proof of fisheries offences by making most offences “offences of strict liability”, i.e. there is no requirement on the prosecution to demonstrate intent. More serious offences, where the penalty may include imprisonment, require proof that the offending was intentional. The Fisheries Act provides evidential deeming provisions and presumptions that place a burden on the defendant to disprove some factual matters. There are also presumptions of vicarious liability for managers, directors and principals for the actions of agents.

There are wide powers relating to the search and seizure of documents. A “document” is given a wide definition including information held in electronic format. For the purposes of Court proceedings, there are provisions that facilitate the production of records, returns and other information held or obtained by the Ministry.

### **2.2.2 State Control over Nationals**

The IPOA calls on States, to the greatest extent possible, to take measures or cooperate to ensure that their nationals do not support or engage in IUU fishing, and to cooperate to identify those nationals who are the operators or beneficial owners of IUU fishing vessels.

New Zealand legislation imposes controls on the activities of New Zealand nationals fishing on foreign flagged vessels both on the high seas and in the national jurisdictions of other States.

General measures controlling the fishing activities of New Zealand nationals outside New Zealand fisheries waters are found in the Fisheries Act<sup>5</sup>. Under the Fisheries Act, no New Zealand national may use a foreign flagged vessel to fish on the high seas unless they do so in accordance with an authorisation issued by a State that meets one of the following criteria<sup>6</sup>:

- A State that is a party to the 1995 UN Fish Stocks Agreement; or
- A State that is a party to the 1993 FAO Compliance Agreement; or
- A State that is a party to, or has accepted the obligations of, a global, regional, or sub-regional fisheries organisation or arrangement to which the authorisation relates; or
- A State that—
  - Is a signatory to the 1995 UN Fish Stocks Agreement; and
  - Has legislative and administrative mechanisms to control its vessels on the high seas in accordance with that agreement.

<sup>5</sup> Section 113A, 113E, & 113F of the Fisheries Act 1996

<sup>6</sup> Section 113E of Fisheries Act 1996

In the national jurisdictions of other States, it is an offence for New Zealand nationals to fish unless the fishing is in accordance with the laws of that State<sup>7</sup>.

More specific measures controlling the fishing activities of New Zealand nationals within areas, or for species, covered by regional fisheries management organisations and arrangements are found in the Antarctic Marine Living Resources Act 1981, Fisheries (South Tasman Rise Orange Roughy Fishery) Regulations 2000, and the Fisheries (Southern Bluefin Tuna Quota) Regulations 2000.

New Zealand is working, through international cooperation, to improve its ability to identify New Zealand nationals who use foreign flagged vessels that are engaged in IUU fishing, as well as the fisheries and geographical areas where those fishing activities take place. Mechanisms for such international cooperation include the International Network for the Cooperation and Coordination of Fisheries-Related MCS Activities (International MCS Network).

### **2.2.3 Vessels without Nationality**

The IPOA calls on States to take measures consistent with international law in relation to vessels without nationality on the high seas that are involved in IUU fishing.

Consistent with the 1982 UN Convention, New Zealand exercises the right for its warships to board vessels without nationality on the high seas.

Once the vessel's nationality is determined, the high seas boarding and inspection provisions of the Fisheries Act apply<sup>8</sup>. These are explained in section 2.2.7.11.

New Zealand also undertakes aerial surveillance in some high seas fisheries. If New Zealand became aware of vessels without nationality fishing in areas or for species covered by RFMOs through aerial or surface surveillance, New Zealand would pass that information on to other relevant States and RFMOs.

### **2.2.4 Sanctions**

The IPOA provides that sanctions for IUU fishing by vessels and nationals under its jurisdiction should be of sufficient severity to effectively prevent, deter, and eliminate IUU fishing and to deprive offenders of the benefits accruing from such fishing.

New Zealand endeavours to deter fisheries-related offending through successful prosecution and deterrent penalties. Penalties for fisheries-related offences can include fines, forfeiture of fish, vessels, other property and quota, and imprisonment. Deterrent penalties in the commercial fisheries context are generally two to three times the benefit the offender would have obtained if offending was not detected. In imposing a sentence for an offence under the Fisheries Act, the Court must take into account the purpose of the Fisheries Act, the difficulties inherent in detecting fisheries offences, and the need to maintain adequate deterrents against the commission of such offences<sup>9</sup>. The key aim in the imposing of penalties is to make sure the cost of offending outweighs the benefits.

<sup>7</sup> Section 113A of Fisheries Act 1996

<sup>8</sup> Sections 113S – 113U of Fisheries Act 1996

<sup>9</sup> Section 254 of Fisheries Act 1996

### **2.2.5 Non-Cooperating States**

The IPOA recommends that all possible steps should be taken, consistent with international law, to prevent, deter, and eliminate the activities of non-cooperating States to a relevant RFMO that engage in IUU fishing.

Under the Fisheries Act, New Zealand has the ability to deny port access<sup>10</sup> and the landing of fish<sup>11</sup> from foreign flagged vessels that have engaged in IUU fishing. New Zealand uses these mechanisms to deter the IUU activities of non-cooperating States where applicable. In addition, where New Zealand receives information of offending by foreign flagged vessels, through surveillance or other means, the Ministry of Fisheries communicates this to the relevant States and RFMOs through the appropriate channels.

New Zealand actively participates, through RFMOs to which it is a member, in the development and improvement of measures to prevent, deter, and eliminate the activities of non-cooperating States to relevant RFMOs that engage in IUU fishing. New Zealand implements all such measures agreed by RFMOs to which it is a member.

Examples of such measures include the CCSBT Action Plan relating to non-members whose vessels catch southern bluefin tuna, the CCAMLR Scheme to promote compliance by non-contracting party vessels with CCAMLR Conservation Measures<sup>12</sup> and the CCAMLR Catch Documentation Scheme for *Dissostichus* (toothfish) species<sup>13</sup>. Under the CCSBT Action Plan, non-members whose vessels catch southern bluefin tuna are requested to implement the CCSBT measures for the conservation, management and optimum utilisation of southern bluefin tuna. Those States whose vessels are found to be undermining the measures may be faced with trade-restrictive measures. The CCAMLR Scheme to promote compliance by non-contracting party vessels sets out procedures for development of an IUU vessel list and requires member States to prohibit licensing of those vessels, or the landing, transshipment, import and export of fish from those vessels. The CCAMLR Catch Documentation Scheme for *Dissostichus* species requires member States to ensure that all landings of toothfish from their vessels or in their ports, and all imports and exports to/from their territories are accompanied by a valid catch document.

### **2.2.6 Economic Incentives**

The IPOA provides that States should avoid conferring economic support, including subsidies, to companies, vessels, or persons that are involved in IUU fishing.

New Zealand does not subsidise its fishing industry or fleet.

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<sup>10</sup> Section 113ZD of Fisheries Act 1996

<sup>11</sup> Section 113 of Fisheries Act 1996

<sup>12</sup> CCAMLR Conservation Measure 10-07 (2003)

<sup>13</sup> CCAMLR Conservation Measure 10-05 (2003)

## **2.2.7 Monitoring, Control, & Surveillance**

The IPOA calls on States to undertake comprehensive and effective monitoring, control, and surveillance (MCS) of fishing from its commencement, through the point of landing, to final destination.

New Zealand uses a number of MCS tools to control the activities of vessels fishing within New Zealand fisheries waters and New Zealand flagged vessels fishing on the high seas. These tools include:

- Fishing permit requirements
- Requirement to hold annual catch entitlement to cover all target and bycatch species caught, or alternatively, to pay deemed values
- Fishing permit and fishing vessel registers
- Vessel Monitoring System (VMS) requirements
- Vessel and gear marking requirements
- Fishing gear and method restrictions
- Observer Programme
- Reporting (including catch and effort reporting) requirements
- Vessel inspections
- Control of landings (e.g. requirement to land only to licensed fish receivers)
- Record keeping requirements
- Auditing of licensed fish receivers
- Control of transshipment
- Monitored unloads of fish
- Information management and intelligence analysis
- Analysis of catch and effort reporting and comparison with VMS, observer, landing and trade data to confirm accuracy
- Boarding and inspection by fishery officers at sea
- Aerial and surface surveillance, and
- Any other measures agreed by RFMOs to which New Zealand is a member, e.g. application of CCAMLR Catch Documentation Scheme for vessels catching toothfish

Some of these tools are outlined in the following sections.

### **2.2.7.1 Schemes for Access to Waters & Resources**

The IPOA calls on all States to develop and implement schemes for access to waters and resources, including authorisation schemes for vessels.

Since 1986, the major commercial fisheries in New Zealand fisheries waters have been managed through a quota management system (QMS) based on individual transferable quotas (ITQs)<sup>14</sup>. Within the QMS, fisheries sustainability objectives are achieved by setting a total allowable catch (TAC) that is consistent with the productivity of a fishery. TACs can be reviewed on an annual basis and a total allowable commercial catch (TACC) is then determined taking into account any recreational and customary harvesting. The TACC for each fishery is then apportioned to quota holders as an annual catch entitlement according to

<sup>14</sup> Part 4 (Quota Management System) of the Fisheries Act 1996

the percentage of quota they hold for a fishery. Fishers are required to hold sufficient annual catch entitlement to cover all target and bycatch species caught, or alternatively, to pay deemed values. Annual catch entitlements are widely traded during their period of validity to enable fishers to balance catches taken against quota held. Total catch limits are also set for some commercial fisheries not managed within the QMS. A fishing permit is required to fish for QMS and non-QMS species<sup>15</sup>. There has been a moratorium on the issue of fishing permits for non-QMS species since 1992 to control the expansion of effort in these fisheries until they can be moved into the QMS.

The Fisheries Act includes provision for foreign licensed access to the New Zealand EEZ for foreign flagged fishing vessels<sup>16</sup>. All foreign flagged vessels, other than those operating under charter to New Zealand companies, must be authorised by a foreign fishing licence issued by the Minister of Fisheries<sup>17</sup>. The only vessels that currently fish in the New Zealand EEZ under foreign fishing license are US vessels fishing pursuant to the US Tuna Treaty. Apart from US Tuna Treaty vessels, the only foreign flagged vessels permitted to fish within the New Zealand EEZ since 1997 have been those operating under charter arrangements with New Zealand fishing companies. These vessels must go through an approval process and become registered as New Zealand fishing vessels, a process during which offending history of the vessel's owner, operator, foreign charter party, master or crew is considered<sup>18</sup>. Once approved, these vessels are subject to the same laws as other New Zealand vessels fishing in New Zealand fisheries waters.

All New Zealand fishing vessels, except those operating under a foreign fishing license, are required to be registered on the Fishing Vessel Register under the Fisheries Act<sup>19</sup>.

### **2.2.7.2 Registers**

The IPOA encourages the maintenance of records of all vessels and their current owners and operators authorised to undertake fishing subject to their jurisdiction.

Under the Fisheries Act, a number of registers are kept by the Ministry of Fisheries including a fishing vessel register, a New Zealand fishing permit register, and a high seas fishing permit register<sup>20</sup>. Included in the registers are details on all vessel owners and operators, vessels, and fishing permit holders. The registers are kept up-to-date and are publicly available. Under the Antarctic Marine Living Resources Act 1981, New Zealand keeps a register of permit holders authorised to take marine organisms in CCAMLR waters. Once WCPFC comes into force, New Zealand will also keep a register of New Zealand flagged vessels authorised to fish within the WCPFC area.

In addition, the Ship Registration Act 1992 requires a New Zealand Register of Ships to be kept<sup>21</sup> of all vessels registered under that Act. This is kept by the Maritime Safety Authority and includes all New Zealand fishing vessels over 24 metres or that travel beyond New Zealand jurisdiction at any time.

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<sup>15</sup> Section 89 of the Fisheries Act 1996

<sup>16</sup> Part 5 (Foreign Licensed Access) of the Fisheries Act 1996; and the Fisheries (Foreign Fishing Vessel) Regulations 2001

<sup>17</sup> Section 83 of the Fisheries Act 1996

<sup>18</sup> Section 103(4) of the Fisheries Act 1996

<sup>19</sup> Section 103 of the Fisheries Act 1996

<sup>20</sup> Section 98 of the Fisheries Act 1996; and the Fisheries (Registers) Regulations 2001

<sup>21</sup> Section 65 of the Ship Registration Act 1992

### **2.2.7.3 VMS**

The IPOA encourages the use of a vessel monitoring system (VMS), in accordance with relevant national, regional or international standards.

New Zealand implemented a vessel monitoring system (VMS) in 1994. The Fisheries (Satellite Vessel Monitoring) Regulations 1993 require all foreign flagged vessels (operating under charter to New Zealand operators or otherwise), and all New Zealand flagged vessels over 28 metres, fishing within New Zealand fisheries waters to carry and operate a registered automatic location communicator (ALC) at all times. Some classes of vessels under 28 metres are also specifically identified to carry and operate an ALC, e.g. any vessel fishing for orange roughy or scampi. As a condition of high seas fishing permits issued under the Fisheries Act, all New Zealand flagged vessels fishing on the high seas are required to carry and operate an ALC at all times<sup>22</sup>. Only ALC's of a type that have passed Ministry of Fisheries Type Approval Standards may be registered by the Ministry of Fisheries.

The Forum Fisheries Agency also operates a regional VMS programme. All New Zealand vessels fishing within EEZs in the Pacific region are required to report to the Forum Fisheries Agency VMS. New Zealand is in the process of implementing the Forum Fisheries Agency VMS within the New Zealand EEZ for foreign flagged tuna vessels.

New Zealand is working through CCAMLR to develop a centralised VMS for vessels operating within the CCAMLR area.

New Zealand should investigate the extension of its VMS requirements to improve the ability to monitor the fishing activities of the inshore fleet in some fisheries and the compatibility with other international organisations and agreements<sup>23</sup>.

### **2.2.7.4 Observer programmes**

The IPOA encourages the implementation of observer programmes in accordance with relevant national, regional or international standards, including the requirement for vessels under their jurisdiction to carry observers onboard.

In 1986, the Ministry of Fisheries implemented an observer programme for the purpose of collecting reliable and accurate information for fisheries research, fisheries management, and fisheries enforcement<sup>24</sup>. Each year, approximately 40 observers are deployed to monitor more than 6000 fishing days in the target fisheries of orange roughy, oreos, hoki, southern blue whiting, ling, hake, scampi, squid, snapper, jack mackerel, tuna and toothfish. Observers are deployed on vessels operating both within New Zealand fisheries waters and on the high seas, including under bilateral arrangements on foreign flagged vessels in the CCAMLR area. Observers are also used to monitor the unloading of catch in New Zealand ports and transshipments of fish, and to inspect the holds of vessels for catch.

<sup>22</sup> High seas fishing permits are issued under Section 113H of the Fisheries Act 1996

<sup>23</sup> Many international organisations and agreements impose VMS requirements on vessels over 24 metres

<sup>24</sup> Section 223 of the Fisheries Act 1996

### **2.2.7.5 Surveillance**

While fisheries surveillance activities are not explicitly included in the IPOA-IUU, they are an integral part of New Zealand's MCS regime.

New Zealand conducts maritime surveillance of New Zealand fisheries waters, CCAMLR waters (within the Ross Sea) and EEZ's of requesting Pacific Island countries by Navy patrol vessels and Air Force P3 Orion maritime patrol aircraft.

Maritime surveillance is managed through the New Zealand National Maritime Coordination Centre. Surveillance of Pacific Island country EEZ's is coordinated with other allied MCS States within the region, particularly Australia and France. CCAMLR surveillance occurs throughout the fishing season to ensure compliance by New Zealand flagged vessels with New Zealand's Antarctic fisheries legislation and to deter and detect any IUU fishing activity by other vessels (flagged to CCAMLR members or non-members).

Six additional surface patrol vessels are being sought by the New Zealand Government to complement the existing naval patrol fleet. These vessels are expected to be operational from 2007.

### **2.2.7.6 MCS Training and education**

The IPOA calls upon States to provide training and education to all persons involved in MCS operations.
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To become a warranted fisheries officer, a 3 month full time intensive training course must be undertaken.

All observers recruited by the Ministry of Fisheries are required to attend a comprehensive observer training course before commencing observer duties at sea. Included in the training is sea safety, species recognition, identification of marine mammals and seabirds, quantifying and recording of catch, losses and discards of quota and non-quota species, conversion factor testing, and transshipment and in port unload monitoring.

### **2.2.7.7 Planning, Funding, & Undertaking MCS Operations**

The IPOA encourages States to plan, fund, and undertake MCS operations in a manner that will maximise their ability to prevent, deter and eliminate IUU fishing.
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The Ministry of Fisheries' Compliance Strategy is to maximise voluntary compliance and provide an effective deterrent. This strategy is applied to all New Zealand MCS operations. New Zealand MCS operations are planned, funded, and undertaken in a manner that maximises the ability to address IUU fishing, both within and outside New Zealand fisheries waters, and achieves Government objectives.

Planning, funding, and undertaking of aerial and surface surveillance operations is coordinated through the National Maritime Coordination Centre, an organisation made up of personnel from multiple government agencies.

New Zealand may need to consider additional funding in the future for multilateral MCS operations that arise once New Zealand has ratified the Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region.

#### **2.2.7.8 Industry Knowledge and Cooperation**

The IPOA encourages all States to promote industry knowledge and understanding of the need for, and their cooperative participation in, MCS activities to prevent, deter, and eliminate IUU fishing.

Fishing industry knowledge, understanding and cooperation in MCS activities is promoted in New Zealand through a variety of means.

The New Zealand government encourages the participation of fishing industry representatives in New Zealand delegations at international and regional fisheries meetings, where MCS issues may arise. When relevant, consultations are held by New Zealand government agencies to ascertain fishing industry stakeholder views and the views of other stakeholders prior to international and regional fisheries meetings.

New Zealand fishing industry stakeholders are encouraged to attend conferences, such as Deep Sea 2003, where MCS issues may be raised. The fishing industry also holds an annual conference which can provide an opportunity for MCS issues to be discussed. Targeted educational sessions are held for fishing industry groups, by both the Ministry of Fisheries and by the fishing industry itself, to increase understanding of the requirements in certain fisheries, e.g. for toothfish fishers prior to the CCAMLR fishing season. Industry stakeholder organisations regularly address MCS issues within their own processes.

MCS related articles are placed in industry and Ministry of Fisheries publications from time to time. The media, including newspapers and television, and websites are increasingly covering IUU fishing and MCS issues.

The New Zealand fishing industry cooperates with the Ministry of Fisheries by reporting fishing vessel sightings, e.g. in the CCAMLR area, and through gathering and passing on information relating to IUU fishing. New Zealand companies engaged in fishing in the CCAMLR area are particularly active participants in international industry efforts to eliminate IUU fishing.

The Ministry of Fisheries has a toll-free telephone number for members of the New Zealand public to report any potential recreational poaching activity.

#### **2.2.7.9 Knowledge & Understanding within the Judicial System**

The IPOA encourages the promotion and understanding of MCS issues within national judicial systems.

Under the Fisheries Act, the Court must take into account the purpose of the Fisheries Act, the difficulties inherent in detecting fisheries offences, and the need to maintain adequate deterrents

against the commission of such offences, when imposing a sentence for a fisheries-related offence<sup>25</sup>.

New Zealand encourages the understanding of MCS issues within the national judicial system through the provision of expert witnesses and detailed summaries of facts for court proceedings.

#### **2.2.7.10 MCS Data**

The IPOA calls upon States to establish and maintain systems for the acquisition, storage and dissemination of MCS data, taking into account applicable confidentiality requirements.

New Zealand has established a comprehensive system for the acquisition, storage and dissemination of MCS data. New Zealand's MCS databases are held at the Ministry of Fisheries and include the Compliance Activity Monitoring System, Fisheries Intelligence Network, Offence database, Observer Trip Register, Prosecution database, Catch Effort database, and VMS. New Zealand is committed to developing analytical capability to enhance the use of this information.

New Zealand also participates in the International Network for the Cooperation and Coordination of Fisheries-Related MCS Activities (International MCS Network)<sup>26</sup>, a newly established worldwide network of MCS professionals. Participating countries agree to participate and cooperate in the direct exchange of information and experiences. The International MCS Network is designed to support countries in meeting their obligations arising from international agreements as well as in performing their domestic MCS functions. New Zealand sees real value in the work of the International MCS Network and will continue to promote it and support and participate in its functions.

#### **2.2.7.11 Implementation of Boarding & Inspection Regimes**

The IPOA calls upon all States to ensure effective implementation of national, and where appropriate, internationally agreed boarding and inspection regimes consistent with international law.

New Zealand has implemented boarding and inspection regimes in relation to New Zealand fisheries waters and the high seas consistent with international law. Procedures for boarding and inspection are outlined in the Fisheries Act.

Within New Zealand fisheries waters, New Zealand fisheries officers have the right to board and inspect any vessel for the purposes of administering or enforcing the Fisheries Act<sup>27</sup>.

For the purpose of ensuring compliance with international conservation and management measures, New Zealand fisheries officers are authorised to board and inspect any foreign vessel flagged to a State that is party to 1995 UN Fish Stocks Agreement, or a global or regional fisheries management organisation or arrangement to which New Zealand is party<sup>28</sup>. For this provision to apply, the relevant RFMO must have established boarding and

<sup>25</sup> Section 254 of the Fisheries Act 1996

<sup>26</sup> Terms of Reference and other information about the MCS Network, can be found at [www.mcsnet.org](http://www.mcsnet.org).

<sup>27</sup> Sections 215 - 222 of the Fisheries Act 1996

<sup>28</sup> Section 113S of the Fisheries Act 1996

inspection procedures. In addition, the boarding and inspection must occur within the area covered by the relevant RFMO, or within New Zealand fisheries waters.

New Zealand flagged vessels fishing on the high seas must also cooperate with foreign high seas inspectors appointed by a State that is party to a global or regional fisheries management organisation or arrangement, when fishing within the area covered by the relevant organisation or arrangement<sup>29</sup>.

If a regional fisheries management organisation and arrangement to which New Zealand is party has established a boarding and inspection regime that differs from the boarding and inspection provisions of the Fisheries Act, the provisions of that organisation or arrangement take precedent under New Zealand law<sup>30</sup>.

New Zealand has implemented the CCAMLR System of Inspection and is working through the Preparatory Conference process of the WCPFC to develop a robust boarding and inspection regime for the WCPFC area. In relation to both regimes, New Zealand has actively participated in their development to date and will continue to work on their improvement.

## **2.2.8 Cooperation between States**

The IPOA calls on States to coordinate their activities and cooperate directly, and as appropriate through relevant RFMOs, in preventing, deterring and eliminating IUU fishing, as follows:

### **2.2.8.1 Data and Information**

The IPOA encourages States to exchange data or information, preferably in standardised format, from records of vessels authorised by them to fish, in a manner consistent with any confidentiality requirements, and to cooperate in the effective acquisition, management and verification of all relevant data and information from fishing.

New Zealand exchanges fisheries-related data or information with other States, e.g. Pacific Island countries, and RFMOs as required and cooperates in the effective acquisition, management and verification of all relevant data and information from fishing.

As outlined in section 2.2.7.10, New Zealand has comprehensive fisheries data systems. Fisheries data and information from these systems can be analysed and provided to relevant States and RFMOs if required, subject to confidentiality requirements.

New Zealand provides vessel details, catch and effort data, observer reports, toothfish catch documentation scheme data, vessel inspection reports and other information relating to New Zealand's involvement in CCAMLR fisheries to the CCAMLR Secretariat as required by CCAMLR Conservation Measures.

From July 1 2004, New Zealand, together with all CCSBT parties and cooperating non-members, will submit information on vessels over 24 metres that fish for southern bluefin

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<sup>29</sup> Section 113W of the Fisheries Act 1996

<sup>30</sup> Section 113V of the Fisheries Act 1996

tuna to the CCSBT Secretariat. New Zealand also submits catch and effort data, trade information scheme data, tagging programme data and all other data required to the CCSBT Secretariat.

New Zealand submits data on New Zealand flagged vessels fishing in the Pacific to the South Pacific Commission. Catch and effort data from New Zealand flagged tuna vessels fishing on the high seas and in the EEZs of Pacific Island States is submitted to the South Pacific Commission. Once WCPFC comes into force, New Zealand will submit fisheries catch data and vessel information to the Commission as required.

The International MCS Network provides a further mechanism to exchange data and information that New Zealand utilises as required.

### **2.2.8.2 Investigation of IUU Fishing**

The IPOA calls on States to collect and maintain data and information on IUU fishing and to enable their respective MCS practitioners or enforcement personnel to cooperate in the investigation of IUU fishing.

New Zealand collects and maintains data and information on IUU fishing within New Zealand fisheries waters and by New Zealand flagged vessels and New Zealand nationals on the high seas. From time to time New Zealand also collects data and information on suspected IUU fishing by foreign flagged vessels in high seas areas and in other countries' EEZs covered by RFMOs to which New Zealand is party (consistent with the measures of the relevant RFMO). When appropriate, New Zealand cooperates with other States in the investigation of IUU fishing activities.

### **2.2.8.3 Transferring Expertise & Technology**

The IPOA encourages States to cooperate in transferring expertise and technology.

New Zealand cooperates in the transfer of expertise and technology.

When hosting overseas visitors from fisheries related organisations, New Zealand gives comprehensive briefings on New Zealand fisheries and shares operational expertise and technology.

New Zealand is active within the South Pacific in supporting technical assistance and capacity building in fisheries legislative frameworks and MCS regimes. Particular effort is put into assisting States, whose flags are being misused in order to circumvent effective flag State controls, to strengthen their legislative and policy frameworks. New Zealand is working with Pacific Island countries to enhance their investigative capabilities and mechanisms for gathering and managing intelligence information to address IUU fishing. New Zealand has participated in and funded regional MCS workshops convened by the Forum Fisheries Agency. New Zealand is a major funder of the Forum Fisheries Agency and one of the contributors to funding of the WCPFC Preparatory Conference process to enable Pacific Island States to participate fully in discussions.

New Zealand is providing expertise to the CCAMLR Secretariat and the Forum Fisheries Agency relating to VMS.

#### **2.2.8.4 Compatibility of Policies & Measures**

The IPOA encourages States to make policies and measures compatible.

New Zealand's MCS measures and policies are consistent with its international obligations, including the measures adopted by RFMOs to which it is a member.

A possible exception is New Zealand's VMS requirements which are generally imposed on vessels over 28 metres, rather than vessels over 24 metres as is the case with many other international organisations and agreements.

#### **2.2.8.5 Rapid Responses to IUU Fishing**

The IPOA calls upon States to develop cooperative mechanisms that allow rapid responses to IUU fishing.

International compliance-related enquiries are dealt with in New Zealand by the Ministry of Fisheries National Compliance Unit and the multi-agency Maritime Intelligence Coordination Centre. These groups work together closely and have linkages to enforcement staff and the Ministry of Foreign Affairs. This enhances New Zealand's ability to respond quickly to IUU fishing incidents when required.

New Zealand has developed processes at an informal level for rapid response to IUU fishing incidents with a number of countries such as the Cook Islands. New Zealand is currently developing Memorandums of Understanding (MOUs) and bilateral arrangements with countries such as Australia, France and South Africa to promote coordination and cooperation on IUU fishing issues, e.g. rapid responses to IUU fishing. On a broader level, New Zealand sees the International MCS Network as an important tool for allowing rapid responses to IUU fishing and will continue to participate in this forum.

#### **2.2.8.6 Cooperation in MCS**

The IPOA encourages States to cooperate in MCS, including through international agreements. The IPOA also encourages States to consider entering into arrangements with other States and otherwise cooperate for the enforcement of applicable laws and conservation and management measures or provisions adopted at a national, regional, or global level.

New Zealand cooperates in MCS through international arrangements as well as multilaterally and bilaterally.

Through CCAMLR, New Zealand cooperates in the development, improvement and implementation of MCS measures for the Antarctic area. Through the WCPFC Preparatory Conference process, New Zealand is cooperating in the development of MCS measures for the Western Central Pacific. New Zealand is a signatory to the Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region and will soon commence the ratification process.

New Zealand participates in the International MCS Network.

In the Pacific region, New Zealand attends MCS and legal working groups and cooperates in surveillance activities. New Zealand is also in the process of developing cooperative arrangements on enforcement and surveillance with Australia and France.

#### **2.2.8.7 *FAO Information***

The IPOA calls on flag States to submit information to the FAO, other States, and relevant international and regional organisations, consistent with Article VI of the 1993 Compliance Agreement.

New Zealand will implement this component of the 1993 FAO Compliance Agreement in the near future.

#### **2.2.8.8 *MCS Contact Points***

The IPOA calls upon States to nominate and publicise formal contact points to facilitate cooperation and exchange of information.

New Zealand publicises formal MCS contact points through the International MCS Network. Nomination and publication of formal MCS contact points would also be beneficial through regional organisations such as CCAMLR.

The Ministry of Fisheries could better utilise its website to publicise compliance personnel authorised to exchange MCS information

#### **2.2.9 *Publicity***

The IPOA calls on States to publicise widely, including through cooperation with other States, full details of IUU fishing and actions taken to eliminate it, in a manner consistent with any confidentiality requirements.

New Zealand uses the media to publicise details of IUU fishing incidents and resulting convictions to deter IUU fishing and to support compliance with international agreements and domestic fisheries laws. New Zealand also publicises information on fisheries surveillance operations and general measures being taken to prevent, deter and eliminate IUU fishing. This information is generally distributed through press releases to national and international media venues.

There is also currently a weekly programme on national television featuring New Zealand fisheries officers undertaking fisheries surveillance around the New Zealand coastline.

The Ministry of Fisheries could better utilise its website to publicise information relating to domestic and international commercial compliance operations.

### ***Recommendations:***

- 1 Ratify the 1993 FAO Compliance Agreement as soon as possible.
- 2 Review the implementation of Part 6A of the Fisheries Act to ensure that all of the relevant obligations of the 1995 UN Fish Stocks Agreement and the 1993 FAO Compliance Agreement have been effectively implemented.
- 3 Continue to improve New Zealand's ability to identify New Zealand nationals who use foreign flagged vessels that are engaged in IUU fishing, as well as the fisheries and geographical areas where those fishing activities take place.
- 4 Investigate the extension of VMS requirements to improve the ability to monitor the fishing activities of the inshore fleet in some fisheries and the compatibility with international organisations and agreements.
- 5 Implement the Forum Fisheries Agency VMS in the New Zealand EEZ for foreign flagged tuna vessels
- 6 Continue to support the development of a CCAMLR centralised VMS.
- 7 Consider extending fishing gear marking requirements to high seas fishing permit holders.
- 8 Transfer high seas fishing permit conditions into regulations.
- 9 Continue to promote, support and participate in the work of the International MCS Network.
- 10 Develop cooperative arrangements on enforcement and surveillance with relevant States.
- 11 Commence the ratification process for the Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region.
- 12 Promote the nomination and publication of formal MCS contact points through regional organisations such as CCAMLR.
- 13 Develop and publicise contact lists of New Zealand compliance personnel authorised to exchange MCS information.
- 14 Publicise information relating to domestic and international commercial compliance operations on the Ministry of Fisheries website.

### 3 FLAG STATE RESPONSIBILITIES

New Zealand has an obligation under international law to effectively exercise its jurisdiction and control over the operations of its vessels, including in relation to their fishing activities. Means for flag States to exert control over the operations of their fishing vessels include through vessel registration, maintenance of fishing vessels records, and authorisation to fish. These aspects of flag State control in relation to New Zealand vessels and fishers are discussed in the following sections.

It is worth noting that New Zealand has taken a broad approach to control of fishing activities under its jurisdiction. Rather than focusing on controlling the activities of its *vessels*, New Zealand legislation is focussed on controlling the activities of those *individuals* responsible for the vessels.

#### 3.1 Fishing Vessel Registration

New Zealand has two registration processes for fishing vessels. They are –

- Registration on the New Zealand Ships Register under the Ship Registration Act 1992<sup>31</sup>, and
- Registration on the Fishing Vessel Register under the Fisheries Act<sup>32</sup>.

Registration on the New Zealand Ships Register confers New Zealand nationality on a vessel and brings it within the jurisdiction of New Zealand laws, even when it is operating outside New Zealand fisheries waters. Although the Ship Registration Act 1992 does not refer to “flagging”, to use terminology consistent with the IPOA-IUU, vessels registered on the New Zealand Ships Register are referred to as “New Zealand flagged vessels” elsewhere in this document.

Registration on the Fishing Vessel Register does not confer New Zealand nationality on a vessel. Instead, it activates the requirements of New Zealand fisheries legislation such as VMS and vessel marking requirements; it provides New Zealand with an accurate record of vessels entitled to fish in New Zealand fisheries waters and under a New Zealand flag on the high seas; and it is one component of the right to access New Zealand or high seas fisheries.

All New Zealand owned<sup>33</sup> vessels over 24 metres must be registered on the New Zealand Ships Register<sup>34</sup>. New Zealand owned vessels under 24 metres that proceed beyond New

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<sup>31</sup> Part 2 of the Ship Registration Act 1992

<sup>32</sup> Section 103 of the Fisheries Act 1996

<sup>33</sup> Section 3 of the Ship Registration Act 1992: New Zealand-owned ships—

(1) For the purposes of registration in [Part A or Part B] of the Register, a ship is deemed to be New Zealand-owned if—

(a) It is owned by a New Zealand national or New Zealand nationals, and no other person; or

(b) It is owned by 3 or more persons as joint owners (otherwise than as described in paragraph (c) of this subsection), and the majority of those persons are New Zealand nationals; or

(c) It is owned by 2 or more persons as owners in common, and more than half of the shares in the ship are owned by 1 or more New Zealand nationals.

(2) For the purposes of subsection (1)(c) of this section, where 2 or more persons are joint owners of any number of shares in the ship the following provisions shall apply:

(a) In the case of 2 or more particular shares that are owned by the same persons, the interest of each owner in those shares shall be ascertained by dividing the number of shares by the number of owners of the shares:

(b) In the case of a share to which paragraph (a) of this subsection does not apply, the interest of each owner in the share shall be ascertained by dividing the number 1 by the number of owners of the share:

(c) If the sum of the interests so ascertained in respect of all jointly-owned shares in the ship as being interests of a New Zealand national or New Zealand nationals is a whole number or a whole number and a fraction, such number of shares as is equal to that whole number shall be deemed to be owned by a New Zealand national or New Zealand nationals.

Zealand fisheries waters at any time must also be registered on the New Zealand Ships Register<sup>35</sup>. Foreign owned vessels under demise charter<sup>36</sup> to New Zealand operators are entitled to be registered on the New Zealand Ships Register, so long as registration of the vessel in any other country has been closed<sup>37</sup>.

All vessels fishing commercially in New Zealand fisheries waters, except those operating under a foreign fishing license, must be registered on the Fishing Vessel Register, regardless of their size<sup>38</sup>. All vessels that are New Zealand owned, or operating under demise charter to New Zealand operators, and fish commercially on the high seas must also be registered on the Fishing Vessel Register<sup>39</sup>.

This means that commercial fishing vessels under 24 metres that fish solely within New Zealand fisheries waters are only required to be registered on the Fishing Vessel Register. In contrast, fishing vessels that are New Zealand owned or operating under demise charter to New Zealand operators (that are not flagged to any other country) that fish on the high seas, must be registered on both the Fishing Vessel Register and the New Zealand Ships Register, regardless of their size.

### **3.1.1 Exercise of Flag State Responsibility**

The IPOA calls upon States to ensure that fishing vessels entitled to fly their flag do not engage in or support IUU fishing.

New Zealand uses a variety of means to control the activities of its fishing and support vessels. These are listed in section 2.2.7. Many of these requirements are imposed on fishers through the Fisheries Act and associated regulations. Penalties are imposed on those who contravene New Zealand legislation, as described in section 2.2.4.

The IPOA encourages flag States to ensure, before registering a fishing vessel, that it can exercise its responsibility to ensure that the vessel does not engage in IUU fishing.

Through New Zealand's vessel registration processes, New Zealand ensures that it has the ability to exercise control over its vessels fishing within New Zealand fisheries waters, on the high seas, and in the jurisdictions of other States. This occurs as follows:

For a vessel to become New Zealand flagged, New Zealand must be able to ensure that it will have the ability to exert control over that vessel, wherever it may be. New Zealand ensures this by only flagging vessels that are New Zealand owned, or operated under demise charter by a New Zealand national and not flagged to any other country at the same time<sup>40</sup>.

Even if a vessel is not required to be New Zealand flagged, if it fishes commercially in New Zealand fisheries waters, it must still be registered on the Fishing Vessel Register (unless it is operating under a foreign fishing license). In most cases, fishing vessels registered on the

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<sup>34</sup> Section 6 of the Ship Registration Act 1992

<sup>35</sup> Section 6 of the Ship Registration Act 1992

<sup>36</sup> "Demise charter" in relation to a ship, means the demise, letting, hire, or delivery of the ship to the charterer, by virtue of which the charterer has whole possession and control of the ship, including the right to appoint its master and crew.

<sup>37</sup> Section 8 of the Ship Registration Act 1992

<sup>38</sup> Section 103 of the Fisheries Act 1996

<sup>39</sup> Section 113D of the Fisheries Act 1996

<sup>40</sup> "New Zealand national" means – (a) A New Zealand citizen; (b) A body corporate established by or under the law of New Zealand; (c) The Executive Government of New Zealand.

Fishing Vessel Register are owned and operated by New Zealand nationals. If a fishing vessel is owned or operated by an overseas person<sup>41</sup>, consent from the chief executive of the Ministry of Fisheries is required<sup>42</sup>. In this case, the fishing company or individual seeking to register the fishing vessel must nominate an authorised agent who is a New Zealand resident for the service of summons in respect of fisheries offences. This ensures that individuals controlling the vessel cannot avoid enforcement action should they act in contravention of New Zealand legislation.

### **3.1.2 Vessels with a History of Non-Compliance**

The IPOA calls upon Flag States to avoid flagging vessels with a history of non-compliance except where 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 having taken into account all relevant facts, the flag State determines that flagging the vessel would not result in IUU fishing.

When undertaking processes to flag a vessel, New Zealand does not consider the compliance history of a vessel's owner or operator. As such, New Zealand has no capacity to avoid flagging a vessel on the basis of a previous or existing owner or operator with a history of non-compliance having a legal, beneficial or financial interest in the vessel.

As mentioned in section 3.1 however, to fish in New Zealand fisheries waters (whether or not the vessel is required to be New Zealand flagged) and on the high seas, a vessel must also be registered on the Fishing Vessel Register and a fishing permit is required.

There is scope under the Fisheries Act to deny registration on the Fishing Vessel Register of a vessel owned or operated by an overseas person on the basis of offending history<sup>43</sup> and the nature of the charter agreement<sup>44</sup>. There is also scope under the Fisheries Act to decline an application for a high seas fishing permit on the basis of offending history<sup>45</sup>.

Therefore it is unlikely that a New Zealand flagged vessel owned or operated by a person with a history of serious non-compliance would be authorised to fish on the high seas<sup>46</sup>. It is also unlikely that a vessel owned or operated by an overseas person with a history of serious non-compliance would be authorised to fish in New Zealand fisheries waters<sup>47</sup>.

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<sup>41</sup> "Overseas person" means—

- (a) Any person who is not a New Zealand citizen and who is not ordinarily resident in New Zealand;
- (b) Any company or body corporate that is incorporated outside New Zealand, or any company within the meaning of the Companies Act 1955 or the Companies Act 1993, as the case may be, that is, for the purposes of the Companies Act 1955 or the Companies Act 1993, a subsidiary of any company or body corporate incorporated outside New Zealand;
- (c) Any company within the meaning of the Companies Act 1955 or the Companies Act 1993, as the case may be, or building society, in which—
  - (i) Twenty-five percent or more of any class of shares is held by any overseas person or overseas persons; or
  - (ii) The right to exercise or control the exercise of 25 percent or more of the voting power at any meeting of the company or building society is held by any overseas person or overseas persons;
- (d) Any nominee of an overseas person, whether or not the nominee is also an overseas person:

<sup>42</sup> Section 103(4) of the Fisheries Act 1996

<sup>43</sup> section 103(6) of the Fisheries Act 1996: in relation to offending history - the previous offending history (if any), in relation to fishing or transportation (whether within the national fisheries jurisdiction of New Zealand or another country, or on the high seas), of the vessel's owner, operator, foreign charterparty, notified user, master, or crew is considered.

<sup>44</sup> Section 103(6) of the Fisheries Act 1996

<sup>45</sup> Section 113H of the Fisheries Act 1996

<sup>46</sup> If the owner or operator was an overseas person the vessel would probably be denied the ability to register on the Fishing Vessel Register. If this did not occur, its high seas fishing permit application would probably be declined.

<sup>47</sup> The vessel would probably be denied the ability to register on the Fishing Vessel Register

Under the current legislative regime, offending history is not considered when seeking to register a vessel on the Fishing Vessel Register where the owner and operator is *not* an overseas person; or when applying for a permit to fish within New Zealand fisheries waters<sup>48</sup>. This means that there is scope for a person or company with a history of non-compliance to have a legal, beneficial or financial interest in a vessel that is authorised to fish within New Zealand fisheries waters.

New Zealand should review and strengthen its processes for registration of vessels on the Fishing Vessel Register, in particular by requiring applicants to supply information on offending history and a written charter agreement (where applicable); and by incorporating consideration of previous offending history into the decision making process under the Fisheries Act for registration of *all* vessels.

### **3.1.3 Chartering Arrangements**

The IPOA calls upon all States with vessels involved in chartering arrangements, including flag States and other States that accept such an arrangement, to, within the limits of their respective jurisdictions, take measures to ensure that chartered vessels do not engage in IUU fishing.

New Zealand allows foreign flagged vessels to fish within New Zealand fisheries waters that are owned or operated by an overseas person and chartered to New Zealand companies. On the high seas, New Zealand allows New Zealand flagged vessels to fish under demise charter arrangements with New Zealand operators.

All charter vessels operating within New Zealand fisheries waters and under a New Zealand flag on the high seas are required to be registered on the Fishing Vessel Register. As part of the registration process, offending history and the nature of the charter agreement are considered and may be grounds for denial of registration<sup>49</sup>. To fish within New Zealand fisheries waters or under a New Zealand flag on the high seas, a fishing permit is also required. Any decision to issue a high seas permit in respect of a vessel, chartered or not, is also subject to consideration of compliance history<sup>50</sup>.

Once registered and issued with the appropriate fishing authorisation (i.e. domestic or high seas fishing permit), strict controls are imposed on the fishing operations of charter vessels under the Fisheries Act and associated regulations, such as mandatory VMS. Failure to meet these legislative requirements results in appropriate penalties.

The way in which New Zealand ensures that it has the ability to exercise control over charter vessels is set out in section 3.1.1.

Foreign owned charter fishing vessels potentially pose a greater risk to New Zealand than New Zealand owned and operated fishing vessels because of the challenges associated with ensuring exercise of effective control over the vessel's activities. As mentioned in section 3.3.2, New Zealand should review and strengthen its processes for registration of vessels, including foreign flagged charter vessels, on the Fishing Vessel Register.

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<sup>48</sup> Sections 91 & 103 of the Fisheries Act 1996

<sup>49</sup> Section 103(6) of the Fisheries Act

<sup>50</sup> Section 113H of the Fisheries Act.

### **3.1.4 Flag Hopping**

The IPOA calls upon flag States to deter vessels from reflagging for the purposes of non-compliance with international conservation and management measures, or "flag hopping". "Flag hopping" is the practice of repeated and rapid changes of a vessel's flag to circumvent conservation and management measures or provisions adopted at a national, regional or global level.

Governmental permission is not required to reflag New Zealand flagged vessels to alternative registries. Reflagging is seen as a legitimate activity when it is done for purposes other than to circumvent conservation and management measures or provisions adopted at a national, regional or global level.

To ensure that New Zealand nationals act responsibly on the high seas, provisions in the Fisheries Act prohibit New Zealand nationals from using foreign flagged fishing vessels on the high seas unless fishing under an authorisation issued by a responsible flag state<sup>51</sup>. This provision limits the extent of reflagging by New Zealand nationals for the purposes of non-compliance.

### **3.1.5 Coordination of Processes**

The IPOA encourages flag States to coordinate the functions of vessel registration and issuing of authorisations to fish.

In New Zealand, registration of vessels on the New Zealand Ships Register (i.e. New Zealand flagging) is carried out by the Maritime Safety Authority, and registration of fishing vessels on the Fishing Vessel Register and issue of authorisations to fish are carried out by the Ministry of Fisheries.

Within the Ministry of Fisheries, the functions of fishing vessel registration and issue of fishing permits are closely coordinated. Greater coordination between the Maritime Safety Authority and the Ministry of Fisheries with respect to registration and de-registration of vessels on the New Zealand Ships Register would be beneficial.

## **3.2 Record of Fishing Vessels**

The IPOA calls upon each flag State to maintain a record of fishing vessels entitled to fly its flag. Each flag State's record of fishing vessels should include, for vessels authorised to fish on the high seas, all the information set out in paragraphs 1 and 2 of Article VI of the 1993 FAO Compliance Agreement, as well as the additional information specified in paragraph 42 of the IPOA.

The Ministry of Fisheries and the Maritime Safety Authority maintain registers as outlined in section 2.2.7.2. Most of the information specified in paragraphs 1 and 2 of Article VI of the

<sup>51</sup> Section 113E(2) An authorisation may be issued by - (a) A state that is a party to the UN Fish Stocks Agreement; or (b) A state that is a party to the FAO Compliance Agreement; or (c) A state that is a party to, or has accepted the obligations of, a global, regional, or sub-regional fisheries organisation or arrangement to which the authorisation relates; or (d) A state that—Is a signatory to the UN Fish Stocks Agreement; and Has legislative and administrative mechanisms to control its vessels on the high seas in accordance with that agreement.

1993 FAO Compliance Agreement and in paragraph 42 of the IPOA is collected and held in relation to New Zealand flagged vessels authorised to fish on the high seas.

The process is underway for New Zealand to ratify the 1993 FAO Compliance Agreement, at which time the requirements set out in paragraphs 1 and 2 of Article VI will be fully implemented.

New Zealand should investigate collecting the additional information specified in paragraph 42 of the IPOA-IUU.

### **3.3 Authorisation to Fish**

#### **3.3.1 Requirement to hold Authorisation to Fish**

The IPOA calls upon States to adopt measures to ensure that no vessel be allowed to fish unless authorised, in a manner consistent with international law for the high seas, or in conformity with national legislation within areas of national jurisdiction. The IPOA also calls upon flag States to ensure that each of the vessels entitled to fly its flag fishing in waters outside its jurisdiction holds a valid authorisation to fish issued by the flag State.

The Fisheries Act contains permitting provisions for vessels fishing within New Zealand fisheries waters and on the high seas. Within New Zealand fisheries waters, no person may take fish, for the purpose of sale, unless under the authority of and in accordance with a fishing permit<sup>52</sup>. On the high seas, no person may use a New Zealand flagged vessel to take fish, for the purpose of sale, unless under the authority of and in accordance with a high seas fishing permit<sup>53</sup>. Penalties for fishing without a fishing permit can include a fine of up to NZ \$250 000, and forfeiture of the vessel, fish, and fishing gear<sup>54</sup>.

New Zealand's high seas permitting regime<sup>55</sup> is consistent with provisions of the 1982 UN Convention, the 1995 UN Fish Stocks Agreement and the 1993 Compliance Agreement. Consideration of an applicant's offending history is an integral part of the process when considering an application. A high seas fishing permit will not be issued if the applicant has engaged in fishing that has undermined the effectiveness of international conservation and management measures in the preceding 3 years, and had their permit suspended or revoked, or had no high seas fishing permit at the time<sup>56</sup>. Other offending history in relation to fishing or transportation of fish is also considered and may result in an application being declined<sup>57</sup>.

An additional permit is required when using a New Zealand flagged vessel to fish in areas or for species covered by some regional fisheries management organisations and arrangements to which New Zealand is party<sup>58</sup>, e.g. within the CCAMLR area. Consistent with the 1995 UN Fish Stocks Agreement, high seas fishing permit conditions prohibit fishing by New Zealand flagged vessels in areas or for species covered by RFMOs to which New Zealand is

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<sup>52</sup> Section 89 of the Fisheries Act 1996

<sup>53</sup> Section 113D of the Fisheries Act 1996

<sup>54</sup> Sections 252 & 255C of the Fisheries Act 1996

<sup>55</sup> Part 6A (High Seas Fishing) of the Fisheries Act 1996

<sup>56</sup> Section 113H of the Fisheries Act 1996

<sup>57</sup> This includes the previous offending history (if any), in relation to fishing or transportation, (whether within the national fisheries jurisdiction of New Zealand or another country, or on the high seas), of the vessel's owner, operator, foreign charter party, master, or crew..

<sup>58</sup> Antarctic Marine Living Resources Act 1981; Fisheries (South Tasman Rise Orange Roughy Fishery) Regulations 2000

not a party, without specific approval. Any such approval issued is subject to conditions that are consistent with the measures established by the relevant RFMO.

The Fisheries Act also prohibits fishing in other countries' jurisdictions by New Zealand nationals and people using New Zealand flagged vessels, unless in accordance with the laws of that jurisdiction<sup>59</sup>.

### **3.3.2 Coastal State Authorisation to Fish**

The IPOA specifies that where a coastal State issues an authorisation to fish to a vessel, that coastal State should ensure that no fishing in its waters occurs without an authorisation to fish issued by the flag State of the vessel.

There is extremely limited foreign licensed fishing in New Zealand fisheries waters. The only vessels that currently fish in the New Zealand EEZ under a foreign fishing license are US vessels fishing pursuant to the US Tuna Treaty. New Zealand does not require a copy of a flag state fishing authorisation to be provided when applying for a foreign fishing license to fish within the New Zealand EEZ. However, New Zealand does investigate the offending history of the vessel's owner, operator, master, and crew prior to issuing a foreign fishing license and imposes conditions on any license issued<sup>60</sup>. New Zealand should consider requiring foreign fishing license applicants to provide a copy of a flag State authorisation to New Zealand authorities. It would also be useful to require applicants to provide information on vessel history and offending history.

### **3.3.3 Conditions of Authorisation to Fish**

The IPOA encourages States to include specific matters in the fishing authorisations that they issue, and to require vessels to carry the authorisation to fish on board.

All New Zealand fishers authorised to fish within New Zealand fisheries waters or on the high seas are subject to a number of requirements. These requirements are imposed on fishers either through regulations or permit conditions. The requirements relate to matters such as:

- Gear restrictions
- Area restrictions
- Species restrictions
- Method restrictions
- Vessel length restrictions
- Duration of the authorisation to fish
- Provision of notifications to Ministry of Fisheries
- Carriage of observers
- Vessel inspection
- VMS
- Vessel & gear markings
- Landing & Transshipment
- Catch and effort reporting

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<sup>59</sup> Section 113A of the Fisheries Act 1996

<sup>60</sup> Section 83 of the Fisheries Act 1996

- Conservation and management measures adopted by RFMOs to which New Zealand is a member (where applicable).

New Zealand fishing permit holders are required to carry a copy of their fishing permit on board the vessel at all times.

### **3.3.4 Transport and Re-supply Vessels**

The IPOA calls upon flag States to ensure that their fishing, transport and support vessels do not support or engage in IUU fishing. The IPOA also calls upon flag States to ensure that, to the greatest extent possible, all of their fishing, transport and support vessels involved in transshipment at sea have a prior authorisation to tranship issued by the flag State, and report specified information to the national fisheries administration or other designated institution.

New Zealand regulates and monitors the activities of transport and support vessels, to the extent possible, to ensure that they do not support IUU fishing.

Any person who uses a New Zealand flagged vessel to transport fish on the high seas must hold a high seas fishing permit issued under the Fisheries Act<sup>61</sup>.

No transshipment of fish caught within New Zealand fisheries waters, or by New Zealand flagged vessels on the high seas, may occur without prior approval from the Ministry of Fisheries<sup>62</sup>. Advanced notice must be given to the Ministry of Fisheries of any transshipments that are to occur. All transshipments of fish are closely scrutinised by the Ministry of Fisheries, including through monitoring by Ministry of Fisheries observers or fishery officers. Specific information about the transshipment must be recorded and submitted to the Ministry of Fisheries e.g. date and location of transshipment, weight by species and catch area of the catch transhipped, details of the vessels involved in the transshipment, and the port of landing of the transhipped catch.

In some cases, transshipment of fish is strictly prohibited, e.g. when fishing in some CCAMLR fisheries.

The IPOA encourages flag States to make information from catch and transshipment reports available, aggregated according to areas and species, in a full, timely and regular manner and, as appropriate, to relevant national, regional and international organisations, including FAO, taking into account applicable confidentiality requirements.

New Zealand makes information from catch and transshipment reports available to relevant national, regional and international organisations, as required, including to the FAO.

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<sup>61</sup> Section 113D of the Fisheries Act 1996

<sup>62</sup> Section 110 of the Fisheries Act; Fisheries (Commercial Fishing) Regulations 2001 & conditions of high seas fishing permit issued under Section 113H of the Fisheries Act.

**Recommendations:**

- 1 Review and strengthen processes for registration of vessels on the Fishing Vessel Register, in particular by requiring applicants to supply information on offending history; and by incorporating consideration of previous offending history into the decision making process under the Fisheries Act for registration of *all* vessels.
- 2 Review and strengthen processes for registration of vessels owned or operated by overseas persons on the Fishing Vessel Register under section 103(4) of the Fisheries Act, in particular by requiring applicants to supply information on offending history and a written charter agreement.
- 3 Enhance coordination between the Maritime Safety Authority and the Ministry of Fisheries with respect to registration and de-registration of vessels on the New Zealand Ships Register
- 4 Consider collecting additional information on New Zealand flagged vessels authorised to fish on the high seas as specified in paragraph 42 of the IPOA-IUU.
- 5 Strengthen processes for granting of foreign fishing licenses, in particular by requiring a copy of the flag State authorisation to fish and by seeking information on offending history from applicants.

## 4 COASTAL STATE RESPONSIBILITIES

In the exercise of sovereign rights of coastal States for exploring and exploiting, conserving and managing the living marine resources under their jurisdiction, the IPOA calls upon coastal States to implement measures to prevent, deter and eliminate IUU fishing in waters under their jurisdiction. Measures which the coastal State should consider are: effective MCS; cooperation and exchange of information with other States and RFMOs; ensuring that all fishing is authorised; ensuring all vessels are registered; logbook requirements; controls on transshipment/processing of fish; regulation of fishing access; and avoiding licensing vessels with an IUU history.

Most issues relating to New Zealand measures in this regard are covered in other sections.

New Zealand has a comprehensive and effective fisheries management regime, which is set out in the Fisheries Act. New Zealand regulates access to its fisheries through the Quota Management System and fishing permits, as outlined in sections 2.2.7.1 and 3.3. All vessels fishing in New Zealand fisheries waters, except for those operating under a foreign fishing license, are required to be registered as outlined in section 3.1.

There is a small amount of foreign licensed fishing occurring within the New Zealand EEZ by US flagged vessels under the US Tuna Treaty. This is outlined in section 2.2.7.1.

New Zealand uses a range of tools to control the activities of vessels fishing within New Zealand fisheries waters. These are outlined in more detail in section 2.2.7.

New Zealand cooperates and exchanges information with other States, where appropriate, including neighbouring coastal States and with RFMOs. This is outlined in section 2.2.8.

## 5 PORT STATE MEASURES

The IPOA calls upon States to use measures, in accordance with international law, to control port access by fishing vessels in order to prevent, deter and eliminate IUU fishing. In the IPOA, port access means admission for foreign fishing vessels to ports or offshore terminals for the purpose of, *inter alia*, refuelling, re-supplying, transshipping and landing, without prejudice to the sovereignty of a coastal State in accordance with its national law and article 25.2 of the 1982 UN Convention and other relevant international law.

New Zealand controls access to its ports by foreign flagged vessels through measures such as prior approval requirements; notification requirements; supervised landings and transshipments; and vessel inspections. New Zealand's exercise of port State control is consistent with international law, and, where applicable, New Zealand implements specific port State measures adopted by RFMOs to which it is party. New Zealand works actively through both international and regional organisations to strengthen port State measures.

Consistent with international law, New Zealand provides port access to foreign flagged vessels for reasons of *force majeure* or distress or for rendering assistance to persons, ships or aircraft in danger or distress.

### 5.1 Port State Measures

The IPOA calls upon States to require vessels seeking access to their ports to seek prior permission to enter their ports and to provide reasonable advance notice of their entry into port, a copy of their authorisation to fish, and details of their fishing trip and quantities of fish on board, in order to ascertain whether the vessel may have engaged in, or supported, IUU fishing.

Under the Fisheries Act, prior approval is required from the Ministry of Fisheries to possess fish within New Zealand fisheries waters on a foreign flagged vessel, unless the fish was already landed elsewhere, or was legally taken or received by that vessel within New Zealand fisheries waters<sup>63</sup>. Foreign flagged vessels seeking access to New Zealand ports are captured by this approval requirement.

The approval must be issued prior to entry into New Zealand fisheries waters and is issued subject to conditions. In most cases the approval requires the vessel to carry and operate a Ministry of Fisheries-approved Automatic Location Communicator (ALC) immediately prior to, and at all times during, the trip. Other conditions apply such as a requirement to submit catch and effort reports to the Ministry of Fisheries; a requirement to notify the Ministry of Fisheries of entry into/departure from the New Zealand EEZ; a prohibition on fishing within New Zealand fisheries waters; a prohibition on transshipment; a requirement that landings must be supervised; a requirement to land or dispose of fish only to licensed fish receivers; and compulsory vessel inspection.

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<sup>63</sup> Section 113 of the Fisheries Act 1996

The master of the vessel must give the Ministry of Fisheries at least 72 hours warning of the intention to bring the vessel into internal waters. Details of quantity, state, and species of fish onboard must be provided.

It would be beneficial for New Zealand to review its procedures for approving port access for foreign flagged vessels. In particular, it would be useful if the Fisheries Act specified a timeframe for seeking prior approval.

The IPOA calls on each port State, where it has clear evidence that a vessel has engaged in IUU fishing activity, to prohibit the vessel from landing or transhipping fish in its ports, and to report the matter to the flag State of the vessel.

If the Ministry of Fisheries is satisfied that a foreign flagged vessel entering New Zealand fisheries waters with fish on board has undermined international conservation and management measures, the vessel may be directed not to enter the internal waters of New Zealand<sup>64</sup>. If such a vessel enters New Zealand internal waters after being instructed not to, the master is liable for penalties under the Fisheries Act. This does not apply if a vessel enters New Zealand internal waters to obtain food, fuel, and other goods and services necessary to enable the vessel to proceed safely and directly to another port outside New Zealand.

Foreign flagged vessels that are not registered on the New Zealand Fishing Vessel Register are not permitted to tranship fish within New Zealand's EEZ.

In addition to the above measures, New Zealand also implements any additional requirements consistent with its obligations under RMFOs. For example, all vessels carrying toothfish that enter New Zealand ports must be inspected, and if there is evidence that the vessel has fished in contravention of CCAMLR Conservation Measures, or if the fish is not accompanied by a valid CCAMLR Catch Document, the landing is prohibited.

If there is evidence that a foreign flagged vessel has engaged in unauthorised fishing activity within New Zealand fisheries waters, the vessel is directed to port and liable for penalties under the Fisheries Act, including a fine of up to NZ\$500 000, and forfeiture of the vessel, fish, and fishing gear.

If a vessel is denied access to New Zealand ports on the basis that it has undermined international conservation and management measures, or prosecuted under New Zealand law, New Zealand reports the matter to the flag State of the vessel, and relevant RFMO.

The IPOA encourages States to publicise ports to which foreign flagged vessels may be permitted admission and to ensure that these ports have the capacity to conduct inspections.

All foreign flagged vessels arriving in, or departing from New Zealand must report to a place that is both an approved port of first arrival (as required under the Biosecurity Act 1993) and a Customs place (as required under the Customs Act 1996). Ministry of Fisheries fishery officers have the capacity to conduct port inspections at all New Zealand ports. In addition, the monitored or supervised transhipment of fish may be carried out in any New Zealand port.

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<sup>64</sup> Section 113ZD of the Fisheries Act 1996

The IPOA calls upon port States, when exercising their right to inspect fishing vessels, to collect specific information and remit it to the flag State and, where appropriate, the relevant RFMO.

New Zealand exercises the right to inspect foreign flagged vessels within New Zealand fisheries waters for the purpose of ensuring compliance with international conservation and management measures adopted by a global or regional arrangement to which New Zealand is party<sup>65</sup>. In order for New Zealand to inspect a foreign flagged vessel, the vessel must be flagged to a State party to the 1995 UN Fish Stocks Agreement or an RFMO that has established boarding and inspection procedures.

New Zealand fisheries officers are authorised to inspect the vessel, the vessel's authorisation to fish or transport fish, the vessel's fishing gear and equipment, the vessel's facilities, fish on board, records and other relevant documents<sup>66</sup>. A report of the inspection is provided to the master of the vessel and to the flag State<sup>67</sup>.

New Zealand also implements any specific boarding and inspection procedures established by RFMOs to which New Zealand is party, such as CCAMLR. In the case of inspections of foreign flagged CCAMLR vessels, a report of the inspection is also provided to CCAMLR.

If, in the course of an inspection, a port State finds that there are reasonable grounds to suspect that the vessel has engaged in or supported IUU fishing, the IPOA calls upon port States to immediately report the matter to the flag State of the vessel and, where appropriate, the RFMO. The port State may take other action with the consent of, or upon the request of, the flag State.

If, as a result of an inspection, a New Zealand fishery officer believes that the vessel has committed a serious violation against international conservation and management measures of a global or regional arrangement to which New Zealand is party, New Zealand will notify the vessel's flag State authorities as soon as practicable<sup>68</sup>. Where appropriate, the RFMO is also notified.

If, within 3 working days, the flag State fails to respond to the notification from New Zealand, or fails to take action under its own laws, the Fisheries Act allows New Zealand to bring the vessel to a New Zealand port<sup>69</sup>.

Consistent with New Zealand's rights under the 1995 UN Fish Stocks Agreement New Zealand can investigate the alleged violation with the consent of the flag State of the vessel<sup>70</sup>.

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<sup>65</sup> Section 113S of the Fisheries Act 1996

<sup>66</sup> Section 113T of the Fisheries Act 1996

<sup>67</sup> Section 113T of the Fisheries Act 1996

<sup>68</sup> Section 113U of the Fisheries Act 1996

<sup>69</sup> Section 113U of the Fisheries Act 1996

<sup>70</sup> Section 113S of the Fisheries Act 1996

The IPOA encourages States to establish and publicise a national strategy and procedures for port State control of vessels involved in fishing and related activities, including training, technical support, qualification requirements and general operating guidelines for port State control officers.

New Zealand's procedures for port State control of vessels involved in fishing and related activities are set out in detail in the Fisheries Act. In addition, fishery officers are trained in standard inspection procedures.

It may be useful to set out New Zealand's port State requirements and procedures on the Ministry of Fisheries website so that they can be easily accessed by foreign flagged fishing vessels intending to enter New Zealand fisheries waters. There could also be a link to the Ministry of Fisheries website from the Maritime Safety Authority website.

## **5.2 Cooperation with port States/through RFMOs**

The IPOA calls upon States to cooperate, as appropriate, bilaterally, multilaterally and within relevant RFMOs, to develop compatible measures for port State control of fishing vessels. The IPOA also encourages States to consider developing, within relevant RFMOs, port State measures building on the presumption that fishing vessels entitled to fly the flag of States not parties to a RFMO and which have not agreed to cooperate with that RFMO, which are identified as being engaged in fishing activities in the area of that particular organisation, may be engaging in IUU fishing.

New Zealand cooperates with other States, and through RFMOs, to develop robust measures for port State control of fishing vessels.

A concerning issue that has recently come to light however, is the importation of IUU fish into New Zealand that has been caught within the jurisdiction of another State or on the high seas without a high seas fishing permit, and landed elsewhere. Because New Zealand has no legal means to deny importation of these IUU fish (as there are no multilaterally-agreed trade measures in place), New Zealand is dependent on the exporting State having in place robust port State controls. New Zealand encourages, and is willing to cooperate with, States to strengthen their port State measures so that IUU fish cannot be legitimately landed and enter international trade. This issue is also raised in section 6.3.

The IPOA encourages States to enhance cooperation, including by the flow of relevant information, among and between relevant RFMOs and States on port State controls.

New Zealand cooperates with other States and shares information with other States and RFMOs regarding port State controls where applicable.

**Recommendations:**

- 1 Review procedures for approving port access for foreign flagged vessels (sections 113 & 113DZ of the Fisheries Act).
- 2 Post on the Ministry of Fisheries website New Zealand's port State requirements and procedures so that they can easily accessed by foreign flagged fishing vessels intending to enter New Zealand fisheries waters.
- 3 Encourage and cooperate with other States to strengthen their port State measures.
- 4 Support continued work in the FAO on the development of binding agreements on port State measures as contained in the report of the Expert Consultation to Review Port State Measures to Combat Illegal, Unreported and Unregulated Fishing held in Rome in November 2002.
- 5 Participate in the 2004 Technical Consultation to Address Substantive Issues relating to the Role of the Port State Measures to Prevent, Deter, and Eliminate IUU Fishing.

## 6 INTERNATIONALLY-AGREED MARKET RELATED MEASURES

### 6.1 Trade-Related Measures

More than 90% of New Zealand's seafood product is exported and New Zealand is conscious of the need to preserve and enhance open market access for its products. However, consistent with the IPOA, New Zealand considers the use of trade-related measures to be an effective tool in combating IUU fishing when implemented consistent with the principles, rights, and obligations established in the World Trade Organisation (WTO), in a fair, transparent and non-discriminatory manner. Trade-related measures are best used only in exceptional circumstances to support fisheries management tools when fisheries management tools alone fail to effectively address IUU fishing. In addition, the most effective trade-related measures to combat IUU fishing are likely to be those developed and implemented within an international or regional framework. Unilateral trade-related measures have not been applied by New Zealand to address IUU fishing.

The IPOA encourages States to take steps, consistent with international law, to prevent fish caught by vessels identified by the relevant RFMO to have been engaged in IUU fishing being traded or imported into their territories.

To date, New Zealand has implemented trade-related measures agreed by CCAMLR and CCSBT, as well as other RFMOs to which New Zealand is not a party.

CCAMLR trade-related measures include the Catch Documentation Scheme for *Dissostichus* (toothfish) species<sup>71</sup>, the Scheme to Promote Compliance by Contracting Party Vessels with CCAMLR Conservation Measures<sup>72</sup>, and the Scheme to Promote Compliance by Non-Contracting Party Vessels with CCAMLR Conservation Measures<sup>73</sup>. The CCAMLR Catch Documentation Scheme for toothfish requires member States to prohibit all imports and exports of toothfish to/from their territories that are not accompanied by a valid CCAMLR catch document certifying that the fish were legally harvested. The Schemes to Promote Compliance by Contracting and Non-Contracting Party Vessels set out procedures for development of an IUU vessel list and prohibit member States from importing and exporting fish harvested by those vessels.

CCSBT trade-related measures include the CCSBT Trade Information Scheme. The Trade Information Scheme requires member States to prohibit imports of southern bluefin tuna unless accompanied by a completed CCSBT Statistical Document, endorsed by an authorised competent authority in the exporting country. There is also scope for trade-restrictive measures to be implemented under step 6 of the CCSBT Action Plan relating to non-members whose vessels catch southern bluefin tuna.

New Zealand has also implemented trade information schemes complimentary to the International Commission for the Conservation of Atlantic Tunas (ICCAT) and Inter-American Tropical Tuna Commission (IATTC) schemes in respect of tuna and swordfish exported to ICCAT and IATTC member countries.

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<sup>71</sup> CCAMLR Conservation Measure 10-05 (2003)

<sup>72</sup> CCAMLR Conservation Measure 10-06 (2002)

<sup>73</sup> CCAMLR Conservation Measure 10-07 (2003)

The IPOA encourages States to cooperate, including through relevant global and regional fisheries management organisations, to adopt appropriate multilaterally agreed trade-related measures, consistent with the WTO, to prevent, deter and eliminate IUU fishing, including catch documentation and certification requirements, and import and export controls or prohibitions. Such measures should be adopted in a fair, transparent and non-discriminatory manner. When such measures are adopted, States should support their consistent and effective implementation.

New Zealand has participated in the establishment of trade-related measures through its membership to RFMOs, such as CCSBT and CCAMLR. New Zealand also supports the development of further measures, e.g. for the WCPFC area, to address IUU fishing, and improvement of existing measures through RFMOs. New Zealand seeks to ensure that trade-related measures adopted by RFMOs to which it is a member are fair, transparent, and non-discriminatory; are in accordance with international law; and compliment fisheries management tools.

New Zealand also cooperates with other States that have implemented multilaterally agreed trade-related measures to deter trade of IUU fish products.

### **6.1.1 Standardisation of Certification Schemes**

Certification and documentation requirements should be standardised to the extent feasible, and electronic schemes developed where possible, to ensure their effectiveness, reduce opportunities for fraud, and avoid unnecessary burdens on trade.

New Zealand supports the development of standardised certification and documentation schemes that not only track fish product through trade, but also ensure that only legally caught fish or fish product can be landed and enter the market. New Zealand has been working on standardisation of certification and documentation schemes through the FAO and RFMOs.

New Zealand also supports the development of electronic certification and documentation schemes to improve their effectiveness. New Zealand is working with other members of CCAMLR to convert its catch documentation scheme for toothfish to an electronic format.

### **6.1.2 The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)**

In addition to trade-related measures established by fisheries management organisations, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) provides some scope to regulate trade of IUU fish where there is international agreement among CITES parties to list species on CITES appendices.

New Zealand has worked to encourage closer cooperation between the FAO and CITES to improve the applicability of CITES provisions to commercial fisheries and has supported the development of an MOU between the two organisations to formalise cooperation.

## 6.2 Transparency of Markets

The IPOA calls upon States to take steps to improve the transparency of their markets to allow the traceability of fish or fish products.

New Zealand meets its obligations, either as the coastal State for fish caught in the EEZ or as the flag State for fish obtained in the high seas, to ensure that all New Zealand origin fish in international trade is identified in normal trade documentation and on packaging with its correct name and identified as a product of New Zealand.

More than 90% of all New Zealand origin fish and fish products are traded internationally. New Zealand industry cooperates with authorities in New Zealand and in export markets to ensure that market access for its products is safeguarded, including through complying with documentation and labelling requirements. It should be noted that food safety verification requirements, rather than fisheries management, demand that processors and exporters can trace back their products at least to the point where they entered the production chain and forward through the value chain while they remain in their original packaging. Once ownership of fish products in international trade passes from the New Zealand exporter to a customer in another country, the capacity to trace relies fundamentally on the customer's traceability system.

Because food safety requirements rather than fisheries management requirements demand traceability of fish products, unless the product is specifically covered by documentation requirements of an RFMO, trade documentation does not differentiate between legally harvested or IUU fish. New Zealand is willing to work with other countries, and through the FAO, to develop standards and processes to ensure that fish products entering trade are accompanied by documentation verifying that the fish product was legally harvested. This will provide a means for countries to only accept imports of legally harvested fish and to deny imports, or seek verification of authenticity from the exporting state, of IUU product.

## 6.3 Post-harvest practices: Law Enforcement and Education

The IPOA calls upon States to take measures to ensure that their importers, transshippers, buyers, consumers, equipment suppliers, bankers, insurers, other services suppliers and the public are aware of the detrimental effects of doing business with vessels identified as engaged in IUU fishing, and should consider measures to deter such business. Similarly, the IPOA calls upon States to take measures to ensure that their fishers are aware of the detrimental effects of doing business with importers, transshippers, buyers, consumers, equipment suppliers, bankers, insurers and other services suppliers identified as doing business with vessels identified as engaged in IUU fishing.

The Fisheries Act imposes controls on the transshipment and transportation of fish in New Zealand fisheries waters and by New Zealand flagged vessels on the high seas. As outlined in section 6.1 above, New Zealand also implements multilaterally agreed trade-related measures.

Within New Zealand there is widespread awareness and support in the industry for the legal obligations to ensure that domestic commercially caught fish comply with the Fisheries Act. The penalties for trading in or being commercially associated with black market or poached fish are severe.

New Zealand authorities are active in increasing awareness of fishers, those engaged in fisheries related business, importers, consumers, and the public, of the detrimental effects of IUU fishing, particularly within the New Zealand EEZ. This issue is covered in sections 2.2.7.8 and 2.2.9.

Imported fish products have a small share of the New Zealand domestic market. Scope for importing fish obtained by IUU activity is therefore limited by the overall size of the market and its dominance by the domestic industry.

As mentioned in section 5.2, the importation of IUU fish into New Zealand that has been caught within the jurisdiction of another State or on the high seas, and landed elsewhere, is of concern to New Zealand. Because these fish are not covered by an RFMO or any associated multilaterally-agreed trade measures, New Zealand has no legal means to deny importation of these IUU fish. In this situation, New Zealand is dependent on the exporting State having in place robust port State controls.

New Zealand authorities welcome opportunities to cooperate with other countries to prevent IUU fish product from entering international trade. This includes through cooperating to strengthen other countries' port State measures. Vigilance in detecting failures or shortcomings in standard trade documentation (e.g. invoices, certificates of origin or health) accompanying consignments, and packaging labelling can also assist in identifying and preventing trade in IUU fish.

The IPOA calls upon States to work towards using the Harmonised Commodity Description and Coding System for fish and fisheries products in order to help promote the implementation of the IPOA.

New Zealand has fully adopted the Harmonised System of Customs Classification (HSCC) for imports and exports of all goods, including fish and fish products. In order to assist transparency in identifying and recording its trade in fish and fish products, New Zealand has made extensive use of the voluntary opportunity to identify fish products at the species level through coding fish products in trade to the 10 digit level.

New Zealand recognises that HSCC system is only internationally comparable at the 6 digit level and as a result more than 70% of its exports of fish and fish products are likely to be recognised only by their product form rather than by their species by importing country authorities. New Zealand is a strong supporter of efforts within the FAO, in cooperation with the World Customs Organisation, to improve the HSCC to enable greater international transparency at the species level of fish and fish products in international trade.

***Recommendations:***

- 1 Work through RFMOs to support the development of WTO-consistent trade-related measures and improvement of existing measures to address IUU fishing.
- 2 Work within RFMOs to ensure that any such measures are standardised, to the extent possible, and make use of electronic communication, to aid efficiency and transparency.
- 3 Urge other Governments, at bilateral, regional, and global levels, to take all steps necessary, consistent with international law, to prevent IUU fish being landed, traded, or imported into their territories.
- 4 Support implementation of an MOU between FAO and CITES.
- 5 Work with other countries, and through the FAO, to develop standards and processes to ensure that fish products entering trade are accompanied by documentation verifying that the fish product was legally harvested.

## **7 RESEARCH**

The IPOA calls upon States to encourage scientific research on methods of identifying fish species from samples of processed products.

For the last twenty years the New Zealand fishing industry has produced a species guidebook that is widely available in New Zealand and internationally to assist visual identification of common commercial fish caught in New Zealand waters as whole fish, fillet and other product form. A new guidebook is planned for publication within the next year. A new poster showing whole fish is also in the planning stages to replace the existing poster widely displayed throughout retail outlets in New Zealand. New Zealand is also developing the technical capacity to identify fish species through DNA analysis.

## 8 REGIONAL FISHERIES MANAGEMENT ORGANISATIONS

The IPOA calls upon States to ensure compliance with and enforcement of IUU fishing-related policies and measures adopted by any RFMOs by which they are bound. States should cooperate in the establishment of such organisations in regions where none currently exist.

New Zealand is a member of three regional fisheries management organisations and arrangements. They are CCSBT, South Tasman Rise Arrangement and CCAMLR. New Zealand has implemented legislation and regulations to give effect to the conservation and management measures agreed by these organisations and arrangements<sup>74</sup>. New Zealand takes these obligations seriously by working actively to ensure that individuals and vessels subject to New Zealand jurisdiction comply with the measures and taking enforcement action where they do not.

New Zealand has ratified the WCPFC, which will enter into force in June 2004, and is participating in the development of a new agreement to conserve and manage fish stocks in the South West Indian Ocean.

In addition, New Zealand acts consistently with conservation and management measures of RFMOs to which it is not a member, e.g. North East Atlantic Fisheries Commission.

The IPOA calls upon States to give effect to their duty to cooperate by agreeing to apply the conservation and management measures established by RFMO to which they are not members, 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.

Consistent with the 1995 UN Fish Stocks Agreement, New Zealand cooperates and acts consistently with the conservation and management measures agreed by RFMOs to which it is not a member. As such, high seas fishing permit conditions prohibit fishing by New Zealand flagged vessels in areas or for species covered by organisations and arrangements to which New Zealand is *not* a party, without specific approval. Prior to issuing such an approval, New Zealand first seeks to cooperate with the organisations by either becoming a cooperating non-member or member (as appropriate). Any approval issued would be subject to conditions reflecting the relevant conservation and management measures of the organisation or arrangement. New Zealand recently became a cooperating non-member of the North-East Atlantic Fisheries Commission and has since applied its conservation and management measures to one New Zealand flagged vessel.

The IPOA encourages States, acting through relevant RFMOs, to take action to strengthen and develop innovative ways, in conformity with international law, to prevent, deter, and eliminate IUU fishing.

New Zealand works actively to strengthen the RFMOs to which it belongs, and to develop effective measures and mechanisms through those RFMOs to prevent, deter, and eliminate IUU fishing. In the coming years, New Zealand will continue to pursue new initiatives and

<sup>74</sup> Antarctic Marine Living Resources Act 1981; Fisheries (South Tasman Rise Orange Roughy Fishery) Regulations 2000; Fisheries (Southern Bluefin Tuna Quota) Regulations 2000.

strengthen existing measures within the RFMOs to which it is a member to combat IUU fishing more effectively.

The IPOA encourages States, acting through relevant RFMOs, to encourage non-contracting parties with a real interest in the fishery concerned to join those organisations and to participate fully in their work. Where this is not possible, the RFMOs should encourage and facilitate the participation and cooperation of non-contracting parties, in accordance with applicable international agreements and international law, in the conservation and management of the relevant fisheries resources and in the implementation of measures adopted by the relevant organisations. RFMOs should address the issue of access to the resource in order to foster cooperation and enhance sustainability in the fishery, in accordance with international law.

New Zealand acknowledges that the effectiveness of RFMOs depends on securing the membership and participation of all States fishing in an area, or for a species, covered by an RFMO. Where applicable e.g. through CCSBT, New Zealand actively encourages non-members to become either contracting parties, or cooperating non-contracting parties of RFMOs. When access to fisheries resources is addressed through RFMOs, New Zealand endeavours to ensure that decisions are made in a cooperative manner and that those decisions maintain or enhance fisheries sustainability.

## 9 SPECIAL REQUIREMENTS OF DEVELOPING COUNTRIES

The FAO encourages States, with the support of FAO and relevant international financial institutions and mechanisms, to cooperate 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. Such assistance should be directed in particular to help such States in the development and implementation of national plans of action.

The FAO also encourages States, with the support of FAO and relevant international financial institutions and mechanisms, where appropriate, to cooperate to enable: review and revision of national legislation and regional regulatory frameworks; the improvement and harmonisation of fisheries and related data collection; the strengthening of regional institutions; and the strengthening and enhancement of integrated MCS systems, including satellite monitoring systems.

New Zealand is active, particularly in the Pacific, in cooperating to support training and capacity building to developing countries, including small island developing States.

When hosting overseas visitors from fisheries-related organisations, including those from developing countries, New Zealand gives comprehensive briefings on New Zealand fisheries experiences and shares operational expertise and technology, as relevant.

New Zealand is active within the South Pacific in supporting technical assistance and capacity building in the areas of fisheries legislative frameworks and MCS regimes. New Zealand has participated in and funded regional MCS workshops convened by the Forum Fisheries Agency. New Zealand is a major funder of the Forum Fisheries Agency and one of the contributors to funding of the WCPFC Preparatory Conference process to enable Pacific Island States to participate fully in discussions. New Zealand attends MCS and legal working groups in the Pacific region and assists Pacific Island countries by providing some fisheries surveillance capacity.

## ANNEX 1 - NEW ZEALAND LEGISLATION RELATING TO IUU FISHING

1	Antarctic Marine Living Resources Act 1981
2	Fisheries Act 1996
3	Fisheries (Commercial Fishing) Regulations 2001
4	Fisheries (Foreign Fishing Vessel) Regulations
5	Fisheries (High Seas Fishing Notifications) Notice 2001
6	Fisheries (Recordkeeping) Regulations 1990
7	Fisheries (Registers) Regulations 2001
8	Fisheries (Reporting ) Regulations 2001
9	Fisheries (Satellite Vessel Monitoring) Regulations 1993
10	Fisheries (South Tasman Rise Orange Roughy Fishery) Regulations 2000
11	Fisheries (Southern Bluefin Tuna Quota) Regulations 2000
12	Ship Registration Act 1992