



# Book - Unit 7 - Instruments adopted under the auspices of FAO

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Site: UNITED NATIONS INFORMATION PORTAL ON MULTILATERAL ENVIRONMENTAL AGREEMENTS

Course: Introductory Course to the International Legal Framework on Marine Biodiversity

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# 1. Introduction

The FAO - especially through its Committee on Fisheries (COFI) - has adopted a wide range of fisheries instruments, both legally binding and non-legally binding.

The Committee is the only global inter-governmental forum where major international fisheries and aquaculture problems and issues are examined and recommendations addressed to governments, regional fishery bodies, NGOs, fishworkers, FAO and international community.

## 2. FAO Code of Conduct for Responsible Fisheries

The non-legally binding Code of Conduct for Responsible Fisheries (“1995 FAO Code of Conduct”) was adopted at the Twenty-eighth Session of the FAO Conference on 31 October 1995. The drafting of the Code occurred parallel to the negotiations of the Fish Stocks Agreement and the 1993 FAO Agreement to promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (“1993 FAO Compliance Agreement”).

Care was taken to ensure that these three instruments would not contradict each other. In fact, the 1993 FAO Compliance Agreement forms an integral part of the Code of Conduct. Even though there are non-contradictory overlaps, the three instruments largely complement each other. The principal purpose of the FAO Code of Conduct is to offer practical guidance to states and all those involved in fisheries. The Code of Conduct is therefore essentially a ‘Responsible Fisheries’- Code.

## Scope

The scope of the FAO Code of Conduct is much broader than the Fish Stocks Agreement or the Compliance Agreement.

First, it is not just limited to marine capture fisheries, but extends to all fisheries, including inland (freshwater) fishing and aquaculture. Consequently, unlike the Fish Stocks Agreement, its application is not limited to the EEZ and the high seas, but also extends to internal waters, territorial seas and archipelagic waters.

Second, the guidance offered is not limited to aspects of conservation and management but also covers fisheries development, marketing, trade, energy use, food hygiene and quality, a safe working environment, marine pollution and integrated coastal zone management. Third, the FAO Code of Conduct is not just directed to states but also specifically at persons, financial institutions and vessel-owners and charterers.

## Fisheries and marine biodiversity

As the Introduction to the Code already emphasizes, due respect for the ecosystem and biodiversity is fundamental to responsible fishing.

Specific references to biodiversity occur in articles 6.6, 7.2.2(d), 8.4.8 and 12.10.

But indirect acknowledgment of the importance of biodiversity is present throughout the code, for example in articles 2(i), 6.2, 6.5, 6.6, 7.2.2(g), 7.2.3, 7.5.2, by way of taking account of associated and dependent species and ecosystems and, of course, by way of striving for sustainable and responsible fishing.

## Implementation process

Apart from implementation efforts by all those directly involved, including states, the implementation of the FAO Code of Conduct is also fostered by three other main processes.

First, FAO's Committee on Fisheries ("COFI") monitors the implementation and application of the Code and the implementation is supported by the FAO's Global Partnerships for Responsible Fisheries.

Second, article 2(d) of the Code of Conduct envisages the development of international agreements in furtherance of the Code's objectives. So far, this has led to non-legally binding International Plans of Action ("IPOAs"):

- International Plan of Action for the Conservation and Management of Sharks (IPOA-Sharks)
- International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU)
- International Plan of Action for the Management of Fishing Capacity (IPOA-Capacity)
- International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries (IPOA-Seabirds)

Third, the FAO Fisheries Department has developed various technical guidelines for responsible fisheries in support of the implementation of the Code of Conduct.

### 3. 1993 FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas

According to UNCLOS, flag states have the obligation to exercise effective jurisdiction and control over administrative, technical and social matters on their ships on the high seas. Unfortunately, some States do not comply with this provision and adopt a very lax control in regard with international maritime and environmental obligations. Flags of convenience refers to the practice of registering a vessel under the flag of a sovereign state different of the country of the owner of the vessel, mainly to reduce costs and/or avoid safety, labour or environmental regulations of the owner's country.

Between 1991 and 1993, the FAO negotiated an agreement to address the issue of reflagging of fishing vessels into flags of convenience to avoid compliance with agreed conservation and management measures. The Agreement was adopted by the FAO Conference in 1993 and entered into force in 2003.

## Application

The Compliance Agreement shall apply, with a few exemptions, to all fishing vessels that are used or intended for fishing on the high seas and in accordance with the provisions of UNCLOS.

## Responsibility of the Flag State

The Compliance Agreement was negotiated in parallel to the UN Fish Stock Agreement; both instruments contain duties of the Flag States in relation to the conservation and management of marine living resources. The flag state has the obligation to take "such measures as may be necessary to ensure that fishing vessels entitled to fly its flag do not engage in any activity that undermines the effectiveness of international conservation and management measures" Flag States shall not allow any fishing vessel to be used for fishing on the high seas unless it has been authorized to be so used by the appropriate authority or authorities of that Party.

This general obligation is broken down in a number of measures, such as, granting an authorization unless the flag state is able to exercise effectively its responsibilities in respect of the vessel, non-authorization of a vessel still under suspension, the requirement that vessel be marked so as to be readily identified in accordance with generally accepted standards, supplying information on the operations of a vessel, and the imposition of sufficiently grave sanctions as to be effective in securing compliance with requirements of the Agreement.

## Record of fishing vessels

Each Party shall maintain a record of fishing vessels entitled to fly its flag and authorized to be used for fishing on the high seas, and shall take such measures as may be necessary to ensure that all such fishing vessels are entered in that record.

## International cooperation and information exchange

Parties shall exchange information, including evidentiary material, relating to activities of fishing vessels in order to assist the flag State in identifying those fishing vessels flying its flag reported to have engaged in activities undermining international conservation and management measures. Each party should supply FAO with all information regarding activities of fishing vessels flying its flag that undermine the effectiveness of international conservation and management measures, including the identity of the vessel and of any measures imposed.

Port States shall notify the Flag States when the Port State has reasonable grounds for believing that the fishing vessel, which is voluntarily in its port, has been used for an activity that undermines the effectiveness of international conservation and management measures. Parties shall draw to the attention of FAO, and the Flag State if it is not flying its flag, any reasonable grounds to believe that a fishing vessel has engaged in activity that undermines the effectiveness of conservation and management measures.

The Parties shall enter into cooperative agreements or arrangements of mutual assistance on a global, regional, subregional or bilateral basis so as to promote the achievement of the objectives of the Compliance Agreement.

### 3. FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing

Ports of non-compliance or ports of convenience are the entry points to the market of fish caught with no regard to international fisheries and environmental regulations. Countries operating ports of non-compliance adopt a very lax attitude in determining whether illegal, unreported and unregulated (IUU) fish are landed, trans-shipped, processed and sold in the ports.

The FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, which is not yet in force, was adopted by the FAO Conference in 2009 to harmonize and establish minimum standards for measures taken by port states in order to combat IUU fishing.

## Objective

The objective of Agreement is to prevent, deter and eliminate IUU fishing through the implementation of effective port State measures to ensure the long-term conservation and sustainable use of living marine resources and marine ecosystems.

The Agreement refers back to the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing in order to define IUU fishing.

## Illegal fishing

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 regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization 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 regional fisheries management organization.

## Unreported fishing

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 regional fisheries management organization which have not been reported or have been misreported, in contravention of the reporting procedures of that organization.

## Unregulated fishing

Unregulated fishing refers to fishing activities:

- in the area of application of a relevant regional fisheries management organization that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization; 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

## Application

It is global agreement to be applied by Port State to fishing conducted in marine areas that is illegal, unreported or unregulated in respect of vessels not entitled to fly its flag that are seeking entry to its ports or are in one of its ports, except for:

1. vessels of a neighbouring State that are engaged in artisanal fishing for subsistence, provided that the port State and the flag State cooperate to ensure that such vessels do not engage in IUU fishing or fishing related activities in support of such fishing ; and
2. container vessels that are not carrying fish or, if carrying fish, only fish that have been previously landed, provided that there are no clear grounds for suspecting that such vessels have engaged in fishing related activities in support of IUU fishing.

## Ports

### **Entry into Port**

Each Party shall designate and publicize the ports to which vessels may request entry pursuant to the Agreement and shall provide a list of its designated ports to FAO, which shall give it due publicity. The Agreement details the procedure to be followed by a Port State to grant or deny access the entry of the vessel into its port.

### **Use of Port**

Once the vessel enters into port, landing, use of the port for landing, trans-shipping, packaging and processing of fish that have not been previously landed and for other port services, including, inter alia, refuelling and resupplying, maintenance and dry-docking may be refused, if there are reasonable grounds to believe that the vessel has been involved in IUU fishing.

## Inspections

Each Party shall inspect the number of vessels in its ports required to reach an annual level of inspections agreed by the Parties. The Agreement establishes the procedure to conduct the inspection and the sharing of results.

## 4. Conservation and protection of vulnerable marine ecosystems

The FAO International Guidelines for the Management of Deep-sea Fisheries in the High Seas provide recommendations on governance and management of deep-sea fisheries to ensure conservation and sustainable use of marine living resources in the deep sea, especially vulnerable marine ecosystems (VMEs).

The guidelines set out internationally agreed upon set of criteria for identifying VMEs and a framework for management measures based on the precautionary approach and the ecosystem approach, including data collection, assessments and monitoring, control, and surveillance to be taken by States or Regional Fisheries Management Organizations.

Comparison - CBD, FAO and IMO

**Table: EBSA, VMEs and PSSA Criteria**

	<b>Ecologically or biologically significant areas (EBSAs)</b>	<b>Vulnerable Marine Ecosystems (VMEs)</b>	<b>Particularly Sensitive Sea Areas (PSSAs)</b>
<b>Organization</b>	CBD	FAO	IMO
<b>Instrument</b>	Decision IX/20, Annex I	International Guidelines for the Management of Deep-sea Fisheries in the High Seas.  UNGA Resolutions 61/105 (paras.80, 83-87), 64/72 (paras.117, 119-127), 66/L.22	Resolution A.982(24) - Revised guidelines for the identification and designation of Particularly Sensitive Sea Areas (PSSAs)
<b>Geographical Scope</b>	Areas within or beyond national jurisdiction	Deep-sea habitats and ecosystems	Any area vulnerable to the impacts of shipping
<b>Criteria</b>	<ol style="list-style-type: none"> <li>1. Uniqueness or rarity</li> <li>2. Special importance for life-history stages of species</li> <li>3. Importance for threatened, endangered or declining species and/ or habitats</li> <li>4. Vulnerability, fragility, sensitivity, or slow recovery</li> <li>5. Biological productivity</li> <li>6. Biological diversity</li> <li>7. Naturalness</li> </ol>	<ol style="list-style-type: none"> <li>1. Uniqueness, rarity</li> <li>2. Functional importance of habitat</li> <li>3. Fragility</li> <li>4. Life history attributes of species</li> <li>5. Structural complexity</li> </ol>	<ol style="list-style-type: none"> <li>1. The area must satisfy one or more of the following: uniqueness or rarity; critical habitat; dependency; representativeness; diversity; productivity; spawning or breeding grounds; naturalness; integrity; fragility; bio-geographic importance; social or economic dependency; human dependency; cultural heritage; research; baseline for monitoring studies; education</li> <li>2. It must be vulnerable to impacts by international shipping activities</li> <li>3. IMO must be in able to adopt protective measures</li> </ol>
<b>Who identifies and establishes the area meeting the criteria</b>	CBD has a facilitator role. States and competent regional organizations identify areas meeting EBSA criteria and implement conservation and management measures	RMFOs and States to identify and close VMEs to bottom fishing.	The Marine Environment Protection Committee of the International Maritime Organization works with coastal states and flag states to identify and establish new PSSAs