

DISSERTATION

Student Name: Abeeda Mugjenkar

Student Number: MGJABE001

Course: LLM (Environmental Law)

Date: 12 October 2010

Supervisor: Prof L Feris

Research dissertation presented for the approval of Senate in fulfilment of part of the requirements for the LLM Environmental Law course in approved courses and a minor dissertation. The other part of the requirement for this qualification was the completion of a programme of courses.

I hereby declare that I have read and understood the regulations governing the submission of the LLM Environmental Law course dissertations, including those relating to length and plagiarism, as contained in the rules of this University, and that this dissertation conforms to those regulations.

Signed by candidate

Abeeda Mugjenkar

The copyright of this thesis vests in the author. No quotation from it or information derived from it is to be published without full acknowledgement of the source. The thesis is to be used for private study or non-commercial research purposes only.

Published by the University of Cape Town (UCT) in terms of the non-exclusive license granted to UCT by the author.

PLAGIARISM DECLARATION**DECLARATION**

1. I know that plagiarism is wrong. Plagiarism is to use another's work and pretend that it is one's own.
2. I have used the footnote convention for citation and referencing. Each contribution to, and quotation in, this essay/report/project/ from the work(s) of other people has been attributed, and has been cited and referenced.
3. This essay/report/project/ is my own work.
4. I have not allowed, and will not allow, anyone to copy my work with the intention of passing it off as his or her own work.
5. I acknowledge that copying someone else's assignment or essay, or part of it, is wrong, and declare that this is my own work.

Signed by candidate

Signature:..... Student No **MGJABE001**

Abeeda Mugjenkar

TOPIC

Towards strengthening and harmonising fisheries governance and legal frameworks in the Southern African Developing Countries (SADC) in an effort to combat illegal, unregulated and unreported (IUU) fishing in the region.

TABLE OF CONTENTS

CHAPTER I:	INTRODUCTION	6
CHAPTER II:	THE IMPACTS AND CAUSES OF IUU FISHING IN THE SADC REGION.	15
A.	THE IMPACTS OF IUU FISHING.	16
1.	ECONOMIC IMPACTS.	17
2.	ECOSYSTEM IMPACTS.	17
3.	SOCIAL IMPACTS.....	19
B.	THE CAUSES OF IUU FISHING.....	20
1.	GOVERNANCE	23
2.	MONITORING, CONTROL AND SURVEILLANCE (MCS)	25
3.	FLAGS OF CONVENIENCE AND PORTS OF NON COMPLIANCE.	28
4.	PORT STATE CONTROL.	30
5.	TRANSHIPMENT AND TRADE ISSUES.	30
6.	CAPACITY AND SKILLS	32
7.	CERTIFICATION.	33
CHAPTER III:	STOPPING IUU FISHING: ENFORCEMENT OF EXISTING INTERNATIONAL LEGAL FRAMEWORKS.....	35
A.	THE INTERNATIONAL INSTRUMENTS IN FISHERIES GOVERNANCE.	35
1.	1982 THE LAW OF THE SEA CONVENTION (UNCLOS).....	35
2.	1993 FAO COMPLIANCE AGREEMENT (COMPLIANCE AGREEMENT).....	37
3.	1995 CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS (THE FISH STOCKS AGREEMENT).....	37
4.	2001 FAO INTERNATIONAL PLAN OF ACTION – ILLEGAL UNREGULATED AND UNREPORTED FISHING (IPOA-IUU).....	38
5.	2006 UN GENERAL ASSEMBLY (UNGA RESOLUTIONS).....	39
6.	2002. THE JOHANNESBURG PLAN OF IMPLEMENTATION: THE WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT (THE JOHANNESBURG PLAN OF IMPLEMENTATION).	40
B.	THE CHALLENGES THAT FACE THE SADC REGION IN IMPLEMENTING AND ENFORCING THEIR INTERNATIONAL OBLIGATIONS.	40
CHAPTER IV:	AN OVERVIEW OF CURRENT REGIONAL INITIATIVES, LEGAL FRAMEWORKS AND COUNTRY PROFILES IN THE SADC REGION.	45
A.	COUNTRY PROFILES	45
B.	CURRENT REGIONAL INITIATIVES AND DISCUSSION ADDRESSING IUU FISHING.	50
C.	OVERVIEW OF THE PRINCIPLE FISHERIES LEGISLATION IN THE MAIN FISHERIES SADC STATES – MOZAMBIQUE, NAMIBIA, SOUTH AFRICA AND TANZANIA.....	52
1.	MOZAMBIQUE.....	54
2.	NAMIBIA.....	56
3.	SOUTH AFRICA	57
4.	TANZANIA.....	59

CHAPTER V	A POSSIBLE SOLUTION: SADC IUU REGIONAL REGULATIONS FOR IUU FISHING - A SINGLE OVERARCHING REGULATORY FRAMEWORK TO STRENGTHEN AND HARMONISE THE EXISTING LAWS IN THE SADC REGION	62
	AREAS FOR HARMONISATION: SPECIFIC LEGAL PROVISIONS FOR THE PROPOSED SADC IUU REGULATIONS.	64
1.	DEFINITIONS	65
2.	CONTROL OF FLAGS OF NON-COMPLIANCE (FONC) AND PORTS OF NON-COMPLIANCE (PONC).....	65
3.	MONITORING CONTROL AND SURVEILLANCE	66
4.	FISHING VESSELS ENGAGED IN IUU FISHING.....	66
5.	BLACK-LISTING OF IUU FISHING VESSELS.	67
6.	PORT STATE CONTROL AND INSPECTION OF FISHING VESSELS.....	67
7	AUTHORIZATION TO ENTER PORTS IN THE SADC COMMUNITY.....	67
8.	TRADE MEASURES: THE CATCH DOCUMENTATION SCHEME.....	68
9.	TRANSSHIPMENT	69
10.	A SADC MEMBER STATE ALERT SYSTEM.....	69
11.	VESSEL REGISTER INFORMATION AND INFORMATION SHARING.....	70
12.	MUTUAL ASSISTANCE AND COOPERATION.....	70
13.	SANCTIONS.....	71
14.	THE ESTABLISHMENT OF A SADC COMMISSION FOR FISHERIES (THE COMMISSION)	71
15.	RATIFICATION OF RELEVANT INTERNATIONAL AGREEMENTS.....	72
CHAPTER VI	CONCLUSION	73
BIBLIOGRAPHY		74

Chapter I: Introduction

'It is not an exaggeration to state that the plague of illegal fishing is one of the largest environmental crimes of our time. In this context, we may well be the last generation of decision-makers with an opportunity to prevent this scandal and to bring to an end the troubling destruction of our oceans and the hardship it brings to our people.'

Dr Abraham Iyambo
Minister of Fisheries and Marine Resources, Namibia
Ministerial Conference, July 2008, Namibia

Illegal, Unreported and Unregulated (IUU) fishing is one of the most serious threats to the sustainable exploitation of living aquatic resources, jeopardizing the very foundation upon which legislation and policies are based the world over and the global efforts to promote better ocean and governance. IUU fishing also represents a major hazard to the marine environment, the sustainability of fish stocks and marine biodiversity.

International, regional, national organizations and governments have been tremendously active in the fight against IUU fishing over decades, some achieving success and others failing dismally. In 2001, the Food and Agriculture's Organization of the United Nations (FAO's) adopted an International Plan of Action on IUU fishing (the IPOA-IUU) to prevent, deter and eliminate IUU fishing.¹ The IPOA-IUU² is a voluntary instrument which aims at preventing, deterring and eliminating IUU fishing by providing countries with a set of comprehensive, effective and transparent measures on the basis of which they may act either directly or through relevant Regional Fisheries Management Organizations (RFMOs).³ The IPOA-IUU seek to address IUU fishing in a holistic manner and provide a comprehensive 'toolbox' as a checklist so that States⁴ can select those measures that are most relevant to their particular situations. The implementation of the IPOA-IUU focuses on the elaboration of national plans of action on seven types of measures such as coastal State measures, port State measures, and market related measures.⁵ The principles on which the IPOA-IUU is founded can be summarized as follows:

¹ Illegal, unreported and unregulated fishing is defined in the FAO's IPOA on page 10 of the agreement.<http://fao.org> [Accessed on 24 August 2010].

² The full text of the IPOA-IUU is available at <http://www.fao.org> [Accessed on 24 August 2010]

³ Chapter IV – Implementation of measures to prevent, deter and eliminate IUU fishing.

⁴ The FAO currently has 192 member States. See <http://www.fao.org.countryprofiles> for a complete list of all the FAO member States.[Accessed 27 August 2010]

⁵ Sections 51- 84 of the IPOA-IUU.

- Participation and coordination: Implemented by all States, in cooperation with other States, and indirectly through relevant RFMOs other appropriate international organizations. Effective coordination and consultation, and sharing of information. The full participation of stakeholders in combating IUU fishing, including industry, fishing communities, and NGOs;⁶
- Phased implementation: Measures should be based on the earliest possible phased implementation of national plans of action;⁷
- Comprehensive and integrated approach: Address factors affecting all capture fisheries. Build on the primary responsibility of the flag State. Use all available jurisdiction in accordance with international law. Address all economic, social and environmental impacts of IUU fishing;⁸
- Conservation: Be consistent with the conservation and long-term sustainable use of fish stocks and the protection of the environment;⁹
- Transparency and Non-discrimination: Implement in a transparent manner. Apply without discrimination in form or in fact against any State or its fishing vessels.¹⁰

The principles of the IPOA-IUU all resonate with the need for improved governance and change across a global spectrum.

On a regional front, Ministers from the Member States of the European Union (EU Member States) reached a political agreement on uniform regulations for the European Community¹¹ to prevent, deter and eliminate illegal, unreported and unregulated fishing on 24 June 2008. The regulation was formally adopted by the European Council on 29 September 2008 and applies as from 1 January 2010. The main thrust of its policy comes from its 2002 Action Plan, directly inspired by the FAO's International Plan of Action on IUU fishing (IPOA-IUU).

However, the efforts of the global community remain a challenge in reducing the scope of IUU fishing activities as this continues unabated. A wider range of species is now affected in

⁶ Chapter III section 9.1 of the IPOA-IUU.

⁷ Chapter III section 9.2 of the IPOA-IUU.

⁸ Chapter III section 9.3 of the IPOA-IUU.

⁹ Chapter III section 9.4 of the IPOA-IUU.

¹⁰ Chapter III section 9.5 of the IPOA-IUU.

¹¹ EC Regulations No 1005/2008 of 29 September 2008 (EC Regulations). <http://ec.europa.eu/fisheries> [Accessed on 13 February 2010].

all oceans throughout the world.¹² For example, Marine Resources Assessment Group Ltd conducted a case study in respect of the impact of IUU fishing in developing countries in July 2005.¹³ The report identifies two principal categories of fisheries that were affected by IUU fishing, namely tuna and mixed fisheries (shrimp and demersal). Tuna fishing was seen to be a particular problem for the east coast and island States, such as Kenya, Tanzania, Somalia and Seychelles. Vessels involved in these IUU activities are largely from distant water fishing nations, some of which may be registered with open register countries. The latter category is a particular problem with west coast and southern east coast African States. It is alleged that legitimate vessels take most of the illegal catch. The major infringements are zone violations. IUU operators who find new markets and circumvent current control systems, which are insufficiently adapted to the inherent complexity of trade flows mainly, cause this critical situation.

Illegal, unreported and unregulated fisheries activities are a worldwide problem, affecting both domestic waters and the high seas, and all types of fishing vessels, regardless of their size or gear.¹⁴ Overall figures show that IUU fishing practices amount to approximately 10 billion Euros a year worldwide, making IUU fishing the second largest producer of fishery products in the world.¹⁵ In 2007, the European Community (EC) imported nearly 16 billion euros of fishery products.¹⁶ Import derived from IUU catches have been conservatively estimated at 1, 1 billion euros in 2005.¹⁷ For example, toothfish fish IUU catch estimates are reviewed by the Commission for the Conservation of Antarctic Marine Living Resources

¹² Brussels, 19 May 2009 Fighting against illegal, unreported and unregulated (IUU) fishing: Impacts and challenges for ACP countries –Chapter 4. Estimating the world extent of IUU fishing at 11. www.acpsec.org/en/fisheries [Accessed 12 April 2010].

¹³ July 2005. Review of impacts of illegal, unreported and unregulated fishing on developing countries Synthesis Report by Marine Resources Assessment Group Ltd at 4 – 5. www.mrag.com [Accessed 24 August 2010].

¹⁴ Carl-Christian Schmidt Head of the Fisheries Division Directorate for Food Agriculture and Fisheries, OECD, Paris – Addressing illegal, unreported and unregulated fishing. www.sadc.international.com [Accessed 8 April 2010].

¹⁵ Billions of dollars lost to illegal fishing in the SADC region www.siaa.org.za [Accessed 19 October 2009]; Also at – Handbook on the practical application of Council Regulation (EC Regulations.) No. 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (the IUU Regulation) at 6. <http://ec.europa.eu/fisheries/iuu> [Accessed 8 April 2010].

¹⁶ Version 1 - 10/2009 Handbook on the practical application of Council Regulation (EC) No. 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (the IUU Regulation) at 6. <http://ec.europa.eu/fisheries/iuu> [Accessed 8 April 2010].

¹⁷ March 2009, Version 2 Information note on the EC Regulations 1005/2008 to prevent, deter and eliminate illegal, unreported and unregulated fishing. <http://ec.europa.eu> [Accessed 8 April 2010].

(CCAMLR)¹⁸ and are based on information from both catch and trade data. During 1997 – 2000, the amounts of toothfish taken by IUU fishing (by EC Member and non-contracting parties) were estimated around 90 000 tons, ie more than twice the level taken in CCAMLR – regulated area. Prior to 1996, CCAMLR used sightings of IUU vessels to determine the amount of IUU catch as function of daily catch rates per day fishing in a given geographical location.¹⁹

In the case of Atlantic tuna fisheries, International Commission for the Conservation of Atlantic Tunas (ICCAT)²⁰ has estimated that 10% of all tuna catches is taken by IUU fishing. ICCAT has estimated that some 25000 tons or 18% of all fishing activities for tuna over the 2001/2002 seasons may be attributed to IUU activities. ICCAT uses a combination of trade information and catch data to estimate the unreported catch of Atlantic bluefin tuna in its area of operation.²¹

Insofar as the Conservation of Southern Bluefin Tuna (CCSBT)²² is concerned, estimates of IUU catches suggest that in 1999 the catches of southern bluefin tuna by non-members were estimated to be at least 4000 tons, corresponding to one-third of the total allowable catch in 1999.²³

In Africa, some 11 million people are employed in the primary fisheries and aquaculture sector in one way or another, including 2.9 million fishers and fish farmers. An estimated 34 million are dependent on the sector where family members are included. Globally, fish is the also the most important traded agricultural commodity.²⁴

In research conducted on IUU activities, a number of experts have offered measures which countries may consider in dealing with IUU fishing. These measures, some of which will be dealt with in this paper for the purposes of the SADC region, include the following elements.

¹⁸ South Africa and Mauritius are members of CCAMLR.

¹⁹ Schmidt (note 14) at 4.

²⁰ Angola, the DRC, Madagascar Mozambique, Namibia and South Africa are members of ICCAT.

²¹ Schmidt (note 14) at 4.

²² Madagascar and South Africa are members of CCBST.

²³ Schmidt (note 14) at 4.

²⁴ A Reader – Fishing against illegal, unreported and unregulated fishing: Impacts and challenges for ACP countries at 23. Available at <http://www.brusselsbriefings.net> [Accessed on 18 November 2009].

1. Legal measures and regulations dealing with:
 - IUU fishing activities by national vessels;
 - IUU fishing activities by foreign vessels within EEZ;
 - Registration of fishing vessels.²⁵
2. Economic measures:
 - Investment rules;
 - Trade rules;
 - Rules regarding landing, transshipments and marketing;
 - Penalties, fees and restrictions.²⁶
3. Governance Issues
 - Information and Data needs;
 - Monitoring, control and surveillance activities;
 - Weak institutions – the need for capacity building
 - Limited enforcement abilities of enforcing regulations.
 - Corruption.²⁷

The Southern African Development Community (SADC) region have similarly worked together to tighten controls on fishing vessels, fishing activities, the transport of fish and trade of fish in an effort to stop illegal fishing and to better manage their fishery resources. The scale of illegal fishing across Africa is very serious and heavily decimates fish stocks across the continent.²⁸ The potential consequences for the SADC region are huge. Losses of income, livelihood options, food security as well as environmental damage are some of the repercussions of illegal fishing. As much as US\$10 billion in revenues are lost annually to IUU fishing in the region.²⁹ In addition to severe revenue loss, IUU fishing in the SADC region exacerbates food insecurity and threatens the livelihoods of coastal dependent families of the fishing industry. Moreover, IUU fishing accelerates environmental losses, such as collapse of fishing stocks and habitat destruction.

²⁵ Carl-Christian Schmidt Head of the Fisheries Division FAO – Addressing illegal unreported and unregulated fishing at 9 – 10. Available at www.sadc.org [Accessed 8 April 2010].

²⁶ *ibid*

²⁷ Fisheries and Governance – Governance in Fisheries. Fisheries Management Science Programme and Marine Resources Assessment Group Ltd. Available at www.fmssp.org.uk [Accessed on 24 August 2010]

²⁸ 18 March 2009 Tanzania SADC joins forces against illegal fishing. Available at www.illegal-fishing.info [Accessed 17 November 2009].

²⁹ 'Billions of dollars lost to illegal fishing in the SADC region.' www.saiia.org.za [Accessed on 17 November 2009].

A concerted attempt was made by the SADC Ministers responsible for marine fisheries on 4 July 2008 at the Windhoek meeting when they signed a Statement of Commitment on IUU fishing³⁰ (the Statement of Commitment) declaring, amongst others, to strengthen fisheries governance and legal frameworks to eliminate the scourge of IUU fishing in the region. The SADC Ministers representing the SADC Member States were Angola, Congo, Madagascar, Mauritius, Mozambique, Namibia, South Africa, Tanzania and Zambia (the SADC Member States).

The SADC Ministers, in the Preamble to the Statement of Commitment, recognized that the 'the fisheries sector played a central role in employment creation, food security and poverty alleviation in the SADC region.'³¹ Further, the SADC ministers 'recognized the harmful consequences of illegal, unreported and unregulated fishing on the sustainability of fisheries, the conservation of living marine resources, marine biodiversity and the entire marine ecosystem.' The SADC Ministers admitted 'awareness of the serious socio-economic consequences resulting from IUU fishing throughout the SADC region and in particular in the coastal States,' and more importantly 'reiterating their willingness to advance regional cooperation in combating IUU fishing by implementing the SADC protocol of Fisheries' and in so doing recognized the 'urgent need for implementation of measures to prevent, deter and eliminate IUU fishing as set out in the IPOA-IUU'³²

The SADC Ministers declared the following priority areas requiring urgent attention the following –

- Improving regional and inter-regional cooperation with a view to eradicating IUU fishing;
- Strengthening fisheries governance and legal frameworks to eliminate illegal fishing;
- Developing a regional monitoring control and surveillance (MCS) strategy and regional plan of action in relation to IUU fishing; and
- Strengthening fisheries monitoring, control and surveillance (MCS) capacity.³³

³⁰ 4 July 2008, Namibia 'Statement of Commitment by the SADC ministers responsible for marine fisheries on IUU fishing.' www.commonwealthfisheries.org [Accessed on 19 November 2009].

³¹ Preamble to the Statement of Commitment (note 30).

³² Statement of Commitment at 2.

³³ Statement of Commitment at 2.

To address these priorities, the Ministers agreed to:³⁴

- Support each other in the development and implementation of national plans of action against IUU fishing as vital building blocks to enable each member State to participate in sub-regional, regional and international actions against illegal fishing;
- To establish a task force to identify and examine, having regard to any global initiative any further action and measures that could be undertaken or taken at regional level to intensify the fight against IUU fishing;
- Explore the possibility of a regional MCS support centre as a mechanism to facilitate cooperation as well as creating awareness in relation to IUU situation in the SADC region;
- Involve the entire chain of processors, traders, transporter and consumers in the undertaking to stop illegal fishing, in order to ensure that only fish that is harvested enters the value chain;
- Establish a strong system of governance by allowing all stakeholders – including civil society and non-state organizations to play a role in fighting illegal fishing;
- Review and harmonize national laws to ensure that they:
 - Incorporate internationally agreed measures to combat IUU fishing as reflected in international instruments on Port State control;
 - Comprise sanctions of sufficient gravity as to deprive offenders of the benefits accruing from their illegal activities and to deter further IUU fishing; and
 - Provide for harmonious and coherent offences and penalties schemes throughout the SADC region;

The need for strengthened fisheries governance and legislative reform at international, regional and national levels has been increasingly recognized as one of the main requirements if IUU fishing were to stop.³⁵ Hence, against the above Statement of Commitment and the urgent priorities outlined, this paper will focus on two of the main regional challenges which add to the problem facing the region in its fight against IUU fishing, namely the challenges facing governance with regard to fishing in the SADC region and secondly, the ways and means of strengthening and harmonizing the current legal

³⁴ A list of fifteen commitments is listed in the Statement of Commitment (note 30) at 2 – 5.

³⁵ A Reader (note 24) at 24. <http://www.acpsec.org/en/fisheries> [Accessed 12 April 2010]; Also see: Dr Andre Standing, Institute of Security Studies, Cape Town – Improving governance to combat illegal fishing in Africa. <http://www.stopillegalifishing.com> [Accessed 4 June 2010]; Also see: Fisheries and Governance FMSP Policy Brief 5 www.mrag.co.uk [Accessed 24 August 2010].

frameworks by proposing a single overarching regional legal framework for IUU fishing. The latter framework must find its genesis in the prevention, deterrence and elimination of IUU fishing by providing all the SADC Member States with comprehensive, effective and transparent measures to deal with the common problems that face them.

It is not within the scope of this paper to outline all the relevant legal provisions but to concentrate on the most salient ones, which will give effect to the priority areas which has been identified for attention by the Ministerial delegation which was held in Namibia on the 4 July 2008 at the SADC Marine Fisheries Ministerial Conference to stop illegal fishing. These are:

- Strengthened fisheries monitoring control and surveillance capacity and capability;
- Improved regional and inter-regional co-operation;
- Strengthened fisheries governance and frameworks; and
- Engaging all those involved in the chain of custody to overcome the global fight against illegal fishing.
- Prohibit access to any SADC port by vessels listed on IUU lists;
- Fully control the movement of fishing vessels;
- Impose a total ban on transshipment at sea of fish and sea products;
- Develop harmonized and deterring sanctions against offenders at a regional level;
- Make an offence under national law for any person to bring into any area under the jurisdiction of any SADC member state any fish and products in contravention of international conservation and management measures;
- Reinforce control by the Member States on the activities of the vessels flying their flag.³⁶

Finally, the paper will conclude that one of the important solutions to the problem facing the region in respect of IUU fishing is to provide the region with a single overarching legal framework and will propose measures to be considered in regulations for the SADC region (the SADC IUU Regulations).

³⁶ Ministerial Conference – SADC Marine Fisheries Ministerial Conference to stop illegal fishing: the billion dollar treasure hunt. Available at www.stopillegalfishing.com [Accessed 19 October 2009).

This paper will take the following scheme:

Chapter I: The Introduction

Chapter II: The impacts and causes of IUU fishing in the SADC region.

Chapter III: Stopping IUU fishing: Enforcement of existing international legal frameworks.

Chapter IV: An overview of current regional initiatives, legal frameworks and country profiles in the SADC region.

Chapter V: A possible solution: SADC IUU Regional Regulations for IUU fishing – what should be considered in a single overarching regulatory framework to strengthen and harmonize the existing laws in the SADC region.

Chapter II: The impacts and causes of IUU fishing in the SADC region.

Illegal, unreported and unregulated (IUU) fishing is defined within the FAO's International Plan of Action on IUU fishing (IPOA-IUU)³⁷ as the following:

'Illegal' fishing refers to activities³⁸

- Conducted by national and foreign vessels in waters under the jurisdiction of a state, without the permission of that state or in contravention of its laws and regulations, or
- Conducted by vessels flying the flag of states that are parties to a regional fisheries management organisation (RFMO) in contravention of the conservation/management measures adopted of that organisation in which the state concerned is bound or of applicable international law, or
- In violation of national laws or international obligations, including those by cooperating states to a relevant RFMO.

'Unreported' fishing refers to fishing activities which³⁹

- Have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations, or
- Have been undertaken in an 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 activities⁴⁰

- In an area of application of a relevant RFMO conducted by vessels without nationally, or by those flying the flag of a state not a party to that organisation, or by a fishing entity, in a manner that is not consistent with, or which contravenes, the conservation and management measures of the RFMO concerned, or

³⁷ The IPOA-IUU to prevent, deter and eliminate illegal, unreported and unregulated fishing, signed in Rome in 2001 is a voluntary instrument that applies to all States and entities and to all fishers. It focuses on the nature and scope of IUU fishing, the IPOA's objective and principles and the implementation of measures to prevent, deter and eliminate IUU fishing.

³⁸ Para 3.1 of the IPOA-IUU.

³⁹ Para 3.1 of the IPOA-IUU.

⁴⁰ Para 3.1 of the IPOA-IUU.

- In areas, or of fish stocks, in relation to which there are no applicable conservation or management inconsistent with state responsibilities for the conservation of marine living resources under international law.’

IUU fishing is an ever-evolving complex combination of behaviours and ranges in the SADC region from under- or misreporting of catches by legitimate operators, sophisticated schemes of laundering fish to circumvent international trade measures and elements of organised crime syndicates⁴¹, as well as blatant violation of coastal States’ Exclusive Economic Zones (EEZs)⁴² and conflicts between unlicensed foreign vessels and local artisanal fishermen.⁴³

A. The impacts of IUU fishing.

The impacts of IUU fishing are far reaching. It is difficult to obtain concrete figures on illegal fishing activities, precisely because they are illicit and therefore evade the established control measures and monitoring systems.⁴⁴ However a number of studies have opted to gather information from management authorities, infraction registers, port authorities, industry representatives and the like. IUU fishing is an activity that is unaccounted for in any direct way. Most of the information and data is therefore anecdotal to the point that we can only get a very general overview of how much fish is taken and how many fishing vessels and fishers are involved.⁴⁵ In the SADC region the impacts of IUU fishing can generally be divided into economic, biological and social impacts.

⁴¹ Shaheen Moolia - Contextualising IUU fishing of marine resources in South African waters at 5. www.feike.co.za [Accessed 3 June 2010].

⁴² M.G Hassan and A Mwangura – IUU fishing and insecurity impacts on Somali fisheries and marine fisheries ‘*The distant-water fishing vessels include of those sailing under flags of conveniences such as China, France, Germany, Honduras, India, Italy, Japan, Kenya, Korea, Pakistan, Portugal, Saudi Arabia, Russia, Spain, Sri Lanka, Taiwan, Thailand and Yemen*’ regularly operate in Somalian waters. www.stopillegalfishing.com [Accessed 2 June 2010].

⁴³ *Ibid.* at 6.

⁴⁴ January 2008 Report of the FAO Regional Workshop on Port State Measures to combat illegal, unreported and unregulated fishing : Dr Douman ‘What do we know about IUU fishing globally’ at 6. www.stopillegalfishing.com [Accessed 2 June 2010]

⁴⁵ Schmidt (note 14) at 3.

1. Economic Impacts.

The countries that bear the greatest economic costs from IUU fishing are largely those in the developing world, where in many places IUU fishing is rampant. IUU fishing on the high seas surrounding the SADC region have major impacts on the economy of the countries. It is estimated that IUU fishing in the SADC region causes annual losses in the order of US\$10 billion.⁴⁶ In sub-Saharan Africa illegal fishing is worth about US\$1 billion a year, a figure that has drawn attention to the enormity of the crime and that has driven the quest by Southern African leaders to win back these fish.⁴⁷ In recent case studies⁴⁸ undertaken on the economic losses as a result of IUU fishing in the region, some of the figures reflect as follows: Guinea – US\$100m; Somalia – approximately US\$90m; Angola – US\$50m; Mozambique – US\$40m and Sierra Leone – approximately US\$30m.

The most obvious economic impact of IUU fishing on developing countries is direct loss of the value of the catches that could be taken by the coastal state if the IUU fishing was not taking place. The coastal state losses are felt in actual revenue that could have accrued in the form of landing fees, licence fees, taxes and other levies which are payable by legal fishing operators. In addition to direct macro-economic impacts, there are indirect and induced impacts. These include the impacts resulting from loss of income and employment in other industries and activities in the supply chain and fishing operations. In addition, IUU fishing depresses the demand for fishing gear, boats and equipment, and other inputs that otherwise might be present; fish processing and packaging, marketing and transport. Any associated reduction in fishing incomes will also have impacts on the demand for consumption goods by fishing families.⁴⁹

2. Ecosystem Impacts.

IUU fishing results in disastrous environmental damages to the marine biodiversity. The General Assembly of the United Nations recognises that 'IUU fishing remains one of the

⁴⁶ Schmidt (note 14) at 3.

⁴⁷ May 2008. Botswana Stop illegal fishing in Southern Africa at (v). www.stopillegalfishing.com [Accessed 18 November 2009].

⁴⁸ Hassan, M.G and Mwangura, A – IUU fishing and insecurity impacts on Somali fisheries and marine resources. www.stopillegalfishing.com [Accessed on 2 June 2010].

⁴⁹ July 2005. Synthesis report. Review of impacts of illegal, unreported and unregulated fishing on developing countries. www.stopillegalfishing.com [Accessed 1 June 2010].

greatest threats to marine ecosystems and continues to have serious and major implications for the conservation and management of ocean resources.⁵⁰ It greatly damages sustainability of fisheries. This is the case in many fisheries where catches get un- or misreported to public authorities and contribute to over-fishing.⁵¹ Those practices have negative short term consequences, but they also distort the scientific assessment of the stocks concerned thereby undermine their future management, as the catch data used for reference do not reflect the reality of the fishery. Management decisions made are therefore likely to be inadequate, and will fail to conserve stocks as intended. In extreme circumstances this can lead to the collapse of a fishery, or serious impairment of efforts to rebuild stocks that are already depleted.⁵²

A stark example of over-fishing and its consequential distortion of scientific data of the stock in the rock lobster sector in South Africa was the matter involving a commercial fishing company, *Houtbay Fishing Industries (Pty) Ltd v The Minister of Environmental Affairs and Tourism and Others (Houtbay Fishing)*.⁵³ The company was exposed in May 2001 when the Department of Environmental Affairs and Tourism (DEAT) received an anonymous tip-off about the illegal harvesting of rock lobster and other fish. This led to the seizure of a shipping container on route to the USA and owned by a commercial quota holder, Hout Bay Fishing.⁵⁴ Although the import declarations appeared in order in the USA, they differed from the export permit issued by the South African authorities. A subsequent investigation identified approximately 20 other such shipments. It was discovered that Houtbay Fishing had been involved in extensive illegal harvesting of rock lobster and other fish from 1987 to 2001.⁵⁵ The impact of Houtbay Fishing's actions was particularly severe for the South Coast rock lobster fishery, where the catch per unit effort after 1990, started to decline to a low point in about 1998. Following the removal of Houtbay Fishing from the fishing industry in 2000⁵⁶, the catch per unit effort gradually increased. This suggests that Houtbay Fishing's

⁵⁰ United Nations General Assembly, Resolution. 61/105 of 6 March 2007.

⁵¹ May 2008. Study and analysis of the status of IUU fishing in the SADC region and an estimate of the economic, social and biological impacts. www.stopillegalfishing.com [Accessed 2 June 2010].

⁵² Environmental Justice Foundation - Impacts of IUU fishing at 163. <http://www.eifoundation.org> [Accessed on 1 June 2010].

⁵³ Case Number: Cape Provincial Division - 7390/01.

⁵⁴ Case Number: Cape Provincial Division – 8788/01.

⁵⁵ Ibid.

⁵⁶ The Director of Houtbay Fishing, Mr Arnold Bengis was criminally tried in the USA under the case reference: United States of America vs Arnold Bengis S1 03 Cr.308 (LAK). Bengis is currently serving a prison sentence in the USA. A parallel civil law process was held in South

over-catches were the direct cause of the decline, and its removal from the fishery the primary reason for the subsequent strong recovery.⁵⁷

Other widespread manifestations of IUU practices include fishing activities targeting juveniles, in contravention with rules on minimum sizes, or fishing during periods or in areas normally closed to let the stock spawn. They jeopardize the renewal of fish stocks concerned and may put into question their survival.⁵⁸ The environmental consequences of IUU fishing go beyond damages to fish stocks. Those practices may also endanger marine ecosystems and habitats. Fishing with prohibited methods can notably result in a high proportion of unwanted species (fish species, but also seabirds or turtles) being discarded. Fishing in protected areas may trigger irreversible damage to vulnerable marine ecosystems, like coral reefs.

3. Social Impacts

The social impacts mainly felt by developing countries are namely, food security in that the impacts the IUU activities has a direct result on food nutrition availability and quality in the local communities; impacts caused between illegal operators and legitimate fishers. For example, the impact of IUU fishing on sedentary species is mostly a concern in South Africa, which suffers large-scale poaching of abalone linked to organized crime⁵⁹. The closure of the fishery in 2008 was an emergency measure as an attempt to save dwindling stocks and is having direct and social and economic impacts on the legal fishers. With the IUU fishing being linked to crime syndicates and the drug trade, the social impacts of closure were also related to the safety of enforcement personnel. Local fishers who have to compete with larger vessels feel further impacts.⁶⁰ Social impacts are borne by local fishing communities

Africa in the matter between The Minister of Environmental Affairs and Tourism v Hout Bay Fishing. All the company's assets were forfeited to the state in the aforesaid case in or about 2005.

⁵⁷ Maria Hauck and Marcel Kroese, Fisheries compliance in South Africa: A decade of challenges and reform (1994 – 2004) at 2. www.sciencedirect.com [Accessed 1 June 2010]

⁵⁸ 17 October 2007 Brussels – Council regulation establishing a community system to prevent, deter and eliminate illegal, unreported and unregulated fishing Impact Assessment at 12 <http://ec.europa.eu/fisheries> [Accessed 14 October 2009]

⁵⁹ Brick, Muchapondwa, Visser: Abalone poaching, methamphetamine use, criminal activity in South Africa and the associated implications for resource management. www.efdinitiative.org; Jonny Steinberg: The illicit abalone trade in South Africa ISS Paper 105 dated April 2005.

⁶⁰ Sandy Davies - Stop Illegal Fishing Programme Coordination Team Paper delivered on 4 July 2008 at SADC Ministerial Fisheries Conference to Stop Illegal Fishing, Windhoek, Namibia -

and legitimate operators and processors, who directly feel the consequences of resource rarefaction, often-violent conflicts on the fishing grounds, and the rising costs related to diminishing catches per unit effort.⁶¹ The social costs associated with IUU fishing is high as it affects the livelihoods of fishing communities, particularly in developing countries, and because many of the crew on IUU fishing vessels are from poor and underdeveloped parts of the world and often working under poor social and safety conditions.⁶²

B. The causes of IUU fishing

There is little doubt that the underlying causes for IUU fishing are complex. In many cases, the actual activity of fishing is not the origin of the IUU problem. The origins may be as diverse as the need to address individual starvation, attempting to alleviate poverty for previously marginalized communities and pure economic greed aimed at taking advantage of potential loopholes in regulations to the financial benefit of a select group of individuals.⁶³

Therefore, over time, countries have strengthened their national monitoring, control and surveillance systems⁶⁴, vessels have been arrested, detained and fined⁶⁵, regional fishery management bodies and organisations have been formed⁶⁶ and joint surveillance activities have taken place⁶⁷ – but still the illegal fishing continues. The crises are exacerbated by high levels of pirate fishing, more particularly off the coast of Somalia on the west coast of

'The Billion Dollar Treasure Hunt.' Record of proceeding at 7. www.stopillegalifishing.com [Accessed 26 February 2010].

⁶¹ 19 May 2009 Brussels – IUU fishing, overcapacity and the need for sound fisheries and management at 2. <http://ec.europa.eu/fisheries/iuu> [Accessed 8 December 2009].

⁶² Ignacio Escobar et al - OECD workshop on IUU fishing activities at 2-3. www.stopillegalifishing.com. [Accessed 1 June 2010].

⁶³ (May 2008 Botswana. Stop Illegal Fishing in Southern Africa – Illegal, Unreported and Unregulated Fishing at 3. www.stopillegalifishing.com [Accessed 18 November 2009].

⁶⁴ 1 October 2008. SADC countries to tighten up on illegal fishing. A commitment was given to develop a regional MCS strategy and regional plan of action at the SADC Ministerial conference of 4 July 2008. www.worldfishing.net [Accessed on 18 November 2009].

⁶⁵ 11 May 2010. Iranian-flagged fishing vessel arrested for IUU fishing. '*The owner and the captain of the Iranian-flagged vessel, the Payam were fined USD 45000 for fishing without fishing licences in Mozambiquan waters, for having no logbook onboard and for not failing to comply with entry/exit EEZ reporting in the Mozambiquan waters.*' It was also report that the Mozambiquan authorities seized the Namibian-flagged longliner, the Antillas Reefer in 2008 for fishing illegally in the Mozambiquan waters. www.fis.com [Accessed 25 May 2010].

⁶⁶ Ibid. Mozambique has stepped up its exchange information with RFMO's.

⁶⁷ A number of bilateral and multi-lateral sea patrols have been undertaken between South Africa and its neighbouring coastal states in recent years. In March 2009, a joint sea surveillance patrol between South Africa, Mozambique, Kenya and Tanzania lead to the arrests of IUU vessels in these countries.

Africa. Somalia loses US\$300 million a year to pirates.⁶⁸ Further, sophisticated and rich fishing nations are turning increasingly to the waters of the African and poorer countries, which are often unable to effectively, protect their fishing grounds. Records of the Census and Statistics of Hong Kong show large quantities of abalone being imported into Hong Kong from South Africa's neighbouring SADC countries of Mozambique, Swaziland and Zimbabwe. Poached abalone from South Africa is also known to be traded through Namibia.⁶⁹ In addition, many industrialised nations negotiate 'sweetheart deals' for their distant water fleets. Some offer debt ridden countries cash to open up their waters to ruthlessly efficient operators of industrialised fishing fleets. The UN estimates that the EU is involved in about a dozen of the approximately 100 such agreements known to exist worldwide.⁷⁰

There has been a tendency in the last few decades to intensify fishing in many African countries by foreign boats, and growing export of fish away from the continent. Although much of this foreign fishing is regulated through formal license agreements, a large number of boats seem to fish in African waters without licences ignore the rules that limit fishing intensity and conserve the marine ecosystem. Foreign fishing boats are the cause (not exclusively) of pressure on fish stocks in African waters. There have also been largely unregulated growths in small scale or artisanal fishing in many African countries. Unfortunately, as fish become less abundant, there is a trend in some countries for local fishermen to use more destructive and desperate means to sustain catches, such as the use of very fine meshes and even dynamite.⁷¹ The situation is made all the more difficult due to the trans-national nature of certain illegal fishing activities. Illegally caught fish may be transhipped on the high seas, or it is laundered through foreign ports. Several so-called ports of convenience⁷² are thought to exist in Africa, where illegal fishing boats seem to congregate. It has, therefore, become vital for countries to work together to combat illegal fishing.

⁶⁸ *Ibid.* at 14.

⁶⁹ May 2008 Botswana Illegal Fishing in Southern Africa – The illegal trade in South African Abalone at 79. www.stopillegalfishing.com [Accessed 18 November 2009].

⁷⁰ May 2008 Botswana Illegal Fishing in Southern Africa – Oceans in Crisis at 13. www.stopillegalfishing.com [Accessed 18 November 2009].

⁷¹ May 2008 Botswana Stop Illegal Fishing in Southern Africa – Improving governance to combat illegal fishing in Africa at 16. www.stopillegalfishing.com [Accessed 18 November 2009].

⁷² See section 2 below on 'Ports of Convenience'.

Some of the key economic, institutional and social drivers and/or causes of IUU activities which have been identified include:⁷³

- Existence of excess or idle fishing capacities, which incite operators to engage in IUU activities to get higher revenues and which reduce fishing vessels and crew cost;
- Incompleteness of the international legal frameworks, which allow operators engaged in IUU fishing activities to face reduced operating and risk cost;
- Insufficient or ineffective of national and international regulations (including low MCS capacities and low level of sanction), which reduce the cost of risk faced by IUU operators;
- Existence of tax havens and other non-cooperative practices, which may provide IUU operators with low tax and reduce the cost of risk;
- Prevalence of poor economic and social conditions in some countries, which reduces the cost of fraud, crew costs, the cost of risk and the cost associated with maintaining appropriate safety and working standards;
- Existence of subsidies that reduce the cost of IUU fishing capacity;
- Existence of fiscal and foreign investment rules that reduce the cost of IUU fishing capacity;
- Underestimation and non-internalisation of the social cost generated by IUU fishing activities, which reduce the moral/reputation cost IUU operators might face.

At the SADC Ministerial conference on 4 July 2008, Sandy Davies⁷⁴ identified some of the key causes for IUU fishing issues in Southern Africa to be: poaching, misreporting of catches, transshipment at sea, trade of black listed vessels and by-catch and discarding of fish within certain fisheries.

In addition to the observations of Davies above, there are a number of factors that are thought to influence the nature and scale of IUU fishing in the SADC region. There is thus an urgent need for a new approach to manage and strengthen these concerns and current governance practises in order to make a practical and lasting difference in the region.

⁷³ Carl-Christian Schmidt Head of the Fisheries Division FAO– Addressing illegal unreported and unregulated fishing at 9 – 10. www.sadc.org [Accessed 8 April 2010].

⁷⁴ Davies (note 60) at 6 – 7. www.stopillegalfishing.com [Accessed 26 February 2010].

1. Governance.

The term 'governance' covers both: (i) the activity or process of governing; (ii) those people charged with the duty of governing; and (iii) the manner, method and system by which a particular society is governed.⁷⁵ In fisheries it is usually understood as the sum of the legal, social, economic and political arrangements used to manage fisheries.⁷⁶ It has international, national and local dimensions. It includes legally binding rules, such as national legislation or international treaties as well as customary social arrangements.⁷⁷ Governance is fundamental to fisheries, determining the manner in which power and influence are exercised over their management.

The need for strengthened fisheries governance at national and regional levels has been increasingly recognised by the international community⁷⁸ as one of the main requirements if IUU fishing is going to stop. In the SADC region, a recent step was taken by Dr Abraham Iyambo, Minister of Fisheries and Marine Resources in Namibia which lead the way on have of the coastal States of the South African Development Community in Namibia commit to measures to overcome IUU fishing in the region.⁷⁹

It has been proven that there is a significant relationship between governance and IUU fishing⁸⁰ and that the operators involved in IUU fishing will take advantage of the weak and in some cases non-existent institutional structures in those countries with the lowest governance indexes, to line their pockets.⁸¹ Illegal fishing seems to thrive in countries where

⁷⁵ What is 'governance' <http://www.fao.org/fishery> [Accessed on 27 September 2010].

⁷⁶ Fisheries Management Science Programme Policy Brief 5 – Fisheries and Governance www.mraq.co.uk [Accessed on 24 August 2010].

⁷⁷ FAO 2001. FIGIS topics and issues fact sheet: Fisheries governance. www.fao.org [Accessed on 24 August 2010]

⁷⁸ Ministers from the Member States of the European Union (Member States) reached a political agreement on uniform regulations for the European Community to deal with IUU fishing – See EC Regulations No 1005/2008 of 29 September 2008 that came into force on 1 January 2010.

⁷⁹ (note 30). 4 July 2008. Namibia 'Statement of Commitment by the SADC ministers responsible for marine fisheries on IUU fishing.' www.commonwealthfisheries.org [Accessed on 19 November 2009].

⁸⁰ (note 13). Review of impacts of illegal, unreported and unregulated fishing on developing countries Marine Resources Assessment Group Ltd at 13. www.mraq.co.uk [Accessed 1 June 2010].

⁸¹ (note 51). Study and analysis of the status of IUU fishing in the SADC region and an estimate of the economic, social and biological impacts at 31. www.stopillegalifishing.com. [Accessed 2 June 2010].

open and accountable governance is lacking and where the voices of civil society may be muted as a result.⁸²

Good governance appears to go hand in hand with good MCS systems and procedures, the political will to enforce regulations, cooperation with neighbours on surveillance, the elimination of possibilities of IUU activity, and active participation in regional and sub-regional fisheries agreements.⁸³

Governance is also a particular problem for the high seas fisheries, including high seas fisheries that developing countries are or could be participating in. Regional fisheries management organisations play a crucial roll in the combat of IUU high seas fishing activities. A number of RFMOs have recently developed both a white list of vessels permitted to fish within the RFMO area as well as black lists of vessels that are not in possession of a permit to fish. There is however doubt whether this initiative will be effective.⁸⁴ The current problem is that only a few RFMOs have implemented catch or trade documentation measures, and applied it only to only a limited number of species. However, Schmidt is of the view that if the listing of vessels is properly maintained and sightings of vessels are continued over some time, it offers possibilities in particular when combined with other measures such as national port state control measures.⁸⁵

Despite national fisheries and policies in SADC coastal countries, several problems continue to exist with fisheries governance. To eradicate IUU fishing, general consensus⁸⁶ appears to exist on proposals to improve fisheries governance and eradicate IUU fishing. Some of the core areas are the following:

- Monitoring Control and Surveillance – strengthen MCS capabilities and develop an MCS network so that it can provide training and support to coastal States;
- Flags of Convenience and Ports of Non-Compliance –
- Transshipment and trade issues;
- Capacity and skills;
- Certification

⁸² Standing (note 35). www.stopillegalfishing.com [Accessed 26 February 2010].

⁸³ (Note 13) at 13. www.mrag.co.uk [Accessed 1 June 2010].

⁸⁴ Schmidt (note 14) at 7. www.sadc.international.com [Accessed 8 April 2010].

⁸⁵ Ibid at 7.

⁸⁶ Monitoring, control and surveillance: the key to ending illegal fishing. <http://www.eldis.org> [Accessed on 21 September 2010]; Fisheries Management Science Programme Policy Brief 5 – Fisheries and Governance www.mrag.co.uk [Accessed on 24 August 2010].

2. Monitoring, Control and Surveillance (MCS)

There are various definitions of MCS. The following one is by the FAO and most commonly used:

Monitoring - means the collection, measurement and analysis of fishing activity including, but not limited to : catch, species composition, fishing effort, by-catch, discards and area of operations. This information is primary data that fisheries managers use to arrive at management decisions. If this information is unavailable, inaccurate or incomplete, managers will be handicapped in developing and implementing management measures.

Control – involves the specifications of the terms and conditions under which resources can be harvested. These specifications are normally contained in national fisheries legislation and other arrangements that might be nationally, sub-regionally, or regionally agreed. The legislation provides the basis for which fisheries management arrangements, via MCS, are implemented.

Surveillance – involves the regulation and supervision of fishing activity to ensure that national legislation and terms, conditions of access and management measures are observed. This activity is critical to ensure that resources are not overexploited, poaching is minimised and management arrangements are implemented.⁸⁷

Governments around the world have recognised the negative effects of over-fishing on resource sustainability.⁸⁸ Responding to these various illegal practices is a daunting challenge.

The sum total of IUU fishing activities have seen the rapid depletion of key fish stocks in the 1980s and the 1990s has caused governments to seek more effective control over fishing activities and the movement of fish products.⁸⁹ There is a strong degree of international

⁸⁷ This paper adopts the FAO definition. <http://www.fao.org/docrep> [Accessed on 21 September 2010]

⁸⁸ Carl-Christian Schmidt Head of the Fisheries Division Directorate for Food Agriculture and Fisheries, OECD, Paris – Addressing illegal, unreported and unregulated (IUU) fishing at 2. www.sadc.org [Accessed on 8 April 2010].

⁸⁹ 1 October 2008. SADC countries to tighten up on illegal fishers. www.worldfishing.net [Accessed on 18 November 2009].

consensus regarding best practice in how to monitor and inspect commercial fishing vessels in order to limit the opportunities for crime.⁹⁰ However, the stark reality is that many countries lack the capacity⁹¹ and skills to achieve anywhere near the necessary degree of law enforcement. Experts in Tanzania⁹², for example, allude to the poor control mechanisms in licensing, monitoring and setting of fishing quotas which are said to be amongst the major factors contributing to a crippling loss of over \$200m per year the country suffers from the lack of enforcement capacity to deal with illegal foreign fishing trawler operations. It has also been established that Tanzania loses billions through fish smuggling by foreign fishing vessels in its EEZ due to the absence of local observers on-board to monitor fishing activities of vessels.⁹³ Other key challenges are seen to be amongst others the following: limited knowledge of the scale of IUU activities in the region, limited regional assets and capacity⁹⁴, extensive size of areas requiring surveillance and significant dispersal of fleets, limited, and in many cases non-existent coordinated systems for MCS regionally, and absence of any directed body to regionally oversee MCS activities and information exchange.⁹⁵

Some of the SADC States have attempted to strengthen its MCS capacity over recent years to prevent, deter and eliminate IUU fishing in varying degrees. For example, South Africa acquired 4 large environmental protection vessels⁹⁶ between the period 2005 and 2007 in order to patrol its coast and lend assistance to its neighbouring SADC States. This has brought some confidence to the region. On 26 March 2009, South Africa's off-shore environmental protection vessel, the Sarah Baartman, returned after completing a four-nation transboundary fisheries patrol in the SADC region in the South African, Tanzanian, Mozambican and Kenyan waters. The joint patrol was at the time the first ever multilateral patrol involving four countries aimed at improving and strengthening fisheries surveillance

⁹⁰ Monitoring, control and surveillance: the key to ending illegal fishing <http://www.eldis.org> [Accessed 21 September 2010]; Also see: Tackling illegal fishing practices in Africa's protected waters <http://www.eldis.org> [Accessed 21 September 2010] and Schmidt at 2-3 (note 14).

⁹¹ See Chapter IV below – Section A – Country Profiles.

⁹² May 2008. Study and analysis of the status of IUU fishing in the SADC region and an estimate of the economic, social and biological impacts at 36 – 37. www.stopillegal fishing.com [Accessed on 2 June 2010].

⁹³ Ibid at 31.

⁹⁴ Ibid at p 31.

⁹⁵ Ibid at 31.

⁹⁶ The offshore vessel, Sarah Baartman, a a 83m regional patrol vessel and three 47m inshore vessels, the Lillian Ngoyi, Ruth First and Victoria Mxenge

and law enforcement activities within the Southern African Developing Community (SADC) region and along the African coastline, as well as increasing co-operation between fisheries surveillance organizations of the SADC countries.⁹⁷ Namibia has for example reduced IUU threats and incidence to a minimum by strengthening its MCS capacity by increasing its patrol vessels, aerial surveillance crafts, fisheries inspectors and observers and vessel monitoring systems.⁹⁸

The recommendations proffered at the SADC Ministerial Fisheries Conference on 4 July 2008,⁹⁹ was this: port state controls should be harmonised; training should be subject to regional standards for field operations and in the analysis of VMS information; governments must set adequate budgets; autonomous observer programmes should be implemented further, possibly at a regional level; license fees and penalties should be harmonised. At the national level, countries can address IUU fishing by implementing measures to deny access to known IUU fishing vessels to ports. The most commonly found challenge was the need for regional MCS networks, observer programmes, joint air and sea patrols where resources are lacking; and data and information systems. Fisheries monitoring, control and surveillance (MCS) activities are thus key components of the fisheries management and governance process and with the political support to implement regional MCS infrastructure, it is believed that most of the challenges facing the region could be addressed via these mechanisms.¹⁰⁰

However, much still needs to be done. Improvement in some areas such as port inspections and the exchange and coordination of information and data (e.g. licence data, vessel registry information etc) as well as data captured at sea and on land will improve the enforcement capabilities if done in a regional context. To this end, it will greatly assist the region if the region establishes a dedicated body to regionally oversee MCS activities and information exchange. In order to strengthen its security and intelligence profile, the region also lacks a common effective information infrastructure and harmonised data security policies that would

⁹⁷ 26 March 2009. Department of Environmental Affairs and Tourism Media Statement – Sarah Baartman EPV returns after successful transboundary patrol. www.sancornf.ac.za [Accessed 21 September 2010].

⁹⁸ (note 51) at 33.. Available at www.stopillegalfishing.com [Accessed on 2 June 2010].

⁹⁹ July 2008. SADC Ministerial Fisheries Conference to Stop Illegal Fishing. 'The Billion Dollar Treasure Hunt.' Held in Namibia. Record of Proceeding at 9 - 10. www.stopillegalfishing.com. [Accessed 26 February 2010].

¹⁰⁰ Duncan Copeland Environmental Justice Foundation, UK 'Improving national fisheries MCS capability and capacity with a view to eradicating IUU fishing' Available at www.stopillegalfishing.com [Accessed on 26 February 2010].

allow the States to retain and exchange MCS data. Many existing MCS systems within the SADC coastal States can improve significantly through greater knowledge, improved information exchange and a more analytical approach to MCS.

3. Flags of Convenience and Ports of Non Compliance.

Flags of convenience (FOC)¹⁰¹, or open registries, allow unscrupulous operators to avoid any regulation of their activities. They fish anywhere and anytime they wish to, in contravention of the regulations put in place by RFMOs to manage and conserve fish stocks.¹⁰²

The use of open registers or FOC arrangements poses significant problems. As one country or region more aggressively acts to deter IUU fishing, activities are displaced to another which is less willing or able to do so. As a flag state tightens its registry, vessels simply reflag to another less restrictive State and as more States tighten their registers, new FOC countries emerge. Jo Kuper of Greenpeace International¹⁰³ estimate that countries operating open registers derive only minimal benefit from that operation, whereas there is huge economic benefit to vessels from not having to meet the standards expected of registering in responsible flag states. Vessels are tempted to register with open registers because of the economic benefits that accrue, or if they are unable to register with a responsible flag state, for instance if that state has a limit on the number of high seas licenses it will issue.

The losses caused by PONC and FONC activities relate to a number of factors, including the effectiveness of a State's MCS infrastructures and the means of arraignment of IUU vessels and the effectiveness and efficiency of port controls and vessel inspections. There are a

¹⁰¹ February 2008. The impact of flags and ports of non-compliance in the SADC region Vol 2 – Report at 5. www.stopillegalfishing.com [Accessed 21 September 2010] describes flag of convenience as 'flags on non-compliance (FONC), where the flag State does not exercise effective control over its fishing vessels, and 'ports of non-compliance' (PONC), where the port States is unwilling or unable to exercise measures to combat IUU fishing activities, including inspections to detect illegal, unreported and unregulated caught fish and prohibitions on the landing or transshipment of such catches.'

¹⁰² Kelly Rigg, Remi Parmentier and Duncan Currie – Halting IUU fishing: Enforcing International Fisheries Agreements at 2. Available at www.vardagroup.org [Accessed 13 October 2009].

¹⁰³ (note 70) at 13.

number of gains that can be accrued to the SADC countries from the reduction and control of IUU fishing and the control of FONC and PONC. These include:¹⁰⁴

- Less damage to the marine ecosystems and therefore in some cases to fish stocks;
- A reduction in the physical conflict between IUU fishing vessels and the legally registered fleets of the SADC coastal states.
- A contribution to improving safety of life at sea and working conditions for foreign fishing crews working on vessels operating in the region;
- The attraction of legal fishing vessels to SADC ports which provide good landing, storage and other infrastructure needs; and
- Better control of IUU fishing will improve food security and incomes for fishers in the SADC countries.

FOC vessels undermine fishing conservation and management regimes by taking fish outside quotas, not reporting catches (making assessment difficult), taking by-catch such as non-target birds and species including albatrosses and dolphins, and poaching in the EEZs which are difficult to police due to isolation or lack of capacity by developing states.¹⁰⁵ For example, in March 2009 the Tanzanian Minister for Livestock Development and Fisheries, Mr John Magufuli reported that despite the high potential in fisheries resources in the marine waters of Tanzania, the country has benefited little from the sub-sector because of illegalities of illegal activities by distant fishing vessels in the EEZ of Tanzania. He states that some of the vessel owners have registered their fleets under the FOC in order to conceal their fishing history whilst others who have proper nationalities operate irresponsibly partly because their fishing operations are highly subsidized by their governments.¹⁰⁶

The SADC Protocol on Fisheries makes no mention of 'ports of non-compliance' or the use of designated ports, other than defining ports for un-reported trans-shipments.¹⁰⁷ It is therefore recommended that the issue of 'flags of convenience' and/or PONC be addressed and defined in any updated regional policy document or through legislation proposed in this paper. The stated objective of the Protocol in Article 3 '*...to promote sustainable use of the living aquatic resources and aquatic eco-systems...*', the provision of Article 9 on law

¹⁰⁴ February 2008. The impact of flags and ports of non compliance in the SADC region Vol 2 – Report at 10 – 11. www.stopillegalfishing.com [Accessed 21 September 2010].

¹⁰⁵ (note 102) at 7.

¹⁰⁶ 18 March 2009 Tanzania, SADC joins forces against illegal fishing. www.illegal-fishing.info [Accessed 18 November 2009].

¹⁰⁷ Article 1 of the SADC Protocol on Fisheries. <http://www.sadc.international.index> [Accessed on 26 February 2010].

enforcement and the promotion throughout the Protocol of responsible behaviour, information sharing, harmonisation of legislation etc clearly supports any national or regional initiatives against the establishment and use of PONC within the region.

4. Port State Control.

The legal basis of port state jurisdiction is complex. The starting point is that a port State has sovereignty over its own territory and a vessel subjects itself to that sovereignty by entering its port.¹⁰⁸ The general practice is that vessels voluntarily seek admission to the port of a State and submits to the jurisdiction of that State. Many developing countries grapple with the legal issues around port state control due to the lack of capacity and skills to apply their laws in instances of detention or arrest of a ship, forfeiture of illegal catches, arrest and detention of foreign nationals. There is an ongoing attempt to deal with the issues concerning port state control and the tools which can be used in order to prevent, deter and eliminate IUU fishing such as provisions for inspections, prior notice of port access and exchange of information. It is also suggested that possible sanctions for IUU vessels, such as denial of permission to land fish or fishery products, forfeiture of fish or fishery products, and refusal to permit a vessel to leave port pending consultation with the flag State of the vessel.¹⁰⁹ At a workshop held in Cape Town on port State measures to combat IUU fishing the potential linkages between port State measures were addressed and were considered to be significant in efforts to combat IUU fishing. Proposals to control landings, transshipments, processing and use of ports were of paramount importance.¹¹⁰

5. Transshipment and trade issues.

Transshipping at sea means that vessels need never port with their illegally caught fish. In this practice, fishing vessels transfer their catch at sea to specialised transport vessels known as reefers. Although Flag States make it illegal for their transport vessels to tranship fish caught by vessels engaged in IUU fishing these activities nevertheless continue.¹¹¹ The

¹⁰⁸ Part V of the Law of the Sea Convention, 1982. Full document available at www.fao.org [Accessed on 13 October 2009].

¹⁰⁹ Kelly Rigg, Remi Parmentier and Duncan Currie (note 102) at 18-19.

¹¹⁰ January 2008. Report of the FAO regional workshop on Port State measures to combat illegal, unreported and unregulated fishing at 5 – 6. www.stopillegalifishing.com [Accessed on 2 June 2010].

¹¹¹ Kelly Rigg, Remi Parmentier and Duncan Currie (note 102) at 2-3.

latter activity is seen as arguably the biggest loophole in fisheries management as vessels rarely or hardly ever enter the ports of countries that maintain adequate port state control measures. The largest vessels are able to remain at sea for months at a time taking more than half of the annual global catch of fish which is simply offloaded to reefer (transport) ships. Transshipment of the catch in this way allows, in essence, a 'whitewashing' of illegal fish by the time it arrives on the market.

FAO's International Plan of Action on Illegal, Unreported and Unregulated fishing (IPOA-IUU) calls on port states to require all transshipments to take place in port or, at a minimum, require that transshipments at sea is done in accordance with proper controls and at locations where inspectors can be present to check the details of the fish being transhipped. The IPOA-IUU also calls on RFMOs to place restrictions on transshipments at sea. Many RFMOs, such as CCSBT have adopted resolutions or conventions on transshipping. However, transshipping at sea in the SADC region remains a challenge. Transshipment is particularly prevalent in areas where surveillance is weak, and can be used as a means to launder IUU catches by mixing it with legal fish aboard reefers. These few examples demonstrate the extent of transshipments in the SADC region. This progress came some months after the SADC Statement of Commitment was issued calling for stricter controls over transshipments¹¹² In July 2008, Mozambican authorities seized the 'Antillas Reefer' in Mozambican waters. Fishing inspectors found on board shark products with a total value of approximately US\$5 million. The ship was unlicensed, taking illegal species in the process of being transhipped and using banning gear. The Mozambican Fisheries Ministry imposed a fine of US\$4.5 million on the ship's owners and confiscated the ship and everything on board.¹¹³ Tanzania has been losing billions of dollars from foreign illegal fishing vessels that have been catching tuna and transshipping its load in its exclusive economic zone. A recent arrest in 2009 of a flagless foreign boat some 100 miles off the Tanzanian coast, with 70 tonnes of tuna fish worth an estimated US\$900 000.00 is an example of the extent of the illegal transshipments and fishing that has been happening for many years. The ship was seized in a joint operation lead by South Africa, Mozambique, Kenya and Tanzania.¹¹⁴

Illegally caught fish are regularly being laundered into the marketplace through complex process that involves mixing legal and illegal catches a sea or on shore that they are not

¹¹² 4 July 2008. Namibia 'Statement of Commitment by the SADC ministers responsible for marine fisheries on IUU fishing.' www.commonwealthfisheries.org [Accessed on 19 November 2010].

¹¹³ After Windhoek. SADC Statement of Commitment: from words into action. <http://www.stopillegalfishing.com> [Accessed on 23 August 2010]

¹¹⁴ Ibid.

subject to any inspection or oversight. Trans-shipment constitutes a very important related activity in Mauritius's tuna fishery. In 2004, a total of 14 2555 tonnes of tuna and tuna-like species were transhipped at Port Louis by longliners. This may be attributed to the lack of resources.¹¹⁵ Similarly, unregulated trans-shipment is also known to occur regularly in the Mozambican waters.¹¹⁶ It is clear that these practices will continue relentlessly unless the international community, political decision makers and authorities act collectively to address the situation.

6. Capacity and Skills

It is often the case that the countries affected most by illegal fishing, and where much illegal fishing takes place, are those with the fewest resources to tackle the problem. Poorer countries affected by illegal fishing activities lose not only livelihoods for local people, but revenues for governments already strapped for cash and with little capacity to train officers, operate effective monitoring, control and surveillance, or to enforce laws and policies. The New Partnership for African Development (NEPAD) says only a few African countries, such as South Africa and Namibia, have the capacity to patrol their waters sufficiently to keep illegal fishing vessels away, leaving vast expanses of sea at the mercy of IUU fishing vessels.¹¹⁷

As a region, SADC states continues to have a number of national fisheries administrations that face severe limitations in technical, resources¹¹⁸ and budgetary assets to respond to the challenges of IUU fishing. Responding to the various challenges facing the States to tackle illegal fishing remains a daunting challenge. The stark reality is that many countries lack the capacity and skills to achieve anywhere near the necessary degree of law enforcement – many countries do not have patrol vessels¹¹⁹, or if they do, they cannot afford to pay the fuel costs.

¹¹⁵ May 2008. Stop illegal fishing in Southern Africa - Country profiles at 29. www.stopillegal fishing.com [Accessed on 26 February 2010].

¹¹⁶ Ibid at 33.

¹¹⁷ Capacity building. www.illegal fishing.org. [Accessed 4 June 2010].

¹¹⁸ July 2008 – SADC Marine Fisheries Ministerial Conference to stop illegal fishing “ The Billion dollar treasure hunt’ at 16 ‘Mozambique has only one surveillance vessel to monitor four ports’ www.illegal fishing.com [Accessed 26 February 2010].

¹¹⁹ (note 115) Country profiles at 26: Mozambique has one patrol vessel; Tanzania lacks patrol vessels.

Many monitoring, control and surveillance (MCS), in other words – enforcement, set-ups throughout the region remain poorly developed, under-funded, and lack human capacity¹²⁰. Challenges within fisheries MCS are often similar, even if the regions and fisheries are different or whether you are with national waters or the high seas. The sharing of information, cross-border collaboration and nationally integrated approaches to tackle fishing are also often weak or lacking.¹²¹ In recent years, encouraging initiatives have been undertaken between the SADC coastal states to conduct jointly funded patrols and vessel monitoring systems (VMS) data-sharing. For example, in March 2009, a multilateral patrol involving four neighbouring countries of South Africa, Mozambique, Kenya and Tanzania was successfully undertaken when ‘four vessels were arrested and over 10 more were fined or cautioned.’¹²²

7. Certification.

Catch documentation schemes have been imposed by a number of RFMOs for trade of high value fish. These trade restrictions are designed to limit the possibility of IUU fishing entering the market place, through the use of documentation that only legally-caught fish is able to obtain.¹²³ Mandatory product certification and catch documentation are increasingly used as a natural extension of normal monitoring and enforcement in fisheries, and as a means of excluding IUU products from consumer markets and therefore rewarding responsible fishing with protected markets.

Probably the best known voluntary certification system aimed at the final consumer market is that operated by the Marine Stewardship Council (MSC), established in 1997 to promote environmentally responsible stewardship of the world's fisheries. It is intended that fish can be traced back. It has developed an environmental standard for sustainable and well-managed fisheries, based on the FAO Code of Conduct for Responsible Fisheries, and uses a product label to reward environmentally responsible management and practices. The MSC covers only a small proportion of world fisheries, though it is growing rapidly. By the end of 2008, MSC certified fisheries recorded annual catches of more than 5 million tonnes of

¹²⁰ Why do we need African cooperation to stop illegal fishing. www.illegal-fishing.info

¹²¹ The International MCS Network: Third Global Fisheries Enforcement Training Workshop www.mcs-sadc.org [Accessed 10 December 2009]

¹²² March 2009. Southern African Joint Surveillance patrol gets tough on illegal fishers. www.stopillegal-fishing.com [Accessed 4 June 2010]

¹²³ Illegal, unreported and unregulated fishing. Policy Brief 8. www.dfid.gov.uk [Accessed on 4 June 2010].

seafood and almost 2000 MSC-labelled products from 51 fisheries were available in 41 countries.

It is against the impacts and causes of IUU fishing in the region that Chapter III investigates the international and domestic legislation in order to ascertain whether or not the loopholes can be sufficiently closed or whether there is a greater need for legal reform.

Chapter III: Stopping IUU Fishing: Enforcement of Existing International Legal Frameworks.

An impressive array of conventions, agreements, organisations, laws and other international instruments provides for a system in which sustainable fisheries management should be possible, yet one of the greatest challenges facing the SADC coastal States is implementing and enforcing their international obligations in terms of the international frameworks available to them. This chapter will overview some of the salient international legislation and look into some of the difficulties that face the SADC nations in its implementation of these laws. Finally, it will be argued that a single binding overarching legal regime for the region is necessary which is will incorporate and facilitate the implementation of the international regimes.

A. The international instruments in fisheries governance.

1. 1982 The Law of the Sea Convention (UNCLOS)¹²⁴

UNCLOS¹²⁵ creates a framework to establish a legal order for the seas and oceans which would facilitate international communication, and promote the peaceful uses of the seas and oceans, the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment.¹²⁶

Particularly with regard to fisheries, UNCLOS establishes a regime for the conservation and management of fisheries resources on the basis of the area they occupy (the internal waters, archipelagic waters, and territorial seas, exclusive economic zones, continental shelf areas and high seas) or the types of fish stocks (straddling stocks, highly migratory species, marine mammals, anadromous stocks and catadromous species) that occur in them. States are required to conserve and manage living marine resources in the areas that are within their jurisdiction or the areas over which they exercise sovereign rights.¹²⁷ States are also required to cooperate to conserve and manage specific stocks, particularly straddling fish

¹²⁴ Document available at <http://www.un.org> [Accessed on 27 September 2010].

¹²⁵ UNCLOS was ratified by: Namibia on 18 April 1983; South Africa on 23 December 1997; Mozambique on 13 March 1997 and Tanzania on 30 September 1985.

¹²⁶ Preamble to the UNCLOS.

¹²⁷ Part V of the UNCLOS.

stocks and highly migratory species¹²⁸ without prejudice to the rights of the coastal state where such stocks occur within their jurisdiction or in areas where the coastal state exercises sovereign rights. There are varying degrees of rights and duties of states¹²⁹ with respect to the conservation and management of fisheries resources and the factors that have to be taken into account in different regimes. However, the common basic principle of conservation and management of fisheries resources that applies in many of these regimes is that the allowable catch shall be determined and that conservation measures be adopted to maintain or restore populations of harvested species at levels which can produce maximum sustainable yield, as qualified by relevant environmental and economic factors.¹³⁰

However, UNCLOS focuses primarily on fishing in the 200 mile Exclusive Economic Zone (EEZ)¹³¹, a significant innovation at the time it was negotiated but now fishing, particularly migratory stocks such as tuna and swordfish and straddling stocks such as cod as well as deep sea fish takes place in international waters. UNCLOS places great reliance on the concept of the maximum sustainable yield in managing fisheries¹³², whereas it has become that other paradigms are required, and in particular the precautionary principle and a more ecosystem approach have evolved. Possibly, its greatest shortcoming is its heavy reliance on flag States for enforcement of environmental and maritime protection provisions¹³³, when it has become evident that some flag States has neither the capacity nor the intention of exercising that control.¹³⁴

¹²⁸ Article 64.

¹²⁹ Articles 56 - 58.

¹³⁰ Articles 61- 62.

¹³¹ Articles 55 to 57. These articles state that coastal states are entitled to an EEZ with a maximum width of 200 nautical miles. In their EEZs, coastal states have sovereign rights for the purpose of exploring, exploiting, conserving and managing the living and non-living natural resources, and for other economic activities. In their EEZs coastal states also have jurisdiction for the protection and preservation of the marine environment.

¹³² Article 61.

¹³³ Article 62 requires nationals of foreign States fishing in the EEZ to comply with the conservation laws and regulations of the coastal State, which may include measures on fishing licences, allowable species, catch quotas, age and size of fish, close seasons, fishing vessels and gear etc. Article 73 authorises the coastal State to take necessary enforcement measures (including boarding, inspection, arrest and judicial proceedings) to ensure compliance with those laws. However, if foreign vessels are arrested, the flag State must be notified promptly about the action taken and any penalties imposed, and the arrested vessels and their crews must be released if a reasonable bond or security is posted.

¹³⁴ Kelly Rigg, Remi Parmentier, Duncan Currie (note 102) at 3 - 4.

2. 1993 FAO Compliance Agreement (Compliance Agreement)¹³⁵

This was the first international legally-binding instrument to directly deal with reflagging and other flags of convenience (FOC), focussing on flag State compliance issues and in particular on strengthening flag State responsibility.

In broad terms, the Compliance Agreement has two primary objectives. The first is to require the flag States to take measures as may be necessary to ensure that vessels flying their flag do not engage in activity that undermines the effectiveness of international conservation and management measures and seeks to limit the freedom of vessels that have a bad compliance record to 'shop around' for new flags.¹³⁶ The second objective is to increase transparency of all high seas fishing operations through the collection and dissemination of data.¹³⁷

The Compliance Agreement has failed to gain widespread acceptance, which explains why the agreement only came into force in 2003, ten years after its conclusion. It is largely restricted to actions taken by flag States rather than port States, and does not address catches. Its efficacy is limited by the small number of ratifications, particularly the failure to ratify FOC States and other States whose vessels may be involved in IUU fishing.¹³⁸

3. 1995 Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the Fish Stocks Agreement).

The Fish Stocks Agreement sets out principles for the conservation and management of straddling fish stocks¹³⁹ and highly migratory fish stocks¹⁴⁰ and establishes that such management must be based on the precautionary approach¹⁴¹ and the best available scientific information. The Fish Stocks Agreement elaborates on the fundamental principle

¹³⁵ Document available at <http://www.fao.org> [Accessed on 25 September 2010].

¹³⁶ Part V Article 18.

¹³⁷ Article 19.

¹³⁸ Kelly Rigg, Remi Parmentier, Duncan Currie (note 102) at 4.

¹³⁹ Straddling fish stocks are those that straddle the boundary of a State's EEZ and the high seas (some stocks straddle 'out' of the EEZ while others straddle 'into' the EEZ).

¹⁴⁰ Highly migratory fish stocks are those that generally roam over large distances and may be found in numerous EEZ jurisdictions and the high seas. Highly migratory species are defined by a listing in Annex 1 of the 1982 UNCLOS.

¹⁴¹ Article 5.

established in the convention that States should cooperate to ensure conservation and promote the objective of the optimum utilization of fisheries resources both within and beyond the exclusive economic zone.

The Fish Stocks Agreement attempts to achieve these objectives by providing a framework for cooperation in the conservation and management of those resources. It promotes good order in the oceans through the effective management and conservation of high seas resources by establishing, among other things, detailed minimum international standards for the conservation and management of straddling fish stocks and highly migratory fish stocks; ensuring that measures taken for the conservation and management of those stocks in areas under national jurisdiction and in the adjacent high seas are compatible and coherent; ensuring that there are effective mechanisms for compliance and enforcement of those measures on the high seas; and recognizing the special requirements of developing States in relation to conservation and management as well as the development

The Fish Stocks Agreement entered into force on 11 December 2001. South Africa¹⁴² and Namibia¹⁴³ are the only SADC States that are parties to the Fish Stocks Agreement.

4. 2001 FAO International Plan of Action – Illegal Unregulated and Unreported Fishing (IPOA-IUU)¹⁴⁴

The Code of Conduct, concluded in 1995, is voluntary or 'soft' law. Pursuant to the Code, four International Plans of Action, including the International Plan of Action to prevent, deter and eliminate IUU fishing (IPOA-IUU) was adopted in 2001.

The IPOA-IUU is a voluntary instrument listing a host of measures that countries and regional fisheries bodies should adopt depending on the nature of their fisheries, in order to eliminate IUU fishing.¹⁴⁵ Although voluntary in nature, the IPOA-IUU sources many of its provisions from binding international fisheries instruments. In order to adopt IPOA-IUU measures in a consistent way, countries were encouraged to develop their own national plan

¹⁴² 14 August 2003.

¹⁴³ 8 April 1998.

¹⁴⁴ Full document available at www.fao.org [Accessed on 24 August 2010].

¹⁴⁵ Gilles Hosch, Fisheries and Coastal Resources Planning and Management – Status report for the SADC region. Assessing the IPOA-IUU. 2007. <http://www.stopillegalifishing.com> [Accessed 19 February 2010].

of action to prevent, deter and eliminate illegal, unreported and unregulated Fishing (NPOA-IUU), sourcing measures from the 'tool box' represented by the IPOA-IUU, and adapting them to their particular situation. The 'tool box' measures include blocking avenues for fraud in critical domains, such as coastal State, port State and flag State controls, and through regional mechanisms and Regional Fisheries Management Organizations (RFMOs). The IPOA-IUU is based upon the principles of integrated approaches, and of transparency and non-discrimination. National, regional and international coordination and collaboration represent key elements in the implementation process, underlining the key fact that IUU fishing is an international, trans-boundary phenomenon that cannot be effectively addressed through disconnected national efforts alone.¹⁴⁶

Namibia is to date the only SADC coastal member to have finalized and officially adopted its NPOA-IUU. An analysis has shown that most of the SADC Member States have not progressed in their implementation and drafting of their own national plan of action.¹⁴⁷

5. 2006 UN General Assembly (UNGA Resolutions)¹⁴⁸

The UNGA Resolutions, which call for a halt to IUU fishing including FOC practices, are not binding, but they do provide some measure of the recognition of the seriousness of the problem by the international community. The 'General Assembly, emphasizes once again its serious concern that illegal, unreported and unregulated fishing remains one of the greatest threats to marine ecosystems and continues to have serious and major implications for the conservation and management of ocean resources, and renews its call upon all States to comply fully with all existing obligations and to combat such fishing and urgently to take all necessary steps to implement the IPOA-IUU of the FAO of the United Nations.¹⁴⁹

¹⁴⁶ Gilles Hosch, Fisheries and Coastal Resources Planning and Management – Status report for the SADC region: Assessing the IPOA-IUU. 2007 <http://www.stopillegalifishing.com> [Accessed 19 February 2010]

¹⁴⁷ Gilles Hosch, Fisheries and Coastal Resources Planning and Management – Status report for the SADC region, 2007 <http://www.stopillegalifishing.com> [Accessed 19 February 2010]

¹⁴⁸ Full document available on www.stopillegalifishing.com [Accessed on 24 August 2010].

¹⁴⁹ 2006. UN General Assembly Resolution on Sustainable Fisheries. Resolution 61/105 para 33. www.stopillegalifishing.com

6. 2002. The Johannesburg Plan of Implementation: The World Summit on Sustainable Development (the Johannesburg Plan of Implementation).¹⁵⁰

The Johannesburg Plan of Implementation aims at ensuring sustainable fisheries and sustainable development of the oceans ' requires effective coordination and cooperation, including at the global and regional levels, between relevant bodies, and actions at all levels...'¹⁵¹

The Johannesburg Summit recognized that protecting and managing the natural resource base for economic and social development are essential requirements for sustainable development. The Johannesburg Plan also set targets and timetables for the management of the natural resource base regarding fisheries activities including putting into effect the FAO international plan of action to prevent, deter and eliminate IUU fishing by 2004.¹⁵²

B. The challenges that face the SADC region in implementing and enforcing their international obligations.

The international fisheries legal regime is a complex and evolving network of binding and non-binding agreements which form a solid basis in international law for promoting the development of sustainable fisheries, and preventing or eliminating IUU fishing. It presents a nested set of diverse and complementary inter-linked actions at different levels of the fisheries management and governance system. Many of the measures must be implemented together in order to be effective and no simple unique measure is able to ensure its successful implementation. What is clear from the above overview of the salient laws is that there are sufficient international instruments and tools to address the current major challenges of fisheries management and IUU fishing. Effective implementation is the constraining factor. Herein lays the challenge for the SADC region.

In practice, the SADC States face enormous challenges in meeting their international obligations. Some of the obstacles facing the coastal States are:

¹⁵⁰ Full document available on www.fao.org [Accessed on 24 August 2010].

¹⁵¹ Johannesburg Plan of Implementation, para 30

¹⁵² Schmidt (note 14) at 10.

1. Ratification of international agreements.

Governments should ratify international agreements in order to give effect to them. For example, Mozambique is neither a party to the Compliance Agreement nor the UN Fish Stocks Agreement.¹⁵³ Only Namibia¹⁵⁴ and Tanzania¹⁵⁵ are parties to the Compliance Agreement. Tanzania has not ratified the Fish Stocks Agreement. The fact that some of the SADC States are not parties to international agreements does not mean that they cannot give effect to the principles of the agreements. This can be done by way of making provision in their national laws and/or in the proposed regulations under discussion.

2. Implementation of international agreements.

Namibia has ratified the Fish Stocks Agreement in April 1998 and on 7 August 1998, Namibia deposited its instrument of acceptance of the Compliance agreement.¹⁵⁶ Namibia has made it in some way possible under section 37 of its national law, the Marine Resources Act, 2000¹⁵⁷ to give effect to the aforementioned agreements. However, the provision is only generic in nature and to give the agreements full effect, it will need regulations to ensure that a specific international agreement is implemented. The Marine Living Resources Act 18 of 1998 of South Africa also does not contain specific provisions or have the necessary detail to fully meet the requirements of the Compliance Agreement and the Fish Stocks Agreement. In respect of the Compliance Agreement, the requirements that need implementation include: the need to main a record of fishing vessels and to ensure that information on any change to the information in the records is provided to the fisheries authorities and also communicated to the FAO.¹⁵⁸

¹⁵³ Blaise Kuemlangan – Comparative analysis of the fisheries legal frameworks of SADC coastal countries at 11. www.fao.org/docrep [Accessed on 12 April 2010].

¹⁵⁴ 7 August 1998.

¹⁵⁵ 17 February 1999.

¹⁵⁶ Ibid at 14 - 15.

¹⁵⁷ Section 37 provides for : '*Giving effect to fisheries and international agreements*

37. (1) The Minister may, for the purpose of any fisheries agreement entered into under section 35 or any international agreement to which Namibia is a party, make such regulations as the Minister may consider necessary or expedient for the carrying out and for giving effect to the provisions of any such agreement or any amendment of such agreement.

(2) The Minister shall publish in the Gazette the texts of all conservation and management measures adopted under any international agreement to which Namibia is a party and any measure so published shall be deemed to be a regulation prescribed under section 61.'

¹⁵⁸ Articles IV and VI.

Other international instruments, such as the FAO Code of Conduct (the IPOA-IUU), contain elements from which management packages can be customized for implementation by governments. Many of the measures must be implemented together in order to be effective. However, only two of the many SADC States, namely Namibia and Mozambique, have thus far finalized and officially adopted its NPOA-IUU.¹⁵⁹

3. Capacity in flag state control

UNCLOS focuses primarily on fishing in the 200 mile Exclusive Economic Zone (EEZ)¹⁶⁰ and places great reliance on the concept of the maximum sustainable yield in managing fisheries¹⁶¹, whereas it has become that other paradigms are required, and in particular the precautionary principle and a more ecosystem approach have evolved. Possibly, its greatest shortcoming is its heavy reliance on flag States for enforcement of environmental and maritime protection provisions¹⁶², when it has become evident that some flag States has neither the capacity nor the intention of exercising that control¹⁶³ and accordingly the SADC States become victim to the abuse of the FOCs.

4. Regional fishing vessel records.

International agreements in some instances require States to keep a register of national and international vessels in their waters and to submit information, where vessels infringe upon

¹⁵⁹ Gilles Hosch, Fisheries and Coastal Resources Planning and Management – Status report for the SADC region: 2007. Assessing the IPOA-IUU. <http://www.stopillegalifishing.com> [Accessed 19 February 2010].

¹⁶⁰ Articles 55 to 57. These articles state that coastal states are entitled to an EEZ with a maximum width of 200 nautical miles. In their EEZs, coastal states have sovereign rights for the purpose of exploring, exploiting, conserving and managing the living and non-living natural resources, and for other economic activities. In their EEZs coastal states also have jurisdiction for the protection and preservation of the marine environment.

¹⁶¹ Article 61.

¹⁶² Article 62 requires nationals of foreign States fishing in the EEZ to comply with the conservation laws and regulations of the coastal State, which may include measures on fishing licences, allowable species, catch quotas, age and size of fish, close seasons, fishing vessels and gear etc. Article 73 authorises the coastal State to take necessary enforcement measures (including boarding, inspection, arrest and judicial proceedings) to ensure compliance with those laws. However, if foreign vessels are arrested, the flag State must be notified promptly about the action taken and any penalties imposed, and the arrested vessels and their crews must be released if a reasonable bond or security is posted.

¹⁶³ Kelly Rigg, Remi Parmentier, Duncan Currie (note 14) at 3 – 4.

the provisions of such instruments, to appropriate authorities.¹⁶⁴ A regional record will assist in its function as an effective MCS tool where all the relevant role players are in agreement, the requirements for access, all parties to participate in enforcement measures and the consequences of non compliance to be similar. A regional record should exist within the context of international law, which includes the treaties such as the UNCLOS, the SADC Protocol on Fisheries and international policy instruments, such as the FAO Code of Conduct on Responsible Fisheries and the national laws of each of the SADC States.

5. Information sharing

Each of the SADC States should include in its national legislation where necessary to facilitate information sharing between States and to remove restrictions imposed by national legislation on the free exchange of information. It is clear from all the research that no data base or adequate information sharing occurs in the region which gives effect to the international requirements.

6. Cooperation and Conformity

The implementation of the Fish Stocks Agreement presents major challenges for both States and sub-regional or regional fisheries management organizations or arrangements (RFMOs). Underpinning the implementation of the Agreement is the requirement for concerted international cooperation. States, either directly or through RFMOs, are obligated to pursue cooperation to ensure the effective conservation and management of straddling fish stocks and highly migratory fish stocks. The levels of conformity with international laws within the SADC region is inconsistent, varies having regard to different factors which play a role in its implementation and can be improved depending on the priorities of national policy, human capacity and financial support.

Finally, in order to remedy the position, it is necessary for all States to ratify or accede to international laws which provides assistance in eliminating IUU fishing in the region and which will enhance the development of sustainable fisheries. Also, each participating SADC State should amend its national laws where necessary, to include amongst others,

- State that it is implementing applicable international instruments;

¹⁶⁴ Article VI and VI of the Compliance Agreement.

- Establish a regional vessel record in accordance with international laws;
- Make available information that may be used in the making of licensing and enforcement decisions;
- to remove any restrictions imposed by national legislation on the free exchange of information that is required for the improvement of fisheries management or to comply with other applicable international instruments.

In addition to the above, the SADC States must actively pursue and give substance to the basic principles of international legal instruments by implementing these agreements in their national laws and administrative structures. To this end, it is recommended that a single, overarching legal instrument be drafted in the form of regulations to seek to give effect to international laws and to harmonize national legislation across the region.

Chapter IV: An overview of current regional initiatives, legal frameworks and country profiles in the SADC region.

This chapter is neither comprehensive nor exhaustive. First, it provides an overview of the country profiles of the SADC States which will demonstrate the strengths and weaknesses of the SADC States to manage IUU fishing. Against this overview, the chapter will further address regional initiatives undertaken to address IUU fishing and finally, current regional initiatives will be discussed by providing an assessment and analysis of the legal frameworks in the SADC region, more particularly, a synopsis of the principle fisheries legislation in the main SADC coastal States.

A. Country profiles¹⁶⁵

¹⁶⁵

Available at <http://www.fao.org> [Accessed on 16 April 2010].

Country Profiles of the SADC region.

	Principle Fisheries Law	Value of Fisheries	Contribution of fisheries to GDP	Area of EEZ	Length of Coastline	MCS Tools	Port State Control Measures in Place	NPOA IUU Fishing	Major IUU activities
Angola	The Aquatic Biological Resources Act of 2004 ¹⁶⁶ (Law 6-A/04)	Trade (2006) ¹⁶⁷ Estimated value of fisheries export : US\$213 948 000 Imports (2006): US\$61 500 000	21.1% - Fisheries and agriculture. ¹⁶⁸	610500 km ²	1900 km	Fishery Control Officers(FCO's) and Vessel Monitoring Systems (VMS)	Limited	Not yet finalised	The major IUU fishing activities include fishing in closed areas, illegal fishing methods, illegal mesh sizes and fishing without licenses. Known IUU activities also include the encroachment by industrial vessels into artisanal areas and unlicensed foreign vessels operating in Angolan waters.
The Democratic Republic of Congo.	1937 Decree on Fishing and Hunting (as amended in 1957/1958/1960)	Trade(1998) Imports: US\$57.1m Exports: US\$0.62m	Not known	13 690 km ²	37km	Extremely limited	No	Not yet finalised	*Very little data exists on IUU activities taking place in the DRC marine waters. *There are foreign vessels fishing without licences in the DRC EEZ; *The artisanal fishery is

¹⁶⁶ Available at www.angolalegal.com

¹⁶⁷ Fishery country profile – The Republic of Angola at 2. <http://www.fao.org> [Accessed 16 April 2010].

¹⁶⁸ Ibid at 8.

									unregulated and is not known to report any catches.
Madagascar	Fisheries Policy of 2000 Ordinance 93-022 of 4 May 1993 ¹⁶⁹	US\$160 million	8%	1786360 km ²	5580 km	Lack of information	Advance notification and port inspections	Not yet finalised	*Strong MCS of the industrial fisheries lead to high levels of compliance. *The traditional fisheries, which are inherently difficult to monitor provide a significant challenge
Mauritius ¹⁷⁰	Fisheries and Marine Resources Act of 22 of 1998 ¹⁷¹	2004:Imports: US\$106m 2004:Exports: US\$112m	4.9%	1274638km ²	3800km ²	Lack of information but VMS system in place	Lack of information	Not yet finalised	*The major IUU activity in Mauritius is potential poaching from unlicensed foreign vessels; *Illegal trans-shipment of tuna catches at sea in order to hide where the fish has been caught
Mozambique ¹⁷²	Fisheries Law 3 of 1990 ¹⁷³	2006: Imports: US\$3177600m Exports: 9663800m	4% (2006)	999 000km ²	2799kms	One vessel patrol and FCO's	Yes, but limited	Awaiting final approval	The most significant IUU fishing that occurs in Mozambique's waters would include the poaching; *Misreporting of tuna and shrimp, in particular by foreign fishing fleet; *Unregulated trans-shipment is also known to occur regularly

¹⁶⁹ May 2008 Country profile for Madagascar. <ftp://ftp.fao.org> [Accessed 16 April 2010].

¹⁷⁰ January 2006 Country profile for Mauritius. <www.fao.org> [Accessed 16 April 2010].

¹⁷¹ Available at <www.faolex.fao.org> [Accessed 2 March 2010].

¹⁷² September 2007 Country profile for Mozambique. <www.fao.org> [Accessed 16 April 2010].

¹⁷³ Available at <www.faolex.fao.org> [Accessed 2 March 2010].

Namibia ¹⁷⁴	Marine Resources Act, 27 of 2000	US\$ 372.2 million	5.9%	581 641 km ²	1800kms	Patrol vessels, aerial surveillance crafts, FCO's; observers and VMS	Yes	Deposited with FAO	<p>*Major IUU fishing problems pertain to the violation of coastal exclusion zones;</p> <p>*Piracy by licensed and unlicensed vessels.</p> <p>*The declaration of true catches and discards might also be an important IUU issue;</p> <p>*Licensed operators – both national and foreign – violate other regulatory provisions;</p> <p>*Threats pertain to unlicensed pirate vessels, engaged in illegal border hopping operations, sailing in from neighbouring EEZs or the high seas.</p> <p>*Other common IUU fishing threats relate to mainstream fisheries infractions.</p>
South Africa ¹⁷⁵	Marine Living Resources Act, 18 of 1998	US\$20 million	Less than 1%	1 387 870 km ²	4300 kms	Patrol vessels, VMS, and fishery control officers	Yes, but limited	Not yet finalised	<p>*Some of South Africa's high profile, high value fisheries have been besieged by IUU fishing. These include the recently closed abalone fishery and hake fishery.</p> <p>*As a member of CCAMLR, South Africa has successfully reduced the large scale plunder of its Patagonian toothfish resources.</p> <p>*Other IUU activities include the high grading of catches and unreported</p>

174

March 2007 Country profiles for Namibia. Available at <http://www.fao.org/fishery/countrysector> [Accessed 16 April 2010].

									catches.
Tanzania ¹⁷⁵	The Fisheries Act 22 of 2003 ¹⁷⁷	US\$10-14 million	2005: US\$324.21m	526 880 km ²	1 645 (includes islands)	FCO's	Yes, but limited	Not yet finalised	*IUU fishing is a problem in both Tanzania's marine and inland fisheries. *On the marine side, dynamite fishing and coral mining create problems in the small scale fisheries, * documented incursions of non-licensed Asian and European tuna fleets into the Tanzanian EEZ have been reported in the past. *In the inland fisheries, the use of illegal gear and unlicensed 'border hopping' are perennial problems.

¹⁷⁵ 2003 Country profile for South Africa Available at <http://www.fao.org/fishery/countrysector> [Accessed 16 April 2010].

¹⁷⁶ December 2007 Country profile for Tanzania Available at <http://www.fao.org/fishery/countrysector> [Accessed 16 April 2010].

¹⁷⁷ Available at www.fao.org/lex/faolex [Accessed 2 March 2010].

B. Current regional initiatives and discussion addressing IUU fishing.

IUU fishing is viewed as one of the key culprits, denying success in the rational management and sustainable exploitation and conservation of world fisheries resources.

In 2001, the FAO, through its Committee on Fisheries (COFI), adopted the International Plan of Action to prevent, deter and eliminate IUU fishing (IPOA-IUU).¹⁷⁸ In short, the IPOA-IUU is a voluntary instrument listing a host of measures that countries and RFMOs should adopt in order to eliminate IUU fishing. The FAO members were encouraged to develop their own National Plan of Action to prevent, deter and eliminate IUU fishing (NPOA-IUU) sourcing measures represented by the IPOA-IUU, and adapting them to their own particular situation.¹⁷⁹ However, of the eight coastal SADC Member States, only Namibia has succeeded in finalising and adopting its NPOA-IUU¹⁸⁰ and has started to implement it. Mozambique is awaiting final approval of its NPOA.¹⁸¹ None of the remaining SADC states have progressed with their NPOA-IUU and this gap remains in the region.

The Treaty of the Southern African Development Community¹⁸² (the SADC Treaty) is a regional instrument that requires Member States to cooperate on development and economic growth, poverty alleviation and support for the socially disadvantaged through regional integration.¹⁸³ Member States are required to co-ordinate, harmonise and rationalise their policies and strategies to promote sustainable development.¹⁸⁴ Numerous protocols have been developed under the SADC Treaty. Of these protocols, the Southern African Development Community: Protocol on Fisheries (the SADC Protocol) is a principal instrument regulating fisheries.¹⁸⁵ SADC Protocol on Fisheries¹⁸⁶ (the SADC Protocol) is a comprehensive legal instrument that has taken into consideration the aspirations of the people of SADC with regard to sustainable management of aquatic resources and their

¹⁷⁸ (note 2).

¹⁷⁹ December 2007. IPOA-IUU Implementation status report for the SADC region at 5. www.stopillegalifishing.com [Accessed 9 June 2010].

¹⁸⁰ Ibid at 6.

¹⁸¹ Country Summary: Mozambique Available at www.fao.org/fishery/countrysector [Accessed 9 June 2010].

¹⁸² (1993) 32 ILM 16. It was open for signature since 1992. South Africa is a signatory to this treaty.

¹⁸³ Article 5(1)(a).

¹⁸⁴ The Preamble.

¹⁸⁵ The Protocol came into force in August 2003. South Africa signed the Protocol on 14 August 2001 Available at <http://www.sadc.int/index> [Accessed 26 February 2010].

¹⁸⁶ Available at www.sadc.int/index [Accessed 26 February 2010].

ecosystems, livelihoods of fishing communities, food security and poverty alleviation and an ultimate goal for its eradication, and the need to realize the full benefits of the potential of the sector in the region. The objectives of the SADC Protocol is to promote responsible and sustainable use of living aquatic resources and aquatic ecosystems in order to safeguard the livelihood of fishing communities, generate economic opportunities and ensure that future generations benefit from renewable resources.¹⁸⁷ The SADC Protocol requires Member States to take measures to regulate the use of living aquatic resources and to protect those resources against over-exploitation.¹⁸⁸ All the fisheries ministers approved the Protocol in Maputo at the end of May 2001.¹⁸⁹ The signatories to the SADC Protocol are: Angola, Botswana, the Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.¹⁹⁰

The SADC States are enjoined to cooperate in fisheries management by virtue of the SADC Protocol.¹⁹¹ The SADC Protocol clearly stipulates that in relation to shared resources, the State Parties shall cooperate with one another to ensure that the objective of the Protocol is met. The Preamble to the SADC Protocol states as follows: '*Mindful of the objectives of SADC, as stated in Article 5 of the Treaty, and Article 21 of the Treaty which enjoins Member States to cooperate in all areas necessary to foster regional development and integration.*' Most of the international treaties and conventions of relevance to the SADC Protocol¹⁹² underscore the duty of States to cooperate. More importantly, the SADC Protocol further imposes a duty on Member States to harmonise legislation in the region.¹⁹³ Article 9 relates to the commitment to harmonise legislation in the region. The SADC States have failed and/or neglected to harmonise their national laws. The most recent commitment to harmonise the national laws was made by the SADC Ministers on 4 July 2008.¹⁹⁴

¹⁸⁷ Article 3.

¹⁸⁸ Article 4(2) and (3).

¹⁸⁹ African Environment Outlook – Past, present and future perspectives United Nations Environment Programme 2002. <http://www.unep.org/aeo> [Accessed 14 April 2010].

¹⁹⁰ The Preamble to the Protocol (note 105).

¹⁹¹ Article 7: Management of shared resources.

¹⁹² The 1982 United Nations Convention on the Law of the SEA (1982 UN Convention); the 1995 Fish Stocks Agreement and the 1993 FAO Compliance Agreement (Compliance Agreement).

¹⁹³ Article 8 of the Protocol.

¹⁹⁴ 4 July 2008. Namibia 'Statement of Commitment by the SADC ministers responsible for marine fisheries on IUU fishing.' www.commonwealthfisheries.org.

The SADC Protocol on Fisheries, a legally binding instrument, which enshrines a regional approach for development and integration of the SADC fishery sector and existing international regimes will provide guidance to establish mechanisms to develop a sound legislative regional framework for the region.

C. Overview of the principle fisheries legislation in the main fisheries SADC States – Mozambique, Namibia, South Africa and Tanzania

Whilst it is beyond the scope of this paper to provide a detailed analysis of all the national legislation of the SADC States, it is important to provide a brief overview on the legislation governing the 4 most economically strong fishing countries in the SADC region will be provided

The Southern African region straddles three great oceans, the Atlantic, the Indian and the Southern Ocean. The coastline extends from Angola on the west (Atlantic) coast to Tanzania on the east (Indian Ocean) coast. The region has a total of eight coastal States: Angola, Democratic Republic of Congo, Mauritius, Mozambique, Namibia, Seychelles, South Africa and Tanzania. Erik Bergh points out that five out of the eight SADC countries were in the top ten African countries for fish exports in 2003.¹⁹⁵ Amongst these, were Mozambique, Namibia, South Africa and Tanzania. The latter four countries continue to be the regions strongest economic forces within the fishing international circles as well as the most developed in the region in respect of governance and enforcement of its fisheries laws. Accordingly, these four countries will form the subject of discussion below.

The Southern African fisheries sector is predominately industrial on the west coast, with up to 90 percent of the total catches landed in Angola, Namibia and South Africa.¹⁹⁶ Artisanal and recreational fisheries are more common on the east coast where they are of high social and economic importance. The regions total marine catch averages 5 million tonnes, which is 25 percent of the total sub-Saharan production. In 2008, South Africa fisheries only contributed 2.3% to the GDP.¹⁹⁷ In Namibia the fisheries sector contributes more than 35% of GDP. The clean, cold South Atlantic waters off the coast of Namibia are home to some of

¹⁹⁵ Erik Bergh – Global and regional issues relating to IUU fishing and port state measures www.stopillegal fishing.com [Accessed on 2 June 2010].

¹⁹⁶ Richard Sherman - Briefing on national, regional and international fisheries and marine related agreements. Global legislators organization for a balanced environment (GLOBE) Southern Africa. <http://www.emg.org.za> [Accessed 28 September 2010].

¹⁹⁷ South Africa's economy www.mediaclubsouthafrica.com. [Accessed 28 September 2010].

the richest fishing grounds in the world, with the potential for sustainable yields of 1.5 million metric tonnes per year. Commercial fishing and fish processing is the fastest-growing sector of the Namibian economy in terms of employment, export earnings, and contribution to GDP. The main species found in abundance off Namibia are pilchards, sardines, anchovy, hake and horse mackerel. Fish stocks had fallen to dangerously low levels, due to the lack of protection and conservation of the fisheries and over-exploitation of these resources. The Namibian Government is now pursuing a conservative resource management policy along with an aggressive fisheries enforcement campaign.¹⁹⁸ The fisheries sector in Mozambique characterized by its economic diversity. Mozambique has three main types of fisheries: industrial, semi-industrial and artisanal fisheries.¹⁹⁹ In 2006, Mozambique's contribution to its GDP was 4%.²⁰⁰ It is estimated of the value of their shrimp fisheries is as high as high as US\$50 to 60 million per year, or about 40 per cent to the country's net foreign exchange earnings.²⁰¹ Approximately 75,000 artisanal fishermen and mussels collectors and families depend directly on fisheries resources. Artisanal production in 2003 was estimated by the Ministry of Fisheries of Mozambique to be about 67,074 tones. In 2003 the annual value of exported fish products was US\$ 79.7 million.²⁰² Tanzania is a coastal state endowed with fishery resources. The number of fishermen who are permanently employed is 80,000 and few others obtain their livelihood from the sector by being employed in the fishing and fishery related activities. The artisanal fishermen produce about 90% of the total fish catch in the country; only 10% is derived from industrial fishing. Most of the fish caught is consumed locally while Nile perch; sardines and prawns are for exports. Fisheries are a source of employment, livelihood to the people, recreation, and tourism in order to generate foreign exchange. The contribution of the sector to GDP for the past five years has been staggering between 1.6 and 3.1 percent.

Despite progressive methods to manage their fisheries, IUU fishing has presented a regional challenge with many harmful environmental, economic and social impacts. The need for strengthened fisheries governance at national and regional levels had been recognized

¹⁹⁸ Economy of Namibia <http://en.wikipedia.org> [Accessed on 20 September 2010].

¹⁹⁹ Review of the state of world capture fisheries management: Indian Ocean. www.fao.org [Accessed on 29 September 2010].

²⁰⁰ Fishery country profile: Mozambique www.fao.org [Accessed on 29 September 2010].

²⁰¹ Africa Environmental Outlook – Past, Present and Future Perspectives, United Nations Environment Programme, 2002. <http://www.unep.org/aeo>. [Accessed on 29 September 2010].

²⁰² Ibid.

increasingly by the international community if IUU fishing were to be eradicated.²⁰³ Erik Bergh points out that the global trade of IUU caught fish and fish products were estimated to be worth between US\$ 4 – 14 billion per year. He estimates that possibly US\$10 billion of this trade was from sub-Saharan Africa.

1. Mozambique

The Fisheries Law 3 of 1990²⁰⁴ (the Act) of 26 September 1990 and the subsequent regulations form the legal basis for the fisheries sector.²⁰⁵ The maritime regulation (Decree 43 of 2003) deals with the fisheries administration and management which includes licensing procedures, fishing regimes and gears, quality control, management measures etc. The Act is a framework law for fisheries and applies to all waters under the jurisdiction of Mozambique and, as far as enforcement is concerned, to all Mozambican fishing vessels in international waters or the waters of third countries.²⁰⁶ It appears that the Act has wide scope. It also appears to address fishing by Mozambican vessels outside the Mozambican waters including by ensuring that Mozambican vessels do not fish illegally in other countries' waters.²⁰⁷ These vessels are also registered and their high seas fishing activities are thus subject to control. Control of fishing operations, is one of the cornerstones of the Act.²⁰⁸ In general, there is adequate basis for enforcement activities and programmes provided in the Act. An observation made by Blaise Kuemlangan²⁰⁹ is that the Act appears silent on surveillance matters. Article 41 provides an interesting approach to fisheries management in the country in that it establishes appropriate co-operation mechanisms with other administrations. This provides for basis for inter-agency MCS and enforcement programmes and activities where skills and capacity is lacking or insufficient.

The main areas of inconsistency between the national legislation and the international commitments relate to the sanctions and evidentiary rules. The obligation to ensure that

²⁰³ Erik Bergh (note 192) at 7.

²⁰⁴ Available at www.faolex.fao.org [Accessed 2 March 2010].

²⁰⁵ Order from 29 February 1992 – establishes the sanctions scheme by setting fine amounts for different types of offences and defines the competence to determine the fisheries sanctions; Decree No. 43 of 2003 regulates fishing activities and the management of marine resources. It also contains provisions on licensing procedures, total allowable catches, quotas and fishing gear. These Regulations establish a system for classification of the fishing vessels and fishing activities setting monitoring and inspection procedures as well.

²⁰⁶ Section 2.

²⁰⁷ Article 32.

²⁰⁸ Title V.

²⁰⁹ Blaise Kuemlangan (note 150) at 10.

sanctions are effective in securing compliance and the suspension of authorisation to fish in the event of non-conservation and management measures is not reflected in the present legislation. Also, except for the admissibility of VMS information in court the existing information does not contain other presumptions that an offence was committed and the destruction of evidence does not constitute an offence.²¹⁰

It was also found that the national fisheries policy does not properly reflect the SADC Protocol on Fisheries namely in what concerns legal harmonisation and cooperation (exchange of information, MCS activities and integrated management of shared resources) with the other Member States.²¹¹ This gap exists in respect of legal harmonisation and the exchange of information.

In order to strengthen and ensure implementation of its national legal frameworks and international obligations, the following areas of importance must be considered:

- Explicit provisions for effective sanctions, suspension and/or withdrawal of fishing licenses in the event of non-compliance as in the case of South Africa.²¹²
- Secure a responsible fisheries management of marine resources, harvest production, sustainable exploitation of the fish resources, protection and conservation of fish resources, including amongst others, the setting up of dynamic co-management approaches. Many of its administrative measures and capacity management must be implemented together so as to be effective. It appears that the institutional arrangements are highly fragmented.²¹³
- Enforcement provisions must be inserted and/or amended so as to include: development of comprehensive monitoring, control and surveillance measures and regulations; harmonising sanctions and evidentiary provisions in conjunction with other SADC States; a proper consideration of the provisions of the SADC Protocol on Fisheries so as to improve on its enforcement endeavours such as exchange of information, MCS activities, integrated management of shared resources and co-operative governance;

²¹⁰ April 2006. Chris Palin and Teresa Amador - International and regional fisheries agreements and organisation in the SADC region. Legal assessment and review at 7. www.stopillegalfishing.com. [Accessed 9 June 2010].

²¹¹ Ibid at 7.

²¹² Section 28 of the Marine Living Resources Act, 18 of 1998.

²¹³ Review of the state of world marine capture fisheries management: Indian Ocean – Country Review: Mozambique at 2. www.fao.org [Accessed on 29 September 2010]. The national administrative system for fisheries is new and the Ministry of Fisheries shares responsibility for fisheries management and enforcement with its Ministry of Tourism.

- Improving the fisheries surveillance system in order to allow inspection at sea.
- A fisheries plan of action must be implemented so as to give effect to global and regional initiatives such as MCS, VMS and capacity building.
- Mozambique must ensure that it implements global fisheries mandates and initiatives such as: implementation of a national program of monitoring and control of fishing activities, and in collaboration with other SADC States, nation-wide implementation of a vessel monitoring system, Mozambique's intention to sign the UN Fish Stocks Agreement and to implement other international initiatives. Importantly also, Mozambique must provide for legal mechanisms to implement internationally adopted measures.
- Participation in regional fisheries bodies (RFMOs). Mozambique is not a member of the Indian Ocean Tuna Commission (IOTC).²¹⁴
- In terms of regulations, Mozambique has an appropriate system but does not have enough enforcement and capacity to control its regulations.

2. Namibia

Namibia has various well developed policies and laws on the protection of fisheries resources. Namibia has put in place a completely new, modern legal and regulatory framework for fisheries management.²¹⁵ The Marine Resources Act 27 of 2000 (the MR Act)²¹⁶ is the principle fisheries legislation in Namibia. The scope and purpose of the MR Act is to *'provide for the conservation of the marine ecosystem and the responsible utilisation, conservation, protection and promotion of marine resources on a sustainable basis, for that purpose to provide for the exercise of control over marine resources;...'*²¹⁷ The MR Act applies as far as enforcement is concerned to Namibian flag vessels in or outside Namibian waters and to foreign flag vessels to the extent authorised by international agreements to which Namibia is a party, outside Namibian waters.²¹⁸ The Marine Resources Regulations Act 241 of 2001 (MRR) establishes forms and procedures for granting rights or exploratory rights, allocating quotas and issuing licenses. It also provides for conservation measures and protection of the marine environment setting the offences and sanctions.

²¹⁴ Ibid at 6.

²¹⁵ Note 121 at 9.

²¹⁶ Available at www.faolex.fao.org. [Accessed on 2 March 2010].

²¹⁷ The Long Title of the MR Act.

²¹⁸ Part II of the MR Act.

Namibia has in place measures to ensure that IUU fishing does not occur either inside or outside of its EEZ, by Namibian-flag vessels or foreign vessels. Hence, Namibia's approach is in line with the obligations of the Compliance Agreement²¹⁹ and the Fish Stocks Agreement²²⁰ as well as UNCLOS.

However, Namibian fisheries policy and legislation does not specifically reflect the SADC Protocol on Fisheries nor the CCAMLR, ICCAT and SEAFO Conventions with regard to compliance and participation in the intergovernmental organisations and arrangements but has confirmed its commitment in its revised policy document of June 2004.²²¹ It is encouraging to note Namibia's commitment to fisheries management, strategies development which is clearly outlined in its 'Vision 2030'.²²²

Namibia is recognized as having one of the best managed fisheries in the world.²²³ What remains then is the following:

- Its on-going compliance with its regional and international obligations and active participation in RFMOs.
- The sustainability of its institutions depends on building appropriate human capacity, being able to retain that capacity and insuring that the institutions remain relevant for the purpose for which they were established.
- The capacity of the institutions to retain the appropriate human skills is vital to sustainability.

3. South Africa

The Marine Living Resources Act 18 of 1998 (the MLRA)²²⁴ is the principle fisheries legislation in South Africa. Other legislation²²⁵ also impact on conservation and management of marine living resources and their environment in varying degrees. Section 2 of the MLRA establishes broad objectives and principles for fisheries management in the

²¹⁹ 1993 FAO Compliance Agreement.

²²⁰ 1995 Fish Stocks Agreement.

²²¹ Palin and Amador (note 122) at 11.

²²² Available at www.npc.gov.na [Accessed on 29 September 2010].

²²³ Review of Namibian fisheries. www.norad.no [Accessed 29 September 2010].

²²⁴ Available at www.deat.gov.za [Accessed on 2 March 2010].

²²⁵ Sea Birds and Seal Protection Act 46 of 1973; National Environmental Management Act 107 of 1998.

Republic. It establishes as objectives the achievement of economic growth, the development of human resources, capacity building and the creation of employment. Its fisheries policy²²⁶ is founded on two principles: (a) that fisheries resources belong to all of South Africa's people; and (b) that these resources should be utilised on a sustainable basis.

The MLRA has broad scope of application. The array of management mechanisms available to fisheries authorities under the MLRA facilitates a broad and flexible approach to management.²²⁷ The MLRA makes elaborate provision for enforcement²²⁸ sharing of information on international conservation and management measures²²⁹ and obtaining information or data relating to vessel's position or activities²³⁰ and judicial provisions are dealt with matters including offences and penalties.²³¹

From the research undertaken by Palin and Amador²³², it was found that, at national level, the agreements to which South Africa is a contracting Party to have been adequately incorporated into domestic legislation and South Africa meets its international and regional commitments in this regard. South Africa has not yet accepted the Compliance Agreement, but adheres to its principles and the various obligations imposed are largely incorporated in the provisions of the domestic legislation. South Africa does not have legislation to enable the implementation of port state and flag state responsibilities with respect to SEAFO system of observation, inspection, compliance and enforcement. In this regard, South Africa should make provision in its current legislative regime for these areas. The legislation should make provision to ensure that it meets the requirements of the Compliance Agreement and the Fish Stocks Agreement. In respect of the Compliance Agreement, the requirements that needs implementation include: the need to maintain a record of fishing vessels and to ensure that information or any change to the information in the records is provided to the fisheries authorities in accordance with the IPOA-IUU.²³³ Provisions that are needed to implement specific requirements of the Fish Stocks Agreement are those regarding boarding

²²⁶ 1997 – White Paper - A Marine Fisheries Policy for South Africa. www.oceandocs.org [Accessed on 29 September 2010].

²²⁷ Chapter 3: Management of marine living resources Sections 14 to 42 includes local matters, foreign fishing and high seas fishing.

²²⁸ Chapter 6 Sections 50 to 57.

²²⁹ Implementation of international conservation and management measures.

²³⁰ Section 76: Observation devices.

²³¹ Chapter 7 Sections 58 to 76.

²³² Palin and Amador (note 210) at 12.

²³³ Article IV and VI.

and inspection procedures on the high seas and enforcement of serious violations. Section 52 of the MLRA is limited in that it can only apply in situations arising out of hot pursuit in accordance with Article 111 of UNCLOS. In sum, South Africa is required to:

- Ratify and accede to international instruments which can support its national legislative framework;
- Implement these agreements in their national laws and administrative structures; and
- Actively apply and enforce these laws and regulations.

4. Tanzania

The principle fisheries legislation in Tanzania is the Fisheries Act, 2003 (the Fisheries Act).²³⁴ The scheme of the Fisheries Act is that it provides for broad powers for fisheries management. In relation to fishing in the EEZ, the Deep Sea Fishing Authority Act, 1998 (which establishes the Deep Sea Fishing Authority), the Principle Fisheries Regulations, 1989 and its subsequent amendments provide much of the detail requirements in accordance with the regulatory scheme.²³⁵ The Minister exercises most of the development and control powers over the fisheries.²³⁶ The Fisheries Act makes provision for sustainable development, protection, conservation, aquaculture development, regulation and control of fish, fish products, aquatic flora and its products.²³⁷ The Management is responsible for issuing of fishing licenses, amongst others, prepares plans and keeps records of vessels licensed to fish in the EEZ, catches of licensed vessels and illegal practises and defaulters of rules and regulations.²³⁸ Part VIII makes provision for enforcement but lacks clear provisions relating to monitoring, control and surveillance. However the penalties seem to be inadequate in respect of offences in that Section 47 provides that:

'Any person, who contravenes the provisions of this Act other than those with specified penalties, upon conviction shall be liable to a fine of not less than one hundred thousand shillings and not more than one million shillings or to imprisonment for a term of not less than two years and not more than five years or to both such fine and imprisonment.'

²³⁴ Available at www.faolex.fao.org [Accessed 2 March 2010].

²³⁵ Kuemlangan (note 153) at 25.

²³⁶ Part II of the Fisheries Act.

²³⁷ Long Title of the Act.

²³⁸ Section 6 of the Act.

One of the weaknesses of this scheme is that the Regulations²³⁹ too attract a lesser penalty for offences and some offences are serious enough to warrant higher penalties.²⁴⁰ This creates a situation where a set of regulations can be without a severe penalty so as to have a deterrent effect such that regulations are contravened with impunity.

Related to the scope of the principal legislation is the definition of the term 'fishing.' 'Fishing' is defined as the 'collection, capture, gathering, killing, snaring or trapping of fish, fish products or aquatic flora'²⁴¹ In many jurisdictions this term has been given a much wider definition than the Tanzanian definition. In Mauritius, for example, the Fisheries and Marine Resources Act²⁴² defines "fishing" as –

- (a) means -
- (i) catching;
 - (ii) collecting;
 - (iii) killing; or
 - (iv) destroying,
- a fish by any method; and
- (b) includes -
- (i) searching for fish for the purpose of catching, killing or destroying the fish;
 - (ii) placing, searching for or retrieving a fish aggregating device;..'

The Marine Living Resources Act, 18 of 1998 defines 'fishing' in Section 1(xviii) as

'fishing' means –

- (a) searching for, catching, taking or harvesting fish or an attempt to any such activity;
- (b) engaging in any activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish;
- (c) placing, searching for or recovering any fish aggregating device or associated gear, including radio beacons;
- (d) any operation in support or in preparation of any activity described in this definition; or
- (e) the use of an aircraft in relation to any activity described in this definition.'

This research has shown that neither the Tanzanian principle Act nor its regulations contain a comprehensive definition for the term 'fishing' illustrating the inconsistency across the legislation and the need to create harmonisation.

In order to create an effective fisheries regime, the Tanzanian legal fisheries framework should consider the following areas in its legislation for implementation and enforcement:

- A review of laws and particular MCS provisions of the various legislation that impact on fisheries must be considered;

²³⁹ Part V of the Regulations under the Fisheries Act of 1970.

²⁴⁰ Kuemlangan (note 153) at 26.

²⁴¹ Section 1 of the Act.

²⁴² Section 2 of the Fisheries and Marine Resources Act 22 of 1998.

- VMS provisions must be regulated so that information on VMS or other modern surveillance equipment could be relied upon in court to secure a conviction.
- Ratify and accede to international instruments which can support its national legislative framework. Tanzania has not ratified the Fish Stocks Agreement.²⁴³
- Implement these agreements in their national laws and administrative structures. Tanzania's principle fisheries legislation do not have clear provisions relating to the Compliance Agreement or the Fish Stocks Agreement; and
- Amendments to the existing legislation or enactment of new legislation or regulations are needed and have to be actively applied and enforced.

Recommendations in the form of possible areas for harmonisation will be made in the next chapter so as to harmonise legislation across the region. The aim is to provide the region with tools which are consistent and enforceable across the SADC coastal States.

²⁴³ Kuemlangan (note 153) at 29.

Chapter V A possible solution: SADC IUU Regional Regulations for IUU Fishing - a single overarching regulatory framework to strengthen and harmonise the existing laws in the SADC region

The preceding chapters have reviewed a suite of conventions, agreements, laws and regional and international instruments which provides for a system in which sustainable fisheries management should be possible, yet weaknesses and gaps are inherent in most of them and which the SADC region must still overcome. This chapter aims at recommending some specific legal provisions to be inserted into regulations for the region which will lend itself to the strengthening and harmonising of the existing legal frameworks in the form of Regional SADC IUU Regulations (the SADC IUU Regulations). The objective of the SADC IUU regulations is to prevent, deter and eliminate IUU fishing throughout the region by providing all the SADC coastal States (the Member States) with a comprehensive, effective and transparent legal framework to deal with the common problems which the Member States face. The underlying purpose therefore directed at creating a legally binding and enforceable single legal framework in order to harmonise and effectively deal with IUU fishing in terms of the commitment by the Fisheries Ministers taken in Namibia on 4 July 2008.²⁴⁴

The recommended SADC IUU regulations will be largely based on a comparative regime, namely the European Council's regulations 1005/2008 (the EC Regulations)²⁴⁵ which came into force on 1 January 2010. There are indeed many parallels between the European Community and the SADC Community insofar as it relates to the common problems which their respective regions face and their respective efforts to fight IUU fishing. At this juncture, it is appropriate to outline the background and main thrust of the EC Regulations.

2008 European Council Regulations 1005/2008 (the EC Regulations)

The European Commission has been tremendously active in the fight against IUU fishing for over a decade. The main thrust of its policy comes from its 2002 Action plan, directly inspired by the FAOs International Plan of Action adopted in 2001 to prevent, deter and eliminate IUU fishing. However, the efforts of the international community have not succeeded in reducing the scope of IUU fishing activities. Overall figures show that IUU

²⁴⁴ See Chapter 1, at 9 – 11.

²⁴⁵ EC Regulations 1005/2008 to prevent, deter and eliminate illegal, unreported and unregulated IUU fishing. www.europe.eu [Accessed on 8 April 2010].

fishing practices amount to approximately 10 billion Euros a year worldwide, making IUU fishing the second largest producer of fishery products in the world. The European Community is a valuable target for IUU operators since it is the largest importer of fishery products in the world and one of the main producers and exports worldwide. The high demand and/or processed products exposes the European Community to a potentially attractive market for IUU operators as, due to the lack of control mechanisms based on traceability and identification of the fishing vessels, IUU catches can be easily laundered including through processing.²⁴⁶

The EC IUU Regulation was an initiative to implement a regional legal framework for the Community and is the outcome of a long row of activities by the European Commission²⁴⁷ in the fight against IUU fishing. The European Council of Fisheries Ministers reached a unanimous political agreement on 24 June 2008, which formally adopted the IUU regulation on 29 September 2008. The regulation entered into force on 1 January 2010. The EC IUU Regulation is one of three pillars of the new control system for fisheries in the European Community. The EC IUU Regulations is a transparent and non discriminatory instrument applying to all fishing vessels, under any flag, which seeks to prevent, deter and eliminate IUU fishing, in all maritime waters, in as much as derived products are traded with the European Community or European Community nationals are involved in IUU fishing.²⁴⁸

The EC regulations adopt a comprehensive approach to IUU activities, and deals with a number of key actions, all of which is necessary to effectively close the net on IUU fishing:

1. Requires all fishing products (including processed products) entering the European Union to be certified by the Flag state as having been caught legally. Proof of the legality of the catch must be provided by the Flag state through a catch certification scheme.

²⁴⁶ 29 September 2008 European Commission, DG Maritime Affairs and Fisheries, Brussels, Belgium (2009) Handbook on the practical application of Council Regulation (EC Regulations) No. 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (the EC Regulations IUU Handbook) at 6. <http://ec.europa.eu/fisheries/iuu> [Accessed on 17 March 2010].

²⁴⁷ The European Commission and fisheries policy – The European Commission is responsible for all aspects of development and implementation of the CFP and other maritime policies. In the field of fisheries, the DG MARE initiatives new fisheries policy to ensure the effective functioning of the CFP and ensures that legislation is put into practice by the EU Member States. The European Commission has a powerful role and large responsibility on the world stage in fisheries. The Brussels based European Commission is the executive body of the EU, responsible for, amongst others, ensuring that EU law is upheld by Member States. <http://www.cfp-reformwatch.eu> [Accessed 28 June 2010].

²⁴⁸ Ibid at 79.

2. Enables the EU to adopt retaliation measures against States and vessels which repeatedly breach international rules on fisheries conservation and management measures. The measures taken by the EU would take the form of commercial sanctions, ban on access to European ports for vessels flying the flag of the country concerned, prohibition for European Union nationals to maintain economic relationships with the fishing industry of the States concerned.
3. Increased financial sanctions for serious breaches of rules on fishing and trade in illegal catches. Financial sanctions must reach a level that deters fraudsters and could be matched with other sanctions such as the confiscation of catches or vessels and/or the withdrawal of licenses.
4. Stronger measures are taken to prevent the participation of European Union nationals in IUU fishing activities.
5. Stepped up cooperation with international partners to improve monitoring, control and surveillance of IUU activities.
6. Participation with RFMOs to improve the fight against illegal fishing and enhance cooperation between these organisations.
7. Increased support for the developing countries to improve control and management in their national waters.

Areas for harmonisation: Specific legal provisions for the proposed SADC IUU Regulations.²⁴⁹

The SADC IUU regulations must apply to all IUU fishing activities in any waters in as much as they are related to the SADC region through trade flows, or the flag of fishing vessels, or nationality of operators. The SADC IUU regulations against IUU fishing should encompass fishing activities occurring within the region's waters as well as beyond those waters. The regulations must be geared towards deterring and punishing the most damaging infringements. Under the EC regulations, for example, a fishing vessel is notably presumed to be engaged in IUU fishing if it is shown that its operators have carried out activities in contravention with the conservation and management measures applicable in the area concerned, such as fishing without a valid license, in a closed area, beyond a closed depth or during a closed season, or by using prohibited gear, as well as the failure to fulfill reporting obligations, falsifying its identify, or obstructing the work of inspectors.²⁵⁰

²⁴⁹ It is not intended to provide all possible options for the regulations but only salient and specific areas. As far as possible, reference will be made to supporting provisions.

²⁵⁰ Article 26 of the EC Regulations.

Accordingly, the following provisions are proposed.

1. Definitions

The IUU definition stems from the International Plan of Action to prevent, Deter and Eliminate (IPOA-IUU)²⁵¹ and it has accepted as the internationally agreed definition of 'IUU fishing.' It is recommended that the proposed SADC IUU regulations reflect this definition. In doing so, the SADC IUU regulations will be brought in line with comparative regional²⁵² and international instruments²⁵³ where the definition has either been proposed as the preferred use or have been accepted.

2. Control of flags of non-compliance (FONC) and ports of non-compliance (PONC)

There are several reasons why the use of PONC and FONC occurs.²⁵⁴ In the case of PONC, of a port State there is a trade off between the effective control of activities by industrial and semi-industrial fishing vessels, the cost of which may be covered from license revenue against the increased revenue that is gained from port expenditure by attracting visiting fishing vessels. The existence of free ports and a lack of port management capacity and corruption in a port State also contribute to the existence of PONC. In the case of FONC, the economic (commercial) benefits are great and this is why the vessel operators use open registries. Diffey and Barnes²⁵⁵ have concluded that in reality it is impossible to determine with any confidence how many IUU vessels and the flag of such vessels are operating in the SADC region.

A regional approach to the control of IUU fishing, FONC and PONC should be adopted in the SADC IUU regulations to counteract the negative economic and social impacts of IUU fishing. The following recommendations are provided as strategies and provisions that can be considered towards addressing FONC and PONC activities and impacts in the SADC

²⁵¹ Food and Agriculture Organization (FAO). International Plan of Action to prevent, Deter and Eliminate IUU Fishing (IPOA-IUU) adopted on 23 June 2001. Paragraph 3 of the IPOA-IUU defines the term 'IUU fishing' www.fao.org. [Accessed on 24 August 2010].

²⁵² 2003. SADC protocol on Fisheries. <http://www.sadc.international.index>. [Accessed on 23 February 2010]

²⁵³ FAO IPOA-IUU (note 2) and EC Regulations (note 246).

²⁵⁴ Chapter II Section 2 above.

²⁵⁵ February 2008. The impact of flags and ports of non compliance in the SADC region Volume 2 – Report at 44. www.stopillegalifishing.com [Accessed on 21 September 2010].

region: Port State control: over national and international fleets should be strengthened in the landing, trans-shipment and servicing of fishing vessels. This is a cost effective and more sustainable form of control than employing conventional MCS activities.

3. Monitoring Control and Surveillance

This is probably the most important provision which should be dealt with in the SADC IUU regulations. It should be dealt with as an entire chapter in the regulations to provide for a comprehensive strategy to combat illegal, unreported and unregulated fishing (IUU) which endangers the economy of the fisheries sector, fish stocks and the marine environment.

The chapter should make concentrate on those MCS measures aimed at improving the standardisation and flow of MCS information between States in the region; provision for: controlled access to the SADC market to those fishery products certified compliant with regulations by the flag State or by the export State in question; surveillance of activities at sea, identification of IUU operators, and improved implementation of legislation in the fisheries field and better application of sanctions in the event of infringements being committed.

The chapter should reflect the various international instruments which exist in providing a useful framework for countries to build its MCS systems. These include: The Law of the Sea Convention; The Fish Stocks Agreement; the Compliance Agreement and the FAO Code of Conduct.

4. Fishing vessels engaged in IUU fishing

The SADC IUU regulations must provide for instances where a fishing vessel is notably presumed to be engaged in IUU fishing activities if it can be shown that its operators have carried out activities in contravention with the conservation and management measures applicable in the area concerned, such as fishing without a valid license, in a closed area, beyond a closed depth or during a closed season, or by using prohibited gear, as well as

failure to fulfill reporting obligations, falsifying its identity, or obstructing the work of inspectors.²⁵⁶

5. Black-listing of IUU fishing vessels.

When, on the basis of the information obtained, there are sufficient grounds to consider that fishing vessels flying the flag of a third country have been engaged in IUU fishing and that the competent flag States have not taken effective action in response to such IUU fishing, the Commission should place those vessels on the SADC Member State IUU vessel list. With a view to remedying the absence of effective action by flag States towards fishing vessels flying their flags and placed on the SADC Member State IUU vessel list, and to restrict the continuation of fishing activities by those vessels, Member States should apply appropriate measures against those vessels.

6. Port State Control and Inspection of Fishing Vessels.

The SADC IUU Regulations should provide for an improved framework for port state control, allowing Member States authorities to better monitor and supervise incoming fishing vessels and their catches. Access to port services, landings and transshipment by third country fishing vessels may then only be authorized in ports designated by the Member States.²⁵⁷ The Member States must be placed in a position to carry out inspections in their designated ports of landings and monitor transshipment operations.

7 Authorization to enter ports in the SADC Community

In examining the issue of port state access for the purposes of landing catch, transshipping or bunkering, it is recommended that the Member States deny access to any non-party vessel that is unable to demonstrate that it has complied with regional management arrangements. Third country fishing vessels must be granted authorization to land or to transship where complete prior notice has been given²⁵⁸ and the fishery products are

²⁵⁶ Article 3 of the EC Regulations provides for a comprehensive list of instances where a vessel may be presumed to be engaged in IUU fishing. These best practice measures can be implemented in the SADC regulations, where applicable.

²⁵⁷ Similar provision has been provided for in Article 9 of the EC Regulations.

²⁵⁸ Article 6 of the EC Regulations provides for 'Prior Notice' to be given by third countries to competent authorities of its Member States whose designated port or landing facilities they wish to use.

accompanied by a validated catch certificate. Member States should not authorize entry into a port if the fishery products are not accompanied by a catch certificate, but should keep such products in storage until the checking process is completed. Fishing vessels appearing on the Member States' IUU vessel list should not be authorized to enter into ports of the Member States.

8. Trade Measures: the catch documentation scheme

A Member State catch certification scheme should form an essential part of the IUU regulations which is intended to improve the traceability of all marine fishery products traded with the Member States and facilitate the control of their compliance with conservation and management rules, in cooperation with third countries.

The regulations must provide that a certificate be required as a precondition for the import of fishery products into the Member States. That certificate should contain information demonstrating the legality of the products concerned. It should be validated by the flag State of the fishing vessels which caught the fish concerned, in line with its duty under international law to ensure that fishing vessels flying its flag comply with international rules on conservation and management of fisheries resources. It is essential that the certification scheme apply to all imports of marine fishery products into the Member States and exports from the Member States. This scheme should also apply to fishery products which have been transported or processed in a country other than the flag State before reaching the territory of the Member States. Specific requirements should therefore apply with respect to those products, in order to guarantee that the products arriving into the territory of the Member States are not different from those the legality of which has been validated by the flag State.

It is important that checking, inspection and verification activities pertaining to fishery products in transit or transshipment be carried out primarily by the SADC States of final destination in order to improve their efficiency.²⁵⁹ It is foreseen that the SADC States may initially encounter capacity constraints for the implementation of a certification scheme but this should not prevent a regulation from making provision for the scheme and taking the appropriate measures to implement it in order to ensure that the main objectives of a catch certification scheme is achieved. These are:

²⁵⁹

EC Regulations at 3 para 20.

- Ensuring product traceability at all production stages, from catch to marketing, including processing and transport;
- enabling flag States to better monitor the fishing activities carried out by its vessels and so support compliance with conservation and management rules; and
- providing a legal basis for cooperation between flag States, countries of processing and of marketing and improving the dissemination of information.

Finally, it is recommended that catch documentation schemes be provided for so that Member States can develop appropriate mechanisms to improve their knowledge on the flow of international trade for catches taken from areas where regional management arrangements apply.

9. Transshipment

Transshipment at sea escape any proper control by flag or coastal States and constitute a usual way for operators carrying out IUU fishing to dissimulate the illegal nature of their catches. It is therefore justified for the Member States to authorize transshipment operations only if they occur within the designated ports of Member States, in ports of third countries between the Member States fishing vessels, or outside Member States waters between Member States fishing vessels and fishing vessels registered as carrier vessels under the auspices of a regional fisheries management organization.

10. A SADC Member State Alert System

In order to assist control authorities within Member States in their tasks of monitoring the legality of fishery products traded with the SADC Member State, as well as to warn SADC Member States' operators, a SADC Member State alert system should be established, designed to spread information, where appropriate, about well-founded doubts as to compliance by certain third countries with applicable conservation and management rules. It is essential that the Member States adopt dissuasive measures against fishing vessels carrying out IUU fishing and which are not subject to appropriate action by their flag State in response to such IUU fishing. To this end, the SADC Commission²⁶⁰, in collaboration with Member States, the third States and other bodies, should identify fishing vessels suspected of carrying out IUU fishing and the SADC Commission should seek information from the

²⁶⁰

See: number 14 below - 'The establishment of a SADC Commission for fisheries.'

competent flag State as to the accuracy of the findings. In order to facilitate enquiries pertaining to fishing vessels presumed to have carried out IUU fishing and prevent the continuation of the alleged infringement, those fishing vessels should be subject to specific control and inspection requirements by Member States.

11. Vessel Register Information and Information Sharing.

A common set of data should be agreed upon for exchange of information between the SADC States and between RFMOs and the SADC States with a view of engaging with a more global MCS network. This too would be in compliance with the requirement of the IPOA-IUU. As a minimum, information on vessels, license holders, and Masters and owners of vessels should be collated. A data base on vessel status 'good standing' or otherwise should be provided and information on vessel infringements be established. Once a data standard is established, information sharing should be conducted via an acceptable third party as the FAO.

12. Mutual Assistance and Cooperation.

Cooperation between Member States, the SADC Commission, and with the third countries is essential to ensure that IUU fishing is properly investigated and sanctioned and that the measures laid down in the proposed Regulations can be applied. A system for mutual assistance should be established to enhance such cooperation.

Administrative authorities of SADC Member States need to cooperate with each other, with public authorities of third countries and with the SADC Commission in order to ensure the effective implementation of the IUU Regulation. However, the exchange and the use of information between authorities at international level require a legal framework to determine the scope and conditions of such cooperation, including the protection of personal data. To that end, the IUU Regulation should provide for the setting up of a systematic and automated administrative cooperation and exchange of information concerning potential and detected IUU fishing, which should cover the following areas:

- exchange of information on request;
- exchange of information on spontaneous basis, without prior request;
- requests to take enforcement measures (e.g. verifications, administrative enquiries or any other type of appropriate enforcement action);

- notification of instruments or decisions on request.²⁶¹

13. Sanctions

IUU fishing activities can only be prevented, deterred and eliminated if States can effectively track down IUU operators. The SADC IUU Regulations should therefore consist of a system of effective, proportionate and dissuasive sanctions for serious infringements in respect of natural and legal persons. A comprehensive harmonised system of administrative sanctions must be introduced, together with enforcement and accompanying measures for serious infringements. This should ensure that operators engaging in or supporting IUU fishing, including by trading, can be deprived from the benefits of these activities and be discouraged from participating in such activities. To this end, the SADC Member States will have to impose a maximum sanction of at least five times the value of the fishery products obtained by committing the serious infringement, and 8 times the value of the fishery products in case of a repeated infringement within a 5 year period for any serious infringement. The value of the prejudice of the fishing resources and the marine environment must be taken into account.

14. The establishment of a SADC Commission for fisheries (the Commission)

In terms of the proposed regulations, it will be recommended that an overall SADC Commission similar to the EC Commission be established to oversee legal and scientific frameworks with the aim of protecting the regions natural resources whose finite nature can no longer be ignored. The Commission must be tasked with responding in an integrated manner to all the challenges that the African continent face. The Commission must be responsible for the implementation of the SADC IUU Regulations in addition to the plethora of national and international legal regimes and relations. The areas of responsibility of the Commission may include: the development and implementation of policies; initiate new policies and legal frameworks to ensure the effective functioning of the policies and ensure that legislation is put into place; laying down rules to ensure Africa's fisheries are sustainable and do not damage the marine environment; providing national authorities with the tools to enforce these rules and punish offenders; monitoring the size of the African fishing fleets; providing funding and technical support for initiatives that can make the industry more

²⁶¹

EC Regulations IUU Handbook at 85.

sustainable and negotiating on behalf of African countries in international fisheries organisations²⁶²

15. Ratification of relevant international agreements.

The regulations must enjoin all SADC States who are parties to the UN Fish Stocks agreement and the Compliance Agreement to ratify these legal instruments as soon as possible. It should also urge all non-parties to accede, ratify or adopt these instruments. This will empower all States to adopt these laws into their domestic laws in order to bring into effect the MCS measures specified for Port States, Flag States and Coastal States.

In conclusion of this chapter, the SADC IUU Regulations can be summarised as follows - the Regulation identifies IUU fishing as a violation of applicable laws, rules or regulations of particular gravity, as it seriously undermines the attainment of the objectives of the violated rules and jeopardises the sustainability of the stocks concerned or the conservation of the marine environment. The Regulations must be built on and find support in other pieces of national, regional and international frameworks as its primary aim is to establish the basic framework for the control, monitoring and elimination of IUU fishing activities.

Information must be shared between RFMOs and national fisheries/maritime administrations. MCS initiatives must however be sustainable over the long-term (through cost-recovery mechanisms) and a reliance on sophisticated technology should be avoided. Analysing the cost benefit of various deterrent measures versus the economics of IUU operations could be the subject of further research

²⁶²

These factors are similar to the areas of action contained in the policy of the Common Fisheries Policy (CFP) of the EU. The Common Fisheries Policy [www://ec.europa.eu/fisheries](http://ec.europa.eu/fisheries). [Accessed 28 June 2010].

CHAPTER VI CONCLUSION

There can be no debate that illegal, unreported and unreported fishing constitutes one for the most serious threats to the sustainable exploitation of living aquatic resources and jeopardises the very foundation of fisheries policies and international efforts to promote better ocean governance world over.

The action by the SADC Community should be targeted primarily at behaviour falling within the definition of IUU fishing and which causes the most serious damage to the marine environment, the sustainability of fish stocks and the socioeconomic situation of fishermen abiding by the rules on conservation and management of fisheries resources.

This paper suggests that the latest option would be the only one able to address effectively the current challenges of the SADC region to increase its efficiency of its action against IUU fishing and adopt new regulatory measures designed to cover all facets of the phenomenon, namely to provide a for single regulatory framework in the form of regional SADC IUU regulations. Its comprehensive scope would allow covering the current loopholes that affect the SADC system and deal effectively with the scourge of IUU fishing in the region. This option, as illustrated in the preceding chapter, supports far-reaching measures in all areas concerned (port state control, flag state control, certification schemes for ports, enforcement and compliance measures; approximation of maximum levels of sanctions in relation to serious infringements and cooperation between States). In line with the foundational provisions already recommended, the SADC IUU Regulations should extend to fishing activities carried out on the high seas and in maritime waters under the jurisdiction or sovereignty of coastal communities, including maritime waters under the jurisdiction or sovereignty of the Member States.

The ambitious approach promoted via this option is one commensurate with the scale and urgency of the problem.

BIBLIOGRAPHY

A. STATUTES AND POLICIES.

1. 1937. Decree on Fishing and Hunting, as amended in 1960. (Democratic Republic of Congo).
2. 1973. Sea Birds and Seal Protection Act 46 of 1973. Available at www.deat.gov.za
3. 1982 The Law of the Sea Convention (UNCLOS). Available at www.fao.org.
4. 1990. The Fisheries Law 3 of 1990 (Mozambique) Available at www.faolex.org.
5. 1993. FAO Compliance Agreement, 1993. Available at www.stopillegal fishing.com.
6. 1993. The Treaty of the Southern African Development Community (1993) 32 ILM 16. Available at <http://www.sadc.int/index>
7. 1995. Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the Fish Stocks Agreement) Available at www.stopillegal fishing.com
8. 1997 – White Paper - A Marine Fisheries Policy for South Africa. Available at www.oceandocs.org.
9. 1998. The Marine Living Resources Act, 18 of 1998 available at www.faolex.org
10. 1998. National Environmental Management Act 107 of 1998. Compendium of South African Legislation Morne van der Linde 2006.
11. 1998. Fisheries and Marine Resources Act, 22 of 1998 (Mauritius). Available at www.faolex.org
12. 2000. The Marine Resources Act, 27 of 2000 (Namibia). Available at www.faolex.org
13. 2000. Fisheries Policy of 2000. Ordinance 93-022 of 3 May 1993. (Madagascar). Available at www.fao.org
14. 2001. The Marine Resources Regulations, Act 241 of 2001 (Namibia). Available at www.faolex.org
15. 2001. Food and Agriculture's Organization of the United Nations International Plan of Action, on Illegal, Unregulated and Unreported Fishing (IPOA-IUU). Available at www.fao.org
16. 2002. The Johannesburg Plan of Implementation: The World Summit on Sustainable Development. Available at www.fao.org.
17. 2003. Fisheries and Marine Resources Act 22 of 2003 (Tanzania). Available at www.faolex.org
18. 2003. The SADC Protocol on Fisheries – August 2003. Available at <http://www.sadc.int/index>
19. 2004. The Aquatic Biological Resources Act of 2004 (Law 6-A/04). Available at <http://www://angolalegal.com>
20. 2007. 17 October 2007 Brussels – Council regulation establishing a community system to prevent, deter and eliminate illegal, unreported and unregulated fishing Impact Assessment. Available at <http://ec.europa.eu/fisheries>.
21. 2007. United Nations General Assembly, Resolution on Sustainable Fisheries 105 of 6 March 2007. Available at www.stopillegal fishing.com.

22. 2008. EC Regulations No 1005 of 2008 of 29 September 2008. Available at <http://ec.europa.eu/fisheries>.
23. The Common Fisheries Policy Directorate-General for Maritime Affairs and Fisheries. Available at http://ec.europa.eu/dgs/maritimeaffairs_fisheries.
24. Policy Brief 8. Illegal, unreported and unregulated fishing. Available at www.dfid.gov.uk.

B. AUTHORITIES

1. July 2005. Review of impacts of illegal, unreported and unregulated fishing on developing countries Marine Resources Assessment Group Ltd. Available at www.mrag.co.uk.
2. July 2005. Synthesis report. Review of impacts of illegal, unreported and unregulated fishing on developing countries. Available at www.stopillegalfishing.com
3. October 2007 Brussels – Council regulation establishing a community system to prevent, deter and eliminate illegal, unreported and unregulated fishing Impact Assessment. Available at <http://ec.europa.eu/fisheries>.
4. December 2007. IPOA-IUU Implementation status report for the SADC region. Available at www.stopillegalfishing.com.
5. January 2008. Report of the FAO regional workshop on Port State measures to combat illegal, unreported and unregulated fishing. Available at www.stopillegalfishing.com.
6. February 2008. The impact of flags and ports of non-compliance in the SADC region Volume 2 – Report. www.stopillegalfishing.com
7. May 2008. Study and analysis of the status of IUU fishing in the SADC region and an estimate of the economic, social and biological impacts. Available at www.stopillegalfishing.com
8. May 2008 Botswana Stop illegal fishing in Southern Africa - Stop Illegal Fishing in Southern Africa – Illegal, Unreported and Unregulated Fishing. Available at www.stopillegalfishing.com
9. May 2008 Botswana Illegal Fishing in Southern Africa – The illegal trade in South African Abalone. Available at www.stopillegalfishing.com
10. May 2008 Botswana Illegal Fishing in Southern Africa – Oceans in Crisis. Available at www.stopillegalfishing.com
11. May 2008 Botswana Stop Illegal Fishing in Southern Africa – Improving governance to combat illegal fishing in Africa. Available at www.stopillegalfishing.com
12. May 2008. Study and analysis of the status of IUU fishing in the SADC region and an estimate of the economic, social and biological impacts. Available at www.stopillegalfishing.com
13. May 2008. Stop illegal fishing in Southern Africa - Country profiles. www.stopillegalfishing.com
14. 4 July 2008, Namibia 'Statement of Commitment by the SADC ministers responsible for marine fisheries on IUU fishing.' Available at www.commonwealthfisheries.org

15. July 2008. SADC Ministerial Fisheries Conference to Stop Illegal Fishing. 'The Billion Dollar Treasure Hunt.' Held in Namibia. Record of Proceedings. Available at www.stopillegalfishing.com.
16. 29 September 2008. European Commission, DG Maritime Affairs and Fisheries, Brussels, Belgium (2009) Handbook on the practical application of Council Regulation (EC Regulations) No. 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing. Available at <http://ec.europa.eu/fisheries/iuu>
17. 1 October 2008. SADC countries to tighten up on illegal fishing. A commitment was given to develop a regional MCS strategy and regional plan of action at the SADC Ministerial conference of 4 July 2008. Available at www.worldfishing.net.
18. March 2009. Version 1 - 10/2009 Handbook on the practical application of Council Regulation (EC) No. 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (the IUU Regulation). Available at <http://ec.europa.eu/fisheries/iuu>.
19. March 2009. Version 2 Information note on the EC Regulations 1005/2008 to prevent, deter and eliminate illegal, unreported and unregulated fishing. Available at <http://www.ec.europa.eu>
20. 18 March 2009 Tanzania, SADC joins forces against illegal fishing. Available at www.illegal-fishing.info.
21. March 2009. Southern African Joint Surveillance patrol gets tough on illegal fishers. Available at www.stopillegalfishing.com
22. May 2009 Brussels - IUU fishing, overcapacity and the need for sound fisheries and management. Available at <http://ec.europa.eu/fisheries/iuu>.
23. March 2009. Department of Environmental Affairs and Tourism Media Statement – Sarah Baartman EPV returns after successful transboundary patrol. Available at www.sancornrf.ac.za
24. 11 May 2010 Iranian-flagged fishing vessel arrested for IUU fishing. Available at www.fis.com
25. Bergh, Erik January 2008 Report of the FAO regional workshop on port state measures to combat IUU fishing: Global and regional issues relating to IUU fishing and port state measures and the 2005 FAO model scheme on port state measures to combat IUU fishing. Available at www.stopillegalfishing.com
26. Brick, Muchapondwa, Visser: Abalone poaching, methamphetamine use, criminal activity in South Africa and the associated implications for resource management. www.efdinitiative.org
27. Copeland, Duncan Environmental Justice Foundation, UK 'Improving national fisheries MCS capability and capacity with a view to eradicating IUU fishing' Available at www.stopillegalfishing.com
28. Churchill, RR and Lowe, AV The law of the sea 3rd edition.
29. Davies, Sandy - Stop Illegal Fishing Programme Coordination Team Paper delivered on 4 July 2008 at SADC Ministerial Fisheries Conference to Stop Illegal Fishing, Windhoek, Namibia - 'The Billion Dollar Treasure Hunt.' Record of proceeding at 7. Available at www.stopillegalfishing.com

30. Dr Douman 'What do we know about IUU fishing globally' January 2008 report of the FAO Regional Workshop on Port State Measures to combat illegal, unreported and unregulated fishing. Available at www.stopillegal-fishing.com.
31. Escobar, Ignacia, et al - OECD workshop on IUU fishing activities. Available at www.stopillegal-fishing.com.
32. Hauck, M and Kroese, M Fisheries compliance in South Africa: A decade of challenges and reform (1994 – 2004). Available at www.sciencedirect.com.
33. Hassan, M.G and Mwangura, A - IUU fishing and insecurity impacts on Somali fisheries and marine fisheries' Available at www.stopillegal-fishing.com.
34. Hassan, M.G and Mwangura, A – IUU fishing and insecurity impacts on Somali Fisheries and Marine Resources. Available on www.stopillegal-fishing.com.
35. Hosch, Gilles Fisheries and Coastal Resources Planning and Management – Status report for the SADC region. Assessing the IPOA-IUU. 2007. Available at <http://www.stopillegal-fishing.com>.
36. Kuemlangan, Blaise - Comparative analysis of the fisheries legal frameworks of SADC coastal countries: status and options Legal Officer Development law service FAO legal office.. Available at <http://www.fao.org/docrep>
37. Moolla, Shaheen – Contextualising IUU fishing of marine resources in South African waters. Available at www.feike.co.za
38. Palin, Chris and Amador, Teresa - International and regional fisheries agreements and organisation in the SADC region. Legal assessment and review. Available at www.stopillegal-fishing.com.
39. Reader, A – Fishing against illegal, unreported and unregulated fishing: Impacts and challenges for ACP countries. Available at <http://www.brusselsbriefings.net>
40. Rigg, Kelly, Remi Parmentier and Duncan Currie – Halting IUU fishing: Enforcing International Fisheries Agreements. Available at www.vardagroup.org.
41. Schmidt, Carl-Christian Head of the Fisheries Division FAO– Addressing illegal unreported and unregulated fishing at 9 – 10. Available at www.sadc.org.
42. Sherman, Richard - Briefing on national, regional and international fisheries and marine related agreements. Global legislators organization for a balanced environment (GLOBE) Southern Africa. Available at <http://www.emg.org.za>.
43. Standing, A - Improving governance to combat illegal fishing in Africa Institute of Security Studies. Available at www.stopillegal-fishing.com
44. Steinberg, Jonny - The illicit abalone trade in South Africa ISS Paper 105 dated April 2005.
45. After Windhoek. SADC Statement of Commitment: from words into action. Available at <http://www.stopillegal-fishing.com>.
46. Billions of dollars lost to illegal fishing in the SADC region. Available at www.siiia.org.za
47. Capacity building. Available at www.illegal-fishing.org.
48. Environmental Justice Foundation - Impacts of IUU fishing. Available at <http://www.eifoundation.org>.

49. Environmental Justice Foundation - Tracking illegally caught fish from West Africa into the European market. Available at www.ejfoundation.org.
50. FAO 2001. FIGIS topics and issues fact sheet: Fisheries governance. Available at www.fao.org.
51. Fishery country profile – The Republic of Angola. Available at <http://www.fao.org>.
52. Fishery country profile for Madagascar Available at <ftp://ftp.fao.org>.
53. Fishery country for Mauritius Available at www.fao.org.
54. Fishery country profile for Mozambique Available at www.fao.org.
55. Fishery country profiles for Namibia Available at <http://www.fao.org/fishery/countrysector>
56. Fishery country profile for South Africa Available at <http://www.fao.org/fishery/countrysector>
57. Fishery country profile for Tanzania Available at <http://www.fao.org/fishery/countrysector>
58. Fisheries and Governance – Governance in Fisheries. Fisheries Management Science Programme and Marine Resources Assessment Group Ltd. Available at www.fmsp.org.uk.
59. Fisheries Management Science Programme Policy Brief 5 – Fisheries and Governance Available at www.mrag.co.uk.
60. Impacts of IUU fishing Environmental Justice Foundation at 163 Available at <http://www.ejfoundation.org>.
61. Policy Brief 8. Illegal, unreported and unregulated fishing. Policy Brief 8. Available at www.dfid.gov.uk.
62. African Environment Outlook – Past, present and future perspectives United Nations Environment Programme 2002. Available at <http://www.unep.org/aeo> [Accessed 14 April 2010]
63. Economy of Namibia Available at <http://en.wikipedia.org>
64. Ministerial Conference – SADC Marine Fisheries Ministerial Conference to stop illegal fishing: the billion dollar treasure hunt. Available at www.stopillegalifishing.com
65. Monitoring, control and surveillance: the key to ending illegal fishing. Fisheries Management Science Programme Policy Brief 5 Available at <http://www.eldis.org>
66. Review of the state of world capture fisheries management: Indian Ocean Available at www.fao.org
67. Review of the state of world marine capture fisheries management: Indian Ocean – Country Review: Mozambique. Available at www.fao.org
68. Review of Namibian fisheries. Available at www.norad.no
69. South Africa's economy Available at www.mediaclubsouthafrica.com
70. Tackling illegal fishing practices in Africa's protected waters Available at <http://www.eldis.org>.
71. The International MCS Network: Third Global Fisheries Enforcement Training Workshop Available at www.mcs-sadc.org
72. The Directorate-General for Maritime Affairs and Fisheries – European Commission. Available at http://ec.europa.eu/dgs/maritimeaffairs_fisheries
73. 'What is governance' Available at <http://www.fao.org/fishery>.
74. Why do we need African cooperation to stop illegal fishing Available at www.illegal-fishing.info

C. LIST OF CASES.

1. Houtbay Fishing Industries (Pty) Ltd v The Minister of Environmental Affairs and Tourism and Others (Houtbay Fishing)- Case Number: Cape Provincial Division 7390/01
2. Houtbay Fishing Industries (Pty) Ltd v The Minister of Environmental Affairs and Tourism and Others – Case Number: Cape Provincial Division 8788/01.
3. United States of America vs Arnold Bengis S1 03 Cr.308 (LAK).