Aspects of Illegal, Unreported and Unregulated Fishing in the Southern Ocean
Reviews: Methods and Technologies in Fish Biology and Fisheries

VOLUME 5

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Aspects of Illegal, Unreported and Unregulated Fishing in the Southern Ocean

by

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Wild is the cry of the sea in the caves by it-
Sea that is smitten by the spears of the snow;
Desolate songs are the songs of the waves by it-
Down in the south where the ships never go.

(Extract from Beyond Kerguelen by Henry Kendall. H. Kendall, Leaves from an Australian Forest-
Poetical Works of Henry Kendall (1869). This poem was written following a whaling trip in 1853 to the
Southern Ocean by 14 year old Henry Kendall.)
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Abstract

Overfishing threatens the viability of high seas living resources. Furthermore, controls to prevent overfishing are inadequate. Illegal, Unreported and Unregulated (IUU) fishing is a product of overfishing and affects all marine fisheries. Southern Ocean fisheries have been particularly targeted by IUU fishing. The efforts of the CCAMLR Commission and the Australian government to adopt complementary measures to deter IUU fishing in the Southern Ocean form the basis of this study, although the examination is conducted following a comprehensive review of the legal and other factors contributing to the development of IUU fishing as well as the applicable international law.

The conclusions reached in the final Chapter are that in the absence of flag State control, alternative measures and strategies have proved to be effective in influencing the behaviour of IUU fishing vessels. By improving coastal State surveillance, enhancing regional cooperation, imposing port and market State controls, establishing IUU vessel databases and vigorously prosecuting offenders, RFMOs and coastal States can jointly increase the risk of conducting IUU fishing activities. At the same time financial returns can be diminished so that engaging in IUU fishing becomes economically unattractive. It is concluded that the application of a combination of these measures is required in order to achieve a degree of success in deterring IUU operators.

This study is up to date in law and facts to 30 October 2005.
Acknowledgements

When one contemplates undertaking a research exercise of the magnitude required to produce a text of this type, I think it is easy to underestimate the impact it will have, not on your academic life but on your ‘other’ life. I talk of the important people in your life such as family and friends. As I became more single minded in my determination to complete my research, I also became harder to live with. The phrase, ‘It won’t be so bad when I’ve finished the book’ was one that was greeted with a mix of amusement and resignation in my house.

I must thank my supportive husband Hugh who did not say a word when I announced my plan, when four months pregnant with child No. 2, to embark upon the PhD research which ultimately led to this book. Child No. 2 and No. 3 have come and grown and he remains supportive. So too have my three dear children who put up with ‘cranky mummy’ or ‘distracted mummy’. They have given up asking when the fish book will be done and have ceased submitting fish illustrations for inclusion.

I should also acknowledge the academic support I received along the way in the form of experts willing to read and comment on my work. To this end I thank Professor Gillian Triggs (the Director of the British Institute for International and Comparative Law) Dr Michael White (T.C Beirne School of Law, University of Queensland) Dr Denzil Miller (Executive Secretary CCAMLR). To the many other people who assisted me along the way, I remain indebted to you.
## Abbreviations

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<td>AAD</td>
<td>Australian Antarctic Division</td>
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<td>Australian Fishing Zone</td>
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<td>CCAMLR</td>
<td>Convention on the Conservation of Antarctic Marine Living Resources</td>
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<td>CDS</td>
<td>Catch Documentation System</td>
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<td>Code of Conduct</td>
<td>Code of Conduct for Responsible Fisheries 1995</td>
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<td>Compliance Agreement</td>
<td>Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas 1993</td>
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<td>Conservation Convention</td>
<td>1958 Convention on Fishing and Conservation of Living Resources of the High Seas</td>
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<td>EC/EU</td>
<td>European Community/European Union</td>
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<td>EEZ</td>
<td>Exclusive Economic Zone</td>
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<td>CITES</td>
<td>Convention on International Trade in Endangered Species 1976</td>
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<td>FAO</td>
<td>Food and Agriculture Organisation</td>
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<td>GATT</td>
<td>General Agreement on Tariffs and Trade 1947</td>
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<td>ICJ</td>
<td>International Court of Justice</td>
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<td>ILC</td>
<td>International Law Commission</td>
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<td>IPOA-IUU</td>
<td>International Plan of Action- Illegal, Unreported and Unregulated Fishing 2001</td>
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<td>IMO</td>
<td>International Maritime Organisation</td>
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<tr>
<td>Abbreviation</td>
<td>Description</td>
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<tr>
<td>ISOFISH</td>
<td>International Southern Ocean Long line Fisheries Information Clearing House</td>
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<td>ITLOS</td>
<td>International Tribunal for the Law of the Sea</td>
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<td>IUU Fishing</td>
<td>Illegal, Unreported and Unregulated Fishing</td>
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<tr>
<td>IWC</td>
<td>International Whaling Commission</td>
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<td>LOSC</td>
<td>Law of the Sea Convention 1982</td>
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<td>NAFO</td>
<td>Northwest Atlantic Fisheries Organisation</td>
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<td>NGO</td>
<td>Non-Governmental Organisation</td>
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<tr>
<td>OECD</td>
<td>Organisation for Economic Cooperation and Development</td>
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<tr>
<td>RFMO</td>
<td>Regional Fisheries Management Organisation</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>USA</td>
<td>United States of America</td>
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<tr>
<td>USSR</td>
<td>Union of Soviet Socialist Republics</td>
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<td>VMS</td>
<td>Vessel Monitoring System</td>
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<td>World Trade Organisation</td>
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PART 1

The Problem of IUU Fishing
Introduction

IUU fishing, the elements of which are discussed in detail further below in this Part, hinders the sustainable management of marine fisheries world wide. Southern Ocean fisheries and in particular the Patagonian Toothfish, have been targeted by IUU fishers. The text examines the response to the persistent problem of IUU fishing in the Southern Ocean, by CCAMLR, as the appropriate RFMO, and Australia, a State with vested interests in the Southern Ocean by virtue of the Heard and McDonald Islands' EEZ. This examination represents original work not only in the context of Southern Ocean fisheries but in the consideration of the linkages between regional and national measures to deter IUU fishing.

Faced with continued flag State inaction, both the CCAMLR Commission and Australia have identified and applied a number of measures to deter IUU fishing. These measures are examined in Parts 4 and 5 respectively. Indeed, the lack of flag State enforcement and the development and persistence of IUU fishing are inextricably linked, a fact that will be pursued in depth in Part 2 along with the other factors identified as contributing to the development of IUU fishing.

To begin, Chapter 1 introduces the points of research addressed in detail in the body of the text. First it will briefly examine the state of marine fisheries before considering the very broad way in which the term IUU fishing has been applied

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1 Convention for the Conservation of Antarctic Marine Living Resources, opened for signature 20 May 1980, 19 ILM 841. (entered into force 7 April 1982) (‘CCAMLR’). In the strict sense CCAMLR is a conservation organisation with an ecosystem based approach to the management of marine living resources, rather than a RFMO as traditionally understood. See Article 1(1). Notwithstanding this distinction, CCAMLR is the organisation charged with the protection of all marine living resources within the Convention Area, including the Patagonian Toothfish (Dissostichus eleginoides) which is the subject of intense IUU fishing. The Antarctic Toothfish (Dissostichus mawsoni) is fished in lesser quantities, however it remains protected under applicable Conservation Measures.

to marine fishing activities in all sections of the world’s oceans. Chapter 1 also provides a synopsis of the international response to IUU fishing over the past decade, proceeds to an overview of the extent of IUU fishing, both as a global problem and as experienced regionally in the Southern Ocean. Finally it introduces the question of why IUU fishing has been able to develop and persist, a question that must be considered before proceeding to identify measures to address the growing and persistent problems created by IUU fishing. This question is discussed more comprehensively in Part 2.

The analysis in Part 2 of the legal and non-legal factors contributing to the development and persistence of IUU fishing is fundamental to making an informed review of the actions of CCAMLR and Australia. Significant progress in identifying factors has been undertaken in the last two years, particularly following the conclusion of the OECD Workshop on IUU Fishing Activities held in April 2004. After reflecting on the ‘drivers’ of IUU Fishing, this text proceeds to examine the substance of the several international instruments with application to IUU fishing with the aim of identifying areas of emergent State agreement or practice and clarifying the international framework supporting the implementation of legal measures to deter IUU fishing in the absence of effective flag State enforcement.

Parts 4 and 5 analyse the extent to which CCAMLR and Australia have implemented the measures identified in Part 3 on a regional and national level, and the degree of success experienced by both CCAMLR and Australia in deterring IUU fishing. The final Chapter of this text draws from the analysis in Parts 2-5, to identify and recommend those measures which can potentially assist in deterring IUU fishing. The concluding Chapter concludes that first, no one measure can be relied upon to deter IUU fishing, and second, that to be effective, measures must be formulated by taking account the factors identified in Part 2 as contributing to the development and persistence of IUU fishing.

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Chapter 1
The Impact of IUU Fishing on Marine Fisheries

1.1 The Physical and legal State of Marine Fisheries

1.1.1 Overfishing

The existence of overfishing was recognised by the first FAO Fisheries Technical Committee in 1946.\(^4\) The recorded global marine capture fisheries catch increased by as much as 6% per year during the two decades following 1950.\(^5\) In simple terms

\[
\text{Graph 1.1 Global Marine Catch in 1948-2002}^3
\]


the reported catch trebled from 18 million tonnes in 1950 to 56 million tonnes in 1969. Whilst increases were not as significant during the last thirty years of the 20th century, the global landings from marine capture fisheries continued to rise. The most recent FAO estimate places marine fisheries production for 2002 at 84.5 million tonnes.\(^6\)

The continued increase in landings has corresponded with an increase in the proportion of estimated overexploited and depleted fish stocks. In 1949 a review of marine resources charted those areas of the world’s oceans considered to contain unexploited resources. The area charted covered most of the ocean’s surface.\(^7\) Nearly thirty years later in 1997, the FAO estimated that up to 60% of marine fisheries were over exploited, fully to heavily exploited or depleted. A further 25% of fisheries fell within the moderately exploited category, whilst only 9% were considered under exploited.\(^8\) In 2003 FAO estimates placed up to 76% of stocks within the over exploited, fully to heavily exploited, depleted or recovering categories. It was estimated that just 3% of fish stocks remained under exploited.\(^9\)

It is acknowledged that approximately 90% of the global marine catch is taken from within coastal State declared EEZs,\(^10\) however this study does not seek to specifically examine the management (or mis-management) of stocks falling within EEZs, with the exception that the review of Australia’s efforts to deter and eliminate illegal fishing within the declared EEZ adjacent to the Heard and McDonald Islands necessitates such a review. Rather, the complex problem of IUU fishing, which by definition can occur in disparate maritime zones, forms the central theme of this study.\(^11\)

**1.1.2 The Role of International Law**

The absence of a single regulatory authority with respect to the high seas has meant that many high seas stocks (including highly migratory and straddling stocks) are particularly vulnerable to overfishing. The principle of freedom of fishing on the high seas, which derives its authority from the observance of a general high seas

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\(^{6}\) Ibid.


\(^{13}\) The term ‘IUU fishing’ is explored and defined further is this Chapter.
freedom, means that in practice there is open access to high seas fishery resources for all States. In the absence of a regulatory authority, flag States have been entrusted with the responsibility of exercising jurisdiction over their flagged vessels on the high seas and with ensuring that the general limitations on the exercise of the freedom of fishing, contained within Arts 117-119 of the LOSC are observed.

It should be understood that in instances where flag States are either unwilling or unable to exercise effective control over their flagged fishing vessels, the existing law of the sea, with the exception of specific provisions in the UN Fish Stocks Agreement, does not permit third State enforcement. There is a growing body of work addressing the scope for non-flag State enforcement in high seas fisheries however this particular issue is not within the focus of the author’s study and it will not be explored further.

14 United Nations Convention on the Law of the Sea, opened for signature 10 December 1982, 19 ILM 1261 (entered into force on 16 November 1994) (‘LOSC’). Articles 87 and 116. It is acknowledged that there remains conflict between the observance of the Grotian concept of the freedom of the high seas (discussed in detail in Chapter 2) and the concept of the common heritage of mankind through which common resources would be collectively managed to avoid the environmental destruction often realised through unregulated access to natural resources. For commentary on this conflict see generally Chapters 1 and 2 of D. Caron and H. Scheiber, (eds) Bringing New Law to Ocean Waters (2004). This thesis is based on the realities of overfishing and increased competition for marine fishery resources which are a consequence of the freedom of fishing and which contribute to the current State of IUU fishing. See Part 2 for the analysis of factors contributing to the existence of IUU fishing.

15 The International Law Commission (ILC) emphasised the role of flag states in maintaining order on the high seas in the Report of the ILC on the work of its seventh session 23 April-4 July 1956, Yearbook of the ILC (1956) Vol. II. 279. The need for order on the high seas and the role of flag States in exercising authority over their vessels is emphasised further in Part 2.

16 As of 11 March 2004 there were 148 documents of ratification or accession lodged with the Secretary General of the United Nations under Art 306 of the LOSC. It argued that the general obligation to cooperate with respect to the conservation and management of high seas resources through subregional or regional fisheries organisations is an obligation under customary international law. This point is examined and substantiated in Part 3.

Indeed the view of the FAO is that the provisions apply to all states including non-member states to the LOSC as the requirements of Art 116-119 reflect existing customary international law. See, FAO State of World Fisheries and Aquaculture Report (2004) Part 1, Box 9, 98.

17 Several RFMOs have adopted Observation and Inspection Schemes which allow at-sea boarding, however they are only applicable between member States. The United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, opened for signature 4 December 1995, 34 ILM 1542 (entered into force 11 December 2001) (‘UN Fish Stocks Agreement’) does envisage boarding and inspection by non-flag States. However it is also restricted to State parties to the UN Fish Stocks Agreement, the significant change being that it seeks to widen boarding and inspection powers through reliance on membership of the UN Fish Stocks Agreement and not membership of the relevant RFMO. Closer inspection shows it remains dependent on State consent to the proposed boarding and inspection regimes.

18 For further analysis of the issue of non-flag State enforcement, see R. Rayfuse, Non-Flag State Enforcement in High Seas Fisheries (2004) and also Rayfuse, ‘Countermeasures and High Seas Fisheries Enforcement’ (2004) 51 Netherlands International Law Review 41-76.
Chapter 1

The resultant lacuna in international law whereby fishers can operate in an environment lacking effective regulation in which RFMOs and coastal States (beyond their EEZs) have no direct enforcement powers to prevent non-member States or third States from fishing unsustainably, has contributed to the growth of IUU fishing.\textsuperscript{19} The legal limitations characterise IUU fishing as a low risk, high return undertaking and large corporate entities, attracted by the economic benefits to be gained with minimum legal risk, have recently entered the IUU fishing industry. The impact of IUU fishing in the Southern Ocean has been particularly severe. The remote location of fishing grounds and absence of any permanent coastal State presence\textsuperscript{20} make it relatively easy for IUU fishing vessels to avoid detection, further tilting the odds in favour of the IUU fisher or operator.\textsuperscript{21}

There is also a myriad of other factors contributing to the continued rise in global landings of marine fish stocks and the emergence of IUU fishing. These include the impact of the industrialisation of the fishing industry; increases in both human consumption and the size of the global fishing fleet; the introduction of government subsidies which have contributed to the creation of an artificial environment of profitability;\textsuperscript{22} increased competition amongst fishers and the entry of large scale commercial fishing entities into the marine fishing industry.\textsuperscript{23}

\textsuperscript{19} Indeed the 1999 Report of the Secretary General to the 53\textsuperscript{rd} Session of the General Assembly of the United Nations on Oceans and law of the sea (A/54/429) 30 September 1999, agreed as much. At paragraph 249 it is states: ‘IUU fishing also raises some fundamental issues associated with well-established norms and principles of international law relating to the qualified freedom of high seas fishing, a flag State’s exclusive jurisdiction over vessels flying its flag on the high seas, rules regarding treaties and third states and the duty to cooperate for the conservation and management of living marine resources of the high seas.’ (‘1999 Report of UNSG on Oceans and law of the sea’)

\textsuperscript{20} Although the French do maintain a scientific base at Port-aux-Francais on Kerguelen Island, there is no permanent enforcement capability on the sub-Antarctic islands. French surveillance patrols have traditionally sailed from la Reunion, a French Island in the Indian Ocean and Australian vessels have left from the port of Fremantle in Western Australia. Coastal State surveillance and enforcement activity is reviewed in Part 5.

\textsuperscript{21} The term IUU operator is used on occasion through the study to acknowledge that there is an entity behind the IUU fisher, more often than not directing the location and fishing intensity of the vessel. The operator may be a corporation or individuals.

\textsuperscript{22} C.C. Schmidt, ‘Addressing Illegal, Unreported and Unregulated (IUU) Fishing’ (paper prepared for the OECD Workshop on IUU Fishing, above) 14. Schmidt makes a reference to the 2002 Declaration of the World Summit on Sustainable Development to ‘put into effect the FAO international plans of action to prevent, deter and eliminate illegal, unreported and unregulated fishing by 2004’ and ‘eliminate subsidies that contribute to illegal, unreported and unregulated fishing and over-capacity.’ The impact of subsidies on high seas fishing is examined in Part 2.

The degree to which IUU fishing impacts on international, regional and national efforts to sustainably manage dwindling high seas fish stocks, particularly in the light of continued reported global landings, and the urgent need for a co-ordinated response to the problem has been emphasised by the statement released by the Australian Government in March 2005:

IUU fishing on the high seas is a highly organised, mobile and elusive activity undermining the efforts of responsible countries to sustainably manage their fish resources. International cooperation is vital to effectively combat this serious problem. By using regional fisheries management organisations as a vehicle for cooperation, fishing states, both flag states and port states, and all major market states, should be able to coordinate actions to effectively deal with IUU fishing activity.24

1.2 Understanding IUU Fishing

The definitions of the nature and scope of IUU fishing outlined in the IPOA-IUU are adopted.25 Illegal fishing means fishing within a declared EEZ without the permission of the relevant coastal State or fishing within an RFMO area of application by a vessel flagged to a contracting party.26 It also encompasses fishing in violation of national or international obligations. Unregulated fishing includes fishing within a RFMO area of application by a vessel either without nationality or flagged to a non-contracting party and which is either inconsistent with, or contravenes the conservation and management measures of the relevant RFMO. It also includes fishing on the high seas in the absence of flag State authorisation. Unreported fishing includes misreporting catch levels or failing to report catches.27

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25 International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU) adopted by the 25th session of the FAO Committee on Fisheries on 2 March 2001. Section II, 3.
26 Under Article 21(1) of the UN Fish Stocks Agreement, a State which is party to the UN Fish Stocks Agreement but not a member of a relevant RFMO may still find its flagged vessels legitimately boarded and inspected by a member state of that RFMO, on the basis of consent obtained by virtue of ratification of the UN Fish Stocks Agreement. This Art also implies compliance by the UN Fish Stocks Agreement State party regardless of membership of the RFMO. See, also Article 8(3). On this basis, fishing within a RFMO area of application by a UNFSA contracting party could also fall within the definition of IUU fishing.
27 IPOA-IUU, Section II(3).
The full text of the relevant section of the *IPOA-IUU* is reproduced below. Whilst illegal and unreported fishing is by definition wrongful, unregulated fishing may, in some circumstances, be legal under international law. That is, all illegal fishing is by necessity unregulated but not all unregulated or unreported fishing, however undesirable or troublesome it may be to RFMOs and coastal States, is necessarily illegal. The FAO Technical Guidelines for Responsible Fishing (No. 9) *Implementation of the IPOA-IUU* note that unregulated fishing that is ‘likely to frustrate the achievement of sustainable fisheries’ would fall within the scope of the *IPOA-IUU*\(^{28}\) and as such RFMOs and States should take action to deter fishers from engaging in such fishing.

Any discussion of IUU fishing and the characteristics of IUU fishers, IUU vessels or the flag States that facilitate IUU fishing by failing to exercise the required level of control, will encounter concepts of good and bad actors.\(^{29}\) In addressing the many issues raised by IUU fishing and identifying alternate legal measures, this study does not seek to impose such labels on States or individual actors. However, the demonstrated behaviour of some States and IUU operators may necessarily lead one to conclude that their actions are undesirable and counter-productive to the goal of sustainable fisheries management. Such a conclusion is quite distinct from stating that the States, corporate entities or individuals involved in IUU fishing are ‘bad actors’ within the framework of international fisheries law.


IPOA-IUU
II. Nature and Scope of IUU Fishing and the International Plan of Action

3. In this document:

3.1 Illegal fishing refers to activities:
   3.1.1 conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations;
   3.1.2 conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or
   3.1.3 in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.

3.2 Unreported fishing refers to fishing activities:
   3.2.1 which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or
   3.2.2 undertaken in the area of competence of a relevant regional fisheries management organization which have not been reported or have been misreported, in contravention of the reporting procedures of that organization.

3.3 Unregulated fishing refers to fishing activities:
   3.3.1 in the area of application of a relevant regional fisheries management organization that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization; or
   3.3.2 in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.

3.4 Notwithstanding paragraph 3.3, certain unregulated fishing may take place in a manner which is not in violation of applicable international law, and may not require the application of measures envisaged under the International Plan of Action (IPOA).
The term IUU fishing is a recent addition to the vernacular of international fisheries management. The CCAMLR Commission established under CCAMLR is credited with being the first RFMO to formally recognise the problem of non-compliant fishers and to coin the phrase ‘IUU fishing’. The 1997 Report of the Standing Committee on Observation and Inspection noted that vessels flagged to CCAMLR members had been observed fishing illegally within CCAMLR waters and the EEZs adjacent to the Prince Edward Islands (South Africa), Crozet Island and the Kerguelen Islands (France), and the Heard and McDonald Islands (Australia). The Committee also noted the increasing incidence of fishing within the Convention Area by non-contracting party States. This activity was classified as ‘unreported and unregulated fishing by non-Members’.

Whilst the distinction was made by the CCAMLR Standing Committee on Observation and Inspection and the CCAMLR Commission between illegal fishing on the one hand and unreported and unregulated fishing on the other, the adoption of the term ‘IUU fishing’ by the international community has partially blurred the distinction. This is because IUU fishing has been used as a generic description of fishing activity which ‘undermines efforts to conserve and manage fish stocks in all capture fisheries’. Further, whilst the definition of IUU fishing within the IPOA-IUU has been described as ‘comprehensive and systematic and in that sense useful’ it does merge distinct activities performed in distinct maritime jurisdictions.

It is true that some IUU fishing activities may overlap. For example, illegal fishing is by its very nature also unreported fishing. However, it is also important to recognise that the generic term IUU fishing is often used to describe specific situations such as fishing within coastal State waters without coastal State permission, or fishing within RFMO waters by a flag vessel of a contracting party in contravention of the relevant RFMO conservation measures. In this context the term illegal fishing would be more accurate than IUU fishing to describe the factual situation. For the purposes of this study the acronym IUU fishing is used generally to refer to the global issues raised. When discussing discrete issues such as foreign vessels fishing without authorisation

31 CCAMLR, Article 1, defines the Convention Area in terms of its application to ‘Antarctic marine living resources of the area south of 60 degrees south latitude and the Antarctic marine living resources of the area between that latitude and the Antarctic Convergence which form part of the Antarctic marine ecosystem.’
32 CCAMLR-XVI (1997), paragraph 1.5.
33 Ibid paragraph 1.20.
34 IPOA-IUU, Section I, Introduction.
36 In this context it is noted that the European Community has stated that the definition of IUU fishing in paragraph 3 of the IPOA-IUU is not entirely appropriate but could be accepted in the interest of supporting the adoption of the IPOA-IUU with the understanding that the EC would not recognise
within the Australian EEZ adjacent to the Heard and McDonald Islands, the term illegal fishing is also used. Fishing within the CCAMLR Area of Application by vessels flagged to contracting parties or acceding states, in contravention of CCAMLR conservation measures, is strictly illegal fishing. However, given that the problem is not confined to contracting parties, as many non-contracting parties fish the Southern Ocean, the generic term IUU fishing has been adopted by the CCAMLR Commission when referring to problems of unsustainable and non-compliant fishing.

The difficulties in employing a broad term like IUU fishing to refer to all forms of unsustainable and non-compliant fishing whether in coastal State waters, RFMO areas of application, or the high seas, is highlighted by the care that must be taken in identifying effective strategies for its deterrence. Whilst this study does not approach IUU fishing in terms of identifying discrete legal measures for each of the constituent activities (that is illegal fishing, unregulated fishing and unreported fishing) it does of necessity, review those measures more appropriate for implementation on a regional basis and those which are appropriate for coastal State implementation. It does this through the examination of CCAMLR and Australian responses to IUU fishing.

1.3 Global Attention on the problem of IUU fishing

IUU fishing is a serious global problem. It has been the subject of numerous conferences and in 2001 the FAO adopted the IPOA-IUU. In late 2003 a High Seas Task Force was formed following the June 2003 meeting of the OECD Round Table on Sustainable Development. The Task Force is, as defined by its title, one concerned with high seas fisheries with a stated mission to identify global, regional...
and national initiatives to minimise incentives to carry out IUU fishing on the high seas.\textsuperscript{40} However it is logical that the problem of IUU fishing within EEZs is not excluded from the Task Force’s considerations. The Ministerial Task Force met for the first time in early March 2005.\textsuperscript{41} Ministerial members agreed upon six priority action areas for the coming year. These are sharing intelligence on IUU vessels, developing a global register of high seas fishing vessels, preparing guidelines on the performance of flag states regarding their high seas vessels, strengthening import measures and control over nationals, analysing trade-related measures and addressing RFMO based initiatives and governance issues.\textsuperscript{42}

In April 2004 the OECD Committee on Fisheries hosted a Workshop on IUU Fishing Activities with the aim of examining the problem of IUU fishing from a ‘multi-disciplinary approach.’\textsuperscript{43} In particular, economic and social ‘drivers’ of IUU fishing were examined by Workshop participants.\textsuperscript{44} IUU Fishing was once again the focus of international attention during the International Conference on the Governance of High Seas Fisheries and the UN Fish Stocks Agreement – Moving from Words to Action held in May 2005. The High Seas Task Force, represented by Ministers from Canada, Australia and Namibia, re-visited the persisting themes of IUU fishing in its submission to the Conference. Factors identified as contributing to the development and persistence of IUU fishing and targeted areas of action formed the substance of debate at these recent international gatherings and the outcomes are examined in Part 2 and 3.\textsuperscript{45} First, however, it is useful to review the international response to IUU fishing over the last decade.

### 1.4 Gaining Momentum in the International Response to IUU Fishing

The persistent and global nature of IUU fishing was noted in a statement made at the close of the FAO’s 25th Committee on Fisheries (COFI) in March 2003. It was

\textsuperscript{40} High Seas Task Force home page, ibid.


\textsuperscript{43} The objective of Part 2 of this study is to examine factors (legal and non-legal) which have contributed in the past or continue to contribute to the creation of an environmental (legal, economic, political) which is conducive to IUU fishing activities.

\textsuperscript{44} See OECD Workshop on IUU Fishing Activities above. Some Workshop papers have been published in hard copy by the OECD in a publication titled: Fish Piracy: Combating Illegal, Unregulated and Unreported Fishing (2004) OECD.