

WEBINARS:

Fisheries Subsidies Refresher Sessions

SESSION I

Understanding the Chair's Text: Balances of obligations and exceptions

Monday 6 September | 2-3 p.m. CEST



Agenda

14:05 - 14:30 : Presentation of the balances in the Chair's text

**14:30 – 14:40 : Scale of possible exceptions in terms of fishing effort
Dr. Yannick Rousseau, University of Tasmania**

14:40 – 14:55: Data Summary and Q&A

14:55 – 15:00: Closing remarks

Chair's text presentation

Caveats:

1) Presentation reflects our reading of the text as it currently stands

- Presentation reflects IISD's reading of the Chair's text of 30 June 2021 (TN/RL/W/276/Rev.1)
- Other readings are possible.
- Other ideas and proposals not captured.

2) Nothing is agreed yet

- All of the text is in square brackets.
- Some areas are more stabilised but.....
- Areas of disagreement remain; some in square brackets, but also in clean text.

**Article 1:
Scope**

**Article 2:
Definitions**



Scope and Definitions

Overall approach: Rules apply to specific subsidies provided to fishing and fishing related activities at sea. Not subsidies to aquaculture, inland fishing, onshore activities. (Article 1.1)

Article 1.2

[The Instrument will also apply to non-specific fuel subsidies.]

Article 2 defines

- Fish
- Fishing
- Fishing-related activities
- Vessel
- Operator

**Article 3:
Subsidies to
Illegal, Unreported,
and Unregulated
(IUU) Fishing**



Subsidies to IUU Fishing

Overall approach: Subsidy obligation triggered by a determination of IUU fishing, subsidizer decides duration

Articles 3.1, 3.2, 3.3

- Subsidies prohibited when a coastal state, flag state or relevant RFMO/A makes an “affirmative” determination that a vessel or operator engaged in IUU fishing.
- But [Determinations by coastal state Members must be based on positive evidence and follow due process (incl notification of flag and subsidising Member, when known)]

Article 3.4

- Subsidising Member can decide the duration of the prohibition, depending on the “nature, gravity and repetition” of the infraction.
- But the prohibition lasts as long as the sanction or listing remains in place.

Footnotes to note:

FN5: This rule does not require Members to undertake IUU fishing investigations or make determinations.

FN7: This rule cannot be used to delay or affect the validity of an IUU determination.

Subsidies to IUU Fishing - SDT

Overall approach: Subsidy obligation triggered by a determination of IUU fishing, subsidizer decides duration

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- Subsidising Member can decide the duration of the prohibition, depending on the “nature, gravity and repetition” of the infraction.
- But the prohibition lasts as long as the sanction or listing remains in place.

Article 3.8 grace period...

[Subsidies provided by developing and LDC Members to low income, resource poor and livelihood fishing or fishing related activities up to 12 nautical miles from the baseline cannot be challenged for [2] years]

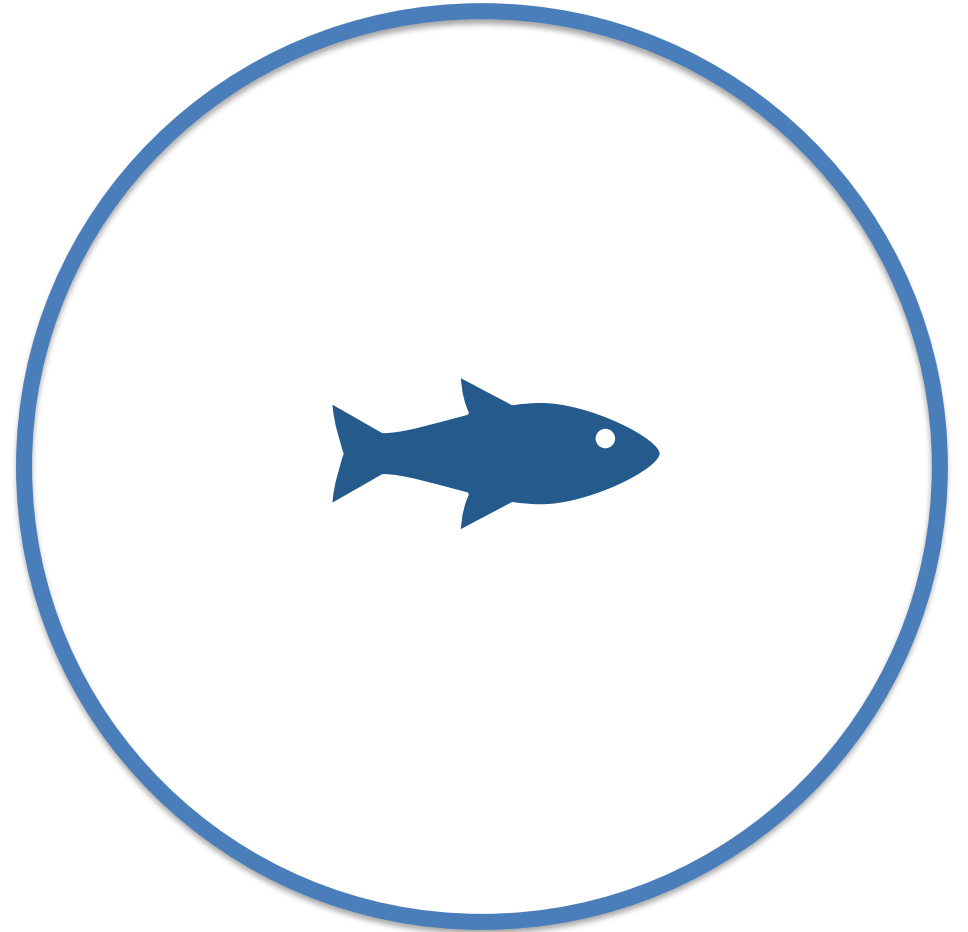
Subsidies to IUU Fishing – Context

RFMO and related IUU vessel lists currently include around 177 fishing vessels

	A	B	U	V	W	X
1	CurrentlyListe	Name	Reason	ICCAT	Reason	IATTC
2	True	ABDI BABA 1	Cross-listing	2008-11-24 -	Use of fraudulent documentation	
3	True	ABISHAK PUTHA 3	Cross-listing			
4	True	ABUNDANT 1	Operating in the IOTC area without authorisation	2015-10-02 -	Following IOTC	
5	True	ABUNDANT 12	Operating in the IOTC area without authorisation	2015-10-02 -	Following IOTC	
6	True	ABUNDANT 3	Operating in the IOTC area without authorisation	2015-10-02 -	Following IOTC	
7	True	ABUNDANT 6	Operating in the IOTC area without authorisation	2017-07-15 -	Following IOTC	
8	True	ABUNDANT 9	Operating in the IOTC area without authorisation	2015-10-02 -	Following IOTC	
9	True	ACROS NO. 2	Cross-listing	2006-11-26 -	Vessels greater than 24m not included in ICCAT Record of Vesse	Seen fishing in the MED during closed season
10	True	AL'AMIR MUHAMMAD	Cross-listing			
11	True	ALBORAN II	Cross-listing	2020 -	Cross-listing	
13	True	ALWESAM 5, AL WESAM 5	Contravention of IOTC Resolution 17/03	2018-06-06 -	Cross-listing	
14	True	AMORINN	Cross-listing	2019 -	Cross-listing	
15	True	ANEKA 228	Operating in the IOTC area without authorisation	2015-10-02 -	Following IOTC	
16	True	ANTONY	Cross-listing	2019 -	Cross-listing	
19	True	ASIAN WARRIOR		2015-10-02 -	Following IOTC	
23	True	ATLANTIC WIND		2015-10-02 -		
26	True	BAROON	Cross-listing	2019 -	Cross-listing	
29	True	BHASKARA NO. 10	Cross-listing	2011-08-30 -	E11-5762	2005-12-26 -
30	True	BHASKARA NO. 9	Cross-listing	2011-08-30 -		2005-12-26 -
32	True	BIGEYE, BIG EYE	Cross-listing	2006-11-26 -	vessels had no VMS, suspected of having no tuna licence and of	ossible at-sea transhipments
34	True	BLAGODATNY	Cross-listing	2020 -	Cross-listing	
36	True	BRAVO	Cross-listing	2004-11-21 -	Sighting of tuna longliner in the Convention area, not on ICCAT R	ord of Vessels
37	True	CAMELOT	Cross-listing	2011-08-30 -		2005-12-26 -
40	True	CARLOS	Cross-listing	2008-11-24 -	Bluefin tuna caught and exported without quota	
44	True	CEVAHIR	Cross-listing	2008-11-24 -	Use of fraudulent documentation	
45	True	CHALLENGE	Cross-listing	2019 -	Cross-listing	
46	True	CHI TONG	Operating in the IOTC area without authorisation	2015-10-02 -	Following IOTC	

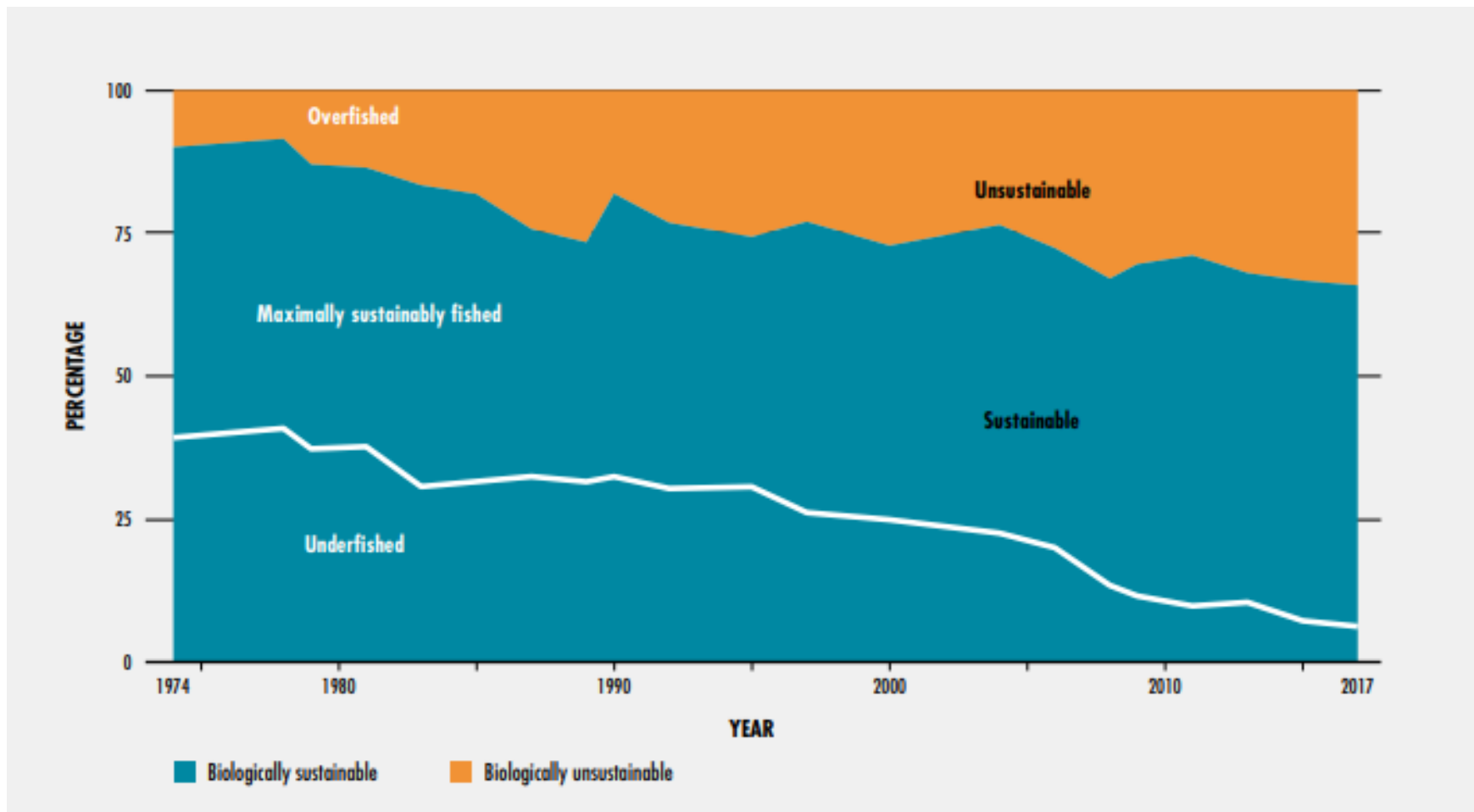
Source:
 Trygg Matt Tracking
 Combined IUU
 Vessel List
www.iuu-vessels.org

Article 4: Subsidies to Overfished Stocks



Subsidies to Overfished Stocks - Context

According to the FAO, around 34% of assessed fish stocks around the world are fished beyond sustainable limits.



Source:
FAO SOFIA report,
2020

Subsidies to Overfished Stocks

Overall approach: Most subsidies are prohibited for the fishing of overfished stocks

Articles 4.1

- Subsidies for fishing related to overfished stocks are prohibited.

Articles 4.2 and 4.3

- Stocks are overfished when national authority or RFMO/A recognizes it is overfished, based on the best scientific evidence available to that authority.
- Exception for subsidies implemented to promote the rebuilding of the overfished stock.
- [Exception for other subsidies if measures are implemented to promote the rebuilding of a stock.]

Subsidies to Overfished Stocks + SDT

Overall approach: Most subsidies are prohibited for the fishing of overfished stocks

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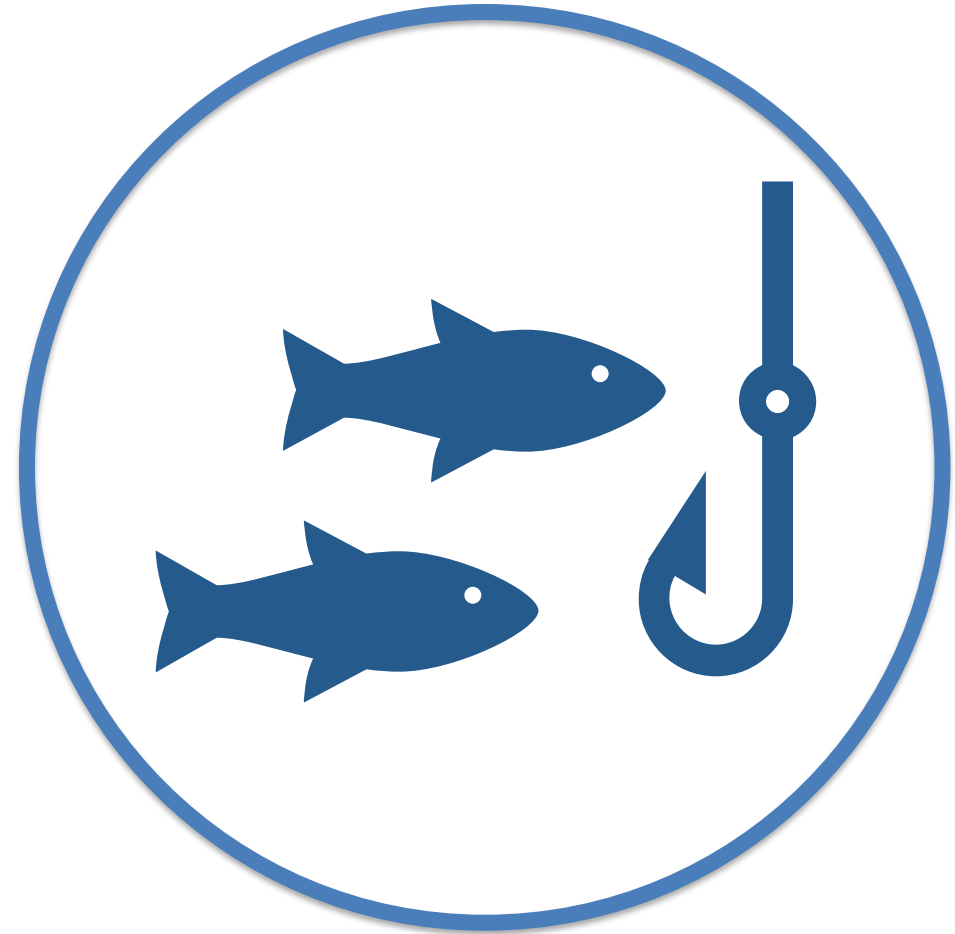
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- Stocks are overfished when national authority or RFMO/A recognizes it is overfished, based on the best scientific evidence available to that authority.
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- [Exception for other subsidies if measures are implemented to promote the rebuilding of a stock.]

Article 4.4 grace period...

[Subsidies provided by developing and LDC Members to low income, resource poor and livelihood fishing or fishing related activities up to 12 nautical miles from the baseline cannot be challenged for [2] years]

**Article 5: Subsidies
that contribute to
Overcapacity and
Overfishing**



Subsidies to Overcapacity and Overfishing

Main prohibition: Listed subsidies are prohibited unless measures are in place.

Article 5.1

- Prohibition of subsidies that **contribute to overcapacity and overfishing**, including:
 - Vessel construction, acquisition, and modernisation
 - Purchase of machines and fishing equipment
 - Purchase of fuel, ice and bait...

Article 5.1.1

- Unless a member can demonstrate it has measures implemented **to maintain stocks at a biologically sustainable level**, with flexibility on how such a level can be determined.

Footnotes to note

FN10: A biologically sustainable level is the level determined by the coastal Member.... using reference points such as MSY or other reference points based on indicators commensurate with the data available in the fishery, or by the relevant RFMO.

Subsidies to Overcapacity and Overfishing - SDT

Article 5.5

[Alternative 1

Permanent exemptions from the main prohibition for subsidies provided:

- By **LDC** Members
- By developing Members for fishing in the **domestic territorial sea**
- Permanent exemption for subsidies for fishing in the **domestic EEZ or RFMO/A** for developing country members who meet any of a set of criteria (GNI per capita; share of global catch; DWFN; and share of agriculture, forestry, and fisheries in GDP)]

[Alternative 2

Permanent exemptions from the main prohibition for subsidies provided:

- By **LDC** Members
- By developing Members for **low income, resource-poor and livelihood fishing ...** within 12 nautical miles from the coast
- [5] year exemption from the main prohibition for subsidies by developing countries to fishing in **domestic EEZs.**

Developing Members with[<0.7%] global catch and <USD [25] million in subsidies can ask Committee for an extension of time for exemption.

Overcapacity and overfishing

Additional prohibitions: Some subsidies to fishing outside national jurisdiction are prohibited.

Article 5.2

- Prohibition of subsidies “contingent or tied to” fishing in areas beyond the subsidizing Member’s EEZ. [Exemption for subsidised access rights if measures are implemented to maintain stocks at a sustainable level.]

Article 5.3

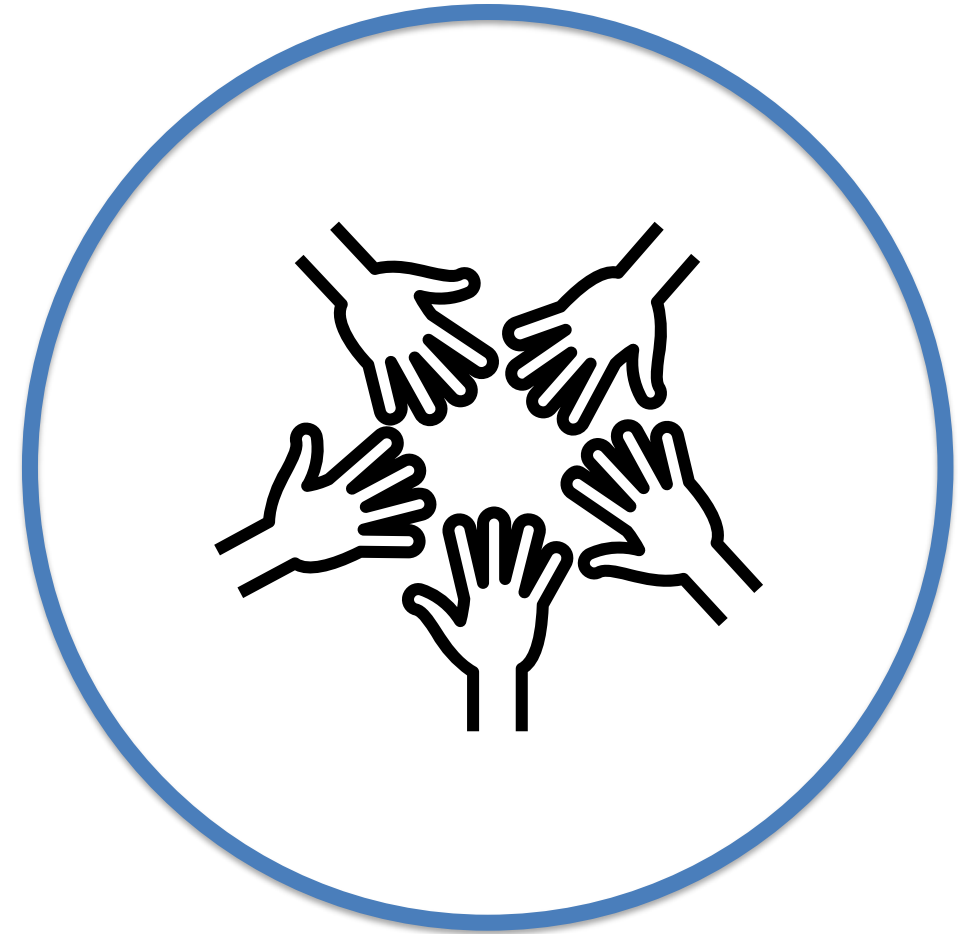
- Prohibition of all subsidies to fishing in high seas outside the competence of an RFMO.

Article 5.4

- [Prohibition of subsidies to vessels not flying the flag of the subsidizing Member.]

**Article 6: Provisions
for LDCs**

**Article 7: Technical
Assistance and
Capacity Building**



Provisions for LDCs

Article 6

- [Provisions for LDCs apply for additional [X] years after an LDC graduates.]
- Members shall exercise due restraint in raising matters under the agreement with LDCs

Technical Assistance and Capacity Building

Article 7

- [Targeted TACB shall be provided to developing country Members.]
- [A voluntary WTO funding mechanism shall be established to support this assistance.]

Article 8: Notification and Transparency

Article 9: Institutional Arrangements



Notification and Transparency

Members have binding or best-endeavour obligations to notify information, including to invoke some exceptions.

Article 8.1

a) Members must notify:

- i) Type of fishing activity that is subsidised
- ii) Catch data for species in subsidised fisheries

b) Members also notify [to the extent possible]:

- i) Status of stocks in subsidised fisheries, whether shared or managed by RFMO.
- ii) Conservation measures in place for relevant stocks
- iii) Name/ID of subsidised vessels
- iv) Fleet capacity for subsidised fishery

Article 8.4

a) i) and ii) must be notified in order to invoke - exceptions for subsidies to overfished stocks (4.3) exceptions for overcapacity/overfishing subsidies (5.1.1) and SDT for overcapacity/overfishing subsidies (5.5)

b) i) and ii) must be notified in order to invoke exceptions re: measures for overfished stocks (Art.4.3) and for measures in other fisheries (Art. 5.1.1)

Notification and Transparency - SDT

Members have binding or best-endeavour obligations to notify information, including to invoke some exceptions.

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a) Members must notify:

- i) Type of fishing activity that is subsidised
- ii) Catch data for species in subsidised fisheries

b) Members should notify [to the extent possible]:

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- iv) Fleet capacity for subsidised fishery

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a) i) and ii) must be notified in order to invoke - exceptions for subsidies to overfished stocks (4.3) exceptions for overcapacity/overfishing subsidies (5.1.1) and SDT for overcapacity/overfishing subsidies (5.5)

b) i) and ii) must be notified in order to invoke exceptions re: measures for overfished stocks (Art.4.3) and for measures in other fisheries (Art. 5.1.1)

Footnotes to note:

FN 16, 17: Developing and LDC Members can provide the information required under 8.1 every 4 years.

Notification and Transparency

Members have binding and best-endeavour obligations to notify information, including to invoke exceptions.

Article 8.2

Members must notify:

- Any lists of vessels they have determined were engaged in IUU
- Any fisheries access agreements (titles and list of parties)

Article 8.5

[Members must notify any RFMOs they are party to, including RFMO decisions on stock status, IUU determinations, conservation and management measures.]

Institutional Arrangements

Overall approach: WTO Committee established to review notifications of information provided.

Article 9

Members must notify on entry into force:

- Implementation measures
- Description of fisheries management measures in place

**Article 10: Dispute
Settlement**

**Article 11: Final
Provisions**



Dispute Settlement and Final Provisions

Overall approach: WTO Dispute Settlement Understanding, as applied to ASCM, applies to this agreement.

Article 11.1

- [Nothing in the Instrument affects the right of **land-locked country Members**.]

Article 11.2

- Members exercise special care and due restraint when subsidising fishing of **unassessed stocks**

Article 11.3

- Exception for subsidies for **disaster relief**, as long as targeted, time limited and rebuilds fishery to [a sustainable level] or its pre-disaster level.

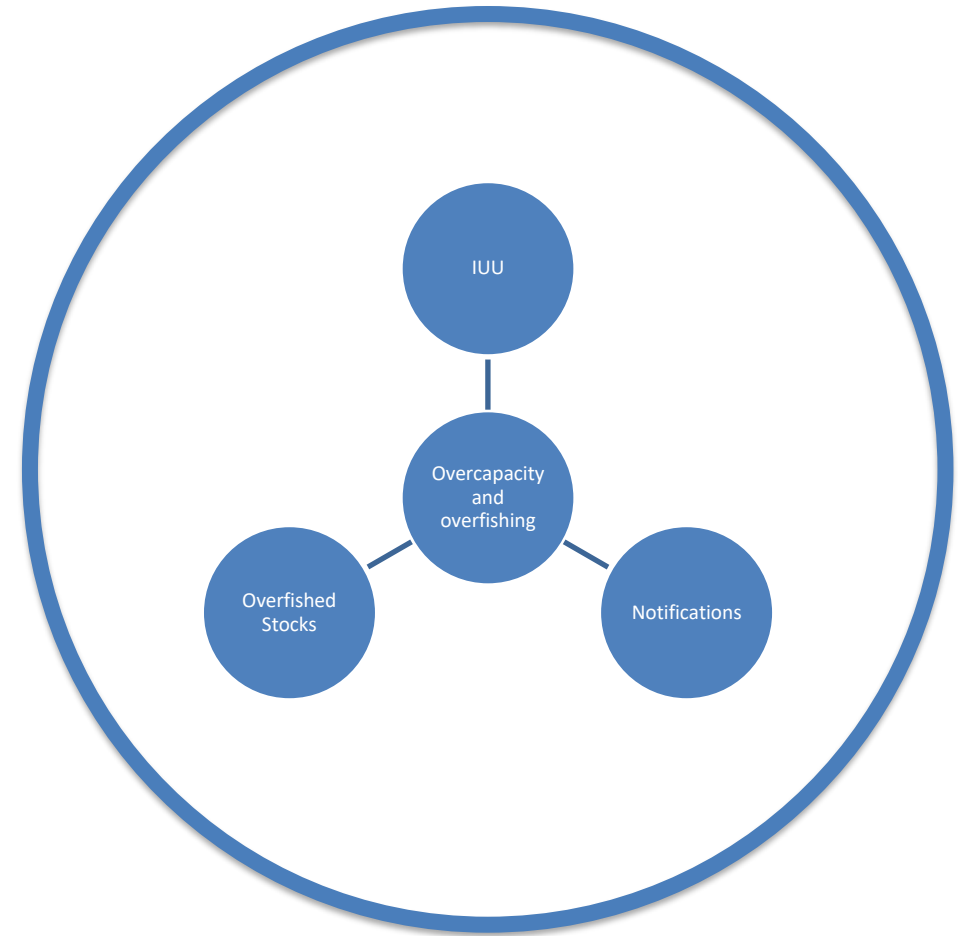
Article 11.4

- The instrument and any findings made under disputes under the Instrument, have no implications regarding **territorial claims or maritime boundaries**.
- Panels established to hear disputes under this Instrument shall not consider claims requiring decisions about contested territorial claims or maritime boundaries.

Balances

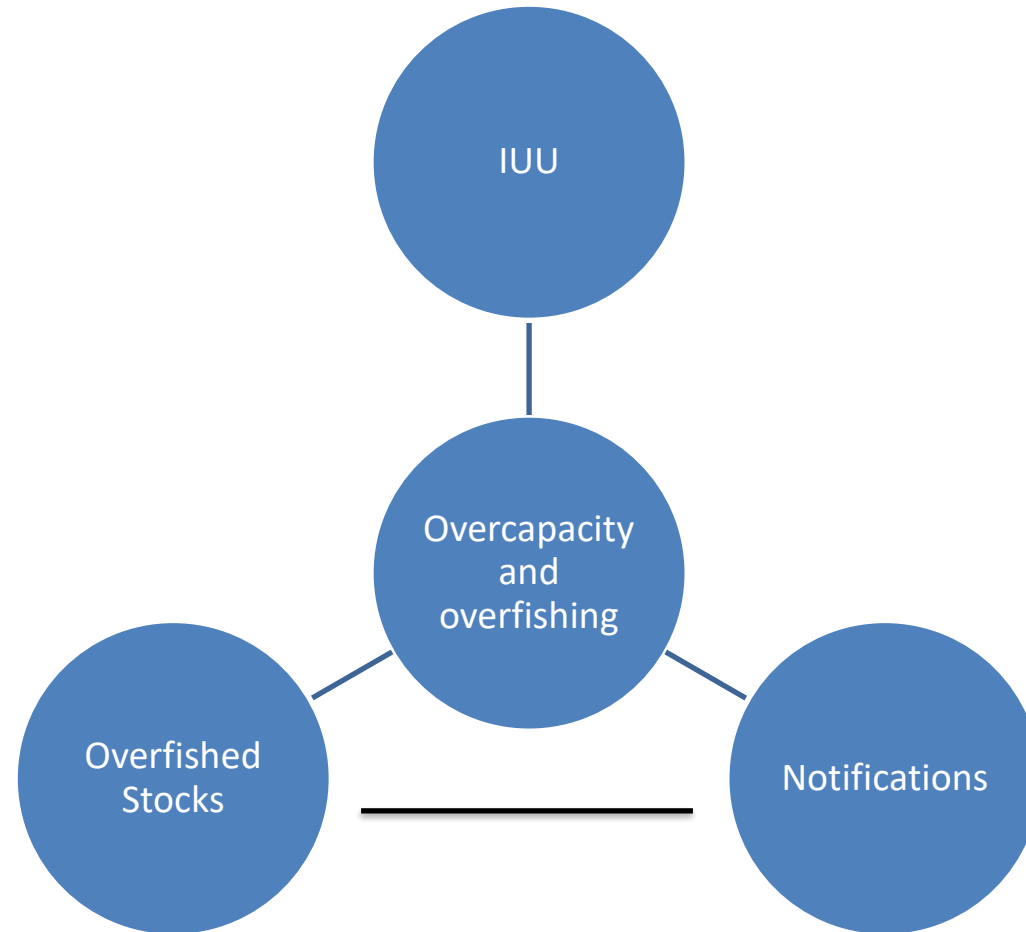
between

Provisions



Balances between provisions

More ambition in one provision can mean flexibility is possible in others without sacrificing effectiveness



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Summary 1: Indicative scale of possible exceptions

Possible exception	% Global catch (tonnage) ²	% Global effort (kW day) ³	WTO-relevant subsidies ⁴
LDCs	6.8%	5%	1.7%
Artisanal (developing Members)	15% (Inshore: 10%)	34% - 45%	5.1%
EEZs (developing Members)	49.6%	61%	n/a
EEZs (developing Members <0.7% global catch)	~ 11% ⁵	16%	n/a

² Data from Sea Around Us, University of British Columbia; ³ Data from Yannick Rousseau; ⁴ Data from Anna Schuhbauer; ⁵ Data from FAO

* The way 'artisanal' is defined varies between studies

Summary 2 : Indicative data points on possible exceptions (expanded, January version)

Possible exception	AIS-covered effort (hours) ¹	AIS-covered effort (kWh) ¹	Catch (tonnage) ²	Number of vessels ³	Engine power ³	Effort (kW day) ³	WTO-relevant subsidies ⁴
LDCs	0.702%	0.99%	6.8%	7%	3%	5%	1.7%
Territorial sea (developing)	20%	10%	Inshore (50 km): 21%				
Territorial sea (developing) and EEZ (developing except China)	26%	18%	42% without China TS 49.6% with China EEZ			58% without China TS 61% with China EEZ	
Artisanal*			22% (Inshore: 16%)	87%	43%	55%	11.4%
Artisanal (developing)			15% (Inshore: 10%)	78%	34%	43%	5.1%

¹ Data from Global Fishing Watch; ² Data from Sea Around Us, University of British Columbia; ³ Data from Yannick Rousseau; ⁴ Data from Anna Schuhbauer

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More resources at

www.iisd.org/projects/fisheries-subsidies

Policy Briefs

- [State of Play analysis of the Chair's Text of May 11, 2021](#)
- [Comment on the Chair's Text of 30 June 2021](#)

Videos

- [A Closer Look at the Fisheries Subsidies Negotiations in the WTO](#) (8 minute video explaining the text for decision-makers)
- [Refresher Session 6 September 2021](#)

Data

- [Compilation of WTO fisheries subsidies notifications](#)
- Slides from [January 2021 webinar on data](#) on fishing catch, effort and subsidies by geographic area, scale of fishing.