

Fisheries Subsidies Webinars

SESSION I

Walk Through the New Fisheries Subsidies Text

Wednesday 10 November | 2-3 p.m. CET



With the support of:



Agenda

14:00 - 14:30: Walk-through of the new Chair's text

14:30 - 14:55: Open discussion

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 8 November 2021 (TN/RL/W/276/Rev.2)
- 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 (**removes requirement that an operator be a person “on board”**)

**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

- Subsidies prohibited for vessels and operators engaged in IUU fishing [**and fishing related activities in support of such fishing.**]
- 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.

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.

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

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

Article 3.3 Alt 1

[Determinations by coastal state Members must be based on **positive evidence and follow due process**, providing the flag and subsidising Member, when known, with:

- **notification** of, of initiation of an investigation;
- **opportunity to submit information** to the investigation.]

Footnotes to note:

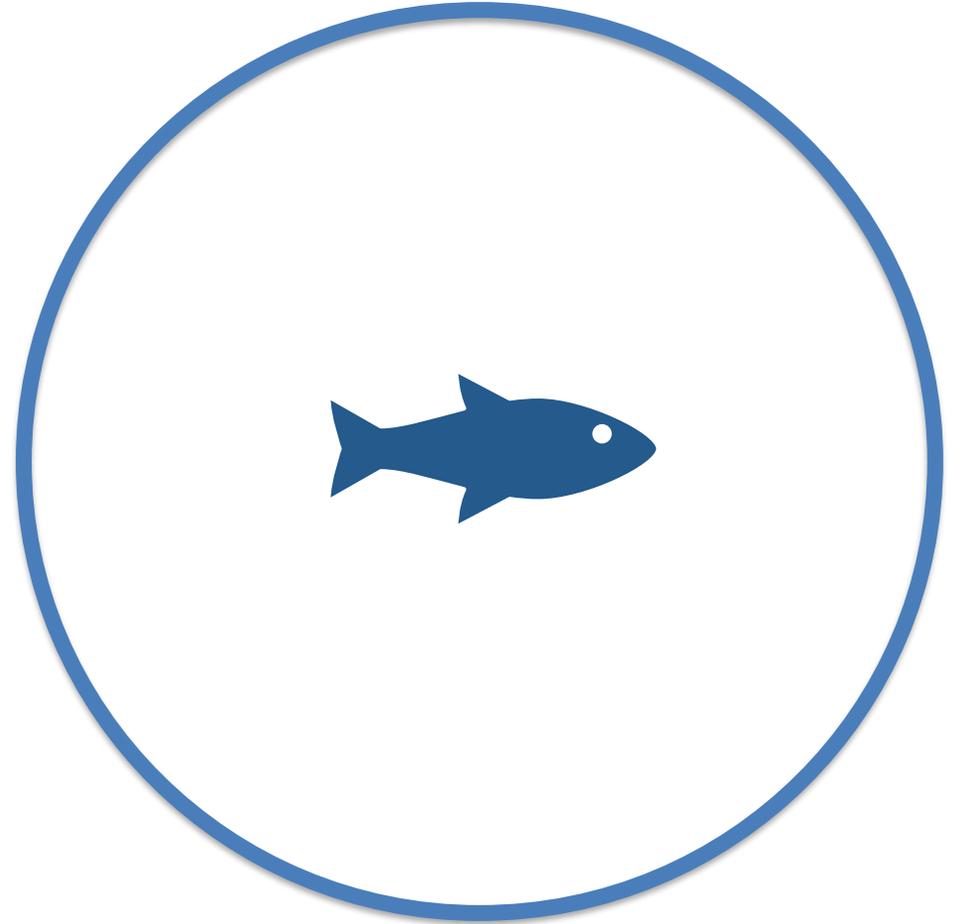
FN7: Nothing in this Article shall be interpreted to delay or affect the validity of an IUU determination.

Article 3.3 Alt 2

[Determinations by coastal state Members must provide to the flag and subsidising Member, when known:

- Timely **notification** that [a vessel or operator is detained for IUU fishing] or [initiation of an IUU investigation]; and
- An opportunity to **provide information, including an opportunity to dialogue** if requested.
- Coastal Member may specify manner and time period for information to be provided.

Article 4: Subsidies to Overfished Stocks



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 to a biologically sustainable level.
- [Exception for other subsidies if measures are implemented to promote the rebuilding of a stock.]

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**, or by the relevant RFMO.

Subsidies to Overfished Stocks + SDT

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

Articles 4.1

- Subsidies for fishing related to overfished stocks are prohibited.

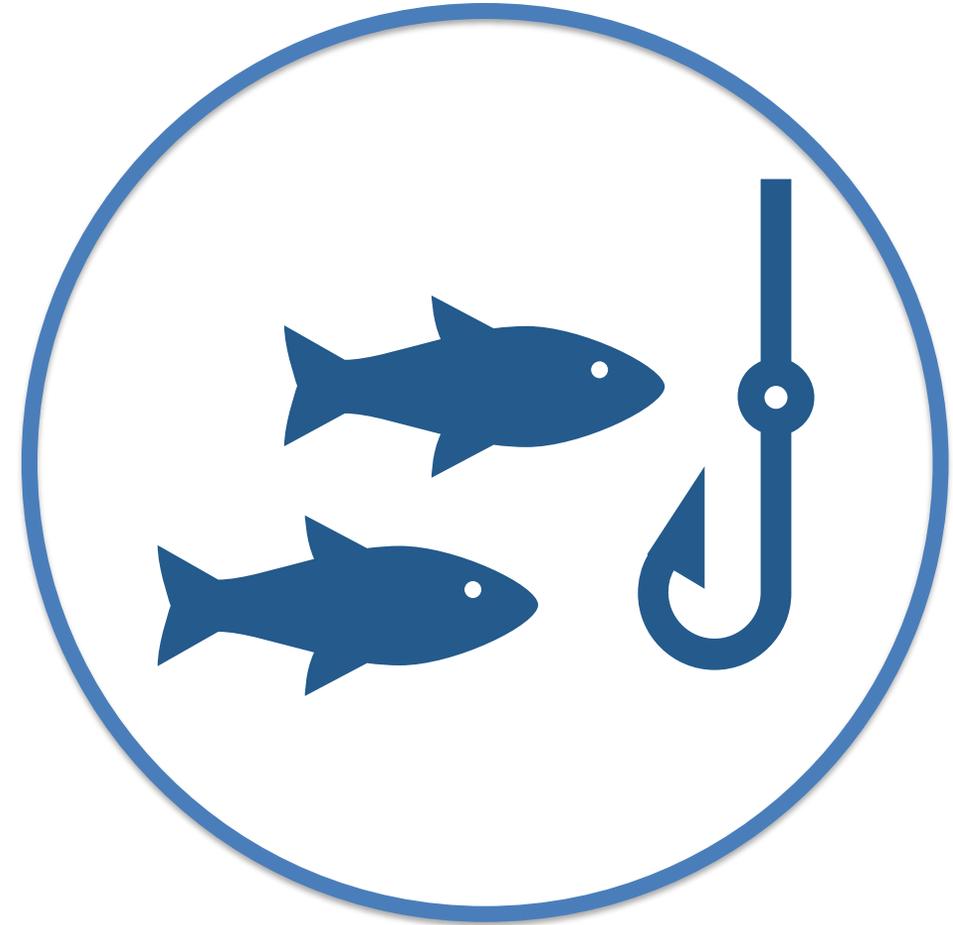
Articles 4.2 and 4.3

- 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.]

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...
 - **[Subsidies contingent on fishing outside EEZ...]**

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.

Subsidies to Overcapacity and Overfishing - SDT

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

Article 5.4

Non-artisanal fishing

Time-limited exemption from Article 5.1 for subsidies by developing countries to fishing in [**domestic EEZs and RFMO areas**] for [**x**] years.

All fishing

Permanent exception from Article 5.1 for subsidies by developing country Members: Responsible for <**0.7%** of global catch. (“de minimis”)

Artisanal fishing

Permanent exception from 5.1 for subsidies by developing country Members for

- low income, resource-poor and livelihood fishing ...
- **within [12] nautical miles from the coast**

Members using 5.4 shall “endeavour to ensure” subsidies don’t contribute to overcapacity and overfishing

Overcapacity and overfishing

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

Article 5.2

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

Article 5.3 Alt 1

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

Article 5.3 Alt 2

- [Prohibition of subsidies to vessels the subsidizing Member does not have **jurisdiction or control** over, or which it cannot ensure is not contributing to overcapacity and overfishing.]

**Article 6: Provisions
for LDCs**

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



Provisions for LDCs

Article 6.1

- Full exemption from Article 5.1.

Article 6.2 Alt 1

[Exception from 5.1 continues to apply for an additional [X] years after an LDC graduates]

Article 6.2 Alt 2

[Provisions for LDCs apply for additional [X] years after an LDC graduates.]

Article 6.3

- Members shall exercise due restraint in raising matters under the agreement with LDCs.
- **LDCs and recent graduates using exception from 5.1 still subject to “endeavour to ensure” obligation.**

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 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 [**New FN**]

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

[**New FN 14: For multi-species fisheries, Members can provide other relevant catch data.**]

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 (5.4)

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.

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 should 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)

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 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 vessels or operators a Member has information that suggests the use of forced labour]**
- Any fisheries access agreements, including:
 - Title, list of parties, **text of agreement, amounts paid by government and by fleet, allowable catch, licences or capacity, list of authorised vessels)**

Article 8.5

[Members must notify any RFMOs they are party to, including RFMO decisions on stock status, IUU determinations, conservation and management measures. **Can be notified collectively, and also by providing links to relevant webpages.**]

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 DSU, 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.

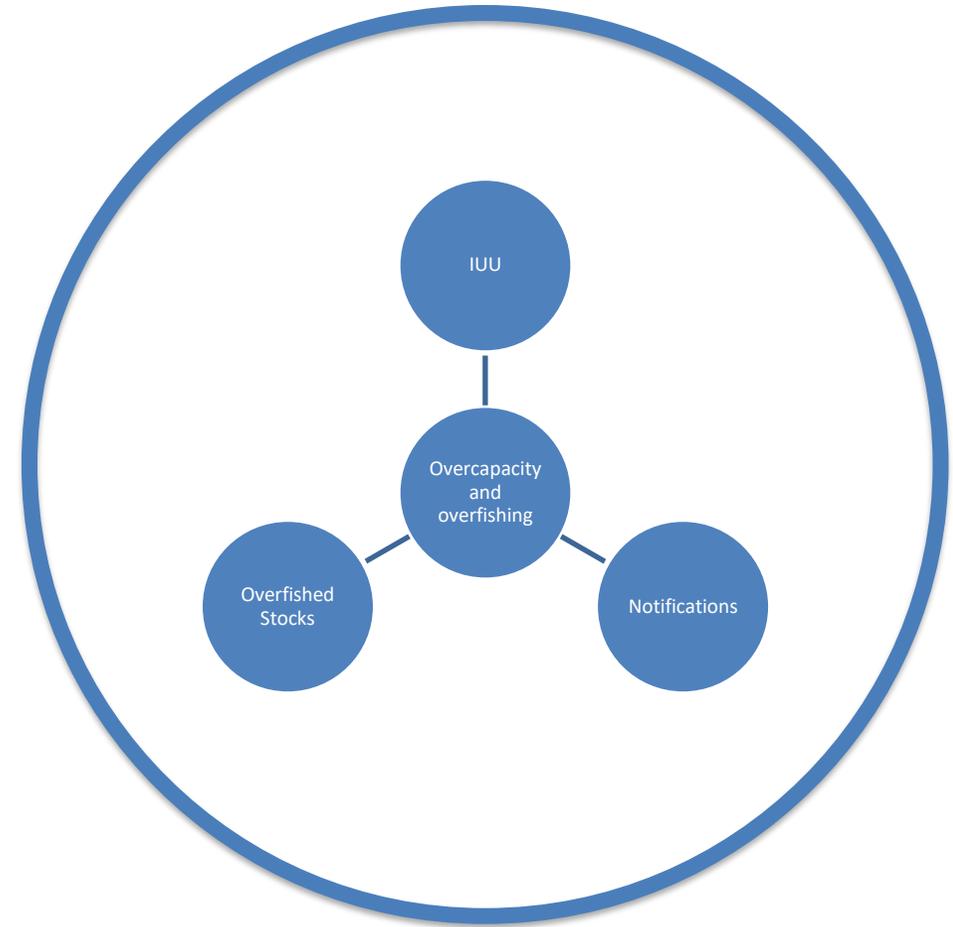
Article 11.5

- **Except as specifically agreed here, Members are not bound by decisions, and do not recognise, of RFMOs they are not party to.**

Balances

between

Provisions



Balances between provisions

IUU

Automaticity plus minimum duration

IUU

Due process or procedure?

Overfished stocks

Strict prohibition +exception for rebuilding subsidies

Overfished stocks

Wider exception for other subsidies?

OCOF

5.1 presumption + list (including “contingent on”)
5.2 and 5.3

OCOF

5.1.1 qualification of 5.1 for management measures

OCOF S&DT

Artisanal fishing (12nm or 200?)
Non-artisanal fishing (200nm + RFMOs?) (how long?)
De-minimis Members (0.7%)?

Notification and transparency

Article 8.1 a)
Article 8.1 b)

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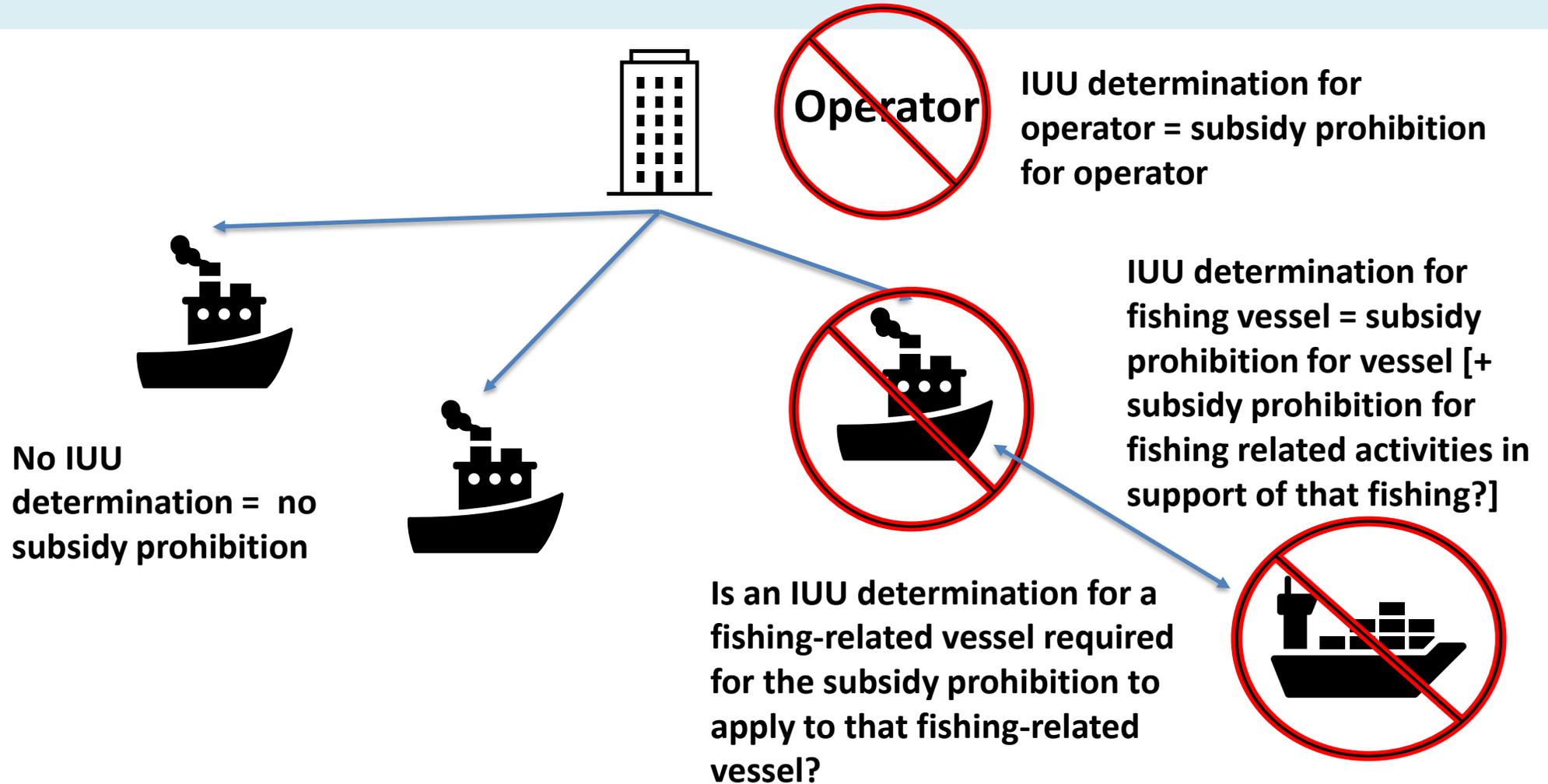


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Subsidies to IUU Fishing

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



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