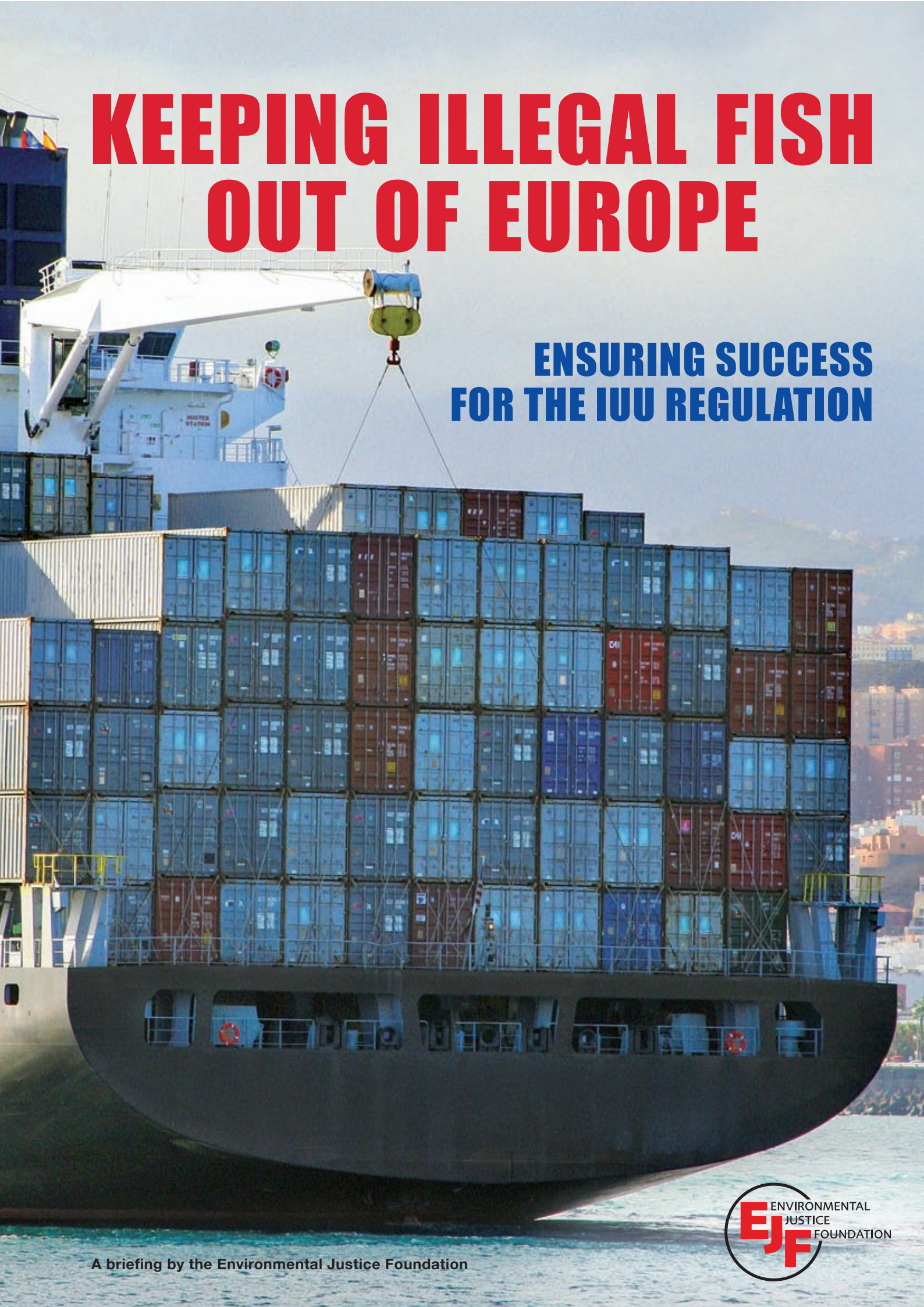


# KEEPING ILLEGAL FISH OUT OF EUROPE

**ENSURING SUCCESS  
FOR THE IUU REGULATION**



***“As a key player in world fisheries, the EU has now taken an active role against IUU fishing: at international level, by actively proposing and supporting measures to improve controls and identify offenders and within the EU, by adopting the so-called IUU Regulation. This regulation marks our commitment to fight illegal fishing and we take its proper implementation and functioning very seriously”.***

Maria Damanaki

Commissioner for Maritime Affairs and Fisheries<sup>1</sup>



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# The EU Regulation to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing

Council Regulation (EC) 1005 / 2008 came into force on 1 January 2010.<sup>2</sup> It implements the 2001 United Nations International Plan of Action on Illegal, Unreported and Unregulated Fishing (IPOA).<sup>3</sup> The Regulation aims to prevent the import of seafood products obtained from IUU fishing, by requiring consignments of fish entering the EU to be accompanied by a catch certificate validated by the fishing vessel's flag State. The Regulation provides mechanisms for 'blacklisting' vessels engaged in IUU fishing and restricting the seafood imports of countries that do not cooperate in addressing IUU fishing. The Regulation also includes provision to sanction EU nationals engaged in IUU fishing.

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## LIST OF ABBREVIATIONS:

EEZ:	Exclusive Economic Zone	IUU:	Illegal, Unreported and Unregulated Fishing
EJF:	Environmental Justice Foundation	NGO:	Non-Governmental Organisation
EU:	European Union	RFMO:	Regional Fisheries Management Organisation
FAO:	United Nations' Food and Agriculture Organization	UN:	United Nations
IEZ:	Inshore Exclusion Zone	UVI:	Unique Vessel Identifier
IMO:	United Nations' International Maritime Organization	VMS:	Vessel Monitoring System
IPOA:	International Plan of Action		

# EXECUTIVE SUMMARY

- Council Regulation (EC) 1005/2008 ('the Regulation') has placed the European Union (EU) at the forefront of global efforts to address Illegal, Unreported and Unregulated (IUU) fishing. It provides a framework that allows illegal fish to be seized in European ports, flag States to be encouraged to improve their monitoring and control, and coastal States to be engaged in protecting their marine resources.
- However, flag States without adequate controls over their fishing fleets, and whose vessels are engaged in IUU fishing, are continuing to export fish to the EU.
- The work of the Environmental Justice Foundation (EJF) in West Africa has shown that the Republic of Korea (hereafter referred to as Korea) is one of these countries. Korean vessels have been operating without a Vessel Monitoring System (VMS) in West Africa since EJF began documenting their activities in 2008. Korean authorities are therefore unable to meaningfully control their vessels or accurately validate the catch certificates of fish consignments exported to the EU.
- Analysing the quantity of IUU fish entering the EU or the impacts of the IUU Regulation is complicated by a lack of data. There is so far no public information available on the number of 'verifications' of consignments across all Member States, or rejections of IUU fish.
- Spain, one of the countries implementing the law most proactively, has provided data showing that 56 out of 124,600 consignments have been rejected since the Regulation came into force in 2010 (0.04 per cent of consignments). This figure is believed to account for over 50 per cent of consignment rejections across the whole of the EU. On the other hand, some Member States are believed not to have investigated or rejected any fish whatsoever since the law came into force, despite significant fish imports from outside the EU.
- Evidence suggests that this lack of uniformity in the implementation of the IUU Regulation may be contributing to the displacement of trade flows of IUU fish towards European ports with weaker controls, therefore penalising Member States that are implementing the Regulation more rigorously. Once fish consignments enter the EU, they are in free circulation, and are not subject to further checks if they are transported to other EU Member States.
- As well as diversions of trade to poorly regulated ports, there is anecdotal evidence that some operators are using containers to avoid controls at European ports. There is a lack of certainty about what controls are being applied to containers as they enter the EU.
- Information-sharing with coastal States is crucial to ascertain that fishing and transshipments in coastal State waters have been carried out legally. Whilst there have been some improvements, communication between Member States and coastal States still often lacks uniformity and coordination. The contact details of some coastal State authorities are unavailable to fisheries authorities across the EU.



The Korean-flagged Kwang II in the waters of Sierra Leone © Grain Media for EJF

- In addition to coastal States, Non-Governmental Organisations (NGOs) have an important role to play in providing information on illegal fishing to the European Commission and Member States. EJF has regularly issued 'IUU Alerts' since the Regulation came into force, leading to enforcement actions by coastal States, flag States, and the EU.
- EJF's evidence helped inform the warning to Panama that it could be designated as a 'non-cooperating' country, and have its seafood exports to the EU restricted.<sup>4</sup> This 'yellow card' given to Panama and seven other countries is an important development, which appears to have encouraged some of these States to improve their monitoring and control. No country has yet had their seafood exports to the EU restricted.
- Progress in using the Regulation's IUU Vessel List has also been slow. No IUU vessels identified by the Commission have been added to the IUU Vessel List since the Regulation came into force. In addition, insufficient progress has so far been made to identify and sanction European nationals involved in IUU fishing. A particular area of concern relates to European nationals with interests in vessels operating under 'Flags of Convenience' (countries that sell their flags to foreign fishing vessels but lack the willingness or ability to monitor and control their activities).
- Correctly identifying vessels and their owners is also complicated by the lack of a Global Record of fishing vessels and a Unique Vessel Identifier (UVI). To address this, the Commission is supporting the development of a Global Record and the use of International Maritime Organisation (IMO) numbers as UVI. Further leadership from the EU, other major seafood markets, and international agencies will be necessary in order to ensure this initiative is implemented.
- Better means of identifying vessels would also be supported by a move towards electronic catch certificates. The current paper-based certification system is vulnerable to fraud, a weakness that can be addressed by transferring the scheme to a suitable electronic framework within a reasonable timeframe. In addition, there is no pan-European facility to enable Member States to compare information on imported fish consignments.
- In the cases where IUU fish is identified, it is essential that it does not gain access to the EU. In 2012, the Commission advised Member States to allow importations of fish caught under fraudulent fishing licences, following the 'retrospective regularisation' of these licences by the coastal State involved. This generated substantial legal uncertainty and risks undermining the IUU Regulation's effectiveness.
- Three and a half years since the IUU Regulation came into force, it is now vital that deficiencies in its implementation are addressed, so that it can fulfil its full potential as a transformative, globally significant tool. It is essential that the Commission plays an effective coordination role, and that all Member States work proactively to end IUU fishing.

# INTRODUCTION

EJF works internationally to document, report and eradicate IUU fishing. In West Africa, a region with some of the highest levels of IUU fishing in the world, EJF works with local partners to gather evidence to support action by coastal States, flag States and the EU.

Working with local stakeholders, EJF has received over 200 reports of IUU fishing by industrial fishing vessels in West Africa, many of which sell their catches to the EU. EJF has used satellite technology and other sources of information to track fish to the European marketplace and support the effective implementation of the IUU Regulation.

Over

200

reports of IUU fishing  
received by EJF  
since 2010



**The Regulation has enabled artisanal fishing communities in West Africa to provide evidence of industrial IUU fishing. Since 2010, EJF has regularly sent the Commission documented notifications (IUU Alerts) in accordance with Article 49(2) of the Regulation.<sup>5</sup>**

The Regulation requires all fisheries products imported into the EU to be accompanied by a catch certificate.<sup>6</sup> The catch certificate contains information about the species included in the consignment, catch location, fishing vessel, date of capture, as well as any transshipments that have taken place. The information in the catch certificate has to be validated by the vessel's flag State, confirming that the fish has been caught in compliance with all applicable laws and regulations.

In cases where the certificate is unclear or where evidence exists of the vessels' involvement in IUU fishing activities, the Regulation enables Member States to seek clarification from flag as well as coastal States and to share information with other Member States through Mutual Assistance Requests.<sup>7/8</sup> If information gathered during this process is unsatisfactory, Member States can refuse the importation of the fisheries products concerned.<sup>9</sup>

The Regulation also contains measures to sanction operators who engage in IUU fishing, ban imports and port access for IUU fishing vessels, and restrict imports from 'non-cooperating' third countries.

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## The IUU Regulation has positioned the EU at the forefront of global efforts to address IUU fishing.

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Given how recently the Regulation came into force, its wide scope, and the complexity of its mechanisms, implementation issues are inevitable. It is important that such issues are addressed so as to ensure that the Regulation can fulfil its purpose to keep IUU fish out of the European marketplace, and deter IUU operators around the world.

The Regulation complements and develops other legal instruments and international initiatives to address IUU fishing. Particularly relevant are the United Nations' Food and Agriculture Organization (FAO) Port State Measures Agreement, the FAO Voluntary Guidelines for flag State Performance, and the move towards requiring industrial fishing vessels to obtain IMO numbers, and be included in a Global Record.<sup>10/11</sup>

This briefing sets out EJF's experience in documenting IUU fishing, and offers recommendations based on our practical experience of working with the Regulation. Its aim is to reinforce the foundations of the Regulation and to encourage its effective implementation.

If properly implemented, the Regulation has the potential to significantly impact the economic and political drivers behind IUU fishing and to provide a model for addressing IUU fishing that other nations can follow.



Tuna in the port of Abidjan © EJF

# ENSURING SUCCESS FOR THE IUU REGULATION

## Flag State Effectiveness

One of the most important innovations of the Regulation is a methodology to objectively evaluate flag State performance against internationally agreed standards.

However, EJF is concerned about the lack of reliability of some flag State assurances provided during the validation of catch certificates.

Flag State engagement in the certification process is essential to ensure that only legally caught fish is being imported as well as to incentivise compliance with international law and conservation and management measures. However, some flag States are falling short of their international obligations and continue to export fisheries products to the EU.



EJF has documented extensive evidence of fishing vessels flagged to Korea persistently operating illegally in West Africa without a functioning VMS. To date, Korea has not addressed their fleet's illegal fishing activities; however, at the time of writing there were draft laws before Korea's National Assembly to strengthen penalties against IUU fishing and improve monitoring and control. It is not clear what impact this will have on the IUU fishing activities by Korean trawlers that EJF continues to document in West Africa.

Further, it has recently been brought to EJF's attention that many vessels documented engaging in IUU fishing in West Africa have been newly approved by Korea as valid establishments for the purposes of the EU Directorate General of Health and Consumers ('DG Sanco'), which gives them the required hygiene certification to trade with the EU. It is therefore imperative that the Commission is proactive in blacklisting known IUU vessels so that their fish cannot enter the EU.





Fish being transhipped between two vessels in West Africa © EJF

## The IUU Regulation in action



### Blocking IUU fish consignments

There is no EU-wide data on the number of fish consignments blocked since the IUU Regulation came into force, but it is widely accepted that the quantity is small. Spain has blocked the most IUU fish but it still only represents around 0.04 per cent of imported consignments. Some Member States have not blocked any fish consignments at all.



### Blacklisting IUU vessels

The current EU IUU Vessel list is a compilation of Regional Fisheries Management Organisation (RFMO) blacklists. No vessels identified by the EU have been added to this list yet. It is hoped that an updated version of the EU IUU Vessel List will be published during 2013, that includes vessels that EJF documented operating illegally.



### Promoting information-sharing

The IUU Regulation has led to far greater information-sharing between EU Member States, and with flag and coastal States. However information-sharing between EU Member States and coastal States is still often weak. Coastal States represent one of the key stakeholders in terms of IUU fishing, because it is their laws that are often being broken.



### Restricting trade from 'non-cooperating countries'

The Commission issued a decision in November 2012 warning eight countries that they may be designated as 'non-cooperating' and have their seafood exports to the EU restricted. This is an important step and there are signs that the pressure from the Commission is causing some of these countries to address their failings. However, the eight countries represent a very small proportion of fish trade with the EU, and more significant players, such as Korea, continue to export to the EU without having proper monitoring and control.



### Sanctioning EU nationals involved in IUU fishing

There is currently no data on the number of EU nationals investigated or sanctioned since the Regulation came into force. This appears to be one of the most urgent areas of the Regulation to address, particularly with regards to EU nationals operating under Flags of Convenience.



### Catch certification

Requiring all consignments of fish imported into the EU to be accompanied by a catch certificate validated by the vessel's flag State is a major step forward. However a paper based system is vulnerable to fraud, and there is no centralised system allowing Member States to cross-check information and identify fraud. There are also serious concerns about the reliability of some flag States to accurately validate catch certificates.

## Vessels involved in IUU fishing documented by EJF during 2011-2013

Vessel name/ Other known names	Flag	IMO number	Owner	IUU offences
Ocean 3/ Sea Queen 1	Republic of Korea	7381336	Dae Hyun Fisheries Co. Ltd.	22.10.2011: Obscuring markings, failing to stop for fisheries officer, fishing in IEZ. Total fine of \$154,000. Dec 2011: Fleeing Sierra Leone with unpaid fines.
Marcia 707	Republic of Korea	unknown	Bugang International Co. Ltd.	29.01.2011: Used canoes to fish within the IEZ.
Seta 70	Republic of Korea	9249001	Inter-Burgo Co. Ltd.	03.03.2011: Obscuring markings, operating in IEZ with gears at the ready, possible lack of valid licence. July 2011: Fishing in the IEZ and evading arrest in Liberia.
515 Amapola	Republic of Korea	7355492	Dong Yang Fisheries Co. Ltd.	18.02.2011: Obscuring markings, fishing within the IEZ.
Medra	Republic of Korea/ Honduras	8837526	Intermiso S.A.	14.02.2011: Fishing in the IEZ, attacking a fisher.
Kwang II	Republic of Korea	7213008	Kwang II Fisheries Co. Ltd.	28.11.2011: Used canoes to fish within the IEZ.
Kummyeong 2/ Now Conosu. Prev. Bellesol-2	Republic of Korea	6802981	Kummyeong Fisheries Co. Ltd.	07.12.2011: Obscuring markings, fishing within the IEZ. Dec 2012: Fleeing Sierra Leone when called to port. Outstanding fine in Sierra Leone.
Five Star	Republic of Korea	7123772	Seokyoung Corp.	18.01.2012: Transshipping without authorisation to Canarian Reefer. Jan 2012: Fleeing Sierra Leone. Outstanding fine in Sierra Leone. EJF has received numerous unsubstantiated reports of the vessel operating in the IEZ off Bonthe, Sierra Leone and Robertsport, Liberia in the second half of 2011.
Marcia 777/ Global 101	Republic of Korea	9036624	Bugang International Co. Ltd.	18.01.2012: Transshipping without authorisation to Canarian Reefer. Jan 2012: Fleeing Sierra Leone. Outstanding fine in Sierra Leone.
Poong Lim 12	Republic of Korea	6820036	Poong Lim Fisheries Co. Ltd.	29.09.2012: Obscuring markings, fishing within the IEZ (Guinea).
Buminho/ Dae Sung 9	Republic of Korea	7355478	Inter-Burgo Co	From 01.12.2012 to 31.01.2013: Buminho has been sighted on satellite AIS system operating within the Angolan IEZ on different occasions at a speed consistent with fishing.
Kum Woong 101	Republic of Korea	7236995	Kum Woong Fisheries Co Ltd.	From 13.02.2013 to 13.03.2013: Kum Woong 101 has been sighted on satellite AIS system operating within the Guinean IEZ on different occasions at a speed consistent with fishing.

Like Korea, a number of other flag States have been validating catch certificates without adequate monitoring, control and surveillance or legislation to sanction IUU fishing operators.

These countries lack control over their fishing fleets, which calls into question the reliability of their validated catch certificates and their responses to enquiries by Member States and the Commission.<sup>13</sup> Examples include Panama, Belize and Ghana, who have failed to detect, prevent and discourage illegal fishing activities carried out by their vessels.

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**In November 2012 the Commission warned eight countries that they could face designation as non-cooperating countries if they did not take steps to address IUU fishing.<sup>14</sup>**

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## RECOMMENDATIONS

EJF recommends that the Commission issues guidance on the level of monitoring required from Member States, as well as their obligations when investigations are being carried out. If a Member State is in possession of information that calls into question the compliance of the vessel with applicable laws and regulations, a minimum evidential standard should be expected from the flag State. This should include robust and uninterrupted VMS readings from the flag State's own monitoring centre.

EJF enquiries suggest that Spain and the UK currently lead the way in the development of a robust verification system, a model that should be replicated by other Member States. In particular, EJF encourages Member States with significant fish imports such as France, Italy, Germany, Portugal and Belgium to ensure that they are taking steps to verify the legality of fish imports.

EJF strongly recommends that the Commission and Council take responsibility for scrutinising flag States that lack effective monitoring and control, and establish consistent standards for allowing States to export to the EU. This may include withdrawing the notification of flag States seeking to export fish to the EU, or using the procedures within the Regulation to designate them as 'non-cooperating' third countries.

In the specific case of Korea, EJF recommends that the Commission highlights existing deficiencies in flag State control to Korean authorities and that, unless substantial improvement is demonstrated, Korea is designated as a 'non-cooperating' third country.

**8** countries which have been "yellow carded" by the European Commission for their illegal fishing activities 

Belize



Panama



Cambodia



Sri Lanka



Fiji



Togo



Guinea



Vanuatu

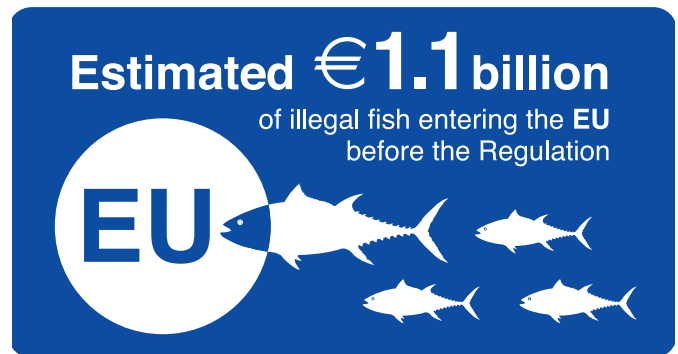


## Diversions in Trade

Evidence suggests that exporters are seeking alternative ports and transportation methods to avoid delays, inspections and increased controls.<sup>15</sup>

Prior to the Regulation coming into force, the value of illegally caught fish imported into the EU was estimated to be in the region of 1.1 Billion Euros.<sup>16</sup> In order to significantly impact this lucrative trade, it is essential that the Regulation is implemented proactively and with uniformity by all Member States.

Notwithstanding the lack of availability of inspection, rejection and importation figures, there is evidence of a significant disparity amongst measures put in place by Member States. Consignment rejection rates vary and EJF enquires have found that few Member States currently demonstrate the willingness and competence to implement the Regulation effectively. So far in 2013, Spain is believed to be responsible for 70 per cent of all import rejections across the EU. In 2013, as of 23rd July, the UK Government has refused the importation of 4 consignments and suspended from import fish products linked to 97 Ghanaian catch certificates pending further verifications.<sup>17</sup> Some key importing States have not rejected any consignments since the Regulation came into force in 2010. Evidence suggests that some European ports may be benefiting from allowing the importation of consignments that would be subject to higher levels of controls, or even denial at other ports.<sup>18</sup>



Fish being transferred to a lorry in the port of Conakry, Republic of Guinea © EJF

## SPAIN'S FISH IMPORTS IN FIGURES

- **45,000** annual importation requests
- **948** verifications involving **2,075** catch certificates since 2010
- **56** consignments denied importation since the Regulation came into force in 2010
- Spain is responsible for **over 50%** of import denials effected across the EU since the Regulation came into force

***“We exercise importation controls to curb unjust competition from countries that engage in IUU fishing, but we cannot accept unjust competition from other European ports that are competing unfairly against ours by being lax in the application of the Regulation”.**<sup>19</sup>*

Carlos Dominguez

Secretary General for Fisheries  
Spanish Ministry of Agriculture,  
Food and Environment

Discrepancies in controls imposed by Member States are concerning. Gaps in controls are likely to divert IUU trade to the European ports with the least stringent controls. This undermines the intended effect of the Regulation and has the potential to disadvantage the Member States that implement the Regulation most effectively.

Another area where displacement of IUU fish is of increasing concern is transportation by container. There is anecdotal evidence that fish caught in West Africa is increasingly being transported by container.<sup>20</sup> A leading provider of container transport by sea states on its own website:

“Maersk Line delivers some 3 million metric tonnes of seafood a year to destinations around the globe. We carry 20% of the world’s total seafood cargo and a much higher share of the growing containerised seafood segment. One of our fastest-growing markets today is West Africa.”<sup>21</sup>

EJF acknowledges that the increase in containerised transport of fisheries products is partly cost-driven. However, information obtained from fishing operators suggests that some changes in the choice of port and method of transport are responses to increased controls at key EU fishing ports, such as Las Palmas.

The Regulation excludes container cargo vessels from the definition of ‘fishing vessel’.<sup>22</sup> Fisheries products transported by containerised cargo ships must be accompanied by a catch certificate, but in practice such ships are not subject to the same notice requirements as fishing vessels and containerised IUU fish may be finding its way into the EU through busy container terminals. In addition, a reluctance to open refrigerated containers may contribute to a lower number of physical inspections of containerised fisheries products.



Fish being loaded into a container in the port of Montevideo © EJF



Fish being hauled onto the deck of the Korean-flagged Apsari 3 © EJF

## RECOMMENDATIONS

In order to achieve the Regulation's stated aim of preventing the importation of IUU fisheries products into the EU, it is essential that all Member States apply the Regulation in a uniform manner and that controls on containerised fish are equal to those that apply to fishing vessels and reefers.

EJF recommends that Member States be required to report on their inspections of fisheries products, including both physical inspection of the products and checks on catch certificates. The Commission should act in cases where controls are inadequate.

Ports where there is a high volume of fisheries imports, particularly if they are containerised, or where the products are of high commercial value or from high-risk areas, should permanently integrate enhanced inspection measures within their operating procedures.

Information on trade flows, numbers of consignments investigated under the Regulation and data on how many consignments have been denied importation should be made public in order to achieve a transparent view of the Regulation's impact.

The Commission has a key role to play in guiding and coordinating the uniform implementation of the Regulation across the EU. Showcasing the work of leading Member States is an effective way of promoting best practice.

## Information Sharing Between the EU and Coastal States

Verification of the legality of fisheries products is partly based on the ability to contact coastal States for information on fishing vessel activities in their Exclusive Economic Zone (EEZ). It is therefore essential that reliable information-sharing is established between the EU and coastal States to facilitate this process.

At present, no comprehensive list of competent coastal State fisheries authorities exists.<sup>23</sup> As an illustration of existing deficiencies in this respect, EJF was recently informed that neither the Commission nor Member States had contact details for fisheries authorities in Guinea Bissau, despite a significant quantity of fisheries products caught in Guinea Bissau's waters being imported into the EU. Notwithstanding this, EJF was able to establish communications with the authorities of Guinea Bissau in order to confirm an unauthorised transhipment.

EJF is aware that Member States can experience delays when requesting information from coastal States and that, too frequently, due to the lack of functioning official email systems, personal email addresses have to be relied on to contact coastal State officials.



EJF documenting a Korean trawler in the Inshore Exclusion Zone of Sierra Leone © EJF

## RECOMMENDATIONS

Where fish has been caught or transhipped in the waters of a coastal State, that country's authorities should be included in verification enquires as a matter of routine. This is particularly important with regard to developing coastal States in areas affected by high levels of IUU fishing.<sup>24</sup>

The Commission should compile a comprehensive list of competent authority contacts for coastal States. This will enable Member States to obtain information on the activities of fishing vessels seeking to export fisheries products to the EU. EU delegations in coastal States could assist with this process.

Delays by coastal States in replying to Member State enquiries within reasonable time limits should be reported to the Commission. All coastal States should be clearly informed of the time limits by which their responses must be received.



## The Use of Community Lists

The Regulation contains two important sanctioning tools: the Community IUU Vessel List and the Non-Cooperating Third Country List.<sup>25/26</sup> The Community IUU Vessel List is a list of fishing boats identified as engaged in IUU fishing, whilst the the Non-Cooperating Third Country List aims to include States that are not taking sufficient steps to tackle IUU fishing. Both lists entail restrictions on trade in seafood for the vessels and countries listed.

The Community IUU Vessel List is a major component of the Regulation and has the potential to be an important deterrent against those who engage in IUU fishing. Currently, the IUU Vessel List is a compilation of Regional Fisheries Management Organisation (RFMO) blacklists. No vessels identified by the EU have yet been added to this list. EJF is aware of a number of fishing vessels and reefers that meet the criteria for inclusion in the Community IUU Vessel List but continue to export to the EU.



It is in the interest of all Member States and legal operators to know the identity of the vessels engaged in IUU fishing as soon as possible, so that their fisheries products can be kept out of the European market, the vessel can be denied access to European ports, and any links to EU nationals can be investigated.

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### **Denial of importations in one Member State may divert trade flow to other ports. Only the IUU Vessel List can establish the uniformity required for the sanctions to be effective.**

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EJF supports the Commission's initiative in naming the eight flag States it has identified as possible non-cooperating countries. The steps taken by Belize to ban transshipment at sea and the recent visit by the President of Panama to Brussels to make a political commitment to the fight against IUU fishing show that the threat of designation has the potential to influence countries' behaviour. Notwithstanding this, the key to identification as a non-cooperating third country should not lie on the strength of high-level commitments, but on evidence that the country is acting in accordance with its international legal obligations to address IUU fishing. The integrity of the system largely depends on whether those States that fail to make substantial progress are ultimately blacklisted by the EU.

The Commission also needs to address the loophole whereby fish caught in the waters of non-cooperating countries could continue to enter the EU market. For example, if Guinea is listed as non-cooperating, EU vessels will be prevented from fishing in Guinea's waters, whereas third country vessels could continue to operate there and export their catches to the EU. This undermines the intended effect of 'blacklisting' countries and risks creating an uneven playing field.

## RECOMMENDATIONS

EJF encourages the Commission to populate the Community IUU Vessel List without further delay.

The Commission should carefully examine the responses of the eight flag States identified in the Commission Decision of 15 November 2012 and, where there is insufficient improvement, make a proposal to the European Council for them to be designated Non-Cooperating Third Countries in accordance with Article 33 of the Regulation. Once these countries have been included in the Non-Cooperating Third Country List, the Commission must take steps to restrict their trade in fisheries products with the EU, in accordance with Article 38 of the Regulation.<sup>27</sup>

Other States, including Korea, should be assessed in light of existing evidence to determine whether or not they should be identified in future Commission Decisions.

### Retrospective Regularisations

In 2012, a number of industrial vessels caught fish in Liberia's EEZ under fraudulent licences. The operators subsequently agreed a 'retrospective regularisation' with the Liberian Government, which resulted in the fish being cleared for importation into the EU.

This is a precedent that potentially facilitates the import of fish that, though illegally-caught, was later 'retrospectively regularised.' This creates considerable legal uncertainty and could undermine the Regulation's effectiveness as a deterrent against corruption.

It is worth noting that Spain, one of the countries with vessels linked to fraudulent private licences in Liberia, is now verifying all licences issued by coastal States through diplomatic channels before allowing vessels to operate in those States' waters. This is an important development, and should be followed by other flag States.



## RECOMMENDATIONS

The Commission should not rely on retrospective regularisations of fishing licences or transshipment authorisations by third countries. The Commission should issue guidance stating that, for the purposes of importation into the EU, illegally caught fish cannot be ‘regularised’.

### Control of Nationals



A Panama-flagged refrigerated cargo vessel that carries fish to the EU © EJF

There is evidence that some European nationals deliberately choose to flag vessels to poorly performing Flags of Convenience in order to avoid regulation and control.

This has the potential to facilitate IUU fishing, mask the true nationality of fleets and obscure the identity of those behind IUU fishing operations, particularly in cases where ‘shell’ corporate structures guarantee the anonymity of vessel owners.

Owner anonymity can make it difficult for Member States to identify nationals with interests or control of fishing vessels flagged to third countries, therefore complicating attempts to identify and investigate any IUU fishing.<sup>28</sup>

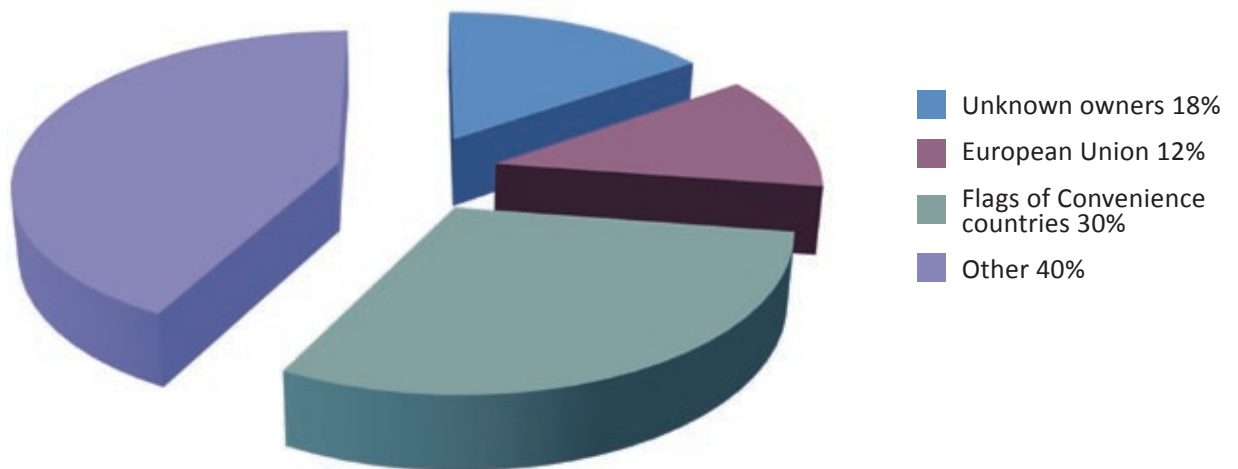
In view of these difficulties, it is even more important that Member States take proactive steps in the identification of their nationals’ interest in vessels registered to Flags of Convenience.

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**The ability of European nationals to escape EU regulation through the use of Flags of Convenience distorts competition, creating an uneven playing field. Regrettably, those with the least regard for conservation and effective management of marine resources may be the ones with the greatest competitive advantage.**

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## The listed location of owners of fishing vessels registered to the top 13 Flags of Convenience



Source: Lloyds List Intelligence (data extracted in 2012)

EJF's own investigations using international shipping databases have shown that 12 percent (100 vessels) of 841 large-scale fisheries vessels flagged to the top 13 Flag of Convenience registries in 2011 are owned by EU companies. Of equal concern are the 18 percent (143 vessels) under the top 13 Flag of Convenience registries that are listed as "owner unknown".

The number of EU beneficial owners of FoC vessels may be far higher as many of the beneficial owners listed in shipping databases are "shell companies" in tax havens. Furthermore, EJF's research did not factor in the significant number of reefers that carry fish, as it is often impossible to differentiate fish-carrying reefers from those that carry other perishable goods. Previous research by EJF has shown that a very high proportion of all reefers operate under FoC.

## RECOMMENDATIONS

EJF recommends that the Community IUU Vessel List is populated with independently identified vessels, so as to assist in identifying and sanctioning IUU fishing by EU nationals.

Meanwhile, Member States should proactively seek to identify their nationals involved in IUU fishing, with a view to taking legal action against them.

## Catch Certification and Vessel Identification

**A Global Record** will enable identification of vessels, making it much harder for **IUU fish** to enter the European market



The experience of RFMOs shows that catch certification schemes can be useful in curbing IUU fish trade, but paper-based systems such as the EU scheme are vulnerable to fraud by unscrupulous operators and officials. This current weakness has the potential to undermine the Regulation's objective of preventing IUU fish from entering EU markets.

This is aggravated by the absence of a facility that enables fisheries authorities in Member States to access EU-wide data when inspecting certificates. For example, authorities need to be aware of ongoing

levels of imports of quota allocated by the International Commission for the Conservation of Atlantic Tunas (ICCAT) to an exporting flag State as consignments reach different European ports during the year of allocation.

A lack of data and coordination allowed Belize-flagged vessels to export consignments of swordfish in excess of its full 2012 ICCAT quota to a single Member State. Consignments were then halted by the Member State concerned, but other Belize-flagged vessels may have exported swordfish caught in excess of quota to other Member States at the same time.

EJF is also aware of fraud that may not be detected through the inspection of certificates, such as the capture of fish by non-DG Sanco-approved vessels for subsequent laundering through DG Sanco-approved vessels. Field-based investigations enabled EJF to identify this practice by Marampa 803 in 2012, which led to a consignment of 28 tonnes of fish being rejected by Spanish authorities in the port of Las Palmas.<sup>29</sup>

Another widespread practice is to hide vessel identities or to intentionally confuse identities of vessels engaged in the same supply chain. Discerning a vessel's true identity can be difficult due to the lack of a Global Record and compulsory IMO numbers for fishing vessels.<sup>30</sup>



Swordfish landings in a European port © EJF



Crew member painting the hull of the Lian Run 14, Las Palmas © EJF

## RECOMMENDATIONS

It is strongly recommended that an adequate electronic certification system is introduced at the earliest opportunity with a view to phasing out paper-based certificates. The Commission should require electronic certification by all relevant flag States within a reasonable timeframe. Real time data on approved flag States' quotas, permits and other relevant information should be made available to fisheries authorities in each Member State.

It is essential that, in accordance with the provisions of Article 49(1) and (2) of the Regulation, EU and Member State authorities can work with NGOs and other organisations that are able to provide well-documented evidence of IUU fishing and the entry of IUU fish into the EU.

Where NGOs can provide robust information to highlight high-risk areas, this evidence should be taken into account by Member States and the Commission when determining risk criteria as per Article 17(3), when initiating investigation and verification procedures and when taking decisions on whether to deny importations.

The EU should assume a leadership role in calling for a Global Record whilst at the same time requiring all industrial fishing vessels seeking to trade with the EU to obtain an IMO number. Adding a requirement to enter IMO numbers to the catch certification scheme for vessels over 100 gross tonnes would provide additional assurances about the origin of fisheries products.

# CONCLUSION

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IUU fishing continues to have a devastating impact on marine environments, livelihoods, food security and legal fishers. It is often facilitated by weak monitoring, corruption and a lack of transparency in the seafood supply chain.

In developing and implementing the IUU Regulation, the EU has positioned itself at the forefront of efforts to address this issue, potentially providing a model for other major seafood markets and Governments to follow. Whilst there are clear examples that this innovative legal tool is having an impact, EJF's research shows that there are issues with the Regulation that urgently need to be addressed.

Evidence demonstrates that a lack of uniformity in the Regulation's implementation is compromising efforts to keep IUU fish out of the European marketplace, and is leading to diversions in trade to the least controlled ports. Similarly, a growing trend in containerising fish suggests a need for further scrutiny of trade flows and how fish is being moved around the world.

In addition, substantial evidence casts doubt on the ability of some countries to deliver on their flag State responsibilities. As a result, the validation of catch certificates by these countries cannot be relied upon. The Commission's decision to warn eight of these countries that they may be designated as 'non-cooperating' is an important step forward, but other poor performing countries need to be identified, and restrictions on trade need to be imposed if substantial improvements are not made.

It is also of particular importance that IUU vessels are included in the Community IUU Vessel List. EJF's investigations have shown that vessels that persistently operate illegally in West Africa continue to be certified to export to the EU. It is vital that they be banned from trading with the EU, or benefiting from European port facilities. Where EU nationals are involved in IUU fishing, they must be investigated and sanctioned.

The proactive and uniform implementation of the IUU Regulation also relies on cost-effective, politically viable and efficient solutions to identify IUU fishing and the people behind these practices. A move towards an electronic catch certificate would make the certification of fisheries products more robust, and a Global Record of fishing vessels supported by IMO numbers would drive transparency throughout the seafood supply chain.

Addressing IUU fishing requires a genuinely coordinated effort that includes Governments, civil society, the seafood industry and other stakeholders. The political will to guide and sustain such an effort is urgently needed. Without it, some of the most vulnerable communities and marine environments will continue to suffer the impacts of IUU fishing, and the fish caught by unscrupulous, poorly-regulated operators will continue to enter the EU marketplace.

As the world's most valuable seafood market, the EU is both duty-bound and perfectly placed to act.

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**EJF is campaigning for the IMO number exemption to be lifted and for all fishing vessels over 100GT to be required to have an IMO number and be included in a Global Record of fishing vessels.**

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