

THROUGH THE NET

Implementation of the EU Regulation
to Prevent, Deter and Eliminate IUU Fishing





The Seta No. 73 in port in Las Palmas in 2010 © EJF



Protecting People and Planet

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List of Abbreviations:

DG Mare: Directorate-General for Maritime Affairs and Fisheries (European Commission)

DG Sanco: Directorate-General for Health and Consumers (European Commission)

EJF: Environmental Justice Foundation

EU: European Union

FAO: United Nations Food and Agriculture Organisation

FoC: Flag of Convenience

IEZ: Inshore Exclusion Zone

IUU: Illegal, Unreported and Unregulated (fishing)

MARM: Spain's Ministry of Environment, Rural and Marine Affairs

RFMO: Regional Fisheries Management Organisation

UNCLOS: United Nations Convention on the Law of the Sea

VMS: Vessel Monitoring System

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The EU regulation to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated (IUU) fishing

Council regulation (EC) No 1005/2008 entered into force on 1 January 2010. It implements the 2001 United Nations International Plan of Action (IPOA) on IUU fishing. 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 provides a system of sanctions for EU nationals engaged in IUU fishing.

Executive Summary

1. The Seta No. 73 case provides an opportunity to review the implementation of the EU IUU Regulation

In March 2011, EJF submitted evidence to the European Commission and Spain's Ministry of Environment, Rural and Marine Affairs ('MARM') that resulted in the seizure of several hundred tonnes of fish from the Seta No. 73 refrigerated cargo vessel. The seizure and subsequent investigations into the presumed IUU fishing provide a 'test case' for the EU IUU Regulation ('the Regulation') and can be used to review and strengthen its implementation by Member States.

2. NGOs could have an important role to play in the effective implementation of the Regulation

NGOs are able to provide information to the European Commission and EU Member States in order to initiate verification procedures relating to suspected illegal fishing. EJF has had a dialogue with the European Commission since the Regulation came into force, and in 2011 EJF provided information on nine separate incidents of IUU fishing in the waters of West African coastal States. This information led to the Seta No. 73 seizure in March 2011 and a further IUU fishing alert from the Commission to Member States about fisheries products from three more vessels presumed to have engaged in IUU fishing in West Africa.

3. Flag State assurances cannot be relied upon without adequate evidence

Flag State assurances under the Regulation cannot be relied on to prove that fish has been legally caught. Fish caught illegally is gaining entry to the European market due to flag States wrongly validating catch certificates. In addition, there is no data regarding the level of information flag States are required to provide when enquiries are carried out into the activities of a vessel or the origin of seafood products. Flag States accredited to export their catch to the EU must be required to properly control their vessels' activities. Where enquiries are carried out, flag State assurances should be accompanied by objective evidence such as robust VMS data.

4. A lack of transparency in the verification process

The Regulation's verification process lacks transparency. In cases of suspected wrongdoing, verification and enquiry procedures are based on a system of confidential State assurances. The verification process has not been clearly set out and is not subject to oversight or scrutiny. Whilst it is accepted that personal data may need to remain confidential, this lack of oversight undermines public confidence in the ability of the Regulation to deter IUU fishing. Furthermore, with increased transparency, authorities making decisions over the entry or denial of seafood products to the EU market will be less vulnerable to inappropriate external pressures.

5. A misinterpretation of the provisions of the Regulation

In explaining the release of a large consignment of presumed illegal fish into the European seafood market, the Spanish government relied upon a misinterpretation of the Regulation. Spanish authorities have wrongly asserted that they cannot deny entry to fish consignments if the evidence for this pertains to a breach of the national fisheries laws of a coastal State. This interpretation undermines the intent and scope of the Regulation and threatens to render it impotent in addressing IUU fishing in West Africa.

6. A lack of progress in utilising tools provided for by the Regulation

Apart from those blacklisted by RFMOs, no vessels have been added to the EU IUU vessel list, and prevented from exporting their catch to the EU, since the Regulation came into force. In addition, no State has been included in the list of non-cooperating third countries, and no data is available on legal actions against EU nationals engaged in IUU fishing since the Regulation came into force. In order to prevent, deter and eliminate IUU fishing, robust action must be taken against individuals, vessels, companies and countries that support or engage in IUU fishing.

Introduction

Council Regulation (EC) 1005/2008 came into force on 1st January 2010. It implements the 2001 United Nations' IPOA to Prevent, Deter and Eliminate IUU fishing and extends the reach of the 1982 United Nations of the Law of the Sea ('UNCLOS') and the 1995 United Nations Fish Stocks Agreement.

The Regulation is the European Union's main legal tool to combat Illegal, Unreported and Unregulated ('IUU') fishing¹. It aims to prevent seafood products obtained by IUU fishing operations from entering the EU, which is the world's largest importer of fisheries products.

IUU fishing depletes fish stocks, degrades marine environments and threatens food security. It is estimated to result in global losses of between US\$10 to 23.5 billion each year². Developing nations are particularly vulnerable to IUU fishing. Sub-Saharan Africa alone is estimated to lose close to US\$1 billion each year³. As well as compromising sustainable fisheries management, IUU fishing places legitimate fishing operators at an unfair disadvantage.

The Regulation establishes a new set of controls on the catching, landing and importation of fish. It relies on the following tools:

1. A catch certification scheme
2. A 'blacklist' of IUU fishing vessels that are prevented from exporting their catch to the EU and from accessing services in EU ports
3. A list of approved 'third countries' with the mechanism to designate countries as 'non-cooperating' and restrict their exports of fisheries products to the EU
4. A system of alerts to share information amongst Member States
5. Sanctions for EU nationals engaged in or supporting IUU fishing.

The catch certification scheme aims to improve the traceability of fisheries products by requiring all seafood entering the EU market to be accompanied by a document detailing where, when and by which vessel the fish was caught. The catch certificate also details the species of fish, its quantity and any transshipments that have taken place. The catch certification scheme relies on an assurance by the vessel's flag State that the fish has been caught in compliance with all applicable laws.

In cases of suspected IUU fishing, the regulation provides for a system of 'verifications' that involves a Member State examining fisheries products and catch certificates to ascertain whether the products have been legally caught. In carrying out verifications, a Member State may make enquires with the vessel's flag State, or in the case of indirect imports, a relevant third country.

Where the verification process confirms that the fisheries products have not been caught in compliance with applicable laws or the products do not match the catch certificate, Member States are required to refuse the importation of the fish. In such a case, the Commission can request that the flag State take enforcement action against the vessel or vessels concerned and request that information on the action taken be shared with the Commission.

In cases where flag States do not take appropriate measures against the vessels, the Commission may decide to list the vessel on the Community IUU Vessel List, therefore preventing them from landing fish in European ports and exporting their catch to the EU. In cases where, on a wider scale, countries are judged not to be acting to prevent, deter and eliminate IUU fishing, they may be designated as 'non-cooperating third countries' by the Commission and prevented from exporting fisheries products to the EU.



The Canoe Support Vessel Marcia 707, which was observed fishing illegally on 29th January 2011 © EJF

¹ Please see page 5 of this briefing.

² Agnew DJ et al; 2009. Estimating the worldwide extent of illegal fishing. PLoS ONE 4(2): e4570.

³ Fisheries Ecosystems Restoration Research; Fisheries Centre. University of British Columbia. 2008. www.mrag.co.uk

The scope of IUU fishing

Involvement in IUU fishing is not limited to the fishing activity itself. It can include the ownership or management of IUU vessels, the financing of IUU fishing operations, the transshipment of illegal fish as well as the procurement, processing and sale of illegal fish.

Low operating costs, evidenced by poor vessel maintenance and squalid crew conditions, coupled with the high value of fish mean unscrupulous operators can benefit greatly from the proceeds of IUU fishing. Additionally, the risk of detection and identification is very low, particularly when fishing in waters not monitored by Regional Fisheries Management Organisations ('RFMOs') or effective coastal States⁴. Financial risk is also low. Fines in many parts of the world are negligible and when IUU vessels are apprehended, the age and poor condition of the vessels means that operators may simply choose to abandon them. Legal prosecutions of operators are rare, particularly in the developing coastal States most afflicted by IUU fishing.

The lack of a Global Record of fishing vessels and the prevalence of 'flag hopping,' means that ownership is often difficult to track. Declared owners are frequently shell companies, with the real beneficial owners hidden and often untraceable. These and other factors such as lack of awareness about the issue within the seafood supply chain and pressure on authorities to uphold the interests of parts of the fisheries sector, help explain the resilience of IUU fishing.

DEFINITION OF IUU FISHING

Article 2: Definitions

For the purposes of this Regulation:

1. **'illegal, unreported and unregulated fishing'** or **'IUU fishing'** means fishing activities which are illegal, unreported or unregulated;
2. **'illegal fishing'** means fishing activities:
 - a. Conducted by national or foreign fishing vessels in maritime waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and Regulation;
 - b. Conducted by fishing vessels flying the flag of States that are contracting parties to a relevant regional fisheries management organization, but which operate in contravention of the conservation and management measures adopted by that organisation and by which those States are bound, or of relevant provisions of the applicable international law; or
 - c. Conducted by fishing vessels in violation of national laws or international obligation, including those undertaken by cooperating States to a relevant regional fisheries management organisation.
3. **'unreported fishing'** means fishing activities:
 - a. Which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and Regulation; or
 - b. Which have been undertaken in the area of competence of a relevant regional fisheries management organisation and have not been reported, or have been misreported, in contravention of the reporting procedures of that organisation.
4. **'unregulated fishing'** means fishing activities:
 - a. Conducted in the area of application of a relevant regional fisheries management organisation by fishing vessels without nationality, by fishing vessels flying the flag of a State not party to that organisation or by any other fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organisation; or
 - b. Conducted in areas or for fish stocks in relation to which there are no applicable conservation or management measures by fishing vessels in a manner that is not consistent with State responsibilities for the conservation of living marine resources under international law.

⁴ Often vessels are sighted operating with their names and external markings covered in order to keep their identity anonymous. Many fishing vessels do not have International Maritime Organisation (IMO) numbers, which makes their identification difficult.

Illustrating the practical application of the Regulation: the Seta No. 73 case

This review focuses on EJF's experience of invoking the Regulation in connection with the high profile seizure of fish caught illegally in Sierra Leone and exported to Europe through the Spanish port of Las Palmas.

Between January and March 2011 EJF's community surveillance boat took photographs, recorded GPS positions and documented the IUU activities of four vessels flagged to Republic of Korea that were operating in the Inshore Exclusion Zone ('IEZ') in contravention of the fisheries laws of Sierra Leone^{5 6}.

According to Article 3 of the Regulation a vessel is presumed to have engaged in IUU fishing if it is shown to be in breach of applicable laws and regulations of the jurisdictions where the fishing activity took place⁷. Aware of this, and having identified the refrigerated cargo vessel used to transport the fish to Europe, EJF issued a notice to the European Commission on 12th March 2011 under Article 49.2 of the Regulation identifying the vessels involved and the date on which the fish was due to arrive in the Spanish port of Las Palmas⁸.

Commission officials travelled to Las Palmas and worked with Spanish authorities to block the consignment of fish from entering the EU between 16th and 19th March 2011, pending verification under Article 17 of the Regulation. The Commission instructed MARM to carry out the verification. MARM issued a request for assistance to the flag State (Republic of Korea) as per Article 17(6) of the Regulation⁹. Meanwhile, the fisheries products were unloaded from the Seta No. 73 and held in a refrigerated warehouse.

The Commission also initiated its own expanded investigations, contacting Panama as the flag State of the Seta No. 73 and the West African coastal States where the Seta No. 73 had received transshipments. Following their investigations, the Commission informed MARM that Liberia, Guinea and Guinea Bissau had confirmed that the vessels concerned had been operating in breach of their laws¹⁰. Sierra Leone also wrote to the Commission to highlight that their laws had been broken by the vessels concerned.

At the end of this process, on 11th June 2011, MARM released the fish to the operators, stating that they had found no evidence of IUU fishing activities. MARM appears to have relied on a translation of Article 12 of the Regulation that it argued allows fish caught in breach of coastal state laws to enter the EU.



The locations of the four vessels documented fishing within the IEZ by EJF in early 2011. All four later transhipped to the Seta No. 73 © EJF



Artisanal fishing boat operating near Bonthe, Sierra Leone © EJF

⁵ Please see Appendix 2

⁶ Shortly afterwards, Sierra Leone issued an official communication denouncing the transgression to its coastal laws.

⁷ Art. 3. 1(a): A fishing vessel shall be presumed to be engaged in IUU fishing if it is shown that, contrary to the conservation and management measures applicable in the fishing area concerned, it has fished without a valid licence, authorisation or permit issued by the flag State or the relevant coastal State; (...).

⁸ Art. 49.2: The Commission or the body designated by it shall also examine suitably documented information regarding sighted fishing vessels submitted by citizens, civil society organisations including environmental organisations, as well as representatives of fisheries or fish trade stakeholder interests.

⁹ Art. 17.6: For the purpose of a verification, the competent authorities of a Member State may request the assistance of the competent authorities of the flag State (...).

¹⁰ The initial weight of the consignment was estimated to be over 1000 tonnes. However, parts of it were released during the investigations that followed until around 300 tonnes remained awaiting MARM's final decision on their destination.

Transparency and evidence in verification and enquiry processes

For a Member State to stop the importation of a consignment of fisheries products due to evidence provided by an NGO, it must be given 'suitably documented' evidence to link the vessel to IUU fishing¹¹. The evidence must be sufficient for a presumption to be established that IUU fishing has taken place in accordance with Article 3 of the Regulation. This is appropriate, for the seizure of a consignment can be disruptive and damaging and only robust evidence of wrongdoing should justify it.

The role of the Member State is to undertake the verification procedures set out in the Regulation. This includes ensuring that the flag State is notified of the alleged infractions and their potential consequences in accordance with Article 26.2 so that the flag State can carry out its own investigations and take action where necessary¹².

In this particular case the importation of the consignment was allowed. This implies that Spain was provided with evidence from the flag State¹³ that discredited the photographs and GPS data provided by EJF as well as information provided by three separate governments of the vessels operating in contravention of applicable laws. EJF has requested that the evidence submitted by Republic of Korea be made available, but MARM has declined to disclose it.

MARM relied on Article 37.4 of Commission Regulation 1010/2009 to deny disclosure, which states that a Member State is not obliged to disclose commercially sensitive information¹⁴. However, the article also says that such data will have to be disclosed if it will prevent IUU operations from continuing. MARM argued that since in their opinion there was no evidence of IUU fishing, they were not obliged to disclose the data. This threatens to make the verification and enquiry procedures under the Regulation opaque.

EJF asserts that for verification and enquiry procedures to have credibility it is not sufficient to obtain assurances from flag States, and that to disprove the original allegations the flag State should submit evidence from their own investigations that is robust enough to counter the original evidence. If the flag State is unwilling or unable to provide such evidence, then the importation should be denied.

The lack of an obligation on flag States to submit objective data to disprove well-founded allegations of IUU fishing undermines the effectiveness of the Regulation. It leaves the outcome of verification and enquiry procedures at the mercy of a flag State's political or financial interests. This is of particular concern in cases where Flags of Convenience (FoC) or non-compliance are involved, since they are frequently unwilling or unable to establish effective systems of vessel control.

An additional concern is the fact that the Regulation does not refer to communication between port Member States and coastal States during the verification process. Since IUU fishing operators often carry out their activities in coastal State waters, sometimes breaching the laws and regulations of those States, Member States should be in contact with coastal States directly rather than obtaining information indirectly via flag States.

Further, the Regulation does not foresee instances where verification enquiries could produce contradictory evidence (for example, where different positional information shows the vessel to have been at two different locations at once). If this occurred or the veracity of the data was otherwise called into question, the Regulation should make provision for independent assessment of the full range of evidence.



Artisanal fishing boat operating near Bonthe, Sierra Leone © EJF

¹¹ Article 49.2: The Commission or the body designated by it shall also examine suitably documented information regarding sighted fishing vessels submitted by citizens, civil society organisations, including environmental organisations, as well as representatives of fisheries or fish trade stakeholder interests.

¹² Art. 26.2: The Commission shall notify flag States whose fishing vessels are identified pursuant to paragraph 1 of an official request for an enquiry into the alleged IUU fishing of their flagged vessels concerned (...).

¹³ In this case the flag State of the vessels that transhipped their catch to the Seta No. 73 was the Republic of Korea.

¹⁴ Art.37.4: Information communicated in any form to persons working for national public authorities and the Commission shall be covered by duties of confidentiality and professional secrecy if their disclosure would undermine (a) the protection of the privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data; (b) the commercial interests of a natural or legal person, including intellectual property; (...).

Recommendations – Transparency and evidence in verification and enquiry processes:

- Verification procedures should be clarified. Except for genuine data protection requirements, the verification process should be made open and transparent. NGOs and interested authorities should be granted observer status to ensure transparency.
- It is strongly recommended that flag State assurances are required to be substantiated by objective data. In particular, robust VMS data should be required to support assertions concerning vessel locations, sightings and catch reports.
- The Regulation should refer to the need for direct contact between Member States and coastal States during the verification process.
- If during verification procedures the authenticity of the evidence is questioned, the Regulation should make provision for an independent enquiry.
- The final report on the investigations should be submitted to the Commission, the flag State, coastal States and other relevant organisations.

Interpreting the scope of the catch certification system

According to correspondence with EJJ, MARM's decision to release the consignment was at least in part based on their interpretation of what the catch certification system requires them to do. It is MARM's view that Member States cannot act in instances where the IUU allegation is based on the breach of a coastal State's national laws. EJJ understands that Spain takes this view on the basis of the wording of Article 12.3 as officially translated into Spanish.

Article 12.3 of the Regulation (English)	Article 12.3 of the Regulation (Spanish)
The catch certificate referred to in paragraph 2 shall be validated by the flag State of the fishing vessel or fishing vessels which made the catches from which the fishery products have been obtained. It shall be used to certify that such catches have been made in accordance with <i>applicable laws, regulations and international conservation and management measures</i> .	El certificado de captura contemplado en el apartado 2 será validado por el Estado de abanderamiento del buque o buques pesqueros que hayan efectuado las capturas a partir de las cuales se hayan obtenido los productos de la pesca. Se utilizara para acreditar que las capturas se han efectuado con arreglo a las <i>leyes, reglamentos y medidas internacionales de ordenación y conservación aplicables</i> .

The Spanish translation is ambiguous and it differs from the English text to read: "[The catch certificate] shall be used to certify that such catches have been made in accordance with international laws, regulations and conservation and management measures of application."

On the strength of assertions made by MARM in their letter of 29th November 2011 EJJ believes that MARM may have decided on the legality of the consignment on the strength of this ambiguous translation. According to this understanding, the role of the validated catch certificate is to document that fish has been harvested in accordance with applicable *international* laws. Fish caught in breach of national laws of coastal States, where the flag State asserts it is legal, would not be covered by the Regulation.

EJF asserts that the position of MARM is untenable for the following reasons:

1. The vessels had been fishing without permission inside Sierra Leone's territorial waters. The right to assert an area of territorial water is given to States in Part II of UNCLOS¹⁵. In addition, Article 62 of UNCLOS sets out the requirement for flag States to ensure the compliance of their vessels with coastal States laws. Spain, the Republic of Korea and Sierra Leone are all parties to UNCLOS and as such they have a duty to cooperate with each other to achieve the sustainable management of marine resources.
2. Three other articles of the Regulation further undermine Spain's erroneous interpretation of Article 12.3. Each are purposive and should take precedence over Article 12.3 even as incorrectly translated:
 - Article 1.3 of the Regulation States that *The system (...) shall apply to all IUU fishing and associated activities carried out (...) within maritime waters under the jurisdiction or sovereignty of third countries and on the high seas.*
 - Article 2.2(a) of the Regulation States that *'Illegal fishing' means fishing activities: (a) conducted by national or foreign fishing vessels in maritime waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations.*
 - Article 2.2(c) of the Regulation States that *'Illegal fishing' means fishing activities: (c) conducted by fishing vessels in violation of national laws or international obligations (...).*

In disregarding the above and deciding that fish obtained illegally in the IEZ of West African countries was fit for importation into the EU, Spain has sent a powerful message to IUU operators who fish in West African coastal waters that they may carry on their illegal activities¹⁶. Indeed, fishing vessels whose loads were seized in Las Palmas have again been observed engaging in IUU fishing activities in West Africa following the decision by Spain to allow the importation of their catches into Europe¹⁷.

Member States endeavouring to prevent, deter and eliminate IUU fishing in line with the aims of the Regulation should be assisting developing coastal States to enforce their laws. Article 11.4 of the Regulation imposes an obligation of cooperation on Member States, which has in this instance been breached by Spain¹⁸.



EJF filming the Marampa 803 within the IEZ on 22nd October 2011 © EJF

Recommendations – Interpreting the scope of the catch certification system:

- EJF strongly recommends that the Commission rejects Spain's erroneous and contradictory interpretation of the Regulation and sends strong and clear guidance to Member States to assert the meaning of all official translations. If MARM's interpretation was to prevail, this would leave a significant loophole through which the products of IUU fishing could easily enter the EU markets, thus rendering the Regulation and the catch certification scheme impotent and unable to achieve its stated aims of preventing, deterring and eliminating IUU fishing.

¹⁵ Part II of The 1982 United Nations Convention of the Law of the Sea.

¹⁶ The coastal waters of West Africa are affected by pirate fishing to a much higher degree than most other sea regions in the world.

¹⁷ One of those vessels, the Seta 70, was detained and seized in Liberia in connection with illegal fishing activities on 1st August 2011.

¹⁸ Art.11.4: (...) In addition, where the suspected breach has taken place in the maritime waters of a third country, the port Member State shall also cooperate with the coastal State in carrying out an investigation into it (...).

The role of flag and coastal States

Like the verification process, the catch certification scheme relies on a system of Government to Government assurances between the EU and flag States: under Article 12 of the Regulation marine fishery products can only be imported to the EU if they are accompanied by a catch certificate validated by the vessel's flag State confirming that fish have been caught in accordance with all applicable laws.

The reliance on Government to Government assurances without explicit reference to objective data renders the system vulnerable to interference by political and economic factors. Whilst the catch certification scheme is a step in the right direction, EIJF proposes a strengthened catch certification system that is reinforced by a requirement to provide log book and VMS data.

Flag States that are authorised to validate information may well be unwilling or unable to ensure their fishing fleets comply with applicable legislation and conservation measures. Some Flag of Convenience ('FoC') States even market themselves as low-regulation options. This is also particularly relevant in cases where distant water fleets operate thousands of miles away in poorly regulated ocean waters and with little contact with their flag States and respective validating authorities.

With regard to the obligations of coastal States, it is essential that they report transgressions in their coastal waters by fishing operators to flag States and the European Commission so that Member States can be alerted that illegally-caught fish may be entering their ports. EIJF is aware that coastal countries in West Africa often do not notify flag States of breaches of their national fisheries laws. This significantly undermines the efficiency of the controls established by the catch certification scheme.

Recommendations – The role of flag and coastal States:

- EIJF recommends that all validated catch certificates are reinforced by a requirement to provide VMS and log book data where required. This can be cross-checked with information provided by coastal States or other organisations.
- Coastal States should be provided with guidance and support with regard to their rights and duties to notify flag States of transgressions in their coastal waters, and supported in providing information regarding IUU fishing to the Commission.

Safeguarding the verification process

Member States are legally obliged to abide by the Regulation and in theory should prioritise their legal obligation before any domestic considerations. However, in reality there may well be political or economic factors which have the potential to strongly influence the due process of the Regulation.

Shortly after the seizure of the consignment in Las Palmas, an announcement was made by third country fishing fleets long established in the port of Las Palmas that they would relocate to other countries unless the consignment was released¹⁹. Further, almost immediately after the release of the consignment, it was reported that MARM had agreed to devolve port control duties to the local authorities in the Canary Islands, who promptly announced that procedures involving fish importations would be streamlined²⁰.

Devolution of powers to regional offices may have advantages such as the removal of unnecessary bureaucracy and capitalising on the local knowledge regarding fishing vessels, companies and seafood products. However, devolution to local authorities also poses the risk that decision-making may be unduly influenced by the local fisheries sector to the detriment of the Regulation.

¹⁹ The Korean, Japanese and Chinese fleets were reported in the local press to have publicly warned the authorities that they would abandon the port, which had been their hub for many years, unless the situation was resolved. www.laprovincia.es/las-palmas/2011/04/14/trabas-burocraticas-incitan-flota-asiatica-abandonar-ciudad/365838.html

²⁰ Please see the detailed chronology for the sequence of events that triggered the release in Appendix 2.

Recommendations – Safeguarding the verification process:

- Procedures for large consignment retention should be defined, clarified and made transparent to minimise possible commercial and financial impact on innocent persons and to prevent seizures growing into significant economic and political issues.
- In order to de-politicise governance it is essential that verification and enquiry procedures, on the strength of which importations are denied or permitted, are open to third party scrutiny and public involvement.
- In order to ensure that those who are denied the financial benefits of entering the European Markets are the actual parties responsible for the IUU operations, EJJ reiterates the urgent need to establish a binding Global Record of fisheries vessels that includes a compulsory declaration of beneficial ownership.
- EJJ strongly recommends that the EU advocates for the establishment of the Global Record before the UN Food and Agriculture Organisation Committee on Fisheries and other relevant international bodies.

Fish caught in West Africa being unloaded in Las Palmas in 2010 © EJJ



Prevention and enforcement

The Regulation establishes a system of sanctions where IUU fishing is identified. Evidence of IUU fishing can trigger the refusal of importation of the vessel's consignment. Furthermore, a vessel can be included in the EU IUU Vessel List (under Article 27.1) and banned from exporting their catch to the EU²¹. In addition, all vessels blacklisted by RFMOs are automatically added to the EU IUU list. The list is an important tool in preventing the entry of illegally-caught fish to Europe and removing the profit from IUU fishing. Furthermore in areas where no regional 'blacklists' exist, such as West Africa, the EU IUU list could play a crucial role in deterring IUU activities by vessels exporting their catch to the EU.

EJF has learnt that there have been a number of investigations since the Regulation came into force, with some still ongoing. However, no vessels have been added to the EU IUU vessel list at the time of publication of this report other than vessels already blacklisted by RFMOs.

With regard to countries, States that do not meet their obligations under the Regulation to prevent, deter and eliminate IUU fishing can be identified as non-cooperating third countries (under Chapter VI of the Regulation) and be placed in the list provided for by Article 33²². Under Article 38, States included in the list of "non-cooperating third countries" are prohibited from exporting fisheries products to the EU or entering into fisheries agreements with the EU.

As yet, no countries have been officially identified as 'non-cooperating third countries,' and been prevented from exporting fisheries products to the EU. Despite this, a leaked letter from Spanish authorities in June 2011, suggested that Panama, Belize, Honduras and Togo were being considered for inclusion in the list of 'non-cooperating third countries.' All of these States are considered to be FoC – they sell their flag to foreign-owned fishing vessels but are unable or unwilling to regulate their activities.

EJF is aware that a significant number of vessels owned by EU nationals are 'flagging out' to third countries, including States described as FoC, that are unable or unwilling to regulate their activities. EJF's initial research shows that over 100 vessels flagged to the 12 top FoC registries are owned by EU nationals or companies. This is a significant obstacle for Member States to prevent their own nationals from engaging in IUU fishing activities.

With regard to Member State nationals, Article 44 enables Member States to use financial or criminal sanctions if their nationals are found to have engaged in IUU fishing. Article 44 states that Member States shall impose a fine of at least eight times the value of the fishery products obtained by committing the serious infringement. However EJF has been advised by the Commission that there is currently no information on the number of EU nationals sanctioned for engaging in or supporting IUU fishing.

EJF has not been provided with official data on the number and value of consignments barred from importation by Member States. Nevertheless, EJF has been advised that there have been refusals on the following grounds:

- Fish caught within a RFMO area, but the exporting country was not a member of the RFMO
- Fish caught by a vessel not listed by the relevant RFMO
- Catch certificate presented but not validated by the corresponding flag State
- Landed species not corresponding with species stated in the catch certificate

²¹ Art. 27.1: The Commission shall, in accordance with the procedure referred to in Article 54.2, establish a Community IUU vessel list. The list shall include the fishing vessels in relation to which, further to the measures taken pursuant to Articles 25 and 26, the information obtained in accordance with this Regulation establishes that they are engaged in IUU fishing and whose flag States have not complied with the official requests referred to in Article 26.2(b) and (c) and Article 26.3(b) and (c), in response to such IUU fishing (...).

²² Art.33: Establishment of a list of non-cooperating third countries. (1): The Council, acting by qualified majority on a proposal from the Commission, shall decide on a list of non-cooperating third countries. (2): The Commission shall, without delay, notify the third country concerned of its identification as a noncooperating third country and of the measures applied in accordance with Article 38, and shall request it to rectify the current situation and to advise on the measures taken to ensure compliance with conservation and management measures by its fishing vessels. (3): Following a decision taken pursuant to paragraph 1 of this Article, the Commission shall, without delay, notify it to the Member States and shall request them to ensure the immediate implementation of the measures laid down in Article 38. Member States shall notify the Commission of any measures they have taken in response to this request.

Recommendations – Prevention and enforcement:

- Where sufficient evidence is available, the Regulation must be used to include vessels in the EU IUU Vessel list and countries that fail to cooperate with Member States in the fight against IUU fishing in the list of ‘non-cooperating third countries.’
- Member States must also be required to provide information to the Commission on nationals sanctioned for involvement in IUU fishing as well as identify nationals (individuals and legal entities) owning fishing vessels registered to FoC (as per Article 40).
- Where vessels are shown to have engaged in IUU fishing, their Directorate-General of Health and Consumers (DG Sanco) hygiene accreditation to export to the EU should be withdrawn.

Conclusion

IUU fishing continues to be a serious threat to sustainable fisheries and food security. Numerous national and international initiatives are seeking to address it. The Regulation seeks to prevent illegal fisheries products from entering the EU and empower European authorities to take action against EU nationals supporting or engaging in IUU fishing anywhere in the world.

But EJF’s investigation has shown that IUU fishing operators in West Africa that export to the EU have so far not been deterred by the Regulation. Vessels that export to the EU continue to breach national fisheries laws in West Africa, by fishing in closed areas, covering their identification markings, using banned fishing equipment, fishing deep within exclusion zones, refusing to pay fines, transshipping fish illegally at sea, not reporting catches and refusing to let authorities board their vessels.

Only with improved implementation of the Regulation by Member States and improved monitoring, control and information-sharing by flag States and coastal States can the Regulation be effective. Alongside this, Member States must adopt a proactive risk-based approach to port controls and verifications, ensuring that consignments from high risk areas, such as West Africa, are prioritised.

The fact that no vessels have been independently added to the EU IUU vessel list in two years is a cause for concern. More data needs to be made available by Member States and the Commission on the impacts of the Regulation, including the number of consignments denied importation, the number of investigations of EU nationals and companies involved in IUU fishing, as well as the results of the Commission’s audit missions to flag and coastal States.



A vessel fishing illegally at dawn in the Sherbro River area © EJF

IUU ALERT (sent by EJF to the European Commission)

Arrival of IUU consignment of fish in Las Palmas de Gran Canaria from 12th March 2011

Introduction

Between January and March 2011 EJF observed several vessels (the vessels) fishing in Sierra Leone waters, suspected to be in violation of the Sierra Leone Fisheries (Management and Development) Decree 1994 (the Fisheries Decree) and the Sierra Leone Fisheries Regulations 1995 (the Fishing Regulations). The legal basis for deeming the vessels' activities to be IUU is detailed in the table below.

EJF considers that there is a high likelihood that the catch was subsequently transhipped to the Panama-flagged refrigerated cargo vessel Seta No. 73. EJF has previously observed the Seta No. 73 landing the catch of one of the vessels in Las Palmas (boxes from the Seta 70 were observed being unloaded in August 2010). We attach a screenshot from AIS Live projecting the anticipated arrival of Seta No. 73. The Seta No. 73 is owned by Inter-Burgo Spain, a subsidiary of the Korean company Inter-Burgo Co Ltd.

Legal basis for assertion that the vessels' activities are illegal

Illegal fishing is defined under Article 2(1)(a) of the EU IUU regulations as being where "fishing activities are conducted by national or foreign fishing vessels in maritime waters under the jurisdiction of a State, without permission of that State, or in contravention of its laws and regulations".

EJF observed the following vessels fishing in suspected contravention of Sierra Leone law. Detailed descriptions of vessels and observed IUU activities are attached. The positions of the vessels when observed are plotted on the attached map.

Vessel Name	IUU Activity
Seta 70 (3/3/11)	<p>Observed fishing without a fishing licence in contravention of Section 21(1)(a) of the Fisheries Decree, where "no foreign fishing vessel shall be used for fishing or related activities in fisheries waters or for such other activities as may be provided in this decree except in accordance with a valid licence issued pursuant to this decree, an applicable access agreement or as otherwise authorised by this decree".</p> <p>While the vessel raised its fishing gear following detection it remained in contravention of Section 21(4) of the Fishing Decree, where "all fishing gear on board any foreign fishing vessel in any place in the fishery waters where it is not permitted to fish shall be stowed in such a manner as it shall not be readily available for use for fishing as may be prescribed".</p> <p>The vessel's markings were deliberately obscured, contravening Regulation 6(1) of the Fishing Regulations, where "each fishing vessel shall at all times when fishing in the fishery waters fly the flag of its State and display identification markings in accordance with the requirements specified in the Fifth Schedule.</p>
Marcia 707 (29/1/11)	Canoes belonging to this canoe support vessel were observed within the Inshore Exclusion Zone (IEZ). This contravenes Section 30(2) of the Fishing Decree, where "no canoe operating with a canoe support vessel shall fish in the inshore exclusion zone".
Medra (14/2/11)	Observed fishing within the IEZ, in contravention of Section 30(1) of the Fishing Decree. The vessel also reportedly previously attacked a local fisherman attempting to retrieve hooks entangled in the Medra's fishing gear, contravening Section 21(5) of the Fisheries Decree where "Each foreign fishing vessel in any place in the fisheries waters shall be operated in such a way that the activities of local and traditional fishermen and fishing vessels are not disrupted or in any other way adversely affected".
515 Amapola (18/2/11)	Observed fishing within the IEZ, in contravention of Section 30(1) of the Fishing Decree. Vessel markings were deliberately obscured, contravening Regulation 6(1) of the Fishing Regulations.

DETAILED CHRONOLOGY OF EVENTS CONCERNING THE SETA NO. 73'S CONSIGNMENT

- **January to March 2011:** EJJ observed four Republic of Korea-flagged fishing vessels, the Medra, Marcia 707, Seta 70 and Amapola 515 fishing illegally in inshore areas of Sierra Leone. EJJ obtained photographic and GPS evidence of their activities. Further EJJ investigations reveal that the four vessels illegally transhipped their catch at sea to the Seta No. 73 refrigerated cargo vessel.
- **12 March:** EJJ sends an IUU Alert to the Commission setting out the above finds.
- **16-19 March:** The Commission travels to Las Palmas and works with Spanish authorities to seize the consignment from the Seta No. 73 and initiate a verification.
- A total of 1,077 tonnes of fish seized from Seta No. 73, Lian Run and Hai Feng 823.
- Whilst MARM carries out the verification process, including contacting the Republic of Korea, the Commission carries out its own expanded investigation, contacting Panama and five West African coastal states where the IUU fishing was judged to have taken place.
- **April to May:** The Las Palmas based Korean, Chinese and Japanese fleets warn local authorities that they will abandon the Puerto de la Luz and relocate to other ports unless assurances can be given that seizures of fisheries products will not occur again. Local newspaper articles criticise the seizure and local politicians decry the impact of the seizure on the local economy and publicly protest the innocence of the affected vessel operators.
- **April to June:** Over two thirds of the consignment are released as investigations progress. By June 2011, 300 tonnes remain, awaiting a decision by MARM.
- **3 June:** MARM sends a report to the European Commission with their conclusions and requesting legal advice.
- **11 July:** Claiming they had received no reply from DG Mare and no evidence to prove that IUU fishing had taken place, MARM orders the release of the remaining 300 tonnes to the fishing operators.
- **12 July:** Las Palmas media announces:
 - the release of the consignment; and
 - that measures have been agreed between the MARM in Madrid and Las Palmas authorities to devolve port control functions to Las Palmas authorities to streamline importations of fishing products.
- **25 July:** EJJ writes to the European Commission enquiring about the release of the consignment.
- **14 September:** EJJ receives a reply from the Commission explaining that Spain was informed that three West African coastal States had confirmed that IUU fishing had taken place and that 'the decision to accept or refuse the importation lies with the Member State.'
- **10 October:** EJJ writes a letter to the Spanish Secretary General of the Sea requesting an explanation for the reasons behind the release of the consignment.
- **2 November:** EJJ receives a letter from the Spanish Secretary General of the Sea explaining MARMs decision to release the consignment.
- **9 November:** EJJ writes to Secretary General of the Sea requesting copies of documentation they received from Republic of Korea and confirmation that the responses from West African governments had been received.
- **29 November:** Letter from the Secretary General of the Sea asserts that Spain is not in a position to deny the import of fisheries products where the alleged illegal fishing pertains to a breach of national fisheries laws.



Protecting People and Planet

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