

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

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**ILLEGAL, UNREPORTED  
AND UNREGULATED  
FISHING: SANCTIONS  
IN THE EU**

STUDY







DIRECTORATE GENERAL FOR INTERNAL POLICIES  
POLICY DEPARTMENT B: STRUCTURAL AND COHESION POLICIES

FISHERIES

# ILLEGAL, UNREPORTED AND UNREGULATED FISHING: SANCTIONS IN THE EU

STUDY

This document was requested by the European Parliament's Committee on Fisheries.

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DIRECTORATE GENERAL FOR INTERNAL POLICIES  
POLICY DEPARTMENT B: STRUCTURAL AND COHESION POLICIES

FISHERIES

# ILLEGAL, UNREPORTED AND UNREGULATED FISHING: SANCTIONS IN THE EU

STUDY

## Abstract

This briefing note presents an overview of illegal, unreported and unregulated fishing and sanctions in the European Union. It provides information on the different approaches for addressing serious infringements in different Member States, as well as an analysis of existing EU and international measures.

The study identifies differences between levels of monitoring, control and surveillance in Member States. Also differences are observed between Member States in the following-up of serious infringements and sanctions imposed.

The study recommends that Member States prioritise effective enforcement of IUU rules and promote harmonisation of penalties.



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## LIST OF ABBREVIATIONS

CCAMLR	Commission on the Conservation of Antarctic Marine Living Resources
CMM	Conservation and Management Measures
EC	European Commission
EEZ	Exclusive Economic Zone
EU	European Union
EUR	Euro
FAO	Food and Agriculture Organization of the United Nations
FAP	Financial administrative penalty
FoC	Flag of Convenience
GBP	Pound Sterling
IATTC	Inter-American Tropical Tuna Commission
ICCAT	International Commission for the Conservation of Atlantic Tunas
ILO	International Labour Organization
IOTC	Indian Ocean Tuna Commission
IOTC	Indian Ocean Tuna Commission
IUU	Illegal, Unreported and Unregulated
JDP	Joint Deployment Plan
MMO	Marine Management Organisation
MS	Member States
MSC	Monitoring Control and Surveillance
NAFO	Northwest Atlantic Fisheries Organization
NEAFC	North East Atlantic Fisheries Commission
OECD	Organisation for Economic Co-operation and Development
PSMA	Port State Measures Agreement
RFMO	Regional Fisheries Management Organisation
SEAFO	South East Atlantic Fisheries Organisation
TAC	Total Allowable Catch
UK	United Kingdom
UNCLOS	United Nations Convention on the Law of the Sea
UNIAP	United Nations Inter-Agency Project on Human Trafficking
UNODC	United Nations Office on Drugs and Crime
WCPFC	Western and Central Pacific Fisheries Commission



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## EXECUTIVE SUMMARY

This briefing note presents an overview of Illegal, Unreported and Unregulated Fishing (IUU) and sanctions in the European Union (EU). The note provides the reader with information on the different approaches for addressing serious infringements in different Member States (MS), as well as an analysis of existing EU and international measures.

### Objectives and methodology

The briefing note aims to:

- Describe the problem of IUU activities and identify key vulnerabilities in order to understand the impact of IUU fishing and the ways in which sanctioning measures can be developed.
- Provide an overview of policy measures against IUU fishing in order to identify challenges in the implementation of EU rules.
- Provide an overview of practices on the sanctioning of IUU infringements in the EU MS.

The timeframe for this briefing note was from the beginning of January 2014 to the end of March 2014. The methodology employed to deliver the note combines desk research, stakeholder interviews and data requests.

### Background

In January 2010 the IUU regulation entered into force based on Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (IUU Regulation). The regulation includes various important tools to control fishing activities and MS are to adopt appropriate measures, allocate adequate financial, human and technical resources and set up all administrative and technical structures necessary for ensuring control, inspection and enforcement.

The EU fisheries control system aims to promote transparency and ensure non-discrimination between EU and third country fisheries. For enforcement, the IUU Regulation includes a harmonised system of proportionate and dissuasive sanctions for serious infringements. This places responsibility with the MS to determine and implement sanctions.

With this briefing note an effort has been made to provide an overview of the sanctioning of serious infringements in EU MS. It has placed particular emphasis on the implementation of measures against IUU fishing, the detection of infringements, imposed sanctions and the degree of repeat offences.

### Key findings

This study has found that weak governance arrangements in the fisheries sector are considered the main vulnerability for IUU activities. Addressing challenges requires good governance, stronger policy frameworks and better implementation of existing policies. A key area for improvement is the tracking of ownership of fishing vessels. Various attempts to establish an international register of fishing vessels have failed. Consequently there is no accurate and complete information on vessel activity in the high seas. In addition, this study has found that there is a lack of transparency on foreign fishing activity in countries' Exclusive Economic Zones (EEZs). While the EU provides public information about EU vessel activity in third countries' EEZs, other large fish producers fail to do so.

Further, this study argues that differences in monitoring, control and surveillance (MCS) activities among EU MS risk that IUU offenders direct their activities to areas with weaker control. Low level of MCS could lead to low probability of detection, increasing revenue from IUU activities and lower transaction costs of doing business. Port and flag states need to be engaged in MCS activities, in which especially port inspections are an important moment to allow for detection and prevention of IUU infringements.

Not only EU MS are responsible for MCS activities but also third countries have to be committed to fighting IUU infringements. Especially developing states experience significant difficulties in governing MCS systems. This study therefore argues that special focus should be placed on supporting third countries through regional cooperation frameworks. Adherence to international agreements and regional fisheries management organisations could greatly reduce the effectiveness of flag states that either cannot enforce their laws or are unwilling to enforce them.

The IUU regulation is equipped with important tools to address challenges the EU is facing with IUU fishing. The rules can be considered innovative and could have major global impact given the important role of the EU as producer and exporter of fishery products, as well as importer of fishery products. This study identified various challenges in the implementation of the IUU Regulation. First of all, the detection of EU financial interests behind IUU fishing is difficult due to lack of transparency. The secretive nature of IUU activities complicates detection and impedes objective estimates of the degree of involvement of EU vessels in IUU fishing inside EU waters, on high seas or in third country EEZs.

Concerning following-up and sanctioning of IUU infringements by EU MS, this study finds that overall there is a lack of publically available data. Through national data requests, information is made available but data repositories do not always make a clear distinction between types of infringements. This should improve in time as the IUU Regulation recently entered into force. An additional complication is the division of competencies for inspecting and sanctioning of infringements. This generates diversity among MS and their approaches to dealing with fisheries. MS have divided competencies for fisheries control across various authorities, at various governmental levels. Sanctioning systems are either administrative or criminal and sanctioning competencies could differ depending on the gravity or type of infringement. Overall, it is difficult to establish the degree of recidivism. More transparency in the use of the point system should improve this and for now some insight is provided on recidivism when taking a closer look at the use of out-of-court settlements.

## Recommendations

Based on the findings of this briefing note, the following recommendations should be prioritised:

1. **Strengthen international policy frameworks.** Due to the nature of IUU fishing, policy frameworks require global strengthening and cannot exclusively focus on regions.
2. **Prioritise enforcement of IUU rules.** Enforcement of IUU rules primarily relies on the responsibility and commitment of EU Member States themselves. Therefore authorities need to prioritise effective enforcement.
3. **Enhance MCS and enforcement.** Monitoring, control and surveillance activities cannot be decoupled from enforcement activities. Authorities need to enhance cooperation between inspection and sanctioning authorities.

Based on the more general recommendations above, the following recommendations specifically focus on licencing and administration, MCS and following-up and sanctioning of IUU infringements:

4. **Strengthen national registries of fishing vessels.** This will allow better tracking of vessels and maintaining a reliable record of fishing vessels.
5. **Promote more transparency on fishing ownership structures.** Promote adherence of flag states to regional management organisations and the relevant Conservation and Management Measures (CMM). Special focus should be placed on tax havens.
6. **Enhance levels of MCS in EU MS.** Both flag and port states need to be engaged in MCS activities and especially port authorities are required to forward information to administering and licencing authorities.
7. **Promote the exchange of information on MCS activities.** MS should exchange information on suspected and detected IUU infringements. The EU Alert system could be an important tool for this.
8. **Prioritise detection of IUU infringements.** Develop expertise on detecting IUU infringements, especially for customs authorities.
9. **Exchange information on rules of procedure.** MS should exchange information on the applied rules of procedure in case of detected IUU infringements.
10. **Establish clear guidelines on evidence requirements.** MS should exchange requirements for evidence collection in order to ensure successful prosecution.
11. **Impose adequate sanctions.** When establishing penalties, MS should take into account the severity of penalties and the potential deterrent effect.
12. **Publish information on sanctions imposed.** Data repositories in EU MS should include information on the sanctions imposed and clearly distinguish between types on infringements sanctioned.
13. **Enhance transparency in out-of-court settlements.** Out-of-court settlement of infringements can be a useful tool to deal with offenders. However, such procedures should be transparent and documented.
14. **Consider criminal procedures in case of repeat offenders.** Criminal proceedings could have a more deterrent effect on repeat offenders. Its consequences can be more severe (e.g. higher penalties and a criminal record).
15. **Promote the use of the point system.** The point system is a useful tool to harmonise sanctioning in the EU and address the problem of recidivism.





## 1. Introduction

This briefing note has been prepared by Blomeyer & Sanz. The introduction briefly presents the briefing note's objectives (1.1.), the methodology (1.2.), definitions and concepts used in the report (1.3.), and the structure (1.4.).

### 1.1. Research objectives

The purpose of this briefing note on Illegal, Unreported and Unregulated Fishing (IUU) and sanctions in the European Union (EU) is to identify strengths and weaknesses in the sanctioning of such infringements with a view on formulating recommendations on the harmonisation of penalties.<sup>1</sup> The following points describe the main aspects of the study:

- The first aspect includes an analysis of the problem of IUU activities and identifies key vulnerabilities. The objective is to understand the impact of IUU fishing and baseline against which sanctioning measures can be developed.
- The second aspect includes an overview of international and EU policy measures aiming to address IUU activities. The objective is to identify challenges in the implementation of EU rules.
- The third aspect includes an overview of practices on the sanctioning of IUU infringements in the EU MS. The objective is to provide for evidence-based recommendations.

The study adds value to the work of the European Parliament Fisheries Committee (PECH) by providing decision-makers and the other stakeholders with information on the 'different approaches for addressing serious infringements in different Member States', as well as an analysis of existing EU and international measures with the aim to 'formulate recommendations for harmonisation of penalties'.<sup>2</sup>

### 1.2. Methodology

This section outlines the methodology for the development of the present study by presenting the time frame (1.2.1), the structure of the research questions (1.2.2.) and finally an overview of the tools used for data collection (1.2.3.).

#### 1.2.1. Time-frame

Research was undertaken from the beginning of January 2014 to the end of March 2014.

#### 1.2.2. Structure of the questions

The study questions have been divided into three groups:

- Challenges in addressing IUU fishing
- Measures to address IUU fishing and implementation of sanctioning systems
- Findings and recommendations

#### Challenges in addressing IUU fishing

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<sup>1</sup> Stated in the study's Terms of Reference.

<sup>2</sup> Ibid.

The first study area covers the understanding of IUU fishing, its global impact, as well as implications for the EU and its MS. The aim of the first study area is to understand the impact of IUU fishing and identify key areas that are particularly vulnerable to IUU activities. The main study questions are:

- What characterizes IUU fishing?
- What are the roots of the problem?
- Which measures can be taken against this?

#### Measures to address IUU fishing and implementation

The second study area provides an overview of EU measures taken to address IUU fishing. This should complement the findings of the first study area and allow for an analysis of which key areas vulnerable to IUU fishing are covered by current measures. The aim of the second study area is to narrow down the focus and pinpoint those areas that need additional attention. The main study questions are:

- What procedures are used in the EU for following up on IUU infringements?
- What sanctioning measures are used in EU Member States for IUU infringements?
- What other measures have been taken at EU level against IUU fishing?

#### Findings and recommendations

The third study area provides recommendations based good practices that can be implemented to cover areas vulnerable to IUU activities that have been identified in the previous study areas. It aims to add value to the work of the PECH Committee by providing evidence-based and action-oriented recommendations for an EU approach in addressing IUU fishing through harmonisation of sanctions for serious infringements.

#### 1.2.3. Data collection and assessment tools

The data for this briefing note has been collected through:

- Desk research. Data used for this report comprises legislation, official documents and secondary sources. A full overview can be found in Section 7. References.
- Stakeholder interviews. Stakeholders were selected from the public and private sector, as well as academia and civil society, at national and EU level. For this briefing note, the main stakeholders consulted come from the European Commission (DG MARE, EFCA), the European Parliament, national fisheries inspection authorities, scientific research institutes, and non-governmental organizations.

The briefing note has undergone a proof reading and external quality review, conducted by Dr. Kim Stobberub.

#### 1.3. Definitions and concepts used by the report

This section will introduce some key definitions used by the report:

Definitions and concepts	
Coastal State	This refers to the 'State in the waters under the sovereignty or jurisdiction or in the ports of which an activity takes place'. <sup>3</sup>
Conservation and management measures	This refers to 'measures to conserve and manage one or more species of living marine resources and that are adopted and in force in accordance with the relevant rules of international and/or Community law'. <sup>4</sup>
Control	This refers to monitoring and surveillance.
Enforcement	This refers to actions taken to ensure compliance with the rules of the CFP.
Executive authority	This refers to a part of the government with the authority and responsibility to impose sanctions.
Fishing activity	This refers to 'searching for fish, shooting, setting, towing, hauling of a fishing gear, taking catch on board, transhipping, retaining on board, processing on board, transferring, caging, fattening and landing of fish and fisheries products'. <sup>5</sup>
Fishing authorisation	This is issued in addition to the fishing licence and entitles a vessel to carry out specific fishing activities under specific conditions.
Fishing licence	This refers to 'an official document conferring on its holder the right, as determined by national rules, to use a certain fishing capacity for the commercial exploitation of living aquatic resources'. <sup>6</sup>
Fishing opportunity	This refers to 'a quantified legal entitlement to fish, expressed in terms of catches and/or fishing effort'. <sup>7</sup>
Fishing vessel	This refers to 'any vessel of any size used or intended for use for the purposes of commercial exploitation of fishery resources, including support ships, fish processing vessels, vessels engaged in transshipment and carrier vessels equipped for the transportation of fishery products, except container vessels'. <sup>8</sup>
Flag State	This refers to the State under whose laws the fishing vessels is registered or licenced.
Inspection	This refers to any 'check carried out by officials regarding compliance with the rules of the common fisheries policy and which is noted in an inspection report'. <sup>9</sup>
Landing	This refers to 'the initial unloading of any quantity of fisheries products from on board a fishing vessel to land'. <sup>10</sup>
Surveillance	This refers to 'the observation of fishing activities on the basis of sightings by inspection vessels or official aircrafts and technical detection and identification methods'. <sup>11</sup>
Transshipment	This refers to the 'unloading of all or any fishery products on board a fishing vessel to another fishing vessel'. <sup>12</sup>

<sup>3</sup> Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy.

<sup>4</sup> Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.

<sup>5</sup> Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.

<sup>9</sup> Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy.

<sup>10</sup> Ibid.

<sup>11</sup> Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.

<sup>12</sup> Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy.

## 1.4. Report structure

The report is organised in 7 chapters, including this introductory chapter:

Chapters	
2. IUU fishing	This chapter covers the understanding of IUU fishing, its global impact, roots of the problem, and presents measures against IUU fishing.
3. Addressing IUU fishing in the EU	This chapter provides an overview of EU measures taken to address IUU fishing with a specific focus on inspections, infringements and sanctions relating IUU fishing.
4. Implementing the IUU Regulation	This chapter looks at the implementation of IUU measures in the EU by looking at the role of the European Commission as well as RFMOs. After this various MS governance arrangements are discussed and their following up of serious infringements, sanctions imposed and degree of repeat offences.
5. Findings	This chapter provides findings and lessons learned in addressing IUU fishing in the EU. Special emphasise is placed on licencing and administration, MCS and infringement procedures and sanctioning.
6. Recommendations	This chapter presents recommendations based good practices that can be implemented to cover areas vulnerable to IUU activities.
7. Bibliography	This chapter presents an overview of the references used for this briefing note.

## 2. IUU fishing

### KEY FINDINGS

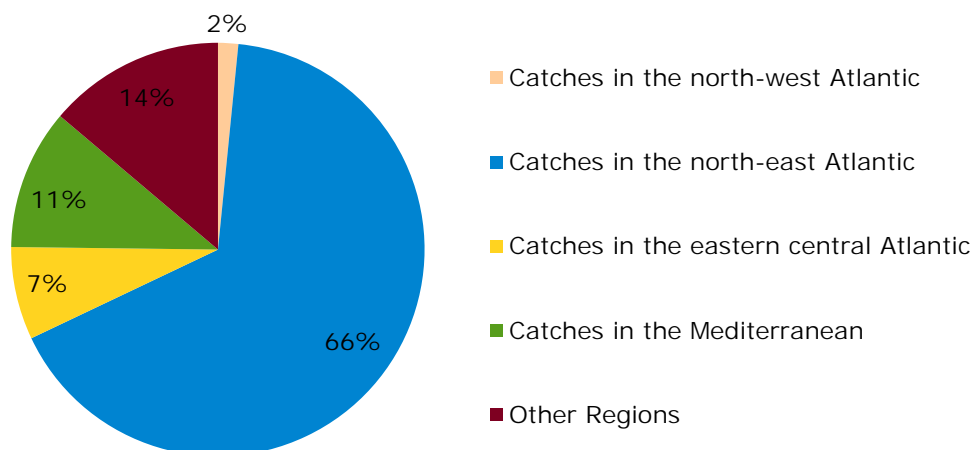
- Differences in the quality and comparability of available data complicate estimates of the extent of IUU fishing.
- Tracking ownership of vessels is difficult due to the lack of an international register of fishing vessels and vulnerabilities in domestic registries allowing vessels to fly Flags of Convenience.
- Mixing legal and illegal products in the fisheries supply chain generates high profits for IUU activities. Allowing this creates an unequal playing field and unfair competition.
- The fisheries supply chain includes many different actors and activities, generating a loosely organised network. Such a network is difficult to control.
- Long distance fishing requires fishermen to plan and coordinate their activities carefully. This could indicate that decisions to engage in IUU fishing are not necessarily opportunistic in nature.
- The fisheries industry is vulnerable to various types of international organized crime. In addition, the difficulties in monitoring and controlling fishing vessels facilitate the potential abuse of labour.
- Legal fisheries suffer from IUU fishing as the depletion of fish stocks could lead to increased costs and consequently to lower revenue and ultimately unemployment.
- The three main economic causes of IUU fishing are overcapacity, ineffective management, and subsidies. Economic benefits are a key driver for actors to engage in IUU activities.
- Gaps in international legal frameworks allow IUU activities to fall outside the scope of national or international agreements.
- Differences in levels of MCS risk providing opportunities for IUU offenders, which could direct their activities to areas with weaker control. In addition, low levels of MCS could reduce the probability of detection, increasing IUU revenue and lowering costs.
- Differences in the level of penalties imposed could undermine compliance. Low fines fail to deter further IUU fishing.

Annual losses worldwide due to IUU fishing are estimated between USD 10 billion and USD 23.5 billion, which represents between 11 and 26 million tonnes of fishery product.<sup>13</sup> According to studies, developing countries are most at risk. For example, in West Africa total estimated catches are 40% higher than reported catches. One of the most extensive studies conducted on the size of IUU fishing analysed 54 EEZs and 15 high seas regions (2009).<sup>14</sup> The results clearly show that IUU fishing is a global problem, with certain regions being more affected than others. The highest levels observed are in the Eastern Central Atlantic and in total 5 areas experienced an increase in IUU fishing since the 1990s. The lowest level was observed in the Southwest Pacific, and overall IUU fishing has declined in 11 areas since the 1990s. Reasonable estimation for IUU fishing are made for the Northeast Atlantic based on reports issued by the International Council for the Exploration of the Sea (ICES). However, the main problem with estimating the global size of IUU fishing is the quality and comparability of available data.

<sup>13</sup> Agnew, J., et al. (2009). Estimating the worldwide extent of illegal fishing [WWW]. Available from: <http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0004570> [Accessed on 12/03/2014].

<sup>14</sup> Agnew, J., et al. (2009). Estimating the worldwide extent of illegal fishing [WWW]. Available from: <http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0004570> [Accessed on 12/03/2014].

Graph 1: EU catches by region in 2012



Source: Eurostat

Estimates of IUU fishing from the Eastern Central Atlantic appear higher than in the Western Central Atlantic due to the large geographic area with a wide variety of fisheries and more importantly the quality of governance. This area stretches from Morocco to Angola, and includes countries suffering serious governance problems such as Guinea, Sierra Leone and Liberia. Increased control efforts in the Western Indian Ocean area seem to have caused a decline in IUU fishing. However, a reduction in the estimated unreported catch by the Regional Fisheries Management Organisation (RFMO) IOTC could also have had impact on the observed decline.

Various species are affected by IUU activities. In particular, high value demersal fish, lobsters and prawns. The most important species targeted on the high seas are tuna, billfish, shark and deep-water species. The gear used for IUU varies, with pelagic longlines for tuna, and bottom trawlers for groundfish, such as cod.

This section discusses IUU fishing (2.1), its consequences (2.2), the roots of the problem (2.3) and measures to address it (2.4).

## 2.1. Understanding IUU fishing

Extensive research has been done on the characteristics of IUU fishing. Understanding the phenomenon allows us to analyse whether existing measures address the main IUU risks, and to highlight critical areas for implementation of the measures.

### 2.1.1. Definition of IUU fishing

To understand what is constituted as IUU fishing activities, we will refer primarily to the definition adopted by the international community, including the EU. In this context, illegal fishing refers to activities:<sup>15</sup>

- '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;

<sup>15</sup> Article 2 to 4, IUU Regulation, and Article 3, International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.

- conducted by fishing vessels flying the flag of States that are contracting parties to a relevant regional fisheries management organisation, 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;
- conducted by fishing vessels in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organisation.'

Unreported fishing refers to activities:

- 'which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or
- 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'.

Finally, unregulated fishing refers to activities:

- '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 measure of that organisation; or
- conducted in areas or for fish stocks in relation to which there are no applicable conservation and 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'.

Addressing IUU fishing is problematic due to the multitude of actors involved as well as the nature of the fisheries sector. First we will take a closer look at the actors involved. After this, we will discuss the characteristics of the fisheries sector. The main problem for law enforcement appears to be the nature of the market, which allows operators to mix legal and illegal catch and use their legal trading relationships to introduce IUU products into the market.

### 2.1.2. Actors involved

A wide variety of actors are involved in IUU fishing such as producers, processors, retailers and consumers. The degree of involvement in IUU activities differs, with some actors directly involved in IUU activities, while others may be unaware of their involvement. For example, consumers might not be aware that they are consuming illegally caught fish but at the same time their consumption incentivises more IUU fishing. Raising public awareness could be an effective approach to reducing demand and could promote responsible consumption of fishery products. Processors and retailers could play an important role in the laundering of IUU products. It is difficult to detect irregularities once illegal products have been processed. Producers of IUU products are more directly engaged in IUU activities and may be individuals or corporations. IUU fishing may involve industrial or artisanal vessels. However, it is important to distinguish beneficial owners of vessels from the vessel master when considering IUU fishing activity. The crew of the vessel may also be involved to some degree.

### 2.1.3. Fishing industry

The right approach to enforce fisheries rules depends on the characteristics of IUU offenders. For example, a vessel engaged in IUU fishing may be licensed or unlicensed, foreign or national, operating in an EEZ or on the high seas. Besides, as mentioned above, operators may be laundering illegally caught product by mixing legal and illegal catch, thus inserting IUU products on the market through legitimate trade relationships.

Overall, fishing activities are subject to licences issued by authorities, either national or international (such as RFMOs). In addition, most states require vessels to be registered in domestic registries. There is no international register of fishing vessels, as various attempts have failed so far in terms of providing accurate and complete information even for vessels active in the high seas.<sup>16</sup> The tracking of the beneficial ownership of vessels is complicated and probably the most challenging aspect in creating and maintaining a reliable record of fishing vessels. Some national registries are seen as vulnerable to abuse, as flag states are unable or unwilling to enforce the law. For example, such registries might allow front companies to register as vessel owners, making it difficult to identify the true owner or beneficiary. Such flag states are branded 'flags of convenience' or 'flags of non-compliance'.

All sorts of fishing-related activities occur at sea or on land, such as crew rotation, refuelling and products processing. Transshipments allow vessels to remain at sea and to dock only occasionally at ports. Hence, monitoring fishing activities can be difficult and costly. On the other hand, long distance operation of vessels requires significant planning as well as collaboration with other stakeholders. This may provide opportunities for early intervention by the authorities to limit irregularities. It also limits the risk of opportunistic violations. On the other hand, coordination activities may exacerbate IUU fishing as they allow for a careful decision on whether to engage in IUU fishing or not. In particular, the complex company ownership structures with larger fleets can easily conceal IUU activities. In addition, large fleets may provide economies of scale enabling the costs of IUU fishing (such as sanctions) to be spread across a number of vessels belonging to the same company. Finally, large organised fleets can easily launder illegal catches by mixing this with legal products.

IUU fishing shares characteristics with other types of environmental crimes, such as illegal logging, trading in endangered species, or dumping of illegal waste products. The activity of inserting illegal products into supply chains creates a complex situation in which a wide variety of actors may be involved (producers, processors, retailers and consumers), all aiming to maximise profits. At the same time, the chain includes many different activities, which complicates control and results in a loosely organised network. Controlling such a network is a challenging task for law enforcement.

## 2.2. Consequences of IUU fishing

The negative impact of IUU fishing is significant, with developing countries in particular facing severe consequences, such as food insecurity, and challenges in addressing the problem. Studies conducted by the UNODC identify the fisheries industry as vulnerable to international organized crime.<sup>17</sup> According to the organization, the use of fishing vessels is associated with illegal activities such as drug trafficking (especially during transshipments),

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<sup>16</sup> This refers to efforts made by the FAO, in particular; e.g. Global Record of Fishing Vessels, High Seas Fishing Vessel Authorization Record (HSVAR).

<sup>17</sup> UNODC (2011). Transnational organized crime in the fishing industry [WWW]. Available from: <https://www.unodc.org/unodc/en/human-trafficking/2011/issue-paper-transnational-organized-crime-in-the-fishing-industry.html> [Accessed on 09/02/2014].



human trafficking (especially smuggling migrants), arms trafficking and terrorism. In addition, the ILO, UNIAP and UNICEF have expressed concerns about poor and/or forced labour conditions on board fishing vessels.<sup>18</sup> Finally, illegal fishing is linked to environmental crimes damaging marine living resources.

IUU fishing affects primarily small-scale fisheries communities in developing countries.<sup>19</sup> It depletes the fish stocks upon which these communities depend. An additional social consequence of IUU fishing is its potential use of workers without effective control. Reports of human trafficking on fishing vessels come mostly from Africa and Southeast Asia. However, examples can be found throughout the world. These vary in degree of severity and victims are often men, but also women and children. Reports on forced labour in fisheries highlight the vulnerability of seafarers being subject to unsafe working conditions, excessive working hours and low salaries (about one fifth of the local minimum wage). In addition, there are indications that recruitment fees and repatriation costs are set off against future earnings and contracts are renegotiated once migrants are away from home. Also they can be threatened with abandonment in port without pay in case they object to their working conditions.

IUU fishing depletes fish stocks, which will have an economic impact on the resources available for all stakeholders involved.<sup>20</sup> Legal fisheries in particular suffer from such activities as depleted fish stocks may lead to increased costs and consequently to lower revenue and ultimately unemployment. This in turn may promote illegality as fishermen may consider breaking the rules in order to survive. Bearing in mind that both legal and illegal catch may end up on the same market, it is necessary to restrict IUU fish access to markets in order to create an equal playing field and avoid unfair competition.

IUU fishing is generally considered an environmental crime. It severely damages ecosystems, and affects society as a whole. Quantification of this damage is complicated, as the crimes often occur far from sight and assessment of fish stocks is based on estimates.<sup>21</sup> However, this does not imply that the problem is not significant. Once critical levels have been reached, the consequences of IUU fishing become painfully visible. IUU fishing jeopardises the achievement of management goals and the sustainability of fisheries. When assessing fish stocks, estimates are highly dependent on reported data on catch and effort. If catch is not reported accurately, the estimates may be distorted. Consequently, established fishing quotas may be inaccurate, resulting in further depletion of stocks. An evident response to such threats is further restriction of legal fishing. However, such restrictions can also exacerbate illegal fishing.

The consequences of IUU fishing and the types of serious crimes associated with the use of fishing vessels highlight the importance of effective measure to control the industry. Most international measures concerning fisheries focus on the fight against IUU activities and

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<sup>18</sup> UNODC (2011). Transnational organized crime in the fishing industry [WWW]. Available from: <https://www.unodc.org/unodc/en/human-trafficking/2011/issue-paper-transnational-organized-crime-in-the-fishing-industry.html> [Accessed on 09/02/2014].

<sup>19</sup> LE GALLIC, B., Cox, A. (2005). An economic analysis of illegal, unreported and unregulated (IUU) fishing: Key drivers and possible solutions [WWW]. Available from: <http://www.sciencedirect.com/science/article/pii/S0308597X05000783> [Accessed on 05/02/2014].

<sup>20</sup> OECD (2006). Closing the net: Stopping illegal fishing in the high seas [WWW]. Available from: <http://www.oecd.org/sd-roundtable/papersandpublications/39375276.pdf> [Accessed on 02/02/2014].

<sup>21</sup> UNODC (2011). Transnational organized crime in the fishing industry [WWW]. Available from: <https://www.unodc.org/unodc/en/human-trafficking/2011/issue-paper-transnational-organized-crime-in-the-fishing-industry.html> [Accessed on 09/02/2014]. SUMAILA, U.R., et al. (2005). Global scope and economics of illegal fishing [WWW]. Available from: <http://www.sciencedirect.com/science/article/pii/S0308597X05000795> [Accessed on 12/03/2014].

related economic and environmental damage. Although the industry is considered as potentially vulnerable to serious international organized crime, fisheries legislation does not necessarily prioritise this. Such crimes are mostly addressed through normal criminal codes. Effective control and inspection under fisheries conservation and management structures may have very important spin-off effects, primarily on the prevention of organized crime. Fighting IUU fishing requires both effective fisheries management as well as successful application of monitoring, control and surveillance. In other words, good governance is required to address the vulnerability of the fisheries sector to illegal, uncontrolled and unregulated activities.

### 2.3. Roots of the problem

Stakeholders engage in IUU activities primarily due to economic incentives in a global market with growing demand for fish. In addition, a mixture of regional and national laws aiming to regulate the global market, with different levels of regulatory enforcement, makes the market vulnerable to abuse. When the risk of getting caught is low, and the proceeds from the crime exceed the consequence of the unlawful act (i.e. sanction), the offender is more likely to engage in non-compliant behaviour. Various economic, institutional and social factors can cause IUU fishing.

The three main economic causes of IUU fishing are considered to be overcapacity, ineffective management and subsidies.<sup>22</sup> The first (*overcapacity*) refers to excessive fishing capacity in relation to existing fishing possibilities in the domestic fleet, or the inappropriate allocation of fishing licences. Both factors result from *ineffective management* and imply that the benefit from using the excess capacity (exceeding fishing possibilities) is bigger than the alternative, which is no profit at all. A particularly vulnerable point for IUU fishing is at the level of regional cooperation. For example, in the context of RFMOs, some contracting parties with significant fishing capacity might be granted insufficient fishing possibility. In other words, within the RFMO, some countries may receive insufficient TAC compared to their capacity, which increases the risk of IUU fishing. Finally, *subsidies* could generate overcapacity when, for example, supporting the construction of new vessels and/or the operations and upgrading of existing vessels.

A direct driver that encourages IUU activities is *economic benefit*. Revenue from IUU can be a motivator to engage in these activities based on an economic model of criminal activity.<sup>23</sup> One could argue that individuals engage in criminal behaviour once the expected benefit exceeds the benefit from engagement in legal behaviour. In other words, the probability of IUU fishing may increase when the fisherman is struggling financially. To determine the exact turning point is complicated but several factors may contribute to determining the potential benefit:<sup>24</sup>

- Revenue - the more fish that can be caught through IUU activities, the higher the probability of engaging in this.
- Operating and vessel costs - the time needed to catch the fish reflects on operating costs as well as the probability of getting caught.
- Market - the price of the fish will determine whether there is a financial incentive, except in case of food security.

<sup>22</sup> LE GALLIC, B., Cox, A. (2005). An economic analysis of illegal, unreported and unregulated (IUU) fishing: Key drivers and possible solutions [WWW]. Available from: <http://www.sciencedirect.com/science/article/pii/S0308597X05000783> [Accessed on 05/02/2014].

<sup>23</sup> LE GALLIC, B., Cox, A. (2005). An economic analysis of illegal, unreported and unregulated (IUU) fishing: Key drivers and possible solutions [WWW]. Available from: <http://www.sciencedirect.com/science/article/pii/S0308597X05000783> [Accessed on 05/02/2014].

<sup>24</sup> Ibid.

The main institutional factors facilitating IUU fishing concern gaps in international legal frameworks, which allow activities to fall outside the scope of national or international agreements. Vessels without a nationality, or flying a flag of a state not party to a fisheries organisation are engaging in unregulated fishing when this takes place on the high seas. Vessels flying a foreign Flag of Convenience are prone to be engaged in IUU fishing, as this enables them to circumvent domestic and international regulations. The second institutional factor concerns differences in levels of MCS at national and international levels. As discussed above, this may limit the detection of IUU activities, increasing revenue and lowering cost for perpetrators. Thirdly, differences in the level of penalties imposed may undermine compliance. Low fines can be considered ‘costs of doing business’ and fail to deter more IUU fishing. Fourthly, institutional factors provide a link between tax havens and IUU operators. Various jurisdictions considered tax havens are also listed as flag States of convenience, allowing shell companies to cover beneficial owners of fishing vessels.

Differences in levels of MCS risks generate opportunism amongst IUU offenders, which may direct their activities to areas with weaker control. Lack of effectiveness and efficiency in enforcement may increase the risk of non-compliance. Also, lack of awareness of the regulations may contribute to this. The role of civil society may be important in strengthening compliance systems.

Box 1: Tax evasion in the fisheries sector<sup>25</sup>

#### REALITY CHECK

##### Tax evasion in the fisheries sector

A study conducted by the OECD in 2013 discusses the various strategies, specific to the fisheries sector, used by criminals to evade tax. Such strategies involve disguising the origin of fish, false declaration of catch, incorrect description of fisheries products, etc.

According to the report, offshore companies and FoCs allow companies to hide the beneficial owners and facilitate falsification of books and records. Widespread vulnerability to tax crime includes fraud on taxes on profits and revenues, customs duties, VAT and social security. Therefore, the report recommends, amongst other, things that:

- Tax administrations assess their vulnerability to tax crime arising within the fisheries sector;
- States ensure that tax officials have the relevant skills and knowledge to detect and combat tax crime in fisheries;
- States improve detection and counter-measures internally by promoting collaboration between customs administrations, fisheries authorities, coast guard authorities, police and other law enforcement authorities;
- States promote international collaboration, in particular the exchange of information.

The most important social factor facilitating IUU fishing is that operators have access to cheap labour due to poor economic situations in developing countries. Not only are these workers exposed to IUU fishing, they are also vulnerable to violations of workers’ health and safety rights.

<sup>25</sup> OECD (2013). Evading the Net: Tax Crime in the Fisheries Sector [WWW]. Available from: <http://www.oecd.org/tax/crime/evading-the-net-tax-crime-fisheries-sector.pdf> [Accessed on 12-01-2014].

Also cultural acceptance in engaging in IUU activity is important in groups of fishermen but also individuals. The legitimacy of fisheries management organisations may also influence behaviour. This is especially important where entire communities depend on fisheries. Impunity is also a factor. Weak sanctions on IUU offenders may jeopardise the culture of legality, as non-IUU offenders feel that non-compliant behaviour goes unpunished.

## 2.4. Measures against IUU fishing

Previously, we discussed the roots and consequences of IUU fishing. Possible ways to counter IUU fishing should address the factors described above. High revenue from IUU activities lie at the core of the problem.<sup>26</sup> Measures should therefore address this by:

- Reducing revenue from IUU fishing;
- Increasing operating costs for IUU vessels;
- Increasing capital costs of IUU vessels;
- Increasing risk and cost of engaging in IUU activities.

### 2.4.1. Reducing revenue

The first step in addressing this is to ensure that the gaps in the international legal framework are closed. Primarily this means that all relevant international conventions should be ratified by flag States and RFMOs should cover all fishing activities. In addition, contracting parties to RFMOs need to adhere to the agreed conservation and management measures (CMM).<sup>27</sup> Adherence to international agreements and regional fisheries organisations could greatly reduce the effectiveness of FoCs in IUU fishing. Moreover, FoCs should be incentivised to join RFMOs. As well as closing the gaps in the international legal framework for fisheries, its effectiveness should also be improved. Efforts should focus on improving compliance with standards, as well as increased MCS efforts.

It should be noted however that there is an important distinction between regional fisheries organizations; a) those with a mandate for management and b) those that have an advisory and collaborative role.<sup>28</sup> Ideally, regional fisheries organizations should all evolve towards management bodies as is the case for tuna RFMOs.

Secondly, measures should address the problem of laundering illegal catches through legal trade relations. Mixing illegal with legal catch significantly increases the value of IUU catches and can best be combated by trade restrictions or import bans for IUU catches. Documenting catches could help to control compliance with IUU regulations. Alternatively, the price of legal catches could be guaranteed, making illegal catches less valuable. This could be done by establishing higher import tariffs for countries not complying with IUU rules. Alternatively, some form of certification or labelling of non-IUU catches could also incentivise consumers to reward sustainable fishing by paying higher prices.

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<sup>26</sup> SUMAILA, U.R., et al. (2005). Global scope and economics of illegal fishing [WWW]. Available from: <http://www.sciencedirect.com/science/article/pii/S0308597X05000795> [Accessed on 12/03/2014]. LE GALLIC, B., Cox, A. (2005). An economic analysis of illegal, unreported and unregulated (IUU) fishing: Key drivers and possible solutions [WWW]. Available from: <http://www.sciencedirect.com/science/article/pii/S0308597X05000783> [Accessed on 05/02/2014].

<sup>27</sup> CULLIS-SUZUKI, S., PAULY, D. (2010). Failing the high seas: a global evaluation of regional fisheries [WWW]. Available from: <http://www.sciencedirect.com/science/article/pii/S0308597X10000540> [Accessed on 05/02/2014].

<sup>28</sup> Personal communications, March 2014.

### 2.4.2. Increasing the operating costs

Considering fishing is a labour intensive activity, the cost of labour is an important factor for the sustainability of the sector. Access to cheap labour is important for the industry but comes with certain risks of abuse. High revenue from IUU catches together with potentially cheap labour makes for a vulnerable situation. Here, again, it is important to close gaps in the international legal framework. Full adherence to international labour standards (such as the ILO conventions) is essential for safeguarding fishermen's working conditions.

Box 2: Closing the gaps<sup>29</sup>

#### REALITY CHECK Closing the gaps

The ILO's Maritime Labour Convention entered into force in 2006. The Convention establishes criteria for decent labour conditions. The so-called "Seafarers' Bill of Rights" embodies all standards of existing international maritime labour Conventions and Recommendations. This is of particular importance as it replaces the former patchwork of different labour conventions. Most EU Member States ratified the Maritime Labour Convention. While this international agreement is a step forward in ensuring safer labour conditions for fishermen, IUU vessels risk falling outside the scope of the agreement. Most importantly, IUU vessel owners are difficult to track, making prosecution difficult once abuse of workers comes to light.

The FAO Agreement on Port State Measures to Prevent, Deter and Eliminate IUU Fishing was adopted in 2009. This agreement aims to increase port control on foreign-flagged vessels in order to keep IUU fish off the market. The EU ratified the agreement in July 2011. Since IUU offenders try to circumvent port control measures, effective implementation by states is crucial. With this comes the need for transparency,

A second area for action is more medium to long term and focuses on the availability of cheap labour, especially from developing countries. Improving the social and economic situation in these countries should result in increased labour costs and reduce risks of abuse.

Finally it is important to direct measures towards vessel masters (the more skilled workers) by enhancing control of states over their nationals. Such measures could include the possibility to use extra-territorial sanctions.

### 2.4.3. Increasing the capital costs

Apart from increasing the operating costs for IUU vessels, an important step in combating IUU fishing is addressing capital costs. The main approach for this is to reduce imbalances between fishing capacities and possibilities. This can be done through (costly) programmes to reduce capacity and by adopting sustainable management regimes that also prevent future capacity building. To specifically target FoC states, restrictions on foreign direct investments could be introduced in to combat IUU activities. For example, investors could be urged to notify their authorities prior to investing in FoC States and asked to prove that their investment does not support IUU activities. This increases transaction costs and could reduce incentives to engage in IUU activities.

<sup>29</sup> ILO (2006). Maritime Labour Convention [WWW]. Available from: <http://www.ilo.org/global/standards/maritime-labour-convention/lang--it/index.htm> [Accessed on 08/02/2014].  
FAO (2009). Agreement on Port State Measures to Prevent, Deter and Eliminate IUU Fishing [WWW]. Available from: [http://www.fao.org/fileadmin/user\\_upload/legal/docs/2\\_037t-e.pdf](http://www.fao.org/fileadmin/user_upload/legal/docs/2_037t-e.pdf) [Accessed on 08/02/2014].

#### 2.4.4. Increasing the cost of risk of doing business

Increasing the costs of risk for engaging in IUU activities is very important as it has a strong preventive impact. High costs of risk will have impact on the decision to engage in IUU activities. This means that the probability of getting caught is important as well as the level of the sanction. These two factors reinforce each other and should not be decoupled.

In order to increase the probability of IUU detection, MCS should be strengthened and collaboration between states should be enhanced. As mentioned above, the extraterritorial application of domestic sanctions could also be beneficial, as it increases geographic coverage. Anti-bribery laws are an example of existing measures with extra-territorial impact. Such laws could be important tools for the EU when targeting bribery by EU vessels of foreign officials in order to circumvent fisheries regulations. Strengthening MCS also increases operational costs for IUU vessels, as additional efforts have to be made to hide IUU activities. For example, increasing control on land might force vessels to stay at sea or divert to distant ports, which increases fuel costs.

Addressing the level of sanctions for IUU infringements is primarily a question of international harmonisation. Special emphasis could be placed on the confiscation of equipment, vessels and catch that directly affects the capital and operating costs of IUU vessels. Imprisonment could be effective when targeting skilled workers such as vessel masters and beneficial owners. Opaque ownership structures could be tackled more effectively by targeting tax havens in the fight against IUU fishing.

As well as the level of sanctions, the mechanisms used for sanctioning are also important. Such mechanisms differ between countries, depending on legal systems and traditions. States use administrative and/or criminal procedures to enforce fisheries policies. Where administrative sanctions are concerned, states empower specific administrative agencies, as opposed to judicial bodies, to impose sanctions.<sup>30</sup> This means that sanctions are imposed outside the judicial process. Criminal proceedings leading to prosecution and conviction are subject to rigid standards and procedures. This allows for the imposition of deterrent sanctions, such as imprisonment. Furthermore, criminal prosecution has significant reputational consequences for the alleged offenders, especially when this results in a criminal record. However, criminal proceedings may be lengthy and time-consuming. In addition, meeting the required standards of proof and evidence is complicated by the secretive nature of IUU fishing and the fact these activities may have been detected by foreign jurisdictions. Therefore, administrative sanctioning may be more cost-effective, timely and practical.

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<sup>30</sup> CACAUD, P., KURUC, M., and SPREIJ, M. (2003) Administrative sanctions in Fisheries Law [WWW]. Available from: <ftp://ftp.fao.org/docrep/fao/006/y5063e/y5063e00.pdf> [Accessed 10/02/2014].

### 3. Addressing IUU fishing in the EU

#### KEY FINDINGS

- There is no objective estimate of the extent of involvement of EU vessels in IUU fishing inside EU waters, on the high seas, or in third country EEZs.
- The EU is required to take measures against IUU fishing from the perspective of producer and exporter of fishery products and from the perspective of importer of fishery products.
- The EU represents the MS when negotiating and agreeing on CMM at the international level. The enforcement of these agreements remains the responsibility of the individual contracting parties. This requires great efforts from MS to ensure appropriate follow-up of violations, as well as equal application across the EU.
- EU regulation includes various important instruments that contribute to the deterrence, elimination and detection of IUU activities. The most important instruments are the EU IUU list, the EU list of non-cooperation third countries, port state control measures, and the catch certification scheme.
- The effectiveness of EU regulations concerning IUU fishing relies heavily on the commitment of third countries.
- Inspection can be carried out by MS or through joint inspections coordinated by the European Fisheries Control Agency. The latter makes up a significant proportion of all inspections.
- Inspection pressure on land is important in order to detect IUU fisheries products. Effective implementation of port state measures is essential, especially to address critical vulnerabilities such as the moment of transshipment.
- The EU point system has potential to address the problem of recidivism and functions as a tool to harmonize the level of penalties for serious infringements.

As discussed in the first chapter, various drivers contribute to the sustainability of IUU fishing. For example, overcapacity in the world's fishing fleet is an important. However, the key drivers of IUU fishing are economic. There is strong demand for fish, labour costs are low and control and sanctioning mechanisms weak. We focus primarily on the latter by identifying the weaknesses in the control and sanctioning mechanisms, and we assess the ways in which the EU could promote and enhance implementation of the IUU Regulation. This implies that it is necessary to look at the existing EU governance framework. In more concrete term this requires analysis of trade restrictions, port state jurisdiction and enforcement capabilities of EU MS. The EU 'holds regulatory powers over the management of fishing activities in EU waters and the discipline that EU vessels must comply with when operating beyond EU waters'.<sup>31</sup> At the same time, the EU represents the MS when negotiating and agreeing on CMM at the international level. The enforcement of these agreements remains the responsibility of the individual contracting parties (the EU MS) and this requires great efforts to ensure appropriate follow-up of violations as well as equal application across the EU. Considering that IUU fishing is a global problem, we also look at best practices from international and regional governance structures.

This section starts with a brief introduction of IUU fishing in the EU (3.1), followed by an analysis of IUU regulation (3.2). Finally, an overview will be given of the main EU tools against IUU fishing (3.3).

<sup>31</sup> OECD (2006). Closing the net: Stopping illegal fishing in the high seas [WWW]. Available from: <http://www.oecd.org/sd-roundtable/papersandpublications/39375276.pdf> [Accessed on 02/02/2014].

### 3.1. EU IUU fishing

There is no objective estimate of the involvement of EU vessels in IUU fishing inside EU waters, on the high seas, or in third country EEZs.<sup>32</sup> Nonetheless, there is evidence to suggest that EU vessels are involved in IUU fishing. Several EU vessels are listed on the IUU lists and examples can be found of ships flying multiple flags in order to circumvent the rules and operate easily in different areas. According to the OECD, operators can easily construct a web of corporate identities and register multiple flags for one vessel, and in this way protect beneficial owners who wish to remain anonymous.<sup>33</sup> The problem of open registries and the FoCs are of concern to the EU. The EC confirmed this and requested MS to further strengthen efforts to identify (EU) beneficial owners of FoC vessels.

### 3.2. Regulating IUU in the EU

The EU is required to take measures against IUU fishing from the perspective of producer and exporter of fishery products and from the perspective of importer of fishery products. In operational terms this implies an estimated 4.5 million tons of imported products and 1.2 million tons of exported fisheries products. Prior to the IUU Regulation in 2007, the EC estimates in its strategy against IUU fishing that imports of illegal products into the EU per year amount to 500,000 metric tons, worth EUR 1.1 billion.<sup>34</sup>

In January 2010 the IUU regulation entered into force based on Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, and Commission Regulation (EC) No 1010/2009 of 22 October 2009 laying down detailed rules for the implementation of the former. For the purpose of this study, these are referred to as the 'IUU Regulation' and the 'IUU Implementation Regulation' respectively.

The IUU Regulation is one of the three pillars of the EU fisheries control system (full overview in Annex 1). The other two pillars are Council Regulation (EC) No 1006/2008 of 29 September 2008 concerning authorisations for fishing activities of Community fishing vessels outside Community Waters and the access of third-country vessels to Community waters, and the 'Control Regulation'.

The EU control system aims to promote transparency and ensure non-discrimination between EU and third country fisheries. Dissemination activities have been organised to ensure that third countries have been made aware of the EU rules. The IUU Regulation applies to 'all trade of marine fishery products, processed or not, originating from third country fishing vessels and exported to the European Community by any means of transportation.'<sup>35</sup> It applies to catches from EU vessels to be exported to third countries as well as transshipments and processing operations. The regulation includes various important instruments:

<sup>32</sup> GOPA (2013). Compliance of imports of fishery and aquaculture products with EU legislation [WWW]. Available from: [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/513968/IPOL-PECH\\_ET\(2013\)513968\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/513968/IPOL-PECH_ET(2013)513968_EN.pdf) [Accessed on 10/03/2014].

<sup>33</sup> OECD (2006). Closing the net: Stopping illegal fishing in the high seas [WWW]. Available from: <http://www.oecd.org/sd-roundtable/papersandpublications/39375276.pdf> [Accessed on 02/02/2014].

<sup>34</sup> GOPA (2013). Compliance of imports of fishery and aquaculture products with EU legislation [WWW]. Available from: [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/513968/IPOL-PECH\\_ET\(2013\)513968\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/513968/IPOL-PECH_ET(2013)513968_EN.pdf) [Accessed on 10/03/2014].

<sup>35</sup> EUROPEAN COMMISSION (2009). Handbook on the practical application of Council Regulation (EC) No. 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing [WWW]. Available from: [http://ec.europa.eu/fisheries/cfp/illegal\\_fishing/info/handbook\\_original\\_en.pdf](http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/handbook_original_en.pdf) [Accessed on 12/03/2014].



- Catch certification scheme;
- Port state controls;
- Mutual assistance;
- Community Alert System.

The most important tool is the catch certification scheme, which aims to trace all marine fishery products traded with the EU. This also implies the export of products, which requires responsibility and commitment of third countries. In other words, the IUU Regulation should be applicable to and improve compliance with national and international conservation and management rules. These tools are analysed in detail in Section 3.3.

For enforcement, the IUU Regulation includes a harmonised system of proportionate and dissuasive sanctions for serious infringements.

Box 3: IUU international governance footprint

**REALITY CHECK**  
IUU international governance footprint

The most important international instruments governing fisheries are the 1982 United Nations Convention on the Law of the Sea (UNCLOS), the 1995 United Nations Fish Stocks Agreement, the 1993 Compliance Agreement, and the 1995 FAO Code of Conduct for Responsible Fisheries (CCRF). Significantly, the latter two address the responsibilities of flag States of fishing vessels. In the context of the CCRF, the International Plan of Action to prevent, deter and eliminate IUU fishing was adopted in 2001, and the Agreement on Port State Measures to Prevent, Deter and Eliminate IUU fishing was adopted in 2009.

The IPOA-IUU sets out the responsibilities of flag, coastal and port states, as well as regional fisheries management organisations. An important driver behind the action plan was the EU. Consequently the EU developed its own action plan in 2002 (COM(2002)180) and strategy in 2007 (COM(2007)160). In 2008 the IUU Regulation was adopted and entered into force in 2010. To complement control efforts, in 2009 also the Control Regulation was adopted.

### 3.2.1. Fisheries inspection

The Control Regulation defines control as ‘monitoring and surveillance’, inspection as ‘any check which is carried out by officials regarding compliance with the rules of the CFP and which is noted in an inspection report’; and enforcement as ‘any actions taken to ensure compliance with the rules of the CFP’.

This implies that MS are to ‘adopt appropriate measures, allocate adequate financial, human and technical resources and set up all administrative and technical structures necessary for ensuring control, inspection and enforcement’. MS can carry out inspections by themselves or through joint-deployment plans (JDP).

Control of third country vessels is important in combatting IUU fishing. According to EU rules at least 5% of transshipments and landings by third country vessels need to be inspected. This must be done according to objective criteria except in case of suspicion of non-compliance. Inspection will always occur in case of:

- Late or no prior notification upon landing;
- Failure to validate catch certificate;

- Observed IUU activities;
- Vessels reported under the EU Alert System;
- Vessels identified by the EC as engaging in IUU activities;
- Vessels on IUU lists by RFMOs.

### 3.2.2. IUU infringements

Article 3 of the IUU Regulation states that fishing vessels '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:

- (a) fished without a valid licence, authorisation or permit issued by the flag State or the relevant coastal State; or
- (b) not fulfilled its obligations to record and report catch or catch-related data, including data to be transmitted by satellite vessel monitoring system, or prior notices under Article 6; or
- (c) fished in a closed area, during a closed season, without or after attainment of a quota or beyond a closed depth; or
- (d) engaged in directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited; or
- (e) used prohibited or non-compliant fishing gear; or
- (f) falsified or concealed its markings, identity or registration; or
- (g) concealed, tampered with or disposed of evidence relating to an investigation; or
- (h) obstructed the work of officials in the exercise of their duties in inspecting for compliance with the applicable conservation and management measures; or the work of observers in the exercise of their duties of observing compliance with the applicable Community rules; or
- (i) taken on board, transhipped or landed undersized fish in contravention of the legislation in force; or
- (j) transhipped or participated in joint fishing operations with, supported or re-supplied other fishing vessels identified as having engaged in IUU fishing under this Regulation, in particular those included in the Community IUU vessel list or in the IUU vessel list of a regional fisheries management organisation; or
- (k) carried out fishing activities in the area of a regional fisheries management organisation in a manner inconsistent with or in contravention of the conservation and management measures of that organisation and is flagged to a State not party to that organisation, or not cooperating with that organisation as established by that organisation; or
- (l) no nationality and is therefore a stateless vessel, in accordance with international law.'

These activities are considered serious infringements in accordance with Article 42, 'depending on the gravity of the infringement in question which shall be determined by the competent authority of the Member State' (Article 3(2)). Article 42 adds to this as a serious infringement the 'conduct of business directly connected to IUU fishing, including the trade in/or the importation of fishery products' and 'the falsification of documents'.

The IUU Regulation prescribes in Article 43 that MS shall start a full investigation of a suspected infringement and take immediate enforcement measures in conformity with their national law. Immediate enforcement measures are:

- (a) the immediate cessation of the fishing activities;
- (b) the rerouting to port of the vessel;
- (c) the rerouting of the transport vehicle to another location for inspection;

- (d) the ordering of a bond;
- (e) the seizure of fishing gear, catches or fisheries products;
- (f) the temporary immobilisation of the fishing vessel or transport vehicle concerned;
- (g) the suspension of the authorisation to fish.

Once an infringement is detected, the competent flag state authority will be notified. When the infringement occurs within a coastal state's EEZ, this state will also be notified. If relevant, the flag states of the donor vessel will be notified as well as the competent RFMO. If an infringement occurs on the high seas or in waters of a coastal state, the inspecting EU MS can sanction the vessel accordingly when permitted by the flag state or coastal state.

### 3.2.3. Sanctions

The IUU Regulation sets benchmarks for sanctions in case of serious infringements (Article 44). This implies that Member States shall 'impose a maximum sanction of at least five times the value of the fishery products obtained by committing the serious infringement. In case of a repeated serious infringement within a five-year period, the Member States shall impose a maximum sanction of at least eight times the value of the fishery products obtained by committing the serious infringement.'<sup>36</sup>

EU legislation distinguishes between administrative sanctions that can be immediately enforced, and accompanying sanctions. The former refer to sanctions that can be immediately implemented in order to prevent the continuation of the serious infringement and to ensure that the investigation can be completed. Established accompanying sanctions are (Article 45):

1. Sequestration of the fishing vessel involved in the infringement;
2. Temporary immobilisation of the fishing vessel;
3. Confiscation of prohibited fishing gear, catches or fishery products;
4. Suspension or withdrawal of authorisation to fish;
5. Reduction or withdrawal of fishing rights;
6. Temporary or permanent exclusion from the right to obtain new fishing rights;
7. Temporary or permanent ban on access to public assistance or subsidies;
8. Suspension or withdrawal of the status of approved economic operator granted pursuant to Article 16(3).

The most common types of sanctions imposed in fisheries legislation across the EU are:<sup>37</sup>

- Warning;
- Suspension or revocation of fishing authorization/licence;
- Temporary ineligibility to hold a fishing authorization/licence;
- Temporary ineligibility to apply for a fishing authorization/licence;
- Permanent ineligibility to apply for a fishing authorization/licence;
- Permanent or temporary confiscation of gear, equipment, vessel, catches;

<sup>36</sup> As an alternative to fines, the MS are also allowed to impose criminal sanctions. Article 73 of the United Nations Law of the Sea Convention prohibits imprisonment as a sanction for fisheries infringements in case agreements between states are absent. In addition, extradition of nationals for fisheries infringement procedures requires similar penalties in both involved states. In other words, prosecuting nationals for IUU offences is complex but can be facilitated through bilateral agreements. An example is the Memorandum of Understanding between Australia and Papua New Guinea in 2002.

<sup>37</sup> BLOMEYER & SANZ (2014). The CFP- infringement procedures and imposed sanctions throughout the EU [WWW]. Available from: [http://www.europarl.europa.eu/RegData/etudes/note/join/2014/514003/IPOL-PECH\\_NT\(2014\)514003\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2014/514003/IPOL-PECH_NT(2014)514003_EN.pdf) [Accessed on 12/03/2014].

- Monetary penalty;
- Closure of fishing facilities;
- Repayment of financial aid;
- Loss of fishing quota;
- Imprisonment.

#### 3.2.4. Point system

The point system is established through the Control Regulation and focuses on serious infringements (Article 92). As from January 2012, each Member State should have set up a system which allows for penalty points to be assigned to holders of fishing licences (companies or individuals) and/or masters of vessels in case of serious infringements. In addition, each MS should establish a national register of infringements, which records infringements committed, and the sanctions imposed and points assigned. This register should include data on infringements dating back to 2011, covering national vessels and citizens.

The flag state authority is responsible for the assigning of points, even when the infringements are detected in another MS. The number of points that are to be assigned in case of infringements depend on the nature of the infringement and are specified in the Control Implementation Regulation (full overview in Annex 2).<sup>38</sup>

In case two or more infringements by the licence holder are detected during one inspection, the points can be summed up. The sum cannot exceed 12 points (Article 162, Implementation Regulation). When the total number of points assigned equals or exceeds a determined threshold, the fishing licence will be automatically suspended. The following table shows an overview of the established limits and consequences in case of serious infringements:

Table 1: Thresholds points system

Offence	Points	Fishing licence
First time	18	2 months suspension
Second time	36	4 months suspension
Third time	54	8 months suspension
Fourth time	72	1 year suspension
Fifth time	90	Permanent suspension

Once a license is suspended, the holder will immediately cease the vessel's fishing activities. When at sea, the vessel is to proceed immediately to its homeport or the port indicated by the competent authority of the flag state.

<sup>38</sup> EUROPEAN COMMISSION (2011) Commission Implementing Regulation (EU) No 404/2011 of 8 April 2011. [WWW]. Available from: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2011R0404:20110507:EN:PDF> [Accessed 25/11/2013].

Points are cumulative, also after a license has been temporarily suspended. However, in case the offender does not commit a serious infringement within three years from the last infringement, all the points will be deleted. The points are assigned to the licence and therefore transferred in case a vessel or licence is sold.

The point system addresses the problem of recidivism of IUU offenders. The gravity of the penalty increases with each repeat offence. In addition, the system rewards compliant behaviour by allowing subtraction of two points in case (Article 133 of the Implementation Regulation):

- a. the fishing vessel which has been used in committing the infringement for which points were assigned uses thereafter VMS or records and transmits thereafter fishing logbook, transshipment and landing declaration data electronically without being legally subject to these technologies; or
- b. the holder of the fishing licence volunteers after the assignation of points to take part in a scientific campaign for the improvement of the selectivity of the fishing gear; or
- c. the holder of the fishing licence is a member of a producer organisation and the holder of the fishing licence accepts a fishing plan adopted by the producer organisation in the year following the assignation of the points involving a reduction of 10 % of the fishing opportunities for the holder of the fishing licence; or
- d. the holder of the fishing licence joins a fishery covered by an eco-labelling scheme that is designed to certify and promote labels for products from well-managed marine capture fisheries and focus on issues related to the sustainable use of fisheries resources.

### 3.3. EU tools against IUU fishing

This section describes the main EU tools provided to combat IUU fishing.

#### 3.3.1. The EU IUU vessel list

This list includes vessels from third countries and from the EU that have been engaged in IUU activities and for which their respective flag States have failed to take appropriate measures. The listing stops vessels from trading products with the EU and is considered a measure of last resort. The EU list will automatically include the vessels listed by RFMOs.

Once a vessel is suspected of carrying out IUU activities, the EU will alert the respective flag state. Once the flag state fails to take appropriate measures, the vessel is placed on the IUU list. This implies restrictive measures such as withdrawal of fishing authorisation in EU waters and/or a ban on trading fisheries products with the EU. More detailed restrictions may be imposed, such as limiting access to ports, authorisation to change crew or supply of fuel or other services in ports.

A vessel can be removed from the list if it has been sanctioned by the flag state or can prove that for at least two years it has not been reported for IUU activities.

Eight RFMOs share lists of IUU vessels. These are:

- Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR)
- Inter-American Tropical Tuna Commission (IATTC)
- International Commission for the Conservation of Atlantic Tunas (ICCAT)

- Indian Ocean Tuna Commission (IOTC)
- Northwest Atlantic Fisheries Organisation (NAFO)
- North East Atlantic Fisheries Commission (NEAFC)
- South East Atlantic Fisheries Commission (SEAFO)
- Western and Central Pacific Fisheries Commission (WCPFC)

Each RFMO established these lists according to their own procedures. They are updated either annually or instantly.

### 3.3.2. The list of non-cooperation third countries

This list includes countries that fail to cooperate in the fight against IUU fishing. Once listed these countries will be banned from trading fisheries products with the EU. Countries can be removed from the list once they have proven that concrete measures have been taken to improve the situation.

### 3.3.3. Emergency measures

Once a third country undermines the conservation and management measures adopted by RFMOs, the EU can impose emergency measures, which cannot last longer than 6 months. Such measures are:

- Refusal of access to ports;
- Prohibition of joint fishing operations with EU vessels;
- Prohibition of EC vessels to fish in that country's waters.

### 3.3.4. Port state control

Access to ports, landings and transshipment by third country vessels is only authorised in ports designated by EU MS (Article 5, IUU Regulation). Ports need to be notified by the masters of third country vessels three days in advance and a declaration needs to be submitted (Article 6, IUU Regulation). Transshipment is a particularly vulnerable moment and therefore forbidden in EU waters. Outside EU waters transshipment is authorised when vessels are registered as carrier vessels under the umbrella of a RFMO. The catch certificate needs to reflect all transshipments. All catch needs a valid catch certificate. If not, the landing cannot be authorized and the third country vessel has two weeks to finalize the process. After this, access can be granted or the product can be confiscated. Vessels listed on the IUU vessel list cannot be granted access.

### 3.3.5. Catch certification scheme

Only fishery products accompanied by a catch certificate issued by the competent authority of the flag state of the fishing vessel can be traded with the EU. This covers import (including indirect import), export and re-export, irrespective of the means of transportation. At the international level there is currently no legal system (with the exception of the some catch documentation schemes by RFMOs) that fully ensures that internationally traded fishery products do not stem from IUU activities. In other words, IUU catches can compete with legitimate catches due to limited restrictions. The IUU Regulation contributes significantly to limiting this risk. Catches by EU vessels are governed by the Control Regulation and in case of export are subject to catch certification of third countries.

The scheme aims to:

- Ensure product traceability at all production stages;
- Enable flag states to better monitor fisheries and support compliance with management and conservation rules;
- Provide a legal basis for cooperation between flag states.

Article 12 of the IUU Regulation promotes the electronic certification of catches. Parties engaged in the certification scheme are vessel operators, importers and exporters, the competent certification authorities of the flag states and the fisheries inspection authorities. Some preferential treatment can be obtained by EU importers that enjoy 'approved economic operator' status. This reduces the number of documents to be submitted to the competent EU MS authorities.

The IUU Regulation does not specify how public authorities of third countries are to validate catch certifications. It does outline that catch certificates can only be validated if there is no reason to believe that management and conservation rules are broken. In case of suspicion, public authorities are requested to investigate. In other words, validation of catch certificates falls under the competence of each individual third country and depends on national legislation and its control systems.

#### 3.3.6. The EU Alert System

This system has been put in place to share information on operators and vessels that are suspected of carrying out IUU activities. It is managed by the EC and aims to enhance transparency and facilitate cooperation between countries. Alert notices are communicated and published.

#### 3.3.7. Mutual assistance

The IUU Regulation provides for a framework that organizes administrative cooperation and exchange of IUU fishing information between the EC, MS and third countries. This covers:

- Exchange of information on request or by own initiative;
- Requests to take enforcement measures;
- Notifications of decisions on requests.





## 4. Implementing the IUU Regulation

### KEY FINDINGS

- A main challenge for the EU is reducing the potential administrative burden for public and private stakeholders engaged in implementing the IUU Regulation. Special emphasis needs to be placed on the potential burden for the MS ports that receive most third country vessels.
- Another significant challenge for the EU is identifying the EU financial interests behind IUU activities.
- The EU has scope for action to ensure compliance with the IUU Regulation by MS and third countries through various instruments. The scope for action against non-compliance by MS has been limited but this could change once the new financial instruments are in place.
- The EU Alert system experienced a delay in its application but its use and effectiveness has been confirmed.
- The EU IUU vessel list depends strongly on decision-making processes of third parties. This risks undermining the quality of the list.
- The EU Non-Cooperating Third Country List sends a strong message to states that do not comply with IUU regulations. The decision-making process to place countries on the list is lengthy and complex.
- The newly proposed 2014-2020 European Maritime and Fisheries Fund has potential to contribute to the fight against IUU fishing by promoting sustainable fisheries.
- Diversity of national approaches to dealing with fisheries control and sanctioning could be perceived as discriminatory. This could have a negative impact on the culture of legality and generate more breaches of fisheries rules.
- MS should ensure that every infringement is dealt with. This will decrease impunity for fisheries infringements, a challenge discussed earlier in this study. Failure to follow-up all infringements undermines the credibility of the system, potentially undermining public perceptions and encouraging repeat offences.
- Out-of-court settlements to deal with fisheries infringements enable prompt sanctioning, tailor-made to the nature of the offence and offender. There is a lack of available information on the use of out-of-court settlement by EU MS.
- Considering that out-of-court settlements often cannot be used for repeat offences, data on its use could be an important indicator for the degree of recidivism.
- Sanctioning for IUU infringements differs significantly across the EU. This results in different levels of fines across the EU, despite benchmarks set by EU regulations. This could lead to discrimination and unfair competition in the fisheries sector.
- The point system is generally well perceived due to the possibility to harmonise sanctioning across the EU. However, the implementation of the point system is not sufficiently transparent. The point system also has the potential to provide better insight regarding the extent of repeat offending.

The IUU Regulation provides for a framework that limits access of IUU fish to the market. We consider that this is essential in the global fight against IUU fishing. In fact, the lack of an international legal framework that limits entry of illegal fish to the market shows the innovativeness of the IUU Regulation. With this analysis we do not aim to question the importance of the IUU Regulation, but rather to expose where implementation efforts need to be improved. We consider that this piece of legislation has great potential to combat IUU fishing at the global level.

One of the main challenges of the IUU Regulation for the EU is the potentially damaging effect it might have on the fisheries industry due to creation of administrative obstacles.<sup>39</sup> This could increase costs for non-IUU operators and could force them to seek business in different regions. IUU operators could be similarly affected. In other words, the IUU Regulation could also shift the problem of IUU fishing to other regions.

In order to meet this challenge, the EU supports third countries in addressing IUU fishing. This should reduce migration of offenders and reduce global IUU activities. Secondly, the EU needs streamline internal implementation of the IUU Regulation. This will help reduce the administrative burden and limit any damaging side effect of the IUU Regulation on non-IUU operators.

The fact that the EU is the world's largest market for fisheries products suggests that the IUU Regulation has great potential to address the problem. This can be used as a tool to promote an international legal framework against IUU fishing. Also, limiting accessibility of vessels and countries to the EU market based on their efforts to limit IUU fishing, could contribute reducing IUU activities globally. Failing to meet EU criteria could be met with sanctions and trade measures. This strikes IUU offenders where it hurts most, namely their profits.

This section describes the role of different authorities and assesses the implementation of the IUU Regulation. The recent entry into force of the IUU Regulation makes it difficult to fully evaluate its effectiveness. Nonetheless, we consider that the potential global impact of the IUU Regulation justifies this preliminary analysis.

#### 4.1. European Commission

In order to ensure compliance of EU MS with the CFP rules, the EC can control and evaluate their application by means of 'examination of information and documents and by conducting verifications, autonomous inspections and audits' (Article 96, Control Regulation). Such audits may include an evaluation of the 'national system of sanctions, including the adequacy of the sanctions imposed, duration of proceedings, economic benefits forfeited by offenders and the deterrent nature of such system of sanctions' (Article 100).

In feedback provided for this study, the EC notes that it is currently collecting data in order to review sanctioning systems in the MS. The aim is to verify compliance by MS with applicable EU law and at the same time provide input for the preparation of the 2015 report for the Council and the European Parliament (Article 118, Control Regulation).

The EC has several tools available to enforce MS compliance. Nonetheless, the scope for action is limited. If the EC considers that irregularities have occurred in the implementation of the rules or that the existing control provisions and methods in the MS are not effective, it shall inform the MS, which shall then conduct an administrative inquiry. If this inquiry does not deal with the shortcomings, the EC shall establish an action plan with the MS. In the event of non-compliance, the EC may decide to suspend for a maximum of 18 months all or part of the payments of the Community financial assistance under Regulation (EC) No 1198/2006 and Article 8(a) of Regulation (EC) No 861/2006 (Article 103 Council Regulation 124/2009).

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<sup>39</sup> Personal communications, interviews, March 2014.

Based on feedback received from DG MARE, the following main implementation challenges are identified:<sup>40</sup>

- To avoid the perception that the control system is an administrative burden for the industry;
- To avoid the control system becoming a burden for the customs authorities;
- To investigate and detect EU economic interests behind IUU activities;
- To further promote an international legal framework against IUU fishing.

The EC is responsible for overall coordination of the implementation of the IUU Regulation. In operational terms this means that the EC is responsible for coordinating the EU Alert System, the EU IUU Vessel List, and the Non-cooperating Country List.

When the EU Alert System becomes fully operational, it should allow port state control agents and IUU officers in MS to track and identify movements of IUU vessels within EU waters. Although implementation of the system has been delayed, there are examples of its use. The EC notes that more than 100 alert messages have been sent to EU national authorities to 'direct their control, check situations of risk, and to request investigations on presumed IUU fishing activities and serious infringements'.<sup>41</sup> The successful implementation of the EU alert system should ensure more efficient detection of infringements and enhance the effectiveness of port state measures. Interview feedback provided by MS during this study indicates the need to enhance communication between MS on the identification of IUU activities.

The implementation of the Non-Cooperating Third Country List is complex due to lengthy procedures. The list is established based on non-compliance with national, regional and international laws that specify responsibilities of flag states, port states and coastal states. After a slow start, in 2012 the EC finally warned eight third countries about insufficient action to fight illegal fishing.<sup>42</sup> These were Belize, Cambodia, Fiji, Guinea, Panama, Sri Lanka, Togo and Vanuatu. The warnings gave these countries a reasonable timeframe to respond to the identified shortcomings, such as lack of dialogue or lack of actions to address deficiencies in MCS. Each country received a proposed action plan and a warning that if the situation did not improve, further steps could be taken, such as trade measures or a ban on selling fisheries products to the EU. By the end of 2013, the EC decided to retain only Belize, Cambodia and Guinea on the list. According to the EC, these three countries did not make credible progress in improving the situation. As a consequence of the decision, MS received additional tools to verify imports from these countries and, if needed, the ability to refuse importation. In March 2014, the Council decided to authorize the Commission's decision and formally introduced trade measures against the three countries.<sup>43</sup> Consequently, from now on, all 'fisheries products caught by vessels flying the three countries' flags will be banned from being imported into the EU<sup>44</sup>. In addition, EU vessels must stop fishing in the waters of

<sup>40</sup> Personal communications, interviews, April 2014.

<sup>41</sup> EUROPEAN COMMISSION (2013). MEMO/13/1053 [WWW]. Available from: [http://europa.eu/rapid/press-release\\_MEMO-13-1053\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-1053_en.htm) [Accessed on 10/04/2014].

<sup>42</sup> EUROPEAN COMMISSION (2012). IP/12/1215 [WWW]. Available from: [http://europa.eu/rapid/press-release\\_IP-12-1215\\_en.htm](http://europa.eu/rapid/press-release_IP-12-1215_en.htm) [Accessed on 28/03/2014].

<sup>43</sup> COUNCIL OF THE EUROPEAN UNION (2014). COUNCIL IMPLEMENTING DECISION establishing a list of non-cooperating third countries in fighting IUU fishing pursuant to Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing [WWW]. Available from: <http://register.consilium.europa.eu/doc/srv?l=EN&t=PDF&gc=true&sc=false&f=ST%206262%202014%20INIT> [Accessed on 20/03/2014].

<sup>44</sup> COUNCIL OF THE EUROPEAN UNION (2014). Illegal fishing activities: trade measures decided by the Council [WWW]. Available from: [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/agricult/141823.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/agricult/141823.pdf) [Accessed on 25/03/2014].

the states, and other forms of cooperation (such as joint fishing operations or fisheries agreements) will no longer be possible. Despite the positive developments in implementing the list, it could be argued that decision-making on the measures is rather protracted, and this may constrain the overall effectiveness of EU responses to failure to comply with anti-IUU efforts. The main weakness of the EU list is the fact that most listed vessels come from RFMO lists. The EU list depends rather strongly on decision-making processes of third parties, in this case the RFMOs. In the following section 4.2 we will take a closer look at the functioning of RFMOs in the fight against IUU fishing.

#### 4.1.1. EMFF

In the EC's Green Paper on the reform of the CFP (COM(2009)163) the role of subsidies as a potential driver for overfishing has been acknowledged. The need to eliminate subsidies that contribute to IUU fishing and overcapacity was recognised in the reform of CFP reform, which altered the CFP's financial instrument.

The newly proposed 2014-2020 European Maritime and Fisheries Fund has the potential to contribute to the fight against IUU fishing by promoting sustainable fisheries. Funding is conditional on compliance with control obligations and the IUU Regulation. This provides an incentive to enhance compliance. Various measures have been introduced to avoid subsidising activities that could result in overcapacity, such as construction of new ports or funding to increase engine capacity.

## 4.2. Regional Fisheries Monitoring Organisations

The EU plays an active role in six RFMOs dealing with tuna and eleven RFMOs dealing with non-tuna species.<sup>45</sup> RFMOs manage almost all high seas areas and are an important player in the fight against IUU fishing. The organizations differ in size, organization and scope. Their effectiveness is criticized, especially due to the observed depletion of specific fish stocks.<sup>46</sup>

It is important to understand the functioning of RFMOs in order to understand the effectiveness of the EU IUU vessel list. As mentioned before, the EC simply adopts RFMO lists, despite the fact that each organisation has its own procedures and criteria in place for listing IUU vessels. These procedures are the result of negotiations between contracting parties with different economic interests. As a consequence, an RFMO might only decide on listing a vessel once unanimity is achieved among contracting parties. Secondly, some RFMOs might have instant decision-making on listing IUU vessels while others decide annually.

Thus, excessive reliance on RFMO lists is undesirable. The main criticism regarding the effectiveness of RFMOs is the fact that contracting parties play a double role: 'as administrators of the commons and concurrently allocating resources to domestic fishing interests (and often in competition with other contracting parties)'.<sup>47</sup> If poorly managed, such a situation could lead to conflicts of interest.

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<sup>45</sup> EUROPEAN COMMISSION (2014). Regional fisheries management organisations (RFMOs) [WWW]. Available from: [http://ec.europa.eu/fisheries/cfp/international/rfmo/index\\_en.htm](http://ec.europa.eu/fisheries/cfp/international/rfmo/index_en.htm) [Accessed on 02/04/2014].

<sup>46</sup> CULLIS-SUZUKI, S., PAULY, D. (2010). Failing the high seas: a global evaluation of regional fisheries [WWW]. Available from: <http://www.sciencedirect.com/science/article/pii/S0308597X10000540> [Accessed on 05/02/2014].

<sup>47</sup> OECD (2010). Globalisation in fisheries and aquaculture: Opportunities and challenges [WWW]. Available from: [http://www.keepeek.com/Digital-Asset-Management/oecd/agriculture-and-food/globalisation-in-fisheries-and-aquaculture\\_9789264074927-en#page92](http://www.keepeek.com/Digital-Asset-Management/oecd/agriculture-and-food/globalisation-in-fisheries-and-aquaculture_9789264074927-en#page92) [Accessed on 13/03/2014].

Box 4: Compliance of port State control<sup>48</sup>

REALITY CHECK  
Compliance of port State control

Effective functioning of port state control should decrease IUU activities and strengthen compliance with fisheries regulations. Studies have been conducted on compliance by port states with RFMO conservation and management measures. For example, a study conducted by Flothmann, looked at IUU listed vessels that visited ports in RFMO member states despite restrictions (2010). This showed that the principal weakness resulting in non-compliance is that enforcement authorities are not aware of, or fail to identify visits of IUU vessels. Lack of detailed information on the vessels could be considered an important factor in enabling these visits to the ports to go unnoticed. For example, the lists did not specify the unique vessel identification number (IMO). Another identified weakness was the lack of cooperation between national fisheries authorities and enforcement authorities. As a result, enforcement authorities failed to notify the fisheries authority about port visits by IUU vessels, and the fisheries authority failed to fulfil its responsibility to have this information. A third identified weakness concerns failure to translate RFMO measures to the national level. Fourth, the port states have a broad interpretation of the grounds upon which IUU vessels are denied access. While some port states always deny access to IUU vessels, others only deny access when fisheries products are on board. Finally, the study also criticizes RFMOs for failure to follow up non-compliance with conservation and management measures by their contracting parties. According to the study, RFMOs have not focussed sufficiently on supporting port states in effectively implementing measures.

These findings are of particular importance for the EU considering the debate that IUU operators might migrate to other ports and this way shift the problem of IUU fishing to different regions. More in-depth analysis is recommended on port state measures in EU

The OECD highlights various variables that should be addressed by fisheries policy makers in order to address problems with IUU fishing:<sup>49</sup>

- Implementation of effective governance and management frameworks;
- Managing fishing industry adjustments;
- Policy coherence;
- Compliance with existing international rules and regulations and setting new standards where appropriate;
- Market access;
- Fisheries food safety.

Concerning the implementation of effective governance and management frameworks, the OECD highlights the importance of support to developing countries to build technical expertise. This will allow these countries to participate in the global market and at the same time address potential problems that come with industrial fisheries, such as large-scale IUU fishing. Support could focus on, for example, information sharing, capacity building and transfer of technology. In this way, control and sanctioning of violations could be improved.

<sup>48</sup> FLOTHMANN, S., et al. (2010) Closing Loopholes: Getting Illegal Fishing under Control [WWW]. Available from: <http://www.sciencemag.org/content/328/5983/1235> [Accessed 12-03-2014].

<sup>49</sup> OECD (2010). Globalisation in fisheries and aquaculture: Opportunities and challenges [WWW]. Available from: [http://www.keepeek.com/Digital-Asset-Management/oecd/agriculture-and-food/globalisation-in-fisheries-and-aquaculture\\_9789264074927-en#page92](http://www.keepeek.com/Digital-Asset-Management/oecd/agriculture-and-food/globalisation-in-fisheries-and-aquaculture_9789264074927-en#page92) [Accessed on 13/03/2014].

In addition, the OECD's High Sea Task Force recommended as a key priority, the control of nationals in the context of regional regulation of high seas fisheries.

For example, the CCAMLR was one of the first RFMOs promoting its members to adopt measures to control their nationals in national and international waters. Its adopted Resolution 19/XXI urges governments to take measures to ensure that nationals subject to their jurisdiction do not engage in IUU fishing. The strength of such a framework is the fact that it can be adapted to the economic, legal or administrative factors that might contribute to a state's ability to control its nationals.

Port State measures are considered another important tool in fighting IUU fishing. The most important international tool dealing with such measures is the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, approved by the FAO in November 2009. RFMOs play an important role in the identification of IUU fishing and enabling the imposition of sanctions once IUU fish is landed at a port. The Pew Environmental Group has done extensive research on the effectiveness of port state measures and challenges the port states face in the implementation. The research highlights that:

- 'Port States and RFMOs have insufficient information to identify and track IUU-listed vessels';
- 'Port States across the globe do not adequately comply with their port State obligations';
- 'The regional focus of port State measures allows IUU-listed vessels to move to other regions to avoid sanctions.'

Despite evidence of the clear challenges the RFMOs are facing, the regulatory framework does provide opportunities to address IUU fishing. The best example is the effect of the NEAFC IUU list.

Box 5: NEAFC IUU list<sup>50</sup>

REALITY CHECK  
NEAFC IUU list

The NEAFC distinguishes between an A and a B list. Vessels on the A list are subject to certain restrictions. Most importantly, these vessels are investigated through their respective flag states. If no explanations are found for the IUU activities, vessels are placed on the B list. Among other things, vessels on the B list are prohibited from entry into ports, prohibited from receiving authorisation to fish in water under national jurisdiction, and imports of fish from these vessels is prohibited. Currently eight vessels are B listed.

A port state performance analysis conducted by the Pew Environment Group concludes that the NEAFC has clear CMM in place. The IUU lists include most IMO numbers, which is important for the identification of the vessels. Overall, the list is considered of high quality and to have contributed to reducing IUU fishing in the area. In particular the cross-fertilization of the NEAFC and the NAFO lists is considered a good practice, as it

<sup>50</sup> PEW ENVIRONMENT GROUP (2010). Port State Performance [WWW]. Available from: [http://www.portstateperformance.org/index.php/\\_rfmo/rfmo/neaftc](http://www.portstateperformance.org/index.php/_rfmo/rfmo/neaftc) [Accessed on 23-03-2014].

### 4.3. Member State governance arrangement

Germany, Spain, France, Italy and the UK are the largest importers of fisheries products in the EU (FAO, 2010). Across the EU, MS reported an increase in personnel to deal with administrative requirements of the IUU Regulation.<sup>51</sup> The verification of import is carried out primarily on the basis of common risk management criteria. Such verification could include the examination of products, declaration data, authenticity of documents, inspection of transport, containers, etc. Prior to approving the importation, a preliminary check of the catch certificate is required. Transit or further transportation require only a check to confirm the existence a catch certificate. It is up to the authorities of the final destination to verify its validity. The latter point raises concerns that the heaviest administrative burden of the IUU Regulation is carried by the main import countries that also receive most third country vessels in their ports. For example, the UK created a specific IUU coordinating unit to manage CCS and port state control work. Germany is also reported to have increased the number of personnel dealing with catch certification<sup>52</sup>, as well as Spain for inspection efforts.

More importantly, the IUU Regulation also necessitated changes in institutional and governance arrangements. The various MS authorities dealing with fisheries are a particularly critical area. While fisheries authorities often deal with inspection services, customs authorities deal with the review and validation of catch certificates. Similar challenges are identified when analysing the following-up of detected infringements. Either ministries or courts deal with sanctioning of infringements. Effective follow-up is essential in combatting IUU fishing. The following sections address these challenges in more detail. Information on the detection and follow-up of IUU infringements comes from desk research, stakeholder interviews and specific data requests, as well as from research previously conducted by Blomeyer & Sanz in the context of the study on sanctions and infringement procedures throughout the EU.

#### 4.3.1. Control of fisheries

In 2007, the European Court of Auditors identified weaknesses in national data collection on catches. This could lead to unreliable data on the level of catches and consequently established TACs. The Court also pointed to weaknesses in the national inspection systems, which could undermine prevention and detection of infringements. In particular the absence of general control standards could impede control pressure and optimisation of inspection activities. Furthermore, the diversity of national approaches to dealing with fisheries control could be perceived as discriminatory. Such a perception could have a negative impact on the culture of legality and generate more breaches of fisheries rules. This would not only undermine the relevance of the CFP but also undermine the essence of the EU single market in creating a level playing field for economic operators. The latter is a crucial challenge when addressing IUU fishing.

Our 2013 study on sanctions and infringement procedures throughout the EU shows that competencies for fisheries control are divided across various authorities and various governmental levels. Most EU MS have assigned fisheries control responsibilities to their agriculture ministries. Activities are developed in cooperation with other ministries and agencies. For example, the transport ministry may deal with vessel registration, the internal

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<sup>51</sup> IEEP (2011). An independent review of the EU illegal, unreported and unregulated regulations [WWW]. Available from: [http://www.ieep.eu/assets/858/IEEP\\_Independent\\_Review\\_of\\_the\\_EU\\_IUU\\_Regulations.pdf](http://www.ieep.eu/assets/858/IEEP_Independent_Review_of_the_EU_IUU_Regulations.pdf) [Accessed on 13/03/2014].

<sup>52</sup> IEEP (2011). An independent review of the EU illegal, unreported and unregulated regulations [WWW]. Available from: [http://www.ieep.eu/assets/858/IEEP\\_Independent\\_Review\\_of\\_the\\_EU\\_IUU\\_Regulations.pdf](http://www.ieep.eu/assets/858/IEEP_Independent_Review_of_the_EU_IUU_Regulations.pdf) [Accessed on 13/03/2014].

affairs ministry with police involvement, and the defence ministry with navy activities. For IUU fishing, the national customs authorities, often under the responsibility of tax authorities, play an important role. The involvement of different public authorities at different levels complicates oversight roles and responsibilities, and this may also limit effectiveness and efficiency. Apart from affecting the harmonisation of EU control efforts, it could also create an additional administrative burden for economic operators, a key concern of the EC.

#### 4.3.2. Sanctioning and infringement procedures

Our study highlights that most EU MS apply administrative sanctioning mechanisms to deal with fisheries infringements. This means that, in principal, administrative authorities are empowered to impose administrative sanctions. Most frequently this is the minister responsible for fisheries or a top official of the fisheries administration. Occasionally, fisheries laws directly empower enforcement officers such as inspectors or harbour authorities to impose fines. 'The competence to impose administrative sanctions may be hierarchically divided between authorities, depending the gravity of the infringement, and/or may be divided between governmental levels, for example in case of federal countries.'<sup>53</sup>

The general use of administrative procedures for fisheries infringements requires clear rules of procedure, especially because criminal procedural standards do not apply, and administrative authorities have to be controlled. Therefore the rules of procedure are either detailed in the specific fisheries legislation or through general administrative procedure legislation that applies throughout the respective legal system. Clarity of the rules of procedures is required in order to ensure integrity and avoid abuse of power. An important aspect of the procedure is the appeal or review procedure, which allows for a review and reconsideration of the imposed sanctions. It can be conducted internally by the same executive authority and, if needed, forwarded to an external administrative tribunal.

In order to strengthen the effect of the IUU Regulation, MS should ensure that every infringement is dealt with. This will decrease impunity for fisheries infringements, a challenge previously discussed. Failure to follow-up all infringements undermines the legality of the system, potentially causing negative public perception and further exacerbation of repeat offences.

The frequent use of out-of-court settlements to deal with fisheries infringements is a potential concern. Out-of-court settlements mean that the offender is able to settle cases by "buying off" the penalty and avoid further prosecution. The power to propose such a settlement often lies with the minister, or public prosecutor, but could also be dealt with in a consultative commission. In some instances, settlements can only be proposed for certain infringements and often cannot be used for repeat offences.

Out-of-court settlements allow for quick sanctioning and are tailor-made to the nature of the offence and offender. This may enhance the effectiveness of the sanction, which in turn strengthens the authority of law enforcement officers. A clear disadvantage of out-of-court settlements is the discretion of the procedure. This could have a negative impact on the transparency of decision-making, which risks potential lack of public control, and violation of due process. Our study highlights the lack of available information on the use of out-of-court settlement by EU MS.

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<sup>53</sup> BLOMEYER & SANZ (2014). The CFP- infringement procedures and imposed sanctions throughout the EU [WWW]. Available from: [http://www.europarl.europa.eu/RegData/etudes/note/join/2014/514003/IPOL-PECH\\_NT\(2014\)514003\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2014/514003/IPOL-PECH_NT(2014)514003_EN.pdf) [Accessed on 12/03/2014].



Finally, sanctioning for IUU infringements differs significantly across the EU. Despite benchmarks established by EU regulations, in practice different levels of fines are applied across the EU. This may cause discrimination and unfair competition in the fisheries sector. This in turn undermines the entire *raison d'être* of the Union, namely creating a level playing field for the Single Market. As a consequence, the Control Regulation introduced the point system as a complementary control mechanism. The point system is generally well perceived due to the possibility to address repeat offences. The EC informed us that they have a well-established overview of the implementation of the system and are currently reviewing the different approaches in the EU MS. Nonetheless, the implementation of the point system is not sufficiently transparent as data is not made publically available. Some EU MS seem to have already implemented and applied the system while others are in the process of doing so. More transparency on the use of the point system would allow for better information on the extent of repeat offences.

#### 4.4. Member State follow-up of serious fisheries infringements

This section provides an overview of a selection of MS and their governance arrangements for dealing with fisheries infringements. Where available, special emphasis is placed on IUU infringements, sanctions imposed and the degree of recidivism. Data has been collected through specific requests, stakeholder interviews and desk research. This study also uses data collected in the context of the previous study conducted by Blomeyer & Sanz.

##### 4.4.1. Belgium

Belgium transferred the competence of fisheries to the regional governments in 2002. In practice this means that Flemish authorities deal with all issues relating to marine fisheries. Control and validation of catch certificates are done by the Flemish Sea Fisheries Service (Dienst Zeevisserij). Administrative fines can be imposed and the Dienst Zeevisserij is empowered to issue warnings for minor offences. Coordination between the Flemish region and the federal state establishes a coast guard structure to support control efforts.

Belgium applies a 100% IUU control of all frozen fish container transport. Fresh products are subject to risk analysis. Customs authorities are requested to contact the Flemish Sea Fisheries Service in case of doubts. Control authority is derived from the law 'Wet van 28 maart 1975 betreffende de handel in landbouw- tuinbouw- en visserijproducten'. The ports of Oostende and Zeebrugge are designated for control of third country vessels.

No confirmation was received from stakeholders on the application of the point system in Belgium. However, the system has been introduced and points can be allocated after intervention of the courts. An infringement procedure starts with referral of the case to the public prosecutor of Bruges. The public prosecutor either initiates criminal legal proceedings, or presents a proposal for settlement. In case of out-of-court settlement, the public prosecutor presents a first proposal for settlement. The fines are then calculated on the basis of the estimated economic benefit. In case the settlement is refused, the offender will still be brought before the court. Overall, infringement procedures are estimated to take between six months and one year.

The previous study conducted by Blomeyer & Sanz on serious infringements developed a general overview of the infringements and sanctions imposed in Belgium.<sup>54</sup> This overview

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<sup>54</sup> BLOMEYER & SANZ (2014). The CFP- infringement procedures and imposed sanctions throughout the EU [WWW]. Available from: [http://www.europarl.europa.eu/RegData/etudes/note/join/2014/514003/IPOL-PECH\\_NT\(2014\)514003\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2014/514003/IPOL-PECH_NT(2014)514003_EN.pdf) [Accessed on 12/03/2014].

covers infringements involving criminal prosecution, although the type of infringements are not specified. Nevertheless, criminal prosecution in itself indicates that the offences were serious, as minor offences are normally addressed through written or verbal warnings.

Table 2: Infringements and penalties imposed in Belgium

Belgium: Infringements 2007-2012					
2007	2008	2009	2010	2011	2012
38	30	37	35	27	24

Source: Flemish Parliament

The data does not specify the level of sanctions imposed. However, minimum penalties for infringements range from EUR 550 to EUR 8 250. This is primarily based on calculations of the economic benefit gained from the infringement. Most convictions included confiscation of catches and equipment.<sup>55</sup> For infringements in 2008, 11 settlements were proposed and 12 cases convicted. In 2009, 12 settlements were proposed and there were two convictions.<sup>56</sup> In 2010 and 2011 respectively, 27 and 11 written warnings were issued and numerous verbal warnings were issued.<sup>57</sup> 18 cases from 2010 were convicted and eight cases were settled. Of the cases in 2011, two were settled and nine convicted. In 2012, 25 written warnings and numerous verbal warnings were issued. Two cases from 2012 were convicted, four were settled, and two were dropped. Overall, between 2008 and 2012, 37 cases were settled out of 153 detected infringements. The use of out-of-court settlements suggests that a certain percentage of infringements are not repeat offences, since out-of-court settlements are normally not permitted for repeat offences.

#### 4.4.2. Denmark

In Denmark, the Directorate of Fisheries (Fiskeridirektoratet), within the Ministry of Food, Agriculture and Fisheries, is responsible for inspection. The most common serious infringements detected in Denmark are: not fulfilling obligations to record and report catch or catch-related data; the use of prohibited gear or non-compliant gear; and fishing in a closed area, during a closed season, without or after attainment of a quota or beyond a closed depth.

Infringements are normally followed-up through administrative procedures before going to criminal sanctioning. The Danish AgriFish Agency is responsible for sanctioning. Most commonly, monetary penalties are imposed which may be combined with confiscation of catches and/or fishing gear.

<sup>55</sup> MINISTRY FOR INSTITUTIONAL REFORM, PORTS, AGRICULTURE, SEA FISHERIES AND RURAL, MINISTER KRIS PEETERS (2008) Response question No 47 of 14 march 2008 by Karlos Callens. [WWW]. Available from: [http://www.vlaamsparlement.be/Proteus5/websiteBulletin.action?pContext=SCHRIFTELIJKE\\_VRAGEN\\_P2&titel=&tekst=&nummer=47&pDatumVan=14-03-2008&pDatumTot=&legislatuur=-1&zittingsjaar=-1&pVraagsteller=2758&pMinister=2849](http://www.vlaamsparlement.be/Proteus5/websiteBulletin.action?pContext=SCHRIFTELIJKE_VRAGEN_P2&titel=&tekst=&nummer=47&pDatumVan=14-03-2008&pDatumTot=&legislatuur=-1&zittingsjaar=-1&pVraagsteller=2758&pMinister=2849) [Accessed 10/12/2013].

<sup>56</sup> MINISTER OF ECONOMY, FOREIGN POLICY, AGRICULTURE AND RURAL, MINISTER KRIS PEETERS (2010) Reply to question No 377 of 23 September 2010 by Peter Reekmans. [WWW]. Available from: [http://www.vlaamsparlement.be/Proteus5/websiteBulletin.action?pContext=SCHRIFTELIJKE\\_VRAGEN\\_P2&titel=&tekst=&nummer=377&pDatumVan=23-09-2010&pDatumTot=&legislatuur=-1&zittingsjaar=-1&pVraagsteller=3417&pMinister=2849](http://www.vlaamsparlement.be/Proteus5/websiteBulletin.action?pContext=SCHRIFTELIJKE_VRAGEN_P2&titel=&tekst=&nummer=377&pDatumVan=23-09-2010&pDatumTot=&legislatuur=-1&zittingsjaar=-1&pVraagsteller=3417&pMinister=2849) [Accessed 10/12/2013]

<sup>57</sup> MINISTRY OF ECONOMY, FOREIGN POLICY, AGRICULTURE AND RURAL, MINISTER KRIS PEETERS (2012) Reply to question No 315 of 17 April 2012 by Jurgen Vanlerberghe. [WWW]. Available from: [http://www.vlaamsparlement.be/Proteus5/websiteBulletin.action?pContext=SCHRIFTELIJKE\\_VRAGEN\\_P2&titel=&tekst=&nummer=315&pDatumVan=17-04-2012&pDatumTot=&legislatuur=-1&zittingsjaar=-1&pVraagsteller=3858&pMinister=2849](http://www.vlaamsparlement.be/Proteus5/websiteBulletin.action?pContext=SCHRIFTELIJKE_VRAGEN_P2&titel=&tekst=&nummer=315&pDatumVan=17-04-2012&pDatumTot=&legislatuur=-1&zittingsjaar=-1&pVraagsteller=3858&pMinister=2849) [Accessed 10/12/2013].

The point system was put in place in 2012 and started on 01 December 2012. Points have been allocated to both license holders and masters of fishing vessels.

Table 3: Serious Infringements Denmark 2007-2012

Denmark: Serious infringements 2007-2012					
2007	2008	2009	2010	2011	2012
20	27	24	32	18	31

All the detected infringements above were sanctioned. On average the length of procedures is 115 days. The procedure starts with regional offices of the Fiskeridirektoratet compiling evidence against offenders. This can then be transferred to the police for additional investigation. After this it will be handed over to the public prosecutor. In case of minor offences the Fiskeridirektoratet can impose administrative sanctions. The local inspection authorities can directly forward cases to the public prosecutor without the involvement of the central headquarters. The local court generally finalises the cases. In the event of appeals cases can be referred to appeal courts. Fishermen can refuse to pay a fine and defend themselves in a criminal court.

The Danish Fisheries Act No. 372 of 2006 is the most important piece of legislation. Penalties are not stipulated by law. Fines are calculated according to the value of the illegal fish, plus the value of the gear. In practice the illegally used gear or illegally taken catches or the value thereof are seized. However, no minimum or maximum penalties are laid down by law.

#### 4.4.3. Croatia

Croatia's legal framework for fisheries consists of three pieces of legislation: Marine Fisheries Act (OG 56/10, 127/10, 55/11), Freshwater Fisheries Act (OG 106/01, 7/03, 174/04, 10/05 i 49/05-consolidated text) and Act on structural support and market organization in fisheries (OG 153/09, 127/10). There is little research in Croatia on IUU fishing, primarily because the Croatian national fleet predominantly exploits national waters. According to the authorities this is fully regulated. The Directorate of Fisheries monitors fleet activity, catch, landing and marketing of fisheries products. In order to reduce IUU fishing, the Croatian authorities recommend public awareness raising among the relevant stakeholders.

Several services deal with fisheries control, surveillance and inspection. The most important is the Ministry of Agriculture, Forestry and Water Management, and in particular the Directorate of Fisheries. Other involved authorities are the Port Authority inspectors and the authorized persons of the Maritime Police of the Ministry of Internal Affairs. The Croatian Coast Guard and the State Inspectorate are also involved.

Croatia's sanctioning mechanism is primarily criminal, with the Magistrates Court responsible for sanctioning fisheries infringements. Monetary penalties are most commonly imposed ranging from EUR 67 to EUR 66 660. Repeat offences can be sanctioned more severely. Seizure of fishing gear, equipment and total catch is possible. Croatia has recently implemented the point system. Currently this is in the testing phase and no points have so far been assigned. Data gathered for the previous Blomeyer & Sanz study shows an increase in the detection of infringements since 2007.<sup>58</sup> From 2007 to 2012, respectively 25, 23, 34,

<sup>58</sup> BLOMEYER & SANZ (2014). The CFP- infringement procedures and imposed sanctions throughout the EU [WWW]. Available from: [http://www.europarl.europa.eu/RegData/etudes/note/join/2014/514003/IPOL-PECH\\_NT\(2014\)514003\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2014/514003/IPOL-PECH_NT(2014)514003_EN.pdf) [Accessed on 12/03/2014].

51, 55 and 10 cases were sanctioned. The low figures for 2012 are most likely due to the duration of infringement procedures, which last on average between one and two years. Most common infringements are: fishing in a closed area, during a closed season, without or after attainment of a quota or beyond a closed depth; followed by fishing without a valid licence, authorisation or permit; and not fulfilling obligations to record and report catch or catch-related data.

Table 4: Infringements in Croatia

Croatia: Infringements 2007-2012					
2007	2008	2009	2010	2011	2012
38	47	59	64	83	88

Source: survey

#### 4.4.4. Estonia

The fisheries sector is divided between the Ministry of Agriculture and the Ministry of Environment. Within the Ministry of Environment, the Estonian Environmental Inspectorate (EEI) has overall responsibility for fisheries inspection and surveillance, enforcement and follow-up of infringements, operation of the VMS, collection of prior notifications and effort reports, and cross-checks of logbooks, etc. The Fisheries Protection Department, as part of the EEI, carries out control activities in cooperation with the Estonian Coast Guard and the Ministry of Agriculture. The latter is responsible for the administration of fishing permits and the maintenance of fishing records. The Ministry of Agriculture also collects commercial data, quota management, etc. Other relevant authorities in the Estonian fisheries are the Police and Border Guard, the Veterinary and Food Board, the Maritime Administration, and the Tax and Customs Board. Estonian fisheries are regulated through the Fisheries Act as amended, which was adopted in its first version on 27 September 1995, and the Fisheries Regulation. In 2009, the Estonian authorities agreed with other EU MS of the Eastern Baltic Sea to establish communication procedures between fisheries control regional administrations and relevant central units.<sup>59</sup> This can be considered a good practice in harmonising EU control efforts.

Data on infringements were collected through a data request to the Estonian Environmental Inspectorate. For a private person, the maximum penalty for a CFP infringement may be up to EUR 1 200, and for a legal person up to EUR 3 200. In addition to the penalty, sanctions may also include a fee for the damage done to the environment, in this case the fish stocks. The following table provide an overview of the fees for damaging the environment. These can be considered more serious infringements:

Table 5: Fees imposed for damage to the environment 200-2012

Estonia: Fees for damage to the environment 2007-2012						
	2007	2008	2009	2010	2011	2012
Cases	5	14	13	19	16	15
Total fee imposed (in EUR)	930	4 650	3 344	4 034	4 530	17 266
Average fee imposed (in EUR)	356	418	92	226	269	1 169

Source: Estonian Environmental Inspectorate

<sup>59</sup> MINISTRY OF THE ENVIRONMENT (2011). Estonian fisheries control action program [WWW]. Available from: [http://www.envir.ee/orb.aw/class=file/action=preview/id=1173812/Kalakontroll\\_ik.pdf](http://www.envir.ee/orb.aw/class=file/action=preview/id=1173812/Kalakontroll_ik.pdf) [Accessed on 20/02/2014].

#### 4.4.5. France

France uses a mixed system of criminal and administrative sanctions. Most commonly, follow-up of infringements is administrative, as this can be done in a timely manner. Fines are usually imposed and the most common infringements are: not fulfilling record and catch data obligations; fishing in a closed area; and fishing without a valid licence. The point system will enter into force in 2014.

Data on infringements in France were collected through the survey conducted for the previous study by Blomeyer & Sanz. We were informed that data on infringements are stored on a dedicated secured online tool as well as on the Ministry's internal network. The information on the system is not categorised according to the definitions used for serious infringements, as stipulated in the Control and IUU Regulation, but rather according to definitions used prior to the new CFP. This system is currently being updated.

Table 6: Infringements in France

France: Infringements 2007-2012					
2007	2008	2009	2010	2011	2012
1 234	1 092	1 289	1 168	1 203	949

Source: Survey

Regional Operational Centres for Monitoring and Rescue (Centres Régionaux Opérationnels de Surveillance et de Sauvetage) are responsible for inspection. France is an important player in the fight against IUU fishing due to its overseas territories. Its territorial waters border many different regions. Collaboration with other states in the control and inspection of fisheries is therefore important. A good example of such collaboration is the Australia-France Cooperative Enforcement Agreement (2011) that allows joint inspection of each other's fishing fleets in their respective waters in the Southern Ocean. The remote waters of the Southern Ocean are vulnerable to IUU fishing and the agreement between the two countries allows for cooperative enforcement measures including 'boarding, inspection, hot pursuit, apprehension, seizure and investigation of fishing vessels that are believed to have breached fisheries laws'.<sup>60</sup>

Sanctioning of fisheries infringements in France is characterised by the use of out-of-court settlements, so-called transactional procedures. In principal, such procedures are applicable to all violations, but they seem less suited to very serious offences. Depending on the gravity of the infringement, different authorities are empowered to initiate the procedure. France's rules of procedure for out-of-court settlement are relatively transparent. In case offenders reject the settlement proposal or fail to pay the established sum within the time limit, the transaction will be null and void. After this, the case is forwarded to the competent court. When the offender fulfils its obligations, the public prosecutor will take no subsequent action.

#### 4.4.6. Ireland

Ireland's IUU Office is situated in Clonakilty and is responsible for the verification of all imports. In operational terms this implies liaison with competent authorities in the exporting countries to verify documentation, working with RFMOs in checking authorisations for

<sup>60</sup> MINISTRY OF FOREIGN AFFAIRS (2011). Australia and France send strong message to illegal fishing operators [WWW]. Available from: [http://foreignminister.gov.au/releases/Pages/2011/kr\\_mr\\_110107.aspx?ministerid=2](http://foreignminister.gov.au/releases/Pages/2011/kr_mr_110107.aspx?ministerid=2) [Accessed on 20/02/2014].

vessels, and cross-checking all import documents, such as catch certificates, processing statements, etc. The IUU Office is also responsible for maintaining databases containing information relating to the verification of imports into Ireland, and to the validation of exports outside the EU as an end product or for processing prior to return to the EU. Close collaboration is established with regional port offices that validate import documentation. From 2007 to 2010, the Sea Fisheries Protection Officers of the SFPA and the Naval Service prepared 13 case files which resulted in 12 convictions.<sup>61</sup>

Table 7: Infringements Ireland 2007-2010

Cases heard during the reporting period				
Country	Principal offence	Year	Fine (EUR)	Forfeit (EUR)
Ireland	Logbook under recording with associated offences of exceeding monthly quota	2007	No sanction applied	
Ireland	Prior notification prior entry into port and associated logbook offence	2008	1 000	0
Spain	Logbook infringement – under recording	2008	10 000	20 000
Ireland	Prior notification to entry into port and associated logbook offence	2008	250	0
Ireland	Breach of monthly quota	2009	250	0
Ireland	Multiple logbook infringements following investigation and analysis	2009	12 000	0
Spain	Logbook under recording in respect of the species Hake which is subject to a recovery program	2009	20 000	21 000
United Kingdom	Illegal fishing within 12 nautical limit	2010	5 000	40 000
Spain	Breach of Hake recovery measures	2010	10 000	19 000
Spain	Logbook infringement – under recording	2010	5 000	53 000
Spain	Illegal fishing within a restricted area	2010	7 500	14 250
Spain	Breach of Hake recovery measures and associated logbook offences	2010	12 500	53 500
Total			83 500	220 750

Source: Annual Report 2010

Enforcement actions by Sea Fisheries Protection Officers may include warnings, detention of vessels and/or the issuing of legal proceedings through the Office of the Director of Public Prosecutions (DPP). In 2010, the majority of detected infringements involved Irish vessels (98 instances, 71%). Only three vessels were detained, one of them on two separate occasions. In addition, 4 vessels from Spain and 2 from the UK were detained. Overall, of the 138 cases, 81% received a warning.

<sup>61</sup> SFPA (2010). Annual Report 2010 [WWW]. Available from: <http://sfpa.oghamtech.ie/Portals/0/Corporate%20Affairs/Annual%20Reports/2010/SFPA%20Annual%20Report%202010%20English.pdf> [Accessed on 20/02/2014].

Most infringements detected in 2010 relate to vessels fishing without appropriate licences and documentation (38%). This is important because vessels operating without proper licences and authorisation enjoy an unfair advantage over compliant operators. 20% of infringements related to failure to complete the EU Fishing Logbook accurately. The latter is important for setting TACs and failure to submit adequate information could have significant consequences. 7% of the detected infringements relate to illegal fishing.

#### 4.4.7. Poland

Poland’s main fisheries interest lies in the Baltic Sea. A study conducted by the Swedish Fisheries Secretariat (FISH) on cod fishing in the Baltic Sea states that unreported landing is the most serious IUU activity in the area.<sup>62</sup> It estimates that 45%-60% more cod is landed than reported. Feedback received by Blomeyer & Sanz confirms this problem in the case of Poland. Other commonly detected infringements are the use of prohibited or non-compliant gear and engaging in directed fishing for a stock which is subject to a moratorium. Poland has a large share of TAC for cod. EU regulations allowing for temporary closure of fishing areas have received significant public opposition in Poland. In 2005, Polish fishermen organised a mass demonstration against seasonal closure of cod fishery.

The Department of Fisheries, within the Ministry of Agriculture and Rural Development, is responsible for inspection services. According to the study mentioned above, inspection pressure at the time was considered low mainly due to limited manpower and other resources. Other identified challenges were the close relations between inspectors and fishermen, coming from the same fisheries communities. Data on detected infringements by Polish authorities show a steady decline over the years.

Table 8: Infringements in Poland

Poland: Infringements 2007-2012					
2007	2008	2009	2010	2011	2012
258	152	76	58	42	50

Source: Survey

Sanctioning in Poland is predominantly of an administrative nature. Monetary penalties are most frequently imposed. From 2007 until 2012, respectively 148, 122, 72, 51, 42 and 50 cases were sanctioned in Poland. The average length of infringement procedures is four months. The Polish Law on Fisheries (Dz.U. No. 34, item 145) of 18 January 1996 prescribes offences and penalties. Article 42 prescribes various types of infringements which may result in a pecuniary penalty 'not exceeding the twentyfold value of an average monthly salary in the national economy recorded in the previous year'. Vessel, gear and catch can be confiscated. Fishing licences can be denied where there have been previous infringements.

#### 4.4.8. Spain

For Spain, data on infringements and sanctions were collected through the survey conducted in 2013 for the Blomeyer & Sanz study on CFP infringements. Most common infringements are not fulfilling obligations to report catch or catch-related data, followed by fishing in a closed area, during a closed season, without or after attainment of a quota or beyond a closed depth. Monetary penalties are usually imposed. The data above concerns only

<sup>62</sup> FISHSEKRETARIATET (2007). A report on IUU fishing of Baltic Sea cod [WWW]. Available from: [http://www.fishsec.org/downloads/1198235739\\_21059.pdf](http://www.fishsec.org/downloads/1198235739_21059.pdf) [Accessed on 20/02/2014].

external waters in Spain, as the procedures followed by regional governments are not available. The Spanish authorities informed us that with the creation of the National Register of Sanctions in 2013, this data would be available in the future.

Table 9: Infringement procedures and sanctions in Spain

Spain: Infringement procedures and sanctions 2007-2012						
Year	2007	2008	2009	2010	2011	2012
Infringement procedures	1 119	1 017	882	1 020	1 285	1 453
Sanctions	934	869	676	747	869	858

Source: Survey

The General Secretariat of Fisheries (Secretaría General de Pesca) is responsible for control, under the responsibility of the Ministry of Agriculture, Food and Environment (Ministerio de Agricultura, Alimentación y Medio-Ambiente). The Sub-Directorate of Fisheries Control and Inspection (Subdirección General de Control e Inspección) deals with inspections. One of the main challenges in the global fight against IUU fishing is the lack of political willingness to prioritize environmental crime and specifically illegal fishing.<sup>63</sup> Spain can be considered a good example in which political willingness has prioritized enforcement. Various stakeholders interviewed for this study highlighted the increased efforts of the current government to address the problem. Given Spain's large fleet and important role in EU fishing, this is important to further support.

Another good practice from Spain relates to the control of nationals operating in fisheries abroad. Spanish legislation requires its nationals to notify the General Secretariat for Maritime Fishing in case this person wishes to master a vessel of an RFMO non-member state. This means they have to provide information on the last vessel flying a Spanish flag they worked on in addition to identification numbers and information on the vessels of the flag state they plan to work on. Also, the nationals need to communicate any registration changes that might arise in the future.

#### 4.4.9. United Kingdom

Each of the four constituent countries of the UK has its own fisheries enforcement authority:

- The Marine Management Organisation in England (MMO).
- Marine Scotland
- The Department of Agriculture and Rural Development in Northern Ireland (DARD)
- The Welsh Government

The four authorities are responsible for fisheries enforcement within their respective zones of British waters.<sup>64</sup> This section focuses primarily on activities of the MMO and Marine Scotland.

As far as prosecution is concerned, the MMO, the Welsh Government, and DARD are responsible for prosecutions in their jurisdictions. In Scotland, the Crown Office and Procurator Fiscal Service undertake prosecutions. The MMO operates a scheme of financial

<sup>63</sup> INTERPOL (2014). Environmental compliance and enforcement committee [WWW]. Available from: <http://www.interpol.int/Crime-areas/Environmental-crime/Environmental-Compliance-and-Enforcement-Committee/Fisheries-Crime-Working-Group> [Accessed on 20/02/2014].

<sup>64</sup> MMO (2014). Map of the monitoring and enforcement zones [WWW]. Available from: [http://www.marinemangement.org.uk/about/where/fisheries\\_monitoring.htm](http://www.marinemangement.org.uk/about/where/fisheries_monitoring.htm) [Accessed on 14/04/2014].



and administrative penalties (FAP).<sup>65</sup> The scheme applies to sea fishing penalty offences committed in England, and to offences committed by English and Welsh fishing vessels wherever they operate, with the exception of Wales and the Welsh Zone. The scheme also applies to other fishing vessels within English waters of British fishery limits. Similar schemes operate in Scotland, Wales, and Northern Ireland.<sup>66</sup>

In England, the MMO may offer an FAP as an alternative to criminal prosecution, in relation to specific offences. There are 13 categories of offence, which are grouped into four penalty levels. Level 1 is the lowest category and Level 4 the highest. The actual penalty applied depends on how many previous offences have been committed. Category 8 established the IUU fishing offences. This automatically places such offences in penalty Level 4. Where the identified financial gain resulting from, or associated with, the offence is greater than the proposed level of penalty, the penalty will be increased so that it is greater than the identified financial gain, up to GBP 10,000. Where the identified financial gain is greater than GBP 10,000, the option of a FAP will not be available, and the infringement will be prosecuted in court.

Table 10: MMO financial and administrative penalty levels

	First offence	Second offence	Further offences
Level 1	GBP 250	GBP 500	Referred for prosecution
Level 2	GBP 500	GBP 1 000	Referred for prosecution
Level 3	GBP 1 000	GBP 2 000	Referred for prosecution
Level 4	GBP 2 000	GBP 4 000	Referred for prosecution

Source: MMO

Some offences will be referred directly for prosecution without the option of a FAP, even if the identified financial gain is less than GBP 10 000, for example where there have been two or more previous offences. In the event that the penalty is not accepted, or it remains unpaid 28 days after the penalty notice has been issued, the case will be referred for prosecution. In addition, FAPs will not be offered for: obstruction, failure to comply with requirements made by marine enforcement officers; offences under an EU recovery plan which attract automatic licence suspension; and certain IUU offences relating IUU-listed vessels.

The same penalty levels apply in Scotland, although there are only seven infringement categories, compared with the 13 in England.<sup>67</sup> Besides monetary penalties and prosecution, the MMO has a number of enforcement options at its disposal. These include "...seizure and disposal of goods and fish e.g. of illegal fishing net attachments or undersized fish."<sup>68</sup> Other

<sup>65</sup> MMO (2012). Financial administrative penalties for fisheries offences [WWW]. Available from: [http://www.marinemanagement.org.uk/fisheries/monitoring/documents/fap\\_guidance.pdf](http://www.marinemanagement.org.uk/fisheries/monitoring/documents/fap_guidance.pdf) [Accessed on 20/12/2013].

<sup>66</sup> SCOTTISH GOVERNMENT (undated). Guidance For Industry On Administrative Penalties [WWW]. Available from: <http://www.scotland.gov.uk/Topics/marine/Sea-Fisheries/Regulation/administrativepenalties> [Accessed on 29/11/2013].

<sup>67</sup> SCOTTISH GOVERNMENT (undated). Guidance For Industry On Administrative Penalties [WWW]. Available from: <http://www.scotland.gov.uk/Topics/marine/Sea-Fisheries/Regulation/administrativepenalties> [Accessed on 29/11/2013].

<sup>68</sup> MMO (undated). Marine Management Organisation Compliance and Enforcement Strategy [WWW]. Available from: [http://www.marinemanagement.org.uk/about/documents/compliance\\_enforcement.pdf](http://www.marinemanagement.org.uk/about/documents/compliance_enforcement.pdf) [Accessed on 29/11/2013].

enforcement options range from verbal warnings to revocation of permit or licence. Imprisonment in the UK for fisheries offences appears to be rare but may be applied when the conditions of another penalty have not been fulfilled.<sup>69</sup>

The point system covers offences committed by UK vessels on or after 01 June 2013.<sup>70</sup> Each of the four fisheries administrations in the UK is responsible for determining and applying points to the licenses of all fishing vessels that are registered as belonging to a port in their jurisdiction.<sup>71</sup> This applies to serious infringements within the jurisdiction of the relevant administration resulting in a conviction. It also applies to serious infringements that result in the application of a penalty or conviction by another Member State or third country.

The MMO's website lists a total of 70 convictions between February 2010 and October 2013.<sup>72</sup> The size of the fine is indicated in only 29 cases. Of these 29 fines, the minimum was GBP 2,115 and the maximum was GBP 1 620 000. Data received from MMO lists only 3 offences relating IUU fishing, of which two are linked to the same case. One case in 2011 involved failure to validate a catch certificate and falsification of documents. The second case in 2012 concerned the obstruction of an officer. The former was settled with an official warning while the latter resulted in a conviction in court and a monetary penalty.

Table 11: Convictions in England February 2010 – October 2013

	Totals	2010	2011	2012	2013
Count of convictions	70	15	19	17	19
Count of indicated fines	29	10	1	10	8
Sum of indicated fines (GBP)	2 033 677	125 077	50 000	1 749 100	109 500
Minimum indicated fine (GBP)	2 115	2 115	50 000	4 015	4 000
Maximum indicated fine (GBP)	1 620 000	25 000	50 000	1 620 000	29 000
Average indicted fine (GBP)	70 127	12 508	50 000	174 910	13 688

Source: based on MMO

Marine Scotland's website lists a total of 72 convictions from April 2006 to July 2012.<sup>73</sup> The size of the fine is indicated in 69 cases. The minimum fine was GBP 100. The maximum was GBP 45 000. The average fine was GBP 4 965. Information about financial and administrative penalties is not available.

<sup>69</sup> BOOKER, C. (2009). Now we treat our fishermen like drug dealers [WWW]. Available from: <http://www.telegraph.co.uk/comment/columnists/christopherbooker/5105730/Now-we-treat-our-fishermen-like-drug-dealers.html> [Accessed on 29/11/2013].

<sup>70</sup> MMO (2013) Points system for serious infringements [WWW]. Available from: <http://www.marinemangement.org.uk/fisheries/monitoring/points.htm> [Accessed on 03/12/2013].

<sup>71</sup> MMO (2013). Guidance for the application of a points system for serious infringements [WWW]. Available from: <http://www.marinemangement.org.uk/fisheries/monitoring/documents/points.pdf> [Accessed on 12/02/2014].

<sup>72</sup> MMO (2013). Prosecutions [WWW]. Available from: <http://www.marinemangement.org.uk/fisheries/monitoring/prosecutions.htm> [Accessed on 28/11/2013].

<sup>73</sup> MARINE SCOTLAND (2013). Enforcement Activity [WWW]. Available from: <http://www.scotland.gov.uk/Topics/marine/Compliance/enforcement> [Accessed on 28/11/2013].

Table 12: Convictions in Scotland April 2006 - July 2012

	Totals	2006	2007	2008	2009	2010	2011	2012
Count of convictions	72	17	14	10	4	13	10	4
Count of indicated fines	69	16	13	10	4	13	9	4
Sum of indicated fines (GBP)	342 572	107 550	46 355	21 400	21 200	68 617	65 450	12 000
Minimum indicated fine (GBP)	100	100	475	700	1 200	1 000	450	2 000
Maximum indicated fine (GBP)	45 000	45 000	15 000	3 000	8 000	20 000	36 500	5 000
Average indicated fine (GBP)	4 965	6 722	3 566	2 140	5 300	5 278	7 272	3 000

Source: Marine Scotland



## 5. Findings

Repeatedly throughout the previous chapters, the vulnerabilities of the fisheries sector for illegal, unreported and unregulated activities due to lack of appropriate governance were highlighted.<sup>74</sup> Addressing the challenges requires good governance, stronger policy frameworks and better implementation of existing policies. Due to the nature of IUU fishing, such policy frameworks cannot exclusively focus on regions but should be strengthened globally. It is therefore important to explore good practices and draw lessons from these in order to ensure that EU rules on IUU fishing are coherent and compliant with international rules.

This study has shown that various factors are considered important when developing a framework for controlling and enforcing IUU fishing:

- Licencing and registration (5.1);
- Monitoring, control and surveillance (5.2);
- Establishing penalties (5.3).

### 5.1. Licencing and registration

This study found that a key area for improvement is the tracking of ownership of fishing vessels. There is no international register of fishing vessels, as various attempts have failed so far in terms of providing accurate and complete information even for vessels active in the high seas.<sup>75</sup> The tracking of the beneficial ownership of vessels is complicated and probably the most challenging aspect in creating and maintaining a reliable record of fishing vessels. Some national registries are seen as vulnerable to abuse, as flag states are unable or unwilling to enforce the law.

When aiming to control nationals, States could decide to licence all nationals engaged in national and international fishing activity. This task might be complicated due to the high number of nationals working as crewmembers as well as their role in IUU fishing. Authorities are therefore recommended to narrow their focus on the masters of vessels. The latter could be recommended as the masters of the vessels are limited in number and could play a key role in IUU activities. Governments should urge fishing masters to contact the national fisheries authority when intending to work on a foreign flagged fishing vessel and only issue licences once given formal approval. Licences could be revoked in case conditions are breached. Information concerning licenced fishing masters should be stored in secured national databases and exchanged between States.

This study has highlighted the importance of transparency of fishing activity data. The EU provides public information about EU vessel activity in third countries' EEZs. This is however not the case for all States around the world. Countries should provide information on agreements with other countries on access to their respective EEZs. In addition, tax havens allow companies to hide ownership structures which complicates the identification of financial interest behind (IUU) fishing activities.

<sup>74</sup> OECD (2010). Globalisation in fisheries and aquaculture: Opportunities and challenges [WWW]. Available from: [http://www.keepeek.com/Digital-Asset-Management/oecd/agriculture-and-food/globalisation-in-fisheries-and-aquaculture\\_9789264074927-en#page92](http://www.keepeek.com/Digital-Asset-Management/oecd/agriculture-and-food/globalisation-in-fisheries-and-aquaculture_9789264074927-en#page92) [Accessed on 13/03/2014].

<sup>75</sup> This refers to efforts made by the FAO, in particular; e.g. Global Record of Fishing Vessels, High Seas Fishing Vessel Authorization Record (HSVAR).

## 5.2. Monitoring, control and surveillance

Difference in levels of MCS risk that IUU offenders direct their activities to areas with weaker control. In addition, low levels of MCS could lead to low probability of detection, increasing revenue from IUU activities and lower transaction costs. MCS systems and procedures have to be adapted to monitor and control its nationals. This means that flag and port states need to be engaged in these activities. Especially port inspections are an important momentum as it allows for opportunities to collect information and track activities of fishing masters. This information can be forwarded to administering authorities.

Responsibility of MCS activities lies both with third countries and EU MS. In order to increase the IUU Regulation's potential positive impact against IUU fishing, the responsibility and commitment of third countries needs to be prioritised. Considering developing states experience significant difficulties in governing MCS systems, special focus should be placed on supporting their efforts through regional cooperation frameworks, such as RFMOs. The EC plays an important role is facilitating such support through its representation in the regional organisations. In addition, it could further strengthen efforts through already existing training modules developed by the EFCA. Gaps in the international legal framework allow IUU activities to fall outside the scope of national or international agreements. Adherence to international agreements and regional fisheries organisations could greatly reduce the effectiveness of FoCs in IUU fishing. Concerning the latter, ideally regional fisheries organizations evolve towards management bodies with a clear governing mandate.

The study finds that the IUU Regulation is equipped with important tools to address challenges the EU is facing with IUU fishing. In fact, the EU rules against IUU fishing can be considered innovative and could have major global impact given the important role of the EU as producer and exporter of fishery products, as well as importer of fishery products. The recent entering into force of the IUU Regulation makes it difficult to evaluate the implementation. Nonetheless, this study identified various challenges in MCS for MS. First of all, the detection of EU financial interests behind IUU fishing can be considered a challenge. The secretive nature of IUU activities complicates detection and impedes objective estimates of the degree of involvement of EU vessels in IUU fishing inside EU waters, on high seas or in third country EEZs.

This study finds that exchange of information on MCS activities between MS is considered of great importance. The use of the EU Alert system can be an important tool for this. The EU should take a proactive role in the establishment of the EU IUU vessel as critics argue that the list depends strongly on decision-making processes of third parties.

The Catch Certification Scheme is an important tool for detecting IUU fisheries products and stop entry into the EU. Also here, commitment is needed from third countries which should be further promoted by the EU. Particular focus should be placed on indirect imports in which market, coastal and port states play an important role. In addition, MS should be supported in the application of the CCS as this can be perceived as additional administrative burden. In particular countries with busy ports risk needing additional resources. Enhancing specialisation of custom authorities is another area of interest for the EU. This study finds that MS acknowledge the importance of expertise in detecting IUU activities.

Inspection of fisheries is primarily the responsibility of MS but joint efforts can be coordinated by the EFCA. The latter makes up a significant portion of inspections. This study acknowledges the importance of land inspections in order to detect IUU fisheries products. Especially enhancing port state measures is essential in detecting IUU irregularities during fishing activities.

### 5.3. Infringement procedures and sanctioning

When establishing penalties, states need to take into account the severity of penalties and the potential deterrent effect. For example, fishermen from developing countries require an alternative approach. Monetary penalties or imprisonment might not have a deterrent effect on fishermen that have few alternative options due to their economic and social conditions. In addition, establishing and imposing such penalties is time-consuming and expensive and can therefore lack political priority. Extradition is another problem when dealing with nationals abroad that have committed IUU infringements. Bilateral agreements could facilitate their prosecution.

Ensuring successful prosecution and sanctioning of IUU offenders requires strong evidence collection. Main challenges facing in the prosecution are gathering sufficient evidence to prove intention to violate the law, as well as establish burden of proof. An approach for dealing with this could be to reverse for fishing activities the burden of proof. In other words, request that the fishing master proves the catch was caught legally. Such methods are also used in other types of crime in which the violation is difficult to prove and activities balance between legality and illegality. An example is criminalizing illicit enrichment due to corrupt activities. Considering that corruption is often difficult to prove, some jurisdictions have reversed the burden of proof. In the case of proving IUU activities, such a method might be beneficial as it may be challenging to establish that IUU fishing occurred. The main criticism against such practice is associated with the presumption of innocence until proven guilty. Besides, shifting the burden of proof to the defendant may risk self-incrimination for criminal acts that are not in question such as tax evasion.

As described above, the role of third countries in implementing the IUU Regulation is important. Failure to address the problem by countries can be more systemic and have great negative impact on efforts to reduce the problem. The EU Non-Cooperating Third Country List sends a strong message to States that do not comply with IUU regulations. Although the decision-making to place countries on the list is lengthy and complex, this can be considered a sanctioning tool available to the EC to enforce compliance.

Enforcing compliance of MS is more complicated but this study finds that the newly proposed EMFF could increase the EC's scope for action. In any case, this implies that commitment and responsibility of MS to follow-up on enforcement of IUU is essential. The identified difference in the levels of penalties imposed potentially undermines EU enforcement. A tool to harmonize this is the EU point system. In addition, this tool has potential to address the problem of recidivism.

Diversity of national approaches to dealing with fisheries control and sanctioning could be perceived as discriminatory. This could have a negative impact on the culture of legality and generate more breaches of fisheries rules. MS should therefore ensure that every infringement is dealt with.

Out-of-court settlements to deal with fisheries infringements allows for quick sanctioning and tailor-made to the nature of the offence and offender. There is a lack of available information on the use of out-of-court settlement by EU MS. Considering that out-of-court settlements often cannot be offered for repeat offences, data on its use could be an important indicator for the degree of recidivism.





## 6. Recommendations

This section present recommendations based on the findings of the briefing note. General recommendations include:

1. **Strengthen international policy frameworks.** Due to the nature of IUU fishing, policy frameworks require global strengthening and cannot exclusively focus on regions.
2. **Prioritise enforcement of IUU rules.** Enforcement of IUU rules primarily relies on the responsibility and commitment of EU Member States themselves. Therefore authorities need to prioritise effective enforcement.
3. **Enhance MCS and enforcement.** Monitoring, control and surveillance activities cannot be decoupled from enforcement activities. Authorities need to enhance cooperation between inspection and sanctioning authorities.

Recommendations on licencing and registration include:

4. **Promote the establishment of an international register of fishing vessels.** This register can provide for accurate and complete information on active vessels.
5. **Strengthen national registries of fishing vessels.** This will allow better tracking of vessels and maintaining a reliable record of fishing vessels.
6. **Licence all nationals engaged in fishing activity.** Licencing should also focus on nationals fishing on foreign vessels. In order to reduce the scope, focus could be placed on licencing masters of vessels.
7. **Exchange information between countries on licencing.** Governments should only provide licences to foreign masters of vessels upon approval of their respective national authorities.
8. **Promote transparency of activities in EEZs.** Improve transparency of agreements between countries on access of fishing vessels to each other's EEZs.
9. **Promote more transparency on fishing ownership structures.** Enhance adherence of flag states to regional management organisations and the relevant CMMs. Special focus should be placed on tax havens and FoCs.

Recommendation on monitoring, control and surveillance include:

10. **Enhance levels of MCS in EU MS.** Both flag and port states need to be engaged in MCS activities and especially port authorities are required to forward information to administering and licencing authorities.
11. **Harmonise levels of MCS in EU MS.** Joint-MS activities and equal levels of MCS should avoid opportunism and migration of IUU offenders.
12. **Prioritise the promotion of IUU compliance in third countries.** Effective implementation of the IUU Regulation also depends on the commitment and responsibility of third countries.
13. **Support fisheries governance mechanisms in third countries.** The European Commission can play an important role in this through its representation in RFMOs.
14. **Promote adherence to international agreements.** FoCs should be incentivised to join RFMOs.
15. **Promote compliance of CMM.** RFMOs should evolve towards management rather than advisory bodies.
16. **Promote the exchange of information on MCS activities.** MS should exchange information on suspected and detected IUU infringements. The EU Alert system could be an important tool for this.

17. **Prioritise detection of IUU infringements and enhance professionalism.** Develop expertise on detecting IUU infringements, especially for customs authorities.
18. **Maintain resources and strengthen accountability.** Ensure on the MS level sufficient financial resources and strengthen accountability mechanisms to avoid conflicts of interests. Place special focus on enhancing port state measures.
19. **Enhance collaboration between national authorities.** Enhance collaboration between fisheries inspection authorities and custom authorities.

Recommendations on follow-up and sanctioning include:

20. **Ensure an effective system for following-up sanctioning.** MS should ensure that every IUU infringement is dealt with in order to decrease impunity and strengthen overall compliance.
21. **Exchange information on rules of procedure.** MS should exchange information on the applied rules of procedure in case of detected IUU infringements.
22. **Establish clear guidelines on evidence requirements.** MS should exchange requirements for evidence collection in order to ensure successful prosecution.
23. **Ensure strong evidence collection.** Gather sufficient evidence to prove intention to violate the law. In case of repeat offenders, the burden of proof could be reversed. This would place responsibility with the fishing master in order to prove that catch was caught legally.
24. **Impose adequate sanctions.** When establishing penalties, MS should take into account the severity of penalties and the potential deterrent effect.
25. **Develop a common sanction schedule.** EU MS should develop a sanction schedule that allows for prosecution guidance. This will enhance harmonisation of sanctions imposed throughout the EU.
26. **Avoid protracting of sanctioning.** MS should impose sanctions in a timely manner, especially in the case of repeat offenders.
27. **Publish information on sanctions imposed.** Data repositories in EU MS should include information on the sanctions imposed and clearly distinguish between types of infringements sanctioned.
28. **Enhance transparency in out-of-court settlements.** Out-of-court settlement of infringements can be a useful tool to deal with offenders. However, such procedures should be transparent and documented.
29. **Consider criminal procedures in case of repeat offenders.** Criminal proceedings could have a more deterrent effect on repeat offenders. Its consequences can be more severe (e.g. higher penalties and a criminal record).
30. **Promote the use of the point system.** The point system is a useful tool to harmonise sanctioning in the EU and address the problem of recidivism. More transparency on its implementation is required.

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## Annex 1

The following table provides an overview of the three pillars of the EU fisheries control system:

Table 13: Overview three pillars EU control system

EU control system for fisheries		
<p>Council Regulation (EC) No 1006/2008 concerning the authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters.</p>	<p>Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy.</p> <p>Commission Implementing Regulation (EU) No 404/2011 laying down the detailed rules for the implementation of Council Regulation (EC) No 1224/2009.</p>	<p>Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.</p> <p>Commission Regulation (EC) No 1010/2009 laying down the detailed rules for the implementation of Council Regulation (EC) No 1005/2008.</p>
<p>The Regulation lays down provisions that govern the authorization of EU vessels engaging in fishing activities outside the EU, for example in waters of third countries or waters under the scope of regional fisheries frameworks. It also deals with the authorization of third country vessels to engage in fishing activities in EU waters and lays down reporting obligations.</p>	<p>The so-called 'Control Regulation' establishes the EU system for control, inspection and enforcement. It aims to ensure compliance with the CFP rules and applies to all activities of EU fishing vessels or nationals in MS and their waters that are covered by the CFP.</p>	<p>1005/2008 defines the EU system to prevent, deter and eliminate IUU fishing. 1010/2009 lays down its implementation. The system applies to all IUU fishing activities carried out in MS and their waters, in waters of third countries, and on the high seas. The Regulation also deals with rules on inspections of third country vessels in EU ports, certification of import and export of fishery products, and provisions on the identification of vessels engaging in IUU fishing.</p>



## Annex 2

The following table provides an overview of the points that are to be assigned in case of infringements, specified in Annex XXX of the Control Implementation Regulation<sup>76</sup>:

Table 14: Overview points per type of infringement

Types of Infringements	Points to be assigned
Fishing without a valid licence, authorisation or permit issued by the flag State or the relevant coastal State.	7
Not fulfilled its obligations to record and report catch or catch-related data, including data to be transmitted by satellite vessel monitoring system.	3
Fishing in a closed area, during a closed season, without or after attainment of a quota or beyond a closed depth.	6
Engaging in directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited.	7
Use of prohibited or non-compliant gear according to EU legislation.	4
Falsification or concealing its markings, identity or registration.	5
Concealing, tampering with or disposal of evidence relating to an investigation.	5
Obstruction of work of officials in the exercise of their duties in inspecting for compliance with the applicable conservation and management measures; or the work of observers in the exercise of their duties of observing compliance with the applicable Union rules.	7
Taking on board, transhipping or landing undersized fish in contravention of the legislation in force.	5
Transhipping to or participating in joint fishing operations with, support or re-supply of fishing vessels identified as having engaged in IUU fishing under Regulation (EC) No 1005/2008, in particular those included in the Union IUU vessel list or in the IUU vessel list of a regional fisheries management organisation.	7
Carrying out fishing activities in the area of a regional fisheries management organisation in a manner inconsistent with or in contravention of the conservation and management measures of that organisation.	5
Use of a fishing vessel with no nationality and that is therefor a stateless vessel in accordance with international law.	7

<sup>76</sup> EUROPEAN COMMISSION (2011) Commission Implementing Regulation (EU) No 404/2011 of 8 April 2011. [WWW]. Available from: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2011R0404:20110507:EN:PDF> [Accessed 25/11/2013].





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