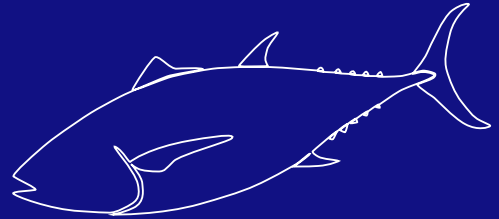




Food and Agriculture
Organization of the
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Indian Ocean Tuna Commission

IOTC

MANUAL

EVIDENCE IN FISHERIES OFFENCES:
EFFECTIVE COLLECTION AND USE



LAWS, PROCEDURES, PROSECUTIONS, ILLEGAL, UNREPORTED
AND UNREGULATED VESSEL LISTING

Indian Ocean Tuna Commission

IOTC
MANUAL

**Evidence in fisheries offences:
effective collection and use**

**Laws, procedures, prosecutions,
illegal, unreported and unregulated vessel listing**

IOTC. 2023. *Indian Ocean Tuna Commission (IOTC) Manual – Evidence in fisheries offences: effective collection and use. Laws, procedures, prosecutions, illegal, unreported and unregulated fishing vessel listing*. Victoria, FAO. <https://doi.org/10.4060/cc6407en>

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ISBN 978-92-5-137930-1

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ABSTRACT

This Manual introduces the role and impact of successful evidence gathering and processing in combating illegal, unreported and unregulated (IUU) fishing and describes the pillars for evidence gathering – the national legislation and regional and international obligations. Procedures for gathering the evidence are presented and requirements for arrest are described. The process for prosecutions and administrative procedures are elaborated and follow-up actions described, including IUU Vessel listing. Challenges in evidence gathering and advice on how to overcome them are described.

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ACKNOWLEDGEMENTS

This Manual was prepared by a Nordenfjeldske Development Services (NFDS) Africa team led by Judith Swan, including Johannes Dirk Kotze, Sandy Davies, Per Erik Bergh and Mathew Markides. The NFDS team were supervised by the Indian Ocean Tuna Commission (IOTC) Secretariat with financial support from the Indian Ocean Commission through the World Bank South West Indian Ocean Fisheries Governance and Shared Growth Project (SWIOFish).

The following publications were drawn upon in the preparation of this manual, and relevant material adapted as appropriate:

- **IOTC.** Forthcoming. *Inspection of vessels: Guide for fisheries inspectors to contraventions of the IOTC Resolutions.* FAO.
- **IOTC. 2021a.** *Implementation of IOTC Conservation and Management Measures, Part B: Implementation of IOTC CMMs entailing reporting obligations.* Retrieved from <https://www.fao.org/fishery/en/publication/287033>
- **IOTC. 2021b.** *Port State measures: Guidelines on best practices for interagency cooperation at a national level with regional cooperation.* Victoria. Retrieved from <https://www.fao.org/3/cb0561en/cb0561en.pdf>
- **IOTC. 2021c.** *Procedures for the implementation of the Indian Ocean Tuna Commission Port State Measures.* Victoria: FAO. Retrieved from <https://www.fao.org/3/cb7113en/cb7113en.pdf>
- **Snijman P.J., & Kotze J.D. 2013.** *Regional Best Practices for Evidence Gathering for MCS.* Practitioners. ACP Fish II. Agrotec spa.
- **Stop Illegal Fishing. 2020.** *Evidence Collection Manual for Fisheries Enforcement - Implementing Port State Measures.* Gaborone: Stop Illegal Fishing. Retrieved from <https://stopillegalfishing.com/publications/evidence-collection-manual-for-fisheries-enforcement-implementing-port-state-measures/>

ABBREVIATIONS AND ACRONYMS

AIS	automatic identification system
AREP	advance request for entry into port
CCTV	closed circuit television
CMM	conservation and management measure
CoC	IOTC Compliance Committee
CPC	contracting party and cooperating non-contracting party
DPP	director of public prosecutions
EEZ	exclusive economic zone
e-PSM	IOTC electronic port State measures application
FAO	Food and Agriculture Organization of the United Nations
GPS	global positioning system
IMO	International Maritime Organization
IORA	Indian Ocean Rim Association
IOTC	Indian Ocean Tuna Commission
IUU	illegal, unreported and unregulated
LSFV	large-scale fishing vessel
MAT	multiagency team
MCS	monitoring, control and surveillance
MOU	memorandum of understanding
NFDS	Nordenfjeldske Development Services
NGO	non-governmental organisation
PSM	port State measure
PSMA	2009 FAO Agreement on Port State Measures to prevent, deter and eliminate IUU fishing
RAR	risk assessment report
RFMO	regional fisheries management organization
SIOFA	Southern Indian Ocean Fisheries Agreement
SOP	standard operating procedure
SWIOFC	South West Indian Ocean Fisheries Commission
SWOT	strength, weakness, opportunity and threat
TSCM	technical surveillance counter measure
VMS	vessel monitoring system

EXECUTIVE SUMMARY

This Manual introduces the role and impact of successful evidence gathering in combating illegal, unreported and unregulated (IUU) fishing and describes the pillars for evidence gathering – the national legislation and regional and international obligations. It shows the weaknesses of some of the pillars, including the insufficiency of legislation in some countries, and offers models for improvements.

Procedures for gathering the evidence are presented and requirements for arrest are described. These are vital core activities which must be carried out with full knowledge and professionalism.

The next steps are prosecutions and administrative procedures. This Manual explains the basis for deciding which route to take, and how to prepare and submit information and evidence in each system. The role of the fisheries inspectors and prosecutors and need for liaison between them is described. Finally, the art of giving testimony in court is elaborated.

Some important follow-up actions include a proposal to include vessels on a regional fisheries management organization (RFMO) IUU vessel list, and information sharing with flag/coastal/port States, RFMOs and other networks.

Reference to fisheries inspectors in this Manual includes inspectors, authorised officers, fisheries officers, enforcement officers and others who are authorised to inspect, search for, gather and process evidence for fisheries offences.



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1

INTRODUCTION



1.1 BACKGROUND AND OBJECTIVE

IUU fishing and related activities have been the targets of the measures and actions taken by the Indian Ocean Tuna Commission (IOTC) in its efforts to achieve sustainability of the fisheries resources.

The measures and actions include:

- IOTC Resolutions comprising legally binding conservation and management measures (CMMs) for fishing and related activities, which address fisheries management, monitoring, control and surveillance (MCS) and statistics; and
- MCS procedures and processes to ensure compliance, including through reporting, inspection, information and communications and use of tools such as IUU vessel lists, a record of authorised vessels, vessel monitoring systems (VMS) and an observer programme.

They are based on obligations in internationally agreed instruments that include port State measures (PSMs), flag State duties, coastal State rights and high seas fisheries.

There are synergies between IOTC measures and actions and those adopted by other regional organisations in which many IOTC Contracting and Cooperating non-Contracting Parties (CPCs) participate.¹

A range of regional project initiatives² support countries in incorporating the agreed measures in national legislation and developing capacity to implement them.

However, having the legislation “on the books” is not enough. It needs to be enforced, and in order to do that the MCS and legal experts must have a clear understanding of evidence gathering and legal proceedings for fisheries offences.

The objective of this Manual is to enable the effective enforcement of the legislation – and to combat IUU fishing – by building the capacity of officers and inspectors from IOTC CPCs for gathering evidence through to its use in legal proceedings and in prosecutions of individuals or organisations that violate the legislation, particularly the aspects related to IOTC CMMs.

This Manual explains the rules and procedures for gathering, handling, preserving and using evidence with a view to combat IUU fishing in the IOTC area. Guidelines are given on implementing port State measures and preparing an IUU listing proposal for presentation at the IOTC Compliance Committee (CoC).

¹ They include the South West Indian Ocean Fisheries Commission (SWIOFC), the Southern Indian Ocean Fisheries Agreement (SIOFA), the Southern African Development Community, the Indian Ocean Commission and the Indian Ocean Rim Association (IORA).

² For example, through the World Bank SWIOFish projects and European Union ECOFISH programme.

Although the extent of the IUU fishing is currently not documented,³ it is known to be a serious threat from the overfished status of many fish stocks, the observer and compliance reports reviewed annually by the IOTC Compliance Committee, IUU Vessel Lists and other sources.

National and regional legal and MCS systems are the first line of both defence and attack against most IUU fishing and related activities. Together they provide a foundation and a complex web of tools that have regional and international reach.

Like the “butterfly effect”, where a butterfly’s moving wings may lead to a chain of events resulting in a cyclone far, far away, the quality and use of those tools will serve to protect and sustain the ocean’s fish stocks and combat IUU fishing.

Fisheries inspectors are in the front line. The evidence they collect, together with their skills in how to use it through investigations, procedures and eventual legal or administrative disposition of the offence, form the backbone of the war against IUU fishing.

It may also act as the wing of a butterfly. Successful detection and prosecution or administrative action has far reaching potential, such as: including a vessel on an IUU Vessel List thus prohibiting fishing in areas of many RFMOs; deterring further IUU fishing by many vessels through high fines, penalties, license revocation, imprisonment and forfeiture of the vessel; or discovering and punishing fisheries violations or crimes that are related to trade or transnational organized crime.

1.2 PREPARATION OF THE MANUAL – IDENTIFICATION OF CHALLENGES

The Manual was developed with input from IOTC CPCs covered by the SWIOFish2 project.⁴ It is based, among others, on reviews and analyses of their legal and MCS systems and a strengths, weaknesses, opportunities, threats (SWOT) analysis for each.

The complete review and analysis is in a separate volume, “Review and Analysis report”,⁵ available from the Secretariat of the IOTC to the IOTC CPCs covered by this project.

The SWOT analysis showed that legislative provisions needed strengthening in most countries and that interagency liaison was not well defined in many coun-

³ To date, there had been no basin-wide estimate of illegal fishing for the Indian Ocean, and the last broad scale estimates were based on a global study which uses data from the early 2000’s.

⁴ Countries surveyed through questionnaires were Comoros, Kenya, Madagascar, Maldives, Mozambique, Mauritius, Seychelles, South Africa, United Republic of Tanzania (referred to from here onwards as Tanzania), and Yemen. All except Mozambique and South Africa provided responses.

⁵ “Review and analysis of legal and monitoring, control and surveillance systems to support IOTC Manual Evidence in Fisheries Offences: effective collection and use” referred to in this Manual as the Review and Analysis report.

tries. The processes for prosecutions and administrative penalties needed further examination.

The full SWOT analyses for legal systems and MCS systems are in the Review and Analysis report.⁶ Some threats are summarised below (see [Box 1](#)); they introduce some of the challenges ahead. A fuller picture of the challenges is described in Section 6 of the Review and Analysis report.

⁶ Sections 2.4 and 3.4 respectively.

**Box 1 | Some threats to successful enforcement activities
in legal and MCS systems**

LEGAL SYSTEMS

Legislative provisions

- Weak legislation prevents or undermines enforcement activities at national/regional levels.
- Fisheries inspectors have limited rights of entry, investigation, information gathering, search, detention, seizure, arrest.
- Prosecutions can fail on technicalities where there are no provisions for presumptions, onus of proof, certificate evidence among others.
- Legal action does not have sufficient grounds for combatting IUU fishing because evidence is not collected and secured.

Interagency cooperation, fisheries/legal

- Disconnects between fisheries and other authorities result in failure to take legal action against fisheries offences or result in taking inadequate action.

Prosecutions process

- Cases are not initiated or are badly prepared and are eventually lost and IUU fishing continues.

MCS SYSTEMS

Institutions

- Development of standard operating procedures (SOPs) which are not in line with legislation and best practices could unintentionally limit capacity.
- Agencies may resist cooperation if they are concerned about encroachment on their mandates.
- Cooperation in relation to sharing electronic monitoring information for evidential purposes are often hindered on the grounds of confidentiality.

Human resources

- Lack of resources can limit training and employment of enough trained personnel.
- Insufficient protection of MCS personnel against threats such as coercion, corruption and conflict of interests.

Infrastructure

- Lack of investment and lack of operating budgets to support required infrastructure and its running costs.

This Manual introduces the role and impact of successful evidence gathering in combating IUU fishing and describes the pillars for evidence gathering – the national legislation and regional and international obligations. It shows the weaknesses of some of the pillars, including the insufficiency of legislation in select countries and offers recommendations for improvements.

Procedures for gathering the evidence are presented and requirements for arrest are described. These are vital core activities which must be carried out with full knowledge and professionalism.

The next steps are prosecutions and administrative procedures. This Manual explains the basis for deciding which route to take, and how to prepare and submit information and evidence in each system. The role of the fisheries inspectors and prosecutors and need for liaison between them is described. Finally, the art of giving testimony in court is elaborated.

Some important follow-up actions include a proposal to include vessels on an RFMO IUU Vessel List, and information sharing with flag, coastal and/or port States, RFMOs and other networks.



2

THE IMPACT OF EVIDENCE GATHERING IN COMBATING ILLEGAL, UNREPORTED AND UNREGULATED FISHING



2.1 FOUNDATION FOR ADMINISTRATIVE, JUDICIAL PROCEEDINGS AND REGIONAL MEASURES

Successful evidence gathering is an essential first step in detecting violations of national legislation or regional measures. The evidence may then be used in administrative or judicial proceedings or under legally binding CMMs of an RFMO. The role of evidence in these proceedings is explained in [Box 2](#).

Box 2 | Role of evidence in administrative proceedings, prosecutions and RFMO CMMs

Administrative proceedings: may be taken instead of judicial proceedings if allowed under national legislation. The offender sees the evidence, admits the offence, pays the amount required and may then resume fishing or other activities. The offender may be subject to additional conditions or penalties provided by law but cannot be prosecuted for the same offence. Evidence should prove the offence on the balance of probabilities.

Judicial proceedings:

Prosecutions (criminal actions) require evidence to be given that requires proof of the offence beyond reasonable doubt.

Civil actions require evidence to show damages on the balance of probabilities.

Either way, the rules on evidence in relevant legislation – including fisheries and evidence laws – must be followed. Where proof is sufficient and the case succeeds, the court may order fines or damages and impose custodial sentences and additional penalties such as revocation of licenses.

RFMO CMMs: Although most RFMO CMMs must be implemented through national laws, in some cases the evidence provided to RFMOs will result in regional sanctions. For example, the IOTC Resolution establishing an IUU vessels list requires evidence to establish presumptions of IUU fishing activities and list vessels. If a vessel is listed:

- A flag State is requested to take all the necessary measures to prevent the vessel from undertaking IUU fishing activities, including withdrawing its fishing licence or the de-registering of the vessel.
- A CPC is requested to take all necessary measures, in accordance with its legislation to ensure, among others, that listed vessels do not receive assistance from its flagged vessels and are refused entry into its ports.

The processes may overlap, for example offences related to fishing prohibited or protected species may be criminal, civil or administrative, depending on the States with jurisdiction over such conduct. However, the evidence must always be of the highest standard.

The evidence to be collected and processed will impact a wide range of fisheries offences and sub-sectors. A recent study (Belhabib and El Billon, 2022) analysed 8 000 fisheries offences between 2000 and 2020 and had the following results (see [Figure 1](#)).

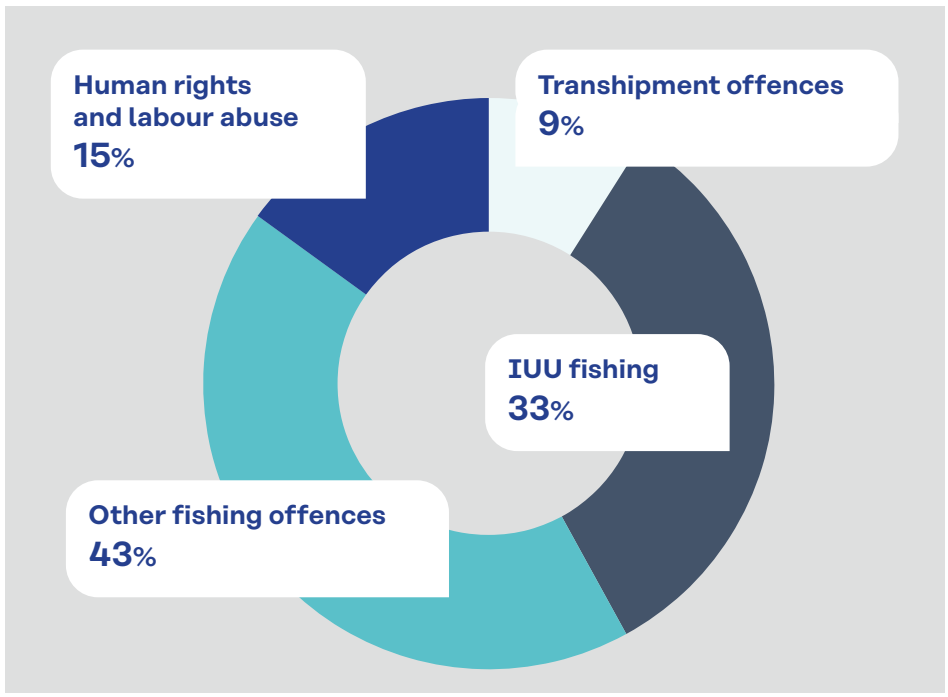


Figure 1 – Fisheries offences in the global oceans between 2000 and 2020

2 - THE IMPACT OF EVIDENCE GATHERING IN COMBATING IUU FISHING

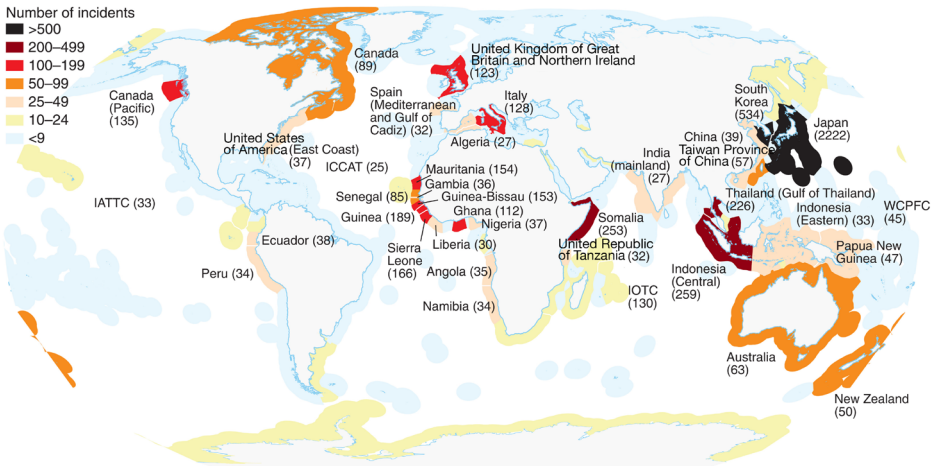


Figure 2 – Geographical distribution of fisheries illegal, unreported and unregulated fishing incidents
 Source: Belhabib, D., & El Billon, P. 2022. *Fish crimes in the global oceans*. *Science Advances*. Retrieved from https://www.science.org/doi/10.1126/sciadv.abj1927?utm_source=rss&utm_medium=rss&utm_campaign=rss-sciadv

Hotspots of reported fisheries-related offences in the world between 2000 and 2020 (see Figure 2). Data are extracted from the criminal record of fishing vessels, using exclusive economic zone (EEZ) boundaries. Offences from the United States of America Pacific coast and Mexico, northern Russian Federation, and Myanmar were not accessed at the time of this study because of time constraints or language barriers. WCPFC, Western and Central Pacific Fisheries Commission; IOTC, Indian Ocean Tuna Commission; ICCAT, International Commission for the Conservation of Atlantic Tunas; IATTC, Inter-American Tropical Tuna Commission.

It found that at least 33 percent of all recorded offences were associated with a small number of vessels – 450 industrial vessels and 20 companies originating from China, the European Union and tax haven jurisdictions.

Evidence may also reveal offences under other legislation such as smuggling, money laundering and fraud, but this Manual will focus on fisheries offences.

2.2 DETERRENCE

The aims of the legal processes are not only to ensure that the offender does not benefit from the offence and does receive proportional punishment; they also serve to deter violations by others.

Evidence, as the foundation for legal action, plays a vital role in securing conviction and deterrence. For maximum impact, some aspects of evidence gathering should be well planned.

It is not necessarily the number of successful prosecutions, fines or sanctions that deter IUU fishing. The consistency and quality of operations in identifying priority offences, detecting, proving and prosecuting them are equally important.

For example, where priority for inspection is given to offences that violate IOTC CMMs and violations are then detected, this could have a broader deterrent effect at regional level. For example, evidence of violations could result in inclusion of the vessel on the RFMO IUU vessels list which would then trigger sanctions by CPCs, magnifying the deterrent effect.

In identifying priority offences for inspection, the maximum level of fines and penalties in fisheries legislation may also be taken into account. Where the level is considered inadequate for deterrence, proposals to raise the maximum level may be considered.

The need for deterrence in the region is reflected in a recent analysis (Hosch, 2021) of measures to combat IUU fishing prepared for the Indian Ocean Rim Association (IORA). It reported that in 2019 the number of detected and sanctioned cases of IUU fishing in nine responding Indian Ocean countries was extremely low. Four of the countries did not issue a single fine in any of the fleet segments. It noted that there had been very few detected illegal fishing cases and/or sanctions across large fleets for a one-year period.

2.3 BROADER CONTROL OF ILLEGAL, UNREPORTED AND UNREGULATED FISHING, RELATED AND ASSOCIATED ACTIVITIES

The evidence gathered contributes to broader control of IUU fishing activities, including activities in support of IUU fishing, such as transshipment. It helps to understand the standard tricks and tactics of non-compliant operators, and of how specific operators tend to violate national legislation and CMMs.

In this way, control of IUU fishing activities may be broadened by a better understanding of the IUU practices, which could lead to strengthened detection procedures and operational or legal control.

The effect could be far-reaching. For example, the evidence could uncover international criminal activities such as smuggling that are prohibited by international

agreement⁷ and by some countries which do not allow fishing vessels to be used for transnational organized crime.⁸

MCS tools such as reporting and documentation requirements are used to control a wide range of fishing and related activities such as transshipment, refuelling and supply. They must apply to all types of vessels in national waters and flagged vessels in areas beyond national jurisdiction.

Evidence must show that a requirement has been violated; but in some cases, there may be evidence but no requirement. For example, where legislation has not kept pace with changing technologies and practices in VMS. In such cases, the evidence could show that legislation would need to be strengthened (see [Figure 3](#)).

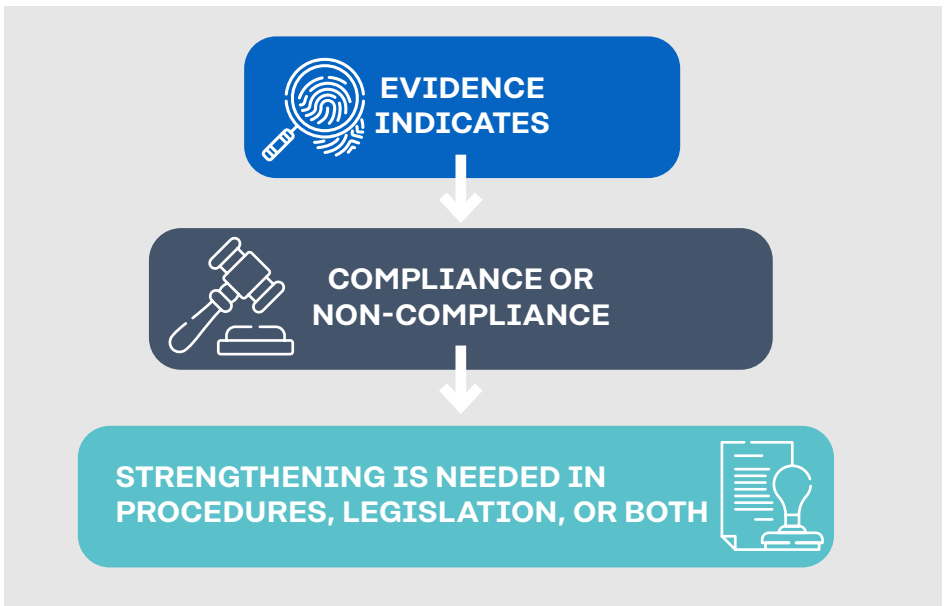


Figure 3 – Evidence collection and what it can signify

⁷ For example, the 2000 United National Convention against Organized Transnational Crime.

⁸ For example, United Republic of Tanzania: The Deep Sea Fisheries Management and Development Act, 2020, Section 38.

2.4 REGIONAL IMPACT: COMPLIANCE WITH IOTC MEASURES

Evidence is fundamental to support compliance with IOTC CMMs. It feeds into the national legal process which implements the CMMs and has a wider impact in the regional IOTC information and compliance systems.

IOTC CMMs fall into three categories – conservation and management of resources, MCS and statistics. There are usually over 50 active CMMs, available online in the IOTC Compendium.⁹

Some key MCS measures are noted below. They require countries to submit certain evidence to the IOTC Secretariat, which is then circulated regionally. This enables CPCs to take further action to combat IUU fishing. They relate to PSMs, an IUU vessels list and transshipment by large-scale fishing vessels (LSFVs).

Resolution 16/11 On Port State Measures to prevent, deter and eliminate Illegal, Unreported and Unregulated Fishing

The objective is to combat IUU fishing through the implementation of effective PSMs. The Resolution takes a step-by-step approach in providing controls for vessels requesting entry into port, certain measures when they enter port and requirements for inspections, information and communications.

Non-compliance may result in sanctions by the reporting port State including denial of entry or use of port for landing, transshipping, packaging and processing of fish not previously landed and for other port services. The other CPCs are notified and, based on the evidence of IUU fishing, may take appropriate actions if the vessel requests entry to their ports.

Three of the reporting requirements require submission of evidence.

- Where the CPC has denied the use of port, the IOTC Secretariat must be notified by official communication, of the reason for denial and any relevant evidence, including an electronic copy of the port inspection report.
- A copy of the inspection report must be transmitted to the master of the inspected vessel, the flag State, the IOTC Secretariat and others as specified, by official letter, with the inspection report and any additional evidence as attachments.
- Where, following an inspection, there are clear grounds for believing that a vessel has engaged in IUU fishing or fishing related activities, notification must be sent via official communication, with evidence attached, to the flag State, IOTC Secretariat and relevant coastal States, other RFMOs and the national State of the Master.

⁹ The compendium is updated systematically and maintained on the IOTC website where it can be accessed at <https://www.iotc.org/documents/compendium-active-iotc-conservation-and-management-measures>

Resolution 18/03 On Establishing a List of Vessels Presumed to have carried out Illegal, Unreported and Unregulated Fishing in the IOTC Area of Competence (Resolution 18/03 on IUU fishing¹⁰)

This Resolution describes a step-by-step system for listing and delisting vessels on the IOTC IUU Vessel List, as well as cross-listing with other RFMOs. Importantly, it also requires CPCs to take certain measures and actions against listed vessels. It applies to vessels, together with their owners, operators and masters that undertake fishing and fishing related activities for IOTC species or species covered by any CMM within the IOTC area.

The IOTC Secretariat must generally circulate information to CPCs and submit:

- initial information received on alleged IUU fishing to concerned flag States; and
- a draft IUU Vessel List with evidence to flag States where information indicates that their vessel(s) has engaged in IUU fishing.

The flag State must submit to IOTC a progress report on the investigation and findings of the vessel(s) alleged to have been involved in IUU fishing. It should include evidence and comments confirming that the alleged offence has either not taken place, or that the offender is being/has been prosecuted/sanctioned. The reporting should be by official letter with evidence annexed.

Resolution 19/06 On establishing a Programme for Transshipment by Large-Scale Fishing Vessels

The aim of this Resolution is to eliminate IUU fishing and the laundering of illegally caught tuna fish into market streams by monitoring transshipments, based on notifications, authorisations and data transmissions.

Reports must be made to IOTC on the results of investigations of possible violations of IOTC CMMs by LSFVs and carrier vessels where IOTC has indicated evidence exists.

2.5 STRENGTHENED FISHERIES MANAGEMENT AT NATIONAL AND REGIONAL LEVELS

Evidence of IUU fishing and related activities helps fisheries managers to pinpoint reasons why stocks may be declining. For example, it could be due to vessel's IUU activities, deficiencies in the use of MCS tools or insufficient legal requirements. Stock estimates could be influenced by these actions, but managers would only be able to take this into account where there is evidence.

¹⁰ This Resolution is referred to as Resolution 18/03 on IUU fishing from this point forward.

Typical evidence of IUU activities includes unlicensed or unauthorised activities, improper vessel registration or marking (e.g. intentionally falsified, concealed), non-compliance with retention, discard and bycatch mitigation requirements, failure to report, keep logbooks or provide information that is true, complete and correct. Stock estimates could be influenced by these actions, but managers would only be able to take this into account where there is evidence (see [Figure 4](#)).

It may be more difficult to produce certain evidence such as that needed for corruption, falsification and concealment but this would also be helpful to managers so they may detect weaknesses in the information used for management decisions.

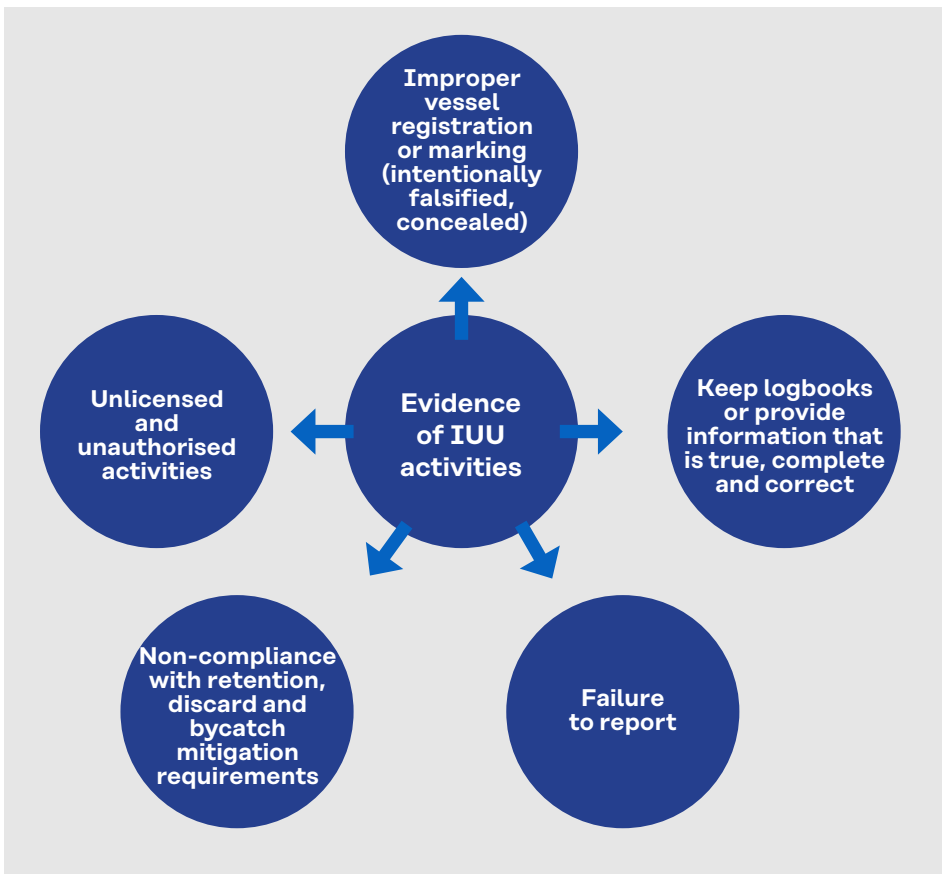


Figure 4 – Typical evidence of illegal, unreported and unregulated activities

3

LEGAL PILLARS AND COOPERATION FOR EVIDENCE GATHERING



The rules and practices for evidence gathering are supported by four pillars, described in section 3.1 to 3.4. They are (see [Figure 5](#)):

- international fisheries instruments, best practices and principles;
- national legislation;
- evidence, information and reporting requirements under IOTC CMMs; and
- interagency cooperation for evidence gathering where other national agencies such as police, navy or port authorities are authorised to inspect.

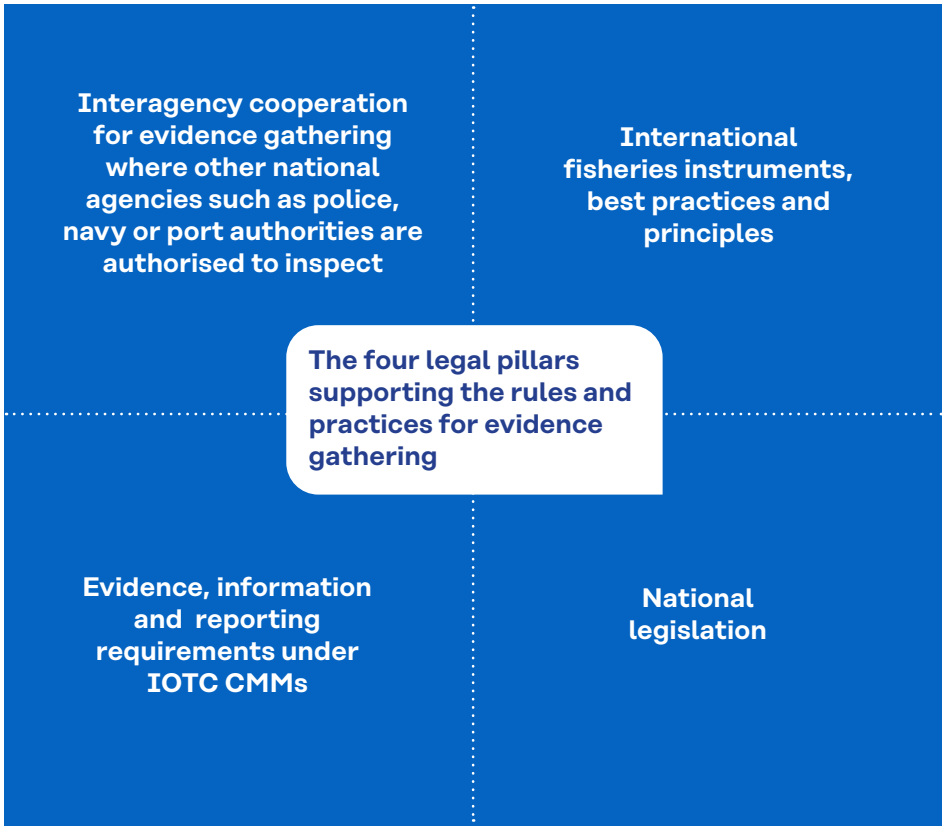


Figure 5 – Legal pillars and cooperation for evidence gathering

3.1 INTERNATIONAL FISHERIES INSTRUMENTS, BEST PRACTICES AND PRINCIPLES

NATIONAL APPLICATION OF INTERNATIONAL EVIDENTIARY REQUIREMENTS AND STANDARDS

International fisheries instruments may use different evidentiary requirements and standards for proving offences throughout the document. In turn, national evidentiary rules and legislation may differ from the various standards required in international fisheries instruments.

For example, various standards for proving offences are used throughout the 2009 Food and Agriculture Organization of the United Nations (FAO) Agreement on Port State Measures to prevent, deter and eliminate illegal, unreported and unregulated fishing (PSMA) using the standards shown in [Box 3](#) (for further detail, see Swan, 2016).

Box 3 | Evidentiary standards in the PSMA**“Sufficient proof”**

- Port entry must be denied where there is “sufficient proof” that a vessel seeking port entry has engaged in IUU fishing or related activities – Article 9(4).
- Withdrawal of denial of use of port may occur only if there is “sufficient proof” that the grounds were inadequate, erroneous or no longer apply – Article 11(4).

“Clear evidence”

- The use of port may be denied without inspection where there is “clear evidence” that the fish on board was taken in contravention of the requirements of a coastal State – Article 11(1)(c).

“Reasonable grounds to believe”

- The use of port may be denied without inspection where there are “reasonable grounds to believe” that a vessel was engaged in IUU fishing or related activities – Article 11(1)(e).

“Clear grounds for believing”

- After port inspection, the use of port may be denied where there are “clear grounds for believing” that a vessel has engaged in IUU fishing or related activities – Article 18(1).
- A flag State must, where there are “clear grounds to believe” that a flag vessel has engaged in IUU fishing or fishing related activities:
 - request another port State to inspect the vessel or take other measures – Article 20(2);
 - immediately and fully investigate the matter and take enforcement action – Article 20(4).

This diverse menu can be confusing for fisheries inspectors and managers, but even more so where national legislation does not use these standards or uses them in certain contexts, e.g. for civil or criminal law but not both.

Often, there is not a body of practice that either defines them, indicates whether one standard is higher than another or even clearly describes elements of the standard.

For example, “clear and convincing proof” can mean that the evidence must be substantially more probable to be true than not, and a greater degree of believability must be met than the common standard of proof in civil actions (preponderance of the evidence – i.e. where the facts more likely than not would prove the issue).

This is relative and may differ from country to country. There is no clearly defined distinction in international usage or elsewhere between “clear and convincing

proof”, “clear evidence” and “clear grounds for believing”, or other standards used in the Agreement.

It is suggested that national best practices be applied. For example, if “reasonable grounds to believe” is well understood, forms best practices in a country, is broad enough to incorporate standards such as “clear evidence”, “sufficient proof” and others, and is consistent with the aim of the relevant Article, it may be used consistently to replace the various standards used in the FAO Agreement.

The approach of using national best practices may also be applied to similar issues in other international instruments.

INTERNATIONAL COOPERATION IN FISHERIES VIOLATIONS

International concerns with the admissibility and transmission of evidence could arise where there is cooperation among countries in cases of fisheries violations.

National legislation should provide for evidence obtained through such mutual legal assistance. Evidence-gathering procedures by foreign fisheries inspectors and its admissibility in court proceedings should be clear (see [Figure 6](#)).

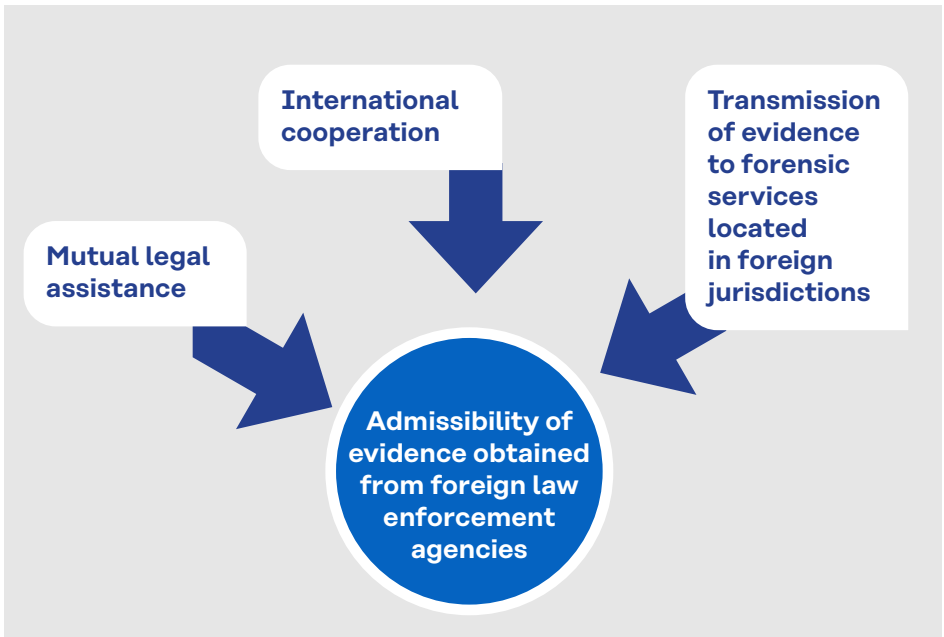


Figure 6 – Admissibility of evidence obtained from foreign law enforcement agencies

The existence of any bilateral or international agreements or networks on co-operation in the transmission of evidence should be ascertained, and applicable processes and of RFMO resources used.

PROCEDURES AND EVIDENCE FOR HIGH SEAS BOARDING AND INSPECTION

The 1995 United Nations Fish Stocks Agreement¹¹ sets out ground rules for inspection and evidentiary standards on the high seas in RFMO areas. Article 21(1) provides that authorised inspectors from a member of the RFMO may board vessels of another State (whether or not an RFMO member) for ensuring compliance with CMMs. Both States (inspecting and boarded) must be party to the Agreement. The procedure for high seas boarding and inspection is set out in Article 22(1).

Article 21(5) provides that where, following boarding and inspection, there are “clear grounds” for believing the foreign vessel has violated CMMs, the inspecting State may secure evidence and must promptly notify the flag State of the alleged violation.

Article 21(8) provides that where the flag State has either failed to respond to the notification by an inspecting State or failed to take necessary action and the alleged violation is serious, the vessel may be brought to the nearest appropriate port by the inspecting State. The inspecting State must immediately inform the flag State of the name of the port and the results of any further investigation. However, this is limited by Article 21(12) which clarifies that at the request of the flag State, the inspecting State must release the vessel to the flag State.

3.2 NATIONAL LEGISLATION

BEST PRACTICE MODEL LEGISLATION FOR INSPECTION, INVESTIGATION AND LEGAL PROCEEDINGS FOR FISHERIES OFFENCES

Evidence is the foundation for legal proceedings; where it is robust, desired outcomes will be served and the sustainability of the fisheries resources protected from IUU fishing activities.

Conversely, national legislation is the foundation for inspection, investigation and

¹¹ The United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (in force as from 11 December 2001). https://www.un.org/depts/los/convention_agreements/convention_overview_fish_stocks.htm

legal proceedings; where it is robust, the powers and responsibilities of all persons involved, and the rules of evidence will offer a sturdy platform and support a successful outcome of legal proceedings.

“Legislation” refers to all instruments having the force of law, including acts, laws, regulations, orders and others.

So, where legislation is weak or non-existent the fisheries inspectors, observers, legal and administrative authorities have less opportunity to obtain evidence or use it in the legal process. Consequently, the sustainability of the fisheries resources is not well protected from IUU fishing activities. In this case, countries should review and strengthen legislation where needed.

ELEMENTS OF FISHERIES OFFENCES

Some basic elements of fisheries offences are described below, they will be relevant for identifying the evidence that is needed to prove an offence.

Jurisdictional Area

The application of national fisheries legislation to specific jurisdictional areas is usually described in fisheries legislation, which normally include areas:

- under national jurisdiction (*includes internal, archipelagic and territorial waters, exclusive economic zone (EEZ)*); and
- beyond national jurisdiction for nationals (*includes persons or flagged vessels in the high seas, other countries’ jurisdictions*).

Evidence may be needed that describes the place where the offence occurred and the nationality of the person or vessel committing an offence in areas beyond national jurisdiction.

Activities and their definitions

Specific activities under the scope of the legislation are usually described and defined in fisheries legislation. They normally include, among others:

- fishing¹²
- fishing-related activities or “related activities”¹³

¹² Best practices definition: searching for, attracting, locating, catching, taking or harvesting fish or any activity which can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish.

¹³ Best practices definition: any operation in support of, or in preparation for, fishing, including the landing, packing, processing, transshipping or transporting of fish that have not been previously landed at a port, as well as provisioning of personnel, fuel, gear and other supplies at sea.

- use of a vessel¹⁴
- selling/buying/trading

The activities and their definitions must be understood in order to ensure the applicability of evidence to certain activities.

Framework of legal requirements in fisheries legislation

Offences violate the legal requirements of national legislation, and requirements may vary from country to country. However, they are generally organized into the following framework:

- CMMs¹⁵
- access by foreign fishing vessels¹⁶
- information requirements¹⁷
- licensing¹⁸
- MCS¹⁹

Responsible persons

The persons responsible for offences involving vessels may vary among countries. The owner, operator, master or other may be designated. Best practices refer always to the vessel operator, and define "operator" as:

"any person who is in charge of, responsible for the operations of, directs or controls a vessel, including the owner, charterer and master and includes the beneficiary of the economic or financial benefit of the vessel's operations".

The definitions of "operator", "master" and "charterer", among others, are important to establish who should be accused of the offence.

¹⁴ Best practices definition of vessel: vessel means any vessel, ship of another type of boat used for, equipped to be used for, or intended to be used for, fishing and fishing related activities."

¹⁵ e.g. species, gear, prohibited areas.

¹⁶ e.g. valid agreement needed, other conditions.

¹⁷ e.g. information must be true, complete and correct, confidentiality, information sharing.

¹⁸ e.g. activities to be licensed, process, grounds for required, discretionary license denial.

¹⁹ e.g. use of VMS, port State measures.

Application of conservation and management measures of regional Fisheries management organisations

The mechanism for implementation of conservation and management measures (CMMs) of regional fisheries management organisations (RFMOs) in national legislation varies from country to country. Some require implementation through adoption of laws, regulations or schedules, others simply require notification in the national Gazette or other similar mechanism that does not require legislative approval.

Where RFMO CMMs are implemented, it will be important to understand the evidentiary requirements under both the CMM and applicable national legislation.

The RFMO compliance tools may provide further evidence, for example whether a vessel is listed on the Record of Authorised Vessels or an IUU Vessel List.

ESSENTIAL POWERS OF PERSONS AUTHORISED TO INSPECT FISHERIES OFFENCES

Although the legislation differs among countries, authorised officers – including but not limited to fisheries inspectors – are typically given certain specific powers to gather evidence in fisheries matters and perform investigations. The suggested text for each of the provisions described here is provided in the model legislation in [Annex 1](#). Essential powers of persons authorised to inspect fisheries offences can be seen in [Figure 7](#).

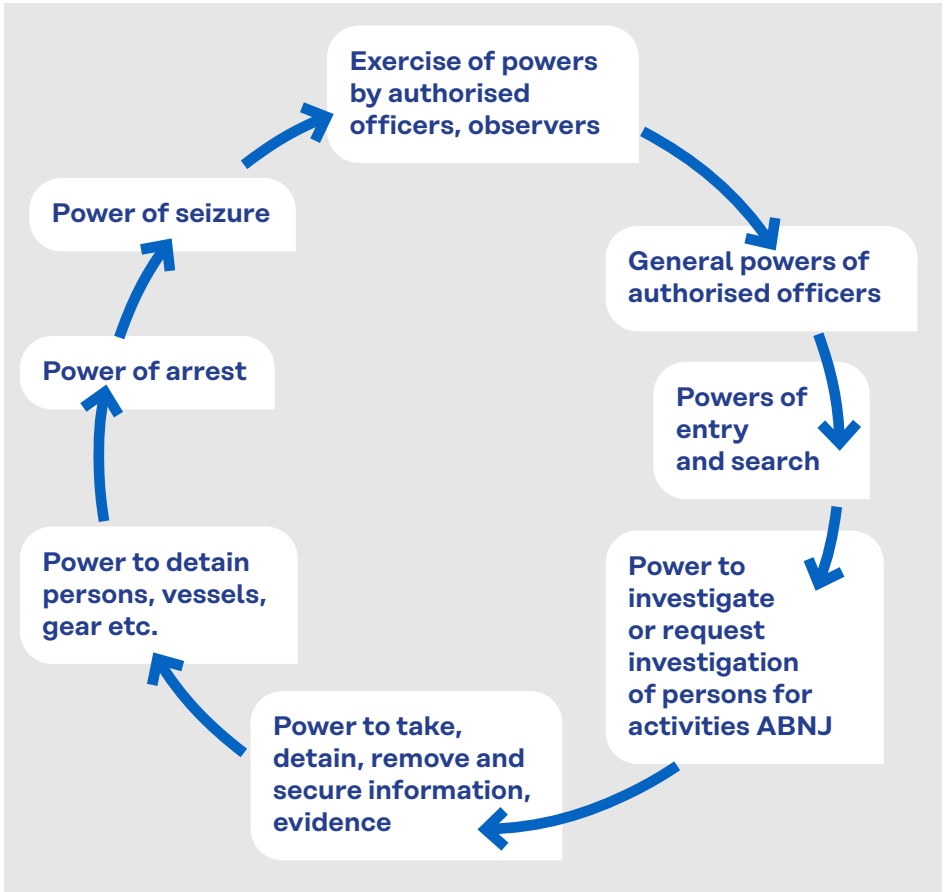


Figure 7 – Essential powers of persons authorised to inspect fisheries offences

Exercise of powers by authorised officers, observers

Legislation usually provides that authorised officers and observers may exercise their powers within and beyond areas of national jurisdiction in accordance with international law.²⁰ This is important as it enables exercise of flag State jurisdiction in areas beyond national jurisdiction as well as supporting effective exercise of hot pursuit.

²⁰ Almost all countries covered in the Review and Analysis report allow for this.

General powers of authorised officers

Authorised officers may do such things and give directions as are reasonably necessary to perform their functions, powers and duties and use reasonable force.²¹ This general provision is important as specific provisions may not foresee all circumstances which may arise.

Powers of entry and search

Legislation should allow authorised officers, without a warrant, to enter and search vessels and premises or other places. Entry and search should apply to vessels and land-based inspection.

It is common to empower authorised officers to order any fishing vessels to stop, stay on board, enter and search any vessel, vehicle or aircraft, including breaking open any hold or container they reasonably believe may contain evidence of an offence. This may be done in the normal course of inspection without requiring a reasonable belief that evidence will be found, except for breaking open holds/containers.

This may also be done in situations of hot pursuit where the pursued vessel proceeds to areas beyond the jurisdiction of the coastal State, except for territorial sea of another country.

A typical related power is to take or order the master of a vessel to take the vessel to any place, port or harbour in the territory of the coastal State for the purpose of carrying out any search, examination or enquiry.

For vessels in port, the power to monitor landing and transshipment operations is given, including taking samples, photographs, videos and relevant documentation.

Similarly, the power of entry, examination and search of any land-based premises is usually given, except for dwelling houses, to ascertain compliance with the legislation. This should include any fish processing establishment or any other place where fish or fish products are kept or stored.

Persons may be stopped to examine items in their possession. Information may also be asked of any person(s) carrying out activities for which a license is required, is associated with a vessel, premises etc or generally for enforcement of the legislation.

Powers usually include examination of gear, equipment, records, electronic equipment, fish and other.

²¹ Only two countries show full integration of this on the dashboard.

Power to investigate or request investigation of persons for activities beyond areas of national jurisdiction

The authorised officer normally has powers to investigate any person (natural or legal) where there are reasonable grounds for believing that they or it are associated directly or indirectly with any vessel or activity that may not be complying with the Act in areas beyond national jurisdiction.

Requests to another State to investigate may be made. Authorised officers may have the power or provide evidence to the appropriate national agency to request another State to carry out investigations where there is reasonable belief that the person in question has been involved in IUU fishing in violation of the Act or RFMO measure. This would enable investigations into nationals (people and vessels) in areas beyond national jurisdiction, or for any other vessel or person.

Power to take, detain, remove and secure information, evidence

Typical powers given to authorised officers are to inspect, take, remove, detain and secure samples, documents, logbooks (including electronic logbooks), and other information and to make copies, photographs and videos.

The power to require production, examine and make copies of documents is essential for evidence gathering and useful in the case of:

- logbooks
- certificates
- permits
- charts
- authorisations
- licences

They powers may normally be exercised in any place except houses used exclusively for dwelling. However, inspections may usually be taken in premises that are attached to dwelling houses and used for activities under the scope of the act.

Authorised officers may take statements and interview witnesses. This involves asking questions to obtain information that may reasonably be required to monitor or enforce the legislation. When doing so, they may require the person to provide answers and explanations, and to produce any relevant license, approval or other document.

Power to detain persons, vessels, gear etc.

The power of detention usually applies to everything – persons, vessels, vehicles, packages, document, gear, equipment, fish, etc. It is normally effective for whatever time is reasonably necessary for examination or search.

Where a vessel or vehicle is detained, a Notice of Detention must be given to the operator and transmitted to relevant government agencies. Where it is a foreign vessel, the flag State must be notified.

Power of arrest

Legislation typically gives the authorised officer the power of arrest. It may give the officer, who believes on reasonable grounds that a person is committing or has committed an offence, the authority to:

- order the person to immediately cease and desist;
- request and verify their particulars, e.g. name, date of birth, address, occupation; and
- arrest the person without a warrant.

Where a person associated with a foreign vessel is arrested, the flag State should be notified.

Power of seizure

Authorised officers normally have the power to seize anything they reasonably believe was/is being used or as provided in some legislation, is intended to be used in the commission of an offence.

Legislation may, for greater clarity, provide an indicative list of items that may be seized under certain conditions, such as any evidence of contravention of a CMM of a relevant RFMO, passports and seamen's' record books. Seizure of fish that are diseased or unfit for human consumption and items that have been forfeited or unlawfully removed from custody may also be included.

Items should be delivered into custody and a written notice of seizure, including grounds for seizure, should be given to the person from whom the item was seized.

Responsibilities of observers, including under an RFMO observer scheme

Responsibilities of observers typically include observing, monitoring, collecting, recording, assessing, verifying and reporting activities under the legislation. This

would involve taking photographs or videos, monitoring the implementation of CMMs and other responsibilities required to discharge the observer's functions. Legislation may require observers to:

- record and reporting fishing activities, vessel position, gear;
- observe and estimate catches, identify catch composition;
- collect information to cross-check logbook entries; and
- carry out other scientific work.

Responsibilities of all persons to authorised officers, observers

To support authorised officers and observers in their work, legislation normally requires all persons to comply with their instructions and provide all information they request. It prohibits persons from a long list of actions including obstructing, threatening or interfering with officers and observers as they perform their duties.

EVIDENTIARY AND INFORMATION PROVISIONS IN FISHERIES LEGISLATION

Although the legislation differs among countries, certain provisions addressing information and evidentiary matters are generally included. They are typically provided in the country's principal fisheries legislation. The provisions described are those which should be included in national legislation based on best practice (see [Figure 8](#)).

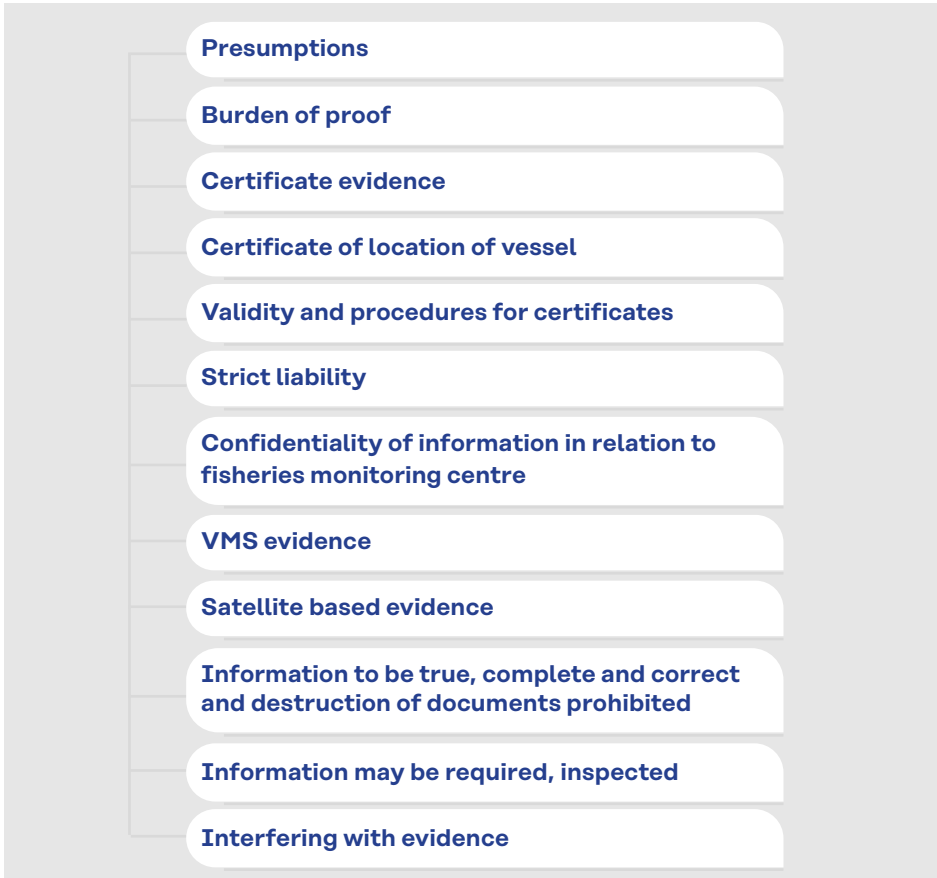


Figure 8 – Evidentiary and information provisions in fisheries legislation

The suggested text for each of the provisions described here is provided in the model legislation in [Annex 1](#).

Presumptions

Presumptions which facilitate proof of an offence may be in legislation; they are prima facie proof meaning they may be rebutted. For example:

- All fish found on board a vessel used to commit an offence are presumed to have been caught during the commission of the offence.

- Information given is presumed to have been given by the vessel operator.
- Position fixing instruments on enforcement vessels or aircraft are presumed to be accurate.

However, those responsible for gathering evidence should not rely on the presumptions alone to win the case for them. It is essential that other corroborative evidence, such as the vessel's logbooks, are secured. Otherwise, the presumption may be rebutted, and the case lost.

Burden of proof

The onus of proof for prosecutors to prove the case may be reversed by legislation. For example, instead of requiring the prosecutor to prove that a person held a licence, the accused person must prove that they held a licence if one is required, or that the information given was true, complete and correct. Reversal of the burden of proof in this manner is common practice in natural resource legislation, including fisheries.

Certificate evidence

A certificate can be provided by authorised officers or other designated persons as evidence in specified matters, and it will be prima facie evidence of all facts averred in judicial proceedings unless the contrary is proved, including specifying for example:

- nationality or type of vessel;
- validity and holder of licence;
- location of vessel at specified time;
- condition of fish;
- whether a piece of equipment is gear;
- whether an appended catch report or other was given by a vessel;
- and
- whether an offence was committed against the laws of another State.

Certificate of location of vessel

Where the place or area in which a vessel was alleged to have been at any given time(s) is material in a case, then the place stated in a certificate given by an authorised officer will be prima facie evidence of its location.

Validity and procedures for certificates

This provision sets out a procedure involving the service of a certificate on the defendant prior to its production in court and allowing the defendant a period in which to object so that it won't be used as prima facie evidence.

Strict liability

In a prosecution for an offence under the legislation, it is not necessary for the prosecution to prove that the defendant intended to commit an offence or to engage in any conduct that comprises the offence. Proof that the offence was committed is sufficient, intent is not a requirement.

Confidentiality of information in relation to fisheries monitoring centre

This provision specifies where confidential information may be released, including to a prosecutor, persons empowered to ensure compliance with the Act or obligations under international law and to an RFMO.

Vessel monitoring system evidence

This involves a presumption that all information from a mobile transceiver unit came from the identified vessel, was accurately transferred and was given by the operator. Requirements for a certificate, which will be prima facie evidence, are given.

Satellite-based evidence

Evidence from satellites that have capacity to provide accurate tracking of vessels is admissible and presumed to be accurate, whether or not a vessel intentionally transmits through such satellites.

Information to be true, complete and correct and destruction etc. of documents prohibited

Fisheries legislation should require all information given under the Act to be true, complete and correct, and prohibit obliteration, destruction or other of documents.

Information may be required, inspected

Legislation should provide that everyone who carries out activities under its provisions must maintain such records and information as required and supply them to the authorities responsible for fisheries. Records and information may be audited or inspected, and anyone commits an offence who fails to keep the records and information or does not comply with inspections.

Interfering with evidence

Fisheries legislation typically prohibits interference with evidence and includes examples of interference such as destruction of evidence, removing items held in custody and interfering with VMS.

EVIDENTIARY PROVISIONS IN OTHER LEGISLATION

In addition to the requirements under fisheries legislation, basic requirements for evidence usually appear in national legislation relating to civil procedure, criminal procedure/codes and evidence acts. The relevant national legislation for countries in this study is listed in the Review and Analysis report.²² The provisions described below are those which should be included in national legislation based on best practice.

Standard and burden of proof

The standard of proof is the measure by which a court or tribunal determines whether a party has established facts to a sufficient degree in order for the entire case or a particular issue to be decided in its favour. The burden of proof, sometimes known as the “onus”, is the requirement to satisfy that standard.

The standard of proof is not rigid but is the degree or range of certainty within which facts need to be established. In most jurisdictions:

- In *criminal proceedings* the defendant is presumed innocent until proven guilty. The burden of proof is on the prosecution to prove its case “beyond reasonable doubt”, a high standard of proof (unofficially, the 99 percent test).
- In *civil or administrative cases*, the burden of proof is on the claimant and the standard of proof is based on a balance of probabilities. The court or tribunal must be satisfied that, on the evidence, the occurrence of the event was more likely than not (unofficially, the 51 percent test).

²² Annex 7.3.

Admissibility and weight of evidence

Judges decide admissibility, and, if the evidence is admitted, jurors decide what weight to give it.

Evidence that is indefinite, vague, or improbable will be given less weight than evidence that is direct and unrefuted. For example, a criminal defendant's testimony that he had never been at the scene of a crime would be given little weight if his fingerprints were found at the crime scene and witnesses testify, they saw him at the scene. Similarly, evidence given by a witness who testifies from personal observation is of greater weight than evidence offered by a witness who is testifying from general knowledge alone.

Evidence, whether physical or testimony, must be admissible in court. The general rule is that if evidence is relevant, it will be admissible, unless it is excluded by a law or at the discretion of the court.

Evidence is relevant if it logically goes to proving or disproving some fact at issue. It is admissible if it has been properly obtained and relates to the facts in issue or to circumstances that make those facts probable or improbable.

What is a fact in issue will depend upon what the elements of the offence charged are and, as a result, what the prosecution has to prove, and any defence put forward by the defendant.

Admissible evidence is decided by the judge and must generally meet the following criteria (see [Figure 9](#)):

- **Authentic.** Proven to be what it claims to be and is not altered or tampered with.
- **Reliable.** Usually confirmed by a fact or testimony of expert witnesses.
- **Relevant.** The evidence effectively proves or disproves a fact of the case. However, relevant evidence may be of little weight due to its lack of credibility or believability.
- **Original.** It is not secondary evidence, e.g. a copy of a document or photograph of an object, unless the original is not available to be produced in court.

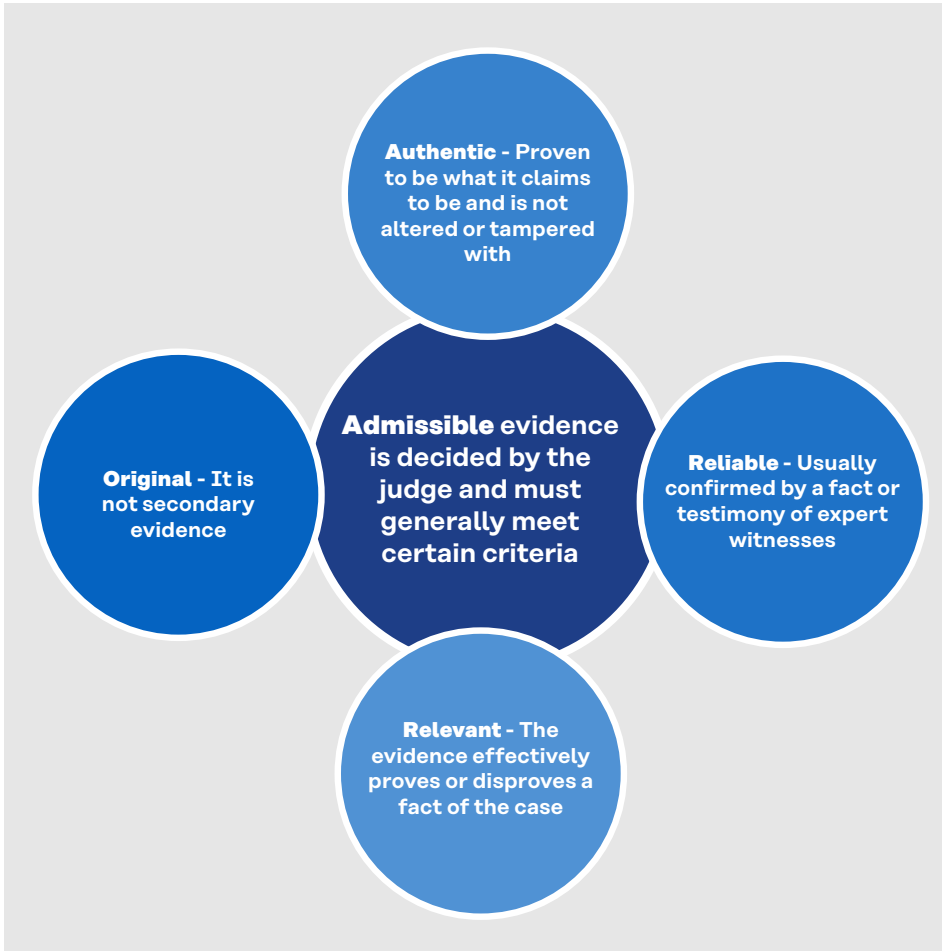


Figure 9 – Criteria for admissible evidence

A court is likely to rule that evidence is inadmissible for a range of reasons such as evidence being unfairly prejudicial, misleading, hearsay, irrelevant etc. see [Figure 10](#) for a more detailed explanation.



Figure 10 – Common reasons for inadmissible evidence

LICENSING REQUIREMENTS FOR NATIONAL AND FOREIGN VESSELS

Evidence of illegal fishing may include non-compliance with licensing requirements in fisheries legislation, by both national and foreign vessels. These requirements must be well understood and used in evidence gathering and legal or administrative cases.

A checklist of standard licensing-related procedures and requirements where evidence of non-compliance may be discovered is shown in [Box 4](#).

Box 4 | Standard requirements where evidence of non-compliance may be discovered

1. Activities requiring licenses, authorisations, other permissions or registrations

Legislation usually requires licenses, authorisation or other permissions for a range of activities.

For example, fishing, related activities (e.g. transshipment), landing, fish aggregating devices, use of aircraft/drones for fishing, gear, VMS, test fishing and marine scientific research. National vessels must have valid authorisations for fishing in areas beyond national jurisdiction.

Evidence that a valid and applicable license, authorisation or other was held will be essential.

2. Terms and conditions of licenses, etc.

Licenses, etc are subject to terms and conditions. Some may be included in the legislation, while others may be attached to the individual licence, etc. Evidence of non-compliance with the terms and conditions may be discovered.

For example, general conditions in legislation may require a valid license to be on board a vessel or at the relevant office and that the license holder produce it to an authorised officer on request, to maintain books and make reports as required by the national authority or a relevant RFMO.

Specific conditions may be required for certain activities, such as landing, transshipment, fish aggregating devices, VMS, quality of fish on board, statistical documentation and other.

3. Activities by foreign fishing vessels may be subject to additional requirements

Legislation usually describes conditions for fisheries access, as well as the requirements for licensing and terms and conditions described above. Evidence of non-compliance may be discovered.

For example, access and licensing may be subject to an access agreement for the foreign vessel, which has additional terms and conditions. Flag State responsibilities may be included in the agreement, as well as requirements to comply with the CMMs of an RFMO. Foreign vessels must hold an authorisation from their flag States to fish in areas beyond their national jurisdiction.

4. Application procedure and grounds for denial of licences, etc,

The applicant is required to provide certain information in the application forms, and grounds for license denial are stated. Evidence that the correct information was not given, or has changed without notification, may be discovered.

5. Fees, duration of licenses, suspension/revocation

Legislation provides for payment of fees, duration of licenses and suspension or revocation.

Typical grounds for suspension or revocation are where:

- it is required by national legislation, access agreements, RFMO CMMs or judicial/ administrative proceedings; and
- the flag State has suspended or revoked the license or authorisation for foreign vessels.

VESSEL REGISTRATION REQUIREMENTS

Fisheries legislation usually requires vessels to be registered before a license is granted, and this is done by a government agency operating under different legislation, such as marine transport.

The vessel to be registered may be owned by nationals or foreigners and must comply with registration requirements under the laws of the registering agency.

When a vessel is registered the country's flag is granted to the vessel (it becomes the "flag State") and it must comply with national legislation, including fisheries legislation, within and beyond areas under national jurisdiction.

The flag State is responsible for "effective control" of the vessel in areas beyond national jurisdiction. It must ensure the vessel complies with the laws of any country where it operates, as well as with the CMMs of any relevant RFMO in its area of

competence. For the IOTC, this would include the entire area of the South West Indian Ocean, including national areas.

The fisheries agency has no direct authority in deciding whether to grant a registration to a fishing vessel. There is a risk that a vessel that has been or is likely to be involved in IUU fishing could be registered. This would make “effective control” very difficult.

Fisheries legislation may provide that registration of a foreign vessel is invalid for purpose of license issuance for fishing or related activities unless there was prior approval by the fisheries agency.

Criteria for such prior approval of the registration by the fisheries agency may be given, for example whether:

- the vessel is or has been on an RFMO IUU Vessel List;
- the vessel or the operator has been involved in non-compliance with national fisheries legislation or RFMO CMMs over the past ten years;
- the vessel is fit for the purposes of fishing and related activities;
- the vessel is in compliance with the fisheries legislation;
- the vessel’s operator or crew have been involved in transnational criminal activities over the past ten years; and
- there is evidence of any other activity that indicates the likelihood of non-compliance.

Evidence of any non-compliance could therefore be important for purposes including registering foreign vessels as well as for monitoring the compliance of flag vessels with laws of other countries and RFMO CMMs beyond areas under national jurisdiction.

3.3 EVIDENCE, INFORMATION AND REPORTING REQUIREMENTS UNDER IOTC CONSERVATION AND MANAGEMENT MEASURES

Gathering evidence and information and assessing compliance with IOTC conservation and management measures (CMMs) require an understanding of the IOTC Resolution 18/03 on IUU fishing, as well as reporting requirements under various other Resolutions.

This is comprehensively addressed in IOTC documents and publications:

- *IOTC Inspections Guide*
- *IOTC Reporting Obligations*

Evidence is required to report contraventions of IOTC CMMs to IOTC under Resolution 18/03 on IUU fishing.

Its measures apply to vessels, together with their owners, operators and masters that undertake fishing or fishing related activities for species covered by the IOTC Agreement or by the IOTC CMMs within the IOTC Area of Competence.

The information or evidence that needs to be produced appears below, as described in the IOTC Inspections Guide.

“Evidence” is defined as all the information that can assist to establish the facts in question, and “information” is “suitably and sufficiently documented data which is capable of being presented as evidence to the Compliance Committee and/or Commission of any facts in issue”.

Evidence and information, as provided in IOTC Resolution 18/03, include:

- reports regarding the alleged IUU fishing activity from CPCs relating to IOTC CMM in force;
- trade information obtained on the basis of relevant trade statistics such as those from statistical documents and other national or international verifiable statistics; and
- any other information obtained from other sources and/or gathered from the fishing grounds such as:
 - information gathered from inspections undertaken in port or at sea;
 - information from coastal States including VMS transponder or automatic identification system (AIS) data, surveillance data from satellites or airborne or seaborne assets;
 - IOTC programmes, except where such a programme stipulates that information gathered is to be kept confidential; or
 - information and intelligence collected by third parties either provided directly to a CPC or via the IOTC Executive Secretary.

Activities constituting IUU fishing and the applicable IOTC Resolutions are presented in [Table 1](#) of the *IOTC Inspections Guide*.

Reporting obligations for each IOTC Resolution are shown in IOTC Reporting Obligations. It presents a table showing for each Resolution whether the flag, port, coastal, and/or market State(s) has (or have) reporting obligations.

The actual reports, given by States, also reflect compliance by their flag vessels. This can be a source of evidence that indicates whether vessels are generally obligated to implement IOTC CMMs and/or are effectively controlled.

IOTC Reporting Obligations focuses on the Resolutions that require reporting and explains, among others, technical and reporting requirements. They are grouped according to objectives, including fisheries management, MCS, mandatory statistics and market-related measures.

Reporting requirements through the annual Report of Implementation, the standard Compliance Questionnaire and the National Report to the Scientific Committee are noted.

The MCS reporting requirements and annual reports could also provide a source of evidence on obligations, procedures and historical trends that may be useful for a particular case.

3.4 INTERAGENCY COOPERATION

Several national agencies typically have legal authority to inspect and enforce various activities relating to fisheries. This could include the fisheries authorities, enforcement agencies (police, navy, coast guard), port authorities, customs and immigration, environment, labour and other.

Inspectors from other agencies may not be trained to gather evidence for fisheries offences. This could make evidence gathering and any follow-up legal or administrative action difficult and confusing, especially where there is low interagency communication or coordination.

IOTC Guidelines on interagency cooperation, although aimed at port State measures, usefully describes requirements for interagency integration and coordination, including in operational and technical matters. There is a focus on coordination of activities and exchange of information at national and regional levels. An interagency Memorandum of Understanding is recommended, some elements appear in [Box 5](#) below. It would be useful to draw on this to strengthen cooperation for evidence gathering.

Box 5 | Model interagency MOU for evidence gathering, communications and coordination

INTERAGENCY MEMORANDUM OF UNDERSTANDING (MOU)

Objectives of an interagency MoU to combat IUU fishing and fishing related activities

- strengthen working relationships between national Fisheries Authority and relevant agencies (to exercise effective evidence gathering and fisheries enforcement for legal action);
- strengthen combined efforts of agencies to effectively implement national laws and international obligations (to combat IUU fishing and fishing related activities);

MoU among applicable agencies

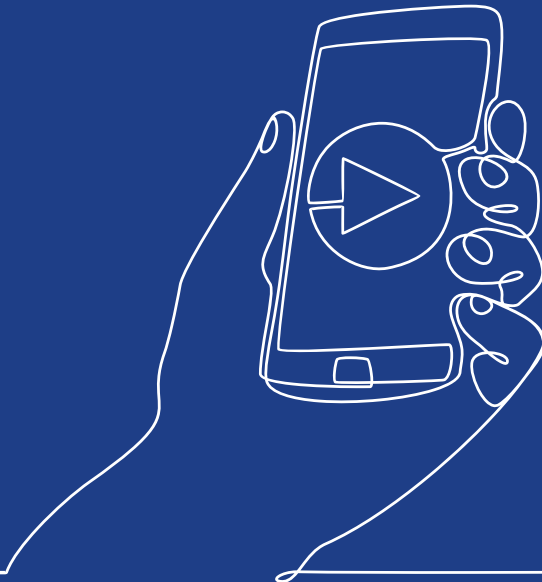
- | | |
|----------------------------------|--------------------------|
| → Fisheries | → Veterinary authorities |
| → Port authorities | → Labour authorities |
| → Maritime/transport authorities | → Police |
| → Customs authorities | → Coast guard/navy |
| → Immigration authorities | → Attorney general |
| → Health/Sanitary authorities | → Foreign affairs |

The MoU should:

- ensure the fisheries authority has lead responsibility for measures involving fisheries and fisheries related activities;
- specify the roles of all agencies to requirement of evidence gathering for fisheries offences;
- describe the decision-making authority and process; and
- describe communications requirements, including focal points, contacts and databases.

4

PROCEDURES FOR GATHERING EVIDENCE



4.1 POWERS OF AUTHORISED OFFICERS AND OBSERVERS FOR INSPECTION AND EVIDENCE-GATHERING

The legal best practices powers of authorised fisheries officers and observers to carry out inspections and investigations, and of inspectors and observers to gather evidence were elaborated in Section 2.1. They included the:

- exercise of powers by authorised fisheries officers and observers;
- general powers of authorised officers;
- powers of entry and search;
- power to investigate or request investigation of persons for activities beyond areas of national jurisdiction;
- power to take, detain, remove and secure information, evidence;
- power to detain persons, vessels, gear, etc.;
- power of arrest;
- power of seizure;
- responsibilities of observers, including under an RFMO observer scheme; and
- responsibilities of all persons to authorised officers, observers.

Not all countries include all of the above powers in their legislation, as evidenced by the dashboard and assessment of national legislation in the Review and Analysis report.²³

4.2 RISK ASSESSMENT

Risk assessments should be conducted routinely as part of an MCS system. There are two primary ways in which risk assessments are relevant to evidence gathering:

- the information considered during the risk assessment may itself be evidence; and
- the result of the risk assessment may indicate a need to gather further evidence in relation to the vessel or person concerned.

Risk assessments in the context of the IOTC are required in relation to port State measures, discussed below. However, risk assessments and due diligence should

²³ Section 2.3 and Annex 4.

be more broadly integrated into routine MCS work, such as licencing and authorisation procedures, vessel registration procedures, and planning of patrols and inspections at sea (see an example in [Figure 11](#)).

PORT STATE MEASURES REQUIREMENTS FOR ENTRY INTO PORT

Any foreign vessel that is seeking port access must provide certain information by a specified time (usually 24 or 48 hours prior to entry) in an advance request for entry into port (AREP). IOTC has developed an electronic platform for port State measures, the e-PSM,²⁴ which includes a form for the AREP.

The AREP requires information about the vessel, previous port calls, owner, fishing and transshipment authorisations, catch onboard and to be offloaded, VMS, estimated date and time of arrival and other details.

Based on this information, the port State authorities can assess the level of risk involved in allowing the vessel to enter and use its port, based mainly on its likely involvement in IUU fishing or related activities. Depending on the level of risk, a decision must be taken to:

- deny entry into port;
- allow into port only for purposes of inspection and deny use of port for landings, transshipment, supplies and other;
- allow into port and use of port, subject to inspection; and
- allow into port and use of port, without inspection.

COLLECTION OF EVIDENCE DURING THE RISK ASSESSMENT PROCESS

Two IOTC publications describe the port State measures risk assessment processes, information is summarised below.

- *IOTC PSM Procedures*
- *IOTC Guidelines on interagency cooperation*.

A component of the e-PSM application contains a tool that provides regional-based information to assist risk analysis of the AREP: the risk assessment report (RAR). It is available as a reporting feature to inform the user about a potential issue called a “warning” regarding a vessel and its owner.

²⁴ e-PSM Manuals for use by flag States and port States are available on the IOTC e-PSM website (<http://epsm.iotc.org>)

The RAR is an intelligence report dedicated to a vessel and based on different sources of information to assist the port State in vessel risk assessment assigning a high, medium or low risk profile to a vessel. It was designed to update and facilitate electronic use of a Checklist within the e-PSM for assessment.

In the process of deciding whether to grant a vessel port entry and use of port and to inspect, together, the RAR and Checklist are designed for internal use by the port State to record relevant:

- actions (e.g. receipt of AREP);
- information (e.g. vessel listed on IUU or authorised vessel lists); and
- communications (e.g. with flag State, vessel, other).

The outcomes provide the basis for briefing the inspection team and advising them of the level of risk and where special attention needs to be focused during the inspection.

The purpose of the RAR is to compare the vessel's declaration versus information in database(s). It flags any IUU listing, offers a review of activity history (e.g. AREP, port calls, flag, and owner) and lists any relevant third-party information.

The RAR is automatically generated when a new Vessel File is created for a vessel and/or an AREP is received. It is a snapshot of the vessel's situation at the moment of the creation of the Vessel File and is not updated during the life of the Vessel File.

The RAR is a tool to help decision-making when reviewing an AREP to decide whether to deny port entry to a vessel, permit entry only for inspection (use of port denied) or permit entry and use of port and monitor the vessel's offloading activities. Specific criteria are evaluated to produce the RAR, sorted in three "levels" of risk according to their importance or seriousness.

However, the RAR does not indicate whether a vessel is currently infringing any legislation or IOTC Resolution.

Exchange of information and cooperation by the port State with the flag State, relevant coastal States and RFMOs may be needed to verify information provided in the AREP and e-PSM application.

In order for a port State to make a final decision on port entry within a prescribed time, rapid responses are needed from the relevant States and RFMOs to verify specific information submitted in the prescribed fields of the AREP. These may include:

- VMS information on the vessel's real time movements;
- status of the vessel on the IOTC lists of authorised and IUU vessels;
- relevant authorisation(s) for fishing or related activities from the flag

State;

- relevant authorisations or licences for fishing or related activities from coastal States;
- relevant transshipment authorisation(s);
- transshipment information concerning donor vessels; and
- catch documentation scheme.

Other useful evidence to support risk assessment includes the following:

- **VMS.** Information relating to the vessel's VMS may be requested from the flag State or relevant coastal State to verify information on the areas fished by the vessel in the period from its last port call. It may be used to cross-reference with the conditions on the fishing authorisation, or verify if the vessel has fished in a closed area or in the exclusive economic zone of a coastal State for which it does not have a valid fishing license.
- **IOTC Record of Authorised Vessels.** The vessel's details in the e-PSM application should be verified on the IOTC Record of Authorised Vessels. Where there are discrepancies in the vessel's details (e.g. identifier, characteristics, information on owner and operator, authorised period), or if a vessel does not appear on the IOTC Record of Authorised Vessels then confirmation should be requested from the IOTC Secretariat that the vessel is either not on the list or that there is a misunderstanding of the name or details provided on the AREP. This verification process may also require cooperation from the flag State.
- **RFMO Authorised Vessel Lists.** Where vessels have indicated they have been operating in the area of competence of another RFMO, it may be requested to provide confirmation of registration on its Authorised Vessels List.
- **IUU Vessels Lists.** If the vessel is not included in the Authorised Vessel lists, the IUU Vessel Lists maintained by IOTC and other relevant RFMOs should be checked.

[Figure 11](#) shows an example of how a risk matrix can be designed, [Figure 12](#) is an example of an internal risk assessment form and [Figure 13](#) shows an example of how a summary risk can be designed with decision recorded by supervisor.

No	Indicator	Low	Medium	High
1	Is the vessel listed as an IUU vessel with any RFMO, does it have any INTERPOOL notice issued against it, or does it have any known IUU history in the last 3-5 years?	<ul style="list-style-type: none"> No RFMO IUU listing reported or found No INTERPOL Notice Issued No IUU fishing incidents found through research within the last 3-5 years 	<ul style="list-style-type: none"> Alleged IUU activities reported to RFMO, but not yet IUU-listed Previously IUU listed by RFMO (but removed from list) INTERPOL alert or communication indicating link to IUU fishing One IUU incident found, but case is settled with relevant State 	<ul style="list-style-type: none"> Vessel listed as IUU vessel with RFMO INTERPOL Purple Notice previously issued but expired/ withdrawn INTERPOL Purple Notice issued and in force. One unsettled or two IUU incidents found
2	Is the vessel authorised to fish by flag State and any necessary RFMOs and licenced by coastal States?	<ul style="list-style-type: none"> Authorised by flag State Authorised by RFMO licensed by coastal States 	<ul style="list-style-type: none"> Unconfirmed or inconsistent authorisations Only copies of authorisations available 	<ul style="list-style-type: none"> Not authorised or no information provided Forged or fake authorisations suspected or confirmed
3	Did the vessel change name or flag during the last 3-5 years?	<ul style="list-style-type: none"> No flag or name change taken place 	<ul style="list-style-type: none"> One or two name or flag change but reason provided Indications of flag change but information not provided or available 	<ul style="list-style-type: none"> Several unexplained name or flag changes Forged registration documents suspected or provided
4	Do AIS tracks indicate suspicious operations?	<ul style="list-style-type: none"> AIS positions and track good and mainly transmitting when at sea 	<ul style="list-style-type: none"> Limited AIS tracks available Tracks indicate that AIS is frequently turned off 	<ul style="list-style-type: none"> No AIS track or positions can be found within the previous 90 days AIS track indicating IUU activities e.g. fishing in restricted areas, illegal transshipment, unlicensed fishing, illegal transshipment etc.

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No	Indicator	Low	Medium	High
5	Does the owner, operator, master, or agent have any known IUU fishing history?	<ul style="list-style-type: none"> Not linked to IUU fishing cases 	<ul style="list-style-type: none"> Settled IUU fishing incidents with other fishing vessels 	<ul style="list-style-type: none"> One or more unsettled IUU fishing cases within the last 3-5 years
6	Is the flag State associated with IUU fishing issues?	<ul style="list-style-type: none"> Flag State not associated with IUU fishing Flag State communicating and verifying information 	<ul style="list-style-type: none"> Flag State has several incidents of vessels being involved in IUU fishing in the region in the last 3-5 years Flag State secretive and reluctant to share information 	<ul style="list-style-type: none"> Several IUU incidents associated with the flag State Flag State not enforcing any flag state responsibilities Flag State not communicating or willing to confirm information or documents issued
7	Do port call history indicate use of 'ports of convenience'?	<ul style="list-style-type: none"> Use of regular ports with good PSM system in place and party to PSMA or IOTC PSMR 	<ul style="list-style-type: none"> Use of ports known to have limited PSM system in place Use of ports known to allow landing and trade of IUU catches 	<ul style="list-style-type: none"> Use of ports with little or no PSM system in place Use of ports where there is evidence of illegal seafood being landed
8	Is the crew at risk of human rights abuse or modern-day slavery?	<ul style="list-style-type: none"> Nationality of crew from known low-risk countries Vessel built in the last 5 years assumed to be in good condition Vessel known for good labour conditions 	<ul style="list-style-type: none"> Nationality of crew from known high-risk countries Vessel old and standard of cabins and living quarters questionable Vessel, owner, or operator suspected to pay below acceptable minimum salaries to crew 	<ul style="list-style-type: none"> Reports of abuse from crew via social media or through official calls for help Vessel, owner, or operator linked to crew abuse in last 3-5 years (including not paying wages) Vessel, owner, or operator known to pay below acceptable minimum salaries to crew

Figure 11 – Example of risk matrix

Name of officer doing the risk assessment:				Date:
Vessel Name:				Flag State:
International radio C/S:				
Owner Name:				Agent Name:
Documents provided and verified				Overall comment and recommendation
Documents provided and verified	Copy	Original	Verified	
Fishing authorization:				
Fishing license:				
Fishing license:				
Registration certificate:				
Deletion certificate:				
Seaworthiness certificate:				
Other:				
Risk scale:				
<p>Any red means the vessel is recommended not to be granted port entry unless there are a requirement to inspect the vessel. If there are uncertainty in relation to information and evidence provided, the vessel should be denied port access until satisfactory information is provided.</p> <p>4 or more yellow mean the vessel is recommended not to be granted port entry. If there are uncertainty in relation to information and evidence provided, the vessel should be denied port access until satisfactory information is provided.</p> <p>3 or 2 yellow mean the vessel may be granted port access but must be inspected before any port services are allowed</p> <p>1 yellow or all green mean that the vessel is granted port access and only routine inspections are required</p>				

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No	Indicator	Low	Med	High	Comment
1	Is the vessel listed as an IUU vessel with any RFMO, does it have any INTERPOOL notice issued against it or does it have any known IUU history in the last 3 -5 years?				
2	Is the vessel authorised to fish by flag State and any necessary RFMOs and licenced by coastal States?				
3	Did the vessel change name or flag during the last 3-5 years?				
4	Do AIS tracks indicate suspicious operations?				
5	Does the owner, operator, master, or agent have any known IUU fishing history?				
6	Is the flag State associated with IUU fishing issues?				
7	Do port call history indicate use of 'ports of convenience'?				
8	Is the crew at risk of human rights abuse or modern-day slavery?				

Figure 12 – Internal risk assessment of fishing vessels requesting entry into port

Risk Assessment of fishing vessels requesting entry into port

Name of officer doing the risk assessment:

Date:

Name of fishing vessel:

Callsign:

No	Issues considered	Yes/ No	Low	Medium	High
0	Is the vessel listed as an IUU vessel with any RFMO, does it have any INTERPOOL notice issued against it, or does it have any known IUU history in the last 3 -5 years?				
1	Is the vessel authorized to fish by flag State and any necessary RFMOs and licenced by coastal States?				
2	Did the vessel change name or flag during the last 3-5 years?				
3	Do AIS tracks indicate suspicious operations?				
4	Does the owner, operator, master, or agent have any known IUU fishing history?				
5	Is the flag State associated with IUU fishing issues?				
6	Do port call history indicate use of 'ports of convenience'?				
7	Is the crew at risk of human rights abuse or modern-day slavery?				
8	Is the vessel listed as an IUU vessel with any RFMO, does it have any INTERPOOL notice issued against it or does it have any known IUU history in the last 3 -5 years?				

Risk Assessment of fishing vessels requesting entry into port

Name of officer doing the risk assessment:

Date:

Name of fishing vessel:

Callsign:

No	Issues considered	Yes/ No	Low	Medium	High
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Recommendation:

Decision by supervisor:

Signature:

Date:

Figure 13 – Risk assessment of fishing vessels summary and decision form

4.3 INSPECTION AND INVESTIGATION PROCEDURES

USE OF NOTEBOOKS

Throughout the inspection or investigation, notebooks, diaries or other similar tools should be used to record events as they occur. This can be an effective means of documenting evidence. They must be maintained at all times and will serve as a permanent and official record of the facts; it will record events, interviews, tasks and observations.

Notebooks must be readily available at all times for supervisors to inspect and, as needed, sign as proof of inspections. They may be used when giving testimony or during cross examination.

Some guidelines for maintaining notebooks, to ensure proper documentation and admissibility of the evidence, are shown below.

- Entries must be:
 - simple
 - direct
 - accurate
 - complete
 - correct
 - neat.
- Entries must be made:
 - promptly, when the event occurs, with a black pen, not a pencil;
 - according to the sequence of events; and
 - on each line, with no line left blank.
- Entries must show:
 - the time and date recorded in the left margin;
 - names in CAPITAL letters for easy reference;
 - corrections by a single line through the correction, and the signature of the writer and date of correction; and
 - the day, the date and the weather conditions at the top of the page.
- Entries must document:
 - occurrences as much as possible in any situation, detail may be added as soon as circumstances allow;
 - warnings and arrests;
 - assistance given to persons;
 - official references attached to items, such as a police reference for an exhibit submitted to secure storage;
 - events relating to personal duties, such as arrival to or departure from sites or change of duties during a shift; and

- a summary of work done at the end of each shift and end of each month, for review by the supervisor.

- ☑ Best practice official government procedures for use of notebooks include:
 - when no official notebook format exists, a normal hardcover A5 manuscript book may be used, with each page numbered, and must be securely stored for at least five years;
 - an alphabetic register should be kept at each office to record each notebook issued to each fisheries inspector and filed annually;
 - the pages must be numbered numerically and fisheries inspector's name, number and department where deployed must be written in the front of each notebook;
 - when a fisheries inspector is handed a pocketbook/notebook, it must be confirmed that all the pages are accounted for;
 - when the notebook is full, a new one must be issued, and an entry must be made by the supervisor that the previous notebook was handed in and received;
 - the fisheries inspector must report the loss of a notebook immediately and submit a statement/affidavit to explain the circumstances; and
 - when a fisheries inspector is transferred or otherwise terminates duties, the notebook should be handed in unless otherwise agreed by supervisor(s).

An example of typical entries made by the Investigator into the notebook:

Date Monday 1 June 2022

Weather: Rain and overcast

06:00	Duty on and inspected by(Name and title of facilitator).
	Posted as at ----- Signature of facilitator
	And equipped with the following equipment: -
	1. Firearm (type, calibre, serial number)
	2. Handcuffs
	3. Torch, 2 way AAA 45 hand radio number
	4. 20 Pamphlets, (Report illegal and unregulated fishing), 10 Smartfish newsletters.
06:30	Visit Hout Bay Fishing (Pty) Ltd) and interview Operations Manager Colin Van Schalkwyk.
06:45	Observe and weigh the offloading of Rock Lobster from the vessel Sandalene Registration CPT400. 20 crates containing 1ton of live lobsters offloaded on the quota of Hout Bay Fishing.
08:00	Back at Sea Point Office to collect water and to do Admin work related to.....
08:15	Leave Office to Oceana Power Boat Club to
10:00	Interview members of the public regarding
11:00	Report illegal fishing activity observed from shore to Patrol vessel.....to.....
12:00	Arrest Mr at
 for the Illegal Possession of 10 Abalone and 12 Crayfish
12:30	Detain Mr at Cape Town SAPS cells, CAS number and suspect handed over to Cst Mkhezi Nr SAP 14 Nr OB nr SAP 13 Nr
13:00	Back on routine patrol of Sea Point shoreline.....
13:30	Interview Mrs Mjobo a member of the public and warn her not to litter.
14:00	Duty off and free from injuries, inspected by
	All equipment handed back, and the following default was reported: (1) Hand-
	radio nr Faulty:- Low battery

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Daily Production Summary

Hours worked	8 hours
Arrest made	1 (SAPS Cape Town CAS 16/06/2009)
Exhibits seized	10 Abalone
	12 Crayfish
Warnings	1 Littering (Coke tins and packets of chips)
Pamphlets distributed	14
Summary of other duties	
Nr Name Rank	

End of the Month Summary

Days worked	
Days on Vacation Leave	
Days on Sick Leave	
Days Suspended	
Total Arrests made	
Total Exhibits seized	
Other duties	
Nr Name Rank	

ASSEMBLING AN INSPECTION/INVESTIGATION TEAM AND THE ADVANTAGES OF MULTI-AGENCY TEAMS

An inspection/investigation team should be assembled where circumstances require a thorough investigation. The outcome of the risk assessment will guide the composition of the inspection team and indicate whether the team should be formed from multiple agencies. For safety purposes, and to ensure accounts can be corroborated, it is best to never work alone, by working in pairs one person can ask the questions and another can listen and take notes and watch what's going on. This ensures there is someone to back up evidence and helps to promote safety. Experience has shown that the composition of a team and the assigning of roles must be carefully considered. For example, a team leader and a scribe should be

appointed, but not if the person appointed team leader has no power to delegate or issue instructions or the scribe has bad handwriting.

Designation of persons with the following responsibilities should be considered:

- team leader;
- safety and security;
- scribe to record events, collect exhibits etc;
- evidence custodian;
- photographer; and
- leader for “walking in front” – making first contact and speaking on behalf of the team.

Every member must know and accept their designated responsibilities and the team should be briefed in detail and agree on the course of action, contingency plans and the exit strategy.

Where necessary, in view of the nature of the suspected offence(s), the potential need for multidisciplinary expertise or human resources and the strength of inter-agency cooperation, involving officials from other agencies to form a multi-agency team (MAT) would promote effectiveness. [Figure 14](#) indicate examples of port State stakeholders and actors

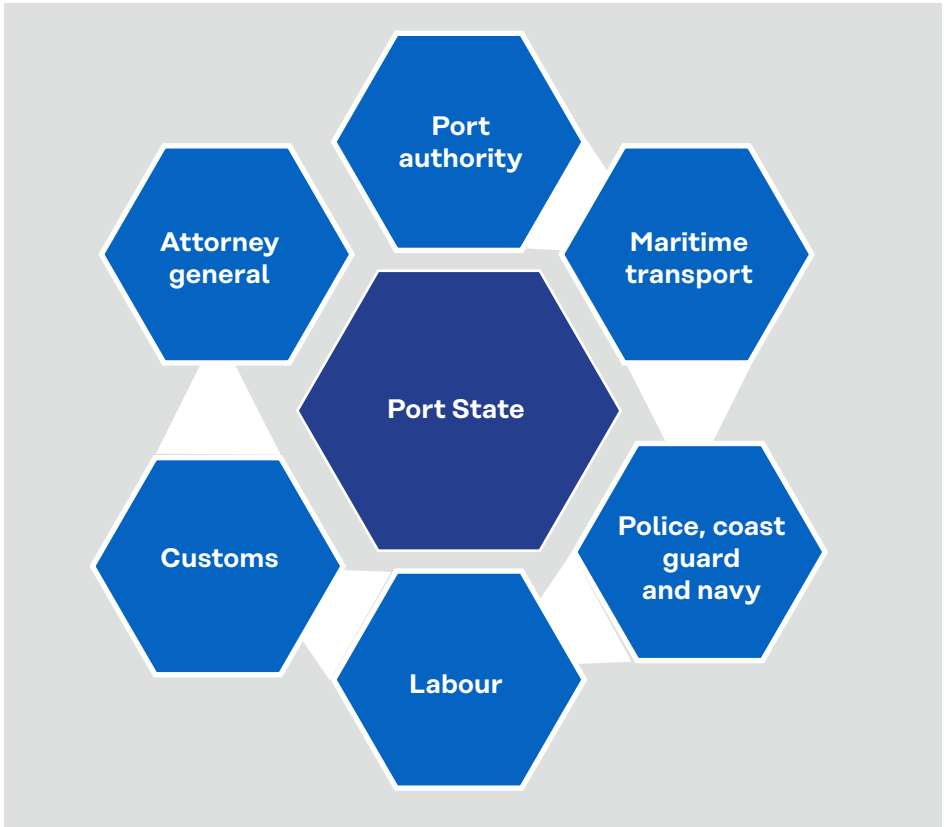


Figure 14 – Example of port State stakeholders and actors

MATs are teams that:

- are composed of various agencies;²⁵
- are committed to a shared goal;
- have complimentary 'all round' skills, represented by the various agencies;
- have accountability (mutual and individual); and
- work interactively and interdependently.

²⁵ For example: specialists/experts; police; customs; port authorities; coast guard; navy. Members of a MAT are also not limited to government agencies. Non-governmental organisations (NGOs) may also be included in a MAT; even though they may not attend an investigation, they can contribute their skills and expertise to investigating an offence. Working in a MAT does not mean that every member must be present during every meeting, as in some cases communication with a member of a MAT may only be through email or videoconference.

Advantages of establishing a MAT are to ensure expanded expertise, responsibilities and authorities and to avoid duplication of work (e.g. where IUU fishing is often associated with organized crime). They can overcome certain limitations, such as those listed below.

- **Jurisdictions**, where investigations reveal that similar unlawful activities are taking place in other regions or countries, and do not fall within the respective officials' area of jurisdiction. Valuable leads may be lost in this way.
- **Mandates**, where inspectors from other agencies may have more extensive powers and different mandates than fisheries inspectors.
- **Lack of follow-up and report back procedures**, where information has been passed on from one agency to another and the official who transferred the information may consider the task complete. In the absence of formal follow-up or report-back protocols, the incidents are often not resolved satisfactorily.
- **Compromising existing investigations and safety**, where investigations that are already in progress may be compromised by working in isolation.

MATs can offer a range of benefits for fisheries inspectors' operations and the implementation of a mandate including greater creativity, knowledge, information sharing, support, commitment and enthusiasm, as well as a variety of problem-solving styles. The resources required to secure compliance can be shared among institutions.

Effective management of a MAT is based on creating an enabling environment with context and meaning, necessary capability and resources and good team dynamics. Management should define the team's purpose and adopt a strategy with priorities, goals and outcomes.

PRE-INSPECTION BRIEFING UTILISING THE INTELLIGENCE GAINED DURING THE RISK ASSESSMENT

Before boarding a vessel and starting an inspection a pre-inspection briefing must be held with colleagues on the team. A lot of information will have been obtained during the risk assessment process that must be discussed with the boarding party. If the inspection is of a foreign vessel in port, the risk assessment will be based on – among others – the AREP given, using the IOTC e-PSM. If the inspection is conducted in a different context, for example during a surface patrol, the risk assessment and its forms and procedures will differ, however the use of the results of the assessment will not.

- The briefing must include all aspects identified during risk assessment that need to be verified and checked, like vessel documents, fishing licenses, fishing logbooks and other. It must further include tasking every member of the boarding party with specific duties.

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A safety risk assessment should be shared during the briefing. For example, entering fish holds and other confined spaces can be dangerous, protocols will be needed for this and other dangerous tasks.

All emergency procedures must be agreed by the boarding party during the pre-briefing; this should include agreeing what to do in the event of an on-board incident such as fire or machinery failure (e.g. crane or hoist), means of communication, and emergency evacuation and assembly points.

The form "Arriving Vessel Risk Assessment and Intelligence Analysis Report" (see [Figure 15](#)) is designed to be completed after the risk assessment and can be used during the pre-inspection briefing at which time a copy can be issued to each team member participating in the inspection. Photographs of the vessel, if available, can be attached to this report. Similar reports may be used in non-port State measures contexts, in which case their integration into the briefing process would be the same, all things considered.

Part 1: AREP INFORMATION (COPY OF AREP ATTACHED)

Intended Port of Call:	Name of Vessel:	Flag State:	Vessel Type:
Flag State Registration:	IRCS:	IMO:	IOTC/ICCAT ID:
Master's name	Nationality	Port and Date of last Departure	

Activity:

Tranship Unload Receive fish (carrier) Operational Port Call

Timeframe AREP received: <input type="checkbox"/> 48 hrs <input type="checkbox"/> 72 hrs	AREP Complete: <input type="checkbox"/> yes <input type="checkbox"/> no	Need to re-submit?
ETA of Vessel:	Responsible Agent:	
ETA of Fisheries Boarding Party		

Part 2: RISK DETERMINATION AND DECISION

<p>Vessel Risk Analysis done; <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>Vessel Risk Analysis score <input type="checkbox"/> 5-6 <input type="checkbox"/> 7-12 <input type="checkbox"/> 12-18 Risk Assessment Attached.</p>	<p>Interpol Purple Notice, Vessel of Interest <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>Vessel IUU listed <input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Vessel granted full Port Access <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>Vessel granted Port Access for inspection only <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>Vessel denied Port Access <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>If vessel is denied Port Access or granted port access for inspection only, provide a summary of reasons in comments and attach documents affording proof supporting the decision</p>	<p><u>COMMENTS:</u></p>		
<p>Flag State Informed <input type="checkbox"/> Yes <input type="checkbox"/> No Date and Method of communication used:</p>	<p>RFMO Informed <input type="checkbox"/> Yes <input type="checkbox"/> No Date and Method of communication used:</p>	<p>Information shared with other Agencies <input type="checkbox"/> Yes <input type="checkbox"/> No If answer is yes name agencies shared with and date and method of communication used;</p>	

Part 3: Intelligence Available

AIS/VMS Track (screenshot)

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Evidence in fisheries offences: effective collection and use

Laws, procedures, prosecutions, illegal, unreported and unregulated vessel listing

Manoeuvring Analysis (*sets determinations, drifting, speeds, courses, distances travelled in between set, etc*)

Screenshots of identified Operations

Part 4: Recommended Boarding Investigation (*aspects to be verified and checked during inspection*)

Estimated Quantities of species to be retained on board (or nil report if no catches)

Species	Estimated total weight (kg)	Presentation of fish/frozen/discard

Figure 15 – Arriving vessel risk assessment and intelligence analysis report

PLANNING OF SEARCH AND SEIZURE OPERATIONS/ INVESTIGATIONS

Search and seizure operations/investigations normally arise as a result of either chance discovery by a fisheries inspector personally, such as during a routine inspection of a fishing vessel or a fish processing facility, or as a result of information received or gathered and converted into intelligence (intelligence driven investigations or actions).

Sound planning of operations/investigations is essential for securing adequate evidence (see [Figure 16](#)).

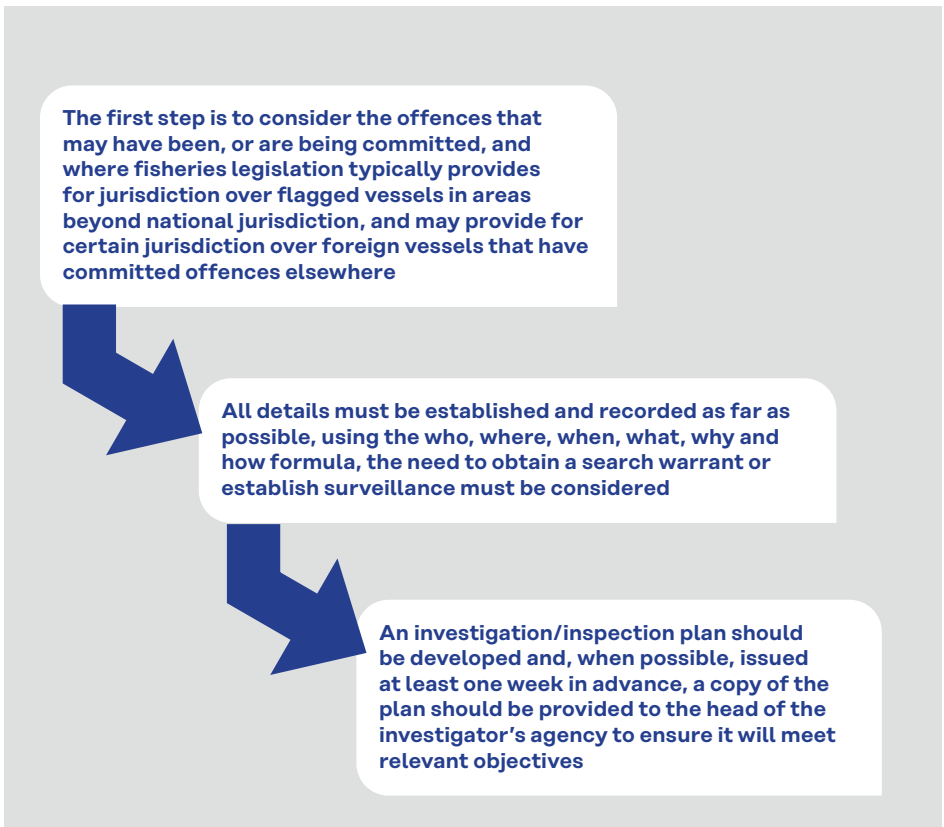


Figure 16 – Planning of search and seizure operations/investigations

Information that should be included in the plan is elaborated in [Box 6](#).

Box 6 | Information to be included in an investigation/inspection plan

- **Introduction.** Objective(s) background and relevant legislation that explain the violation to be investigated.
- **Relevant administrative documentation.**
- **Background information.** For example, on the subject or suspect and the type of suspected illegal activities.
- **Information gathering and surveillance information.** Surveillance information will allow the fisheries inspector/investigator to plan and prepare for unforeseen contingencies while maintaining the element of surprise.
- **Scope.** This may include the number and locations of fishing vessels, vehicles, fish processing establishments, other premises involved (residential or commercial), type and quantity of evidence expected to be collected, records to be reviewed and number of persons involved. It will be a basis for assessing the resource requirements of the investigation.
- **Estimated time** required for the investigation/inspection. It is essential that an estimate be made of the time allotted to each type of inspection so that the number of team members required can be calculated.
- Dates for **completion** of certain tasks.
- **Team selection** for multi-media investigations and co-ordination for multi-agency investigations. To ensure roles and responsibilities are communicated.
- **Equipment selection and logistics.** Equipment that will be required, the travel and logistical needs.
- **Safety considerations.** Hazard identification and safety equipment required.
- **Evidence.** What actual evidence will be required to prove any suspected contraventions, methodology and planning for evidence collection (who will collect which evidence).

EQUIPMENT REQUIRED FOR GATHERING/PRESERVING EVIDENCE AND CONDUCTING INSPECTIONS/INVESTIGATIONS

Once on-board, it is too late to disembark to retrieve a forgotten item. Therefore, a boarding equipment checklist of items the boarding party will need is important²⁶. The checklist might include, for example:

- formal identification for every fisheries inspector;
- copies of authority to undertake inspection (e.g. Fishery Act);
- body worn cameras/video and still cameras;
- clipboards, paper, and pens;
- official notebooks;
- copies of the vessel authorisations and AREP if in port;
- copies of the inspection report form;
- certified tape measure and other measuring devices (net gauge/callipers);
- voice recording device for notes or interviews;
- evidence bags/ freezer plastic bags that can be used to seal evidence;
- metal seals with numbers;
- envelopes that can be used to seal documents seized;
- chain of custody forms for evidence;
- fish identification material;
- radios;
- mobile or satellite phones;
- first aid kit; and
- personal protective equipment.

The boarding equipment should form part of the inspection kit that is kept at the office to use during all inspections. The inspection kit must be regularly checked and replenished if necessary.

²⁶ This complements the information on a toolkit for the fisheries inspector described in Section 4.4.

USING INFORMANTS

An informer or informant is a potentially powerful tool for evidence gathering.

It is an individual who provides information to a law enforcement agency and gets remunerated for services or information provided. Because not all law enforcement agencies have a structured informant recruitment and payment system, fisheries inspectors should familiarise themselves with the system in their country including procedures relating to registration and remuneration of informants (see [Figure 17](#)).



Figure 17 – Different types of informers

Recruitment of temporary employed informants must be discreet and extreme care must be taken. It is common knowledge that any person found violating the code of secrecy that exists among illegal operators and fisheries criminals faces extreme personal danger.

The rule of law enforcement of 'do not work alone' is applicable here. A colleague must accompany any fisheries inspector recruiting an informant. This will ensure that each informant will always have a handler and a co-handler.

There must be a relationship of mutual trust between the handler, the co-handler and the informant.

The informants are placing themselves in danger, and the fisheries inspector must be able to trust the informants and know the information provided is reliable, and not just an attempt to lead them into a trap or on a false trail. When dealing with an informant officers must exercise professionalism, not become too familiar nor friendly with the informant and ensure that mutual respect is developed.

Beware of informants playing a double role. Criminals involved in fisheries offences often use informants to lead law enforcers astray. For example, they may provide false information to send the law enforcers to one area while they operate in a different area. Beware of the information conveyed to an informant because they could be looking for information about law enforcement activities to pass along to their superiors or criminal accomplices.

A file must be kept for each informant after recruitment. The file must not contain the personal details of the informant but must be marked with a unique number that can be traced to an informant register where the informant's personal particulars are documented, and a specimen signature is kept. The register must at all times be locked in a safe. All information received from these informants must be documented and placed on the file. This will not be the case with occasional informants.

The **motives** of informants vary, and some examples are given below.

- **Sense of responsibility.** This is usually the motive when law-abiding members of society supply information on illegal activities observed by them.
- **Personal motives.** Individuals sometimes provide information to get rid of opposition or to direct law enforcement actions to a certain area so they can operate in a different area unnoticed.
- **Emotional motives.** Such as when a person supplies information about a spouse's illegal activity because of animosity between them.
- **Financial motives.** Often the motive for providing information is solely financial benefit.

The **reliability** of informants must be evaluated in accordance with the accuracy of the information supplied and the amount of information supplied. Each informant

should be classified based on this evaluation. The evaluation becomes very important when actions are taken and planned after receiving information and when applying for search warrants after receipt of information, if necessary.

The evaluation classifications that can be assigned to informants after evaluating the information supplied by them would be:

- always/usually/fairly reliable; or
- not always reliable/reliability can't be judged/unreliable.

Information received from informants must always be assessed, with a view to reaching a conclusion, such as it being:

- reliable and can be confirmed by another independent source;
- possibly true, but some confirmation is required;
- of doubtful reliability, and difficult or impossible to verify;
- probably false and there is an ulterior motive for providing it; or
- false.

On occasion the reliability cannot be determined.

Guidelines for dealing with informants are to always: maintain confidentiality, exercise ethical conduct, meet at places of safety and act within the bounds of the available authority.

If an agency has no official informant registration and remuneration system, information may be gathered through another authority that has such a system. If no system exists, start keeping a confidential file for each informant.

Information by itself has no evidential value. However, when corroborated and analysed, information becomes intelligence. When facts are found that prove the intelligence, it can become evidence during a prosecution. In most countries the source of information does not have to be divulged. Knowledge of the legislation governing this issue is important to avoid identification of informants, which may endanger their lives.

[Figure 18](#) explains the status of intelligence information from unverified information to factual intelligence information.

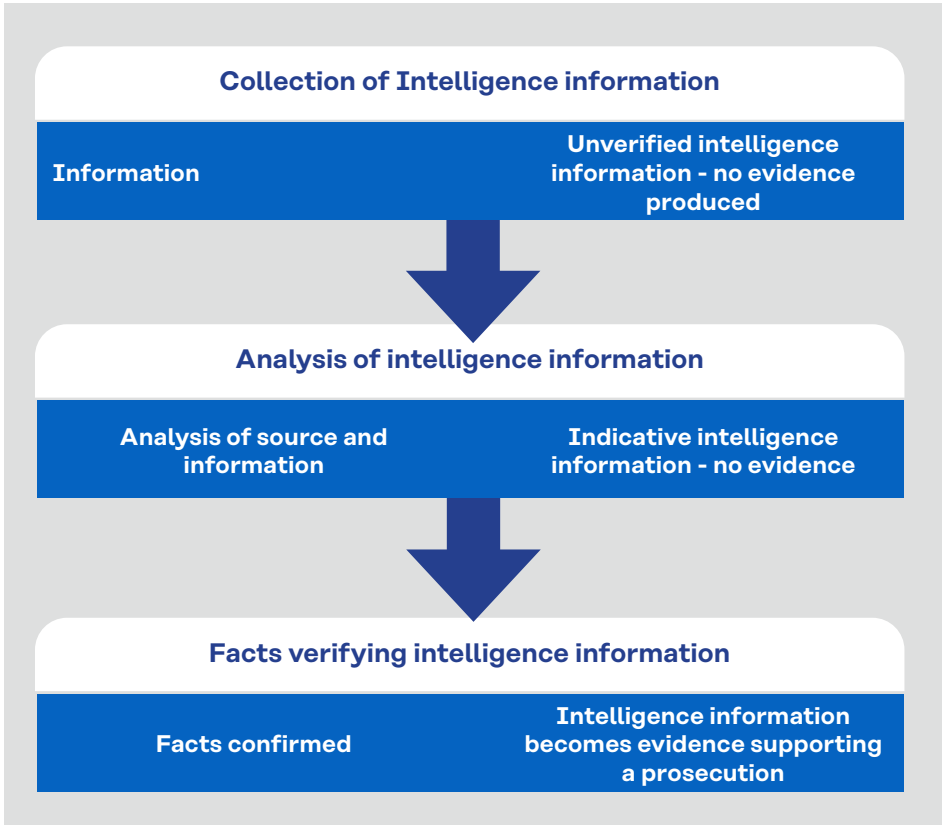


Figure 18 – Status of intelligence information

BASIC SURVEILLANCE

The main purpose of surveillance is to gather information and evidence that may be used to the fisheries inspector's advantage in later stages of the investigation (see [Figure 19](#)).

Surveillance information is used to plan and prepare for the investigation and allows for previously unforeseen contingencies. At one end of the scale, surveillance may be directed at the simple observation of a fisher on the beach, in order to monitor their activities. The objectives of surveillance may be met by driving/walking past the beach or parking the vehicle near the site or sitting on the beach to record observations.

At the other end of the scale, surveillance may entail closely monitoring the activities of a known smuggler or individual involved in organized crime with a view to infiltrating their network. This may need a slightly different approach, such as following the person under observation and getting to know their habits and places they frequent.

With the advent of modern technological development, especially in electronics and information technology, a number of sophisticated surveillance techniques have emerged. Their use is regulated, and fisheries inspectors must comply with applicable legislation when gathering information.



Figure 19 – Elements to conduct a basic effective surveillance

Being watched and application of anti-surveillance strategies

Surveillance is not solely within the purview of the official institutions. Officials and their organisation may also be under surveillance of some kind or the other. This is illustrated with the following example:

Box 7 | Surveillance of officials and their organisations

By the early eighties, the then Natal Parks Board, now Ezemvelo KwaZulu-Natal Wildlife, in South Africa, had amassed a considerable volume of rhino horn, which was stored in a large vault in an office complex. It came to the investigations section's notice that a break-in was being planned in order to steal the horns.

Subsequent further investigation revealed that the gang knew the names and addresses of the officials who held keys to the vault and were planning to kidnap the female key-holder with a view to force the male key-holder to co-operate.

What surprised the investigators was the detailed map found in the possession of those planning the break-in, with the vault and all the important aspects such as exit, and entry points accurately recorded.

This example highlights an extreme instance, however the fact that officials and organisations may be watched applies to the fisheries context. Surveillance could be for the purpose of warning operators, vessels or individuals of the plans or mobilisation of officers with a view to avoiding apprehension. More sinister end goals may also be possible.

The first step in counteracting this eventuality is to consider the possibility that a fisheries inspector is being watched. Only professionalism, confidentiality, vigilance and a healthy measure of common sense can in some way serve to minimise the personal and organisation risks. A certain kind of mind-set needs to develop, and vigilance is a keyword in this regard.

- **Covert surveillance.** As counterintuitive as it may first appear, one of the best ways of detecting, proving and protecting against surveillance is to use a form of covert surveillance. For example, an individual can use a closed-circuit television (CCTV) camera outside their property or a video doorbell system to identify any unusual activity and capture images of anyone conducting illegal activity.
- **Technical surveillance counter measures (TSCMs).** TSCMs surveys, or bug sweeps, can provide information for certain points in time. They involve the systematic search for illicit bugs or eavesdropping devices. Some detection equipment is readily available from online retailers or can be built using other accessible components. However, sophisticated devices may only be detectable by professional-grade equipment due to the frequency or range of frequencies they use, or the devices

may use techniques to avoid being detected such as remote activation and inactivation. Continuous monitoring and detection systems are also available. Live monitoring can be provided for sensitive occasions such as press briefings or board meetings. Where surveillance techniques are prohibited, such as the use of a mobile phone to record information, mobile phone blockers and detectors are available.

- **Cyber TSCM and software countermeasures.** With the growing threat posed by cyber-attacks, the protection of data held online and on secure networks is paramount. For those responsible for information technology systems, cybersecurity methods such as access control, firewalls, and general employee education on issues such as password best practice are essential.

However, there is a risk of an adversary using surveillance techniques such as installing keyloggers, intercepting Bluetooth and mimicking Wi-Fi points to lure unsuspecting users. TSCM techniques including visual, physical, and digital searches can be used to detect illicit cyber activity.

- **Human countermeasures and counterintelligence.** Many surveillance techniques use human methods rather than electronic. To counter these, techniques such as simply being situation-aware and avoiding certain locations can be sufficient to counter the threat of surveillance. On a national level, counterintelligence operations exist to monitor and protect against surveillance by other nationalities or criminal groups such as terrorists.
- **Structural countermeasures.** To protect an organisation against the threat of physical interception and access, social engineering techniques such as physical penetration testing can be used to examine how readily access can be gained into a building by a non-authorized individual and then to address any weaknesses in the physical security protocols.

Surveillance as investigative strategy

Surveillance can be considered an investigative technique as part of an overall strategy. It is a tactic by which information is collected with the objective(s) being to:

- detect the commission of a crime (illegal activities in progress);
- verify information received;
- collect information for the purposes of formulating an appropriate action;
- familiarise personnel with the terrain, structures or general 'lay of the land' when planning interventions;
- obtain the requisite information for the purposes of obtaining a search warrant;

- identify and locate persons suspected of being involved in the commission of a crime; and
- safeguard and/or monitor persons or premises in respect of which a lawful instruction (e.g. a directive or a compliance notice) may have been given regarding ceasing certain activities or taking certain steps to protect the environment.

Prerequisites for instituting surveillance

Selecting suitable staff. Not everyone is suited for observation, and staff should be selected for this purpose according to their individual strengths and talents. This may include:

- inventiveness and resourcefulness;
- patience and tenacity;
- an eye for detail and good general situational perception;
- self-discipline;
- proven ability to memorise details and keep accurate records; and
- resilience and the ability to react positively under stressful conditions.

Plan, plan, plan. Successful enforcement work relies heavily on pre-planning, which includes formulating a strategic plan of action, as well as putting in place contingency arrangements. Advance reconnaissance of the sites should be undertaken before surveillance can commence.

Never jump into a surveillance without doing adequate research. The more that is known about the habits and actions of the target the better the tailing. Sometimes social media can even be helpful in answering the following questions:

- Where do they live?
- Where do they work?
- What is their schedule?
- What kind of vehicle do they use?
- What are their habits (such as gym, entertainment)?

Knowing the answers to these questions could help in finding the suspect as well as predicting their next stop. Use a mapping application to identify routes the suspect would take and scout the area for potential risks.

Key considerations before surveillance commences

Individual's right to privacy. The primary principle that must be followed is the individual's right to privacy. It likely appears in national legislation and is recognised internationally.²⁷

Compliance with all other legislation governing surveillance. This is to remind fisheries inspectors to remain strictly within the bounds of the law.

Types of surveillance

Electronic surveillance. Electronic surveillance performs a similar function to undercover operations but allows for the collection of a broader range of evidence.

It is a preferred investigative method when an organized criminal group cannot be penetrated by an outsider, or where physical infiltration or surveillance would represent an unacceptable risk to the investigation or to the safety of investigators. Given its intrusiveness, electronic surveillance is subject to strict judicial control and legal safeguards to prevent abuse and limit the invasion of privacy.

Examples of electronic surveillance for audio, visual, tracking or data purposes appear below:

- phone tapping
- voice over internet protocol
- listening devices (e.g. room bugging)
- hidden surveillance devices
- in-car video systems
- body worn cameras
- thermal imaging/forward looking infrared
- CCTV
- global positioning system (GPS) tracking
- AIS/VMS tracking
- mobi/satellite phones
- radio frequency identification devices
- biometric information technology (retina Scans)
- computer/internet (spyware/cookies)
- keystroke monitoring
- social media.

²⁷ An example of international recognition is Article 17 of the International Covenant on Civil and Political Rights, adopted by the General Assembly of the United Nations on 19 December 1966.

Physical surveillance. For fishing or related activities such as transshipments, this can be carried out using assets such as drones, patrol vessels or observers. There are several other types of physical surveillance.

- **Static surveillance.** Where offences take place on land and in one place, the easiest path might be to follow them or to watch them from an appropriate observation post. The latter applies to activities that might occur in processing plants or business premises suspected of being used for illegal purposes. Static surveillance is performed by an observer(s) situated at a fixed location and in a stationary position such as from another building. They should keep logs and record evidence such as descriptions of persons, visitors, accurate times and photographs.
- **Tailing.** It is always easier to tail a suspect in a vehicle than on foot, and preferably the suspect will not recognise the officer, however, if confronted, a cover story is needed. In vehicles, ensure that there is adequate fuel, supplies, equipment. When on foot, stay on the same side of the street in congested areas, use the opposite side for less busy streets.

SECURING THE SCENE OF FISHERIES INFRINGEMENTS AND BASIC SCENE MANAGEMENT

Initial phase of the scene management process

Management of the scene starts from the time a fisheries inspector arrives on-board a vessel to start an inspection.

During the risk assessment certain elements have been identified for verification and further inspection. The inspector must now verify compliance; if evidence unveils non-compliance or criminal acts, it is their duty to act.

The scene needs to be secured. Access to and exit from the scene must be controlled. This can be done by securing access and exit to the bridge and if necessary to the vessel at the gangway.

There must be documentation of the whole scene, as well as everybody present at the scene. This can be done by photographs, video (including by body worn cameras), and/or entries in the notebook.

Evidence seized must be documented by photographs or video in the situation where it was found before it is seized and sealed.

Processes will differ from case to case. Basic guidelines are to ensure that the scene is processed optimally, and evidence is not destroyed or contaminated. The inspector has the preliminary duty to:

- carry out an initial assessment;

- deal with emergencies, if any;
- call for assistance by police and experts if necessary;
- preserve the scene by following the correct procedures such as cordoning off the scene or controlling access at the entrance to the gangway and the bridge and removing bystanders;
- record their assessment of the scene in a notebook;
- communicate the assessment, together with actions that provide appropriate information about the scene and the process, to those with a vested interest in the case;
- attempt to determine the perpetrator;
- separate the witnesses so that their statements are not influenced by others;
- secure and investigate additional scenes, if any;
- refrain from moving or touching any object at the scene until documented; and
- assign every enforcement official present to help with specific duties to minimize confusion and duplication.

The scene can be classified into three different types (see [Figure 20](#)).



Figure 20 – Three types of fisheries infringement scenes.
Source: **NFDS**

Effective and systematic scene preservation is vital for maximum evidence recovery to be achieved. The basic reasons for scene preservation are:

- movement of exhibits;
- evidence being obliterated;
- additional material being added;
- loss of material; and
- interference while awaiting forensic experts.

These will be the same regardless of what type of scene is being dealt with and they apply to all inspections and investigations.

The nature of the scene and the information found can provide clarity about the:

- unlawful nature of the act; and
- method used to commit the unlawful act.

Depending on the offence suspected, additional vessels, vehicles or locations may be added to the investigation as separate scenes. Each of which should be managed in the same manner as presented above.

Ascertaining the offence or non-compliance

A fisheries inspector is very seldom present when an act of non-compliance or a crime is committed. The fisheries inspector should establish if an offence has been committed, through a systematic approach. For fisheries offences, the illegalities are usually uncovered during risk assessments, inspections and verification of documents and identity.

Information or 'clues' found at the scene that can be regarded as hints or pieces of unconfirmed information as to what happened come from people or objects found at the scene. If these clues are collected by the fisheries inspector in accordance with the rules of admissibility, they may become evidence. This evidence can be used to present to court a version of what happened at the scene.

Identifying and individualising the suspect

If the fisheries inspector can identify a suspect:

- facts must be established which link the suspect to the non-compliance or commission of a crime, and the evidence must establish the facts for a legal or administrative case to succeed; and
- the non-compliance or crime must be identified (or "individualised") in accordance with the relevant legislation, to which the fisheries inspector must refer.

The term 'individualise' refers to the positive identification of a fishing vessel/vessels, person/persons, facility/facilities or company/companies as being the only possible fishing vessel/vessels, person/persons, facility/facilities or company/companies responsible for a particular incident.

The fishery inspector must 'individualise' (identify) the fishing vessel/vessels, individual/individuals, facility/facilities, or company/companies suspected of the non-compliance or crime.

An example of individualisation may involve the VMS tracks and GPS system of a particular fishing vessel that identify that vessel as being in a particular EEZ during a specific period.

Through forensic examination of the VMS tracks and GPS system of a fishing vessel, it may be possible to prove that it operated in a specific area or maritime zone during a specific period and that the VMS tracks and/or the GPS system afford proof of fishing or related activities during that period. If the vessel does not have permission to conduct the specific activity in that area or zone during that period, it may constitute an offence.

In the arena of forensic investigation, electronic and chemical 'fingerprinting' is increasingly being used as an effective and accurate way for analysing electronic exhibits seized as well as samples taken.

All electronic equipment like computers, VMS equipment and GPS systems have a distinct 'electronic fingerprint' meaning that all the mentioned equipment can be used to identify (individualise) a particular vessel and or individual linked to it or making use of it.

All samples taken possess distinct 'chemical fingerprints', meaning that all samples are distinctly identifiable through their respective chemical composition, have a distinct DNA or other 'fingerprint' that is identifiable through their respective chemical composition.

Use of these fingerprinting techniques can help individualise the vessel(s), person(s), facility(s) or company(s) that committed the offence concerned and therefore greatly support the case made against the accused.

INTERVIEWING WITNESSES AND INTERROGATING SUSPECTS

During the course of an inspection or investigation, the need to interview or interrogate individuals is likely to arise. As noted in Section 3, best practice legislation will empower officers to question individuals. The information obtained during interviews of witnesses and interrogations of suspects may provide pivotal evidence for successful prosecutions. Interviewing and interrogation are fundamentally different activities.

Interviewing is the first phase of communication in which evidence/information is obtained from a witness or suspect. A well-planned and carefully conducted interview is very important to obtain accurate and reliable information. Prior to the interview and where no arrest has been made, the suspect and in some cases the witness must be warned:

I am Fisheries Inspector [NAME] and I am investigatingI have information that you might have knowledge of the case that can help the investigation. It is a serious case and you must be careful what you say as

you cannot/will not be compelled to make admissions and or confessions that can be used as evidence against you.

The “PEACE” process is well known by interviewers:

- Prepare and plan for the interview
- Explain and engage
- Account, clarify and challenge
- Close
- Evaluate

Interviewing, as an evidence/information gathering process, is achieved through a process of asking questions and listening to answers. There are two different approaches that may be taken.

Non-offensive interviewing ensures a good relationship with the witness and should be conducted in initial stages to develop a good rapport.

If the witness refuses to cooperate, *offensive interviewing* may be used but only after care is taken not to use it too early and only with a witness (not a suspect). Offensive interviewing is viewed in line with interrogation, below except that it is used on a non-cooperative witness and not a suspect.

Basic skills include paying attention, taking time, listening techniques (do not pretend to listen, listen for hidden motives), repeating questions, avoiding interruptions and self-discipline.

Interrogation takes place after arrest or detention and requires that the suspect/accused should receive prior warning of any constitutional rights. If the Constitution does not provide for the protection of rights of the accused, it is best practice to issue a warning including:

- the reason for their arrest or detention;
- his or her right to remain silent and the consequences of not remaining silent;
- the fact that they cannot/will not be compelled to make a confession or admissions that can be used as evidence against them in court during a prosecution; and
- their right to representation by a legal practitioner of choice (advise if the national legislation allows one to be provided at the States expense, if not they may appoint one).

Some basic guidance for interviewing and interrogation are shown in [Box 8](#) and [Box 9](#) below, including suggested interviewing techniques, interview techniques to

avoid, guidelines on the formulation of questions and guidance for conducting a cognitive interview.

Suggested interviewing techniques are in [Box 8](#), including repetition, remaining silent, elaboration, explanations, rephrasing, confrontation and closing and acceptance questions.

Box 8 | Suggested interviewing techniques

Repetition, remaining silent, elaboration, explanations, rephrasing, confrontation, closing and acceptance questions

Repetition

The interviewer should repeat the last words of the witness's answer and urge the witness/suspect to continue with his report, i.e. 'so you said that you told your captain that he was fishing illegally and what happened then?'

Remaining silent

Remain silent and listen when the witness is relating their account of events.

Elaboration

Examples of elaboration:

'How do you feel about IUU fishing?'

'Tell me more about your experience with this Captain.'

Explanations

Request a witness to explain what they meant with a specific word or phrase.

Rephrasing

Use your own words to explain what the witness/suspect has told you to ensure you understand what has been said. Rephrase what the witness/suspect reported to you: 'So you are telling me that you saw that the GPS reflected ... ?'.

Confrontation

Confront the witness/suspect in a tactful manner if contradictory facts or versions are provided - for example - 'I do not understand what you are telling me.'

Closing questions

It is advisable to ask closing questions with short answers at the end of the interview, i.e. 'yes/no questions'.

Acceptance questions (supposition questioning)

As a general rule, ask questions based on the version provided by the witness/suspects and not on the facts to your disposal. Questions can however also be pre-empted with a statement that indicates that you already have knowledge of certain facts and events. This is especially useful when interviewing a suspect.

The interview techniques to avoid during an interview are described in [Box 9](#), including interruption of the witness, excessive use of questions and answers, inconsequent order of questions, negative phrasing, non-neutral words and general.

Box 9 | What to avoid during an interview

Interruption of the witnesses, excessive use of question and answers, inconsequent order of questions, negative phrasing, non-neutral words

Interruption of the witness

During the initial stage of interviewing, it is important not to interrupt the witness because the memory recovery process is broken. This causes the witness to rather concentrate on the interviewer (external source) rather than the incident that occurred. The witness will then provide sketchy and insufficient evidence/information.

Excessive use of questions and answers

Excessive use of questions and answers will have the effect that the witness will not recall the whole incident and will give short, direct answers. This method should be avoided and should only be used to clear up any unexplained events and ambiguities.

Inconsequent order of questions

Do not pre-draft questionnaires before interviews. Rather adapt the interview so that it confirms with the memory of the witness. Formulate your questions on the version of the incident as given by the witness. Make short notes in respect of ambiguities. Once the witness's version has been completed, short questions may be put to the witness to clarify ambiguities.

Negative phrasing

To start any interview with a question (e.g. - 'can you not ...?') will result into a negative answer. Rather phrase the question positively (e.g. 'what time did you...?'). Negatively phrased questions may create the impression that the interviewer believes the witness is not able to answer questions.

Non-neutral words

Avoid questions consisting of non-neutral words (e.g. 'Did the Master of the vessel enter the Kenyan EEZ and fish?') Ask an open-ended question consisting of neutral words (e.g. 'Can you recall when you realized that the vessel had entered into the Kenyan EEZ and you were fishing illegally?').

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General

Avoid the usage of nouns, jargon and forensics terminology that is not readily understood by the public, e.g., scientific names of fish species. Always take the intelligence and educational level of the witness into consideration during the interviewing process. Focus on the time lapse between the answer given by the witness and the pausing of the next question. By giving the witness enough time to think, it will encourage the witness to speak more and give more complete and comprehensive answers to questions. Always try to avoid distractions that might interfere with the witness's concentration during interviewing, e.g., answering a cell phone or sending a text message.

Do not upset the witness with prejudiced remarks. This may strain the relationship between you and the witness.

All information must be followed up properly. Example, if the witness states that the suspect may have been a diver by trade. Your response should be - 'how do you know that?'

Guidelines on the formulation of questions, including open ended, interrogative, invitational and searching questions, are in [Box 10](#). The fisheries inspector should always keep in mind the "who, what, where, when and how".

Box 10 | Guidelines on the formulation of questions

Open ended, interrogative, invitational, searching questions

Open ended questions

Open-ended questions are productive questions and will encourage an interviewee to talk freely and describe their version. For example, “What did you see?”

Interrogative questions

The following are examples clearly illustrating interrogative questions:

- **how** did you know you were in the Tanzanian EEZ?
- **why** did you look at the GPS?
- **when** did you realize that you were on an IUU vessel?
- **where** did you sit on the bridge of the vessel?
- **what** were you doing on the bridge of the vessel?

Invitational questions

Invitational questions such as “explain to me ...”, “tell me what happened...”, “describe to me ...” usually produce good results.

Searching questions

The following are situations where it will be valuable to ask searching questions to obtain further information:

- where incorrect information is given;
- where the meaning of a word is not clear;
- where there is a lack of response by the witness;
- where there is insufficient response by the witness; and
- where the response is not relevant to the question.

Cognitive interviews are aimed at prompting the memory of the witness. Planning will involve ensuring a common ground of interest, for example thank the witness for his or her co-operation and the information given so far. Allow the person to feel important. Small talk might help to remove emotional barriers, such as experiences at sea. [Box 11](#) provides guidance on how to conduct a cognitive interview.

Box 11 | Guidelines for conducting a cognitive interview**Cognitive interviews**

Ask the witness to:

- verbally reconstruct the circumstances of the event or occurrence step by step;
- report every detail even if they think it trivial, this might trigger key information;
- recount the events in different order; people tend to remember more recent events better and therefore witnesses should be encouraged to begin at the end and work backwards;
- report the events from a different perspective; and
- explain what they think other witnesses might have seen.

Taking along numerous documents and statements – even if these documents and statements have no bearing on the present case – and referring to these during the interview may create the impression that a lot of evidential material is available causing the suspect to rather reveal the truth.

A suspect's statement must always be taken in the form of a warning statement, meaning the suspect has been informed of their rights and warned of the implications of their statement.

Always act within the law of the country and within the 'Bill of Rights' contained in the Constitution.

For example, if it is the practice and/or the Constitution protects the rights of the suspect, any suspect who starts making a confession must be stopped and informed that they are making a confession and that it can be made in front of a Magistrate should they wish to do so. If so, a Magistrate must be arranged. If the suspect is represented the legal representative must be informed of the fact that the suspect is intending to make a confession.

TAKING STATEMENTS OF WITNESSES

The purpose of a written statement is to ensure that a permanent and official record exists of the facts surrounding a particular event or occurrence.

The underlying principles of effective statements are shown in [Box 12](#): honesty, accuracy, objectivity, completeness, expansiveness, terms used, simplicity and comprehensibility.

Box 12 | Principles of effective statements

Honesty

Although somebody might be incriminated, the investigator must always be honest when obtaining or writing a statement.

Accuracy

To ensure accuracy, a distinction must be drawn between: -

- facts and hearsay (supplied by a third-party);
- facts seen and heard;
- facts and opinions; and
- facts based on actual occurrences and facts not borne out by actual occurrences.

Factors such as fear, tension and age can influence the observational ability of the person making the statement.

Objectivity

The deponent or investigator taking the statement must not allow his or her emotions to affect the content of the statement.

Completeness

The following questions, as was explained in more detail above, can be used to ensure completeness of any statement:

- who
- what
- when
- why
- where
- how

Expansiveness

Without using telegram style written skills, all the facts that the deponent knows must be included in the statement, in as few words as possible.

Terms used

If incorrect terminology or words are used in the wrong context it will influence the meaning of a sentence.

Simplicity and comprehensibility

Write the statement in a simple and understandable way so that anybody who reads the statement will feel that they are in fact there and watching what the witness is testifying.

Taking sworn witness statements can be considered an art form. It must encourage the person giving the statement to ensure that the details are full and correct, at the same time the person taking the statement must be capable of asking the correct questions and eliciting and recording a full and correct statement.

Professional requirements for taking sworn witness statements are shown in [Box 13](#), and include professionalism, objectivity and impartiality, good language skills, pleasant personality, emotional maturity, empathy, patience, knowledge, focus, ethics and appearance.

Box 13 | Professionalism in taking sworn witness statements

Professionalism, objectivity and impartiality, good language skills, pleasant personality, emotional maturity, empathy, patience, knowledge, focus, ethics, appearance

- **Professionalism:** When taking the sworn witness statement the investigator must identify him- or herself, introduce him-or herself as the person investigating the case, state the aim of the interview and refrain from making misrepresentations and telling lies. If the interview is recorded on audio or video, it is the undisputed right of the witness to be informed accordingly, and the investigator must obtain written permission from the witness to make the recording. Under no circumstances should the investigator smoke in the presence of the witness.
- **Objectivity and impartiality:** When the witness discloses the information that the investigator had hoped for, the witness must not be put under pressure to provide even better information. This not only affects the impartiality of the investigator but also endangers the credibility of the case as a whole. The investigator should remain objective, neutral, and non-judgmental to ensure that his or her conduct is professional when taking witness statements.
- **Good language skills:** An Experienced investigator with a strong intellect and a good insight into human nature will be better equipped to take effective witness statements. Good and proper language use and sentence construction and the ability to write down the events in sequence without spelling mistakes are the standards against which the witness will measure the investigator. Spelling mistakes could affect the meaning and interpretation n of sentences. The investigator does not need to be a language expert, but language should be used correctly, and good spelling is important. Using obscene and blasphemous language and swear words is unacceptable.
- **Pleasant personality:** An investigator with a pleasant personality will be able to put the witness at ease and this will help to focus his/her thoughts.

- **Emotional maturity:** An investigator who can control his or her emotions will be in a better position to obtain a sworn witness statement and remain objective.
- **Empathy:** Sometimes incidents or events are traumatic for witnesses, and they will look for sympathy. Being overly sympathetic towards the witness could result in the witness giving unnecessary and inappropriate information. The investigator should never become emotionally involved with the witness and should be empathetic rather than sympathetic.
- **Patience:** Patience is important. Being patient will enable the investigator to obtain all the information, even if the witness repeatedly strays from the point.
- **Knowledge:** In many instances the investigator who had to take the witness statement is asked to testify about it in court. To pass the test of credibility during cross-examination, the investigator should have a good working knowledge of criminal procedure and criminal law. The academic background of the investigator could benefit him- or herself and the case.
- **Focus:** A witness may sometimes make racist, sexist or inappropriate, hilarious remarks. The official should resist the temptation to respond or laugh and should simply continue with the interview.
- **Ethics:** During the interview the official must use techniques that are acceptable and ethically correct.
- **Appearance:** Research has shown that conservative clothing has a positive effect on witnesses. Officials are advised to wear non-obtrusive clothing when taking a witness statement.

In the **preparation phase**, the enforcement office must ensure that sufficient detail has been obtained.

Statements should be divided into paragraphs, each numbered at the centre of the page. Lines may not be left open between paragraphs or sentences, to prevent any later additions. It can be helpful to first draw up a framework of all details before writing a statement.

The **forms and composition** of statements (see [Figure 21](#)).

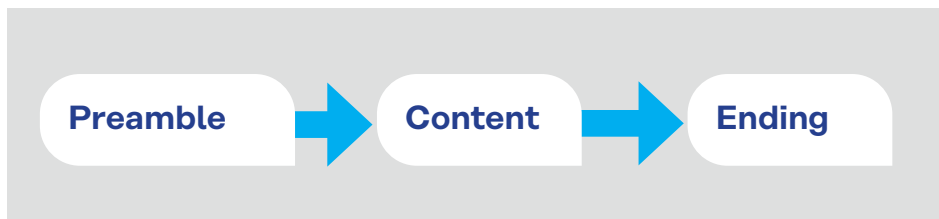


Figure 21 – The composition of statements

Preamble

The purpose of the preamble is to identify the deponent. The following information must appear in the preamble:

- the language spoken by the deponent;
- whether the statement is sworn to, or affirmed;
- gender;
- age;
- identity number;
- date of birth;
- full residential address;
- occupation;
- business address;
- contact details: home telephone number, mobile phone number, business telephone number and e-mail; and
- full names and surname of the deponent.

If the witness is a fisheries inspector or law enforcement official, the paragraph following the preamble must contain facts about his service and experience.

Content

The content of the statement must:

- Identify the unlawful nature of the action.** It should state the Law or Regulation that was violated and could also identify the perpetrator. The prosecutor will then be able to formulate a charge if the information provided covers the elements of the non-compliance or crime.
- Provide evidence of the occurrence** and to describe the who, what, where, when, why and how to ensure completeness.

- ☑ **Record the testimony of a witness.** The witness can only testify to his or her own senses, such as 'I saw, heard, smelt and felt'. The most common is testimonial evidence about what they observed or heard first hand and it should not include opinions.
- ☑ **Include the following information when a statement relates to incident scene:**
 - description of mode of transport/vessel/boat/skiff/ individual fishing from land or transporting fish, and fishing gear, that relates to the criminal activity;
 - description of licensing that authorises activity, if necessary;
 - description of suspect;
 - behavioural characteristics of suspects;
 - description of fish/fish product including scientific name;
 - description of seized exhibits/evidence;
 - weather conditions;
 - right or permission; and
 - whether investigation is required.
- ☑ **Use the exact words of the deponent to ensure authenticity and originality.** The words used by the deponent must not be translated into correct terminology; because the defence is entitled to a copy of the statement and may cross-examine the deponent on terminology, 'translations' may lead to acquittal.

Ending

The ending of a statement, prepared after the deponent has been read or handed the statement to read, provides them an opportunity to make any corrections/changes/additions. The following procedures would then ensue.

- ☑ When the deponent is satisfied with the content of the statement, they are requested to initial every page and sign fully on the next line after the last word of the statement.
- ☑ If the deponent is illiterate, they will be requested to make their mark in place of the signature and initials.
- ☑ If there is a translator, they must certify the translation ('Translated from Swahili to English') and sign the certification.
- ☑ The law enforcement official who obtained the statement, either commissions/affirms the statement or endorses it, as may be legally required. Endorsements should state 'The above statement was taken by me' and be signed with the date, time and place.

Sworn, or affirmed witness statements (affidavits) can provide essential evidence. To take an effective sworn witness statement, the fisheries inspector should follow the steps below.

- Conduct an in-depth interview with the witness to determine which facts and information should be included in the statement.
- Start writing the statement and, if possible, read the content to the deponent as the statement progresses.
- After taking the statement read it back to the witness or ask the witness to read it.
- As soon as both the witness and the official are satisfied that all the facts have been documented correctly, the witness must swear to or affirm the statement.
- The witness and the commissioner of oaths must sign and date the statement.
- The sworn statement must be filed in the case file.

Sworn or affirmed statements require a deponent who is satisfied that the statement is complete to respond to certain questions under oath or by affirmation. Their answers will be required in the statement as shown in [Box 14](#).

Box 14 | Sworn or affirmed statements

The deponent must be asked:

- Do you know and understand the content of this statement?
- Do you have any objection to taking the prescribed oath?
- Do you consider the prescribed oath/affirmation to be binding on your conscience?

The deponent has to reply for:

- Oaths: yes, no, yes
- Affirmations: yes, yes, yes

The replies must also be written down in full sentences:

- I know and understand the contents of this statement.
- I have no objection (for affirmations, I have objection) to taking the prescribed oath
- I consider the prescribed oath/affirmation to be binding on my conscience.

The oath/affirmation is then administered:

- Oaths: I swear that the contents of this statement are true, so help me God.
- Affirmations: I truly affirm that the contents of this statement are true.

INSPECTION REPORT

Inspection reports for routine inspections must contain at a minimum the information in the form below in [Figure 22](#) and a guide to the form is in [Figure 23](#).

Where the inspection has been in port, the report form in Annex III of IOTC Resolution 16/11 on port State measures must be submitted. The form is provided in [Annex 2](#) of this manual.²⁸

²⁸ Also available at <http://extwprlegs1.fao.org/docs/pdf/mul163767.pdf>

There are some follow-up actions whether or not there is suspicion or clear of IUU fishing. Some of these actions will depend on why the inspection was conducted. For example, where the purpose was compliance with:

- **IOTC port State inspection requirements:** A port inspection report on the prescribed form must be issued within three days of the inspection; and
- **National legislation:** Specific notification provisions may be provided in national legislation.

If it is decided not to report suspicions of IUU because the evidence is weak, documents or equipment detained should be returned as soon as possible.

If the port inspection reveals nothing unusual, a copy of the inspection report should be provided to the master of the vessel as soon as possible.

If evidence has been found of IUU fishing, this should not be a surprise to the master. The boarding party will probably have indicated that they have concerns about certain findings and may even have detained or seized logbooks and electronic equipment.

By this stage the senior inspector will have communicated the problems to a supervisor and sought legal advice, especially if the intention is to detain or seize the vessel, gear, or catch, or to charge the master.

It may also be appropriate for the next actions to be undertaken by more senior inspectors because of the potential implications for international relations.

As *a matter of course*, within three full working days of the inspection, the IOTC Resolution requires the port State to transmit electronically a copy of the inspection report (and upon request an original or certified copy), to the **master** of the inspected vessel, the **flag State**, the **IOTC Secretariat** and, as appropriate, to:

- (a) the flag State of any vessel that transhipped catch to the inspected vessel;
- (b) the relevant CPCs and States, including those States for which there is evidence through inspection that the vessel has engaged in IUU fishing, or fishing related activities in support of such fishing, within waters under their national jurisdiction; and
- (c) the State of which the vessel's master is a national.

Following an inspection, where there are *clear grounds for believing that a vessel has engaged IUU fishing or fishing related activities*, the inspecting port State must promptly notify:

- the flag state
- the IOTC Secretariat
- relevant coastal States
- other RFMOs

The port State must also deny the vessel the use of the port for landing, transshipping, packaging and processing of fish and for other port services, including refuelling and resupplying, maintenance and dry-docking. (However, the use of port services essential for the safety or health of the crew or for the safety of the vessel must not be denied.)

After inspections, official warning (or caution) letters may be issued in lieu of taking legal proceedings where there are clear grounds for believing an offence has been committed. This needs to be carefully considered.

A warning letter should only be issued when there is enough evidence to prove an offence but where, for example, there was an honest and genuine mistake, the infringement was minor, or it is policy to do so in certain circumstances.

Do not issue a warning letter based only on suspicion. In that situation it is better to simply issue a letter reminding the master or other person of his or her obligations under the law.

Remember, even a warning letter can be challenged if the master or other suspected person believes no offence has been committed.

1. Name of inspector (s) and Agency	2. Date of inspection
3. Port of inspection	4. Time of Inspection

5. Vessel name	6. Flag State	7. Port of registry
8. Type of vessel / gear used	9. Radio Call Sign	10. IMO Number
11. Vessel master name	12. Vessel master nationality	13. Fishing master name
14. Name, address and contact of the vessel owner		

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15. Name, address and contact of local vessel agent

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16. Name, address and contact of the operator(s) (if different from vessel owner)

--

17. Examination of ship documents

Navigational Log	Y <input type="checkbox"/> N <input type="checkbox"/>	Registration	Y <input type="checkbox"/> N <input type="checkbox"/>
Catch Log	Y <input type="checkbox"/> N <input type="checkbox"/>	License(s)	Y <input type="checkbox"/> N <input type="checkbox"/>
Freezer Log	Y <input type="checkbox"/> N <input type="checkbox"/>	Transshipment Authorisations	Y <input type="checkbox"/> N <input type="checkbox"/>
Crew List	Y <input type="checkbox"/> N <input type="checkbox"/>	Other	Y <input type="checkbox"/> N <input type="checkbox"/>

18. Photos/copies secured of ship documents

Y N

19. Comments on Documents

--	--

20. Last port of call (country and port) and date

21. AIS

22. AIS MMSI number

	Y <input type="checkbox"/> N <input type="checkbox"/>	
--	---	--

23. Authorisation to fish from Flag State

24. Vessel on IOTC authorised list

25. Vessel on any RFMO IUU list

Y <input type="checkbox"/> N <input type="checkbox"/> # _____	Y <input type="checkbox"/> N <input type="checkbox"/> # _____	Y <input type="checkbox"/> N <input type="checkbox"/> RFMO: _____
---	---	---

26. Regional fishing licenses (list all)

Country	License #	Valid From	Valid To	Original Document?
				Y <input type="checkbox"/> N <input type="checkbox"/>
				Y <input type="checkbox"/> N <input type="checkbox"/>
				Y <input type="checkbox"/> N <input type="checkbox"/>
				Y <input type="checkbox"/> N <input type="checkbox"/>
				Y <input type="checkbox"/> N <input type="checkbox"/>
				Y <input type="checkbox"/> N <input type="checkbox"/>

27. Photos taken of vessel					
Port Side	Y <input type="checkbox"/> N <input type="checkbox"/>	Bow	Y <input type="checkbox"/> N <input type="checkbox"/>	Bridge	Y <input type="checkbox"/> N <input type="checkbox"/>
Starboard Side	Y <input type="checkbox"/> N <input type="checkbox"/>	IMO	Y <input type="checkbox"/> N <input type="checkbox"/>	Catch / Cargo	Y <input type="checkbox"/> N <input type="checkbox"/>
Stern	Y <input type="checkbox"/> N <input type="checkbox"/>	Call Sign	Y <input type="checkbox"/> N <input type="checkbox"/>	Gear	Y <input type="checkbox"/> N <input type="checkbox"/>

28. Inspection of fishing gear	29. Comments
Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/>	

30. Any transhipments in last 90 days	31. Comments
Y <input type="checkbox"/> N <input type="checkbox"/>	
32. Transhipment authorisation documents examined	
Y <input type="checkbox"/> N <input type="checkbox"/>	

33. Species and quantity (t) transhipped

34. List date of transhipments or embarkation, name of receiving vessels and IMO numbers

35. Fish Hold(s) inspected
Y <input type="checkbox"/> N <input type="checkbox"/>

36. Species and quantity (t) offloaded

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37. Actions taken and comments by Inspector	38. Date and signature of Inspector(s)
39. Comments by vessel Master	40. Date and signature of vessel Master

AFTER INSPECTION

41. List of document copies / photos attached to final inspection report

Figure 22 – Fishing vessel inspection form for a routine inspection

A guide to fill in the form can be seen below ([Figure 23](#))

Form reference	Comment
1, 2, 3	Complete in full
4	Time of start if inspection
5, 6, 7, 9, 10	See vessel registry certificate (request this from the vessel Master)

8	For fishing vessels, list gear type according to national standards For support / supply / reefer vessels describe vessel type
11, 12, 13	Request vessel Masters passport and crew list
14, 15, 16	Request full details from vessel Master. Owners are listed in vessel registration certificate.
17, 18	Mark with a clear 'X' boxes that apply
19	Describe any significant findings or anomalies, and list any additional documents that are inspected
20	Request this from the Master, and cross check in the Navigational Log
21	Request this from Master if equipped with AIS and fill in number
26	Request to see all relevant fishing licenses. These should be originals.
27	Take all possible photos and mark with a clear 'X' boxes that apply
33,34	Complete as indicated. Check if transhipments are reflected in the navigational log book
35	Complete as indicated
37	Any action you have taken or any comments to information provided (continue on to the back of the form if more space is required). Please give a form reference if relevant.
38	Signature(s) completed with date
39	The vessel Master must be given the opportunity to comment on the inspection.
40	Vessel Master signature. If the vessel Master refuses to sign the document, please indicate this.
41	Provide a complete list of all copies of documents and photos that are attached to the final inspection report. Continue on the back of the form if necessary.

Attachments (or photos) if possible:	<ul style="list-style-type: none">• Prior notification of EEZ entry• Vessel registration certificate• Flag State authorisation to fish• National authorisation to fish (foreign vessels)• Master passport• Crew list• Photos of vessel
---	--

Figure 23 – Guide to the inspection form

4.4 COLLECTION OF EVIDENCE

WHY EVIDENCE IS COLLECTED

Fisheries inspectors carry out inspections for different purposes; some for simply monitoring compliance with national legislation and applicable RFMO CMMs, and others for investigating possible violations. The officers may also investigate compliance by countries with their international obligations as flag States, coastal States and port States.

Any inspection may lead to the need for legal action, so officers must always be prepared to collect evidence at all times. It will be used to prove or disprove compliance or violations, and it can also present a bigger picture. For example, the evidence can:

- corroborate testimonies;
- validate assumptions or conclusions;
- uncover illegal practices other than fishing, such as labour, safety, trafficking and association with transnational criminal organizations;
- implicate others who may be associated with the violation, such as donor vessels;
- give the court a full picture of the illegal activity; and
- uncover fraudulent practices of other actors, such as presentation of forged documents by an agent to gain resource access for a specific vessel.

Evidence can take the form of physical objects, testimony, documents, photographs, videos, voice recordings or other electronic proof. It serves as the building blocks for any investigation.

Evidence tells the story of what happened, who was involved, when, where and why it occurred and who was at the scene.

TYPES OF EVIDENCE: REAL, TESTIMONIAL AND DEMONSTRATIVE

The different types of evidence are illustrated in [Figure 24](#).

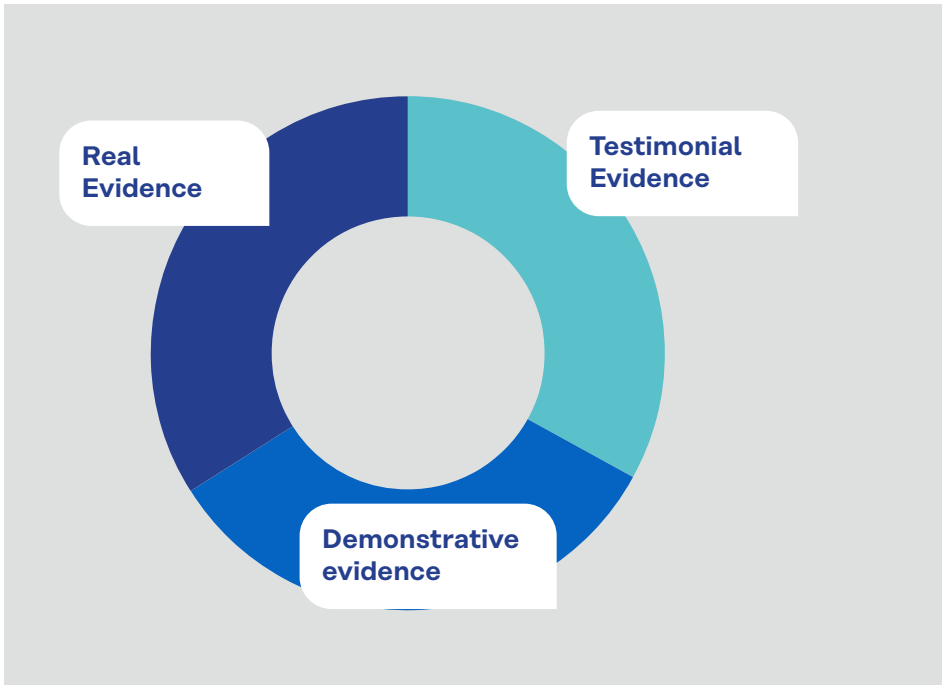


Figure 24 – Types of evidence

- **Real evidence.** Real evidence is an actual object or thing relating to the case, such as tools used to commit the offence (e.g. illegal fishing gear) and the object of the offence (e.g. the fish). These are tangible and can be seen or inspected when presented in court, usually by witnesses.
 - **Object.** Something tangible that was part of or related to an actual event, such as gear.
 - **Documentary.** Documents that are relevant to an issue in a case and can link a suspect to the commission of an offence, for example, licences, logbooks and observer records.
 - **Electronic.** Computer generated evidence, the admissibility of which

- is normally addressed in national rules, such as VMS data.
- **Photographic/video.** This may be understood as either documentary or real evidence; infrared footage taken by a drone might be electronic evidence. However, these classifications are not material to the case itself.

- **Testimonial evidence.** Testimony is the statement of a witness who appears in court to testify about the facts at issue in a case. This could be vessel personnel (captain, crew), observers, inspectors and other. They may be lay or expert witnesses; different rules may apply to each, however both. usually testify under oath.
 - **Fact or lay witnesses.** Persons with first-hand knowledge to the limit of their five senses, and competency. They testify to the facts, but cannot offer opinions, inferences or conclusions.
 - **Expert witnesses.** Persons with specialised skills whose opinion may help understand the facts of the case.
- **Demonstrative evidence.** Demonstrative evidence is evidence that shows, illustrates, or demonstrates a fact at issue in the case. It makes testimonial evidence easier to understand, and can be an illustration, flow chart, drawing or other. An example of demonstrative evidence in court is provided below in [Figure 25](#).



Figure 25 – Vehicle display in court as demonstrative evidence
Source: NFDS.

CLASSES OF EVIDENCE: DIRECT AND CIRCUMSTANTIAL

The two classes of evidence are direct and circumstantial evidence. The class that evidence falls into affects how it will be considered in proceedings.

- **Direct evidence** establishes or proves a fact on its own without inference or presumption. For example, if it is prohibited to catch or carry a certain turtle species on board a vessel, and the prohibited species is found onboard, this would qualify as direct evidence.
- **Circumstantial evidence** indirectly establishes or proves a fact by proving another fact from which an inference or presumption can be made. For example, fish on board does not necessarily constitute evidence of illegal activity. However, where related AIS, VMS and GPS evidence shows fishing activity in a prohibited zone, it may be presumed or inferred that it was fished illegally.

EVIDENCE COLLECTION PROCEDURES

Practical and methodical evidence collection procedures should be followed with a view to ensuring that:

- The fisheries inspector has a toolkit, including:
 - ID and/or badge;
 - reports, such as port State measure AREP documents;
 - fish/product ID cards;
 - calculator;
 - digital camera;
 - measuring equipment, net measures, callipers and flexible tape;
 - seals, bags, labels, chain of custody forms;
 - notebook;
 - mobiles phones/radio;
 - copies of licenses and legislation; and
 - protective clothing, gloves.
- Risk assessment results are available as appropriate and there is a pre-inspection briefing.
- Inspection of documents includes verification and cross-referencing of reports (e.g. AREP) if available:
 - of information found during document inspection with findings from the physical inspection; and
 - of operations and catch details with those monitored onboard, e.g. by observers during offloading.
- Physical inspection includes recording gear specifications, checking on

equipment to verify information in documentation and looking for additional undeclared components. It could include:

- inspecting compartments for gear or equipment or evidence of catch;
 - inspecting bridge equipment for its working order and reliability, e.g. navigation plots, VMS, AIS, computers, etc.;
 - inspecting fish storage holds;
 - identifying fish, weights and products to see if they conform to catch and transshipment documents; and
 - monitoring the off-loading process.
- If needed, a search warrant has been issued.
 - Relevant questions are asked of witnesses, accurately recorded and signed.
 - A person who holds a position of responsibility in the relevant company/vessel/other is present and as appropriate signs an inspection report.
 - Actions are taken to maintain the “chain of custody”.
 - Responsibility for and content of inspection reports are clear.
 - There is interagency cooperation as needed.
 - Regional cooperation and communication as needed.²⁹

Guidelines for seizing and securing evidence and the chain of custody are addressed in the following sections, but for general procedures it is important that, where possible, all **objects** or **exhibits** to be presented as evidence in court, and **samples** authorised under national legislation that are sent for forensic analysis, should be seized or taken in the presence of:

- the alleged offender(s); or
- a person who holds a position of responsibility in the company/partnership or on board a fishing vessel.

Any **seal** that is used to secure a seized object or sample to be used as evidence should have a unique reference number and be promptly recorded in the notebook or other similar tool and be properly labelled with the details of the object or sample, persons present and location/time/date it was taken.

²⁹ Suggested Standard Operating Procedures are provided that aim at coordinating different procedures in the IOTC region in IOTC PSM Procedures.

The **label** should then be signed by the officer seizing the object or sample and a receipt of all objects seized as evidence should be provided to the offender. All these details will also be recorded in the officer's notebook or other similar tool.

After seizure of objects, exhibits and samples, the following actions must be taken to ensure admissibility:

- Those that do not require analysis must be deposited into a secure evidence locker in accordance with procedures and practice in that country. This must be done as soon as reasonably possible and the particulars of the person/date/time/place to whom it was delivered for safe keeping must be recorded.
- Those that must be analysed must also be deposited into a secure evidence locker and particulars recorded as above. In addition, the object/exhibit/sample must be booked out of the secure storage facility accompanied by a letter describing what analysis is necessary and delivered to the expert or forensic laboratory for analysis. A record must be made of the person/date/time/place to whom it was delivered.

A statement must be prepared that explains:

- when and where the samples were taken, or the object/exhibit seized;
- who was present;
- the number of samples taken and a list of all the objects/exhibits; and
- what happened to them.

Some practical procedures for handling evidence:

- When seizing objects or exhibits, make sure to prevent them from getting mixed up or becoming contaminated;
- Mark exhibits properly, do not expose them to the elements and protect them from change in conditions.
- Pack fragile articles carefully, using shock-resistant material;
- Properly cork and seal holders containing liquids.
- Use an ink or ball point pen to note the details of exhibits.

Practical procedures for evidence gathering are summarised in [Figure 26](#).



Figure 26 – Practical procedures for evidence gathering

Detailed inspection and evidence-gathering procedures for port State measures, which are generally applicable for any vessel inspection are described in IOTC PSM Procedures.

SEIZING AND SECURING EVIDENCE

Procedures for seizing and securing evidence that is physical, documentary, electronic and photographic are described below:

- items that are included;
- possible violations;
- where to find the items;
- what to look for;
- what to do; and
- top tips.

A separate reference for photographic evidence, Photo manual for fisheries enforcement – the use of cameras in fisheries operations is provided in the bibliography (Stop Illegal Fishing and TM Tracking, 2017). Additional guidance is provided in [Annex 3](#).

Physical evidence

During an inspection of a fishing vessel, from the time that possible violations are identified, the vessel should be treated as an active incident/crime scene to the extent possible.

Access to the vessel should be controlled to avoid contamination and weakening of the admissibility of any evidence that will be collected. All individuals present on the vessel must be documented and their movements must also be documented if boarding or disembarking is allowed by the law enforcement officer in charge.

Priorities for evidence collection must be determined, considering the suspected violation or criminal activity and the circumstances and location of the inspection.

Once it has been decided which evidence to collect, this needs to be seized and secured in a systematic manner and recorded in an inventory list.

Physical evidence could include fishing gear, fish aggregating devices, bait, catch and weapons.

Seizing and securing evidence from a fishing vessel should take place in the presence of the captain or master of the vessel or a senior officer appointed by the captain or master. Before proceeding to secure the object, where possible a photograph should be taken of the physical evidence in situ, on sight and unmoved. After photographs have been taken, the following procedures are required to seize and secure the evidence.

Bags. Physical evidence must, as far as is possible, be placed in a bag, known as an evidence bag. Forensic evidence bags are purpose-made for this and if available should be used. If they are not available other items can be used such as plastic freezer bags, bin bags for larger objects or envelopes for smaller items. When objects are too large to be placed in a bag, for example catch or gear, special arrangements need to be made. Fragile articles must be handled and bagged with extra care to ensure that they are not damaged.

Seals. Physical evidence placed in a bag must be sealed to stop the possibility of tampering. Forensic evidence bags are self-sealing. Other bags must be sealed with purpose made tamper-resistant evidence tape, other tape, a cable tie or another means.

To ensure that the seal is not tampered with, different approaches can be taken but generally writing across the seal, extending the writing across the tape and the plastic bag all help to demonstrate if tampering has occurred. Writing the date and initials of the enforcement officer packing the evidence and the signature of the master is recommended.

Labels and tags. Physical evidence that is bagged and sealed must be marked for correct identification. Clear writing with permanent ink is required, special care is required if the item is perishable, as it will be kept in refrigerated or freezer storage and a waterproof marker must be used. The

following information is required on each object of evidence:

- item description;
- date and time seized;
- officer's name;
- specific place of seizure; and
- a case number, once a case is registered.

Inventory log. An inventory log, written in ink or ballpoint pen, provides details for all physical evidence collected in relation to a case of suspected illegality or crime.

Documentary evidence

Fisheries inspectors must decide which documents should be seized or photographed during evidence collection. There are many that could be relevant, such as certificates for vessel registration, classification, tonnage and safety, licenses and authorisations for fishing or transshipment and passports of the master and crew.

Document verification plays an important role in ensuring the legal operation of fishing vessels. Through visual analysis, crosschecking information and verifying information with issuing authorities, fisheries officials conducting due diligence checks or inspections can identify high-risk vessel operators who are not complying with legal requirements.

The practice of under or misreporting catches are well documented, for example by using false catch logs and catch certificates to bypass catch restrictions, underpay related fees, falsify hygiene reports, and mislabel species.

Document forgery also facilitates vessel identity fraud (e.g. a vessel's nationality, authorisation status, operational history) through abuse of flag State registries for fishing vessels. A Document Verification Manual for fisheries enforcement – vessel identity has been published by Stop Illegal Fishing (Stop Illegal Fishing and TM Tracking, 2019).

The handling of the catch itself is also prone to 'identity fraud', transshipment and port landing operations where false documents may be used to cover the illegal origin of the fish in order to gain access to port and markets. The boundary between vessel identity fraud and catch identity fraud can be very thin.

Electronic evidence

The importance of electronic evidence is continuously increasing, and as new technologies are developed, so is the range of electronic equipment. Collection of electronic equipment as evidence will permit analysis of the equipment and instru-

ments including computers and peripherals, mobile and satellite phones. Outputs from electronic equipment may also be collected as evidence, such as VMS data and position data from onboard GPS devices, emails and text messages.

Electronic evidence is data that is manipulated stored or communicated by any manmade device, computer, or computer systems, or transmitted over communication system. This in the context of fish crime of VMS tracks, AIS Tracks, GPS tracks, GPS Servers, laptop and desktop computers, tablets, mobile phones, satellite phones and computer peripherals such as hard drives and USB memory sticks.

Electronic evidence has become critically important, as computer data can leave a trail to a multitude of crimes. Previously used solely in the prosecution of e-crimes, digital evidence is now used in a wide range of criminal prosecution, drawing upon things like email communication, text messages, cell phone location, and satellite tracking data.

Electronic evidence is obtained by a cybercrime expert and when the necessity exists to seize exhibit in relation to this, the inspector needs to solicit the assistance from the police Cyber Crime Unit. The investigation of electronic evidence consists of three stages, namely acquisition or imaging of exhibits, analysis, and reporting.

Acquisition involves creating an exact duplicate of the storage media which can be the hard drive, external hard drive, memory USB sticks, Mobile Phone memories, VMS and AIS servers. This is done using specialist software programs, like EN-CASE for computers and CELEBRIGHT for mobile phone devices.

During the analysis phase the investigator recovers evidential material even if deleted using different methodologies and tools.

When the investigation is completed, the date is presented – usually in the form of a written report accessible and easily understood by the lay person.

In relation to fishery crimes, investigation of electronic evidence assists with, but not limited to, the recovery of digital data and the uncovering of illegal transgressions or activities.

Photographic evidence

Photographs of evidence may be admissible in court if the original evidence is unavailable for acceptable reasons such as being too physically large to be in the court, to demonstrate the original situation of physical evidence or to demonstrate that the evidence was seized and secured correctly. However, to be admitted in court the integrity of photographs must be demonstrated to avoid claims that the photographs have been manipulated.

In order for photo and video evidence to be admissible in court it must meet two basic requirements, relevance and authenticity.

Relevance. It must have probative value; it must either support or under-

mine the truth of any point at issue in the legal proceedings.

Authenticity. It must accurately represent its subject as related to the legal claim.

However, because photographs and videos can be manipulated to skew reality, there may be objections to introducing them as evidence. Claims supporting inadmissibility are shown below.

Undue Prejudice. A claim that the photo or video evidence is not a reasonable representation of its subject and may result in undue prejudice.

Hearsay. If there is no witness present who can be cross-examined, it may be argued that the substance of the photo or video evidence is hearsay.

The Best Evidence Rule. If the photo or video is secondary evidence (a copy or facsimile), it may be argued that the original copy is superior evidence.

Lack of Foundation. When visibility, the time of day, the weather or some other factor is at issue in the litigation, it may be questioned whether there is a substantial similarity between the occurrence in question and the photo or video evidence.

It is therefore important to establish formal procedures for the collection and preservation of the evidence, to adhere to the requirements of relevance and authenticity and to prepare for the objection tactics of the opposition.

Photographic evidence in fisheries offences can reveal the use of multiple identities by a fishing vessel or incidents where multiple vessels share one identity, in order to circumvent regulation and avoid paying access fees. Photographs can also indicate compliance issues such as incorrect gear and transshipment activity.

The ability to take and analyse photographs are important skills and cameras are an essential tool for anyone involved in fisheries monitoring and enforcement including fisheries inspectors, observers, MCS staff, field staff, the Coast Guard and community groups.

Stop Illegal Fishing (SIF) has published a very useful photo manual for fisheries enforcement (Stop Illegal Fishing and TM Tracking, 2017). It describes what to look for (e.g. evidentiary items such as gear, species, fish hold, packaging, navigational equipment, AIS, VMS, logs, ownership documents, licenses, laptops and other electronics), photographic metadata, storage, use, analysis and case studies.

After the photographs have been taken, the evidence should be secured using the following procedures (Stop Illegal Fishing, 2020).

If the photographs were taken on a digital camera – As soon as possible after the photographs have been taken, two sets of working copies of the photographs must be downloaded from the original secure digital (SD) card or memory card. The original SD card must be placed in an evidence bag, sealed and labelled according to the procedure for all evidence and a chain of custody form maintained.

If the photographs were taken on a mobile phone – As soon as possible af-

ter the photographs have been taken, two sets of working copies of the photographs must be downloaded from the phone. The original photos must be kept secure on the phone, so that if the validity of the photographs is challenged, they can be verified by downloading the metadata from the phone.

To be admissible as evidence, printed photographs must be placed in a numbered sequence in a photo album. A key to the photo album must be included with information including an explanation for each photograph and a statement by the photographer stating the date and time the photographs were taken and where they were taken, which will usually include vessel identifiers.

CHAIN OF CUSTODY

An item will only be admissible as evidence unless the prosecution proves a “chain of custody” – a properly documented and unbroken trail of custody without gaps or discrepancies.

“Chain of custody” is a legal term referring to the order and manner in which physical or electronic evidence in criminal and civil investigations has been handled. In practice, it is a chronological paper trail documenting when, how, and by whom individual items of physical or electronic evidence—such as cell phone logs—were collected, handled, analysed, or otherwise controlled during an investigation.

In court, the chain of custody documentation is presented in order to prove that the item of evidence is, in fact, related to the alleged violation, and that it had been in the possession of the defendant. Information contained on the evidence label or tag is included in the evidence chain of custody form in addition to information about who has handled the evidence, at what time and date and where.

It must show:

- the initial contact with the object;
- whether it was handed over to someone else (who/time/date/place);
- if retained, how and where; and
- that the object has not been tampered with.

The completed original form accompanies the evidence in court to enable the enforcement officer to demonstrate that the object originally found is the object exhibited.

In an effort to establish a reasonable doubt, the defence looks for holes or acts of mishandling in the chain of custody to show, for example, that the item may have been fraudulently ‘planted’ to make the accused person appear guilty.

4.5 COMPILING AND PREPARING A CASE DOCKET

A docket is an official file or dossier that records a reported incident and its investigation. It contains information on all available evidence that can prove the commission of a incident, reports all steps taken during investigations and serves as a document for court procedures.

In best practices, dockets are structured into different sections (described below) but national systems may differ. They facilitate communications between the investigator and the person in charge of the investigation, the person in command of the office and the prosecutor.

Dockets are compiled when an incident is registered according to national procedures, which normally involves submission by a witness of a statement/affidavit showing the elements of an incident. The statement/affidavit must contain sufficient 'particularity' for a case to be registered. In the case of a statutory crime the sections and acts contravened must be entered on the cover for registration purposes.

Many countries have a computerised registration system called a crime administration system. When registered, a unique number is allocated to each case and is connected to the name of the police station where the case is registered.

A case docket is typically arranged in sections, (see [Figure 27](#)) noting that each document filed within the docket, no matter which section it is filed in should be clearly marked at the top of the page and the name of the police station and the case number with the reference number should be placed in the top right corner.

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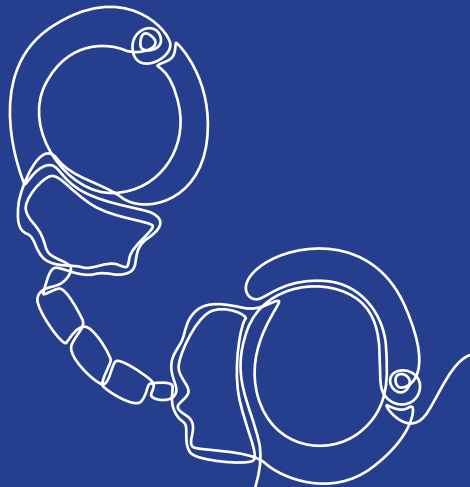
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5

ARREST



The arrest of a suspect must be executed correctly. If not, the case may be jeopardised.

5.1 REQUIREMENTS OF A LAWFUL ARREST

Arrests must be made in accordance with the Constitution and legislation governing criminal law and criminal procedures in each country, however basic rules of lawful arrest are similar and provided below.

1. The arrest (with or without a warrant) must be in accordance with statutory law.
2. There must be a sufficient act of arrest.
 - This can include physical and verbal actions or statements by an arresting officer that entail the physical restraining of a person, or communicating to the person that they are under arrest, while also making some physical contact with the suspect.
 - It is not necessary for a person who is arrested to be confined to a specific area. However, it should be communicated to the person that they must remain in the presence of the arrestor, who should affect physical control over the person.
 - Physical control means touching the arrested person or the submission of his body by force when the arrested person resists arrest or flees.
 - Reasonable force may be used when making an arrest.
3. The arrested person must be informed of the reason for arrest.
 - They should be informed at the time of the arrest of the offence they have been suspected of committing, or the factual basis behind their arrest. The reason for their arrest must not be vague.
4. Where applicable under a country's legislation, arrested persons should be told of their constitutional rights.
 - For example, the arrested person may have the right to remain silent, consult with a legal representative or other.
5. The arrested person must be brought to an appropriate place such as a police station as soon as possible after being apprehended.
 - Legislation in some countries may also require that the arrested person appear in court within a specified time.

5.2 USE OF FORCE AND INJURIES DURING AN ARREST

When necessary for executing the arrest of an individual, the arresting officer should take care to use the minimum force necessary to achieve that goal. Otherwise, they may become criminally liable. There is no justification for using excessive force towards a suspect or arrested person.

When determining whether or not to apply any level of force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, including:

- the conduct of the individual being confronted (as reasonably perceived by the officer at the time);
- officer/subject factors (age, size, relative strength, skill level, injury/exhaustion and number of officers versus subjects);
- Influence of drugs/alcohol (mental capacity);
- proximity of weapons;
- the degree to which the subject has been effectively restrained and their ability to resist despite being restrained;
- time and circumstances permitting, the availability of other options;
- seriousness of the suspected offence or reason for contact with the individual;
- training and experience of the officer;
- potential for injury to the public, officers and suspects; and
- risk of escape.

The use of force may be justified under legislation where certain circumstances exist, such as the above, or where the suspect is fleeing or resisting arrest.

When using force to make an arrest the legislation should be taken into account, as well as the following guidelines.

- The force is immediately necessary for the purposes of protecting the arrestor, any person lawfully assisting the arrestor or any other person from imminent or future death or grievous bodily harm.
- There is a substantial risk that the suspect will cause imminent or future death or grievous bodily harm if the arrest is delayed.
- The offence for which the arrest is sought is in progress and is of a forcible and serious nature and involves the use of life threatening violence or a strong likelihood that it will cause grievous bodily harm.

The use of deadly force is provided in national legislation, of which fisheries inspectors should be aware. In general, while the use of a firearm is expressly considered deadly force, other force might also be considered deadly if the officer reasonably anticipates and intends that the force applied will create a substantial likelihood of causing death or very serious injury.

Use of deadly force may be justified if an officer needs to protect themselves or others from what they reasonably believe would be an imminent threat of death or serious bodily injury, or to stop a fleeing suspect if there is probable cause to believe that the suspect has committed or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and there is reasonable belief that there is an imminent or future potential risk of serious bodily injury or death to any person if the suspect is not immediately apprehended (under such circumstances, a verbal warning should precede the use of deadly force, where feasible).

5.3 RESTRAINING MEASURES AND INJURIES

In order to prevent an arrested person from escaping, handcuffs or leg-irons may be used (if necessary). Irrespective of whether restraining measures are used or not the enforcement officer must always remain alert until such persons are safely placed in a cell or handed to a police official.

The safety of the arrested person must be ensured at all times by the person conducting the arrest. Should the arrested person show any signs that they are ill or injured, it must be reported to the detaining official and medical treatment should be arranged immediately in the case of serious injuries or illness.

If any individual refuses medical attention, the refusal must be fully documented in related reports and, whenever practical, should be witnessed by another officer and/or medical personnel. If an audio recording is made of the contact or an interview with the individual, any refusal should be included, if possible.

Persons who exhibit extreme agitation, violent irrational behaviour accompanied by profuse sweating, extraordinary strength beyond physical characteristics, unusually high tolerance to pain or who require a protracted physical encounter with multiple officers to bring under control may be at an increased risk of sudden death and should be examined by qualified medical personnel as soon as practicable.

All visible injuries to the person standing to be arrested must be noted in the fisheries inspector's notebook/pocketbook/diary so as to avert later allegations of assault by the fisheries inspector.

5.4 SEARCH OF ARRESTED PERSON

Legislation provides terms for the search of an arrested person.

The arresting officer must search the arrested person immediately after arrest for evidence pertaining to the incident and/or weapons that may endanger the enforcement officer and party.

During the search, their safety must be paramount. If the situation is volatile and there is an imminent threat that their lives will be threatened, the enforcement officer must restrain the arrested person and transport them to the nearest police station as soon as possible, under visible guard, to undertake the search.

The search of an arrested person must be undertaken in a decent manner, which displays respect for the inherent dignity of the person, and searches must be done by someone of the same gender. If a male or female is not readily available, the fisheries inspector can request a member of the public to assist with searching the arrested person.

5.5 WARNING AND INTERVIEWING AN ARRESTED PERSON

It international best practice, and the law in many countries, that a warning, informing an individual of his rights, is furnished to a person at the time of, or immediately after his or her arrest. It should include:

- the reason for arrest;
- the right to remain silent and that anything they say may be used as evidence against him or her in a court of law;
- the fact that they are not compelled to make an incriminating confession and will not be forced to do so; and
- the right to consult with a legal practitioner of their choice, only if this is stated in the Constitution of the country of appointment. The arrested person would be asked if they wish to have a lawyer and be given the opportunity to contact one.

Fisheries inspectors should be familiar with national law involving warning statements. They can be used for further investigation and to prove or disprove an alibi used by the accused.

A warning statement may contain admissions by the accused, and it could be handed in during the trial as evidence that proves the admissions and/or the credibility of the accused.

When a fisheries inspector interviews any individual who is reasonably suspected as being involved with an illegal activity that is being investigated, they should:

- identify themselves and show ID;
- state that they are investigating an illegal case and specify this;
- state that they have information or a reasonable suspicion that the individual might be involved;
- state the seriousness of the case;
- inform the individual that they have the right to remain silent and that anything they say may be used as evidence against them in a court of law; and
- inform the individual that they can have an Attorney present.

The above warning must be noted in the fisheries inspector's notebook and the suspect must sign. If the suspect refuses to sign, another fisheries inspector present can sign as witness that the warning was given. Everything that a suspect interviewed states must be documented properly, and the record must be supported by an affidavit by the enforcement officer conducting the interview.

An arrested person's reaction to the arrest could be neutral (I exercise my constitutional right to remain silent) or exculpatory (I do not know anything about this offence). It could also take the form of an admission or confession. The above procedures concerning warning statements apply, mindful that they may contain admissions by the accused, and it could be handed in during the trial as evidence proving the admissions. National legislation will provide for evidentiary requirements relating to admissions and confessions. Generally, if they are obtained under duress, they are considered inadmissible in court.

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6

**CRIMINAL PROSECUTIONS
AND ADMINISTRATIVE
PROCEDURES**



6.1 DECISION TO PROSECUTE OR PROCEED ADMINISTRATIVELY

A decision to prosecute or proceed administratively in relation to an offence may need to be made. In addition, there may be civil liability involved, such as compensation for pollution or payment for damages to property.

In most countries, criminal procedures legislation and administrative procedures legislation govern prosecutions and administrative procedures respectively. However, specific fisheries legislation is in place, or being developed in a number of countries that provides for administrative determinations in fisheries offences.³⁰ The final decision to proceed one way or another will be made by a designated official/officials in each country according to applicable legislation. For example, it could be the director of public prosecutions (DPP) or, for proceeding administratively, a designated fisheries official or committee with the approval of the DPP.

There are various **advantages to using an administrative process**. These procedures are alternatives to normal criminal proceedings for fisheries enforcement and may be judicious as they allow a reasonable/lower standard of evidence to be used in proceedings as well as the swift and economic settlement of violations, including negotiated settlements.

In many ways they are comparable to “traffic ticket” offences where the perpetrator admits guilt, pays the fine and may, subject to the terms of the administrative determination, resume fishing activities.

In many cases, however, use of **criminal law may be preferable** to civil or administrative law because:

- (a) The use of criminal law shows a higher societal disapproval of IUU fishing.
- (b) Criminal law sanctions, such as imprisonment and high fines, can be more severe and serve as a deserved punishment and a deterrent.
- (c) Special investigation methods may be taken under criminal procedures legislation, needed to prove various aspects of the case.
- (d) Use of criminal law enables the use of international cooperation mechanisms such as extradition.

³⁰ For example, Guidance notes were produced in 2021 for Fisheries Administrative Penalties (FPAs) in Wales. https://gov.wales/sites/default/files/publications/2021-03/fisheries-offences-financial-administrative-penalties-guidance_0.pdf, Seychelles Fisheries Act, 2014, section 72.

Generally applicable **guidelines for opting for administrative offences** may take into account the following considerations, recognizing that the more serious offences should be sent for prosecution:³¹

- The severity of the infringement: how serious the offence is including, where appropriate, environmental impact.
- Previous infringement history: whether there has been any previous offending which could preclude the issue of a penalty notice. (Previous offending could mean any previous convictions, or two or more penalty notices; including what action was taken as a result of any previous infringements.)
- Other offences detected at the same time as the offence in question: the nature of these offences may add to the seriousness of the overall infringement.
- Value of catch: where the breach is sufficiently serious to warrant a direct referral for prosecution the value of the catch will be considered. For these purposes, 'sufficiently serious' will normally be taken to mean a situation where the potential financial gain exceeds the maximum level of penalty available.
- Volume of catch: where the volume of catch is not large enough to warrant a prosecution. This is particularly relevant to by-catch offences but may also be a factor in other offences where the volume of illegal catch is significant.
- Damage to the environment/ecosystem: including whether the species involved is subject to stock recovery measures or general protection.

Some countries prohibit administrative proceedings to be taken where the offence relates to loss of life or obstructing, assaulting or threatening with violence any person including an enforcement officer or observer.

The same procedures and criteria apply to collecting and seizing evidence for both administrative and criminal proceedings. However, the burden of proof is usually higher for criminal proceedings (beyond reasonable doubt) than for civil and administrative proceedings (the balance of probabilities, i.e. a chance greater than 50 percent that the evidence is true).

³¹ Ibid.

6.2 PREPARING AND SUBMITTING INFORMATION AND EVIDENCE FOR ADMINISTRATIVE PROCEDURES

Institutional arrangements for making administrative determinations vary from country to country. For example, legislation may establish an administrative hearing committee, others may appoint certain official/officials to conduct the procedures.

Should there be a hearing in which evidence is required, the standard of proof is simply one of preponderance of evidence, that it is convincing and more likely to be true than not true. For example, AIS data could not be the main evidence in court but could carry higher weight in administrative procedures, which may be a reason to choose administrative over prosecution procedures.

After the case is determined and payment and other conditions have been fulfilled, judicial proceedings cannot be taken for the same offence(s). However, in case of failure of the accused to appear, administrative proceedings are deemed to terminate, and the case may be handed over to the prosecution (see [Figure 28](#)).

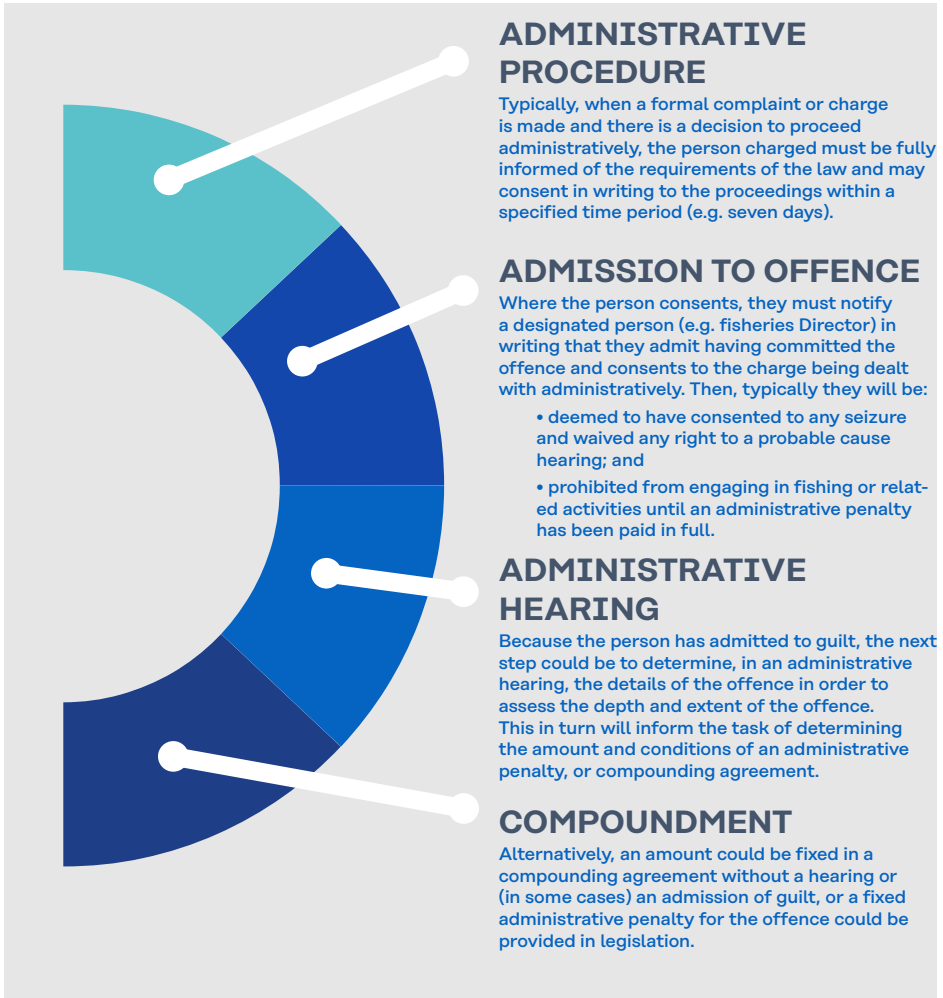


Figure 28 – Submitting information and evidence for administrative procedures

6.3 PREPARING AND SUBMITTING INFORMATION AND EVIDENCE FOR THE CHARGE UNDER CRIMINAL PROCEDURES

If it is decided to proceed with criminal charges and take the case to court, fisheries inspectors may be asked to give evidence on aggravating circumstances before sentencing.

“Aggravating circumstances” refers to the factors that increase the severity or culpability of a criminal act. Typically, the presence of an aggravating circumstance will lead to a harsher penalty for a convicted criminal.

The prosecutor may explain the type of evidence necessary to prove aggravating circumstances related to a violation, such as where IUU fishing was found to have occurred. Or the fisheries inspector may have already anticipated this and collected evidence that would show aggravating circumstances.

In either situation, discussions should take place between the fisheries inspector and the prosecutor on the possible introduction of such circumstances.

General aggravating factors can include:

- previous conviction(s), particularly for serious offences;
- evidence of prior planning;
- more serious harm was intended than actually resulted;
- the offence was committed as part of an organized criminal group;
- the offence was motivated by financial or material gain;
- attempts to frustrate or impede the administration of justice;
- the offender committed the non-compliance or crime while subject to pre-trial or sentence conditions;
- vulnerable victim(s) were targeted;
- weapons were used to frighten or injure victim(s) or persons known to them;
- deliberate, repeated or gratuitous violence or other forms of degradation were used;
- offenders abused a position of power, authority or trust; and
- there were multiple victims or multiple incidents.

If aggravating circumstances relate to environmental damage caused by the violation, evidence should show:

- the nature and extent of impact on the marine environment, for example the damages to coral reefs by dynamite fishing;

- the nature and extent of impact on species of fish, including abundance, for example due to loss of habitat;
- short term and long-term effects of the above;
- estimated time for recovery; and
- the costs of clean up and/or redress.

Evidence that can also be collected could include:

- statistics on the prevalence and extent of the non-compliance or crime;
- expert testimony as to the effect on the environment; and
- testimony from individuals or community groups on the effect of the violation on their lifestyle and income.

Fisheries inspectors and prosecutors should cooperate to the extent possible in preparing the court case and ensure that they know all the facts of the case and that all the **evidence is relevant and can be authenticated**.

They should **prepare and index** photographs, maps, plans and reports.

Concerning **expert witnesses**, they should ensure that their affidavits are complete and correct, and that their methodology is reliable by showing:

- The methodology has been tested.
- The methodology has been subjected to peer review.
- There is a known and low margin of error.
- It is an accepted technique in the scientific community.
- The methodology and techniques were appropriately applied.

Expert witnesses should be prepared for attacks by the defence, including on their credibility.

If **laboratory analyses** will be introduced as evidence, ensure that all instruments were calibrated, controls were in place and that the work was being checked by a colleague.

Research evidence likely to be used by the defence, as well as possible defences. This could include undertaking on-site inspections.

Ensure that the court record reflects everything that occurs in court proceedings.

6.4 ROLE OF FISHERIES INSPECTOR/PROSECUTOR IN COURT

The prosecutor's principal role is to assist the court to arrive at the truth and to do justice between the community and the accused, according to law and the principles of fairness. Authorities who conduct prosecutions may, depending on the system in each country, represent the DPP, Attorney General's Office or police. In some countries, fisheries inspectors may prosecute minor offences.

In trials and summary hearings a prosecutor must present the prosecution case fairly and firmly and seek to adduce all relevant evidence in a clear and logical manner. They must refer in the opening address only to the evidence reasonably expected to be admitted at trial and confine the case to identified issues that are genuinely in dispute and present those issues clearly and succinctly.

A prosecutor should generally call all witnesses whose testimony is admissible and necessary to present the relevant circumstances and gives reasonable grounds to believe that it could provide evidence relevant to any matter in issue. Some exceptions apply, for example where the opponent consents to the prosecutor not calling a particular witness, the only matter on which the witness can give evidence has been addressed by an admission on behalf of the accused or the prosecutor believes on reasonable grounds that the testimony of a particular witness is untruthful or unreliable.

Prosecutors must object to any question asked of a prosecution witness that is misleading or confusing, is unduly annoying, harassing, etc., is asked in an insulting manner or tone or is based on stereotype (sex, race, etc).

A prosecutor may assist a witness, including a fisheries inspector, to prepare to give evidence by:

- advising the witness to read their statement prior to giving evidence;
- explaining the court's procedure (including the roles of the judge or magistrate), taking oaths or affirmations and the order of examination in chief, cross-examination and re-examination;
- informing the witness that they must answer all questions truthfully, however difficult the questions may be;
- informing the witness that it is not a sign of weakness to not know or not recall the answer to a particular question and that they should not be afraid to say this if it is genuinely the case;
- explaining to the witness that it is the role of defence counsel to put their client's case and challenge the prosecution's version of events, including by suggesting the witness is mistaken or lying and informing the witness that they must listen carefully to any such suggestion and clearly say whether they agree or disagree with it;

- informing the witness that they should not be afraid to ask for a break if they genuinely need one, such as when they feel tired, are losing concentration or want to compose themselves emotionally; and
- explaining to the witness the importance of listening to each question carefully and making sure they understand it before answering it and encouraging them not to be afraid to ask the lawyer, judge or magistrate to repeat or rephrase any question they do not understand.

A prosecutor may question and test the version of evidence to be given by the witness and if new and relevant information comes forward, request the officer-in-charge to obtain that information in statement form.

The role of the fisheries inspector in court is to present evidence. As noted above in section 4.4, there are several types of evidence, including real, or object evidence, and documentary photographic and electronic evidence. The rules for admissible and inadmissible evidence as well as weight were also discussed in section 3.2.

The prosecutor will usually lead the evidence in court. They should first brief the fisheries inspector on any applicable procedures. For example:

- Documentary evidence may need to be led by the author of the document.
- The defence lawyer's possible questions during cross examination.
- Evidentiary admissibility for electronic evidence.

Additional advice regarding prosecution in court is given for fisheries inspectors and prosecutors in the following two subsections.

6.5 LIAISING WITH PROSECUTORS

At the outset, in deciding whether or not to prosecute, the prosecutor may direct investigations to take place. They will play a consultative role in investigations, which could serve as a basis for cooperation and liaison with fisheries inspectors. The latter may wish to suggest where further investigations may be needed, or undertake the investigations as directed by the prosecutor. This could provide the foundation for a good working relationship.

Prosecutors may be available able to assist with the following, when needed (see [Figure 29](#)):

- providing legal advice;
- guiding investigations to ensure that evidence gathering will result in admissibility;
- recommending evidence that should be gathered;

- assisting in establishing systems to secure the integrity of exhibits; and
- assisting with finalising search warrant, affidavits and arrest warrant applications.

Fisheries inspectors may also assist the prosecutors by explaining technical aspects of the case. Many prosecutors will not have had much, if any, experience in fisheries enforcement and may need the “bigger picture” that a fisheries inspector can provide: what does the legislation say, why does it say that and what is the importance of a successful prosecution to the country’s fisheries resources.

Cooperation and liaison on the above matters, or any others that may be mutually supportive, will build a strong case and effective outcomes for fisheries enforcement.



Figure 29 – Areas prosecutors can assist

6.6 GIVING TESTIMONY IN COURT

Testifying in court is an opportunity to showcase the training, technical knowledge, investigative skills and teamwork that a fisheries inspector has used to build the case. They must rely on the prosecutor to secure a conviction and focus on presenting evidence logically, completely and honestly.

The prosecutor will lead the questioning and ask open-ended questions, for example about where the fisheries inspector was on a certain date or what was found in relation to the violation.

The defence lawyer will then cross-examine and may ask open or closed questions to test if what was said during examination-in-chief was accurate, and to try and find contradictions in the evidence. The defence lawyer may try and discredit the testimony on the following grounds:

- It is inconsistent.

- It contradicts the statement.
- It is dishonest.
- Facts are not correctly remembered.
- The evidence contradicts that of another witness.

The person testifying should endeavour to stick with the evidence they submitted. It is not their duty to make their evidence fit in with that of another witness in order to secure a conviction. Changing any part of the evidence under pressure in cross-examination, if it is dishonest to do so, would affect the credibility of the person testifying.

Regardless of who asks a question, the answer should be delivered as though the question were asked by the magistrate or judge. The following are key to remember when testifying:

- Speak clearly and audibly.
- Speak slowly: allow enough time for the magistrate/judge, prosecutor and defence lawyer to make notes of the answers.
- Listen carefully to the question, and answer it.
- If the question is not understood, say so.
- If the question cannot be answered, say so.
- When being cross-examined by the accused, or the accused's lawyer, do not argue, simply answer the question.
- Above all, speak the truth.

7

FOLLOW-UP ACTIONS



7.1 PROPOSAL FOR ILLEGAL, UNREPORTED AND UNREGULATED VESSEL LISTING

As described in section 1.4 above, IOTC Resolution 18/03 on IUU fishing describes a step-by-step system for listing and delisting vessels on the IOTC IUU Vessel List, as well as cross-listing with other RFMOs. It also requires:

- CPCs to take certain measures and actions³² against listed vessels. It applies to vessels, together with their owners, operators and masters that undertake fishing and fishing related activities³³ for IOTC species or species covered by any CMM within the IOTC area; and
- the IOTC Secretariat to circulate information to CPCs and submit:
 - initial information received on alleged IUU fishing to concerned flag States; and
 - a draft IUU Vessel List with evidence to flag States where information indicates that their vessel(s) has engaged in IUU fishing.

To propose a vessel for inclusion in the IOTC IUU Vessel List, a State will have to gather sufficiently convincing evidence. This evidence must show that the vessel concerned has engaged in IUU fishing or fishing related activities related to species under the mandate of IOTC.

Evidence of IUU fishing activities alone is not sufficient as it must first be shown that the activity concerned IOTC species.

Evidence may be gathered through various means, including inspection of a vessel and monitoring and surveillance of its activities. It is therefore important to ensure that sufficient evidence is collected which covers all relevant matters and that the evidence can be interpreted and argued sufficiently.

[Table 1](#) provides some description of key information which the State should gather to create a strong argument for IUU Vessel listing of the vessel concerned.

³² For example, prohibiting its flag vessels from providing assistance, etc to IUU listed vessels, refusing port entry, prohibiting vessel chartering, refusing to grant its flag, prohibiting import, landing or transshipment of tuna from such vessels.

³³ “**Fishing related activities**” cover any operation in preparation for or in support of fishing, including landing, packaging, processing, transshipment or transport of fish and/or fish products that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear, food and other supplies at-sea.

Table 1 – Key information required to create a strong argument for illegal, unreported and unregulated Vessel listing

Information to gather	Explanatory notes:
1) Vessel details	<p>The vessel must be identifiable, which will include collecting the following in as far as possible:</p> <ul style="list-style-type: none"> a) Name of the vessel and previous name/s, if any; b) Flag of the vessel and previous flag/s, if any; c) Date the vessel was first included on the IOTC IUU Vessel List, if applicable; d) International Maritime Organization (IMO) number, if available, or other unique vessel identifier (UVI); e) Photographs of the vessel; f) Callsign of the vessel and previous callsign, if any; g) Vessel length overall; and h) Name and address of the Owner (including beneficial owner), Operator and Master/Fishing Master of the vessel and previous Owner and Operator, if any.
2) Details of the contravention	<p>For each contravention, a summary should be drafted including the specific elements of the applicable resolution or legislation contravened, the date and location of the contravention and references to the source of information/supporting documentation. If any actions were taken, a summary of the actions and the resultant outcomes should be included.</p>
3) Associated documents	<p>Provide documents evidencing the contraventions, such as boarding reports, court proceedings, witness statements, photographic evidence, documentary evidence, electronic evidence.</p> <p>The evidence used for IUU listing is not subject to the admissibility requirements of evidence relied on in court. As a result, States may submit evidence which it cannot rely on in other settings. However, evidence which would hold up in court would be more convincing and therefore aid in the argument for IUU listing a vessel. Therefore, as far as possible evidence and other facts should be gathered and prepared as if they were being presented by a prosecutor for decision of criminal prosecution in a court of law.</p>

The procedure for including a vessel in the IOTC IUU Vessel List consists of various steps and phases of listing. In total there are three lists:

- Draft IUU Vessel List, based on information submitted of IUU fishing activity (described below) and follow up by the IOTC Secretariat with the flag State, and presented to the Compliance Committee;

- Provisional IUU Vessel List, agreed by the CoC at its annual meeting, after reviewing the Draft IUU Vessel List, and presented to the Commission; and
- IUU Vessel List, included by the Commission in the IUU Vessel List.

COMPLETING AND SUBMITTING THE IOTC FORMS FOR THE DRAFT IUU VESSEL LIST

The three phases that address the Draft IUU Vessel List are described below. They are communicating IUU fishing activity; requesting inclusion in the Draft IUU Vessel List; and IOTC Circulation of the Draft IUU Vessel List and compiled information.

Information that must be submitted to IOTC is described below, including evidentiary and other factual documents or reports. This will assist to prepare for the review of the Draft IUU Vessel List at annual CoC meetings.

The procedures relating to the Provisional, Draft and IUU Vessel List are then elaborated below and visualised in [Figure 30](#) while the timeline of events can be seen in [Table 2](#).

Table 2 – Timeline of events

At least 70 days before CoC meeting	At least 55 days before CoC meeting	At least 15 days before CoC meeting	At least 10 days before CoC meeting
CPC may submit information on IUU activities by identified vessels	Executive Secretary shall circulate Draft IUU Vessel List and all compiled information received to that point.	Flag States may transmit information to Executive Secretary on vessels in the Draft IUU Vessel List.	Executive Secretary shall compile and circulate all information received.

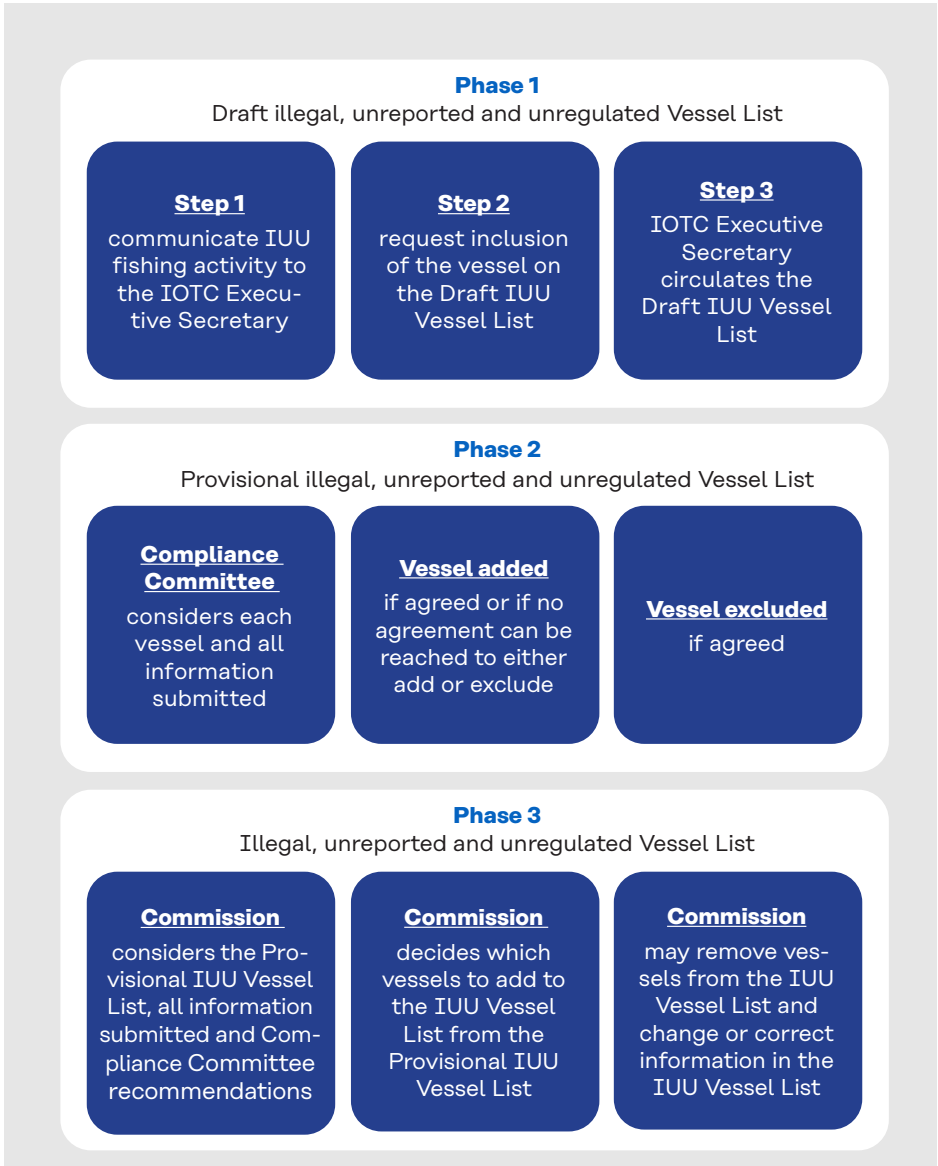


Figure 30 – IOTC illegal, unreported and unregulated vessel listing process

Phase 1 – Draft IUU Vessel List

Step 1 – Communicating IUU activity

To propose a vessel for inclusion in the Draft IUU Vessel List, a CPC is required to submit information concerning IUU fishing activity within 24 months before a CoC annual meeting to the IOTC Executive Secretary. This would include the evidence mentioned above.

In accordance with IOTC Resolution 18/03, IUU fishing activity is presumed to have taken place where certain activities occurred. The list includes such items as failure to report its catches in accordance with IOTC CMMs or has made false reports. The full list is included in ANNEX I, Part B of IOTC Resolution 18/03 on IUU fishing.

The submission must be made at least 70 days before the annual meeting and must include the IOTC Reporting Form for Illegal Activity which is included in ANNEX I of IOTC Resolution 18/03 on IUU fishing, shown below.

The IOTC Reporting Form for Illegal Activity is designed to be user friendly and includes tick boxes. Among other things, the tick boxes allow the reporting State to select from a series of violations which it has information on for the vessel concerned. Some are specific violations of IOTC Resolutions however there is also a general reference to a violation of any other IOTC Resolution as well as violations of coastal State law.

As per IOTC Resolution 18/03, it should be accompanied by the following:

- a) reports regarding the alleged IUU fishing activity from CPCs relating to IOTC CMM in force;
- b) trade information obtained on the basis of relevant trade statistics such as those from statistical documents and other national or international verifiable statistics;
- c) any other information obtained from other sources and/or gathered from the fishing grounds such as:
 - i. information gathered from inspections undertaken in port or at sea; or
 - ii. information from coastal States including VMS transponder or AIS data, surveillance data from satellites or airborne or seaborne assets; or
 - iii. IOTC programmes, except where such a programme stipulates that information gathered is to be kept confidential; or
 - iv. information and intelligence collected by third parties either provided directly to a CPC or via the IOTC Executive Secretary.

ANNEX I of IOTC Resolution 18/03 on IUU fishing is extensive, and requires the information shown below. It is essential to be familiar with its requirements when preparing a case for IUU listing. Information to be submitted includes the details of the vessel and of the IOTC Resolution which has been contravened, as well as associated documents and recommended actions.

The Executive Secretary circulates the information received to all CPCs and to the flag State and requests a response from the flag State within 60 days.

IOTC RESOLUTION 18/03 on IUU fishing

ANNEX 1

IOTC REPORTING FORM FOR ILLEGAL ACTIVITY

A. Details of Vessel

(Please detail the incidents(s) in the format below)

Item	Definition	Indicate
a	Current Name of Vessel (Previous name/s, if any)	
b	Current Flag (previous flag/s, if any)	
c	Date first included on IOTC IUU Vessel List (if applicable)	
d	Lloyds IMO Number, if available	
e	Photo	
f	Call Sign (previous call sign, if any)	
g	Owner (previous Owner/s, if any)	
h	Operator (previous Operator/s, if any) and Master/Fishing Master	
i	Date of alleged IUU fishing activities	
j	Position of alleged IUU fishing activities	
k	Summary of alleged IUU activities (see section B for more detail)	
l	Summary of any actions known to have been taken in respect of the alleged IUU fishing activities	
m	Outcome of actions taken	

B. Details of IOTC Resolution Elements Contravened³⁴

(Indicate with a "X" the individual elements of IOTC Resolution 18/03 contravened, and provide relevant details including date, location, source of information. Extra information can be provided in an attachment if necessary.)

That a vessel has, within the IOTC Area and in relation to species covered by the IOTC Agreement or by IOTC CMM:

Item	Definition	Indicate
a.	engaged in fishing or fishing related activities and is neither registered on the IOTC Record of Authorised Vessels in accordance with Resolution 15/04, nor recorded in the Active list of vessels; or	
b.	engaged in fishing or fishing related activities when its flag State is without quota, catch limit, or effort allocation under IOTC CMMs where applicable; or	
c.	failed to record or report its catches in accordance with IOTC CMM or has made false reports; or	
d.	taken or landed undersized fish in contravention of IOTC CMM; or	
e.	engaged in fishing or fishing related activities during closed fishing periods or in closed areas in contravention of IOTC CMM; or	
f.	used prohibited fishing gear in contravention of IOTC CMM; or	
g.	transhipped fish to, or otherwise participated in joint operations with, support or re-supply vessels that are not included on the IOTC Record of Authorised Vessels or not on the Record of Vessels Authorised to receive transshipments at-sea in the IOTC Area; or	
h.	engaged in fishing or fishing related activities in waters that are under the national jurisdiction of a coastal State without the permission or authorisation of that State or in contravention of the laws and regulations of that State (without prejudice to the sovereign rights of the State concerned to undertake enforcement measures against such a vessel); or	
i.	engaged in fishing or fishing related activities whilst being without nationality; or	
j.	engaged in fishing or fishing related activities having intentionally falsified or concealed its markings, identity or registration; or	
k.	engaged in fishing or fishing related activities in contravention of any other binding IOTC CMM.	

³⁴ This reflects the list of presumed IUU activities in paragraph 4 of Resolution 18/03 on IUU fishing.

C. Associated Documents

(List here the associated documents that are appended e.g. boarding reports, court proceedings, photographs)

D. Recommended Actions

Recommended Actions		Indicate
a	Notification to IOTC Secretariat only. No further action is recommended.	
b	Notification of illegal activity to IOTC Secretariat. Recommend notification of activity to flag State.	
c	Recommended for inclusion on IOTC IUU list.	

CPCs must indicate where a vessel has, within the IOTC Area and in relation to species covered by the IOTC Agreement or by IOTC CMMs, carried out activities described in a-k (see [Table 3](#)). Some examples are given of evidence that will be needed to prove the case, in addition to the date, location and source of information.

Table 3 – Information required in respect to suspected illegal, unreported and unregulated activities

REPORT TO IOTC ON IUU ACTIVITY	EXAMPLES OF EVIDENCE NEEDED
a. engaged in fishing or fishing related activities and is neither registered on the IOTC Record of Authorised Vessels in accordance with Resolution 15/04, nor recorded in the Active list of vessels.	IOTC RAV and Active list of vessels, identity of vessel, proof of fishing or related activities (logbook, AIS, VMS, sightings, other).
b. engaged in fishing or fishing related activities when its flag State is without quota, catch limit, or effort allocation under IOTC CMMs where applicable unless that vessel is flagged to a CPC.	Relevant IOTC CMMs, confirm flag State, total quota, catch limit, effort allocation, proof of fishing or related activities.
c. failed to record or report its catches in accordance with IOTC CMMs or has made false reports.	Vessel reports of catches, verification, IOTC requirements.
d. taken or landed undersized fish in contravention of IOTC CMMs.	Fishing for or landing undersized fish, IOTC requirements, inspection/trade data, logbook evidence.
e. engaged in fishing or fishing related activities during closed fishing periods or in closed areas in contravention of IOTC CMMs.	Sighting, VMS reports, logbook reports, IOTC requirements
f. used prohibited fishing gear in contravention of IOTC CMMs.	Inspection of gear or other proof of use of gear, logbook, IOTC CMM.
g. transhipped fish to, or otherwise participated in joint operations with, support or re-supply vessels that are not included on the IOTC Record of Authorised Vessels or not on the Record of Vessels Authorised to Receive Transhipments At-Sea in the IOTC Area.	Observation or record of transhipment (e.g. VMS, logbook, AIS information, SkyTruth, port inspection), confirmation of IOTC RAV, or Record of Vessels Authorised to Receive Transhipments at Sea.
h. engaged in fishing or fishing related activities in waters that are under the national jurisdiction of a coastal State without the permission or authorisation of that State or in contravention of the laws and regulations of that State (without prejudice to the sovereign rights of the State concerned to undertake enforcement measures against such a vessel).	Information from coastal State on unauthorised or illegal fishing or related activities, proof of vessel position and fishing activity.
i. engaged in fishing or fishing related activities whilst being without nationality.	Proof of no registration or registration in more than one country.
j. engaged in fishing or fishing related activities having intentionally falsified or concealed its markings, identity or registration.	Proof of intentional falsified or concealed markings, identity or registration. Proof of forgery as appropriate.
k. engaged in fishing or fishing related activities in contravention of any other binding IOTC CMMs.	Proof of activities and IOTC CMMs.

Knowledge of the above activities defined as IUU fishing, together with IOTC CMMs will be essential in the process to propose inclusion of any vessel on the IUU Vessel List. It will be helpful to obtain information from all possible sources, including the vessel, flag State, enforcement authorities, records, other government agencies and as appropriate IOTC and other States.

Step 2 – requesting inclusion in Draft IUU Vessel List

If the IUU activity concerned took place on the high seas, any CPC can request the Executive Secretary to include the vessel in the Draft IUU Vessel List. If the IUU activity concerned occurred in the waters of a coastal State CPC, that CPC may request the Executive Secretary to include the vessel in the Draft IUU Vessel List. If the State who is submitting the IOTC Reporting Form for Illegal Activity wishes to include the vessel in the Draft IUU Vessel List, this can be requested in the form.

Step 3 – IOTC circulation of Draft IUU Vessel List and compiled information submitted

No later than 55 days before the CoC annual meeting, the Executive Secretary circulates all information received up to that point along with the draft IUU Vessel List to all CPCs and flag States of listed vessels which are not CPCs.

Flag States may submit additional information up to 15 days before the CoC meeting. At least ten days before the meeting, the Executive Secretary must circulate the updated compiled information to all CPCs and flag States of listed vessels which are not CPCs.

CPCs may submit additional information concerning a vessel on the Draft IUU Vessel List to the Executive Secretary at any time. If this is after the Draft IUU Vessel List has already been circulated, the Executive Secretary shall circulate the additional information.

The Draft IUU Vessel List, Provisional IUU Vessel List and the IUU Vessel List shall contain the following details:

- 1.** Name of the vessel and previous name/s, if any;
- 2.** Flag of the vessel and previous flag/s, if any;
- 3.** Name and address of the Owner and Operator of the vessel and previous Owner and Operator, if any;
- 4.** For legal entity the country of registration and registration number;
- 5.** Call sign of the vessel and previous call sign, if any;
- 6.** IMO number, if any, or unique vessel identifier (UVI), or if not applicable, any other vessel identifier;
- 7.** Recent photographs of the vessel, where available;
- 8.** Vessel length overall;
- 9.** Date the vessel was first included on the IOTC IUU Vessel List, if applicable;

10. Summary of the alleged IUU fishing activities which justify inclusion of the vessel on the List, together with references to all relevant supporting documents information;
11. Summary of any actions known to have been taken in respect of the alleged IUU fishing activities and their outcomes; and
12. Name of the organization, if the vessel has been listed or is proposed to be listed based on the information from another organization.

Phase 2 – Provisional IUU Vessel List

During its annual meeting, the Compliance Committee considers all information submitted in relation to each vessel included on the Draft IUU Vessel List and decides whether or not to include each vessel in the Provisional IUU Vessel List.

If the Compliance Committee cannot agree on a particular vessel, the vessel is included in the Provisional IUU Vessel List and the Commission decides at its Session if the vessel should be excluded or kept.

The Provisional IUU Vessel List is submitted to the Commission for consideration at its next Session.

Phase 3 – IUU Vessel List

The Commission will consider the Provisional IUU Vessel List, the recommendations of the Compliance Committee and the information submitted. The Commission shall determine which vessels, if any, from the Provisional IUU Vessel List are added to the IUU Vessel List. The Commission may also remove vessels from the IUU Vessel List as well as correct or inset information on listed vessels.

PREPARING FOR THE IOTC COMPLIANCE COMMITTEE MEETINGS

The main activities of the IOTC Compliance Committee are to:

- review all aspects of CPCs individual compliance with IOTC CMM;
- review information relevant to compliance from IOTC subsidiary bodies and from Reports of Implementation submitted by CPCs;
- identify and discuss problems related to the effective implementation of, and compliance with, IOTC CMM, and to make recommendations to the Commission on how to address these problems.

To these ends, the agenda of annual meetings normally includes reviews of the implementation of IOTC CMMs, information related to IUU fishing activities and the Draft IUU Vessels List.

Participants should be prepared to evaluate whether vessels on the Draft IUU Vessels List should not be included in the Provisional List. IOTC Resolution 18/03 provides that the Compliance Committee must not include a vessel in the Provisional IUU Vessel List where:

- The nominating CPC did not follow the requirements for submitting information on the Draft IUU Vessels List.
- On the basis of the information available, the Compliance Committee is not satisfied that:
 - any presumption of IUU fishing activities referred to in paragraph 4 of Resolution 18/03 has been established;
 - the flag State of a vessel included in the Draft IUU Vessel List provides information that demonstrates that the vessel has at all relevant times complied with the rules of the flag State and with its authorisation to fish and that the vessel has conducted fishing activities:
 - in a manner consistent with the IOTC Agreement and CMM;
 - within the waters under the jurisdiction of a coastal State in a manner consistently with the legislation of that State; or
 - fished exclusively for species that are not covered by the IOTC Agreement or IOTC CMM.
- The flag State of a vessel included in the Draft IUU Vessel List provides information that demonstrates that effective action has been taken in response to the IUU fishing activities in question, including prosecution and imposition of sanctions of adequate severity to be effective in securing compliance and deterring further infringements.

All reports submitted in advance to the Compliance Committee must therefore be read and understood prior to discussion, especially taking into account the role played by evidence.

7.1 INFORMATION SHARING

We are in the “information age”; we have access to more information than ever before. It is fundamental for detecting, proving and managing offences. This is recognized in a wide range of international and regional treaties and agreements, as well as national laws, which require or facilitate information sharing.

REPORTING TO THE FLAG STATE, COASTAL STATE, RFMO AS REQUIRED

The IOTC Executive Secretary must report the Draft IUU Vessel List to the CPCs and the flag State involved and request the flag State to notify the owner and closely monitor the relevant vessel.

The flag State will then have an opportunity to respond, at least 15 days before the annual Compliance Committee meeting, indicating the vessel’s compliance with CMMs and the laws of coastal and flag States for species covered by IOTC (see [Figure 31](#)).



Figure 31 – Flag State responsibility when a vessel is included on the draft IOTC illegal, unreported and unregulated list

Otherwise, reports must be made to the flag State and coastal State in circumstances where evidence of IUU fishing is found that meets a certain standard of proof (see [Figure 32](#)). For example, IOTC Resolution 16/11 on port State measures requires reporting to the flag State, relevant coastal State, RFMOs where:

- denial of port entry and/or port use has occurred, based on “*sufficient proof*” of IUU fishing or related; or
- following an inspection, there are “*clear grounds for believing*” that a vessel has engaged in IUU fishing or fishing related activities (national country of the vessel master must also be notified).

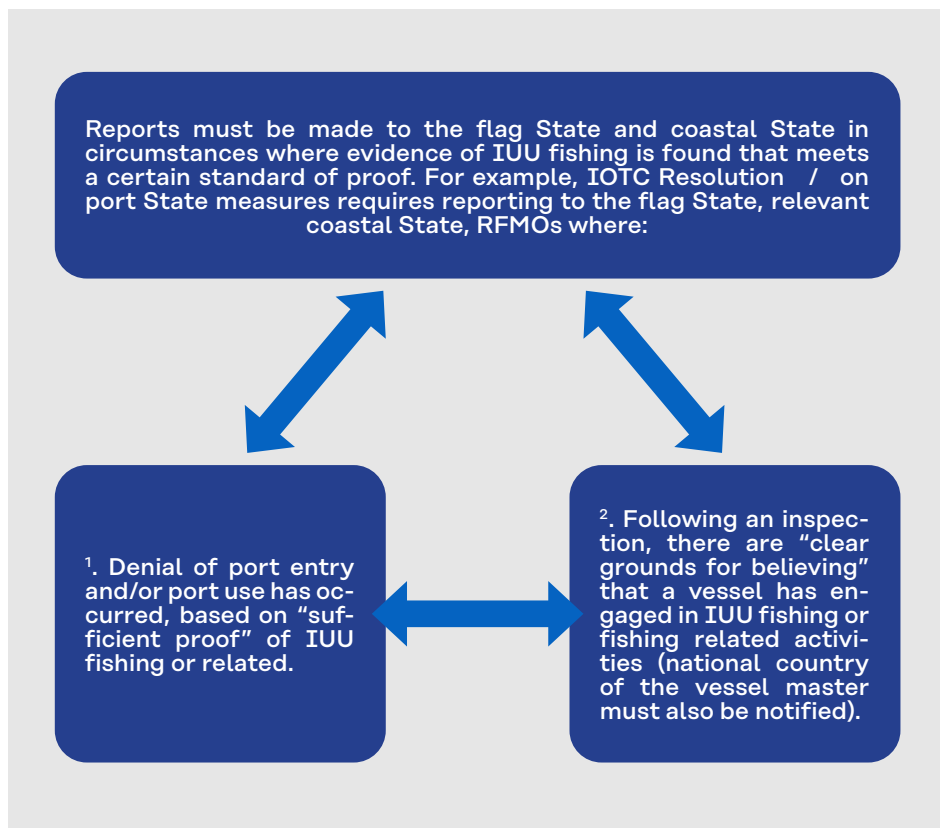


Figure 32 – Criteria when evidence of illegal, unreported and unregulated fishing is found

INFORMATION SHARING IN OTHER NETWORKS, AMONG RFMOs

Over the years strong interlinked RFMO and other networks have emerged that operate to effectively close the nets on IUU fishing.

For example, in the Indian Ocean region alone and apart from RFMOs, valuable MCS information is gathered and transmitted through networks including the non-governmental organisation (NGO) Stop Illegal Fishing,³⁵ the Indian Ocean

³⁵ The website for which is available at <https://stopillegalfishing.com/>

Commission³⁶ fisheries projects and programmes and the Southern African Development Community Monitoring Control and Surveillance Coordination Centre.³⁷

These networks can be used two ways, to access and report information to strengthen knowledge about IUU fishing and related activities.

The RFMOs have established strong information-sharing networks among themselves; importantly, this includes cross-listing vessels included on their respective IUU Vessels Lists.

For this purpose, sub-groups among RFMOs are recognized: the five RFMOs with a mandate over tuna and those with mandates over other species. IOTC has a mandate to maintain contacts with the Secretariats of certain RFMOs to obtain their latest IUU vessel lists and other relevant information regarding the list.³⁸ They include:

- Tuna RFMOs: CCSBT, ICCAT, WCPFC;
- Other RFMOs: CCAMLR, SEAFO, SIOFA, SPRFMO.

The Executive Secretary must transmit the IOTC IUU Vessels list to the above RFMOs, and any other organization that has expressed an interest to receive it.

Vessels that have been included in the IUU Vessel Lists of the above RFMOs must be included in the IOTC IUU Vessel List. There are procedures for objection and removal of such vessels, contained in paragraphs 35 to 38 of IOTC Resolution 18/03.

A CPC may object to the inclusion in writing within 30 days of the date of transmittal by the Executive Secretary. The objecting CPC shall explain the reason for the objection.

³⁶ The website for which is available at <https://www.commissionoceanindien.org/>

³⁷ A body under the Southern African Development Community, the website for which is available at sadc.int

³⁸ Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), the Commission for the Conservation of Southern Bluefin Tuna (CCSBT), the International Commission for the Conservation of Atlantic Tunas (ICCAT), the South East Atlantic Fisheries Organisation (SEAFO), the Southern Indian Ocean Fisheries Agreement (SIOFA), the South Pacific Regional Fisheries Management Organisation (SPRFMO) and the Western and Central Pacific Fisheries Commission (WCPFC).

8

CASE STUDIES



The following case studies are reported to illustrate evidence collection uses in fisheries cases (Stop Illegal Fishing, 2020).

8.1 TAWARIQ 1

Salvaged computer equipment provides key evidence.

March 2009. The TAWARIQ 1, supposedly registered to Oman, was intercepted in the Tanzanian exclusive economic zone (EEZ). The vessel had no flag visible, the radar was switched off, no licence was produced and no port of registry was provided. There were 200 tonnes of fresh and frozen tuna on board.

Multiple names were found on the vessel. NO.68 BU YOUNG was found embossed on the hull; in some places this had been painted over with the name TAWARIQ. In other places, including life-rings, a life raft and documents the name NO.11 INSUNG was used.

Indian Ocean Tuna Commission (IOTC) MANUAL

Evidence in fisheries offences: effective collection and use

Laws, procedures, prosecutions, illegal, unreported and unregulated vessel listing

Violations and/or criminal activity	<p>Fishing without a licence</p> <p>Stateless</p> <p>Vessel identity fraud</p> <p>Pollution</p>
Inspection details – who, when, where, why	<p>During the initial in-port inspection, the bridge computer was thrown overboard, but later recovered and data which had been erased was restored.</p> <p>A quick-thinking fisheries inspector took photographs during the inspection showing the GPS positions.</p> <p>Tanzanian prosecutors proclaimed evidence collected during the initial inspection inconclusive. A formal request for assistance was sent to the FAO, the Governments of Norway and Mozambique and Stop Illegal Fishing, and a Norwegian-funded mission followed. The specialist team was made up of a MCS specialist from Mozambique, an Australian naval architect, a Norwegian fleet manager and two special agents (an information technology and a fisheries law expert) from the National Oceanic and Atmospheric Association (NOAA).</p> <p>Their investigation involved a survey of the vessel, an assessment of the value of the catch and an analysis of the evidence reconstructed from the vessel's computer and electronic equipment. They discovered a web of contradictory information about the identity of the vessel; all pointing to different nationalities and the team were unable to determine the vessel's true identity or flag.</p>
Evidence gathered	<p>Coordinates on the GPS plotter showing the vessel entering the Tanzanian EEZ</p> <p>Documents from the bridge including logbook</p> <p>Mobile phones from the captain</p> <p>Bridge computer</p> <p>Expert testimony</p>
Administrative or criminal proceedings?	Criminal
Case outcome	<p>Vessel to be forfeited to the Government of United Republic of Tanzania.</p> <p>The captain, agent and owner were found guilty of fishing without a licence in the Tanzanian EEZ and each sentenced to pay 1 billion Tanzanian shillings (USD 625 975).</p> <p>The captain was fined a further 20 billion Tanzanian shillings (USD 12 519 500) for the offence of pollution.</p>

8.2 GREKO 2

Evidence confirms suspected illegal fishing and indicates vessel identity fraud.

September 2016. GREKO 1 attempted to enter port in Mombasa. The Kenyan authorities denied port access and informed Somalia. Unable to offload in Kenya, GREKO 1 returned to Mogadishu where it was detained and inspected at anchor-age.

Violations and/or criminal activity	<p>Operating in the Somali EEZ without a valid licence.</p> <p>Using forged licences and documents.</p> <p>Fishing in an area reserved for Somali fishermen.</p> <p>Using fishing gear of a type that is illegal under Somali law.</p> <p>Not reporting any data concerning its activities and operations regarding effort and catch to the Somali authorities.</p>
Inspection details – who, when, where, why	The inspection was carried out by representatives from the Somali police and coastguard, the Ministry of Fisheries and Marine Resources and supported by the FISH-i Africa Technical Team.
Evidence gathered	<p>Documents including fishing licences, registration documents, crew list and fishing logbook.</p> <p>Logbook was also photographed and showed fishing had taken place in Somali EEZ, outside of the Puntland region where the vessel was licensed.</p> <p>Electronic navigational systems and electronic maps were photographed but it was not possible to extract the positions within the time-frame of the inspection.</p> <p>The freezer room was full of catch, a few boxes were opened and photographed during the inspection and seemed to contain groupers. The limited time available for the inspection did not allow for further investigations into the catch.</p>
Administrative or criminal proceedings?	Administrative fine
Case outcome	The owner paid USD 65 000 to Somalia for illegal fishing. The catch was initially impounded by officials in Kenya for sale on the local market, but no one was prepared to buy the fish from the government and the owner arranged a sale for below the market price.

8.3 NAHAM 4

Photographic evidence reveals vessel identity fraud.

March 2013. A tuna longliner, NAHAM-4 was inspected in Cape Town. Inconsistencies were identified between the amount of fish held on-board and the supporting documentation. The name of the vessel had been painted on the hull, but a faded name could be seen under this, which raised questions about the true identity of the vessel.

The vessel was detained under suspicion that it was falsely claiming to be NAHAM-4 and a forensic analyst confirmed that there was indeed a hidden name, DER HORNG 569. DER HORNG 569 had been flagged to Belize, where authorities reported that the vessel and a sister vessel (the DER WEI 686) had been reported as stolen by their Taiwanese owner Der Wei Fishery Co. Ltd.

Investigations revealed that between 2010 and 2013 at least four different vessels had been operating with the name NAHAM-4 and that the vessel held in Cape Town was significantly larger than the NAHAM-4 authorised to fish in the IOTC region. Comparisons of photographs of vessels showed significant differences in the structure of the vessels and inconsistencies between the call signs painted on the vessels.

Violations and/or criminal activity	Vessel identity fraud Document forgery
Inspection details – who, when, where and why	Fisheries officers in Cape Town collected initial evidence. Naval architects conducted further investigations. Evidence was collected from the vessel.
Evidence gathered	Documents including fishing licences and fishing logbooks. Fishing gear was collected. Catch was confiscated.
Administrative or criminal proceedings?	Criminal
Case outcome	South African Authorities seized both the vessel and the fish on board. The authorities in South Africa investigated Al-Naham Co. LLC and its representatives, but no criminal charges were laid and no arrests were made. The ship owners abandoned the vessel, leaving the agent with debts amounting to USD 100 000. The vessel and fish on-board were forfeited to South Africa under civil forfeiture legislation and sold on auction.

8.4 BUAH NAGA 1

At-sea inspection provides evidence resulting in criminal convictions.

January 2018. Malaysian Flagged longliner BUAH NAGA NO. 1 was inspected in the Tanzanian EEZ, as part of Operation Jodari, a partnership between the United Republic of Tanzania's National Multi-Agency Task Team, Sea Shepherd Global and FISH-i Africa. Inspectors discovered over 90kgs of shark fin in violation of Tanzanian law and international regulations.

Further inspection of the vessel finds inhuman living conditions, and a 9mm Berretta Pistol with ammunition is found hidden in the master's cabin. The Indonesian crewmembers reported that the Captain threatened them with the pistol to work and that when no fish was caught that they would get no food.

Violations and/or criminal activity	Crew violations. Charges of conspiracy to commit criminal acts Unlawful possession of shark fin Unlawful possession of a firearm and ammunition Pollution of the marine environment
Inspection details – who, when, where, why	The vessel is placed under arrest for contraventions of the Deep Sea Fishing Authority (DSFA) Act and Regulations and the vessel is escorted to Mtwara Port for further action. In port the vessel, catch and exhibits seized were handed over to an inspection team consisting of members of the DSFA, investigators from the United Republic of Tanzania Police Force and members of the Department of Public Prosecution.
Evidence gathered	Vessel documents United Republic of Tanzania fishing licence Fishing logbook Bag containing 90kg of shark fins 9mm Berretta pistol and ammunition Photographs of the shark fins and the bag Photographs of the 9mm Berretta pistol and ammunition in situ and sealed in an evidence bag Photographs reflecting the living conditions of the crew as well as their ablution facilities and galley Photographs of the vessel
Administrative or criminal proceedings?	Administrative fine of USD 230 000 for offences relating to illegal shark finning and pollution. Failure to pay the fine resulted in criminal charges. No action was possible in relation to human rights violations.

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Case outcome	Vessel was impounded. The vessel's Captain, owner, and local agent pleaded guilty to a charge of unlawful possession of shark fins and were sentenced to 20 years imprisonment or a fine of USD 433 000. Their prison sentences will be suspended only on payment of the fine.
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8.5 FARQUHAR NO.1

Illegal transshipment detected in port inspection and licence denied.

August 2019. Port inspection of Seychelles flagged MFV FARQUHAR NO. 1 took place in Beira when the vessel called port for purposes of getting a licence to fish for tuna in the Mozambique EEZ.

An advance request for entry to port (AREP) had been sent in the form of a letter on the 13 August 2019. The inspectors only received this AREP on the 15 August at the time when the vessel was entering port. The AREP incorrectly stated that the vessel was flagged to China.

The master reported that he had transhipped 24,400 kg of tuna and swordfish at sea in international waters to the Liberian flagged reefer SHOTA MARU. After this transshipment, the vessel then transhipped 302 units of shark with the weight of 7,734 kg to its sister vessel FARQUHAR No 2. The first transshipment was legal; however, the Master could not present any documents or receipts to verify the second transshipment and there was no authorisation issued for it.

Mozambique informed the flag State Seychelles and IOTC of the violations and rejected the licence application from the vessel.

Violations and/or criminal activity	Unauthorised transshipment
Evidence gathered	Copies of vessel documents Scanned copies of fishing logbook Copies of transshipment documents with Mate's receipts Photographs of GPS tracks and coordinates during transshipment Photographs of empty holds
Administrative or criminal proceedings?	No legal proceedings, but fishing licence denied for illegal transshipment and reporting wrong flag State.
Case outcome	Information exchange with flag State – Seychelles. Communications to IOTC on the illegal transshipment. Information sent to China.

8.6 HOUT BAY FISHING COMPANY

Evidence seized in South Africa supports prosecution in the United States of America

May 2001. South African authorities open and seize a container of unlawfully harvested fish being exported by the Hout Bay Fishing Company and alert United States (US) authorities.

Investigations revealed that between 1987 and 2001 Hout Bay Fishing Company had illegally harvested large quantities of rock lobsters in South African waters and exported them to the US in violation of South African and US law.

South Africa focused its prosecution on the South African-based entities involved in the scheme. Including Hout Bay Fishing Company, its operational manager, several fishermen whom Hout Bay Fishing Company had contracted and 14 fisheries inspectors who had taken bribes. Through a Mutual Legal Assistance request, the South African government also cooperated with the US investigation and prosecution of Noll and Bengis, presidents of the two US corporations that had imported, processed, and distributed fish in the US on behalf of Hout Bay Fishing Company. The evidence seized in South Africa was again used in their prosecution in the US.

The success of the investigation and the prosecution lies in the fact that law enforcement agencies in South Africa, the US, Hong Kong and Singapore cooperated, and shared information and evidence was seized correctly.

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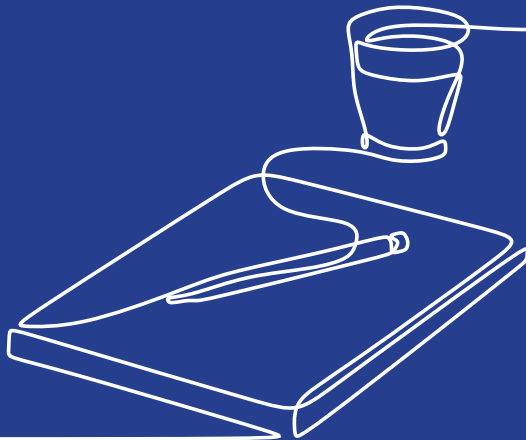
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Summary of case	
Evidence gathered	<p>Documentary evidence from the premises of Hout Bay Fishing Company under a search warrant.</p> <p>Records of the wages paid to crew, payments made to fisheries inspectors and payments to other quota holders for illegal lobsters.</p> <p>Two sets of books which had been used, one recorded the quantity of lobster caught within quota and reported to the authorities. The other set showed the true amount harvested including the hake.</p> <p>Witness statements of which the accountant of Hout Bay being the most crucial, revealed the workings of the South African supply side of the scheme as well as the US side of the scheme.</p>
Administrative or criminal proceedings?	<p>South Africa - Criminal</p> <p>US – Criminal</p>
Case outcome	<p>In South Africa, Hout Bay paid a fine of USD 1.2 million and forfeited, office buildings, fishing vessels and the contents of a seized container after reaching a plea-bargain with the National Prosecuting Authority. The total value of the sentence in South Africa amounted to ZAR 40 million (USD 5 million).</p> <p>14 Fisheries Inspectors were convicted of corruption and sentenced to a substantial fine and suspended sentences after plea-bargain agreements.</p> <p>17 Small Lobster Quota Holders convicted and sentenced with substantial fines and suspended sentences after plea-bargain agreements.</p> <p>In the US, the defendants were sentenced to various terms of imprisonment and forfeited a total of over USD 13 million to the US after pleading guilty due to the evidence seized in South Africa being presented to a US court.</p> <p>In 2013 South Africa was awarded restitution of USD 29 million.</p>



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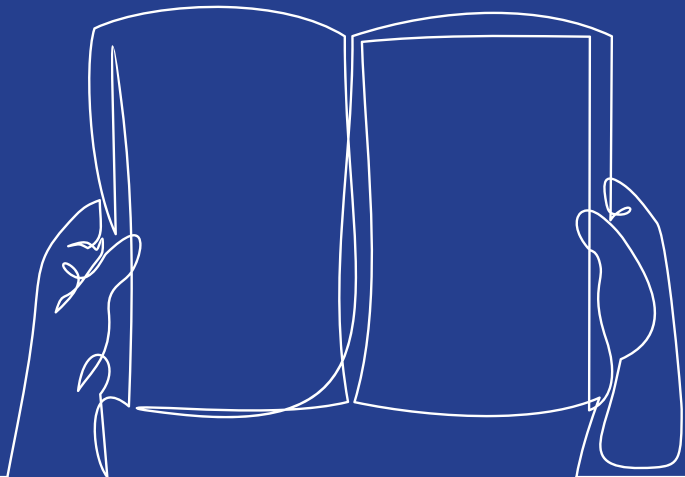
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10

ANNEXES



ANNEX 1 – MODEL LEGISLATIVE PROVISIONS FOR EVIDENCE

This annex provides summarised and legislative model provisions that support evidence gathering for fisheries offences.

The information is presented in the following categories.

1. Model evidentiary provisions, fisheries legislation;
2. Model powers of authorised officers for evidence gathering;
3. Model responsibilities of observers;
4. Responsibilities of all persons concerning information, evidence;
5. Responsibilities of all persons to authorised officers, observers; and
6. Evidence legislation, civil/criminal procedures.

MODEL EVIDENTIARY PROVISIONS, FISHERIES LEGISLATION

1. **Presumptions.** Rebuttable presumptions are given which facilitate proof, for example that all fish found on board a vessel used to commit an offence are presumed to have been caught during the commission of the offence, information given is presumed to have been given by the vessel operator, position fixing instruments on enforcement vessels or aircraft are presumed to be accurate.
2. **Burden of proof.** The onus of proof for prosecutors to prove the case is reversed. For example, a person must prove that s/he held a licence if one is required, or that the information given was true, complete and correct.
3. **Certificate evidence.** A certificate can be provided by authorised officers or other designated persons as evidence in specified matters, and it will be prima facie evidence of all facts averred in judicial proceedings unless the contrary is proved, including, e.g. specifying:
 - nationality or type of vessel;
 - validity and holder of licence;
 - location of vessel at specified time;
 - condition of fish
 - whether a piece of equipment is gear;
 - an appended catch report or other was given by a vessel;
 - an offence was committed against the laws of another State.

4. **Certificate of location of vessel.** Where the place or area in which a vessel was alleged to have been at given time(s) is material in a case, then the place stated in a certificate given by an authorised officer will be prima facie evidence of its location.
5. **Validity and procedures for certificates.** Provides a procedure involving service of a certificate on the defendant prior to its production in court and allowing the defendant a period in which to object so that it won't be used as prima facie evidence.
6. **Strict liability.** In a prosecution for an offence under the legislation, it is not necessary for the prosecution to prove that the defendant intended to commit an offence or to engage in any conduct that comprises the offence.
7. **Confidentiality of information in relation to fisheries monitoring centre.** Specifies where confidential information may be released, including to a prosecutor, persons empowered to ensure compliance with the Act or obligations under international law and to an RFMO.
8. **VMS evidence.** A presumption that all information from a mobile transceiver unit (MTU) came from the identified vessel, was accurately transferred and was given by the operator. Requirements for a certificate, which will be prima facie evidence, are given.
9. **Satellite-based evidence.** Evidence from satellites that have capacity to provide accurate tracking of vessels is admissible and presumed to be accurate, whether or not a vessel intentionally transmits through such satellites.

MODEL POWERS OF AUTHORISED OFFICERS FOR EVIDENCE GATHERING

10. **Exercise of powers by authorised officers, observers.** Powers may be exercised within national jurisdiction and beyond national jurisdiction in accordance with international law.
11. **General powers of authorised officers.** Authorised officers may do such things and give directions as are reasonably necessary to perform his/her functions, powers and duties and use reasonable force.
12. **Power of entry and search.**
 - (1) For purposes and activities falling under the Act, without a warrant, authorised officers may:

- (a)** stop, board, stay on board, enter and search any vessel, vehicle or aircraft, including breaking open any hold or container he/she reasonably believes may contain evidence of an offence;
 - (b)** enter, examine and search any premises or place, other than premises used exclusively as a dwelling house, to ascertain compliance with the Act;
 - (c)** stop any person and examine any record, article, container, gear, apparatus, device or fish in the possession of that person;
 - (d)** pass across any land;
 - (e)** monitor landing and transshipment operations and take samples, photographs, videos and relevant documentation;
 - (f)** require a person engaged or apparently engaged in any activity for which a license, or other permission is required under the Act or RFMO to:
 - (i)** give information about the relevant activity;
 - (ii)** state whether he/she holds a license, endorsement or other authorization under the Act and, if so, to produce it;
 - (iii)** state his or her name, date of birth and place of abode;
 - (g)** make an entry dated and signed by her/him in a vessel's log, and require the master to sign the entry, or to indicate on a chart or other document the position of the vessel at that time and initial such chart or other document accordingly;
 - (h)** require any person associated or apparently associated with a vessel, vehicle, aircraft, premises, facility, or other place or activity falling within the scope of the Act, to provide such information as may be reasonably required for the enforcement of the Act;
 - (i)** examine any gear, equipment, record or other document that is found in or on any vessel, vehicle, aircraft, premises, facility or place, that he/she has reason to believe has been used, is being used or is intended to be used for or in relation to any activity requiring a license or authorization under the Act;
 - (j)** examine and/or test or cause to be examined and/or tested any electronic equipment required to be on board any vessel or used for the any purpose that falls within the scope of the Act, and may examine and search any document, record, article, gear, equipment, apparatus, device, container, fish and contents of any kind found therein or thereon.
- (2)** In respect of premises used exclusively as a dwelling house, searches and seizures may be conducted with a warrant, and the provisions of this section apply.

13. Power to investigate or request investigations of persons for activities beyond areas under national jurisdiction. An authorised officer may:

(a) investigate any person where there are reasonable grounds for believing that such person, natural or legal, is associated directly or indirectly with any vessel or activity that may not be complying with the Act in areas beyond national jurisdiction;

(b) request another State to carry out investigations of any vessel or person, natural or legal, where there is reasonable belief that it has been involved in IUU fishing in violation of the Act or RFMO measure.

14. Power to take, detain, remove and secure information, evidence.

(1) An authorised officer may:

(a) inspect, take, detain and secure samples, documents, logbooks including electronic logbooks or other information, or copies thereof, from any vessel, premises, facilities or other place, other than premises used exclusively as a dwelling house, but including premises that are part of or attached to a dwelling house used for activities falling within the scope of the Act;

(b) make or take copies of any record, and for this purpose may take possession of and remove any records from the place where they are kept, for such period of time as is reasonable in the circumstances;

(c) if necessary, require a person to reproduce, or assist the authorised officer to produce in a useable form, information recorded or stored in a document; and

(d) require any person associated or apparently associated with a vessel, premises, facilities or other place or activity falling within the scope of the Act to provide such information as may be reasonably required for the monitoring or enforcement of the Act.

(2) Where an authorised officer is questioning a person for the purposes of subsection (1)(d), he or she may:

(a) require the person being questioned to provide answers including any explanation or information concerning any vessel or any place or thing or fishing method, gear, apparatus, record, document, article, device, or thing relating to the taking, sale, purchase, or possession of any fish; and

(b) require that person or any other person to produce any permit, Ministry, approval, permission, licence, certificate or other document issued in respect of any vessel or person.

15. Power to detain persons, vessels, gear, etc.

(1) An authorised officer may detain any person, vessel, vehicle, parcel, package, record, document, article, gear, equipment, apparatus, device,

container, fish or thing for such period as is reasonably necessary to enable an examination or search under the Act.

(2) Where a vessel or vehicle is detained, including any of its gear and equipment, a Notice of Detention must be provided to the operator of a relevant vessel or vehicle and a copy of such Notice must be promptly transmitted to any relevant government Ministry.

(3) Where a foreign vessel is detained, the flag State must be notified.

16. Power of arrest.

(1) An authorised officer who has legal authority to make arrests, may, if he or she believes on reasonable grounds that a person is committing or has committed an offence against the Act:

(a) order that person to immediately cease and desist;

(b) request that person to supply to the authorised officer their name, date of birth, residential address and occupation and request such verification of those details as it is reasonable in the circumstances; and

(c) arrest that person without warrant.

(2) Where a person associated with a foreign vessel is arrested, the Director General shall ensure that the flag State is notified.

17. Power of seizure. For the purposes of this section, a vessel's equipment, gear, furniture, appurtenances, stores, and cargo are deemed to form part of the vessel.

(1) An authorised officer may seize:

(a) any vessel or other conveyance, gear, implement, appliance, material, container, goods, equipment or thing which the authorised officer believes on reasonable grounds is being, has been or is intended to be used in the commission of an offence against the Act;

(b) any fish or fish product (and any other fish with which such fish are intermixed) that the authorised officer believes on reasonable grounds are being or have been taken, killed, transported, bought or sold or have been found in the possession of any person in contravention of the Act or are found to be diseased or unfit for human consumption;

(c) any item, article, record or thing that the authorised officer believes on reasonable grounds may provide evidence of an offence against the Act or contravention of an applicable international CMM;

(d) any passport and seaman's record book:

(i) of the master and crew of a vessel directed to return to and remain in port pursuant to the Act until the vessel is permitted to depart;

(ii) of any person arrested, until that person is brought before a court; or

- (iii) pursuant to any order of the Court; and
- (e) any other item which the authorised officer has reasonable grounds to believe:
 - (i) has been or is being used to commit an offence against the Act;
 - (ii) has been forfeited under the Act; or
 - (iii) has been unlawfully removed from custody under the Act.
- (2) An authorised officer shall deliver anything seized under subsection (2) into the custody of the Ministry for safekeeping.
- (3) A written notice of the seizure shall be given to the person from whom any article or thing was seized or to any other person whom the authorised officer believes is the owner or person otherwise entitled to possession of the article or thing seized, and the grounds for such seizure shall be stated in the notice.
- (4) Upon seizure of a foreign vessel, the flag State shall be promptly notified of any action taken and penalties imposed.

MODEL RESPONSIBILITIES OF OBSERVERS

18. Responsibilities of observers

- (1) The responsibilities of observers shall include:
 - (a) observing, monitoring, collecting, recording, assessing, verifying and reporting information that may be required for purposes of this Act including inter alia on any activity under the scope of this Act, the effect of such activity on the fisheries or aquaculture resources and their environment and all aspects of such activities related to compliance;
 - (b) taking samples or photographs of fish harvested or anything on board a vessel;
 - (c) monitoring the implementation of conservation and management measures taken pursuant to this Act, applicable international conservation and management measures and international agreements; and
 - (d) such other responsibilities under this Act as may be required to discharge the observer's functions.

19. Observers and field inspectors under a regional fisheries management organization observer scheme. An observer shall, inter alia:

- (a) record and report fishing activities, verify positions of the vessel;
- (b) observe and estimate catches as far as possible with a view to identifying catch composition and monitoring discards, bycatches and size frequency;

- (c) record the gear type, mesh size and attachments employed by the master;
- (d) collect information to enable the cross-checking of entries made to the logbooks (species composition and quantities, live and processed weight and location, where available); and
- (e) carry out such other scientific work as requested by the Scientific Committee of the relevant regional fisheries management organization.

RESPONSIBILITIES OF ALL PERSONS CONCERNING INFORMATION, EVIDENCE

20. Information to be true, complete and correct and destruction etc of documents prohibited. All information given under the Act must be true, complete and correct and destruction, obliteration or other of documents is prohibited.

21. Information may be required, inspected. Requires persons carrying out activities within the scope of the Act to keep and maintain such records and information and supply them to the (Ministry) as provided under the Act or directed or required by an RFMO. The accounts, record, document, data and other information may be audited or inspected .

Persons commit an offence who:

- (a) fail to keep, furnish or communicate any accounts, records, documents, data and other information as required; or
- (b) do not facilitate, assist or comply with the requirements for an audit or inspection.

22. Interfering with evidence.

(1) No person shall interfere with evidence which may be related to an offence under this Act.

(2) Without limiting the generality of subsection (1), no person shall:

- (a) being on board any vessel being pursued, about to be boarded, being boarded or notified that it will be boarded by an authorised fisheries officer, whether within or beyond (country) waters, throw overboard or destroy any fish, fish product, equipment, document, explosive, noxious substance or other thing with intent to avoid its seizure or the detection of any offence against this Act;
- (b) remove from custody any vessel, fish, fish product, equipment or other item held in custody under this Act, or act or omit to act so that a vessel, fish, fish product, equipment or other item held in custody under this Act may be removed from custody, whether or not he or she knew

that the vessel, fish, fish product, equipment or other item was being held in custody;

(c) destroy, damage, render inoperative or otherwise interfere with any premises or facilities licensed under this Act; or

(d) where a mobile transceiver unit is required under this Act, whether within or beyond (country) waters, destroy, damage, render inoperative or otherwise interfere with any part of such mobile transceiver unit aboard a vessel, or feed or input into a mobile transceiver unit or an applicable vessel monitoring system information or data which is not officially required or is meaningless.

RESPONSIBILITIES OF ALL PERSONS TO AUTHORISED OFFICERS, OBSERVERS

23. Obstruction of, failure to comply with authorised persons, including authorised officers, observers.

(1) For the purposes of the Act, "fails" includes any effort which does not result in meeting the specified requirement.

(2) A person commits an offence who:

(a) interferes with, intimidates, threatens or obstructs an authorised person in the performance of his or her duties;

(b) fails or refuses:

(i) to allow an authorised person to carry out his or her duties safely; or

(ii) to take all reasonable measures to ensure the safety of an authorised person as appropriate in the performance of his or her functions or duties;

(c) is the operator or a crew member of a vessel, and fails or refuses to allow and assist an authorised person to perform or exercise his or her functions, powers or duties, including to:

(i) safely board the vessel;

(ii) have full access to and use of such places, facilities, fish, gear and equipment on board, including navigational and communications equipment;

(iii) have full access to the vessel's electronic and hardcopy records including its logbook, charts, documentation and other information relating to fishing;

(iv) take, measure, store on or remove from the vessel and retain, such reasonable samples or whole specimens of any fish as may be required for scientific purposes; and

- (v) safely disembark from the vessel;
 - (d) obstructs or refuses to allow an audit, inspection, examination or search that is authorised under the Act;
 - (e) fails or refuses to facilitate by all reasonable means an authorised person's entry into and any inspection of:
 - (i) any premises, including import, export, aquaculture or other facility, including storage areas and suspected storage areas, or locations;
 - (ii) any fish or fish products, gear, equipment or records;
 - (f) fails or refuses to comply with a lawful instruction or direction or denies a request given by an authorised person in the course of exercising his or her functions, powers and duties, including any request to provide information;
 - (g) when lawfully required to give information to an authorised person, gives information which is false, incorrect or misleading in any material respect;
 - (h) resists lawful arrest for any act prohibited by the Act;
 - (i) interferes with, delays or prevents by any means, the apprehension or arrest of another person by an authorised person, if the authorised person has reasonable grounds to believe that the person has committed an offence under the Act;
 - (j) impersonates an authorised officer or inspector or falsely represents himself or herself to be an authorised officer;
 - (k) impersonates or falsely represents himself or herself to be or not to be the operator, master or an officer of a vessel;
 - (l) if requested by an authorised officer, fails to sail a vessel to a place in (country) designated by the authorised officer and to ensure the safety of all those on board;
 - (m) bribes or attempts to bribe an authorised person;
 - (n) kidnaps, causes bodily harm to or assaults:
 - (i) an authorised person who is carrying out his or her duties or exercising his or her powers under the Act or as a consequence of his or her having done so; or
 - (ii) any person lawfully acting under an authorised officer's instructions or in his or her aid or as a consequence of his or her having done so,
- or** aids, incites, or encourages another person or persons to do so.

EVIDENCE LEGISLATION, CIVIL/CRIMINAL PROCEDURES

24. Admissibility and weight. Legislation should provide what evidence is admissible in court and its weight (i.e. how evidence should be evaluated).

25. Exclusion of evidence. Legislation should provide evidentiary rules relating to character, similar fact, opinion evidence, hearsay and violation of the Constitution.

ANNEX 2 – PORT STATE INSPECTION REPORT FORM

1. Inspection report number					2. Port State				
3. Inspecting authority									
4. Name of principal inspector							ID number		
5. Port of inspection									
6. Commencement of inspection		YYYY		MM	DD	HH:MM			
7. Completion of inspection		YYYY		MM	DD	HH:MM			
8. Advanced notification received		Yes				No			
9. Purpose(s)		LAN	TRX	PRO	OTH (specify)				
10. Port, State and date of last port call					YYYY	MM	DD		
11. Vessel name									
12. Vessel flag									
13. Vessel type									
14. IRCS									
15. Certificate of registry number									
16. IMO number (if applicable)									
17. External ID (if applicable)									
18. Port of registry									
19. Vessel owner(s)									
20. Vessel beneficial owner(s), if different from vessel owner(s)									
21. Vessel operator(s), if different from vessel owner(s)									
22. Vessel master name and nationality									
23. Fishing master name and nationality									
24. Vessel agent									

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25. VMS	No	Yes (National)	Yes (RFMO)	Type:		
26. Status in RFMO areas where fishing or fishing related activities have been undertaken, including any IUU vessel listing						
Vessel identifier	RFMO		Flag State status	Vessel on authorised vessel list	Vessel on IUU vessel list	
27. Relevant fishing authorisation(s)						
Identifier	Issued by	Validity	Fishing area(s)	Species	Gear	
28. Relevant transshipment authorisation(s)						
Identifier		Issued by		Validity		
Identifier		Issued by		Validity		
29. Transshipment information concerning donor vessels						
Name	Flag State	ID no.	Species	Product form	Catch area(s)	Quantity
30. Evaluation of offloaded catch (quantity)						
Species	Product form	Catch area(s)	Quantity declared	Quantity offloaded	Difference between quantity declared and quantity determined, if any	
31. Catch retained onboard (quantity)						
Species	Product form	Catch area(s)	Quantity declared	Quantity offloaded	Difference between quantity declared and quantity determined, if any	
32. Examination of logbook(s) and other documentation						
Yes	No	Comments				
33. Compliance with applicable catch documentation scheme(s)						
Yes	No	Comments				

34. Compliance with applicable trade information scheme(s)		
Yes	No	Comments
35. type of gear used		
36. Gear examined		
Yes	No	Comments
37. Findings by inspector(s)		
38. Apparent infringement(s) noted, including reference to relevant instrument(s)		
39. Commends by the master		
40. Action taken		
41. Master's signature		
42. Inspector's signature		

ANNEX 3 – COLLECTION OF EVIDENCE

COLLECTING OBJECT EVIDENCE

Object evidence can include various items, examples are given here for gear, catch and weapons with detail on what is included, which types of violations and crimes it may link to, where this evidence can be found, what do look for and what to do.

Gear

What does this include	Fishing nets – net size, mesh size, chafers, round straps, chains etc. Hooks, lines, sinkers etc. Traps, lines, sinkers etc. Bait Turtle, seabird and other excluder devices Fish aggregation devices (FADs)
Possible violations	Fishing without authorisation Fishing in restricted area Use of illegal gear
Where to find them	Deck Storage spaces
What to look for	Gear markings Illegality in gear Use of illegal bait, e.g. dolphins, turtles etc.
What to do	Photograph fishing net, chafers etc. with the net gauge correctly positioned Detain the vessel as where a vessel or the fishing gear is highly relevant, the court or equivalent can perform an inspection Gear or gear samples can be collected as evidence and the process of securing the gear or gear samples can be documented by photography or video
Top tips	Check storage spaces on the vessel or the hardtop of the vessel, as illegal gear may be stored there

Catch

What does this include	Fish and seafood Protected fish and marine mammals
Possible violations	Fishing without authorisation Fishing in restricted area Prohibited species, shark finning or undersize catch Unauthorised transhipment
Where to find them	Freezer hold Dried shark fins are normally found in the engine room
What to look for	If catch quantities match logbooks Undersized fish and seafood or fish or seafood in illegal state (e.g. berried) Prohibited species Illegal quantities of bycatch Shark fins and the ratio of fins to carcasses Labelling of packaged fish – check it matches contents and vessel identity and activity
What to do	Catch and perishable goods are difficult to present in court, so they are normally presented through photographic evidence Seized catch will need to be transported and kept in a cold store
Top tips	Enforcement officers must wear appropriate protective clothing, cold store temperatures can be as low as -60°C Always position one officer by the cold store door during inspection to ensure that access is secured and not blocked

Weapons

What does this include	Firearms Knives other than those used during fishing or fish processing Sticks (including Knobkieries)
Possible violations	Crew mistreatment or abuse Illegal killing of mammals or other sea life
Where to find them	Master/captain, fishing master, senior officers or chief engineer In the cabin of these officers On the bridge
What to look for	Firearms and ammunition Knives other than those used during fishing or fish processing Objects with no obvious legitimate use that appear to have been used to inflict blunt force trauma
What to do	Seize the weapon if relevant or record relevant information, such as: make, brand name, model designation, calibre, serial number, whether the blade of a knife is foldable or not, size of blade Check for the licence or authority to possess the weapon, seize or photograph with overall and close-up photos, particularly of the receiver/frame, safeties, and bolt if practical Handle the weapon with gloves to not destroy possible fingerprints The enforcement officer, a police or naval officer who has been trained on firearms should make the weapon safe
Top tips	Look for and seize ammunition Unload weapon and render safe before transporting If chamber position is deemed important, then properly mark the cylinder by placing an "X" on both sides of the chamber located under the hammer Cartridges and cartridge cases should also be wrapped individually, and packaging marked as to position

COLLECTING DOCUMENTARY EVIDENCE

Documentary evidence often includes a wide range of possibilities for evidence collection, and it is necessary for the enforcement officer to decide which documents need to be seized as evidence or photographed to ensure correct collection procedures for admissibility of evidence.

Stop Illegal Fishing's 'Document verification manual for fisheries enforcement – vessel identity' provides useful information about documents and how to verify these, it is available at: www.stopillegalfishing.org.

Three examples of documentary evidence are provided to show what is included, which types of violations and crimes they may link to, where this evidence can be found, what to look for and what to do.

Certificates, permissions and authorisations

What does this include	Vessel registration certificate Vessel classification certificate Vessel tonnage certificate Vessel safety certificates Transshipment authorisation Vessel radio licence Flag State fishing authorisations Coastal State fishing authorisation Passports of crew and master/captain
Possible violations	Fishing without authorisation Vessel identity fraud or stateless vessels Unauthorised transshipment Crew abuse
Where to find them	Most documents relating to the vessel are kept on the bridge The master/captain is responsible for vessel documents and usually holds the crews' passports Agent may have copies of documentation
What to look for	Tampering with or evidence of false documents (forged, fake, fraudulent) Inconsistent information across documents Discrepancy with physical information on the vessel (engine number, IMO number, call sign, licence number, vessel name) Crosscheck with documents supplied (e.g. by agent) Confirm details are consistent across documents
What to do	Seize original documents and provide copies to the master/captain or agent Take photographs of all documents
Top tips	Look for use of different fonts, sizes, cursive and bold Irregularities can indicate forgery or altered documents

Activity logs and declarations

What does this include	Navigation logbook Freezer logbook Catch logbook Radio logbook Transshipment declarations Hold and stowage plans for catch Crew list
Possible violations	Fishing without authorisation Fishing in restricted area Not recording or reporting catches or entries and exists Prohibited species, shark finning or undersize catch Unauthorised transshipment Illegal discarding at sea (e.g. high-grading)
Where to find them	Bridge Master/captain or fishing master cabin Freezer log – in engine room
What to look for	Tampering or evidence of changes Position manipulation Incomplete information Confirm details are consistent with e.g. cold store records and fishing logbook or transshipment declarations Confirm details are consistent with positional data Unbound logbooks (licensing and RFMO regulations may require logbooks to be bound)
What to do	Seize original documents where required and provide copies to the master/captain or agent Take photographs of relevant pages from logbooks or documents If binding is an issue take photographs of this and seize original documents
Top tips	Some countries use electronic logbooks, in this case copies of the electronic logbook should be printed and it should be download to a USB device to be secured as evidence The computer/device containing the records should be seized as evidence

Vessel markings and displayed information

What does this include	<p>Markings showing name, IMO number, call sign, licence numbers, engine numbers, serial numbers etc.</p> <p>Contact lists</p> <p>Buffer marks on external hull of vessel indicating transshipment</p> <p>Writing or marks made by crew in living areas</p>
Possible violations	<p>Vessel identity fraud</p> <p>Stateless vessel</p> <p>Fishing without authorisation</p> <p>Crew abuse</p>
Where to find them	<p>On the outside of the vessel</p> <p>Buoys and life rafts</p> <p>Equipment</p> <p>Notice boards</p> <p>Living quarters</p>
What to look for	<p>Information or markings on public display</p> <p>Consistency of vessel markings e.g. name and identifiers</p> <p>Signs of previous names or identifiers</p> <p>Information connecting the vessel to IUU vessels or operators</p>
What to do	<p>Smaller items may be seized but generally these items are likely to be difficult to seize, photographs should be used as evidence</p> <p>When there are strong suspicions about vessel identity fraud, the vessel should be detained</p>
Top tips	<p>Check that the names on the life rings are the same as on the vessel documents</p> <p>Look for indications of name changes on the vessel hull where the vessel name is displayed</p>

COLLECTING ELECTRONIC EVIDENCE

Electronic evidence is becoming increasingly more important and includes an ever growing range of items. The collecting of electronic equipment as evidence will ensure that expert analysis of this equipment can take place. Three examples are provided here, with details about what is included, which types of violations and crimes it may link to, where this evidence can be found, what do look for and what to do.

Equipment and instruments

What does this include	VMS and AIS equipment GPS server Electronic navigation system including maps Electronic gear devices
Possible violations	Fishing without authorisation Fishing in restricted areas or times Unauthorised transhipment Use of illegal gear (e.g. FADs) Unreported entries/exits
Where to find them	Bridge Radio room
What to look for	Evidence of tampering with the units e.g. AIS and VMS units are sealed a broken seal means tampering) Discrepancy in vessel details and broadcast information Inaccurate positional data (spoofing) AIS or VMS turned off Evidence of interactions with other vessels Failure to comply with flag or coastal State requirements to transmit on AIS or VMS
What to do	Record make and serial number Record if seal is broken or in place Record indicated Maritime Mobile Service Identity (MMSI), a series of nine digits which are sent in digital form over a radio frequency channel in order to uniquely identify ship stations, ship earth stations, coast stations, coast earth stations, and group calls These units must be seized by a trained police officer: if one is not available the items must be preserved until one is available or if necessary, assistance can be requested from INTERPOL
Top tips	Collect equipment the first time you board if you have the authority as it is easy for the operator to erase information such as vessel tracks Always check the seal of AIS and VMS units to check if broken, validate with your VMS room if the units are broadcasting the correct information

Computers and peripherals

What does this include	Computers Tablets Memory cards External hard drives USB devices
Possible violations	Fishing without authorisation Fishing in restricted area Vessel identity fraud or stateless vessels Unauthorised transhipment
Where to find them	Bridge Radio room Engine room Living quarters Captain and crew may have personal laptops
What to look for	Contact information Email history and online communication Vessel identification information Electronic fishing logs Original or forged documents Photographs or videos linked to fishing activity or crew Location information
What to do	Record the make and model and serial numbers Photograph as found (location, screens, serial numbers) External hard drives and USB flash drives must be secured in evidence bags Computers must be seized by a trained police officer: if one is not available the items must be preserved until one is available or if necessary, assistance can be requested from INTERPOL
Top tips	Look for external hard drives and flash sticks To avoid tampering, deliberate damage or disposal computers must be guarded until police officers are available to seize as evidence

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Mobile and satellite phones

What does this include	Handsets SIM cards
Possible violations	Fishing without authorisation Fishing in restricted area Prohibited species, shark finning or undersize catch Vessel identity fraud or stateless vessels Unauthorised transshipment Use of illegal gear Crew violations
Where to find them	Bridge Captain Crew Agent
What to look for	Usually, you may look at phones if you have permission from the owner, and a search warrant will usually be required to enable collection of the phones as evidence When phones can be accessed, they may provide: call history, contacts, messages (SMS and social media messages), location information, photos or film footage documenting or indicating illegal activity such as crew mistreatment, shark finning or sister vessels
What to do	Photograph the device and screen as you find it using a scale indicator Record the makes, model details and serial numbers (also known as an International Mobile Equipment Identity (IMEI) number and is a unique 15-digit code) Record the 19 digit SIM card serial number (SSN), printed on the SIM card Record the owner details and access passwords If the phones are on leave them on, if they are off do not try to switch them on Phones must be wrapped in protective wrapping (i.e. bubble wrap) and sealed in an evidence bag with any associated chords, chargers and manuals If the phones are seized, they must be analysed by an expert for evidential value contained on the phone
Top tips	Isolate the device from internet or phone connections Keep away from magnets and radio transmitters The police have trained experts to analyse mobile phones using software, like Cellebrite, that can recover deleted messages and photographs, if this is not available in country assistance in this regard can be obtained from INTERPOL

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LAWS, PROCEDURES, PROSECUTIONS,
ILLEGAL, UNREPORTED AND UNREGULATED VESSEL LISTING

Food and Agriculture
Organization of the United
Nations

Viale delle Terme di Caracalla
00153 Rome, Italy

Tel: (+39) 06 57051
E-mail: FAO-HQ@fao.org

www.fao.org

Indian Ocean Tuna
Commission

Abis Center
PO Box 1011, Victoria, Seychelles

Tel: + 248 422 54 94
E-mail: iotc-secretariat@fao.org

www.iotc.org

Funded by the Second South West Indian Ocean Fisheries Governance
and Shared Growth Project (SWIOFish2).



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ISBN 978-92-5-137930-1



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CC6407EN/1/06.23