

# The need for mandatory IMO numbers for vessels catching seafood for the EU market

## EU IUU COALITION POSITION PAPER

### Executive summary

A consistent means of identifying fishing vessels, through the carrying of Unique Vessel Identifiers (UVI), is a key tool in preventing and combatting illegal, unreported and unregulated (IUU) fishing. A UVI is a permanent number that stays with a vessel from construction through to disposal, regardless of the vessel's flag or where it operates. This is essential for the effective and reliable monitoring of a vessel's activity and for the tracking of compliance throughout a vessel's lifespan. Other forms of vessel identification, such as a vessel's name, flag or call sign, can be quickly and easily changed, allowing vessels to disguise their identity when engaged in IUU fishing activities.

The International Maritime Organization (IMO) Ship Identification Number Scheme is widely recognised as the best available UVI for the global fishing fleet. To date, 11 of the major Regional Fisheries Management Organisations (RFMOs) have mandated that vessels above a certain size or tonnage wishing to fish within their jurisdictions obtain and report IMO numbers. An IMO number requirement has also been introduced for the EU fishing fleet: since January 2016, IMO numbers have been required for all EU vessels of more than 24 metres in length overall (LOA) (or 100 gross tonnage (GT) and above) fishing in EU waters, and for all EU vessels of more than 15 metres LOA fishing outside of European waters.

IMO numbers are not, however, currently a requirement for non-EU vessels to import their catches into the EU under

the catch certification scheme established by the EU's 2010 Regulation to end IUU fishing. This hinders the ability of EU member states to assess compliance of a vessel's activities with applicable rules, to determine the legal origin of fisheries imports, and therefore to ensure the robust implementation of the EU IUU Regulation catch certification scheme. In view of the recently adopted IMO number requirement for the EU fishing fleet, it also means that uneven standards are applied to EU and non-EU vessels catching seafood for import to the EU.

**This paper recommends the adoption of an implementing act to the EU IUU Regulation, by latest end-2017, which states that catch certificates accompanying products for import to the EU must include the vessel's IMO number. The requirement should apply to vessels of 15 metres LOA and above fishing outside of waters under national jurisdiction (provided they are eligible under the IMO Ship Identification Number scheme), and vessels of 24 metres LOA (or 100 GT) and above fishing within waters under national jurisdiction.**

The inclusion of an IMO number on catch certificates for imports of fisheries products under the EU IUU Regulation would: (i) assist member states in checking and verifying the legality of fisheries imports into the EU; (ii) ensure that all vessels supplying fisheries products to the EU market are subject to the same requirements, thereby creating a level playing field for operators; and (iii) drive compliance globally with RFMO measures that mandate IMO numbers for vessels fishing within their Convention areas.



Several vessels displaying the same name. © EJF

## Introduction

The Environmental Justice Foundation (EJF), Oceana, The Pew Charitable Trusts and WWF are working together to secure the harmonised and effective implementation of the European Union's (EU) Regulation to end illegal, unreported and unregulated (IUU) fishing<sup>1</sup>.

A consistent means of identifying fishing vessels, through the carrying of Unique Vessel Identifiers (UVI), is a key tool in preventing and combatting IUU fishing. A UVI is a permanent number that stays with a vessel from construction through to disposal, regardless of the vessel's flag or where it operates. This is essential for the effective and reliable monitoring of a vessel's activity and for the tracking of compliance throughout a vessel's lifespan. Other forms of vessel identification, such as a vessel's name, flag or call sign, can be quickly and easily changed, allowing vessels to disguise their identity when engaged in IUU fishing activities.

The IMO<sup>2</sup> Ship Identification Number Scheme is widely recognised as the best available UVI for the global fishing fleet<sup>3</sup>. From 1 January 2016, IMO numbers have been required under EU law for all EU vessels of 24 metres in length overall (LOA) and above (or 100 gross tonnage (GT) and above) fishing in EU waters, and for all EU vessels of 15 metres LOA fishing outside of European waters. In addition, all third (non-EU) country vessels fishing in EU waters must have an IMO number. These requirements were introduced via an amendment to Implementing Regulation (EU) No. 404/2011 of the EU Control Regulation (EC) No. 1224/2009<sup>4</sup>. The EU Control Regulation is one of the three enforcement pillars of the EU Common Fisheries Policy (CFP), alongside the EU IUU Regulation (Regulation (EC) No. 1005/2008) and the regulation governing the EU's external fishing fleet (currently, Regulation (EC) No. 1006/2008<sup>5</sup>).

This paper sets out the case for including IMO numbers as a prerequisite for vessels catching seafood for import into the EU. This is necessary for the robust application of the EU IUU Regulation, ensuring member state authorities can effectively track and verify a vessel's compliance history so that products stemming from IUU fishing are detected and blocked at the EU border. This would mean that all vessels supplying fisheries products to the EU market are subject to the same requirements, thereby creating a level playing field for operators. It would also drive compliance globally with Regional Fisheries Management Organisation (RFMO) measures that mandate IMO numbers for vessels fishing within their Convention areas.

***Other forms of vessel identification, such as a vessel's name, flag or call sign, can be quickly and easily changed, allowing vessels to disguise their identity when engaged in IUU fishing activities***

## The IMO vessel numbering scheme and global record of fishing vessels

The IMO Scheme was introduced in 1987<sup>6</sup>, with the aim of enhancing maritime safety and preventing maritime fraud. It assigns a permanent, unique 7-digit number to ships for identification purposes, which remains unchanged even if the ship changes name, ownership or flag. The number must be marked on the ship's hull or superstructure, and is included in the ship's certificates and integrated into its Automatic Identification System (AIS) broadcast messages. The records based on the IMO number provide an independent audit trail for each vessel. IHS Maritime (IHSM), a UK-based company, manages the IMO scheme and assigns IMO numbers without charge on behalf of the International Maritime Organization of the United Nations (IMO).

The scheme became mandatory for cargo and passenger ships over a certain tonnage on 1 January 1996<sup>7</sup>; however, fishing vessels were exempt. In December 2013, the IMO General Assembly removed the exemption, allowing fishing vessels of 100 GT or greater into the scheme on a voluntary basis.

In August 2016, through **Circular Letter No. 1886/Rev 6**, the scheme was further expanded to cover all motorised inboard fishing vessels of less than 100 GT down to a size limit of 12 metres LOA that are authorised to operate outside of waters under national jurisdiction. In addition, non-steel hull vessels — such as those made from wood or fiberglass — are now eligible if they weigh at least 100 GT.

The 31<sup>st</sup> session of the United Nations Food and Agriculture Organization (FAO) Committee on Fisheries (COFI) agreed that the IMO number should be used as the UVI for Phase I of the Global Record of Fishing Vessels, Refrigerated Transport Vessels and Supply Vessels (the Global Record)<sup>8</sup>. UVIs are recognised as a prerequisite for the successful implementation of the Global Record<sup>9</sup>, the aim of which is to gather and disseminate verified information on vessels used for fishing and fishing-related activities, to assist in the global fight against IUU fishing.



Vessel clearly displaying IMO number. © Per Erik Berg/NFDS

## RFMO measures mandating IMO numbers for vessels fishing within their Convention areas

To date, 11 major RFMOs have mandated that vessels above a certain size or tonnage wishing to fish within their jurisdictions obtain and report IMO numbers. The recent expansion of the IMO scheme enables RFMOs and their member countries to mandate IMO numbers for a larger pool of fishing vessels, allowing for more comprehensive tracking throughout the fishing industry. An overview of requirements implemented by the major RFMOs is provided in **Table 1**.

**Table 1: IMO number requirements adopted by the major RFMOs**

RFMO	Resolution	Scope of IMO number requirement	Implementation deadline
CCAMLR	Resolution 10-02 (2013)	All fishing vessels	November 2013
CCSBT	Resolution on a CCSBT Record of Vessels Authorised to fish for Southern Bluefin Tuna	All fishing vessels (if available)	1 January 2017
GFCM	GFCM/33/2009/6*	All fishing vessels > 15 m in length	*See note
IATTC	Resolution C-14-01	All fishing vessels >100 GT/GRT	1 January 2016
ICCAT	Recommendation 13-13	All fishing vessels >20 m in length	1 January 2016
IOTC	Resolution 15/05	All fishing vessels >24 m in length	1 January 2016
NAFO	NAFO/FC.Doc.14/09	All eligible fishing vessels	1 January 2016
NEAFC	Resolution A.1078(28)	All eligible fishing vessels	1 January 2017
SEAFO	SEAFO System (Art. 4.1, 4.2)	All fishing vessels >100 GT	December 2016
SPRFMO	CMM 2.05	All fishing vessels >100 GT/GRT	1 January 2016
WCPFC	Resolution 2013-10	All fishing vessels >100 GT/GRT	1 January 2016

\*As amended at the fortieth session of the Commission in June 2016. The Compendium of GFCM Decisions is currently being revised to include decisions emanating from the fortieth session of the Commission and will be published here once available: <http://www.fao.org/gfcm/decisions/en/>.

### Abbreviations:

CCAMLR – Commission for the Conservation of Antarctic Marine Living Resources  
CCSBT – Commission for the Conservation of Southern Bluefin Tuna

GFCM – General Fisheries Commission for the Mediterranean  
IATTC – Inter-American Tropical Tuna Commission  
ICCAT – International Commission for the Conservation of Atlantic Tunas  
IOTC – Indian Ocean Tuna Commission  
NAFO – Northwest Atlantic Fisheries Organization  
NEAFC – North East Atlantic Fisheries Commission  
SEAFO – South East Atlantic Fisheries Organisation  
SPRFMO – South Pacific Regional Fisheries Management Organisation  
WCPFC – Western and Central Pacific Fisheries Commission

## The case for IMO numbers for vessels catching seafood for import into the EU

A core aim of the EU IUU Regulation is to prevent, deter and eliminate trade in fisheries products stemming from IUU fishing into the EU. A key mechanism to achieve this is the Regulation's catch certificate scheme, according to which a catch certificate validated by the flag State of the catching vessel must accompany all imports of seafood to the EU. The catch certificate is intended to demonstrate that the product was caught in compliance with all applicable laws, regulations and conservation and management measures (CMMs).

Annex II of the EU IUU Regulation contains a specimen catch certificate, which sets out the information that catch certificates must contain. This includes a description of the catch (e.g. species and weight), and the identity of the vessel which caught it (e.g. name, home port registration number and call sign). There is a box on the specimen catch certificate headed "IMO/Lloyd's number (if issued)".

The EU IUU Regulation, as currently drafted, does not require vessels to carry an IMO number in order to import

their catches into the EU. However, fisheries products imported into the EU must comply with all applicable laws, regulations and CMMs, including those relating to vessel requirements, such as capacity limitations, vessel identification and Vessel Monitoring Systems. An IMO number should therefore be carried by a vessel – and be provided in the relevant box of the catch certificate – where this is a pre-condition for the vessel to fish in a particular area or for a particular stock. This is the case, for example, for vessels subject to the requirements of the EU Control Regulation, or for vessels falling within the scope of mandatory IMO number requirements adopted by major RFMOs (see **Table 1** above).

At present, a significant proportion of catch certificates for the import of fisheries products to the EU do not contain vessel IMO numbers<sup>10</sup>. The reasons for this are three-fold: (i) the failure by exporters to communicate vessel IMO numbers to the flag State, where issued<sup>11</sup>; (ii) non-compliance by the catching vessel with national or regional IMO number requirements; and (iii) vessels falling outside the scope of national or regional IMO number requirements.

This gap in information on vessel IMO numbers hinders the ability of member states to assess compliance of a vessel's activities with applicable rules, and to ensure the

robust implementation of the EU IUU Regulation catch certification scheme. More often than not, member states must rely on a vessel's name to track past behaviour, with the associated problems of name changes and gaps in the historical compliance record. As such, there is a risk that imports involving vessels fishing illegally may go undetected, for example if the name of an importing vessel cannot be matched to a vessel identified in an EU-wide alert<sup>12</sup> or IUU vessel list. The inclusion of information on IMO numbers would assist member states significantly when checking and verifying catch certificates for the import of fisheries products into the EU.

Our analysis has revealed that several of the world's major flag States<sup>13</sup> have some way to go to achieve IMO number coverage for their vessels in line with RFMO requirements (see **Table 2**). As a number of these flag States are important exporters of seafood to the EU, introducing IMO numbers as a condition of access to the EU market would assist in driving compliance with RFMO requirements. This is in line with the EU's strategy on international ocean governance, as outlined in a recent Joint Communication of the European Commission and High Representative for Foreign Affairs and Security Policy. This Joint Communication included a commitment by the European Commission to "promote multilateral action, including [...] the allocation of a unique vessel identifier (IMO number) to commercial fishing vessels"<sup>14</sup>.

Mandating the inclusion of IMO numbers in catch certificates would also allow member states to assess rapidly whether RFMO requirements for IMO numbers have been complied with for a given vessel, and thus whether products should be authorised for import into the EU.



Vessel name being re-painted. © EJF

**Table 2: Compliance with RFMO IMO number requirements by major flag States of origin of seafood products exported to the EU**

Note: includes countries within the top 20 flag States globally in terms of fleet size based on publicly available information in international databases.

Flag State	Total no. of CCs validated (2010 – 2015) <sup>a</sup>	Ranking no. of CCs (2010 – 2015)	Fleet size <sup>b</sup>	Rank by fleet size	% of vessels with IMO no <sup>c</sup>
Morocco	99,488	1	222	12	2.26%
Norway	73,339	2	186	14	100%
USA	64,527	3	1,344	2	55.39%
China	54,958	5	733	5	82.99%
Maldives	32,809	9	339	10	1.20%
Canada	29,758	10	173	15	25%
Chile	25,280	12	157	16	90%
Indonesia	22,186	15	380	7	0.20%
Russian Federation	15,912	20	380	7	100%
Ecuador	12,531	23	100	20	71.83%
Philippines	11,428	25	259	11	16.41%
Korea, Republic of	7,098	27	715	6	82.59%
Turkey	4,950	32	139	17	7.45%
Taiwan, Province of China	3,601	37	812	4	84.80%
Panama	2,095	45	195	13	59.02%

#### Notes

- Based on flag State information reported in the biennial reports submitted by member states under the EU IUU Regulation for 2010-2015. Note that not all member states reported data on flag States of origin of catch certificates for all years.
- Average of (i) vessels >24 m within FAO fishing vessel finder; (ii) vessels >100 GT within IHSM core database; (iii) vessels >24m or 100 GT within RFMO authorised vessel lists.
- According to an average across RFMO authorised vessel lists that are publicly available. It is noted that NEAFC and NAFO do not publish their authorised vessel lists; therefore IMO coverage for vessels fishing under these RFMOs could not be assessed.

The introduction of an IMO number requirement for vessels catching seafood for import into the EU would have additional key benefits, including:

- **Ensuring a level playing field between EU and non-EU operators.** One of the key objectives of the reformed Common Fisheries Policy is to ensure a level playing field for all fishery and aquaculture products marketed in the EU regardless of their origin, as well as for EU operators vis-à-vis third country operators<sup>15</sup>. This was emphasised in a 2010 Resolution of the European Parliament<sup>16</sup>, which stated that EU policy on fishery and aquaculture imports should ensure that imported products meet the same requirements that apply to EU production in every respect.

Yet, at present, EU vessels above a certain size are subject to an additional condition – the requirement to

obtain an IMO number when fishing in non-EU waters and in waters under EU jurisdiction – in order to access the EU market. At the same time, imports of fish from non-EU vessels – whether caught in the flag State’s waters, or outside of national jurisdiction – are not subject to an IMO number requirement. This also means that EU vessels are subject to higher standards of compliance monitoring and tracking, due to the key role of IMO numbers in this regard.

- **Prompting the adoption by major flag States of national IMO requirements.** The EU is the leading market for seafood products in terms of value<sup>17</sup>. By including IMO numbers as a condition of access to the EU market, this may prompt flag States with significant numbers of vessels importing seafood to the EU to mandate IMO numbers for their fleets. As such, the EU can use its considerable market weight to drive best practices in transparency and the fight against IUU fishing worldwide.

Obtaining an IMO number is free for fishing vessels eligible to enter the scheme (i.e. above a certain size/tonnage – see above). As such, there would be limited additional burden associated with a mandatory IMO number requirement for vessels wishing to import their catches into the EU. Applications can be made online at <http://imonumbers.ihs.com> using the free registration system, or by post. IHSM, at its discretion, may also issue IMO numbers in bulk (i.e. to multiple vessels) following a request from a flag State.

The details that must be submitted to IHSM in the application form are relatively comprehensive (see **Table 3**); however, in general, they are in-line with data requested by flag States at the time of registration. For developing countries, assistance in the form of capacity building could be provided within the framework of Sustainable Fisheries Partnership Agreements (SFPAs), RFMOs and EuropeAid, and in the context of the third country dialogue process under the EU IUU Regulation.

**Table 3: Information to be provided to obtain an IMO number** (source: The Pew Charitable Trusts and IHSM)

Required Information	Where to find this information
Ship name	Actual name under which the vessel will navigate
Former name(s)	Name(s) the vessel previously known as. May be found on the vessel's flag or registry certificate
Current flag	Nationality of vessel. May be found on the vessel's flag or registry certificate
Port of registry	May be found on the vessel's registry certificate
Former flag	Nationality of the vessel before current flag. May be found on the vessel's flag or registry certificate
Call sign	May be found on the vessel's flag or registry certificate
Official number	May be found on the vessel's flag or registry certificate
MMSI number	A Maritime Mobile Service Identity (MMSI) number is only issued to vessels fitted with Digital Selective Calling (DSC) and/or (Satellite) Ship Earth Station (SES) equipment. In order to get an MMSI number you will need to be in possession of a valid Ship Radio Licence
Fishing number	Fishing registration letters, numbers or combination of both and issued by national fishery licencing authority. May be found displayed on vessel hull or superstructure
Gross tonnage	May be found on the vessel's tonnage certificate and/or flag or registry certificate
Length overall (m)	Extreme length of vessel's hull. May be found on the vessel's flag or registry certificate, more often Registered length or Length between perpendiculars will be shown
Moulded depth (m)	Vertical distance measured from the top of the keel to the top of the freeboard deck beam at side
Extreme breadth (m)	Width of a ship over the outside of all planking or plating at the widest frame. May be found on the vessel's flag or registry certificate
Date of build	Date of completion/delivered/entered service. May be found on the vessel's flag or registry certificate
Keel laid date	Date on which construction identifiable to the vessel commenced. May be found on the builder's certificate
Shipbuilder	Name of company/shipbuilder that constructed the vessel. May be found on the builder's certificate, vessel's flag or registry certificate. Will be found on builder's plate if on vessel
Hull number	Shipbuilder unique reference number for a vessel on order/under construction, often sequential. May be found on builder's plate if on vessel or on the builder's certificate
Country of build	Country in which vessel was built. May be found on the vessel's flag or registry certificate or on the builder's certificate
Number of main engines	May be found on the vessel's flag or registry certificate
Engine model	Official designation of the engine given by the manufacturer, often combining model, type and displacement. Will be found on plate affixed to main engine
Type of vessel (e.g. purse-seiner)	Specific details on fishing vessel
Hull material	Specific details on the material of the hull
Registered owner	Name of the person/company to appear in the documents as registered owners
Owner address	Full address of the registered owners as it shall appear in the registration documents
Photograph of vessel	If available

## WTO rules and an IMO number requirement<sup>18</sup>

Under the World Trade Organization's (WTO) General Agreement on Tariffs and Trade (GATT), trade measures such as import bans, catch documentation schemes and traceability requirements cannot result in discrimination between different foreign trading partners (Most Favoured Nation Treatment), or less favourable treatment for foreign products that are "like"<sup>19</sup> domestic products (National Treatment).

Violations of the above provisions may be permitted in exceptional cases, provided they are not more trade restrictive than necessary to achieve their objective and conducted in ways that are fair, transparent and even-handed as between producing countries. The exceptions are set out in GATT Article XX and include:

- the conservation of exhaustible natural resources (which can include biological resources<sup>20</sup>);
- the protection of human, animal or plant life or health;
- securing compliance with relevant domestic laws; and
- the protection of public morals.

The EU IUU Regulation catch certification scheme is an example of a trade measure under GATT rules. As an IMO number requirement for vessels exporting their catches to the EU would introduce an additional condition of entry to the EU market, the GATT provisions would need to be considered. However, as the requirement would apply to all vessels exporting to the EU above a certain size – from the EU<sup>21</sup> and third countries alike, with no exception – the requirement would be unlikely to fall foul of the discrimination provisions described above. Such a requirement may also be justified under one of the Article

XX exceptions – for example, IUU fishing and possible connection with organised crime could fall under the protection of public morals (the moral welfare of citizens)<sup>22</sup>. It is therefore unlikely that a challenge under the GATT would prevail, provided the IMO number requirement is introduced transparently and with due notice.

In addition to the GATT, a further body of rules that would need to be considered are contained in the WTO Agreement on Technical Barriers to Trade (TBT). This agreement concerns "technical regulations," the scope of which has been the subject of contradictory reports from the WTO Appellate Body<sup>23</sup>. If the EU IUU Regulation's catch certificate scheme were to be considered a technical regulation, and thus its constituent parts such as an IMO number requirement, it would need to comply with the following<sup>24</sup>:

- not create unnecessary obstacles to trade;
- be non-discriminatory; and
- not be more trade restrictive than necessary to fulfil a legitimate objective.

"Legitimate objectives" set out in the TBT agreement appear to encompass the objectives of a catch certificate scheme, for example, national security, the prevention of deceptive practices and protection of the environment. In addition, technical regulations based on international standards attract a presumption that they are not an unnecessary obstacle to international trade (a presumption which may, however, be refuted by evidence to the contrary)<sup>25</sup>. Proliferation of mandatory IMO requirements within key RFMOs, as well as the requirements established under the EU Control Regulation, represent major steps towards an international standard. This is further supported by progress at the international level on the Global Record and the acceptance of IMO numbers as the UVI for this purpose.



Vessel with illegible name.  
© Per Erik Berg/NFDS

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## Proposal for amendment to the current legal framework

We have sought advice from ClientEarth<sup>26</sup> on the possible legal options for introducing an IMO number requirement for vessels catching seafood for import into the EU, without necessitating an amendment to the EU IUU Regulation itself.

Based on this advice, we would propose the adoption of a new implementing act to the EU IUU Regulation stating that catch certificates accompanying products for import to the EU must include the vessel's IMO number, in particular for:

- vessels of 15 metres LOA and above fishing outside of waters under national jurisdiction, provided they are eligible under the IMO Ship Identification Number scheme<sup>27</sup>, and
- vessels of 24 metres LOA or 100 GT and above fishing exclusively within waters under national jurisdiction.

This would be consistent with the requirements for EU vessels established by the Control Regulation.

Such a requirement could be introduced within the context of the modernisation of the EU IUU Regulation catch certificate scheme, which was announced by the Commission in a Communication to the European Parliament and the Council in October 2015<sup>28</sup>. According to the Communication, modernisation of the catch certification scheme will involve the establishment of an EU-wide IT system that will record, in electronic format, the information contained in catch certificates submitted by operators under the EU IUU Regulation. Should this process require the adoption of an implementing act, this would be an opportunity to mandate the inclusion of vessel IMO numbers in catch certificates for imports into the EU.

We do not consider the presence of the box entitled “*IMO/Lloyd’s number (if issued)*” on the specimen catch certificate in Annex II of the EU IUU Regulation to provide an obstacle to the introduction of an implementing act. The amendment suggested could still make sense in this context, as vessels smaller than the size specifications in the implementing act will still not have IMO numbers. Therefore “if issued” still has meaning.

It will, of course, be necessary to argue that the IMO number requirement is in some way a necessary fleshing out of rules contained in the parent legislation – the EU IUU Regulation. In this case, it is clear that the IMO number requirement would be giving effect to the objective in Article 12(1) of the EU IUU Regulation that the importation of products obtained from IUU fishing be prohibited. It would also contribute to creating uniform conditions for implementation.

One possible obstacle is that the EU IUU Regulation text does not explicitly provide a mandate for the European

Commission to expand on the catch certification system using implementing acts. In other words, there is no specific Article in the Regulation expressing that implementing acts should be used for this purpose.

However, this has not prevented the Commission from using implementing acts to make additional rules on catch certification in the past. For example, the Implementing Regulation to the EU IUU Regulation (Regulation (EC) No. 1010/2009) establishes a system of simplified catch certificates for small-scale vessels, which is not expressly foreseen in the EU IUU Regulation itself. This suggests that implementing acts can be used in these circumstances, provided there is sufficient political will to do so.

## Recommendations

An IMO number requirement for vessels catching seafood for import into the EU would improve implementation of the EU IUU Regulation catch certificate scheme, ensure equal standards for EU and non-EU operators supplying fish to the EU market, and drive the uptake of IMO numbers at the global level, including where IMO numbers are mandated via regional instruments.

We therefore recommend the adoption of an implementing act to the EU IUU Regulation, by the end of 2017, which states that catch certificates accompanying products for import to the EU must show the vessel's IMO number. The requirement should apply to vessels of 15 metres LOA and above fishing outside of waters under national jurisdiction (provided they are eligible under the IMO Ship Identification Number scheme<sup>29</sup>), and to vessels of 24 metres LOA or 100 GT and above fishing exclusively within waters under national jurisdiction.

In the mid- to longer term we recommend that the European Commission works towards aligning IMO number requirements in EU legislation with the eligibility criteria for fishing vessels to enter the IMO numbering scheme, as set out in IMO Circular Letter No. 1886/Rev 6.

To ensure coherence across all areas of EU fisheries policy, we further recommend that the future regulation on the EU external fishing fleet contains a requirement that all applications for an external fishing authorisation include information on the vessel's IMO number<sup>30</sup>. This was included in the European Commission's proposal for a regulation on the sustainable management of external fishing fleets (COM(2015) 636 final), and should be maintained.

Finally, the EU should continue to support implementation of, and compliance with, IMO requirements within the framework of RFMOs, including through the effective implementation of the amendment to the EU system of fisheries controls mandating IMO numbers for the EU fleet.

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## References

- <sup>1</sup> Council Regulation (EC) No. 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.
- <sup>2</sup> The IMO is the United Nations specialised agency with responsibility for the safety and security of shipping and the prevention of marine pollution by ships.
- <sup>3</sup> For example, the FAO and Workshops on the Consolidated List of Authorized Vessels of Tuna RFMOs support the use of IMO numbers as the principal identifier for fishing vessels.
- <sup>4</sup> Commission Implementing Regulation (EU) No. 2015/1962 of 28 October 2015 amending Implementing Regulation (EU) No. 404/2011 laying down detailed rules for the implementation of Council Regulation (EC) No. 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy.
- <sup>5</sup> The legal framework that sets standards for EU vessels to obtain authorisations to fish in non-EU waters is now being revised. The European Commission's proposal for a regulation on the sustainable management of external fishing fleets (2015/636) was published in December 2015 and will replace the current Fishing Authorisation Regulation (Council Regulation (EC) No. 1006/2008).
- <sup>6</sup> Through the adoption of IMO Assembly Resolution A.600(15).
- <sup>7</sup> Through the International Convention for the Safety of Life at Sea (SOLAS) regulation XI/3 (adopted in 1994).
- <sup>8</sup> Report of the 31st Session of the FAO Committee on Fisheries (COFI) (Rome, 9–13 June 2014).
- <sup>9</sup> Report of the Expert Consultation on the Development of a Comprehensive Global Record of Fishing Vessels, Food and Agriculture Organization of the United Nations, Rome, 25–28 February 2008: <http://www.fao.org/3/a-i0149e.pdf>. The 30th session of the UN FAO Committee on Fisheries (COFI) in 2012 recognised the necessity of a global UVI as a key component of the Global Record to identify and track vessels.
- <sup>10</sup> According to unofficial data provided by a Member State Single Liaison Office (SLO), around 70% of import catch certificates received do not contain IMO numbers. This includes only those catch certificates with a box (field) for the IMO number, i.e. excluding those issued under the simplified catch certificate regime (Annex IV Regulation (EC) No. 1010/2009) and the CC models accepted by the EU under administrative agreements with several flag States (Norway, USA, Iceland and Faroe Islands) according to Art. 12(4) of the IUU Regulation. The sample used for this estimate comprised all CCs received with an IMO number field for a period of 31 days (31/10/2016 – 30/11/2016).
- <sup>11</sup> Member State Single Liaison Office (SLO), pers. comm. to Coalition, December 2016.
- <sup>12</sup> For example, an alert issued by the European Commission or member states within the framework of mutual assistance.
- <sup>13</sup> Based on high seas fleet size. Fleet size calculated as an average of: (i) vessels >24 m within the FAO fishing vessel finder; (ii) vessels >100 GT within the IHSM core database; (iii) vessels >24m or 100 GT within RFMO authorised vessel lists that are publicly available.
- <sup>14</sup> Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. International ocean governance: an agenda for the future of our oceans. JOIN(2016) 49 final.
- <sup>15</sup> Article 2(5)(g), Article 28(2)(d) and paragraph 57 of the Recitals to Regulation (EU) No. 1380 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy.
- <sup>16</sup> European Parliament resolution of 8 July 2010 on the arrangements for importing fishery and aquaculture products into the EU with a view to the future reform of the CFP (2009/2238(INI)).
- <sup>17</sup> EUMOFA (2016). *The EU Fish Market – 2016 edition*. Available at <http://www.eumofa.eu/>.
- <sup>18</sup> For further information, see Young, M. (2016) International trade law compatibility of market-related measures to combat illegal, unreported and unregulated (IUU) fishing. *Marine Policy*. Volume 69, July 2016, pp. 209–219.
- <sup>19</sup> The criteria for determining “like” products have been elaborated through WTO case law. For further information, see: [https://www.wto.org/english/tratop\\_e/envir\\_e/envt\\_rules\\_gatt\\_e.htm](https://www.wto.org/english/tratop_e/envir_e/envt_rules_gatt_e.htm).
- <sup>20</sup> As established in the US-Shrimp Turtle case, although the CITES-listed status of the species was taken into account: see *WTO case Nos. 58 and 61. Ruling adopted on 6 November 1998*.
- <sup>21</sup> The EU requirement has in fact already been implemented via the amendment to the EU Control Regulation.
- <sup>22</sup> Art. XX (a) of the GATT refers to the adoption or enforcement by a contracting party of measures “necessary to protect public morals”. The scope of this exception has been subject to debate, but was successfully argued in the EU-Seal products case: see *DS400, DS401: European Communities — Measures Prohibiting the Importation and Marketing of Seal Products*.
- <sup>23</sup> The WTO Appellate body held a US voluntary labelling scheme for “dolphin-safe” tuna to be a technical regulation, while an EU ban on seal products was not. A key issue seems to be whether the ban lays down “product characteristics” – see Young, M. (2016) International trade law compatibility of market-related measures to combat illegal, unreported and unregulated (IUU) fishing. *Marine Policy*. Volume 69, July 2016, pp. 209–219. Based on the EU-seal ban case, the EU IUU Regulation catch certification scheme would not be considered a technical regulation and would therefore be outside the scope of the TBT agreement.
- <sup>24</sup> See Article 2 of the TBT Agreement. It is noted that the burden of proof rests on the complaining party.
- <sup>25</sup> See Article 2.5 of the TBT Agreement.
- <sup>26</sup> ClientEarth is a leading non-profit environmental law organisation with offices in London, Brussels and Warsaw.
- <sup>27</sup> See Circular Letter No. 1886/Rev 6 for the most recent update to the IMO numbering scheme.
- <sup>28</sup> Communication from the Commission to the European Parliament and the Council on the application of Council Regulation (EC) No. 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing. COM(2015) 480 final: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0480&from=EN>.
- <sup>29</sup> See Circular Letter No. 1886/Rev 6 for the most recent update to the IMO numbering scheme.
- <sup>30</sup> For further information, see: <http://www.whofishesfar.org/case-studies/Unveiling-cases-of-EU-vessel-number-changes-in-breach-of-EU-law>.

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The Environmental Justice Foundation (EJF), Oceana, The Pew Charitable Trusts and WWF are working together to secure the harmonised and effective implementation of the EU Regulation to end illegal, unreported and unregulated (IUU) fishing.

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