

ILLEGAL FISHING

Beneficial Ownership Transparency to address Illegal, Unreported and Unregulated (IUU) Fishing



EU AML / CFT
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Introduction

Beneficial ownership transparency involves identifying the individuals who ultimately and effectively own, control and benefit from legal vehicles (e.g. companies) and assets (e.g. fishing vessels). It is a transparency tool that can address the global risks created by illegal, unreported and unregulated (IUU) fishing.

As described by the [International Maritime Organization](#) (IMO) “illegal, unreported, and unregulated (IUU) fishing remains one of the greatest threats to marine ecosystems due to its potent ability to undermine national and regional efforts to conserve and manage fish stocks and, as a consequence, inhibits progress towards achieving the goals of long-term sustainability and responsibility”. The [Food and Agriculture Organization of the United Nations](#) (FAO) estimated that “IUU fishing across the world’s oceans weighs in at around 11–26 million tonnes of fish each year or a price tag of US\$10–23 billion”. This global impact does not affect all countries equally. According to the [Financial Transparency Coalition](#), much of the burden is faced by countries in the Global South, especially in West Africa: “48.9 percent of all IUU vessels for which there is data where offenses took place were found in Africa, leading to an economic loss of Illicit Financial Flows alone of up to USD \$11.49 billion originating from the continent due to IUU fishing. The most affected sub-region is West Africa, where 40 percent of the global IUU fishing took place with a loss of up to USD \$9.4 billion in Illicit Financial Flows...Tax revenues losses depend on tax regimes (mainly corporate taxes, royalties, and export taxes), but could be up to 20 percent of the total.”

Concept

IUU fishing is a broad concept. In the EU, [Council Regulation \(EC\) No 1005/2008](#) on a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing defines the elements of IUU fishing under article 2 :

‘illegal fishing’ means fishing activities:

(a) conducted by national or foreign fishing vessels in maritime waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations;

(b) conducted by fishing vessels flying the flag of States that are contracting parties to a relevant regional fisheries management organisation, but which operate in contravention of the conservation and management measures adopted by that organisation and by which those States are bound, or of relevant provisions of the applicable international law; or

(c) conducted by fishing vessels in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organisation;

‘unreported fishing’ means fishing activities:

(a) which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or

(b) which have been undertaken in the area of competence of a relevant regional fisheries management organisation and have not been reported, or have been misreported, in contravention of the reporting procedures of that organisation;



'unregulated fishing' means fishing activities:

(a) conducted in the area of application of a relevant regional fisheries management organisation by fishing vessels without nationality, by fishing vessels flying the flag of a State not party to that organisation or by any other fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organisation; or

(b) conducted in areas or for fish stocks in relation to which there are no applicable conservation or management measures by fishing vessels in a manner that is not consistent with State responsibilities for the conservation of living marine resources under international law;

Links to money laundering

IUU fishing may be highly related to money laundering given that the proceeds of IUU fishing could then be laundered through the financial system. However, IUU fishing appears not to be high on the anti-money laundering agenda. For instance, neither the FATF report on [environmental crimes](#)¹ nor the one on [illegal wildlife trade](#)² focus on IUU fishing. An [OECD report](#) on illegal fishing described that effectively treating IUU fishing as a predicate offence for money laundering was low among countries: "Considering IUU as a predicate offence for money laundering would allow for more in-depth investigations and the use of adequate sanctions. Yet, while 91% of respondents legally consider IUU as a predicate offense for money laundering, only 22% reported fully implementing this regulation". By the same token, an [APG report](#) on typologies of illegal fishing concluded that while "Illegal fishing is criminalised in all surveyed member jurisdictions and is a predicate offence for ML in all but four of those members...APG members may not have sufficiently identified the risks associated with illegal fishing. The majority of surveyed members had not identified the risk of laundering the proceeds of, or TF through, illegal fishing as a factor in any of their risk-based supervision models. The majority of members have also not conducted supervisory activity specifically targeting ML/TF related to illegal fishing in the past five years...There is limited reporting of suspicious transaction reports (STRs) with a nexus to illegal fishing....The majority of APG members indicated they require further training in multiple areas relating to illegal fishing including: identifying illegal fishing risks; the ML/TF elements of illegal fishing; and identifying and using available resources and information exchanges between domestic agencies."

The secrecy that enables IUU fishing

All organisations involved in IUU fishing agree that secrecy, and especially complex ownership structures, represent an impediment to address the risks of IUU fishing. For instance, the [APG report](#) explained that member countries "do not investigate or prosecute cases of illegal fishing due to a number of factors including: (1) a lack of technical expertise (including financial investigative expertise); a lack of resources for training investigative officers; and an additional lack of maritime surveillance and enforcement mechanisms due to large economic exclusion zones; (2) They have

¹ "The FATF recognizes that other environmental crimes such as those associated with illegal, unreported and unregulated fishing or illegal carbon trading also generate significant gains. However, these activities are not included within the scope of this report to keep the report sufficiently focused"

² "This report does not cover illegal logging and associated trade (ILAT) or illegal, unreported and unregulated fishing (IUU). While the financial flows from these offences are significant, the project team decided that due to the distinct actors and markets for ILAT and IUU, it would not be feasible to cover these issues within this report"



difficulties in identifying evidence associated with or relevant to illicit proceeds of illegal fishing due to the comingling of legal and illegal fishing outputs in the supply chain, and (3) Incomplete, inaccessible or unavailable information regarding beneficial ownership of companies (or other legal persons) and trusts (or other legal arrangements) involved in ML related to illegal fishing.”

The [OECD report](#) also acknowledged that “ensuring the availability of information on the beneficial owner of fishing activities is nevertheless challenging for authorities due to the complex and multi-jurisdictional legal arrangements that often characterise the fisheries sector. Partly as a result, only 64% of respondents report that they request information on beneficial owners when registering fishing vessels, while less than half do so for vessels that conduct fishing-related activities.” In addition, according to the report there is lack of coordination and cooperation: “Only about one in three respondents have a legal framework mandating tax authorities to co-operate and share information with fisheries authorities to facilitate the detection of illicit proceeds and the identification of nationals who are the beneficial owners of IUU fishing vessels and only 16% of respondents reported fully implementing this legal framework”.

The [report by the Financial Transparency Coalition](#) reached similar conclusions: “Individual shareholder information was available for only one-sixth of vessels accused of IUU fishing, mostly incomplete, revealing a beneficial ownership information gap”. The report further added: “Overall, the lack of beneficial ownership information is concerning, while even legal owner - ship data is largely missing. The S&P Lloyd’s Global IHS Markit dataset, for example, does not provide adequate information about shareholders and beneficial owners, even though this is the largest repository of fishing vessel data in the world. Similarly, official datasets such as the regional fisheries management organisations’ Combined IUU Fishing Vessel List only provide legal ownership information – as opposed to beneficial owners – for just a few vessels, and only for current owners, not for those when the IUU offense took place.”

The need and challenges to shed light on the beneficial owners of IUU fishing vessels

Identifying the beneficial owners of the vessels as well as the firms involved in fishing, trans-boarding, processing, and selling the fish is needed to discourage individuals from engaging in IUU fishing as well as to investigate and prosecute those responsible, after a vessel is found to be engaged in IUU fishing. However, there are many challenges to tackle the lack of transparency. These include challenges specific to the fishing industry, which are then coupled with general challenges of global beneficial ownership transparency.

Challenges specific to the fishing industry

- **Extreme mobility outside any country’s supervision.** Vessels, unlike other types of assets are extremely mobile. They are not fixed in one country (e.g. real estate) nor are held by a licensed financial institution (e.g. a bank account). Vessels do not even stay within the territory of one jurisdiction or region like a car. Instead, fishing vessels may spend a high degree of time in the high seas. Vessels are also different from aircrafts. The latter are also extremely mobile, but they must still land within a country’s airport within a few hours of flying (and be subject to airport or customs supervision). Vessels, instead, thanks to other vessels that can transfer oil or food anywhere (even outside a port), may spend a very long time overseas, making the identification of the vessel and its activities highly challenging.



- **Global registration flexibility.** Vessels are similar to companies in their global registration flexibility. Just as individuals may incorporate an offshore company remotely and from any country in the world, so can vessels be registered to foreign countries (flag of convenience) even if the registration country is completely unrelated to the vessel (because neither the vessel nor its owners or its operations take place in the country). There are flag ship countries with ship registries that do not even have access to the sea.
- **Complex ownership.** Fishing vessels may be owned through very complex ownership structures involving many layers of entities from tax havens in addition to state-owned enterprises, which are usually exempted from beneficial ownership disclosure requirements. It may be impossible to determine or confirm the beneficial owner of a complex ownership structure if any of the layers integrating the structure are incorporated in tax havens which lack legal or beneficial ownership registration. Even if the offshore entity involved in the ownership structure is from a country where there is beneficial ownership registration, there may be challenges to access the information if there is no public access to information or if the country has no or exchange of information agreement to request ownership information of the vessel.
- **Limited beneficial ownership scope.** Fishing vessels may be owned by foreign companies, many of which would not be covered by general beneficial ownership registration requirements. The new FATF Recommendation 24 for instance, requires countries to ensure beneficial ownership transparency for foreign companies that represent a money laundering risk and that have a link to the country. According to the new Guidance on Recommendation 24, “links” could include having significant investments or employees in the country. In the EU triggers may be based on purchasing real estate or establishing relations with an obliged entity. However, holding a fishing vessel may not necessarily trigger BO requirements.
- **Limited beneficial ownership collection.** Even in the case of local companies, many countries fail to collect beneficial ownership information in a central registry, and most countries don’t collect BO information in the ship registry either. In some cases where some identification is required at the ship registry, legal ownership can be replaced by disclosing the operator of the vessel.

All of these factors specific to the fishing industry are then exacerbated by general challenges to beneficial ownership transparency including:

- **Limited scope.** Even for countries that hold beneficial ownership registries, they may not collect beneficial ownership information for all types of entities (e.g. trusts or limited partnerships) that may be part of the fishing vessel’s ownership chain.
- **Incompliant beneficial ownership definitions.** Even for countries where the ship registry or fishing license framework do require the collection beneficial ownership data, beneficial ownership definitions may be inconsistent with international standards. In such case, the ship register may allow a company to be registered as a beneficial owner, instead of a natural person.



- **Unverified data.** Countries suffer from challenges regarding the quality of information. There may be a lack of verification of registered BO information coupled with poor understanding of the obligations and concepts. These challenges are faced by specialised beneficial ownership or commercial registries, and by obliged entities of countries which have been immersed in beneficial ownership requirements for many years. In this context, it is likely that such lack of understanding and resources to ensure effective BO registration will be even worse in the case of ship registries and fishing authorities, both of which are unfamiliar with the concept of beneficial ownership.
- **Lack of access by all relevant stakeholders.** Given that BO registries may be held by different authorities (e.g. the tax administration or a special beneficial ownership registry), it cannot be guaranteed that all relevant stakeholders, including fishing authorities and law enforcement agencies will have access to beneficial ownership information, including the FIU (for instance, if fishing is not considered a predicate offense for money laundering). Access by investigative journalists or civil society organisations working against IUU fishing may also be prevented.

Challenges for law enforcement

The difficulties to determine the beneficial owner are then exacerbated by the challenges to hold them to account. There are many challenges affecting law enforcement and other competent authorities from prosecuting beneficial owners and others for IUU fishing in itself, and as a predicate offence to anti-money laundering. These challenges include those affecting investigative powers, lack of cooperation and difficulties to prosecute, enforce sanctions and confiscate assets, as described below.

Investigative powers

Competent authorities may suffer from the following shortcomings to their investigative powers:

- **Lack of resources and capabilities** for monitoring what happens overseas, within the coast and ports, by flagged vessels and in the market when IUU fish are imported or sold.
- **Lack of powers** to inspect the premises of fishing firms to obtain and analyse corporate information to determine the beneficial owners and others who should be held liable for IUU fishing.
- **Lack of skills** to undertake complex money laundering investigations involving IUU fishing as a predicate offense for money laundering, with foreign elements (foreign entities, foreign beneficial owners, illegal conducts happening overseas, secretive transactions, etc.), and where several related crimes may be involved (e.g. human trafficking, environmental crimes, tax evasion, etc.).

Cooperation

Competent authorities may suffer from the following shortcomings when it comes to local and international cooperation and exchange of information:

- **Lack of frameworks to exchange information** between local authorities, especially between fishing authorities, coastguard, the FIU, the tax administration, customs, courts and other law



enforcement agencies based on confidentiality constraints or on lack of trust or absence of working relationships.

- Lack of frameworks or **demanding time resources to exchange information** with foreign authorities.
- **Constraints to use the information** received from abroad based on tax or other administrative cooperation as evidence in criminal court proceedings.
- **Lack of cooperation** or collection of information from the country where the vessel is flagged (where it is registered), especially from flag of convenience countries.

Prosecution and enforcement of sanctions

Competent authorities may suffer from the following shortcomings to prosecute those responsible, enforce sanction and confiscate assets:

- An **improper or insufficient description of IUU fishing within the criminal code** or fishing law, including the type of offence that can be prosecuted, the participants related to the fishing vessel that can be held accountable (e.g. legal owner, beneficial owner, operator, those providing financing or insurance, etc.), or lack of provisions to prosecute both natural and legal persons.
- **Lack of dissuasive sanctions** (e.g. low-value fines), rather than harsher ones (e.g. suspension of fishing license, removal of subsidies, confiscation of vessel, etc.)
- **Territorial exemptions**, in case the IUU fishing took place in the exclusive economic zone of a foreign country or in the high seas, or lack of clarity about the applicable law.
- **If the beneficial owner is a non-resident located abroad**, the possibility to enforce any sanction against them.
- The **difficulty to confiscate the vessel and other assets**, especially if the vessel is located abroad.

Conclusion

In conclusion, IUU fishing seems not to be high on the AML agenda. Moreover, the general shortcomings of beneficial ownership transparency, limited resources of law enforcement authorities, as well as challenges to local and international cooperation and exchange of information are exacerbated by the specific challenges of the fishing industry (e.g. extreme mobility and flexibility to avoid supervision).



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How the EU AML Global Facility can help

The EU AML/CFT Global Facility has wide experience helping countries establish beneficial ownership transparency frameworks. Our work involves an assessment of the legal framework to identify shortcomings, engagement with competent authorities and other relevant stakeholders, including the private sector, to create awareness and understanding of the issues, setting up the IT systems of a beneficial ownership registries, as well as helping develop verification mechanisms (e.g. reporting of discrepancies, cross-checks) or sanction frameworks.

During 2024 and 2025 the EU AML/CFT Global Facility will be organising events relating to IUU fishing and beneficial ownership transparency in Africa, Latin America, Southeast Asia and Europe, to bridge the gap and link together IUU fishing experts and organisations with beneficial ownership transparency experts and institutions.

To learn more about the EU Global Facility on AML/CFT, please visit www.global-amlcft.eu

If you would like to obtain more information, please contact Alexandre Taymans at Ataymans@global-amlcft.eu

Disclaimer

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