



EVIDENCE COLLECTION MANUAL

FOR FISHERIES ENFORCEMENT



This second edition of the Evidence Collection Manual for Fisheries Enforcement has been produced by Stop Illegal Fishing as part of their support to the Southern African Development Community Monitoring, Control and Surveillance Coordination Centre's FISHERIES MCS TOOLKIT.

This manual has been developed to assist fisheries enforcement officers, particularly those working in Africa, to gain an understanding about why evidence is important, different types and classes of evidence and how to collect and use evidence. It provides case material from investigations and inspections to illustrate the importance of evidence collection and the challenges officers face. The principles and information contained in this manual are relevant to many fisheries situations when evidence collection is required including for countries in fulfilling their roles as flag, port, coastal and market States.

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CONTENTS

1.	INTRODUCTION	4
1.1	Fisheries violations and crimes	6
1.2	Legal basis	8
1.3	Interagency cooperation	9
2.	EVIDENCE	10
2.1	Types of evidence	12
2.1.1	Physical evidence	12
2.1.2	Testimonial evidence	13
2.1.3	Demonstrative evidence	14
2.2	Classes of evidence	15
2.3	Admissibility of evidence	16
3.	COLLECTING EVIDENCE	18
3.1	Physical evidence	19
3.1.1	Securing the location	19
3.1.2	Seizing and securing evidence	19
3.1.3	Transporting and storing evidence	21
3.1.4	Maintaining a chain of custody	22
3.1.5	Collecting object evidence	23
3.1.6	Collecting documentary evidence	26
3.1.7	Collecting electronic evidence	30
3.1.8	Collecting photographic evidence	34
3.2	Testimonial evidence	36
3.3	Demonstrative evidence	39
4.	USING EVIDENCE	40
4.1	Working with prosecutors	41
4.2	Criminal and administrative proceedings	42
4.3	Aggravating circumstances	43
4.4	Referring matters to other States	44
4.4.1	The violation or violations	44
4.4.2	Requesting assistance	44
4.4.3	Multiple States	45
5.	CASE STUDIES	47
5.1	TAWARIQ 1	48
5.2	GREKO 1	51
5.3	NAHAM 4	53
5.4	BUAH NAGA 1	55
5.5	FARQUHAR NO. 1	57
5.6	HOUT BAY FISHING COMPANY	58
6.	CONCLUSION	60
7.	ANNEXES	62
7.1	EVIDENCE LOG	63
7.2	EVIDENCE CHAIN OF CUSTODY FORM	64
8.	ACRONYMS	66

1.

INTRODUCTION



Collecting evidence, also described as gathering or seizing evidence, is a critical step enabling or supporting enforcement action against illegal and criminal activity in the fisheries sector.

Whether administrative or criminal proceedings follow the identification of an illegal, unreported and unregulated (IUU) fishing violation, or fisheries related illegality or a fisheries associated crime, full and reliable evidence that is collected, documented and stored following appropriate procedures will be required.

Evidence is usually collected once a decision has been made to act against suspected or identified fisheries violations or associated criminality. This can take place at different points in the fisheries cycle and at different locations, including on fishing vessels or craft, in ports or at landing sites, in offices, in processing factories or at markets. This can be related to a countries responsibilities as a flag, port, coastal or market State. The information which informs the decision to begin evidence collection can itself become evidence, making careful recording and management of information vital at all times.

Evidence may be gathered by different officials who are authorised to inspect, search for, gather and process evidence for fisheries offences, these may include fisheries inspectors, authorised officers, fisheries officers, enforcement officers or other officials. In this Manual we refer collectively to these officials as fisheries enforcement officers.

Understanding the principles and having the skills required to collect evidence in accordance with the applicable laws is essential for fisheries enforcement officers. This manual provides generic information and guidance to support evidence collection in a range of different legal and operational situations. Therefore, to make it relevant to national situations, some local adaptation may be required.

1.1 FISHERIES VIOLATIONS AND CRIMES

The primary concern of fisheries enforcement officers is to ensure that IUU fishing does not occur and that 'compliance' to applicable fisheries conservation and management measures (CMMs), regulations and laws takes place. These broadly include the legality of the fishing vessel or craft and fishing gear, the fishing activity and the catch. Practically, this involves ensuring that the fishing vessel or craft had the necessary authorisations, that the fish were caught with the correct gear in the correct location, that the catch contains the correct species of the correct size and that reporting obligations are complied with.

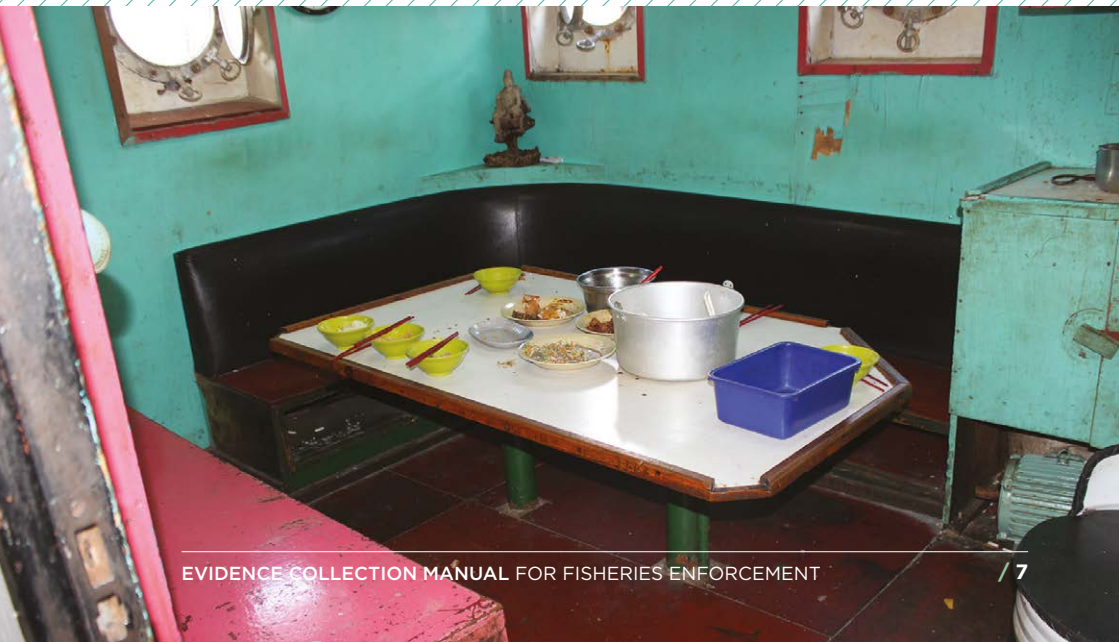
However, fishers, fishing vessel owners, or others operating in the fisheries sector may commit **fisheries related illegalities** to facilitate fishing or to increase profit from a fisheries sector activity, such as the use of vessel identity

fraud, false documents, modern day slavery or corruption. In these cases when the illegality or crime is a violation of legislation other than fisheries legislation, investigation and evidence collection will require, and often be led by, enforcement officers that are not from fisheries authorities.

In addition, fishers, fishing vessel owners, or others operating in the fisheries sector may engage in **fisheries associated crime**, by committing a criminal activity facilitated by its association to the fisheries sector, such as using a fishing vessel to smuggle drugs, arms or people. In these cases, whilst fisheries officers may initially identify or suspect the crime, subsequent investigations and evidence collection will be led by fisheries enforcement officers that are not from fisheries authorities.

If illegal or criminal activity is detected or suspected evidence related to these activities will be present and must be collected and preserved in accordance with the relevant national legislation. After investigation of the illegal or criminal issues the relevant authority will decide on the course of action. Either criminal proceedings or administrative action may be taken, depending

on the nature and severity of the offences and the national legal framework. In both cases a defence lawyer may scrutinise the steps taken by the fisheries enforcement officer to assess if the evidence was collected, protected and preserved according to the correct procedures and the chain of custody maintained, if not the case will be weakened.



1.2 LEGAL BASIS

For evidence to be admissible in a court it must be collected in accordance with relevant national legislation, while this may vary from country to country, generally these rules are contained in a Criminal Procedure Act. Each violation or criminal act has elements of proof that need to be satisfied to ensure successful prosecution. The enforcement officer gathers evidence that can support proof of the elements of the specific violation or criminal act. To do this, he or she must have a good working knowledge of the legislation that governs the gathering of evidence, often referred to as the law or rule of evidence, encompassing the rules and legal principles that govern the proof of facts in a legal proceeding.

Fisheries enforcement officers need to be familiar with their powers in respect to evidence gathering. These are usually contained in the national fisheries legislation and include the power to:

- Board, enter, and inspect a vessel.
- Search a vessel and the need for a search warrant.
- Collect evidence.
- Make an arrest.

If a fisheries inspector does not have adequate powers to collect evidence, it may be required to have another officer, such as a police officer, who is entitled to collect evidence.

For evidence to be admissible in a court it must be collected in accordance with relevant national legislation

1.3 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.

Interagency cooperation and information exchange is particularly important in respect to cooperation between fisheries and police, navy and coast guard authorities, as they are normally the investigative authority within a country trained and experienced in the investigation of criminal offences.

Other relevant national agencies include the maritime and transport authorities, port authorities, immigration authorities, customs authorities, labour authorities, attorney general and foreign affairs. Interagency cooperation may be informal or formal, through guidelines such as memoranda of understanding or other official mechanisms setting out the principles and procedures for cooperation between the relevant agencies.



2.

EVIDENCE

Fisheries enforcement officers need to always be prepared to collect evidence.

Evidence can help to:

- Prove or disprove if illegality occurred.
- Demonstrate methods and motive.
- Validate if an assumption or a conclusion is correct.
- Corroborate testimonies.
- Tell a story about the illegal activity to the court.

Through these, evidence helps to answer critical questions about the illegality or crime, such as:

- **WHAT** happened?
- **WHO** was involved?
- **WHEN** did it occur?
- **WHERE** did it occur?
- **WHO** was at the scene?



2.1 TYPES OF EVIDENCE

There are two main types of evidence of importance to evidence gathering – physical and testimonial. A third type – demonstrative evidence – is used to support court proceedings.

2.1.1 PHYSICAL EVIDENCE

Physical evidence, also called real evidence consists of tangible objects that can be seen or inspected when presented to a court. This is normally the tools used in the commission of the offence, referred to as the instrumentalities and the objects of the offence. The physical evidence may be an object, documentary, electronic and photographic.

Type of physical evidence	Explanation
Object evidence	Something tangible that was part of or related to an actual event. For example, the vessel, illegal gear, fish (illegal catch, prohibited species, and undersize species), shark fins, weapons.
Documentary evidence	Written material that 'speaks for itself'. For example, inspector's or investigator's field notes, observer records and notes, vessel documents, fishing licences, fishing logbooks, transshipment documents and notices, mate's receipts, cargo plans, communication with the owner, operator or agent (such as messages, computer printouts of e-mails) and inspection reports.
Electronic evidence	This consists of vessel monitoring system (VMS) tracks, automatic identification system (AIS) tracks, global positioning system (GPS) tracks, GPS servers, laptop and desktop computers, tablets, mobile phones, satellite phones and computer peripherals such as hard drives and universal serial bus (USB) memory sticks. Electronic evidence has become critically important, as computer data can leave a trail to a multitude of crime. Previously used solely in the prosecution of e-crimes, digital evidence is now used in a wide range of crime prosecution, drawing upon, for example, email communication, text messages, cell phone location, and satellite tracking data.
Photographic evidence	Photographs including digital photographs are admissible at proceedings where an expert or the photographer can verify the accuracy of the photographs and the items they reflect. Photographs paint a picture at proceedings instead of getting a verbal description of events and footage can provide evidence of an object seized while in situ and confirm that the proper seizure of the object took place.

2.1.2 TESTIMONIAL EVIDENCE

Testimonial evidence consists of information supplied by witnesses, e.g. captain, officers, crew members, observers, fishery inspectors, factory workers, managers and other officials. In most countries, an oath or affirmation is required during testimony. There are two general categories of witness – fact or lay witnesses and expert witnesses – in national law testimony from fact and expert witnesses may be subject to separate sets of rules governing admissibility in court.

Type of witness

Fact or lay witness

Explanation

A person with knowledge about what happened in a particular case. Testify about their first-hand knowledge to the limit of their five senses – I saw, I heard, I smelt, I touched, I tasted – and competency. Testifies in the case about what happened or what the facts are. Testify to facts, but unlike experts, cannot offer opinions, inferences, or conclusions. The validity or value of the testimony depends on the truthfulness of the person testifying. Often closely related to the case in some way, may be crew members, business partners, or eyewitnesses at the scene. Captain and officers, crew members, observers, fishery inspectors and other officials are usually called as fact witnesses.

Expert witness

A person with specialised skills whose opinion may help make sense of the facts of the case. Expert witnesses may provide an opinion about facts or events sometimes called scientific evidence. The value of the testimony depends on the expertise and credibility of the person testifying. Do not have first-hand knowledge of the facts or events, so expert witnesses use their technical knowledge, experience, skills, and expert methodologies to form their opinions on the case. Enforcement officers who have professional credentials in disciplines such as fisheries science or marine biology may be called as expert witnesses.

2.2 CLASSES OF EVIDENCE

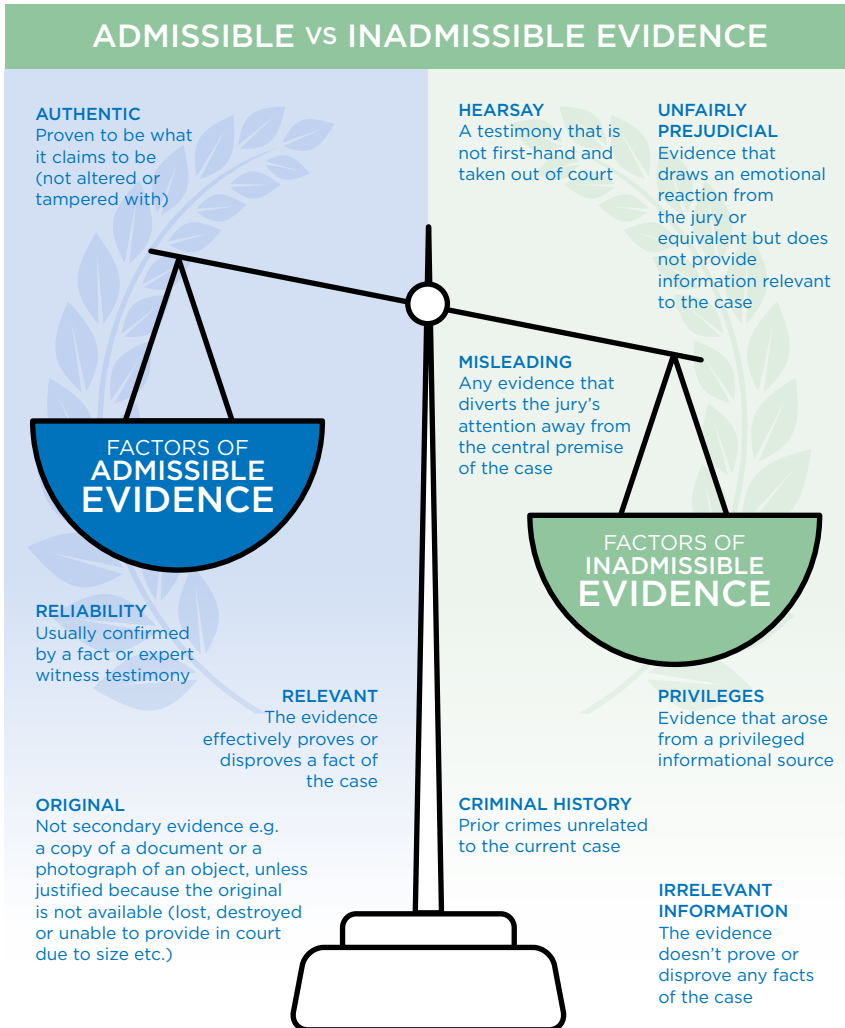
There are two classes of evidence relevant for evidence gathering – direct and circumstantial evidence. While direct and circumstantial evidence may be either physical or testimonial, it should be borne in mind that witnesses are subjective, and objects are objective.

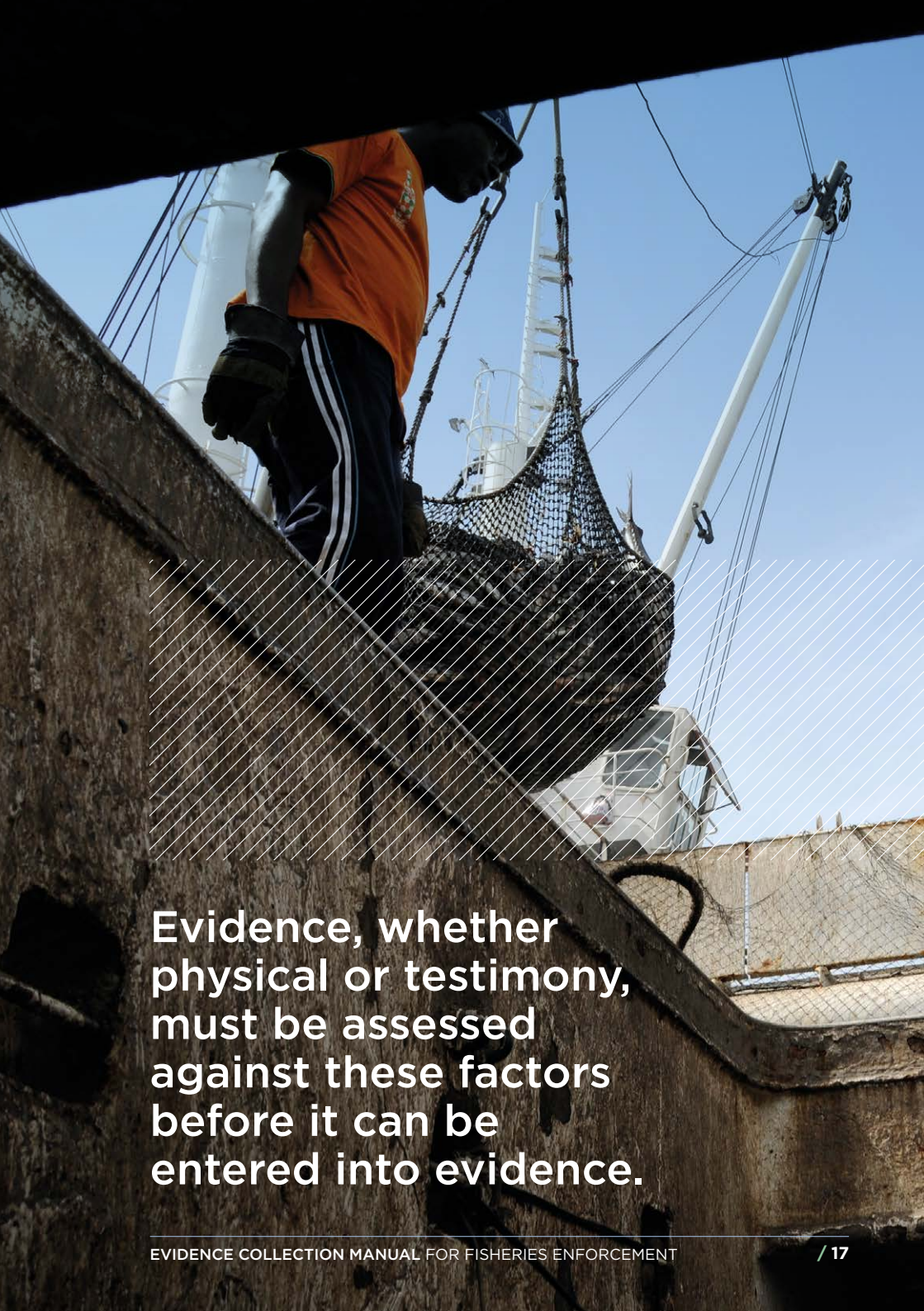
- **Direct evidence – establishes or proves a fact on its own without inference or presumption.**
For example, if removing shark fins from carcasses is not permitted, and during an inspection shark fins are found on board a fishing vessel with no shark carcasses or records of shark catch present, direct evidence of this violation is provided.
- **Circumstantial evidence – indirectly establishes or proves a fact by proving another fact from which an inference or presumption can be made.**
For example, fish in the hold of a vessel does not on its own present evidence of illegal activity, however when it is coupled with AIS, VMS and GPS tracks reflecting fishing activity within an area that it is not permitted to fish within, it is inferred or presumed to have been fished illegally in that area.



2.3 ADMISSIBILITY OF EVIDENCE

Evidence must satisfy the 'rules of evidence' for admissibility before it can be 'entered into evidence' for use in court. The rules of evidence require that the 'best evidence' should be presented to determine the facts of an issue.





Evidence, whether physical or testimony, must be assessed against these factors before it can be entered into evidence.

3.

COLLECTING EVIDENCE

Fisheries enforcement officers may collect evidence from many different locations including buildings, factories and offices, but the most common location is a fishing vessel, and this will often be following an inspection. Therefore, the following section will focus on collecting evidence from fishing vessels, although the information is applicable to other locations.



3.1 PHYSICAL EVIDENCE

3.1.1 SECURING THE LOCATION

During an inspection of a fishing vessel, when possible violations are identified, from this point forward as far as is possible the vessel should be treated as an active crime scene.

Access to the vessel should be controlled to avoid contamination and weakening of the admissibility of any evidence that will be collected. All individual's presence on the vessel must be documented and should boarding or disembarking be allowed by the law enforcement officer taking charge, all movement of individuals must be documented.

3.1.2 SEIZING AND SECURING EVIDENCE

Evidence collection priorities will be determined by the suspected violation or criminal activity and the circumstances and location of the inspection. However, 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.

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. Once any 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, special arrangements need to be made, for example catch or gear. 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.
- 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 respect to a case of suspected illegality or crime.

Physical evidence placed in a bag must be sealed to stop the possibility of tampering.



3.1.3 TRANSPORTING AND STORING EVIDENCE

Once physical evidence has been seized and secured it needs to be transported with its chain of custody form to a police storage facility for safe keeping.

This transportation should take place as soon as is practicably possible, keeping in mind that if an object is seized during an arrest, the object must be transported within sight of the suspect. Usually, police stations have storage facilities for physical evidence, that are likely to become exhibits in court. Exhibits must be booked into a police storage facility as part of their chain of custody, but they may later be booked out when needed for expert analysis or in the case of perishable exhibits to be stored in a cold room or freezing storage facility if required.

Storage of physical evidence at the police facility will consider the following:

- Exhibits must not be exposed to the elements.
- Exhibits must be protected from changes in condition.
- Fragile exhibits must have sufficient shock-resistant material to reduce potential damage.
- Perishable exhibits must be stored in a cold room at the correct temperature.

If the vessel catch is seized, the procedures for handling this will need to follow national legislation and procedures and be determined in agreement with the owners if they are available. The fish may be stored in a cold storage room if available or sold, possibly at auction, at market related prices. If the fish is sold the funds will usually be retained in a government account awaiting a decision of either forfeiture or repayment to the owners by the competent authority or court.

3.1.4 MAINTAINING A CHAIN OF CUSTODY

Proof that physical evidence is authentic is required to enable its admission to court. A chain of custody for the handling of the evidence is used to demonstrate this.

A chain of custody is a complete record of all individuals who have maintained control over the evidence since its collection. If a chain of custody is incomplete this creates the possibility that the evidence could have been altered or tampered with between the time

it was collected and the time it is presented in court, possibly leading to the evidence being inadmissible to the court.

Information contained on the evidence label or tag is included in an evidence chain of custody form in addition to information about who has handled the evidence, at what time and date and where. The completed original form accompanies the evidence in court to enable the fisheries enforcement officer to demonstrate that the object originally found is the object exhibited.



3.1.5 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 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 transshipment.
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 this evidence is 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. Sticks.
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.

3.1.6 COLLECTING DOCUMENTARY EVIDENCE

Documentary evidence often includes a wide range of possibilities for evidence collection, and it is necessary for the fisheries 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.

吨位计算书

TONNAGE CALCULATION BOULLET

副本

泰祥 7 TAI XIANG 7 青岛 QINGDAO 金枪鱼钓船 Tuna angling boat 2012年3月23日 中国 石岛 Mar 23, 2012 Shidao, China 黄海造船有限公司 Huanghai Shipbuilding Co., Ltd. 山东省中鲁远洋渔业股份有限公司 Shandong Zhonglu Ocean Fisheries Incorporated Company	船旗国 Flag 船舶呼号/识别码 Signal Letter or number 推进机器种类 Type of Propelling machine 船体材质 Material 核定旅客总数 Number of Passenger	中国 China 412326861 柴油机 Diesel engine 钢质 Steel 零 Nil
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000000012136 船型代号: HC871

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总吨位 392

GROSS TONNAGE _____

净吨位 147

NET TONNAGE _____

Luo Wenda
中华人民共和国渔业船舶检验局验船师
Surveyor to Register of Fishing Vessel of the People's of Chi

26 / 2012年06月27日
Jun. 27, 2012

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, International Maritime Organization (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. Prohibited species, shark finning or undersize catch. Unauthorised transshipment. Illegal discards. Non reporting of catch. Failure to make entry and exit reports.
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 regional fisheries management organisations (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	Markings showing name, IMO number, call sign, licence numbers, engine numbers, serial numbers etc. Contact lists. Buffer marks on external hull of vessel indicating transshipment. Writing or marks made by crew in living areas.
Possible violations	Vessel identity fraud. Stateless vessel. Fishing without authorisation. Crew violations.
Where to find them	Exterior of the vessel. Buoys and life rafts. Equipment. Notice boards.
What to look for	Information or markings on public display. Consistency of vessel markings e.g. name and identifiers. Signs of previous names or identifiers. Information connecting the vessel to IUU vessels or operators.
What to do	Smaller items may be seized but generally these items are likely to be difficult to seize, photographs should be used as evidence. When there are strong suspicions about vessel identify fraud, the vessel should be detained.
Top tips	Check that the names on the life rings are the same as on the vessel documents. Look for indications of name changes on the vessel hull where the vessel name is displayed.

3.1.7 COLLECTING ELECTRONIC EVIDENCE

Electronic evidence is becoming increasingly 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 devises.
Possible violations	Fishing without authorisation. Fishing in restricted area. 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.

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 SIM card serial number (SSN), which is 19 digits and 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 Cellebright, that can recover deleted messages and photographs, if this is not available in country assistance in this regard can be obtained from INTERPOL.

3.1.8 COLLECTING 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, or 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.

Many countries have a Photographic Unit within their police that can assist with the process of taking and correctly recording information about photographs to ensure their admissibility in court. Stop Illegal Fishing has published a 'Photo manual for fisheries enforcement - the use of cameras in fisheries

operations' which provides useful general information and includes a section on photos of documentation and potential evidence. However, always ensure that photographs are of a suitable resolution, are clear, provide a scale indicator if necessary and contain the entire object being photographed.



Once the photographs have been taken the following procedure should be followed to secure the evidence:

- **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 after 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.

Photo manual for fisheries enforcement – the use of cameras in fisheries operations is available at: www.stopillegalfishing.org in English, French and Portuguese.

3.2 TESTIMONIAL EVIDENCE

A witness statement is a document recording the information provided by a witness to an event, for example crew, officers or other relevant people spoken to. In some countries it is a requirement that the statement be sworn to through an oath while in other countries it is enough for the deponent to confirm that the contents of the statement are true facts. Fisheries enforcement officers are most likely to deal with fact or lay witness rather than expert witnesses.

PREPARATIONS:

- Explain the reasons for interviewing a witness and if they are unsure if they wish to provide a voluntary statement take care to explain again but do not apply undue pressure.
- Advise the witness that the primary aim of taking a statement is to find out what happened.
- Inform the witness that they will be asked to sign a declaration of truth and ensure they understand.
- Treat all witnesses with courtesy and attempt to put them at ease.
- Speak to a witness in a private room if possible, this will ensure that different witnesses do not hear each other's statements and if any human rights abuses have occurred the abused are separated from the abusers.

QUESTIONING:

- What happened?
- Where did the events take place?
- When did the events occur?
- What did the witness see?
- Who else was present?
- What did the witness hear?
- Do they have any evidence (e.g. photos or videos) that show what happened?

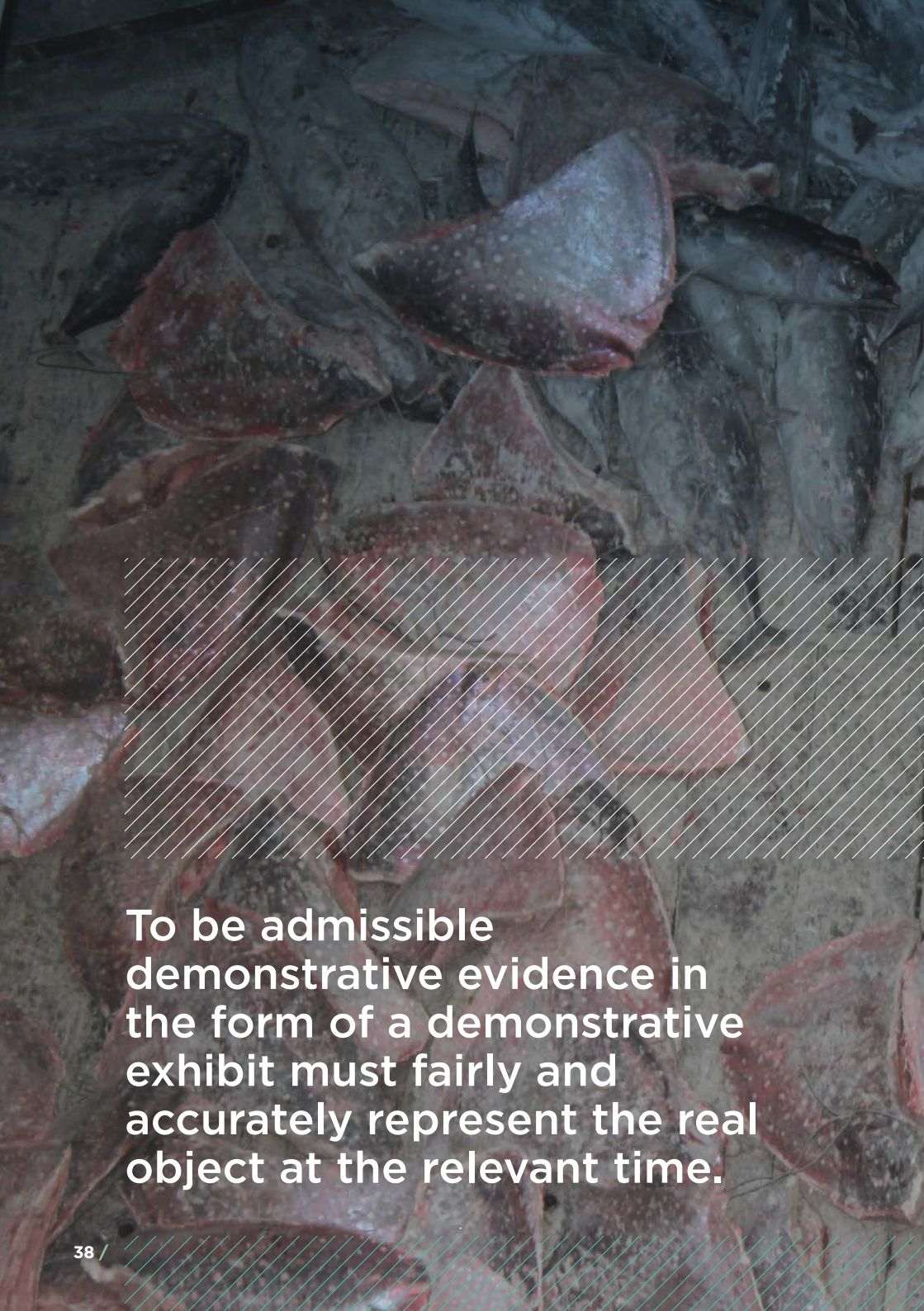
DRAFTING:

- Take notes before writing the statement if this is helpful.
- Write in hand in black pen or type the statement, some countries may have a prescribed statement form that must be used.
- Write in a concise and to the point manner.
- Include matters within the direct knowledge of the witness and as far as is possible, only record the witness' own words.

CHECKING and SIGNING:

- Provide the witness with an opportunity to check the contents of the statement and make corrections before signing it.
- Read the statement back to the witness if they cannot read.
- Provide an official interpreter that is conversant in the language of the witness if they cannot speak the official language in which the statement is to be recorded.
- Ensure that the statement is signed by the person who gave the information, if the witness cannot write, their mark and right thumb print should be placed on the statement.
- Check that any alterations to the statement are initialled by the witness.





**To be admissible
demonstrative evidence in
the form of a demonstrative
exhibit must fairly and
accurately represent the real
object at the relevant time.**

3.3 DEMONSTRATIVE EVIDENCE

Demonstrative evidence illustrates the witness's testimony through maps, diagrams, animations, charts, graphs and sketches.

To be admissible demonstrative evidence in the form of a demonstrative exhibit must fairly and accurately represent the real object at the relevant time. Diagrams or maps are used in some cases to simplify the explanation of what happened or where it occurred. They should be clear and focused to ensure that the information is understandable. Investigative sketches are a useful form of evidence for fisheries enforcement and they can be used to give an overview of a vessel, holds where catch has been stored, or to compile a range of vessel location information to show where fishing activity or transshipment took place.

Demonstrative evidence must be clearly marked and preferably include:

- Name of sketcher.
- Case title or number.
- Date and time of sketch.
- Location of scene.
- Legend of symbols.
- Approximate distances.
- Approximate scale used, or clearly marked as 'not to scale'.
- Views not captured by photographic evidence.

4. USING EVIDENCE



4.1 WORKING WITH PROSECUTORS

Fisheries enforcement officers are encouraged to establish a good working relationship with prosecutors and to approach them for advice, assistance and guidance if needed.

Generally, there will be a separate authority for prosecution whether that is the director of public prosecution, the attorney general, police prosecutors or other. The primary role of the prosecutor is the prosecution of offences and they do not become actively involved in investigations, due to the risk of becoming a witness in their own case.

The prosecutor will decide whether to prosecute based on if there is:

- Sufficient admissible evidence.
- Interests of the community.
- Environmental harm.
- Culpable conduct.

The prosecutor will generally perform the following functions:

- Issue instructions to investigators for further investigation.
- Decide which charges to prosecute on and when.
- Complete the charge sheet.
- Negotiate compounding, plea and sentence agreements or plea bargains.

- Consult with witnesses.
- Call and lead witnesses and run trials.

The prosecutor will usually be knowledgeable about the elements of the offence and can assist a fisheries inspector, by:

- Providing legal advice throughout the process.
- Assisting in setting up systems to secure the integrity of exhibits.
- Recommending what evidence needs to be obtained for successful prosecution.
- Assisting with finalising search warrant, affidavits, applications and arrest warrants.
- Guiding to ensure that investigation methods and gathering of evidence is done in such a way that it will be admissible in court.

Units responsible for asset forfeiture – the confiscation and forfeiture of assets used in the commission of environmental crime, as well as assets that are the proceeds of such crime – usually are within the office of the directorate of public prosecutions or the attorney general.

4.2 CRIMINAL AND ADMINISTRATIVE PROCEEDINGS

Administrative sanctions against environmental crime, such as fines, are generally easier and cheaper to implement than criminal punishment methods, such as prison sentences.

	Administrative law	Criminal cases
Legal basis	Rules or regulations made and enforced by government agencies.	National criminal laws. Criminal actions are usually reserved for the most serious violations, those that are wilful, or knowingly committed.
Fisheries violations	Mostly Administrative.	Can result in criminal prosecution.
Fisheries related crimes		Document forgery. Corruption. Money laundering. Tax evasion.
Fisheries associated crimes		Smuggling of drugs, arms, wildlife or timber. Human trafficking.
Collection, seizing and storing of evidence	Same procedures and criteria apply.	
Burden of proof	Based upon the preponderance of the evidence – meaning that the evidence presented is convincing and more likely to be true than not true. Effectively, the standard is satisfied if there is a greater than 50 per cent chance that the evidence is true.	This is usually a higher or stricter standard than the administrative liability standard and the burden of proof must be beyond reasonable doubt.
Liability	The defendant in an administrative suit can either be found liable, following a trial, or reach a mutually agreed-upon settlement with the government. In a settlement the defendant does not have to acknowledge that they violated the law.	When a criminal defendant pleads guilty or is convicted by a jury, there is no question of legal wrongdoing. He or she has legally committed the crime.
Potential sanctions	Forfeiture of vessel and catch. Monetary fine, usually paid to the fisheries administration. Restrictions may be placed on officers.	Monetary fines. Restitution/damages/costs. Suspended sentence. Custodial sentences.

4.3 AGGRAVATING CIRCUMSTANCES

If it is decided to pursue criminal charges in a matter, the case will be decided in a court of law. To this end fisheries enforcement officers may be asked to testify on aggravating circumstances before sentencing. Aggravating circumstances are factors that increase the severity or culpability of a criminal act, typically, their presence will lead to a harsher penalty.

The prosecutor will guide the fisheries enforcement officer as to what evidence is necessary to prove aggravating circumstances. Alternatively, a fisheries enforcement officer may collect evidence to lead to aggravating circumstance, such as when the accused is found guilty of the offence of IUU fishing. This evidence must be disclosed to and discussed with the prosecutor.

The following are examples of direct environmental damage resulting from a violation that may be used as aggravating circumstances:

- Nature and extent of impact on the marine environment.
 - Duration in the short-term and long-term of the impact.
 - Effect on the fish stocks and other marine life especially impacts on abundance.
 - Estimate of the time required for the impacted environment to recover.
 - Estimate of the costs of remediation.
- Evidence can also be collected on:
- Statistics on the prevalence and extent of the impact of the crime.
 - Expert testimony as to the effect on the environment, such as the points listed above.
 - Testimony from individuals or community groups on the social and economic effects of the crime on people's livelihoods.

4.4 REFERRING MATTERS TO OTHER STATES

When a State detects a violation or crime which it does not have jurisdiction over, the matter should be referred to a State that does have jurisdiction. For fisheries violations this would most commonly be a flag State or a coastal State. For related illegality and associated crimes, a wide variety of States may have jurisdiction depending on the violation, including the States of nationality of those involved.

4.4.1 THE VIOLATION OR VIOLATIONS

The nature of the offence is important as criminal and non-criminal matters might be subject to different procedures. The nature of the case will differ depending on the country involved, as some States criminalise illegal fishing in their exclusive economic zones (EEZ) while others do not.

Two violations may be very closely linked yet subject to different legal regimes. For example, if a fishing vessel has a forged licence, that may be a violation of the criminal or penal code. At the same time, the vessel would be fishing without a valid licence, which would be a violation of fisheries legislation.

4.4.2 REQUESTING ASSISTANCE

Requesting assistance and provision of assistance is usually agreed through diplomatic channels which can be a lengthy process. If a treaty between the States concerned exists, this can provide a more streamlined system. The inclusion of summary administrative procedures as an out of court settlement may also allow issues to be dealt with quickly without the stringent evidence requirements of court and while the vessel is in the port of another State. However, summary administrative procedures may not apply to all violations, particularly related and associated crimes.

In referring to other States, each instance will have to be addressed on a case by case basis as there are many factors to consider. Questions which should be asked include:

- What is the violation?
- Who is the accused?
- Where is the accused?
- Is there an applicable agreement in place between the countries concerned?
- Does the matter need to go to court or can administrative summary procedures be used?
- Can secondary evidence be used, or must originals be transferred including the vessel and catch?
- Do the individuals on the vessel need to be present in the State with jurisdiction?

4.4.3 MULTIPLE STATES

There may be instances in which multiple States have jurisdiction over distinct but very closely related violations. For example, presenting a forged document to officials may be an offence in the port State. The forging of the

document may be an offence in the State whose document it is a forgery of. In this example, the port State would have jurisdiction in relation to the presentation of the forged document, and the other State would have jurisdiction in relation to the creation of the forged document.

This example demonstrates that the same evidence may be needed by multiple countries. This raises further questions which must be considered on a case by case basis:

- Can one or both States use secondary evidence?
- Is the perpetrator of both offences the same individual?
- Do the same individuals need to be present in proceedings in both States?
- Is one case more urgent than the other?
- Can the courts of one State recognise the outcomes of proceedings in another?
- Does a conviction in one State help proceedings in another or does it hurt proceedings?



5. CASE STUDIES



5.1 TAWARIQ 1

Salvaged computer equipment provides key evidence.

March 2009. The TAWARIQ 1, supposedly registered to Oman, was intercepted in the Tanzanian 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.

Violations and/or criminal activity

Fishing without a licence.
Stateless.
Vessel identity fraud.
Pollution.

Inspection details

During the initial in-port inspection, the bridge computer was thrown overboard, but later recovered and data which had been erased was restored.

A quick-thinking fisheries inspector took photographs during the inspection showing the GPS positions. 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 monitoring, control and surveillance (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).

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.

Evidence gathered

Coordinates on the GPS plotter showing the vessel entering the Tanzanian EEZ.
Documents from the bridge including logbook.
Mobile phones from the captain.
Bridge computer.
Expert testimony.

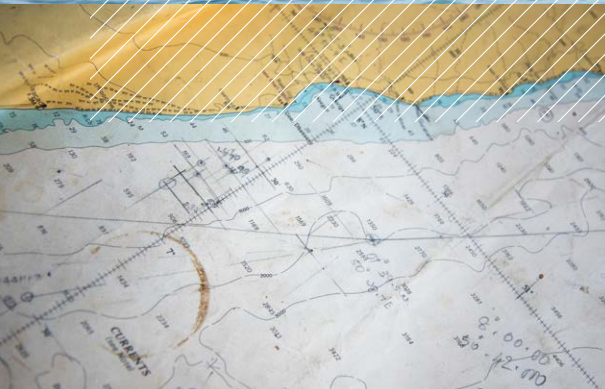
Administrative or criminal proceedings?

Criminal.


Case outcome

Vessel to be forfeited to the Government of Tanzania.
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).
The captain was fined a further 20 billion Tanzanian shillings (USD 12,519 500) for the offence of pollution.





License No. _____ Serial No. 0655



PUNTLAND STATE OF SOMALIA
 Ministry of Fisheries and Marine Resources

Fishing Licence

This licence is issued under the provisions of the Somali Fisheries Law No. 25 of 30th November, 1985 and the Puntland State of Somalia Fisheries Regulations of 6th December, 2011 to the fishing vessel whose details specified herein below to carry out fishing activities within Puntland marine waters.

DURATION OF VALIDITY	From: 07-April-2016	To: 30-Septem-2016
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VESSEL DETAILS	
Vessel Name: CREKO 7	Flag State: BELIZE
Vessel Type: FISHING	LOA/Width/Depth: 24.78/7.70/4.50
Official No.: 011971891	Fish hold capacity: 25 mt
Post of registry: BELIZE	
GRT/NRT: 173/58	
Engine type and power: Diesel 824 HP	
Other craft on board: -	

FISHING AREAS & TARGET SPECIES	
Species permitted: All species except tunas	Designated fishing areas: ALL SOMALI WATERS
Quantities permitted: 25 mt	Fishing methods & gear: TRAWLING

LICENCEE DETAILS	
Owner's Name: MARE FISHING Com	Address: P.O. BOX 0016-01557 PANAMA
Head Office: PANAMA CITY	Telephone: 0030-699334236
Fax: _____	E-Mail: chaosco@oceanet.gr
Agent in Puntland: INDIANOCEAN FISHING	Address: BOSASO
Telephone: 00752-407746780	Fax: _____
E-mail: CAPE.abdirabi@gmail.com	Receipt No.: _____

RADIO COMMUNICATION	
International call sign: V3TJ4	Normal transmitting frequencies: NORMAL FREQ.
Satellite phone: _____	Access code and No.: _____

TRANSPONDERS/VMS	
Type: VMS POLESTAR	Code: MODEL: FMJ

OTHER POSITIONING EQUIPMENT	
LORAN: _____	GPS
OMEGA: _____	VHF GMDSS
DECCA: _____	PLOTTER

OTHER EQUIPMENT	
AUDIO BEYOS: _____	RADAR
EBRHS: MC MURDO ES	TECHNO SHOUAD ES

Approved and signed by the Minister:

This licence is subject to the terms and conditions provided herewith. Failure to comply with the terms and conditions may lead to suspension and/or cancellation of the licence and further restrictions in relation to the operation of the vessel. Fishing activities in the specified marine waters are subject to the above-mentioned fisheries law and regulations.



5.2 GREKO 1

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 anchorage.

Violations and/or criminal activity	Operating in the Somali EEZ without a valid licence. Using forged licences and documents. Fishing in an area reserved for Somali fishermen. Using fishing gear of a type that is illegal under Somali law. Not reporting any data concerning its activities and operations regarding effort and catch to the Somali authorities.
Inspection details	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	Documents including fishing licences, registration documents, crew list and fishing logbook. Logbook was also photographed and showed fishing had taken place in Somali EEZ, outside of the Puntland region where the vessel was licensed. Electronic navigational systems and electronic maps were photographed but it was not possible to extract the positions within the timeframe of the inspection. 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.
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.

5.3 NAHAM 4

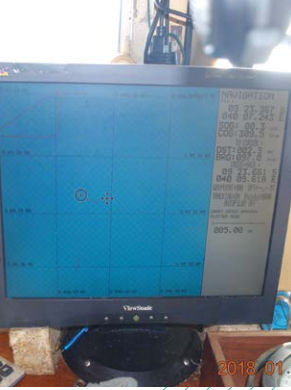
Photographic evidence reveals vessel identity fraud.

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	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.



2018/01

5.4 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 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 Beretta Pistol with ammunition is found hidden in the master's cabin. The Indonesian crew members 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

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 Tanzania Police Force and members of the Department of Public Prosecution.

Evidence gathered

Vessel documents.
Tanzania fishing licence.
Fishing logbook.
Bag containing 90kg of shark fins.
9mm Beretta pistol and ammunition.
Photographs of the shark fins and the bag.
Photographs of the 9mm Beretta 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.

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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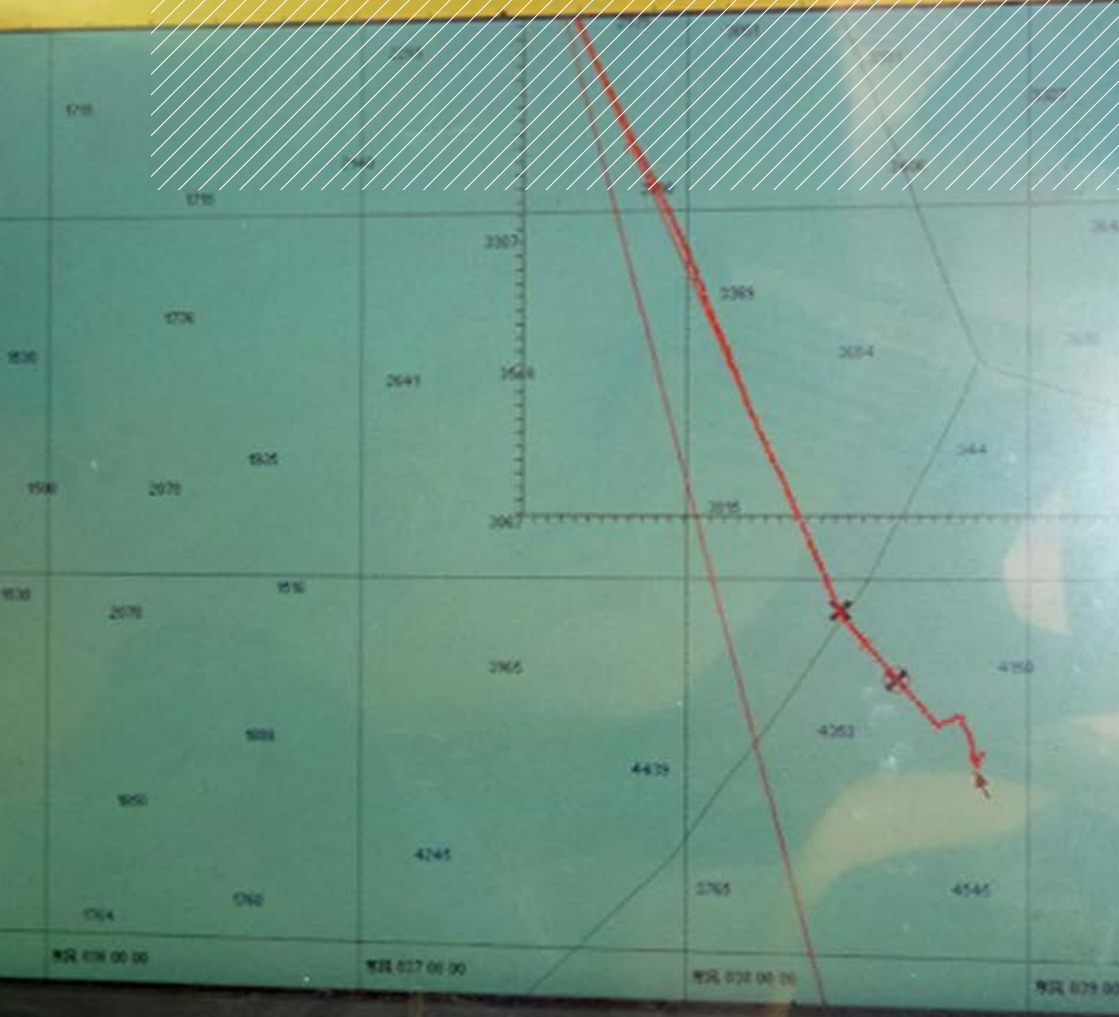
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5.5 FARQUHAR NO. 1

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 authorization 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.

5.6 HOUT BAY FISHING COMPANY

Evidence seized in South Africa supports prosecution in the USA.

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 fishery 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.

Evidence gathered

Documentary evidence from the premises of Hout Bay Fishing Company under a search warrant.

Records of the wages paid to crew, payments made to fishery inspectors and payments to other quota holders for illegal lobsters.

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.

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.

Administrative or criminal proceedings?

South Africa – Criminal.
US – Criminal.





Case outcome

In South Africa, Hout Bay Fishing Company 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 fine in South Africa amounted to ZAR 40 million (USD 5 million).

14 fisheries inspectors were convicted of corruption and sentenced to a substantial fine and suspended sentences after plea-bargain agreements.

17 lobster quota holders convicted and sentenced with substantial fines and suspended sentences after plea-bargain agreements.

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.

In 2013 South Africa was awarded restitution of USD 29 million.

6.

CONCLUSION



Fisheries enforcement officers collect evidence, firstly to determine whether there are grounds for taking enforcement action, and if so, to present the evidence to a court or tribunal to decide whether guilt has been established.

Once guilt has been determined, the court or tribunal must decide what the appropriate sanction is for the violation. Following a conviction in a criminal court this can be a fine or imprisonment, or both, and the forfeiture of the instruments such as the vessel or gear or objects of the offence such as the fish caught without a licence.

Where administrative enforcement is taken, the sanction can be the issuing of an administrative fine by a compounding committee, and/or the suspension or revocation of the vessel registration or fishing licence.

For fisheries enforcement officers, understanding evidence types and classes, what makes evidence admissible and how to collect and use this evidence is an important addition to their knowledge and skills to ensure that those committing fisheries violations and crimes do not go unpunished.



Once guilt has been determined, the court or tribunal must decide what the appropriate sanction is for the violation.

7. ANNEXES





7.2 EVIDENCE CHAIN OF CUSTODY FORM

Item number Case number

Date acquired Seized Collected

Seizure notice issued Yes No

Acquired from (vessel/facility)

Name of person responsible

Description of location found

Collected/seized by

Evidence type

Quantity

Description of item(s)

Evidence bag number

Seizure tag

Transferred from

Release signature

Release date

Name

Transferred to

Receipt signature

Receipt date

Name

Transferred from

Release signature

Release date

Name

Transferred to

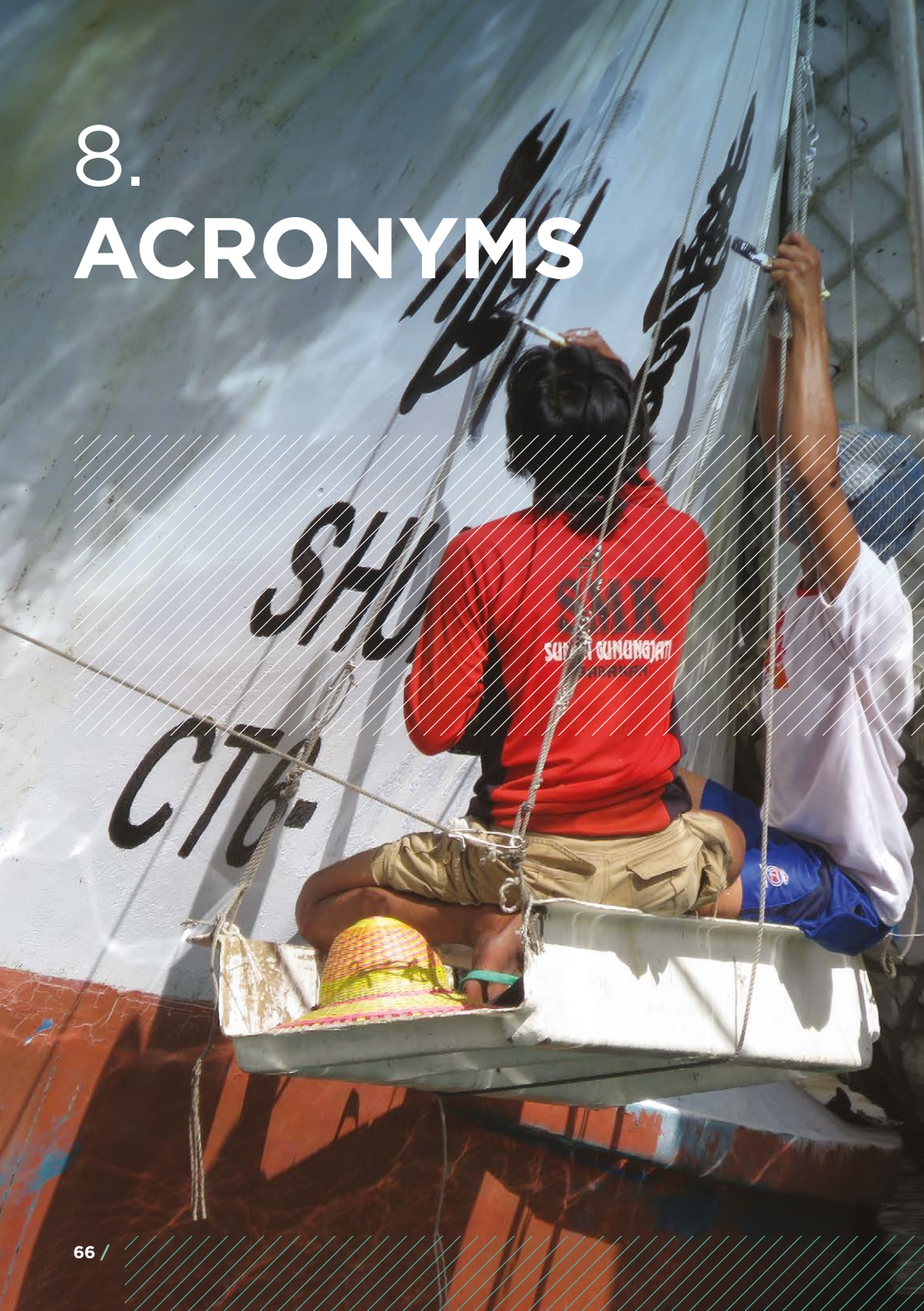
Receipt signature

Receipt date

Name

Comments

8. ACRONYMS



Acronym	Full name
AIS	automatic identification system
AREP	advance request for entry into port
BMZ	German Federal Ministry for Economic Cooperation and Development
CMM	conservation and management measure
DSFA	Deep Sea Fishing Authority (of Tanzania)
EEZ	exclusive economic zone
FAD	fish aggregating device
FAO	Food and Agriculture Organization of the United Nations
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
GPS	global positioning system
IMEI	international mobile equipment identity number
IMO	International Maritime Organization
IUU	illegal, unreported and unregulated fishing
kg	kilogram



MCS	monitoring, control and surveillance
mm	millimetre
MMSI	maritime mobile service identity
NOAA	National Oceanic and Atmospheric Association
PSM	port State measures
PSMA	Port State Measures Agreement of the FAO of the UN
RFMO	regional fisheries management organisation
SD	secure digital
SIF	Stop Illegal Fishing
SIM	subscriber identity module (card)
SMS	short message service
SSN	SIM card serial number
VMS	vessel monitoring system
US	United States (of America)
USB	universal serial bus
USD	United States dollar



This second edition of the **EVIDENCE COLLECTION MANUAL FOR FISHERIES ENFORCEMENT** has been produced based on insights, experiences and knowledge gained by Stop Illegal Fishing over many years.

During this time Stop Illegal Fishing has worked on different projects throughout Africa with support from a range of partners and funders. We would like to acknowledge their support which is critical to the work of Stop Illegal Fishing and to enable us to support the work of the SADC MCS Coordination Centre.





THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY prioritises fighting illegal, unreported and unregulated fishing to protect the region's people, oceans and economies from its devastating impacts. The SADC is coordinating and driving regional monitoring, control and surveillance collaboration through the SADC MCS Coordination Centre.



STOP ILLEGAL FISHING is working at a practical and policy level to support coastal, flag, port and market States to take action against illegal fishing. Stop Illegal Fishing is pleased to be a technical partner supporting the work of the SADC and the SADC MCS Coordination Centre.

This publication is part of our



**FISHERIES MCS
TOOLKIT**

For more information, please visit

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