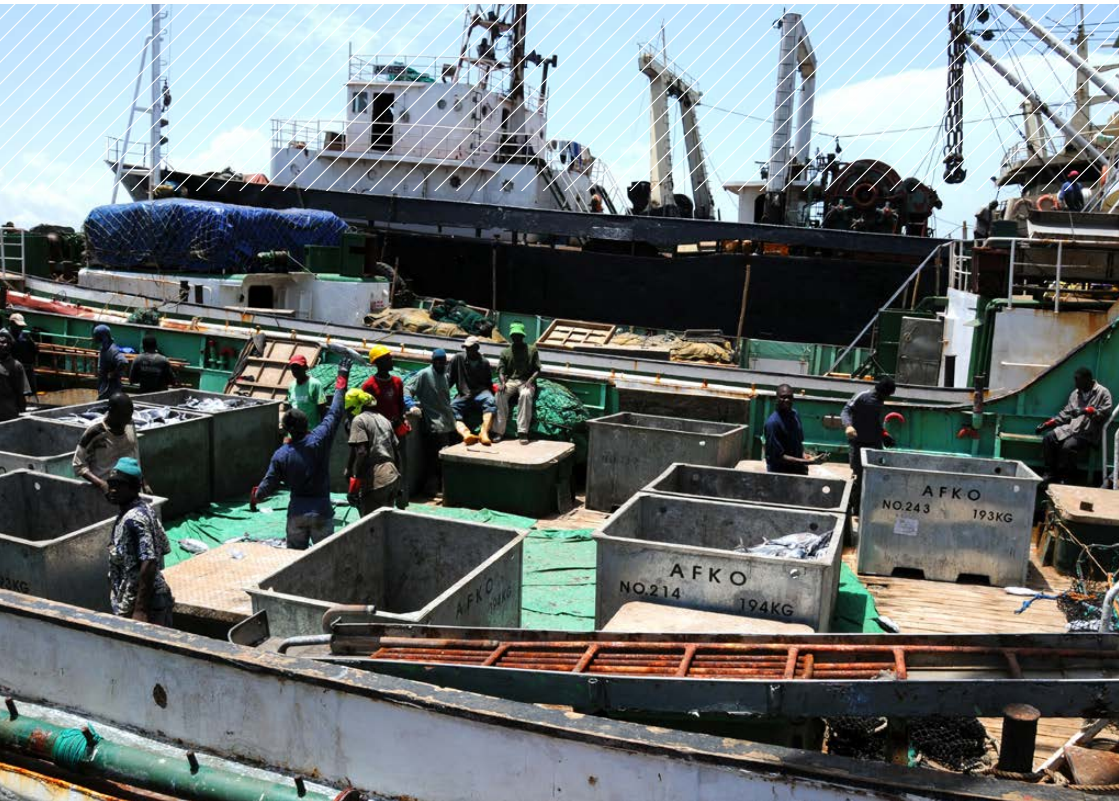




**AFRICAN PORTS  
NETWORK**  
to stop illegal fishing

# EVIDENCE COLLECTION MANUAL FOR FISHERIES ENFORCEMENT

IMPLEMENTING PORT STATE MEASURES



The Evidence Collection Manual for Fisheries Enforcement has been produced by Stop Illegal Fishing as part of their support to the Port State Measures to Stop Illegal Fishing initiative, the FISH-i Africa Task Force and as part of the African Ports Network Toolkit.

The Food and Agriculture Organization (FAO) Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA) is the first binding international agreement to specifically target illegal, unreported and unregulated (IUU) fishing. The PSMA came into force in 2016 and it enables officials to require that a request for entry into port is provided on behalf of all foreign fishing vessels before they enter port. By checking this request and the information provided, officials can decide if there are grounds for suspicion that the vessel has links to IUU fishing, and if so to either deny the vessel access to port or port services. If a vessel is permitted to enter port, with or without suspicion of IUU links, on arrival the vessel may be subjected to a port State measures inspection. If during this inspection any suspected illegal activity or links are identified a fisheries enforcement officer may be required to collect evidence that can later be used in court.

This manual has been developed to assist fisheries enforcement officers, particularly those working in African ports, 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. While this manual focuses on port State measures inspections, the principles and information contained in it will be relevant to many fisheries situations when evidence collection is required.

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# 1. INTRODUCTION

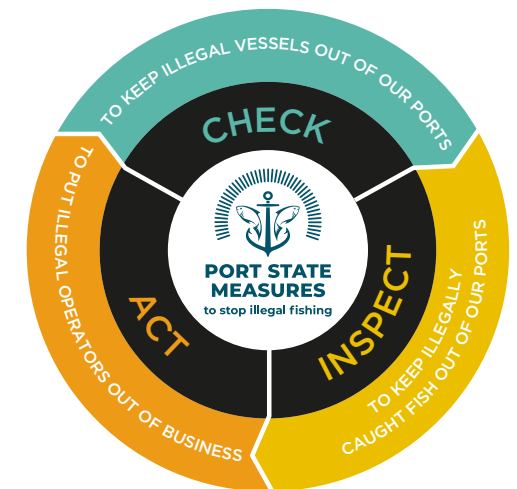


Collecting evidence, also described as gathering or seizing evidence, is a critical step enabling or supporting enforcement action against illegal and criminal activity in the fisheries sector.

Whether administrative or criminal proceedings follow a fishing vessel inspection, 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 non-compliance or criminality. This can take place during checks before a vessel enters port, during an inspection, or after an inspection during analysis of information collected. The information which informs the decision to begin evidence collection can itself become evidence. Therefore, the careful recording and management of information is vital in all three – check, inspect and act – stages required to implement port State measures.

Understanding the principles and having the skills required to collect evidence in accordance with law 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 local adaptation may be required.



## 1.1 FISHERIES VIOLATIONS AND CRIMES

The primary concern of fisheries enforcement officers is to ensure 'compliance' to fisheries rules and regulations, also referred to as ensuring 'legality' or ensuring that no 'violations' occur. These broadly include the legality of the fishing vessel, the fishing and the catch. Practically, this involves ensuring that the fishing vessel has 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, fishing vessel owners or operators may also commit fisheries related illegalities that occur to facilitate fishing activity or to increase profit, such as vessel identity fraud, false documents, modern day slavery or corruption. In these cases when the illegality or crime is a violation of non-fisheries legislation, investigation and evidence collection will require, and often be led by, non-fisheries officers.

In addition, fishing vessel owners or operators may also engage in fisheries associated crime, by

committing a criminal act usually involving their fishing vessel, such as drugs, arms or people smuggling. In these cases, whilst fisheries officers may initially identify or suspect the crime, subsequent investigations and evidence collection will be led by non-fisheries officers.

During inspections of fishing vessels, issues of non-compliance or criminal activity may be 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 issues of non-compliance or acts of criminality 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.

## 1.3 INTERAGENCY COOPERATION

Implementing fisheries PSMs is usually integrated and coordinated with the implementation of broader port State controls. The resultant interagency cooperation and information exchange is particularly important in respect to cooperation between fisheries and police 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 port authority, immigration and navy or coastguard. 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

Every fisheries inspection may result in findings that require action to be taken and a court case to follow, therefore, enforcement officers need to always be prepared to collect evidence during an inspection.

### 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 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 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	Explanation
Fact or lay witness	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 crewmembers, business partners, or eyewitnesses at the scene. Captain and officers, crewmembers, 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.

### 2.1.3 DEMONSTRATIVE EVIDENCE

A third type of evidence, demonstrative evidence, is likely to be of less interest to a fisheries enforcement officer in terms of evidence gathering but is a form of evidence used to make testimonial evidence more easily understandable. Demonstrative evidence refers to evidence that offers an illustration of a fact presented, rather than a verbal description, including photographs, diagrams, graphs, models, maps, charts, slideshows, drawings, computer graphics, flow charts, representations, or illustrations. While demonstrative evidence is usually physical in nature it is not classified as physical or real evidence as it is not directly related to the case, it is used to help clarify, explain and offer a visual representation of an aspect of the case.

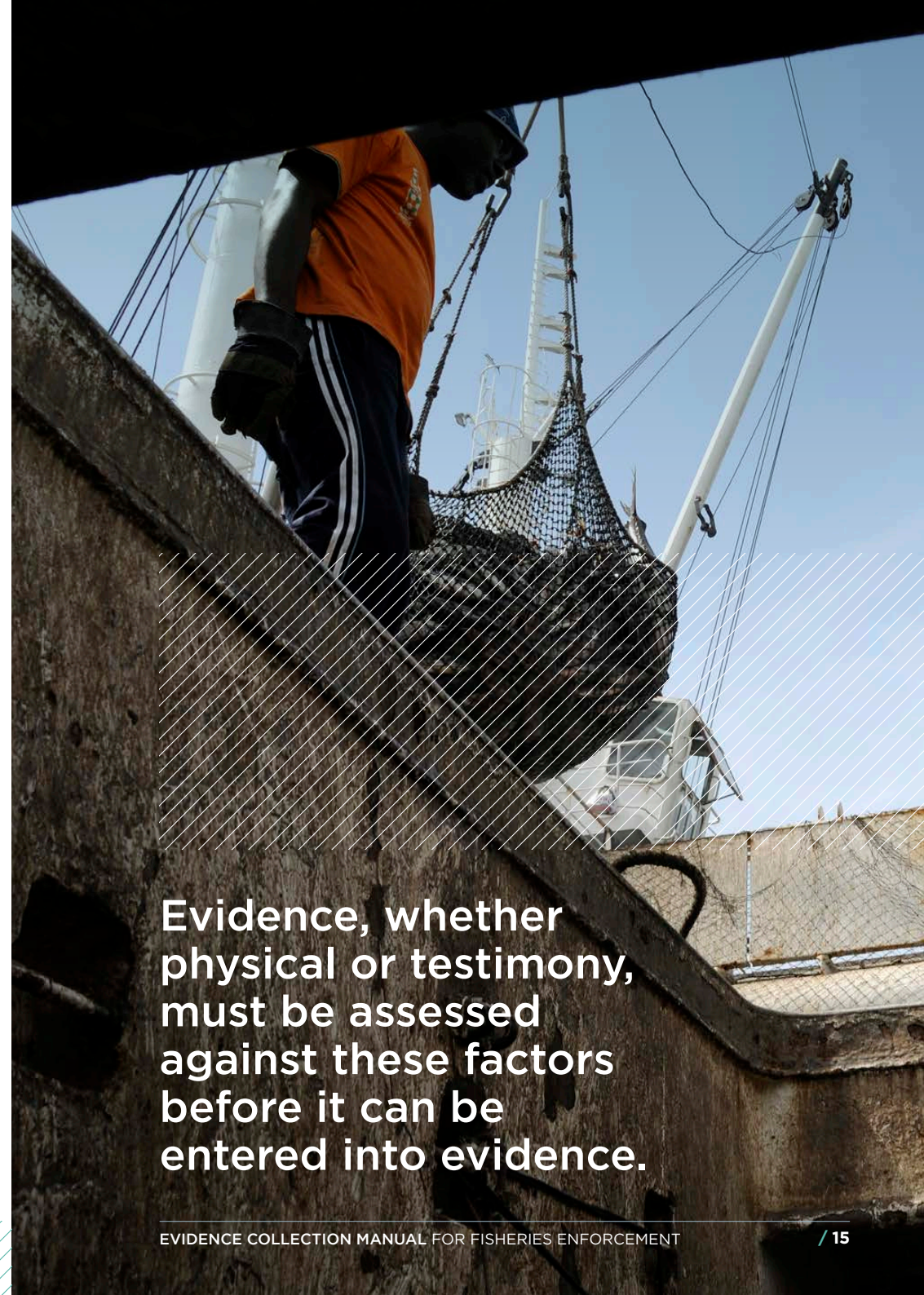
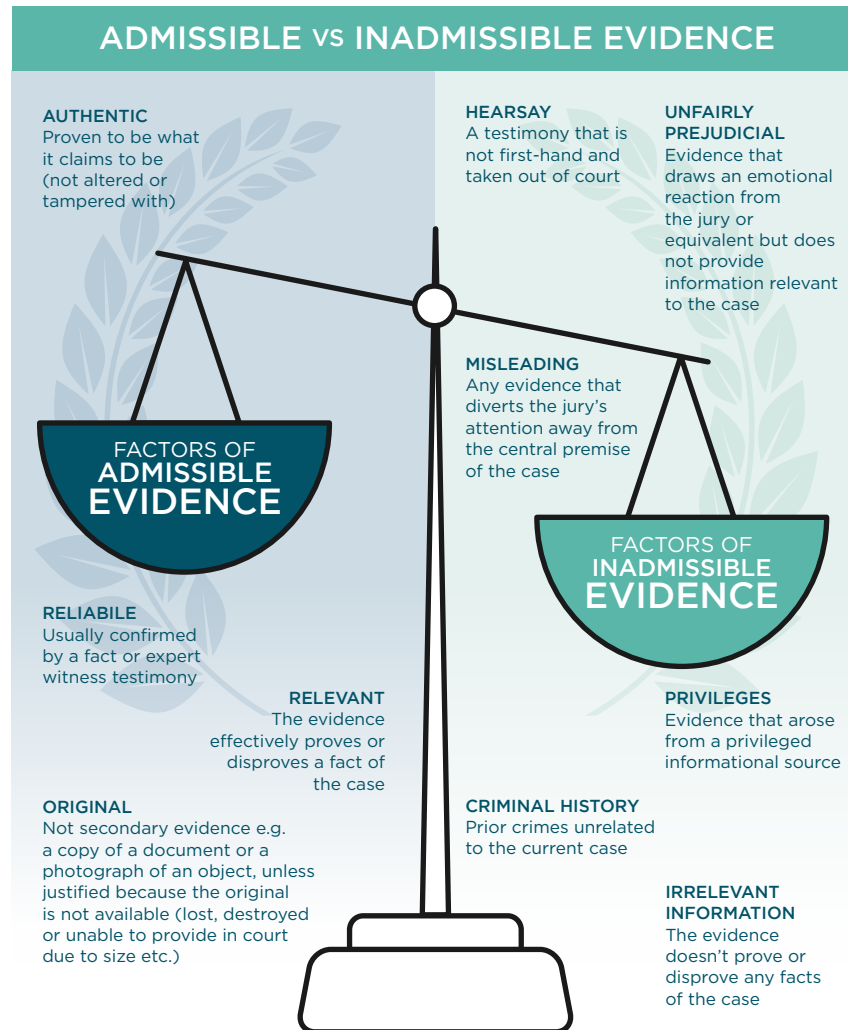
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NAME OF VESSEL 船名: 207	COUNTRY OF REGISTRATION 注册国: 中国	FISHING PERMIT OR LICENCE NUMBER(S) 捕捞许可证/执照号: 0446	TARGET SPECIES 目标物种: 大眼金枪鱼	YEAR 年份: 2017	STEP NUMBER THIS YEAR 今年步数: 206													
NAME OF FISHING COMPANY 捕捞公司: 207	REG NO. 注册号: 20206	NAME OF CAPTAIN 船长: 207	PORT OF ORIGIN 始发港: 207	DATE AND TIME OF FISHING 日期和时间: 2017.9.26, 15:30														
REGISTRATION NUMBER IN COUNTRY OF REGISTRATION 注册国注册号: 20206	LENGTH OF FLOAT LINE 浮标线长度: 30(M)	VESSEL SIZE 船体尺寸: 40(M)	ALL WEIGHTS MUST BE CALIBRATED 所有重量必须校准															
INTERNATIONAL RADIO CALLSIGN 国际无线电呼号: 32VY7	LENGTH OF BRANCHLINE 支绳长度: 32(M)	TYPE OF BRANCHLINE MATERIAL 支绳材料: 2	TYPE OF GEAR 渔具类型: 延绳钓															
LENGTH OF BRANCHLINE 支绳长度: 32(M)	LENGTH OF BRANCHLINE MATERIAL 支绳材料长度: 40(M)	TYPE OF BRANCHLINE MATERIAL 支绳材料类型: 2	DATE AND TIME OF FISHING 日期和时间: 2017.9.26, 15:30															
SET DETAILS 下钩信息	CATCH 渔获信息																	
NO. POSITION 钩位号	LATITUDE 纬度	LONGITUDE 经度	NO. 数量	KG 重量	NO. 数量	KG 重量	NO. 数量	KG 重量	NO. 数量	KG 重量	NO. 数量	KG 重量	NO. 数量	KG 重量	NO. 数量	KG 重量		
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2	07°00'N	043°20'E	3	126	2	68	4	150	2	73	8	300	3	105				
3	07°10'N	07°50'E			2	36	2	108			3	209	1	24				
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## 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



## 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 individuals present 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 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**

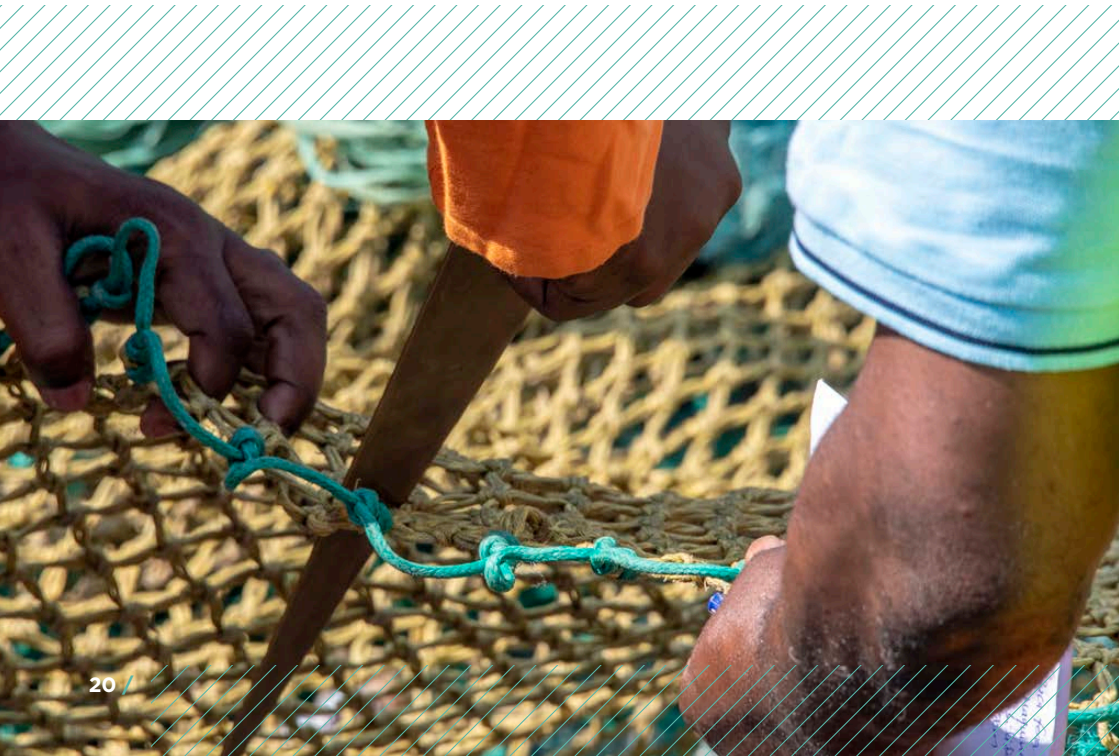
Gear markings.  
Illegality in gear.  
Use of illegal bait, e.g. dolphins, turtles etc.

##### **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

<b>What does this include</b>	Fish and seafood. Protected fish and marine mammals.
<b>Possible violations</b>	Fishing without authorisation. Fishing in restricted area. Prohibited species, shark finning or undersize catch. Unauthorised transshipment.
<b>Where to find them</b>	Freezer hold. Dried shark fins are normally found in the engine room.
<b>What to look for</b>	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.
<b>What to do</b>	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.
<b>Top tips</b>	<b>Enforcement officers must wear appropriate protective clothing, cold store temperatures can be as low as -60°C.</b> <b>Always position one officer by the cold store door during inspection to ensure that access is secured and not blocked.</b>

## Weapons

<b>What does this include</b>	Firearms. Knives (other than those used during fishing or fish processing). Sticks (including knobkieries).
<b>Possible violations</b>	Crew mistreatment or abuse. Illegal killing of mammals or other sea life.
<b>Where to find them</b>	Master/captain, fishing master, senior officers or chief engineer. In the cabin of these officers. On the bridge.
<b>What to look for</b>	Firearms and ammunition. Knives. Sticks.
<b>What to do</b>	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.
<b>Top tips</b>	<b>Look for and seize ammunition.</b> <b>Unload weapon and render safe before transporting.</b> <b>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.</b> <b>Cartridges and cartridge cases should also be wrapped individually, and packaging marked as to position.</b>



### 3.1.6 COLLECTING DOCUMENTARY EVIDENCE

Documentary evidence often includes a wide range of possibilities for evidence collection and it is necessary for the enforcement officer to decide which documents need to be seized as evidence or photographed to ensure correct collection procedures for admissibility of evidence.

Stop Illegal Fishing's 'Document verification manual for fisheries enforcement – vessel identity' provides useful information about documents and how to verify these, it is available at: [www.stopillegalfishing.org](http://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** 副本

**TONNAGE CALCULATION BOULLET**

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

000000012136 船型代号: HC871

公约第二条 8) (Article 2(8) (m)	宽度 (公约规则第二条 3) Breadth(Regulation 2(3) (m)	船中处至上甲板的型深 (公 约规则第二条 2) Moulded depth aminships to upper deck(Regulation) (m)	型吃水 (公约规则第四条 2) Moulded draught(Regulation4(2) (m)	总长 Length overall (m)
38.24	7.20	3.80	3.10	42.60

总吨位 GROSS TONNAGE	392	净吨位 NET TONNAGE	147
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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

24 / 2012年06月27日  
Jun. 27, 2012

### Certificates, permissions and authorisations

<b>What does this include</b>	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.
<b>Possible violations</b>	Fishing without authorisation. Vessel identity fraud or stateless vessels. Unauthorised transshipment. Crew abuse.
<b>Where to find them</b>	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.
<b>What to look for</b>	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.
<b>What to do</b>	Seize original documents and provide copies to the master/captain or agent. Take photographs of all documents.
<b>Top tips</b>	<b>Look for use of different fonts, sizes, cursive and bold.</b> <b>Irregularities can indicate forgery or altered documents.</b>

## Activity logs and declarations

<b>What does this include</b>	Navigation logbook. Freezer logbook. Catch logbook. Radio logbook. Transshipment declarations. Hold and stowage plans for catch. Crew list.
<b>Possible violations</b>	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.
<b>Where to find them</b>	Bridge. Master/captain or fishing master cabin. Freezer log - in engine room.
<b>What to look for</b>	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).
<b>What to do</b>	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.
<b>Top tips</b>	<b>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.</b> <b>The computer/device containing the records should be seized as evidence.</b>

## Vessel markings and displayed information

<b>What does this include</b>	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.
<b>Possible violations</b>	Vessel identity fraud. Stateless vessel. Fishing without authorisation. Crew violations.
<b>Where to find them</b>	Exterior of the vessel. Buoys and life rafts. Equipment. Notice boards.
<b>What to look for</b>	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.
<b>What to do</b>	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.
<b>Top tips</b>	<b>Check that the names on the life rings are the same as on the vessel documents.</b> <b>Look for indications of name changes on the vessel hull where the vessel name is displayed.</b>



### 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

<b>What does this include</b>	VMS and AIS equipment. GPS server. Electronic navigation system including maps. Electronic gear devises.
<b>Possible violations</b>	Fishing without authorisation. Fishing in restricted area. Unauthorised transhipment. Use of illegal gear (e.g. FADs). Unreported entries/exits.
<b>Where to find them</b>	Bridge. Radio room.
<b>What to look for</b>	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.
<b>What to do</b>	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.
<b>Top tips</b>	<b>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.</b> <b>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.</b>

## Computers and peripherals

<b>What does this include</b>	Computers. Tablets. Memory cards. External hard drives. USB devices.
<b>Possible violations</b>	Fishing without authorisation. Fishing in restricted area. Vessel identity fraud or stateless vessels. Unauthorised transshipment.
<b>Where to find them</b>	Bridge. Radio room. Engine room. Living quarters. Captain and crew may have personal laptops.
<b>What to look for</b>	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.
<b>What to do</b>	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.
<b>Top tips</b>	<b>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.</b>

## Mobile and satellite phones

<b>What does this include</b>	Handsets. SIM cards.
<b>Possible violations</b>	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.
<b>Where to find them</b>	Bridge/Captain/Crew/Agent.
<b>What to look for</b>	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.
<b>What to do</b>	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.
<b>Top tips</b>	<b>Isolate the device from internet or phone connections. Keep away from magnets and radio transmitters. The police have trained experts to analyse mobile phones using software, like Cellebrite, that can recover deleted messages and photographs, if this is not available in country assistance in this regard can be obtained from INTERPOL.</b>



### 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](http://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:

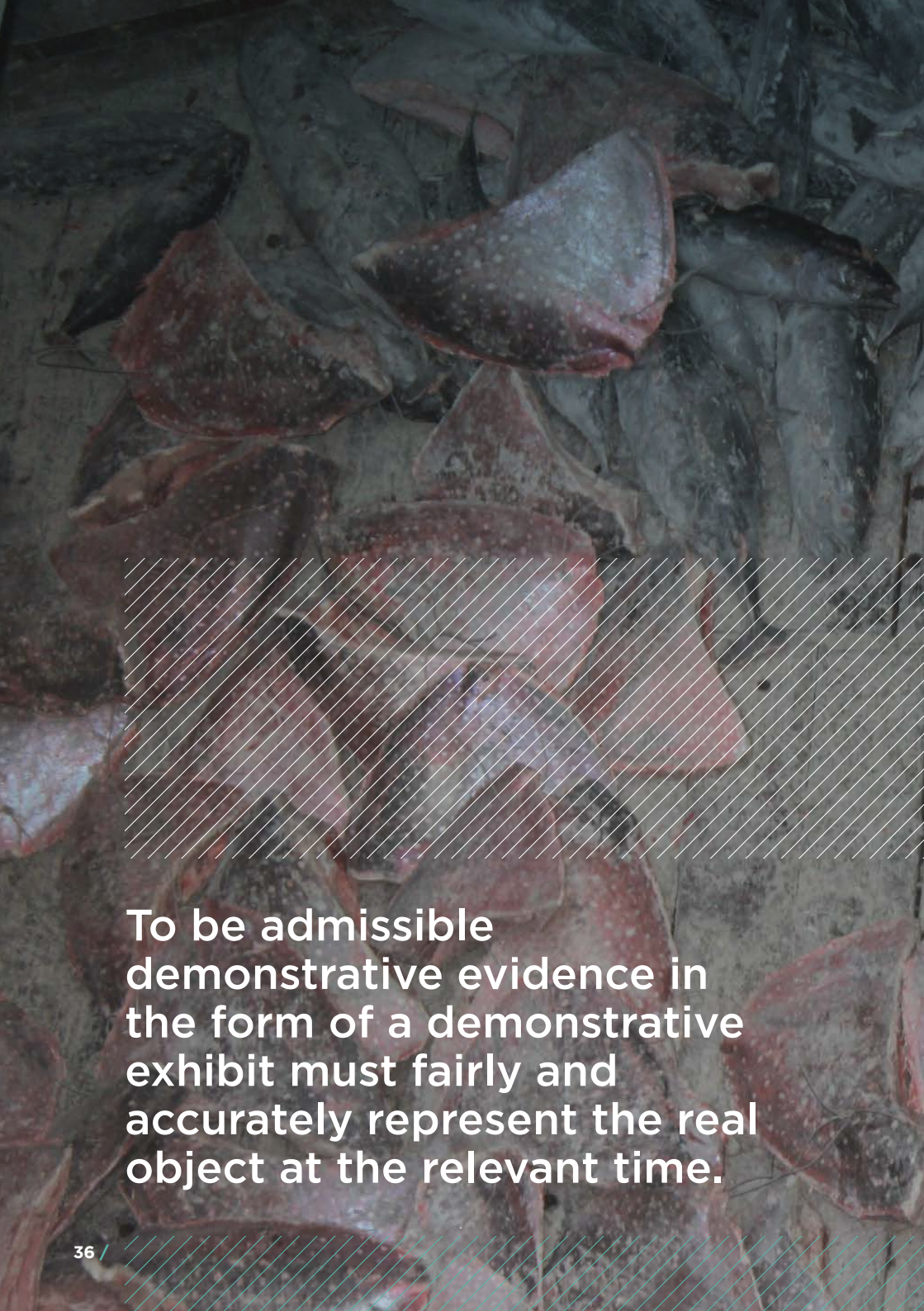
- Take notes before writing the statement if this is helpful.
- Write in hand in black pen or type the statement, some countries may have a prescribed statement form that must be used.
- Write in a concise and to the point manner.
- Include matters within the direct knowledge of the witness and as far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

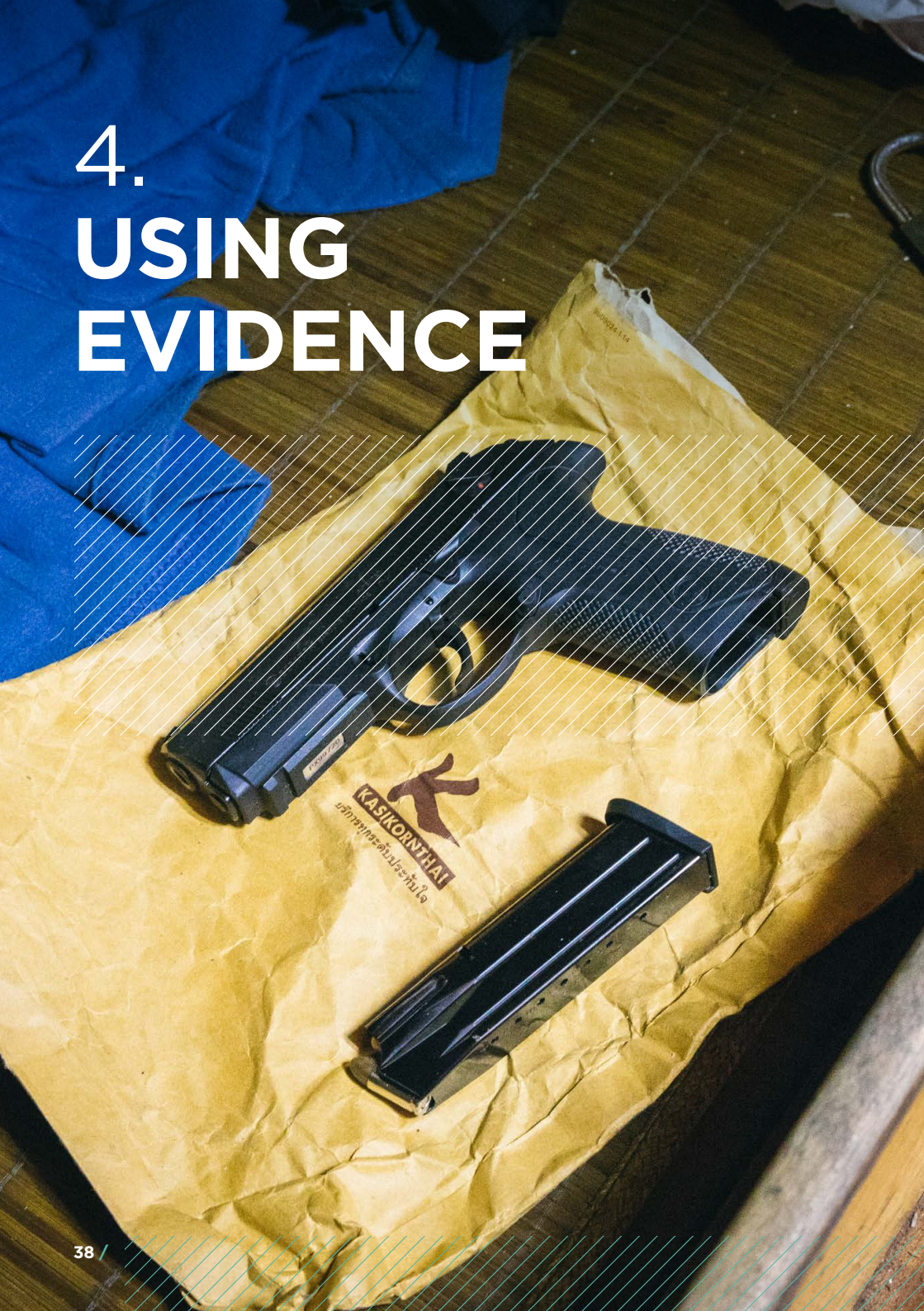
To be admissible demonstrative evidence in the form of a demonstrative exhibit must fairly and accurately represent the real object at the relevant time. Diagrams or maps are used in some cases to simplify the explanation of what happened or where it occurred. They should be clear and focused to ensure 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

**Inspectors 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
<b>Legal basis</b>	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.
<b>Fisheries violations</b>	Mostly Administrative.	Can result in criminal prosecution.
<b>Fisheries related crimes</b>		Document forgery. Corruption. Money laundering. Tax evasion.
<b>Fisheries associated crimes</b>		Smuggling of drugs, arms, wildlife or timber. Human trafficking.
<b>Collection, seizing and storing of evidence</b>	Same procedures and criteria apply.	
<b>Burden of proof</b>	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.
<b>Liability</b>	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.
<b>Potential sanctions</b>	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 inspectors 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 fishery inspector as to what evidence is necessary to prove aggravating circumstances. Alternatively, a fishery inspector 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 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 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 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 exclusive economic zone (EEZ). The vessel had no flag visible, the radar was switched off, no licence was produced and no port of registry was provided. There were 200 tonnes of fresh and frozen tuna on board.

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

#### 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.**





## 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.

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 30<sup>th</sup> November, 1985 and the Puntland State of Somalia Fisheries Regulations of 6<sup>th</sup> December, 2011 to the fishing vessel whose details specified herein below to carry out fishing activities within Puntland marine waters.

<b>DURATION OF VALIDITY</b>	From: 07-April-2016	To: 30-Septem-2016
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**VESSEL DETAILS**

Vessel Name: GREKO 1	Flag State: BELIZE
Vessel Type: FISHING	LOA/Width/Depth: 24.78/7.70/4.50
Official No: 011971891	Fish hold capacity: 25 mt
Port of registry: BELIZE	GRT (NRT): 113/58
Engine type and power: Diesel 684 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 0016-01552 PANAMA
Head Office: PANAMA CITY	Telephone: 0030-699334236
Fax: -	E-Mail: thalaco@oceanet.gr
Agent in Puntland: INDIAN OCEAN FISHING	Address: BOSASO
Telephone: 00752-907796780	Fax: -
E-mail: capt.abdirahi@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 BUOYS: -	RADAR
EPIRB'S: MC MURDOES	TECHNO SHOULDER

Approved and signed by the Minister:





### 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.

<b>Violations and/or criminal activity</b>	Vessel identity fraud. Document forgery.
<b>Inspection details</b>	Fisheries officers in Cape Town collected initial evidence. Naval architects conducted further investigations. Evidence was collected from the vessel.
<b>Evidence gathered</b>	Documents including fishing licences and fishing logbooks. Fishing gear was collected. Catch was confiscated.
<b>Administrative or criminal proceedings?</b>	Criminal.
<b>Case outcome</b>	<b>South African Authorities seized both the vessel and the fish on board.</b> 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.





## 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 crewmembers reported that the Captain threatened them with the pistol to work and that when no fish was caught that they would get no food.

#### Violations and/or criminal activity

Crew violations.  
Charges of conspiracy to commit criminal acts.  
Unlawful possession of shark fin.  
Unlawful possession of a firearm and ammunition.  
Pollution of the marine environment.

#### Inspection details

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.**





## 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 transhipment, the vessel then transhipped 302 units of shark with the weight of 7,734 kg to its sister vessel FARQUHAR No 2. The first transhipment was legal; however, the Master could not present any documents or receipts to verify the second transhipment 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.

<b>Violations and/or criminal activity</b>	Unauthorised transshipment.
<b>Evidence gathered</b>	Copies of vessel documents. Scanned copies of fishing logbook. Copies of transhipment documents with Mate's receipts. Photographs of GPS tracks and coordinates during transhipment. Photographs of empty holds.
<b>Administrative or criminal proceedings?</b>	No legal proceedings, but fishing licence denied for illegal transshipment and reporting wrong flag State.
<b>Case outcome</b>	<b>Information exchange with flag State – Seychelles.</b> <b>Communications to IOTC on the illegal transhipment.</b> <b>Information sent to China.</b>

## 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.**







## 7.2 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
<input type="text"/>	<input type="text"/>

Description of item(s)

Evidence bag number  Seizure tag

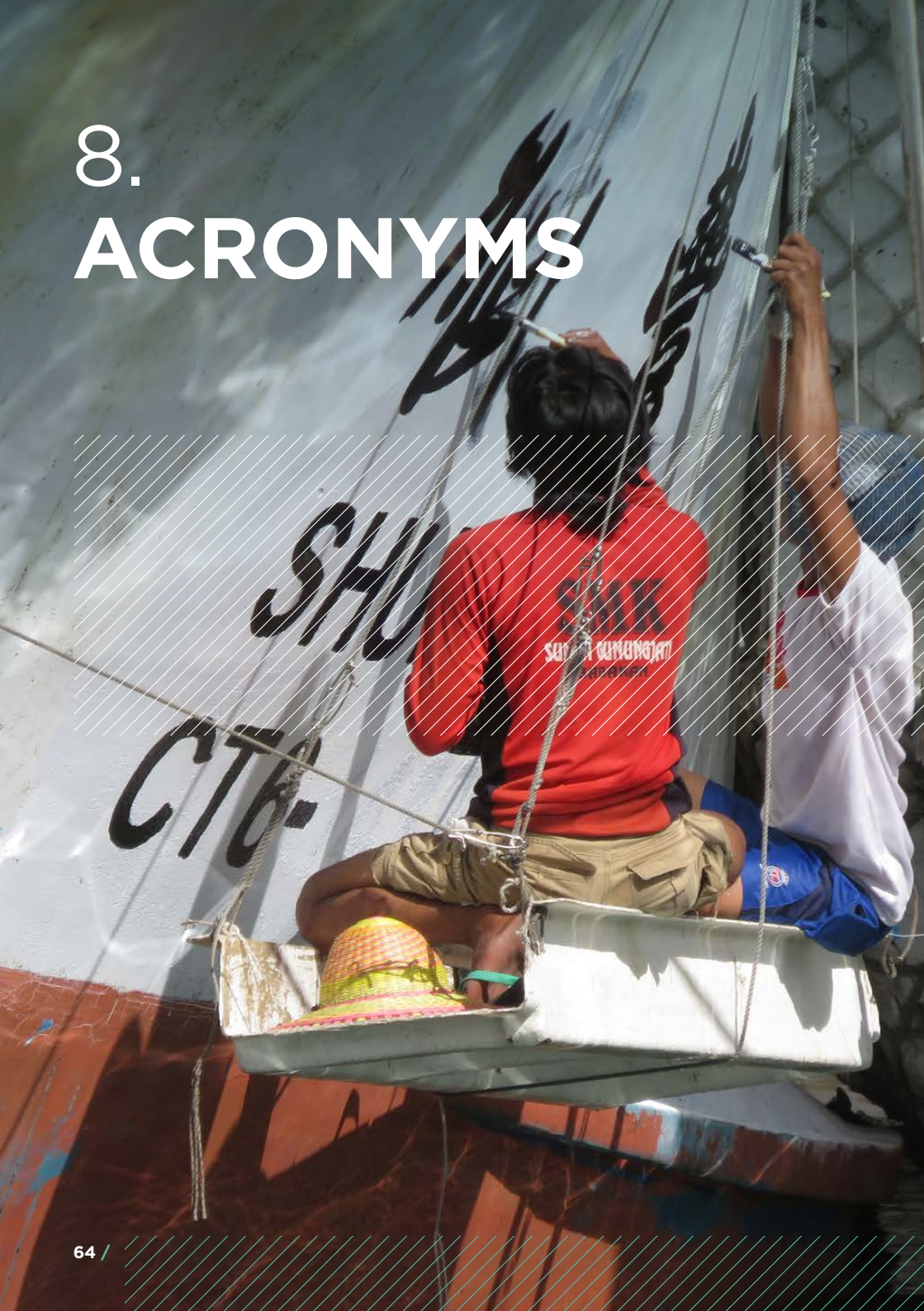


## 7.2 EVIDENCE CHAIN OF CUSTODY FORM

Transferred from <input type="text"/>	Release signature <input type="text"/>
Release date <input type="text"/>	Name <input type="text"/>
Transferred to <input type="text"/>	Receipt signature <input type="text"/>
Receipt date <input type="text"/>	Name <input type="text"/>
Transferred from <input type="text"/>	Release signature <input type="text"/>
Release date <input type="text"/>	Name <input type="text"/>
Transferred to <input type="text"/>	Receipt signature <input type="text"/>
Receipt date <input type="text"/>	Name <input type="text"/>

Comments

# 8. ACRONYMS



Acronym	Full name	Acronym	Full name
<b>AIS</b>	Automatic identification system	<b>MCS</b>	Monitoring, control and surveillance
<b>APN</b>	African Ports Network	<b>MM</b>	Millimetre
<b>AREP</b>	Advance request for entry into port	<b>MMSI</b>	Maritime mobile service identity
<b>BMZ</b>	German Federal Ministry for Economic Cooperation and Development	<b>NOAA</b>	National Oceanic and Atmospheric Association
<b>DSFA</b>	Deep Sea Fishing Authority (of Tanzania)	<b>PSM</b>	Port State measures
<b>EEZ</b>	Exclusive economic zone	<b>PSM-SIF</b>	Port State Measures to Stop Illegal Fishing
<b>FAD</b>	Fish aggregating device	<b>PSMA</b>	Port State Measures Agreement of the FAO of the United Nations
<b>FAO</b>	Food and Agriculture Organization of the United Nations	<b>RFMO</b>	Regional fisheries management organisation
<b>GIZ</b>	Deutsche Gesellschaft für Internationale Zusammenarbeit	<b>SIF</b>	Stop Illegal Fishing
<b>GPS</b>	Global positioning system	<b>SIM</b>	Subscriber identity module (card)
<b>IMEI</b>	International mobile equipment identity number	<b>SMS</b>	Short message service
<b>IMO</b>	International Maritime Organization	<b>SSN</b>	SIM card serial number
<b>IUU</b>	Illegal, unreported and unregulated fishing	<b>VMS</b>	Vessel monitoring system
<b>KG</b>	Kilogram	<b>US</b>	United States (of America)
		<b>USD</b>	United States Dollar





**AFRICAN PORTS NETWORK**  
to stop illegal fishing

THE AFRICAN PORTS NETWORK to stop illegal fishing is working to effectively implement the Port State Measures Agreement across Africa, to keep illegal fishing vessels and illegally caught fish out of African ports.



**PORT STATE MEASURES**  
to stop illegal fishing



Implemented by  
**giz** Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

THE PORT STATE MEASURES TO STOP ILLEGAL FISHING initiative is supported by Stop Illegal Fishing, with funding from the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) on behalf of The German Federal Ministry for Economic Cooperation and Development (BMZ). Over four years, through supporting authorities in Ghana, Madagascar and Mozambique implementation of multi-agency port State measures is taking place to promote a legitimate and equitable environment for all fishers and their communities.



thewaterloofoundation\*

FISH-i AFRICA is an operational task force developed by East African countries and Stop Illegal Fishing to fight illegal fishing in the Western Indian Ocean. FISH-i is being adopted by the Southern African Development Community and will become an integral part of their Regional Monitoring, Control and Surveillance Coordination Centre. The Waterloo Foundation has provided a grant to Stop Illegal Fishing to support the work of FISH-i Africa.



STOP ILLEGAL FISHING is working at a practical and policy level to support coastal, flag, port, market and crew States to take action against illegal fishing.

This publication is part of our



For more information, please visit  
[www.stopillegalfishing.org](http://www.stopillegalfishing.org)