



## STOP ILLEGAL FISHING CASE STUDY SERIES **09**

March 2014

# Illegally fished, illegally transhipped and legally consumed

## Background

West Africa is home to some of the richest and most productive fisheries grounds in the world. Unfortunately, West Africa also is home to some of the highest rates of illegal fishing in the world, at the hands of foreign and domestic, industrial as well as small-scale, operators. It is estimated that this illegal fishing costs the region an estimated USD 1.3 billion a year.<sup>i</sup> Moreover, a large portion of the industrial catches, sometimes legal, sometimes not, are exported to Asian and European markets.

There are many cases that demonstrate this pattern and here we detail just one, allowing us to explore the challenges and lessons learned in order to guide future policy actions to combat illegal fishing.

## The story

On September 18th and 19th, 2013 a trawler flagged to the Republic of Korea (South Korea), the Kum Woong 101, was tracked fishing illegally in the Republic of Sierra Leone's Inshore Exclusion Zone (IEZ). Using a satellite Automatic Identification System (AIS), the Environmental Justice Foundation (EJF), working in cooperation with the government of Sierra Leone, recorded the Kum Woong 101 traveling at speeds of between one and five knots, consistent with fishing, within one nautical mile of Sherbo Island in Southern Sierra Leone. Over this period, numerous incidents were reported by local communities<sup>ii</sup> of a trawler illegally fishing in the IEZ, consistent with the AIS tracking of the Kum Woong 101.

Again, using satellite information, the Kum Woong 101 was tracked travelling to the Exclusive Economic Zone (EEZ) of the Republic of Guinea where, on September 20th, it is believed to have transhipped its illegal catch to the Dutch-flagged cargo vessel, the Holland Klipper. The Holland Klipper's Captain confirmed that he had received a transhipment of 4 385 cartons of fish from the Kum Woong 101. The Holland Klipper was destined for port in Busan, South Korea.

### STOP ILLEGAL FISHING CASE STUDIES aim to:

Define best practice by analysing practical examples of different approaches in the fight against IUU fishing. They also demonstrate the magnitude of activities and partnerships underway to stop illegal fishing and provide the basis for policy advice.



## The story (cont'd)



The first violation occurred in Sierra Leone when the Kum Woong 101 illegally fished in the IEZ, which is off-limits to industrial vessels.<sup>iii</sup> Also, the Kum Woong 101 did not have an observer on board, which constituted a separate violation. Once the Kum Woong 101 transited to Guinea, where it transhipped to the Holland Klipper, another violation occurred as, under Guinean law, transshipments at sea are forbidden within Guinea's EEZ.<sup>iv</sup>

The Busan-based Kum Woong Fisheries Co., owner of the Kum Woong 101, asserts that the transhipped catch actually was product of six months of authorised fishing in Guinea Bissau, not Sierra Leone. The owners and managers of the Holland Klipper, Green Sea, assert that the transhipment took place legally as they had received the necessary authorisation. However, since the authorisation only applied within the Port of Conakry and the transhipment took place over 90 miles from the Guinean coast, the Holland Klipper's transhipment violated both the terms of the authorisation as well as Guinean law.

Additionally, the European Union (EU) Regulation on Illegal, Unreported and Unregulated (IUU) fishing, (EC) No 1005/2008, states that "fishing vessels flying the flag of a Member State shall not be authorized to tranship at sea from third country fishing vessels outside Community waters," unless "registered as carrier vessels under the auspices of a regional fisheries management organisation (RFMO)."<sup>iv</sup> Since the Holland Klipper falls within the definition of "fishing vessel" established by the Regulation, is flagged by a Member State, and transhipped from a South Korean-flagged vessel outside of Community waters, outside of the auspices of an RFMO, it is argued that the Holland Klipper also violated the EU Regulation against IUU fishing.

## Key features and outcomes

- **Sierra Leone charged the Kum Woong 101 with fishing within the IEZ and failing to carry an observer**, and it is believed that a penalty has been paid to the government of Sierra Leone.
- **Guinea has written both to South Korea and the Netherlands**, but there has been no report of action taken regarding the alleged illegal transhipment that occurred in Guinean waters
- **EJF notified the Netherlands, Belgium, the European Commission and South Korea** regarding the incident and called on each to take action.
- **South Korea's Ministry of Ocean and Fisheries required the Kum Woong Fisheries Co. to submit explanatory material.** Additionally, they requested information from the governments of Sierra Leone, Guinea, and the Netherlands through diplomatic channels.
- **Presently, there have been no official reports of sanctions issued by the Netherlands, Belgium, the European Commission, or South Korea** regarding the illegal activity of either the Kum Woong 101 or the Holland Klipper.
- **The fish has since been sold at market and likely consumed**, after being offloaded from the Holland Klipper in Busan, South Korea.

## Drivers

Due to increased efforts by African governments, supported by strengthened cooperation with non-government partners, surveillance of illegal fishing activities in African waters is improving.<sup>iv</sup> The cooperation between Sierra Leone and EJF led to the tracking and identification of the Kum Woong 101, thereby exposing the trail of illegal fish from sea eventually to market.

## Challenges

- **Speed, timeliness, and efficiency of communication, particularly among governments:** When investigating the alleged incidents of illegal fishing and transshipment, South Korea, the Netherlands, Belgium, and the European Commission all have relied on information sharing through diplomatic channels, a process which has been slow and complicated by non-responsiveness. In the meantime, the allegedly illegal fish has made its way to market and to consumers' plates.
- **Limited traceability of fish:** In this case, questions were raised as to the origin and legality of the fish that was transhipped and imported to South Korea; however, without sufficient traceability schemes in place, it was more difficult to conclusively prove the origin and illegality of the fish.
- **Lack of application of the precautionary principle in the face of uncertainty:** Without a definitive conclusion that the fish was legally caught and transhipped, South Korea allowed the fish to be imported and sold.
- **Informing and engaging industry and end-consumers:** From transshipment to importation and sale, Industry played a large role in enabling the allegedly illegal fish to reach the market. Once there, the end-consumers played another large role in purchasing and consuming the fish.
- **Absence of applicable market-based regulations which restrict trade in illegal fish:** South Korea does not have a legal tool, such as the EU IUU regulation, which restricts trade and import of illegal fish. The EU IUU regulation governs over EU vessels, EU waters, as well as imports to EU markets only.

## Players involved

- **Kum Woong 101:** The South Korean-flagged fishing vessel which illegally fished in Sierra Leone and transhipped to the Holland Klipper within Guinea's EEZ.
- **Holland Klipper:** The Dutch-flagged refrigerated cargo vessel that received a transshipment from the Kum Woong 101 in Guinean waters, allegedly in contravention of Guinean law.
- **Republic of Korea (South Korea):** The flag State of the Kum Woong 101.
- **Republic of Sierra Leone:** The coastal State that sanctioned the Kum Woong 101 for fisheries violations.
- **Republic of Guinea:** The coastal State in which the transshipment occurred.
- **The Netherlands:** The flag State of the Holland Klipper.
- **Belgium:** The Holland Klipper is owned and managed by Green Sea, a Belgian registered company.
- **The European Commission:** The Holland Klipper is subject to European laws and regulations, including the EU IUU Regulation.
- **The Environmental Justice Foundation:** The UK-based environmental organisation that works in Sierra Leone and assisted in tracking the movements and illegal fishing activities of the Kum Woong 101.
- **Stop Illegal Fishing:** a Working Group of the New Partnership for Africa's Development (NEPAD) and a not-for-profit organisation that researched and published this case study as part of its commitment to evidence-based lesson learning and policy advice.

## Lessons learned

- **Need for sustained publicity and media engagement:** While publicity was strong at the beginning of the case, it waned as time passed, thereby reducing the pressure placed on governments for a swift and successful conclusion to the investigation, ideally resulting in the further sanctioning of violators.
- **Lack of information sharing and use of effective communication channels delayed the relevant information from being shared in time:** As a result the fish was imported, sold and consumed.
- **Need for information sharing and collaboration among coastal States, particularly at a regional level:** As was demonstrated by the fact that, after being sanctioned by the government of Sierra Leone for illegal fishing, the Kum Woong 101 travelled to Guinea to tranship its catch, which was destined for South Korea.
- **Need for decision makers and stakeholders to be informed of and able to understand the relevant legal frameworks:** Various laws were at play in this case and a solid understanding of the intersection among them all was necessary to ensure that violations did not occur in any part of the chain from fishing to transshipment to importation.
- **Need for cooperation among all stakeholders:** This included the coastal, market, port, and flag States (including that of the Holland Klipper) as well as the industry players.
- **Community surveillance programs effectively support government enforcement of fishing laws and regulations:** With the use of community surveillance reports, the government of Sierra Leone successfully was able to build a strong case to sanction the Kum Woong 101 for illegal fishing in its waters.

## Next steps

In order to ensure a fair conclusion to this case and to prevent similar incidents in the future, the following steps should be considered:

- The European Commission, Belgium, and the Netherlands should continue to investigate the alleged violations of the Holland Klipper and apply sanctions where appropriate.
- South Korea should continue to investigate the alleged violations of the Kum Woong 101, collaborating with Sierra Leone and Guinea, and should apply sanctions where appropriate.
- Sierra Leone and Guinea should continue to collaborate with the flag, port, and market States in order to ensure that the alleged violations that occurred within Guinea's waters are addressed.
- The media should continue to be engaged throughout the next stages of this case in order to ensure a fair resolution, to heighten awareness of the systemic and underlying causes of illegal fishing, and to encourage action/reform.
- The various governments involved should take the appropriate legal steps to be bound by the Port State Measures Agreement, if they have not yet done so.

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## Further information



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## Policy implications

- Nationally, regionally, and internationally, political will to combat the chain of illegality, from catch to sale of fish, must be bolstered.
- Improved systems need to be designed and implemented to ensure rapid and streamlined communication, particularly among governments.
- In our modern world of globalized markets, there is an urgent need for systems and regulatory frameworks that improve the traceability of fish and restrict the importation of illegal fish, similar to the EU IUU regulation and other various national and regional measures, including those of RFMOs.
- In the face of uncertainty, policies and legal frameworks need to be designed to operate based on the precautionary principle so as to ensure that only legal fish reaches the market.
- Improved systems need to be designed and implemented to ensure effective information sharing and collaboration. This can be done through regional networks such as the FISH-i Africa network.<sup>vii</sup>
- The contribution of corruption to illegal fishing activities must be identified and addressed.
- Regional, continental and international agreements on fishery-related issues, particularly the Port State Measures Agreement<sup>viii</sup>, need to be ratified and implemented so as to facilitate national actions to combat illegal fishing.

## Footnotes

- <sup>i</sup> Copeland, Duncan. "Accounting for net losses." *The World Today*, February 2014. <http://www.chathamhouse.org/publications/twt/archive/view/197223> (accessed March 5, 2014).
- <sup>ii</sup> See SIF Case Study 5 – Community surveillance to protect small-scale fisheries.
- <sup>iii</sup> Sierra Leone Fisheries (Management and Development) Decree 1994, Section 30(1). <http://faolex.fao.org/docs/pdf/sle4863.pdf> (accessed March 5, 2014).
- <sup>iv</sup> Republic of Guinea Presidential Decree D/2013/No 128/PRG/SGG.
- <sup>v</sup> Chapter II, Section I, Art. 4(4). <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:286:0001:0032:EN:PDF> (accessed March 5, 2014).
- <sup>vi</sup> Recommendation by the 2010 Conference of African Ministers of Fisheries and Aquaculture (CAMFA) 'that monitoring, control and surveillance (MCS) systems and regional cooperation should be strengthened and that urgent actions at national and regional levels are required to deter and eradicate IUU fishing'.
- <sup>vii</sup> See SIF Case Study 8 – The FISH-i Africa task force: Testing regional cooperation to stop illegal fishing.
- <sup>viii</sup> Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing. [http://www.fao.org/fileadmin/user\\_upload/legal/docs/1\\_037t-e.pdf](http://www.fao.org/fileadmin/user_upload/legal/docs/1_037t-e.pdf) (accessed March 5, 2014).



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