

Policy brief

Can an EU vessel fish sustainably in an IUU yellow carded country?

Brussels, 20 April 2021

This article looks at a case of Italian trawlers suspected of fishing in the Inshore Exclusive Zone of Sierra Leone's waters,¹ as a case example casting doubts about the possibility for EU vessels to fish sustainably in the waters of a State that has been pre-notified by the EU for not doing enough to fight illegal fishing. Furthermore, CFFA argues that taking into account the political commitments of the EU on International Ocean Governance, EU flagged vessels should be exemplary and not abuse the weaknesses of the coastal States where they operate.

1. Overview

On 6 February 2019, CFFA, together with PRCM, Bloom, Danish Living Seas and CAOPA,² jointly lodged a complaint³ to the European Commission for alleged failure by Italian authorities to adopt measures to monitor their vessels in the waters of Sierra Leone and, where relevant, to sanction them if they were operating illegally in contravention of EU fisheries rules. After several exchanges with DG MARE, its legal

¹ To see a full chronology of the exchanges between the European Commission and CFFA on this case, please read the online version of this policy brief at: <https://www.cffacape.org/publications-blog/can-an-eu-vessel-fish-sustainably-in-an-iuu-carded-country>

² See PANOSSIAN, Anaïd, "African artisanal fishers and NGOs jointly complain to the EU against Italy turning a blind eye to its trawlers' illegal activities in West Africa", CFFA-CAPE website, 6 February 2021. Available at: <https://www.cffacape.org/news-blog/2019/02/06/2019-2-6-african-artisanal-fishers-and-ngos-jointly-complain-to-the-eu-against-italy-turning-a-blind-eye-to-its-trawlers-illegal-activities-in-west-africa?rq=Complaint%20>

³ The complaint can be accessed at the following address: <https://static1.squarespace.com/static/5d9341270c6f505b38e59293/t/5db959daea3e1a497465a711/1572428251594/190206+Complaint+EU+SL+Italy.pdf>

services sent a pre-closure letter⁴ on 6 April 2021, stating that “*no illegal activities of the operators can be proven in this instance.*”

2. What about the precautionary approach?

According to local sources and VMS/AIS data, and as spelled out in the joint complaint, six Italian trawlers were delivered direct fishing authorisations to fish in Sierra Leone waters but did not comply with the provisions of the authorisations. In particular with the prohibition to fish in the inshore zone reserved for artisanal fishing, called the Inshore Exclusive Zone (IEZ).

The Commission has replied that “*the lack of exact nautical maps for the delimitation of Sierra Leone IEZ creates difficulties in identifying the actual illegal activities from those being carried out outside the IEZ*”. Therefore, according to the Italian authorities, after checking the VMS tracks of all Italian vessels that operated in Sierra Leone from 2018 to 2020, “*no fishing activities were identified in the IEZ.*”

Whereas the Commission seems to be satisfied that “*all necessary measures*” were taken to remedy the situation and intends to close this complaint, CFFA believes the EU could do more and better, and has said so in an official letter⁵ to DG MARE legal services sent on 15 April. EU flagged vessels should not even be under suspicion of illegal activities, they should be exemplary and not abuse the legal or operational weaknesses of the coastal States where they operate.

1. THE PRECAUTIONARY APPROACH: ITALIAN TRAWLERS SHOULD STAY AWAY FROM THE IEZ

The Monitoring, Control and Surveillance (MCS) capacities of Sierra Leone, as well as of other African coastal countries, are very limited, which makes it difficult for these countries to ensure proper surveillance and control of fishing activities in their waters, even though it is their responsibility under international law. Additionally, the lack of political will hinders the development of relevant legal frameworks, and their implementation.

In this case, according to the EC, Sierra Leone has particularly failed to draw nautical maps that would clearly delimitate the Inshore Exclusive Zone (IEZ), from which industrial fishing vessels are excluded, as per the Sierra Leone Fisheries and Aquaculture Bill (2016).

Still, these failures of Sierra Leone, and more generally of certain coastal States, **should not be used as an excuse to cover potentially suspicious activities by EU fleets, including incursions in Sierra Leone’s IEZ.** EU fleets should not be allowed to take

⁴ The answer by DG MARE legal services can be accessed at the following address: <https://static1.squarespace.com/static/5d402069d36563000151fa5b/t/60701c4e01b2b94a0ef6e8cb/1617960017926/CHAP+2019+00315+Ares%282021%292356219+%281%29.pdf>

⁵ Our letter can be accessed at the following address: <https://static1.squarespace.com/static/5d402069d36563000151fa5b/t/607d95938e883c1bd55a5f10/1618843027950/210415+Our+complaint+CHAP%282019%2900315.pdf>

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advantage of the weak legal and operational frameworks of coastal States where they operate.

Furthermore, in the case of Sierra Leone, the coordinates of the IEZ are well known,⁶ (see table below) and even if precise nautical maps do not exist, **the precautionary approach that governs EU fisheries, including its external fisheries, suggests that EU vessels should stay well away from the zone given by the known IEZ coordinates.**

LATITUDE	LONGITUDE
9,05333	-13,40167
8,50000	-13,39167
8,07833	-13,33167
7,57500	-13,14167
7,28667	-12,61167
7,10167	-12,25000

2. THE EXISTING 'IUU DIALOGUE' WITH SIERRA LEONE: MAKING THE MOST OF IT

The EU has set itself up as a model in the fight against IUU fishing, in particular with the IUU regulation, which the EU uses to distribute yellow and red cards to non-complying coastal States. In fact, in 2016,⁷ it gave a yellow card to Sierra Leone, which has still not been lifted.⁸ In its justification, the Commission noted that: *“in Sierra Leone legal texts governing fisheries are outdated and sanctions fail to deter illegal operators operating internationally under the flag of Sierra Leone, without the fisheries authorities' knowledge. In addition, the number of licensed vessels exceeds the available resources and authorities fail to monitor or control their waters”*.

We can therefore suppose that the Commission has been well aware, since the time of the 2016 Sierra Leone Fisheries and Aquaculture Bill, of the importance of developing all necessary tools to ensure the authorities would be able to control the country's waters. It is particularly important for Sierra Leone to efficiently guard the IEZ from trawlers incursions to protect artisanal fishing activities. **The Commission should make the most of this existing 'IUU dialogue' between the EU and Sierra Leone and renew its efforts so that all tools are set in place to ensure the IEZ is duly protected from trawler incursions.**

The Commission should support countries such as Sierra Leone by building their MCS capacities through, for example, the INTPA-EFCA partnership under PESCAO.

⁶ See for example, page 3 of the following article. BAIQ, Andrew & SEI, Sheku, “On the Development of Territorial Use Rights in the Marine Small-Scale Fisheries of Sierra Leone”, 2019. Available at: <http://www.fao.org/fishery/static/tenure-user-rights/root/volume2/C23.pdf>

⁷ See the press release at: https://ec.europa.eu/commission/presscorner/detail/en/MEMO_16_1460

⁸ See in this European Parliament document an update on IUU-carded countries: [https://www.europarl.europa.eu/RegData/etudes/ATAG/2017/614599/EPRS_ATA\(2017\)614599_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2017/614599/EPRS_ATA(2017)614599_EN.pdf)

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Specifically for Sierra Leone, the Commission support the delimitation of its IEZ and in drawing nautical maps accordingly, and make sure the country has the means to protect the IEZ from trawlers incursions.

3. SMEFF SUSTAINABILITY CRITERIA: SHOULD EU VESSELS BE OPERATING IN AN IUU YELLOW CARDED COUNTRY?

The EU should be fully coherent: It cannot tell deficient coastal States what they have to do to be in line with IUU policy requirements, and on the other hand let its fleets abuse the lack of proper MCS measures in the waters of these same states.

Taking into account the current political commitments of the EU on International Ocean Governance, and its willingness to be a champion for sustainability, the behaviour of EU flagged vessels, should be exemplary, and not abuse the legal and/or operational weaknesses of the coastal States where they operate. The EU's credibility and legitimacy in the fight against IUU fishing will only be more effective and coastal States more willing to cooperate.

In line with the SMEFF regulation,⁹ **EU operators should not engage in fishing activities where sustainability criteria are not met.** There are severe doubts that, today, the situation of Sierra Leone, —a country yellow carded for not being able to control its waters, licensing too many vessels to access fragile, sometimes overexploited, resources— allows these sustainability criteria to be met by EU vessels such as these Italian coastal trawlers.

This raises the general question of EU flagged vessels fishing in coastal countries that have been yellow carded because they can't police their waters – something which is allowed under the IUU regulation. **Is that compatible with the obligation put on the EU vessels to show their activities in the waters of that country are sustainable?** The case of Sierra Leone raises doubts about that.

4. 'OVERRIDING PUBLIC INTEREST': ACCESSING THE AUDIT ON THE EU EXTERNAL FLEET

These six Italian trawlers are not the only EU flagged vessels that have been accused of carrying suspicious activities. For example, recently, a couple of Latvian vessels fishing under the EU-Mauritania fishing agreement protocol, the KAPITAN MORGUN and the FISHING SUCCESS allegedly did not respect the fishing zones¹⁰ established by the provisions of the SFP, coming to fish very close to the coast, which is illegal. According to a European scientist who has been following their activities in West Africa for years, these Latvian vessels systematically refuse to take scientific observers on board, which could have made it easier for these vessels to make illegal incursions into the coastal zone.

⁹ See Article 5 of Regulation No 1006/2008. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R2403>

¹⁰ "Les elements de La garde côte agissent avec brutalité avec les navires de la flotte nationale et ferment les yeux sur les violations des chalutiers étrangers", Al Awiam Info, Agence d'Informations, 23 September 2020. Available at : <https://alwiam.info/fr/ar/8955>

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Despite the Commission's efforts, shortcomings remain in the control of European fleets outside EU waters, even though Member States have an obligation to control the activities of their fishing vessels inside and outside EU waters.¹¹ However, Member States do not always communicate the information and fleets do not always carry out activities in compliance with the regulations (SFPA, SMEFF) and sanctions are too often absent...

The Commission has carried out an audit of the capacities of the Member States to monitor their external fleets. Since this news was out, several Civil Society organisations in different fora have been requesting this audit to be made public, which has always been denied because “*investigation following this audit is still ongoing.*”

CFFA reiterates the **importance of accessing this audit on the external fleet since, clearly, in line with the transparency and role model objectives of the EU, “*there is an overriding public interest in disclosure.*”**¹²

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¹¹ See Preamble §17 of regulation No 1224/2009. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32009R1224&from=EN>

¹² See Article 4§2 of Regulation No 1049/2001. Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32001R1049>