

Analysis of the EU fishing fleet's implementation of the SMEFF Regulation: Reflagging behaviours

February 2022



EU IUU FISHING COALITION



Design by Kat Price

The Environmental Justice Foundation (EJF), Oceana, The Nature Conservancy, The Pew Charitable Trusts and WWF are working together to promote EU leadership in improving global fisheries transparency and governance to end illegal, unreported and unregulated (IUU) fishing.

For further information about this report, please contact:

Selim Azzi, Environmental Justice Foundation, Tel: +44 (0) 207 239 3310, selim.azzi@ejfoundation.org

Ignacio Fresco Vanzini, Oceana, Tel: +32 479 927 029, ifresco@oceana.org

Emily Langley, The Nature Conservancy, emily.langley@tnc.org

Nikolas Evangelides, The Pew Charitable Trusts, Tel: +44 (0) 207 535 4232, nevangelides@pewtrusts.org

Louis Lambrechts, WWF, Tel: +32 499 734 586, llambrechts@wwf.eu

Thomas Walsh, EU IUU Fishing Coalition Research Officer, tom.walsh@ejfoundation.org

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Acronyms and abbreviations

AIS	Automatic Identification System
CFFA	Coalition for Fair Fisheries Arrangements
CFP	EU Common Fisheries Policy
CMM	Conservation and Management Measures
DG MARE	European Commission's Directorate-General for Maritime Affairs and Fisheries
DG SANTE	European Commission's Directorate-General for Health and Food Safety
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FAR	EU Fishing Authorisation Regulation
FoC	Flags of convenience
FoNC	Flags of non-compliance
IMO	International Maritime Organization
IUU fishing	Illegal, Unreported and Unregulated fishing
LDAC	EU Long Distance Fleet Advisory Council
MCS	Monitoring, Control and Surveillance
RFMO	Regional Fisheries Management Organisation
SFPA	Sustainable Fisheries Partnership Agreement
SMEFF	EU Regulation on the Sustainable Management of External Fishing Fleets
STECF	European Commission's Scientific, Technical and Economic Committee for Fisheries

Executive summary

In January 2018, the EU introduced a more stringent legal framework for the control of EU vessels fishing in non-EU waters, in the form of the EU Regulation on the sustainable management of external fishing fleets (SMEFF Regulation),¹ which replaced and repealed the Fishing Authorisation Regulation (FAR).² The new regulation addressed loopholes in transparency and sustainability, and required the EU to create a public database of fisheries authorisations. It was also seen as an effort by the EU to better implement its responsibilities as a party to the Food and Agriculture Organization (FAO)'s Compliance Agreement.³

Furthermore, a novel element of the new regulation was that private or direct authorisations should meet EU standards and adhere to EU laws on sustainability. Under FAR, EU vessels fishing under direct authorisations⁴ were not subject to the same EU standards that applied to other EU vessels fishing under Sustainable Fisheries Partnership Agreements (SFPAs)⁵ or, to an extent, in Regional Fisheries Management Organisations (RFMOs),⁶ even though these fishing activities had equal access to the EU market. In the preamble of the SMEFF Regulation, the EU recognised that its "IUU Regulation,⁷ FAR and Control Regulation⁸ were not implemented consistently; in particular there were inconsistencies between the FAR and the Control Regulation [while] the implementation of the FAR also revealed several loopholes, since some challenges in terms of control, such as chartering, reflagging and the issuance of fishing authorisations issued by a third-country [for an EU vessel to fish] outside the framework of an SFPA ('direct authorisations'), were not covered."⁹ Reflagging refers to the process of changing the flag of a vessel from one country to another. Although reflagging is perfectly legal, there are a number of instances where the rationale for choosing to reflag a vessel could be problematic, for example, when the owners of fishing vessels may try to get around the necessary authorisations or fishing quotas by reflagging their vessels.

In September 2016, the EU IUU Fishing Coalition published an investigation on the reflagging behaviour of the EU fleet. It sought to identify patterns of reflagging behaviour and to highlight which flag States and companies consistently engaged in reflagging. The 2016 investigation identified **23 vessels** that had entered or reentered the EU fleet register having previously operated under flags of non-EU countries found to be failing in their efforts to stop illegal, unreported and unregulated (IUU) fishing. These failings were indicated by EU decisions to **red or yellow "card"** these countries under the EU IUU Regulation¹⁰ (**Box 1**). Certain vessels were authorised to fish under official EU access agreements almost immediately after (re)joining the EU fleet, despite concerns as to the level of control exerted over them by their previous flag State.¹¹ Such repeated and purposeful reflagging between carded non-EU countries and the EU fleet reflected behaviours contrary to the objectives of the Common

1 Council Regulation (EU) 2017/2403 of the European Parliament and of the Council of 12 December 2017 on the sustainable management of external fishing fleets. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R2403>.

2 Council Regulation (EC) No 1006/2008 of 29 September 2008 concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters.

3 FAO Agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas. Further information available at: <https://www.fao.org/iuu-fishing/international-framework/fao-compliance-agreement/en/>

4 Direct authorisations – also referred to as private agreements are agreed between individual EU operators (using their EU-flagged vessels) and the government of the non-EU coastal State for access to fisheries resources in the coastal State's exclusive economic zone (EEZ). Due to the presence of an "exclusivity clause" in official EU access agreements (Sustainable Fisheries Partnership Agreement or SFPAs), private agreements are only allowed where there is no (S)FPA in place.

5 Sustainable Fisheries Partnership Agreements (SFPAs) refer to agreements that the EU have with a number of countries (primarily in Sub-Saharan Africa) in which the EU and shipowners pay for access to their exclusive economic zones, purportedly in an ecologically sustainable and equitable manner, and the EU provides support to the sector in the partner countries, with the aim of promoting development and strengthening their capacity.

6 Regional fisheries management organisations or arrangements (RFMO/As) are the international organisations regulating regional fishing activities in the high seas that have major deep-sea fisheries. While some RFMOs have a purely advisory role, most have management powers to set catch and fishing effort limits, technical measures, and control obligations. In addition, they are usually tasked with collecting fisheries statistics, assessing resources and monitoring activities (https://ec.europa.eu/oceans-and-fisheries/fisheries/international-agreements/regional-fisheries-management-organisations-rfmos_en and <https://www.fao.org/fishery/en/topic/166304/en>).

7 Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.

8 Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy.

9 Op cit.

10 Op cit.

11 EJF, Oceana, The Pew Charitable Trusts and WWF (2016). Ensuring better control of the EU's external fishing fleet. http://www.whofishesfar.org/files/Case_Studies/FAR_Narrative.ENG.FINAL.30.6.pdf.

Fisheries Policy (CFP)¹² because effective scrutiny of vessels returning to the EU fleet from these countries was apparently lacking.

This new study analyses the flagging behaviour of all fishing vessels in the EU Fleet Register in the period between the SMEFF Regulation's entry into force (17 January 2018) and 2 November 2021. It seeks to identify whether the SMEFF Regulation has been successful in helping to deter problematic reflagging behaviours.

While the SMEFF Regulation does not prohibit reflagging from non-EU countries carded under the EU IUU Regulation, it does require EU Member States to assess the legality and sustainability of fishing activities carried out under previous non-EU country flags before issuing fishing authorisations. There are also a number of scenarios in which authorisations should not be granted, including cases where vessels have been flagged to red carded countries within the previous five years. Additionally, EU Member States cannot issue a fishing authorisation to vessels that have engaged in IUU fishing or operated in the waters of a country where unsustainable fishing is permitted.

Overall, this study finds that **EU Member States are adhering to the provisions of the SMEFF Regulation**. None of the vessels examined in this analysis entered or reentered the flag registry of an EU Member State after being flagged to a non-EU country that was identified as failing in its efforts to stop IUU fishing.

Nonetheless, the analysis exposed undesirable behaviours related to reflagging. For example, an identified Spanish vessel has been reflagged in May 2021 to Cameroon, a country recently pre-identified as non-cooperating in the fight against IUU fishing (yellow card) in February 2021. Additionally, a number of Latvian vessels which have been reflagged to Cameroon (prior to its carding), have retained beneficial ownership within the EU. These vessels can therefore exploit what the European Commission sees as Cameroon's lax fisheries controls,¹³ whilst the financial proceeds remain within the EU.

A number of reflagged vessels were also found to be operating under "flags of convenience" and/or operating in the waters of countries with which the EU has a current SFPFA, whilst ownership remained within the EU. Whilst this study suggests that the SMEFF Regulation looks to have improved on the requirements of the FAR, **the potentially problematic reflagging behaviours identified within this analysis highlight the need for transparency on beneficial ownership and public access to this information.** As there are often a number of actors involved in the ownership chain of fishing vessels, information on beneficial ownership is crucial in the fight against IUU fishing. It allows fisheries managers and enforcement officials to determine who is legally accountable for and profiting from illegal activities.

Additionally, a number of the reflagged vessels identified in this analysis were found on the DG SANTE¹⁴ list of non-EU country authorised establishments.¹⁵ These vessels can continue to supply the EU market whilst remaining on this list and may therefore compete with the products of operators that maintain an EU flag and have to meet a potentially stricter framework of oversight requirements. It was also noted that several reflagged vessels were found on the list of approved EU food establishments but still under their previous flag. This highlights the need for a coherent and coordinated approach between Commission services (in this case DG SANTE and DG MARE).

Finally, this study has found that the majority of EU vessels that had been reflagged to a non-EU country were exported to a small number of countries (Russia, Mauritania, Norway and Suriname), some of which the EU does not have an ongoing IUU fishing dialogue with or for which bilateral cooperation could be enhanced. In addition, a number of EU vessels were reflagged to undisclosed flag States raising questions on the lack of transparency surrounding these movements.

12 The CFP should ensure that EU fishing activities contribute to long-term environmental, economic, and social sustainability. It includes rules that aim to ensure the traceability, security and quality of products marketed in the Union. Carded countries have been identified by the EU as failing to effectively tackle IUU fishing and thus failing to uphold these values. The ability of a vessel to return to the EU fleet and be granted fishing authorisations after recently operating under the flag of a carded non-EU country does not live up to the EU's commitments under the CFP. Further information on the Common Fisheries Policy is available at: https://ec.europa.eu/oceans-and-fisheries/policy/common-fisheries-policy-cfp_en and <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1547133726973&uri=CELEX%3A32013R1380>.

13 Commission Decision of 17 February 2021 on notifying the Republic of Cameroon of the possibility of being identified as a non-cooperating third country in fighting illegal, unreported and unregulated fishing, Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.CI.2021.059.01.0001.01.ENG&toc=OJ%3AC%3A2021%3A059I%3AFULL>

14 DG SANTE is responsible for the EU Commission's policies on health and food safety. These lists contain details of the non-EU establishments (e.g. fishing vessels) authorised to export food to the EU and are published in accordance with the requirements of Article 127 of Regulation (EU) 2017/625 and Commission Delegated Regulation (EU) 2019/625.

15 DG SANTE Non-EU Countries Authorised Establishments. Available at: https://ec.europa.eu/food/food/biological-safety/food-hygiene/non-eu-countries-authorised-establishments_en

Introduction

The Environmental Justice Foundation (EJF), Oceana, The Nature Conservancy, The Pew Charitable Trusts and WWF are working together to secure the harmonised and effective implementation of the European Union's (EU) Regulation to end illegal, unreported and unregulated (IUU) fishing¹⁶ and the EU Regulation on the sustainable management of external fishing fleets (SMEFF Regulation).¹⁷

The EU's IUU, Control and SMEFF Regulations are integral to the fight against IUU fishing globally. They prevent illegally-caught fish from entering the EU market and improve the capacity to monitor and control the activities of the EU fishing fleet, wherever it operates. The SMEFF Regulation also aims to ensure that the same standards are applied to non-EU vessels operating in EU waters. Whilst it is one of the world's most ambitious anti-IUU regulations, its effectiveness may be compromised when not properly implemented by EU Member States.

Abusive reflagging – the situation before the SMEFF Regulation

The EU IUU Fishing Coalition's 2016 study¹⁸ identified loopholes in the Fishing Authorisation Regulation (FAR).¹⁹ At that time, the FAR was the framework for regulating EU fishing activities in external (non-EU) waters. One such loophole was the lack of robust checks of the legality and sustainability of past fishing activities of a vessel entering or reentering the EU fleet register.²⁰ While reflagging (i.e. the process of changing the flag of a vessel), is legal, the 2016 investigation considered reflagging to be 'abusive' when an operator repeatedly and rapidly changes a vessel's flag in order to circumvent applicable CMMs and/or laws adopted at the national, regional or global level.²¹

Through an analysis of the EU Fleet Register, the previous Coalition study identified 23 vessels that had shown abusive reflagging behaviours, **entering or reentering the flag of an EU Member State from a carded non-EU country (countries that were either subject to a card at the time or that received a yellow or red card subsequently) (Box 1)**. Whilst not illegal under EU law, such reflaggings were seen as behaviours contrary to the objectives of the Common Fisheries Policy (CFP) and which for the purposes of the report were considered as abusive (**Box 2**).

There are a number of reasons why vessels might practice abusive reflagging. In the case of EU vessels, abusive reflagging may occur to circumvent the exclusivity clause set out in official EU access agreements with non-EU countries (SFPAs). According to this exclusivity clause,²² EU flagged fishing vessels are not permitted to operate in the waters of the non-EU country in which an SFPA is in force unless they hold a fishing authorisation which has been issued in accordance with that agreement. However, by reflagging a vessel to a non-EU country, an EU operator is free to set up a private agreement with the said coastal State to continue fishing in the same waters covered by the SFPA. Thus, an EU vessel could re-flag to Saint Kitts and Nevis for example, and set up a private agreement with Mauritania or Morocco, allowing it to continue fishing after the fishing possibilities under the relevant SFPA are exhausted and the EU has closed the fishery. In a similar vein, abusive reflagging may occur in order to access fishing quotas allocated to other states through Regional Fisheries Management Organisations (RFMOs). The quota allocation within RFMOs can incentivise operators to reflag to countries that have an untapped quota when that of their initial flag State becomes fully exploited.

16 Op cit.

17 Op cit.

18 EJF, Oceana, The Pew Charitable Trusts and WWF (2016). Ensuring better control of the EU's external fishing fleet. Available at: http://www.whofishesfar.org/files/Reflagging_by_EU_fishing_vessels_-_the_need_for_stricter_standards.pdf

19 Op cit.

20 The EU Fleet Register is a database on which all the fishing vessels flying the flag of an EU country have to be registered. Any changes in the status of a fishing vessel, for example if it has reflagged and left the EU fleet, need to be registered by the EU Member State in the Fleet Register. Available at: https://webgate.ec.europa.eu/fleet-europa/search_en

21 EJF, Oceana, The Pew Charitable Trusts and WWF (2016). Ensuring better control of the EU's external fishing fleet. Available at: http://www.whofishesfar.org/files/Reflagging_by_EU_fishing_vessels_-_the_need_for_stricter_standards.pdf

22 Article 31(5) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC.

Box 1: The EU carding scheme

The EU IUU Regulation establishes a carding scheme for the identification of non-EU countries failing to implement adequate measures to prevent and deter IUU fishing.

Yellow card (warning)

The European Commission can pre-identify or “yellow card” “non-cooperating third countries” that are not supporting the fight against IUU fishing. Before doing so, the Commission conducts rigorous fact-finding missions to evaluate the compliance of these countries with their duties as flag, coastal, port or market States under international law. The Commission and non-EU country authorities enter into a lengthy dialogue to assess the systems in place to prevent IUU fishing and their compliance with international rules. The European Commission’s decision to card a non-EU country is made publicly available on the EU official journal and website.

After a country has received a yellow card, there is an evaluation period of at least six months. During this period, countries are expected to undertake substantial reforms to address the identified shortcomings. These reforms should be in line with an action plan proposed by the EU when the yellow card was issued. EU support is provided to the pre-identified country during this time.

Red card and listing (sanction)

If reforms are not carried out in a timely manner, the country can be formally identified as “non-cooperating” in the fight against IUU fishing, and issued a “red card”. This results in a ban on EU imports of fish products caught by vessels flying the flag of the red-carded country. It also leads to a ban on EU vessels fishing in the waters of that red-carded country. Additionally, fishing vessels flagged to an EU Member State are prohibited from reflagging to and/or operating in the waters of the red-carded country.²³

Box 2: EU IUU Fishing Coalition analysis (September 2016)

In September 2016, the EU IUU Fishing Coalition published an investigation on the flagging behaviour of all 771 EU fishing vessels above 50 metres in the EU fleet register over a **10-year period** (2005 to 2015).²⁴ It sought to identify patterns of reflagging behaviour in the European fleet and to highlight which flag States and companies engaged in reflagging.

The investigation identified **23 vessels** that had entered or reentered the EU fleet register, having previously operated under flags of non-EU countries known to be failing in their efforts to stop illegal, unreported and unregulated (IUU) fishing - as indicated by EU decisions to **red or yellow “card”** these countries under the EU IUU Regulation (**Box 1**). Certain vessels were authorised to fish under official EU access agreements almost immediately after (re)joining the EU fleet from non-EU flag States, despite concerns as to the level of control exerted by the prior flag States over vessels registered to their flags.

Under the legal framework at the time (**FAR**) that set the standards for granting fishing authorisations to the EU external fleet, there was no requirement for EU Member States to assess the sustainability of prior fishing activities carried out under non-EU flags, or the compliance of those activities with applicable laws or CMMs.

²³ Art. 38 Regulation (EC) No. 1005/2008.

²⁴ Op cit.

Additionally, EU vessels may also reflag to a non-EU country to avoid complying with EU Regulations that apply to vessels flying the flag of an EU Member State. An example of such a regulation would be the EU Regulation on the removal of shark fins on board.²⁵ The European Commission's Scientific, Technical and Economic Committee for Fisheries (STECF) highlights abusive reflagging as a serious concern with the potential to undermine the objectives of a Regulation such as this.²⁶ It is worth noting however that there are a variety of legitimate reasons why a vessel may change flags (including to the flag of a carded country), for example when the vessel is sold to an owner abroad.

EU law to better manage the EU external fleet

In January 2018, the SMEFF Regulation came into force. It forms one of the three enforcement pillars of the CFP, alongside the EU IUU Regulation²⁷ and the EU Control Regulation.²⁸ The SMEFF Regulation replaces and repeals the FAR. It addresses previous loopholes in transparency and sustainability, and requires the EU to create a public database of fisheries authorisations, containing information on who can fish what, when and where. It also ensures that private or direct authorisations meet EU standards and adhere to EU laws on sustainability. Prior to the SMEFF Regulation, EU vessels fishing under direct authorisations were not subject to the strict EU standards that applied to other EU vessels fishing under SFPAs or, to an extent, under the jurisdiction of RFMOs, even if catches were destined for the EU market. This distorted the playing field between EU operators and failed to guarantee the sustainability of the fishing activities of all EU fishing vessels. The previous Coalition study identified repeated and purposeful reflagging between carded non-EU countries and EU Member States, allowing for behaviours that were not consistent with the objectives of the CFP.

The SMEFF Regulation aims to address shortcomings related to IUU fishing and unsustainable behaviours, including abusive reflagging, by strengthening the framework under which EU vessels are granted fishing authorisations by EU Member States. According to Article 6 of the SMEFF Regulation, a flag Member State may not issue a fishing authorisation to a vessel that has left the EU fleet register, been reflagged to a non-EU country, and has subsequently returned to the Union fishing fleet register **if in the past five years the vessel engaged in IUU fishing**. Moreover, EU Member States should not issue a fishing authorisation to a fishing vessel that has, **during the five years preceding the application, operated in the waters of or was flagged to a non-EU country that is:**

- Red carded (**Box 1**) under the EU IUU Regulation (listed as non-cooperating in the fight against IUU fishing);
- Red carded under the EU IUU Regulation after a period of 6 weeks following the adoption of the European Commission's decision;
- Identified as allowing non-sustainable fishing, such as the Faeroe Islands from August 2013²⁹ to August 2014.³⁰

Vessels returning to the EU fleet from a non-EU country must provide the following information related to the period during which the vessel operated under a non-EU flag to the flag EU Member State:

- a. a declaration of catches and fishing effort during the relevant period as required by the non-EU flag State;
- b. a copy of any fishing authorisations permitting fishing operations during the relevant period;
- c. an official statement by the non-EU country where the vessel was reflagged, listing the sanctions the vessel or the operator has been subject to during the relevant period;
- d. complete flag history during the period when the vessel had left the Union fleet register.

25 Regulation (EU) No 605/2013 of the European Parliament and of the Council of 12 June 2013 amending Council Regulation (EC) No 1185/2003 on the removal of fins of sharks on board vessels.

26 Scientific, Technical and Economic Committee for Fisheries (STECF) (2019). 62nd Plenary Meeting Report (PLEN-19-03). Available at: https://pub.epsilon.slu.se/16656/11/alvaro_j_et_al_200324.pdf

27 Op cit.

28 Op cit.

29 Official Journal of the European Union L 223 (August 2013). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2013:223:FULL&from=EN>

30 Commission Implementing Regulation (EU) No 896/2014 of 18 August 2014 repealing Implementing Regulation (EU) No 793/2013 establishing measures in respect of the Faroe islands to ensure the conservation of the Atlanto-Scandian herring stock. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014R0896&from=ET#tr2-L_2014244EN.01001001-E0002

This scrutiny of vessels returning to the EU fleet from a non-EU country is expected to deter certain reflagging behaviours within the EU fleet, as vessels must now prove that these behaviours did not intend to circumvent EU rules before receiving a fishing authorisation. Therefore, in order to assess the extent to which EU Member States have implemented Article 6 of the SMEFF Regulation, this report analyses the reflagging behaviours of the EU fleet following the introduction of the Regulation in January 2018.



Methodology

This investigation analyses the flagging information of all vessels in the EU Fleet Register between 17 January 2018 (the date that the SMEFF Regulation entered into force) and 2 November 2021.³¹ The focus is on vessels that have exited (exported, code EXP) or entered (imported, code IMP) the EU fleet. These vessels are then filtered to determine reflagging events between the EU and non-EU countries. Importations/exportations of vessels between EU Member States is outside of the remit of this analysis.

It is important to note that this analysis does not take into account cases where EU Member States have used alternative codes when vessels left the EU fleet.³² Any results are therefore potentially under-counting occurrences of reflagging. Verification of the flagging behaviour observed within the EU fleet register is performed using the IHS Sea-web³³ and MarineTraffic³⁴ platforms. Not all instances of reflagging could be verified using these sources; these instances are highlighted throughout this report.

This investigation primarily aims to determine whether vessels have entered or reentered the flag of an EU Member State having been flagged to a non-EU country that is subject to a red card. Under the new SMEFF Regulation, EU Member States should not provide fishing authorisations to these vessels. This report also seeks to identify any other problematic reflagging behaviours observed within the EU fleet following the SMEFF Regulation's entry into force.

As such, the Coalition determined that a number of reflagged vessels appeared to be operating in countries with which the EU has a current SFPAs in place³⁵ using Automatic Identification System (AIS) data.³⁶ The Coalition also collected vessel ownership details using IHS Sea-web, where available, to determine whether beneficial ownership remains within the EU for any vessels that had left the EU fleet. In order to determine whether any of the reflagged vessels were continuing to export fishery products to the EU, the Coalition also analysed the European Commission's Directorate-General for Health and Food Safety (DG SANTE)³⁷ list of non-EU country authorised establishments³⁸ and the lists of EU countries' approved establishments for the relevant EU Member States. Findings on potential import trends are based on data retrieved from the EU Member States' biennial reports for the 2016/17 and 2018/19 reporting periods – specifically the number of catch certificates³⁹ presented to EU Member States by the non-EU countries to which vessels had been reflagged.

Further details on the methodology and data sources used in this study can be found in **Annex 1**.

31 Official Journal of the European Union L 223 (August 2013). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2013:223:FULL&from=EN>

32 For example, the fishing vessel Sandettie (IMO: 8012085) was identified as using the incorrect code (Retired, or RET) when exporting to a non-EU country (the code EXP should have been used). This error was not discovered as part of this analysis.

33 Information Handling Services (IHS) Sea-web is the industry's largest maritime ships database. Search the database by ship name, LR/IMO number, class, flag, call sign and much more. Available at: <http://maritime.ihs.com> (subscription required).

34 MarineTraffic contains information about vessels in addition to AIS information, including vessel flags. Further information on MarineTraffic is available at: <https://marinetraffic.com>

35 Current SFPAs exist between the EU and Cabo Verde, Cook Islands, Côte d'Ivoire, Gabon, Greenland, Guinea-Bissau, Mauritania, Mauritius, Morocco, São Tomé and Príncipe, Senegal, Seychelles and The Gambia [as of November 2021].

36 The Automatic Identification System (AIS) is an essential part of maritime safety. It uses radio frequencies to ensure that vessels do not collide and it also allows for the tracking of fleets by Maritime Authorities. Information on the location and operations of vessels was gathered using exactEarth, ShipView. Available at: <https://shipview.exactearth.com> (Subscription Required).

37 DG SANTE is responsible for the EU Commission's policies on health and food safety. These lists contain details of the non-EU establishments (e.g. fishing vessels) authorised to export food of animal origin to the EU and are published in accordance with the requirements of Article 127 of Regulation (EU) 2017/625 and Commission Delegated Regulation (EU) 2019/625.

38 DG SANTE Non-EU Countries Authorised Establishments. Available at: https://ec.europa.eu/food/food/biological-safety/food-hygiene/non-eu-countries-authorised-establishments_en

39 Imports of fisheries products into the EU require a catch certificate where the flag State certifies that catches have been made in accordance with applicable laws, regulations and international conservation measures.



Finding 1: EU Member States are adhering to Article 6 of the SMEFF Regulation

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This analysis shows that between the entry into force of the SMEFF Regulation and 2 November 2021, a total of 96 EU vessels had been reflagged to non-EU countries. Vessels from 11 of the 27 EU Member States reflagged to 28 non-EU countries (**Table 1**).⁴⁰ The non-EU countries to which most EU vessels were exported can be found in **Annex 2**.

Within the EU fleet register, there were also a number of reflagging events between EU countries and unknown countries, as countries of importation/exportation had not been provided within the register for all events. As a result, there are a number of reflagging events between EU Member States and non-EU countries which may not have been identified. Consequently, any results are potentially under-counting occurrences of reflagging between the EU and carded non-EU countries. Information on these events is included in **Annex 3**.

A number of vessels were found to have been imported from a non-EU country into the EU fleet over this period, though none entered the EU fleet from a red carded country (Table 2). This indicates that the SMEFF Regulation is proving effective in deterring the reflagging of vessels from red carded non-EU countries and that Article 6 of the SMEFF Regulation is being correctly implemented by EU Member States.

⁴⁰ In light of its withdrawal from the European Union, the United Kingdom has been excluded from this analysis.

Table 1: EU vessel exports to non-EU countries between 17 January 2018 and 2 November 2021

EU country	Non-EU country to which vessels have exported (number of vessels in brackets) ⁴¹	Total
Spain	Angola (1), Argentina (1), Belize (1), Cameroon* (1), Cape Verde (1), Côte d'Ivoire (1), Curaçao (1), Falkland Islands (1), Guinea-Bissau (1), Morocco (1), Mauritania (13), Namibia (4), Panama (1), Peru (1), Senegal (2)	31
France	Anguilla (1), Côte d'Ivoire (1), Dominica (5), Libya (1), Mauritania (5), Republic of the Congo (1), Saint Lucia (1), Suriname (6) ⁴²	21
Latvia	Cameroon (1), Georgia (1), Russia (12)	14
Denmark	Canada (1), Faroe Islands (1), Morocco (1), New Zealand (1), Norway (6), Russia (1)	11
Sweden	Morocco (1), Norway (3), Russia (1).	5
Belgium	Suriname (3)	3
Germany	Norway (1), Russia (2)	3
Lithuania	Russia (3)	3
Portugal	Belize (1), Mauritania (1), Senegal (1)	3
Ireland	Morocco (1)	1
Netherlands	South Africa (1)	1

* Countries yellow or red carded at the time of export

Table 2: EU vessel imports from non-EU countries between 17 January 2018 and 2 November 2021

EU country	Non-EU country from which vessels have been imported (number of vessels in brackets) ⁴³	Total
Latvia	Canada (1), Georgia (1), Russia (1)	3
Lithuania	Greenland (1)	1
Netherlands	Faroe Islands (1)	1
Poland	Faroe Islands (1)	1
Spain	Panama (1)	1

41 A number of these reflagging events could not be verified using IHS Sea-web or other online sources (for further details see **Annex 4**)

42 There are doubts as to the accuracy of this information submitted by the Member State to the EU fleet register as, according to online sources, a number of these vessels to have reportedly reflagged to Suriname are in fact registered in Guinea.

43 A number of these reflagging events could not be verified using IHS Sea-web or other online sources (for further details see **Annex 4**).

Finding 2:

No vessels have returned to the EU fleet from a non-EU country with a yellow card

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Under the SMEFF Regulation, EU Member States are prohibited from providing fishing authorisations to vessels previously flagged to a red carded country (within the last five years). This is not however the case for yellow carded countries. This analysis found only one example of a vessel reflagging from an EU Member State to a country yellow carded at the time of export: a Spanish vessel to Cameroon in May 2021. Cameroon was issued a yellow card in February 2021.⁴⁴ This Spanish vessel did not however return to the EU Fleet following the reflagging event identified and by the time this report was drafted (Table 3). **There are no criteria preventing the reflagging of vessels from a non-EU country with a yellow card to an EU Member State. If the vessel had returned to the EU fleet, EU Member States would also be permitted to grant a fishing authorisation to this vessel. For the period during which this vessel operated under a non-EU country flag however, its activities would be scrutinised by the EU Member State under the SMEFF Regulation (in accordance with Article 6) before receiving any fishing authorisations.**

Whilst a number of other vessels have been exported to States currently or previously carded by the EU, these countries were not carded at the time the vessel joined the new flag State. Hence, the timing of the reflagging behaviours does not seem to be correlated with the carding by the EU. A number of these vessels also appear to have reflagged to these carded countries for legitimate reasons, for example, due to a change in ownership. It is also worth mentioning that the number of non-EU countries engaged with the carding system under the IUU Regulation has fluctuated over the years (**Annex 5**).

Table 3: EU vessel exports to currently/previously carded non-EU countries between January 2018 and November 2021

EU country	Non-EU country vessels have exported to (number of vessels in brackets)	Date of export	Country carded at time of export?	Returned to an EU Flag?
Latvia	Cameroon (1)	14-11-2019	No	X
Portugal	Belize (1)	21-09-2019	No	X
Spain	Belize (1)	24-04-2018	No	X
	Cameroon (1)	11-05-2021	Yes – Yellow since February 2021	X
	Curaçao (1)	23-01-2020	No	X
	Panama (1)	21-05-2018	No	X

⁴⁴ Commission Decision of 17 February 2021 on notifying the Republic of Cameroon of the possibility of being identified as a non-cooperating third country in fighting illegal, unreported and unregulated fishing. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.CI.2021.059.01.0001.01.ENG&toc=OJ%3AC%3A2021%3A059I%3AFULL>



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Finding 3:

A number of vessels exhibit potentially problematic reflagging behaviours whilst maintaining beneficial ownership within the EU

A beneficial owner can be broadly defined as the natural person who ultimately owns or controls a company. Beneficial ownership can be difficult to determine as there are often multiple layers within ownership chains, including a number of corporations between the legal owner and the beneficial owner. Outside of fisheries, implementation of technical requirements on transparency and beneficial ownership differs between most EU Member States, as noted by the Financial Action Task Force (FATF).^{45,46}

In identified cases of IUU fishing, it can be difficult for authorities to investigate and prosecute the beneficial owner of a fishing vessel. In many cases, the vessel's crew, captain or legal owner faces fines or penalties. For example, Chinese fishing companies have been known to register trawl vessels under local Ghanaian front companies (the registered owner) in order to access Ghanaian waters under local licenses, though beneficial ownership remains in China.⁴⁷ Beneficial ownership details could not be determined using IHS Sea-web for all vessels, so this analysis may be underreporting the number of vessels to have reflagged whilst retaining beneficial ownership within the EU (**Annex 4**).

Despite the fact that no vessels were found to have been reflagged from a carded non-EU country to an EU Member State over the analysed period and EU Member States appear to be effectively implementing the SMEFF Regulation, **there were several reflagging behaviours identified within this analysis which could be considered problematic.** For example, a number of Latvian vessels identified in this analysis have been reflagged to Cameroon and retained beneficial ownership within the EU, whilst operating in a carded non-EU country.⁴⁸ These vessels can therefore exploit what the European Commission has identified in its carding decision as Cameroon's lax fisheries controls and failings to satisfactorily assess vessel histories before registration (**Box 3**), whilst the financial proceeds remain within the EU. This includes the fishing vessel Marshal Novikov (IMO: 8036108) which was found to have reflagged from Latvia to Georgia, though according to IHS Sea-web, the vessel is now reportedly flagged to Cameroon. Although there is no EU regulation preventing the beneficial ownership of fishing vessels flagged to carded countries, there have been recent incidents of illegal activity involving vessels within this fleet (**Box 3**). Beneficial ownership often makes it difficult to financially sanction or prosecute the actual beneficiary in cases of illegal and unsustainable fishing, thus demonstrating the importance of transparency on beneficial ownership.

The public database of fishing authorisations created under Article 39 of the SMEFF Regulation includes information related to the identity of the vessel owner and up to five main beneficial owners. However, information on beneficial ownership is not publicly available and can only be accessed by relevant administrative services involved in the management of fishing fleets.⁴⁹

45 FATF (2014). FATF Guidance - Transparency and Beneficial Ownership. Available at: <https://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>

46 FATF (2021). Details on the assessment and scoring of Transparency and Beneficial Ownership (R.24 and R.25) for EU Member States is available at: <https://www.fatf-gafi.org/media/fatf/documents/4th-Round-Ratings.pdf> [latest update as of 26 November 2021].

47 EJF (2021). At what cost? How Ghana is losing out in fishing arrangements with China's distant water fleet. Available at: <https://ejfoundation.org/reports/at-what-cost-how-ghana-is-losing-out-in-fishing-arrangements-with-chinas-distant-water-fleet>

48 Cameroon was pre-identified as a non-cooperating non-EU country in the fight against IUU fishing (yellow card) in February 2021. For details on Cameroon's carding, see **Box 3**.

49 Guggisberg, S. (2019). The EU's Regulation on the Sustainable Management of External Fishing Fleets: International and European Law Perspectives. *The International Journal of Marine and Coastal Law*. Available at: https://brill.com/view/journals/estu/34/2/article-p291_4.xml?language=en

Box 3: Cameroon yellow card – recent reflaggings and beneficial ownership

In the European Commission's decision to pre-identify Cameroon as a non-cooperating non-EU country in fighting IUU fishing (yellow card), it was noted that Cameroon fails to perform a comprehensive assessment of a vessel's history of compliance prior to the vessel's registration.⁵⁰ Cameroonian authorities have also failed to exercise control over Cameroonian flagged vessels and prevent their engagement in IUU activities in waters outside its jurisdiction.

This analysis discovered two Latvian vessels – Marshal Novikov (IMO: 8036108) and Marshal Vasilevskiy (IMO: 8033869) – believed to have been reflagged to Cameroon whilst remaining under EU ownership (beneficial ownership remains with a Latvian company).⁵¹ This follows a trend observed by the Coalition for Fair Fisheries Arrangements (CFFA) of multiple vessels recently reflagging to Cameroon with ownership remaining in the EU.⁵²

Furthermore, Marshal Vasilevskiy, then flagged to Latvia, used an illegal fishing license to fish in Senegal between 2010 and 2012.⁵³ At that time this vessel was also operating under the EU-Mauritania fisheries partnership agreement. Following reflagging, according to Automatic Identification System (AIS) data, this vessel, alongside Marshal Novikov, continued operating in the Mauritanian exclusive economic zone (EEZ), presumably under a private authorisation.

Meanwhile, a number of vessels still flagged to Latvia were found by the CFFA to have continued to fish under the EU-Mauritania access agreement, including the KAPITAN MORGUN (IMO: 9120308) and the FISHING SUCCESS (IMO: 9121091). Both vessels were found to have allegedly fished within 20 miles of the Mauritanian coast, the zone reserved for artisanal and coastal fishers.⁵⁴ According to recent data from the European Commission, these vessels were authorised to fish under the EU-Mauritania access agreement as late as September 2021 and are also authorised to fish under the EU-Morocco access agreement.⁵⁵ This Latvia-based beneficial owner continues to utilise SFPAs through its Latvia-flagged vessels, but also looks to have formed private agreements through its vessels now reflagged to a Cameroon.

It is the EU-based company that ultimately profits from vessel activities that jeopardise the livelihoods of West African fishing communities. This case study demonstrates why information on beneficial ownership is so crucial and why the EU should improve upon the current legal framework and make this information publicly available.

50 Op cit.

51 According to IHS Sea-web, op cit.

52 Coalition for Fair Fisheries Arrangements (CFFA). (2021). "Cameroon IUU yellow card: The EU should also sanction European companies hiding behind this country's flag". Available at: <https://www.cffacape.org/publications-blog/cameroon-iuu-yellow-card-the-eu-should-also-sanction-european-fishing-companies-hiding-behind-this-countrys-flag>

53 ibid.

54 Agence Alwiam d'informations. (2020). "SOURCES: The elements of the Coast Guard act brutally with the vessels of the national fleet and turn a blind eye to violations by foreign trawlers... photo report". Available at: <https://alwiam.info/fr/ar/8955>

55 Information on EU vessels authorisations can be accessed at: <https://circabc.europa.eu/faces/jsp/extension/wai/navigation/container.jsp> (accessed 6.10.21)

Slipping through the net – vessels owned by EU citizens actively fishing in non-EU countries despite SFPAs

Negotiated between a non-EU coastal State and the EU on behalf of its Member States, SFPAs allow EU vessels to fish in a coastal State's EEZ.⁵⁶ The EU currently pays around EUR 160 million annually from public funds for SFPAs.⁵⁷

As part of the reform of the CFP, SFPAs are subject to strict standards. They must be of mutual benefit to the EU, the EU fleet and the non-EU country (including its local population and fishing industry), and they must respect democratic principles and human rights. SFPAs are subject to an exclusivity clause which dictates that once the EU quota or fishing opportunities (where they exist) under an SFPa are exhausted, EU vessels are barred from continuing to fish in the waters of the coastal State outside of the official access agreement.

According to AIS data,⁵⁸ of the 96 vessels to have reflagged following the entry into force of the SMEFF Regulation, 14 vessels appear to be operating in countries with which the EU currently has an active SFPa.⁵⁹ Beneficial ownership remains within the EU for at least three of these vessels (**Table 4**).⁶⁰ Up-to-date details on ownership could not be determined using IHS Sea-web for a number of vessels which appear to be operating in countries with which the EU has a current SFPa. Further details are provided in **Table 4**.

If the EU and an SFPa partner country determine that the fishing opportunities within the SFPa have been exhausted, all EU vessels are prohibited from fishing in the partner country's waters. These EU-based beneficial owners however can retain access to these areas through national quotas as their vessels are no longer flagged to an EU Member State and subject to the provisions of the SFPa, including any exclusivity clause. The financial benefits of these fishing activities still end up with the EU-based beneficial owners, whose vessels continue fishing in and profiting from resources in the coastal State waters, which are no longer accessible to EU flagged vessels. This also creates an uneven playing field for EU Member State-flagged operators. There are however a number of tools, including transparency and non-discrimination clauses which, if properly applied, can aid in achieving a level playing field within SFPAs (**Box 4**).

Box 4: Non-discrimination and transparency clauses within SFPAs

In order to improve transparency, some recent SFPAs have a transparency clause in place requiring, for example, the publication by the non-EU Party of the fishing agreements it has with other fleets and the sharing of the list of licensed vessels. This information helps to ensure the sustainability of fishing activities in the region.

Recent SFPAs also may include a non-discrimination clause under which the non-EU country should offer similar financial and technical conditions as those that apply under the SFPa, to other distant water fleets fishing in the area.⁶¹

Application of these clauses in SFPAs has the potential to create a level playing field between vessels fishing in SFPa partner waters as it will help to ensure equal conditions of access between EU fleets and other foreign fleets. It will also provide for the publication of information on private and public fishing agreements with non-EU countries, to aid in the assessment of fish stock exploitation levels.

56 According to the United Nations Convention on the Law of the Sea (UNCLOS) of 10 December 1982, the exclusive economic zone is an area beyond and adjacent to the territorial sea, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention (UNCLOS). In the exclusive economic zone, the coastal State has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil. Available at: https://www.un.org/depts/los/convention_agreements/texts/unclos/UNCLOS-TOC.htm

57 European Commission. (2021). "Sustainable fisheries partnership agreements (SFPAs)". Available at: https://ec.europa.eu/oceans-and-fisheries/fisheries/international-agreements/sustainable-fisheries-partnership-agreements-sfpas_en [Accessed November 2021].

58 ExactEarth, ShipView. Available at: <https://shipview.exactearth.com> (subscription required) (accessed 2.11.2021)

59 Current SFPAs exist between the EU and Cabo Verde, Cook Islands, Côte d'Ivoire, Gabon, Greenland, Guinea-Bissau, Mauritania, Mauritius, Morocco, São Tomé and Príncipe, Senegal, Seychelles and The Gambia.

60 Vessel ownership details were obtained using IHS Sea-web. Available at: <https://maritime.ihs.com/Account2/Index> (Subscription required).

61 LDAC. (2021). LDAC Recommendations for a Level Playing Field for EU and non-EU fish products. Available at: https://ldac.eu/images/EN_LDAC_Advice_LPF_25May2021.pdf

Table 4: Vessels that were reflagged to non-EU countries and the countries with an active SFPA in which these vessels were found to be presumably fishing in*

EU country of ownership	Non-EU country vessels have exported to (number of vessels in brackets)	Date of export	Active SFPA vessels found to be presumably fishing in the waters of ⁶²	Date SFPA entered into force	Date current SFPA will expire (if not renewed)	Ownership details
Denmark	Morocco (1)	12-12-2019	Morocco	18-07-2019	17-07-2023	No details of reflagging or updates on ownership available on IHS Sea-web.
France	Mauritania (2)	12-11-2018 13-01-2019	Mauritania	16-11-2015	15-11-2021	No details of reflagging or updates on ownership available on IHS Sea-web.
Spain	Morocco (1)	11-05-2018	Morocco	18-07-2019	17-07-2023	No details of reflagging or updates on ownership available on IHS Sea-web.
	Mauritania (3)	17-03-2020 26-01-2021 13-09-2021	Mauritania	16-11-2015	15-11-2021	No details of reflagging or updates on ownership available on IHS Sea-web for two of these vessels. For the third vessel, beneficial ownership remains within the EU (Spain) .
	Côte d'Ivoire (1)	30-10-2018	Côte d'Ivoire	01-08-2018	31-07-2024	No details of reflagging or updates on ownership available on IHS Sea-web.
	Senegal (2)	09-01-2019	Senegal	20-11-2014	17-11-2024	No details of reflagging or updates on ownership available on IHS Sea-web for one of these vessels. For the other, registered ownership remains within the EU (Spain) . No details on beneficial ownership available.
Latvia	Cameroon (1)	14-11-2019	Mauritania	16-11-2015	15-11-2021	Beneficial ownership remains within the EU (Latvia) .
	Georgia (1) - reportedly flagged to Cameroon in October 2020 (IHS Sea-web).	27-12-2018	Mauritania	16-11-2015	15-11-2021	Beneficial ownership remains within the EU (Latvia) .
Sweden	Norway (1)	2-02-2021	Morocco	18-07-2019	17-07-2023	No details of reflagging or updates on ownership available on IHS Sea-web.

* Rows outlined in blue highlight occasions where vessels were reflagged to non-EU countries whilst retaining **beneficial ownership within the EU**.

Flags of convenience

Of the 96 vessels to have left the EU fleet following the entry into force of the SMEFF Regulation, three have been reflagged to flag States which are considered for the purpose of this study only as ‘flags of convenience’ (FoC). The beneficial ownership of one of these vessels remains within the EU, and registered ownership of two others also remains within the EU. It is also worth noting that in this analysis of the EU fleet register, the vessel Marshal Novikov (IMO: 8036108) was found to have reflagged from Latvia to Georgia, though according to IHS Sea-web, the vessel is now reportedly flagged to Cameroon – which would bring the total number of vessels to have reflagged to a FoC to four. Marshal Novikov also remains beneficially owned within the EU (Latvia).

In the fishing sector, the term FoC has increasingly encompassed elements of flag State performance and is often used interchangeably with the term “flags of non-compliance” (FoNC), meaning a flag that exhibits a consistent pattern of failure with its international obligations.^{63,64} At present, an internationally and officially accepted list of FoNC States does not exist nor does a definition of FoC for the fishing sector.⁶⁵ In the European Commission’s decision to card both Cameroon and Panama, it was noted that “the procedures put in place in [Cameroon and Panama] prior to the registration of a fishing vessel do not entail a comprehensive prior assessment of a vessel’s history of compliance and ability to comply with any applicable regulations and international measures, as well as the verification of IUU vessel lists adopted by RFMOs”.^{66,67} As such, both Cameroon and Panama have been determined for the purpose of this study to exhibit traits commonly associated with FoC. The fact that vessels now flagged to both Cameroon and Panama have maintained beneficial ownership within the EU further substantiates this classification.

FoC often fail to have effective Monitoring, Control and Surveillance (MCS)⁶⁸ and hamper attempts to improve fisheries transparency by masking true details on vessel ownership.⁶⁹ Both Cameroon and Panama are currently yellow carded [as of 2 November 2021] due to their failure to apply sufficient verification of the history of vessels prior to their registration. EU-based beneficial owners are likely profiting off this lack of enforcement without penalty, having reflagged their vessels to these countries.

The SMEFF Regulation may be acting as a deterrent for these vessels as none have reflagged back to an EU Member State, potentially due to the fact that an assessment of fishing activities is required. On the other hand, the operators of these vessels may have no intention of reflagging to an EU Member State in the future, and solely intend on accessing non-EU country waters with less stringent conditions. These vessels no longer have to abide by EU policies including the IUU Regulation, Control Regulation and the SMEFF Regulation. Despite this, the financial returns of these activities continue to enter the EU as a result of their beneficial ownership. It must be noted however that vessels may have been reflagged to a non-EU country (including those carded under the EU carding scheme) for a number of perfectly legitimate reasons.

63 FAO. Expert consultation on flag state performance. Rome: Food and Agriculture Organization of the United Nations; 2009. Available at: <http://www.fao.org/3/i1249e/i1249e00.htm>

64 Environmental Justice Foundation. (2020). OFF THE HOOK - how flags of convenience let illegal fishing go unpunished. https://ejfoundation.org/resources/downloads/EJF_Bericht_FoC_Billigflaggen_2020.pdf

65 Miller, D. D., & Sumaila, U. R. (2014). Flag use behavior and IUU activity within the international fishing fleet: Refining definitions and identifying areas of concern. *Marine Policy*, 44. <https://doi.org/10.1016/j.marpol.2013.08.027>.

66 Op cit.

67 Commission Decision of 12 December 2019 on notifying the Republic of Panama of the possibility of being identified as a non-cooperating third country in fighting illegal, unreported and unregulated fishing. Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020D0115\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020D0115(01)&from=EN)

68 Miller, D. D., & Sumaila, U. R. (2014). Flag use behavior and IUU activity within the international fishing fleet: Refining definitions and identifying areas of concern. *Marine Policy*, 44. <https://doi.org/10.1016/j.marpol.2013.08.027>

69 EJF (2020). Off the Hook - how flags of convenience let illegal fishing go unpunished. Available at: <https://ejfoundation.org/resources/downloads/EJF-report-FoC-flags-of-convenience-2020.pdf>



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Finding 4: There is evidence that reflagged vessels may be exporting their catch to the EU

Every two years, EU Member States are required under the EU IUU Regulation (Article 55)⁷⁰ to submit a report to the European Commission on the implementation of key obligations. These biennial reports were obtained by the Coalition via access to information requests to the European Commission and include information on the number of catch certificates received by EU Member States. Imports of fisheries products into the EU require a catch certificate where the flag State certifies that catches have been made in accordance with applicable laws, regulations and international conservation measures. These catch certificates assist EU Member State authorities in detecting and blocking products of IUU fishing at their borders.

Using the biennial reports submitted by EU Member States for the 2016/17 and 2018/19 reporting periods, this analysis found that a number of the EU Member States from which vessels have reflagged have also seen an increase in catch certificates presented by the non-EU country the vessels had reflagged to (**Table 6**). It is important to note here that France is not included in this analysis as the flag State information on catch certificates was redacted in the reports shared to the EU IUU Fishing Coalition in both the 2016/17 or 2018/19 biennial reports.

This observed increase in catch certificates indicates that reflagged vessels may be operating under reduced scrutiny having left the EU, but continuing to export their fisheries products into the EU through their original Member State. Under the EU IUU Regulation, there are systems in place to ensure that no products of IUU fishing enter the EU through the import control scheme, but there is evidence of disparities between the implementation of import controls by Member States.⁷¹ It is important to recognise, however, that catch certificates fluctuate annually and it is not guaranteed that the observed increases in catch certificates were the result of an increase in imports presented by the reflagged vessels. There is also the possibility that the increase in the number of catch certificates received by these EU Member States could be the result of an increase in the number of vessels within the non-EU country's fleet (in addition to the reflagged EU vessels), thus increasing fishing capacity.

⁷⁰ Art. 55 Regulation (EC) No. 1005/2008. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02008R1005-20110309>

⁷¹ EJF, Oceana, The Pew Charitable Trusts and WWF (2017). The EU IUU Regulation - Analysis: Implementation of EU Seafood Import controls. Available at: http://www.iuuwatch.eu/wp-content/uploads/2017/03/IUU_Import-controls_report_ENG.pdf

Table 6: The annual number of catch certificates presented to EU Member States from non-EU countries that vessels have reflagged to (as reported in the biennial reports submitted to the European Commission)*

EU country	Non-EU country to which vessels have been reflagged (number of vessels in brackets)	2016	2017	2018	2019
Latvia	Russia (12)	14	14	16	31
Portugal	Belize (1)	2	5	28	32
	Mauritania (1)	36	85	91	112
	Senegal (1)	613	772	956	1704
Spain	Belize (1)	17	26	40	31
	Côte d'Ivoire (1)	24	20	45	142
	Falkland Islands (1)	132	178	217	246
	Mauritania (13)	3831	4023	4176	4177
	Morocco (1)	13168	13737	14037	15829
	Peru (1)	2351	2663	2842	3052
	Senegal (2)	1338	1495	1530	1780
Sweden	Russia (1)	433	248	586	777

* This table shows only the occasions where there was a notable increase in the number of catch certificates presented to the EU Member States from non-EU countries that vessels have reflagged to.

Non-EU establishments looking to export products of an animal origin to the EU must adhere to strict hygiene standards,⁷² a process overseen by the DG SANTE which carries out inspections and is responsible for EU policy on food safety and health and for monitoring the implementation of related laws.⁷³ 12 of the above 96 reflagged vessels were found on the DG SANTE⁷⁴ list of non-EU country authorised establishments.⁷⁵ These 12 vessels can continue to supply the EU market whilst remaining on this list and may therefore compete with the products of operators that maintain an EU flag.

It was also noted that eight of the 96 reflagged vessels were found on the list of approved EU food establishments under their previous flag. This suggests that DG SANTE's list of authorised establishments able to export to the EU is inaccurate. This raises a number of questions over DG SANTE's ability to track these meaningful changes, and promptness of relevant States, including Member States, in providing an up-to-date hygiene accreditation. It also highlights the need for a coherent and coordinated approach between Commission services (in this case DG SANTE and DG MARE), something that has been highlighted by the EU Long Distance Advisory Council (LDAC).⁷⁶

72 Laid down in Regulation (EC) 853/2004

73 https://knowledge4policy.ec.europa.eu/organisation/dg-sante-dg-health-food-safety_en

74 These lists contain details of the non-EU establishments (e.g. fishing vessels) authorised to export food to the EU and are published in accordance with the requirements of Article 127 of Regulation (EU) 2017/625 and Commission Delegated Regulation (EU) 2019/625 and Article 5 in the relevant Commission Delegated Regulation (EU) 2019/625.

75 DG SANTE Non-EU Countries Authorised Establishments. Available at: https://ec.europa.eu/food/food/biological-safety/food-hygiene/non-eu-countries-authorised-establishments_en

76 LDAC (2021). LDAC Recommendations for a Level Playing Field for EU and non-EU fish products. Available at: https://ldac.eu/images/EN_LDAC_Advice_LPF_25May2021.pdf

Conclusions

Overall, this analysis suggests that thus far, the SMEFF Regulation is effectively deterring reflagging from countries identified as non-cooperating in the fight against IUU fishing, according to the criteria established in Article 6, and that Member States are abiding by these criteria. As of 2 November 2021, there have been no instances of vessels entering or reentering the flag of an EU Member State having previously been flagged to a yellow or red carded country following the SMEFF Regulation's entry into force. When compared to the previous Coalition report analysing the reflagging behaviours of the EU fleet in 2016, the SMEFF Regulation appears to be functioning as intended. 23 vessels were identified in the previous Coalition report to have entered or reentered the EU fleet register from a carded non-EU country (countries that were either subject to a card at the time or that received a card subsequently) between 2005-2015. The SMEFF Regulation has thus far deterred vessels such as these from reflagging to EU Member States and therefore appears to be effective in comparison to the previous FAR.

This analysis discovered that two vessels, Marshal Novikov (IMO: 8036108) and Marshal Vasilevskiy (IMO: 8033869), have reflagged from Latvia to Cameroon during the period before Cameroon's carding (February 2021) and one vessel - VICMAR UN, now RIO TAMUXE (IMO: 9329198) - has been reflagged from Spain to Panama in May 2018, prior to the Commission's decision to present Panama with a yellow card in December 2019. It was also identified that a Spanish vessel - ADEXE PRIMERO, now ELONGA (IMO: 8834823) - has purposefully been reflagged to a country with a yellow card, having been reflagged to Cameroon in May 2021. If Cameroon or Panama is identified as a non-cooperating country in the fight against IUU fishing (red carded) EU Member States will no longer be permitted to provide these vessels with a fishing authorisation under the SMEFF Regulation (unless reflagged within 6 weeks of the European Commission's decision).

Despite the SMEFF Regulation proving to be effective in deterring reflagging specifically from red carded countries and potentially deterring reflagging between yellow carded countries and EU Member States, this analysis identified vessels exhibiting reflagging behaviours which could be considered problematic, whilst remaining under EU beneficial ownership. A number of vessels were found, using AIS information, to be fishing within the waters of a country with which the EU has an SFPAs in force and a proportion of these vessels also maintained beneficial ownership within the EU. A number of the vessels identified have also been reflagged to countries which for the purpose of this study have been classified as flags of convenience (FoCs), where rules on IUU fishing and enforcement have been identified as lacking, whilst EU-based owners continue to reap the rewards. Collectively, this information highlights the need for transparency on beneficial ownership and public access to this information would aid in this goal.

Reflagging operations become an issue when the objective is to circumvent the rules of the Common Fisheries Policy or existing conservation and management measures.⁷⁷ This analysis demonstrates the efficacy of the SMEFF Regulation in deterring reflagging from carded countries, when compared to the previous FAR and this success should provide an example to other States looking to prevent abusive reflagging within their own external fishing fleets. There were however a number of reflagging behaviours observed that do not fall under the scope of the SMEFF but would still be considered problematic.



⁷⁷ Council Regulation (EU) 2017/2403 of the European Parliament and of the Council of 12 December 2017 on the sustainable management of external fishing fleets.

Recommendations

The EU IUU Fishing Coalition has provided a number of recommendations below to further address issues raised in this analysis and to bolster efforts to fight IUU fishing around the globe. These improvements will help to ensure that neither the products or profits of illegal or unsustainable fishing enter the EU and that EU-based beneficial owners are held accountable for their actions in distant waters.

The EU IUU Fishing Coalition recommends that the European Commission:

- Considers engagement with other major distant water fishing nations, aiming towards the application of equivalent standards to those of the SMEFF Regulation as a way of levelling the playing field while also promoting robust standards internationally;
- Considers the performance of destination flag States in their efforts to prevent and deter IUU fishing within the context of the EU carding scheme. A number of vessels appear to have reflagged to previously or currently⁷⁸ carded countries⁷⁹ and countries and territories following the entry into force of the SMEFF Regulation;
- Continues to encourage Member States to strive towards a harmonised and effective implementation of import controls, as our analysis of catch certificates⁸⁰ suggests that reflagged vessels that are potentially benefiting from less stringent controls than those applied to EU vessels may be continuing to export fisheries products to the EU;
- Ensures effective cooperation/dialogue between DG MARE and the flag States with the highest number of EU vessels taking up their flags (in this case Russia, Mauritania, Norway and Suriname), and considers utilising the relevant financial instruments to support them as needed;
- Ensures the effective implementation of the EU IUU Regulation when it comes to the control of EU nationals by Member States, in line with Articles 39 and 40, by:
 - Encouraging EU Member States' nationals to report legal, beneficial or financial interests in foreign flagged vessels;
 - Mapping where EU nationals have registered the vessels they own and/or operate in order to better inform the European Commission's assessments and/or dialogues in the context of the EU IUU Regulation (including under its carding scheme);
 - Facilitating cooperation between Member States and/or non-EU countries in investigating potential cases of EU nationals supporting or engaging in IUU fishing, and in taking appropriate action where needed;
- Facilitates public access to beneficial ownership information (limited to the name, country of residence and nationality of the beneficial owners, as well as the nature and extent of the beneficial interest held) when there is an overriding public interest in disclosure of this information and in cases of documented involvement in IUU fishing operations, corruption or money laundering,⁸¹ as per LDAC's advice of 25 May 2021;⁸²
- Ensures, through training or other means, the appropriate use by Member States of the event codes on the EU fleet register when vessels leave the EU fleet,⁸³ more specifically of the export (EXP) code, to prevent inaccurate/erroneous data entry;⁸⁴

78 Cameroon (current yellow card) and Panama (current yellow card),

79 Belize (red card - now delisted), Curaçao (yellow card - now delisted), Republic of Guinea (red card - now delisted)

80 Further information on the EU's catch certification scheme can be found here: <http://www.iuuwatch.eu/the-iuu-regulation/catch-certification/>

81 This would align the implementation of the SMEFF Regulation with Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents, Regulation 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, and the fifth EU Anti-Money Laundering Directive (2015/849), which provides that Member States must make the registers of beneficial owners of companies publicly accessible to any member of the general public under conditions as stipulated above.

82 LDAC (2021). LDAC Recommendations for a Level Playing Field for EU and non-EU fish products. Available at: https://ldac.eu/images/EN_LDAC_Advice_LPF_25May2021.pdf

83 Commission Implementing Regulation (EU) 2017/218 of 6 February 2017 on the Union fishing fleet register, https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32017R0218#nr6-L_2017034EN.01001401-E0006

84 For example, the fishing vessel Sandettie (IMO: 8012085) was identified as using the incorrect code (Change of activity (exit), or RET) when exported to a non-EU country (the code EXP should have been used). This vessel was not identified in this analysis.

- Works to achieve a coherent and coordinated approach between Commission services (in this case DG SANTE and DG MARE), as highlighted by the EU Long Distance Advisory Council (LDAC).⁸⁵

The EU IUU Fishing Coalition recommends that EU Member States:

- Ensure the accuracy of all information submitted to the EU fleet register as there are instances in which the information provided on the register does not reconcile with that provided in other trusted sources such as IHS Sea-web;⁸⁶
- Ensure that lists of approved EU food establishments are kept up to date, as a number of vessels that have now been reflagged to a non-EU country still remain on these lists;
- Cooperate with other Member States and non-EU countries to ensure that their citizens who own vessels under non-EU flags are neither supporting or engaging in IUU fishing, as per Article 39 of the EU IUU Regulation;
- Ensure compliance with the requirements of the SMEFF Regulation, particularly when it comes to the recording of ownership information in the EU fishing authorisation database, including the name, city, country of residence of the owner and of up to five main beneficial owners.



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⁸⁵ Op cit.

⁸⁶ For example a vessel reportedly reflagged to the Central African Republic according to the EU Fleet Register appears to be currently flagged to Mauritania (IHS Sea-web) so the accuracy of the information on the EU Fleet Register is questioned.

Annex 1: Further details on methodology and data sources

The EU Fleet Register

The EU Fleet Register is a database where all fishing vessels flying the flag of an EU Member State must be registered. Any changes in the status of a fishing vessel, for example if it has been scrapped, need to be registered by the Member State in the Fleet Register.⁸⁷ Within this study, **this data source is considered authoritative as it is the most complete record of the EU fleet available.**

Event types within the EU Fleet Register:

Event code:	Event type:
CEN	Census ⁸⁸
CHA	Change of activity (entry)
CST	New construction
DES	Destruction, wreck
EXP	Exportation, transfer
IMP	Importation, transfer
MOD	Modification
RET	Change of activity (exit)

Methodology:

All information available on the EU Fleet Register was downloaded and this data was then filtered using Microsoft Excel to find events using only the EXP or IMP codes between the 17th January 2018 and 2 November 2021. These events were then filtered to determine reflagging events between the EU and non-EU countries. Within this analysis, the Coalition was not interested in the importations/exportations of vessels between EU Member States.

Concerns about data quality:

Occasions have been identified in Coalition work outside of the present study where the incorrect code has been inputted by Member States within the fleet register (for example the use of the RET code in place of the EXP code). As a result, there may be occurrences of abusive reflagging that were not identified in this analysis, hence the results presented may be an underestimate of the abusive reflagging issue.

Additionally, a number of vessels to have been imported into/exported out of the EU fleet during this period did so to unknown flags. Within the EU Fleet Register there were a number of occasions where the country of import/export was not provided (**Annex 3**). As a result, occurrences of abusive reflagging identified within this analysis may again be an underestimate.

Some of the information contained within the EU Fleet Register also appears to be incorrect, and a number of reflagging events could not be verified using IHS Sea-web or other online sources. As a result, errors in the reflagging activity presented in this analysis cannot be ruled out. These unlikely (and potentially incorrect) reflagging events have been highlighted in the report, as have occasions where reflagging activity could not be verified.

⁸⁷ The EU Fleet Register is available at: https://webgate.ec.europa.eu/fleet-europa/index_en

⁸⁸ 'Census date' means the date on which the first event has been communicated by a Member State to the Commission, as per Commission Implementing Regulation (EU) 2017/218, https://eur-lex.europa.eu/eli/reg_impl/2017/218/oj

Information handling services (IHS) Sea-web

IHS Sea-web combines comprehensive data on ships, owners, shipbuilders, fixtures, casualties, port state control, International Safety Management (ISM) code, real-time vessel movements and ports information into a single application. IHS Sea-web is a service that provides a range of search capabilities, from simple look-ups through to complex database queries. It displays results in a grid which includes sort, group and find features, with the option to export data.

In identifying reflagging behaviours, IHS Sea-web was used in this study for verification purposes only (verifying information contained within the EU Fleet Register). IHS Sea-web was also used as the primary source for vessel ownership details. Though often incomplete, IHS Sea-web contains details on a vessel's Group Owner, Shipmanager, Operator and Registered Owner. Further details on the company type is also often included, including information on whether the company in question is a beneficial owner or a registered owner.

Key Features:

- 200,000+ ships of 100 GT and above
- 240,000+ company records including owners, operators, managers and builders
- 7 levels of group and operational ownership
- Powerful query, reporting and export functions
- Updated daily by an expert data analyst team

MarineTraffic

MarineTraffic contains information about vessels in addition to AIS information, including vessel flags. Further information on MarineTraffic is available at: <https://marinetraffic.com>

MarineTraffic was only used when information on reflagging behaviours could not be verified using IHS Sea-web.

Concerns about data quality:

Information contained within the EU Fleet Register could not always be verified using IHS Sea-web or MarineTraffic. This is likely due to a time delay in information updates. IHS Sea-web and MarineTraffic were used only as verification tools and are not exhaustive resources. As a result, errors in the reflagging activity presented in this analysis cannot be ruled out. Instances in which reflagging information could not be verified using IHS Sea-web or MarineTraffic were highlighted throughout the report and summarised in **Annex 4**.

Member State biennial reports

Through an 'access to information' request sent to the European Commission, the EU IUU Fishing Coalition has obtained the biennial reports submitted by the then 28 EU Member States as required under the IUU Regulation. The reports utilised in this analysis cover both the 2016/17 and 2018/19 reporting periods. Included within these reports is information on the number of catch certificates validated each year by non-EU countries. These details were used in this study's analysis of EU seafood imports under IUU Regulation.

Annex 2: Non-EU countries to which most EU flagged vessels were exported to between January 2018 and November 2021

Non-EU country	Number of EU vessels exported
Russia	19
Mauritania	19
Norway	9
Suriname	9
Dominica	5
Morocco	4
Namibia	4
Senegal	3
Belize	2
Côte d'Ivoire	2
Cameroon*	2

* Currently carded country as per the EU IUU Regulation [As of 2 November 2021]

Annex 3: Reflagging behaviours between flag EU Member States and unknown flags.

Exports

EU country	Non-EU country to which vessels have been exported (number of vessels in brackets)
France	Unknown (10)
Netherlands	Unknown (9)
Finland	Unknown (5)
Denmark	Unknown (3)
Ireland	Unknown (3)
Sweden	Unknown (2)
Estonia	Unknown (1)

Imports

EU country	Non-EU country from which vessels have been imported (number of vessels in brackets)
Estonia	Unknown (5)
Finland	Unknown (2)
Croatia	Unknown (1)
France	Unknown (1)
Slovenia	Unknown (1)

Annex 4: Verification of reflagging behaviours between the EU fleet and non-EU countries following the entry into force of the SMEFF Regulation on 17 January 2018.

EU country	Non-EU country to which vessels have been exported to (number of vessels in brackets)	Number of exports verified using IHS Sea-web ⁸⁹ or other online sources ⁹⁰
Belgium	Suriname (3)	1
Denmark	Canada (1)	1
	Faroe Islands (1)	1
	Morocco (1)	1
	New Zealand (1)	0
	Norway (6)	5
	Russia (1)	1
France	Anguilla (1)	0
	Côte d'Ivoire (1)	0
	Dominica (5)	0
	Libya (1)	1
	Mauritania (5)	1
	Republic of the Congo (1)	0
	Saint Lucia (1)	0
	Suriname (6)	1 (1 registered in Guinea according to MarineTraffic)
Germany	Norway (1)	1
	Russia (2)	1
Ireland	Morocco (1)	0
Latvia	Cameroon (1)	1
	Georgia (1)	1
	Russia (12)	10
Lithuania	Russia (3)	3
Netherlands	South Africa (1)	1
Portugal	Belize (1)	1
	Mauritania (1)	0
	Senegal (1)	1

⁸⁹ IHS Maritime Portal: Sea-web. Available at: <https://maritime.ihs.com/ships/Details/9150016>

⁹⁰ MarineTraffic: Global Ship Tracking Intelligence. Available at: <https://www.marinetraffic.com/en/ais/home/centerx:-8.8/centery:42.2/zoom:5> (Subscription Required)

EU country	Non-EU country to which vessels have been exported to (number of vessels in brackets)	Number of exports verified using IHS Sea-web⁸⁹ or other online sources⁹⁰
Spain	Angola (1)	0
	Argentina (1)	1
	Belize (1)	1
	Cameroon (1)	1
	Cabo Verde (1)	0
	Côte d'Ivoire (1)	0
	Curaçao (1)	1
	Falkland Islands (1)	1
	Guinea-Bissau (1)	0
	Morocco (1)	0
	Mauritania (13)	4
	Namibia (4)	4
	Panama (1)	1
	Peru (1)	0
	Senegal (2)	2
Sweden	Morocco (1)	1
	Norway (3)	1
	Russia (1)	1

EU country	Non-EU country from which vessels have been imported (number of vessels in brackets)	Number of exports verified using IHS Sea-web⁹¹ or other online sources⁹²
Latvia	Canada (1)	1
	Georgia (1)	1
	Russia (1)	1
Lithuania	Greenland (1)	0
Netherlands	Faroe Islands (1)	1
Poland	Faroe Islands (1)	0
Spain	Panama (1)	1

91 IHS Maritime Portal: Sea-web. Available at: <https://maritime.ihs.com/ships/Details/9150016>

92 MarineTraffic: Global Ship Tracking Intelligence. Available at: <https://www.marinetraffic.com/en/ais/home/centerx:-8.8/centery:42.2/zoom:5> (Subscription Required)

Annex 5: Timeline of EU carding decisions*

Country	Pre-identification (yellow card)	Pre-identification revoked	Identification (red card)	Listing	Delisting
Belize	November 2012	N/A	November 2013	March 2014	December 2014
Cambodia	November 2012	N/A	November 2013	March 2014	
Cameroon	February 2021				
Comoros	October 2015	N/A	May 2017	July 2017	
Curaçao	November 2013	February 2017			
Ecuador	October 2019				
Fiji	November 2012	October 2014			
Ghana	November 2013	October 2015			
	June 2021				
Kiribati	April 2016	December 2020			
Republic of Korea	November 2013	April 2015			
Liberia	May 2017				
Panama	November 2012	October 2014			
	December 2019				
Papua New Guinea	June 2014	October 2015			
Philippines	June 2014	April 2015			
Republic of Guinea	November 2012	N/A	November 2013	March 2014	October 2016
Sierra Leone	April 2016				
Solomon Islands	December 2014	February 2017			
Sri Lanka	November 2012	N/A	October 2014	February 2015	June 2016
St Kitts and Nevis	December 2014				
St Vincent and Grenadines	December 2014	N/A	May 2017	July 2017	
Taiwan	October 2015	June 2019			
Thailand	April 2015	January 2019			
Togo	November 2012	October 2014			
Trinidad and Tobago	April 2016				
Tuvalu	December 2014	July 2018			
Vanuatu	November 2012	October 2014			
Vietnam	October 2017				

Countries in bold are currently carded under the EU's carding system. This reflects information as per the table published by DG MARE in https://ec.europa.eu/oceans-and-fisheries/fisheries/rules/illegal-fishing_en.

* Information correct as of 2 November 2021.



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