

July 2017

# The Control and Enforcement of Fisheries in Spain

ClientEarth commissioned the Instituto Internacional de Derecho y Medio Ambiente to produce this report. The report was finalised on 26 July 2017





# THE CONTROL AND ENFORCEMENT OF FISHERIES IN SPAIN

## Index

Executive summary and recommendations .....	4
Introduction .....	7
1. The Spanish fisheries enforcement framework .....	8
1.1. Competent authorities .....	8
1.1.1. National level: Sub-directorate General for Control and Inspection .....	9
1.1.2. AA.CC level: Andalucía and Galicia .....	11
1.2. Organisation of fisheries controls .....	13
1.2.1. Controls over maritime fisheries under State competence .....	14
1.2.2. Controls over the planning and management of the fishing sector and marketing of fisheries products .....	16
1.3. Spanish system for infringements and penalties on fisheries .....	19
1.3.1. Determination of what constitutes serious administrative infringements to the CFP rules .....	19
1.3.2. Provisional measures .....	21
1.3.3. The administrative sanctioning procedure and type of sanctions .....	22
1.3.4. Criminal sanctions .....	25
1.3.5. The Spanish penalty point system .....	26
1.4. The national register of infringements .....	27
2. What is happening in practice .....	28
2.1. National level .....	29
2.1.1. Data on inspections .....	29
2.1.2. Data on infringements .....	31
2.1.3. Data on sanctions .....	33
2.2. AA.CC level .....	36
2.2.1. A.C of Andalucía .....	36
2.2.1.1. Data on inspections and infringements .....	37
2.2.1.2. Data on sanctions .....	39
2.2.1.3. Controls over traceability requirements of fisheries and aquaculture products .....	39
2.2.2. A.C of Galicia .....	42
2.2.2.1. Data on inspections .....	43
2.2.2.2. Data on infringements .....	44
2.3. Lack of transparency in the availability and access to implementation data .....	45
3. Discussion and recommendations .....	47
3.1. The penalty point system .....	47
3.2. Increasing and improving controls and verification over the engine power of fishing vessels .....	48
3.3. Increase controls at sea in order to ensure compliance with the landing obligation and discarding .....	49

3.4. Improving controls over the marketing of fisheries and aquaculture products to ensure further compliance with EU requirements on traceability .....	50
3.5. Increasing transparency and availability of implementation data on fisheries .....	51
3.6. Reconsidering the effectiveness of the administrative proceeding to prosecute infringements on IUU fishing.....	52
Conclusion .....	52
Bibliography .....	54
List of tables.....	58
List of illustrations .....	58
Annex I.- .....	59
Annex II.- .....	60
Annex III.-.....	62

## Acronyms

<b>AA.CC</b>	Autonomous Communities
<b>AGAPA</b>	Agency of Agricultural and Fisheries Management of Andalusia
<b>BOE</b>	State Official Journal
<b>BOJA</b>	Andalusia Official Journal
<b>CC</b>	Catch Certificate
<b>CFP</b>	Common Fisheries Policy
<b>CGPJ</b>	General Council of the Judiciary
<b>CPSWA</b>	Common Control Programme for the South West Area
<b>DEA</b>	Spanish electronic fishing logbook
<b>DOG</b>	Galicia Official Journal
<b>EC</b>	European Commission
<b>ECA</b>	European Court of Auditors
<b>EEZ</b>	Exclusive Economic Zone
<b>EFCA</b>	European Fisheries Control Agency
<b>EMFF</b>	European Maritime and Fisheries Fund
<b>EP</b>	European Parliament
<b>ERRS</b>	Electronic Recording and Reporting System
<b>EU</b>	European Union
<b>FAR-NET</b>	European Fisheries Areas Network
<b>FIP</b>	Fisheries Inspection Plan
<b>FMC</b>	Fisheries Monitoring Centre
<b>GT</b>	Gross Tonnage
<b>IECA</b>	Institute of Statistics and Cartography of Andalusia
<b>IGAFA</b>	Galician Institute for Aquaculture Training
<b>ICR</b>	Veterinary Inspection Unit
<b>IUU fishing</b>	Illegal, Unreported and Unregulated fishing
<b>JDP</b>	Joint Development Plan
<b>MAPAMA</b>	Ministry of Agriculture and Fisheries, Food and Environment
<b>PACIAP</b>	Annual Programme for Integral Control of Fishing Activity
<b>REVIPES</b>	Fisheries Surveillance Network
<b>RFMO</b>	Regional Fisheries Management Organisation
<b>SEPRONA</b>	Nature Protection Service of the Spanish Civil Guard
<b>SERMAR</b>	Maritime Service of the Spanish Civil Guard
<b>SGCI</b>	Sub-directorate General of Control and Inspection
<b>SGP</b>	General Secretariat for Fisheries
<b>SIPE</b>	Spanish Fisheries Information System
<b>TAC</b>	Total Allowable Catch
<b>UPA</b>	Ascribed Police Unit
<b>VMS</b>	Vessel Monitoring System

## Executive summary and recommendations

To ensure that the rules of the Common Fisheries Policy (CFP) are complied with, the CFP control system was last reformed in 2009 in order to fill the gaps and remedy the problems identified by the European Court of Auditors (ECA) in 2007.<sup>1</sup> That year, the European Union (EU) adopted the EU Control Regulation, which established a solid control system for fisheries, placing a number of enforcement and implementation obligations on Member States in order to:

- Ensure appropriate measures are taken each time the rules of the CFP are breached;
- Impose sanctions that are effectively dissuasive in cases of serious infringements;
- Include in a national register all infringements to the CFP rules;
- Establish a penalty point system for license holders and masters of fishing vessels who commit a serious infringement of the CFP rules.

The Control Regulation, which entered into force in 2010, brought the control system in line with the strong measures adopted by the EU in 2008 to combat illegal fishing through the EU Regulation on Illegal, Unreported and Unregulated fishing (IUU), which has also been in force since 2010. Success of the CFP rules can only be achieved through the design and implementation of an effective and strong system of fisheries control and enforcement in each Member State. It has now been 7 years since the CFP Control Regulation entered into force. However, there is evidence pointing out that some Member States still do not have systems for fisheries control effective enough to ensure the success of the CFP.

This report examines Spain's degree of compliance with EU obligations on fisheries control and enforcement. Taking into account the distribution of competences on fisheries provided by the Spanish Constitution, this study takes a two-tiered approach: on the one hand, it examines compliance with EU regulations at national State level and, on the other, it undertakes such analysis at the Autonomous Communities (AA.CC) level. In particular, it focuses on the regions of Andalusia and Galicia, concerning those specific matters on fisheries falling under their exclusive competences.

The organisation of the fisheries control system in Spain relies on a wide range of competent authorities at State and AA.CC levels. A high level of coordination is thus required for an effective control system. The conduct of inspections is mainly governed by national and regional fisheries inspection plans, and officials are required to take inspection minutes and reports every time there is a suspicion that an infringement of fisheries laws is taking place. Although Spanish law provides a wider list of fisheries infringements than those identified in the EU Control and IUU Regulations, it does reflect all categories of serious infringements. Spanish law is more restrictive in categorising breaches concerning IUU fishing and stateless vessels. However, the Spanish State Maritime Fisheries Law provides for relatively short limitation periods applying to fisheries infringements, which may not allow the effective prosecution of those most serious infringements in all cases.

Under Spanish law, the same act cannot be punished both by administrative and criminal sanctions ("*non bis in idem*" principle). Unlike in the French case, infringements to the CFP rules are exclusively foreseen as administrative infringements under the Maritime Fisheries

---

<sup>1</sup>European Court of Auditors Special report No 7/2007 on the control, inspection and sanction systems relating to the rules on conservation of Community fisheries resources (December, 2007), available online at: [http://www.eca.europa.eu/Lists/ECADocuments/SR07\\_07/SR07\\_07\\_EN.PDF](http://www.eca.europa.eu/Lists/ECADocuments/SR07_07/SR07_07_EN.PDF).

Law and subject to the imposition of the corresponding administrative penalties. If there is evidence that a violation of fisheries laws can also entail a criminal offence in accordance with the Spanish Criminal Code, the administrative sanctioning procedure is suspended, giving way to the criminal one.

In practice, data gathered through this study shows that the number of fisheries controls conducted at both State and AA.CC of Galicia and Andalusia levels has decreased over the last two years. Compared to the amount of inspections conducted at State level, the rate of infringements detected was low. For instance, in 2016 an overall 10,238 inspections were conducted out of which only 1,058 infringements were detected, representing a 12.13% decrease compared to the infringement rate of 2015. By contrast, while fewer controls were conducted in 2016 in the AA.CC of Galicia and Andalusia, their infringement rates remained constant in Galicia, or even increased in the case of Andalusia compared to previous years.

There is no consolidated and publicly available data in Spain concerning the administrative sanctions imposed by competent authorities. Furthermore, there is evidence that the Spanish penalty point system is not being effectively applied by the competent authorities, and that data contained in the national register of infringements to the CFP rules is neither accessible by AA.CC competent authorities, nor by the public.

It must be highlighted that Spain has become a leader across the EU on the fight against IUU fishing in the last years, given the strong will of the Spanish authorities to control Spanish nationals or companies taking part in IUU fishing operations.

In view of these considerations and other findings obtained from this study, this report concludes with the following recommendations:

- **Improve the implementation of the penalty point system.** There is strong evidence showing the existence of deficiencies in the enforcement of the system of sanctions in Spain, given the inconsistent manner in which the point system is being applied since it was created in 2013. Spanish authorities are applying the system with extreme caution due to the socio-economic impact of withdrawing fishing licenses. This may lead to a loss of the system's deterrent function, generating a lack of level playing field for all fisheries operators.
- **Increase and improve controls and verification over the engine power of fishing vessels.** Although Spain is one of the few Member States carrying out verifications on engine power based on a representative sampling plan, the ECA has noted deficiencies in controls given the existence of discrepancies between the actual engine power of operating fishing vessels and the one officially certified. Furthermore, the lack of data on infringements for non-compliance with engine power regulations raises concerns on the effectiveness of Spanish authorities' approach to detect this category of breaches.
- **Increase controls at sea in order to ensure compliance with the landing obligation and discarding rules.** While inspections at sea only represented around 19.7% of overall controls carried out from 2013 to 2016, the detection of infringements at sea appears to be highly effective. Since compliance with landing obligation and discarding rules require a high focus on monitoring and control over those fishing activities taking place at sea, Spain must increase such type of controls.
- **Improve controls over marketing of fisheries and aquaculture products to ensure further compliance with EU requirements on traceability.** Evidence gathered through interviews with stakeholders stressed the lack of sufficient resources and

implementation capacity at AA.CC level to carry out more comprehensive controls on traceability across the whole supply chain. Data gathered shows the existence of significant deficiencies on the traceability of products in the A.C of Andalusia that must be rectified.

- **Increase transparency and availability of implementation data on fisheries.** Publicly available information concerning fisheries inspections, infringements and sanctions is limited. AA.CC only provided 'partial access' to the information requested, and there is a general lack of transparency concerning access to data contained at the national register of infringements and imposed administrative sanctions.
- **Reconsider the effectiveness of the administrative proceeding to prosecute infringements on IUU fishing.** Spanish law typifies IUU fishing activities as very serious administrative infringements but not as criminal offences, raising concerns on whether administrative law is the only suitable legal route to effectively prosecute, in all cases, these types of illegal activities. Several deficiencies and loopholes have been identified in this regard. Thus, we urge to analyse the convenience to introduce specific amendments to Spanish legislation.

## Introduction

The CFP aims to ensure that fish stocks and the fishing sector are sustainable in the long term. The success of the CFP rules can only be achieved through the design and implementation of an effective and strong system on fisheries control and enforcement by each Member State.

Spain is the country with the largest fleet at the EU level in terms of capacity (Gross Tonnage, or GT), representing 23.6% of the overall European fleet. It also occupies third place of the EU fleet in terms of number of vessels, accounting for 9,299 out of 83,780 EU overall fishing vessels. In terms of fishing industry, Spain is the biggest producer of fishery products and represents 20% of the overall production across the EU, and it ranks 18<sup>th</sup> in the world market with 1.1% of global marine catches.<sup>2</sup>

The Spanish territory has a coastline of approximately 8,000 km, which includes the Canary Islands and two autonomous cities: Ceuta and Melilla. There are ten Autonomous Communities (AA.CC) located on the Spanish coastline: País Vasco, Cantabria, Asturias, Galicia, Andalusia, Murcia, Valencia, Cataluña, Islas Baleares and the Islas Canarias. There are approximately 23 million inhabitants living by the coastline, representing 58% of the total population living within 15% of the national territory.<sup>3</sup>

Several pieces of EU legislation govern the organisation of fisheries control and enforcement in Spain. The EU Control and the IUU Regulations,<sup>4</sup> together with their respective implementing Regulations<sup>5</sup>, are directly applicable in Spain and therefore legally binding, being an integral part of the national legal system on fisheries. Spain also has the State Maritime Fisheries Law 3/2001, of 26 March 2001, which reflects many of the obligations of the CFP and which was later on amended in 2014 to introduce specific provisions on IUU fishing. In addition, the key piece of legislation transposing the IUU Regulation requirements was approved in 2010 through national Order ARM/2077/2010. In any case, a wide range of national regulations detailing rules on fisheries inspection, sanctioning procedures and marketing of fisheries products must be taken into consideration, without prejudice of the legislation adopted by the AA.CC on specific matters related to fisheries of their exclusive competence. Indeed, AA.CC legislation is entitled to further develop those basic national provisions established at national law but without contravening them.

This report analyses the implementation in Spain of the EU requirements on fisheries control and enforcement mainly derived from the EU Control Regulation. For this purpose, this study not only focuses on the national or State level but also on the AA.CC, given the distribution of competences on fisheries matters provided by the Spanish Constitution. The AA.CC considered

---

<sup>2</sup>"Report of the Spanish Fisheries Sector. A year of opportunities" (CEPESCA, 2017) available online at:<http://www.cepesca.es/attachment/e39fc26c-f703-4325-870f-0bd34d52319f>. CEPESCA is the Spanish Fisheries Confederation, a business organisation representing the interests of 36 associations of ship-owners, 750 fisheries business, 815 fishing vessels, 10.000 employees (crewmembers) and 50% national catches.

<sup>3</sup>15% is the percentage of the Spanish coastline territory.

<sup>4</sup>Council Regulation (EC) N° 1224/2009 of November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy (OJ L,343 of 22.12.2009), and Council Regulation (EC) N° 1005/2008 of 29 September establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (OJ L,286 of 29.10.2008).

<sup>5</sup>Commission Implementing Regulation (EU) N° 404/2011 of 8 April 2011 laying down detailed rules for the implementation of the Council Regulation (EC) N° 1224/2009 of November 2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy (OJ L,112 of 30.04.2011), and Commission Regulation (EC) N° 1010/2009 of 22 October 2009 laying down rules for the implementation of the Council Regulation (EC) N° 1005/2008 of 29 September establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (OJ L, 280 of 27.10.2009).

in this study are Andalusia and Galicia because of their relevant role in the Spanish fishing industry and their strategic geographic locations in the Iberian Peninsula. This report first examines the legal framework for fisheries control and enforcement at the State and AA.CC levels. Secondly, it examines the implementation of the obligations related to fisheries control and enforcement through the review of official statistical data on control and enforcement, as well as the responses provided in a series of interviews to different stakeholders. Finally, it provides a series of recommendations and conclusions.

This report shows that there have been great improvements in the control and enforcement of fisheries in Spain, but some deficiencies remain in light of the legal provisions and their implementation *vis a vis* the CFP Control Regulation. In our view, a number of improvements, including amendments to Spanish legislation, must be carried out in order to have in place a system where fisheries activities are effectively controlled and breaches of the CFP rules are identified and sanctioned in an effective, proportionate and deterrent manner. Until then, Spain will not be fully compliant with the EU applicable regulations.

## 1. The Spanish fisheries enforcement framework

In Spain, general rules on the organisation of fisheries controls and enforcement are provided in the State Maritime Fisheries Law 3/2001, of 26 March 2001 (“Law 3/2001”),<sup>6</sup> and further developed into a wide range of national regulations, without prejudice to the legislation adopted by AA.CC concerning specific fisheries matters falling within their exclusive jurisdiction. In addition, the IUU Regulation provisions were incorporated into the Spanish legal system through the approval of Order ARM/2077/2010, of 27 July.<sup>7</sup> Specific provisions on IUU fishing were also introduced by a 2014 amendment to Law 3/2001.

This chapter first provides an overview of the current institutional and legal framework regarding fisheries control and inspection at State and AA.CC levels, with a particular focus on the AA.CC of Andalusia and Galicia. Secondly, it explains the organisation of the control system at both levels of jurisdiction and evaluates the infringements and penalty system for fisheries, with an emphasis on the penalty point system for serious infringements of the CFP rules and the national register of infringements.

### 1.1. Competent authorities

The competencies for fisheries in Spain are distributed between the State General Administration (the Ministry for Agriculture and Fisheries, Food and Environment, or “MAPAMA”) and the AA.CC competent authorities, which correspond to the respective regional Departments with competencies on fisheries.

---

<sup>6</sup>Law 3/2001, of 26 March, of State Maritime Fisheries (BOE num.75, of 28.03.2001), amended by Law 33/2014, of 26 December, amending Law 3/2001, of 26 March, of State Maritime Fisheries (BOE num.313, of 27.12.2014).

<sup>7</sup> Order ARM/2077/2010, of 27 July for the access control to port services of fishing vessels of third countries, transit operations, transshipment, import and export of fisheries products to prevent, deter and eliminate IUU (BOE num.185, of 31.07.2010).

**Table1.- Distribution of competences on fisheries provided by the 1978 Spanish Constitution.<sup>8</sup>**

State Art. 149.1.19	AA.CC Article 148.1.11
- Exclusive jurisdiction over maritime fisheries in <b>external waters</b> . <sup>9</sup>	- Exclusive jurisdiction over maritime fisheries in <b>internal waters</b> , shellfishing and aquaculture.
- Approval of basic rules concerning the planning and management of the fishing sector.	- Development of the basic rules on the planning and management of the fishing sector in Spain, which includes the marketing activity. - Execution of the competence on the planning and management of the fishing sector.

The scope of both areas of competence, ‘maritime fisheries’ and ‘planning and management of the fishing sector’, has been addressed in several judgments of the Spanish Constitutional Court.<sup>10</sup> On one hand, ‘maritime fisheries’ refers to the extractive activity of fisheries products and the protection, conservation and improvement of fishery resources. This competence includes rules on resources, areas and periods in which fishing is allowed, in addition to fishing gear means and fisheries protection, conservation and restoration. On the other hand, ‘planning and management of the fishing sector’ refers to all fisheries matters not connected with the direct extractive activity and mainly refers to the fisheries economic sector, including the first sale of fisheries products<sup>11</sup> (i.e., fishing fleets, official registers, *lonjas* ‘fish auctions’ and fishers markets, among others). This latter competence includes the marketing of fisheries products whose scope goes from the finalisation of the first sale up to their acquisition by the final consumer, including transportation, transformation, exhibition and sale.<sup>12</sup>

In addition, it is important to take into consideration that the State has exclusive competence for international trade (Article 149.1.10<sup>3</sup>), which is relevant when considering fisheries products imported from third countries.

### 1.1.1. National level: Sub-directorate General for Control and Inspection

The **General Secretariat of Fisheries** (*‘Secretaría General de Pesca’* or SGP)<sup>13</sup> within MAPAMA, is the State (national) authority responsible for the control and implementation of maritime fisheries laws in external waters, beyond the baseline. The SGP is also competent for developing national basic rules dealing with the management of the fishing sector, including processing, transport and marketing of fisheries products.<sup>14</sup>

<sup>8</sup>BOE num.311, of 29.12.1978.

<sup>9</sup>Jurisdiction over maritime fisheries in Spain is determined on the basis of a spatial criterion, depending on whether the fishing activity takes place in external or internal waters. External waters include: the territorial sea (12 nautical miles), the exclusive economic zone (EEZ) (200 nautical miles) and international waters. By contrast, internal waters include all waters located within the baseline of the territorial sea of the coastal State of Spain.

<sup>10</sup> Judgment of the Constitutional Court num. 44/1992, of 2 April (RTC 1992, 44), and num. 57/1992, of 9 April (RTC 1992, 57).

<sup>11</sup>Article 2 of Law 3/2001.

<sup>12</sup>Ibid.

<sup>13</sup>Royal Decree 424/2016, of 11 November, regarding the establishment of the organic structure of the ministerial departments, BOE num. 274, of 12.11.2016. Website of the SGP available at:

[http://www.mapama.gob.es/es/ministerio/funciones-estructura/organizacion-organismos/organigrama/SG\\_Pesca.aspx](http://www.mapama.gob.es/es/ministerio/funciones-estructura/organizacion-organismos/organigrama/SG_Pesca.aspx).

<sup>14</sup>Article 15 (1) of Royal Decree 401/2012, of 17 February developing the organic structure of the Ministry of Agriculture, Food and Environment- today MAPAMA- (BOE num.42, of 18.02.12). The organic structure of the new MAPAMA follows the same as the previous Ministry of Agriculture, Food and Environment.

Within the SCP is the **Sub-Directorate General for Legal Affairs** (*Subdirección General de Asuntos Jurídicos*), which among its functions are the preparation of the corresponding administrative sanctioning decisions in relation to maritime fisheries before their official adoption by the competent sanctioning body as well as reports concerning the administrative appeals filed against such decisions.

The **Sub-directorate General for Control and Inspection** (*Subdirección General de Control e Inspección* or SGCI), under the Directorate General for Fisheries Management of the SGP, is the competent body for inspections over maritime fisheries in external waters.<sup>15</sup> Through a coordinated and integrated approach, and based on the analysis of identified risks, the SGCI was created in 2012 to perform the following functions:<sup>16</sup>

**Table 2.- SGCI functions on control and inspection**

Control of fishing activity	Fisheries inspections	Imports control and fight against IUU Fishing
<ul style="list-style-type: none"> <li>Granting of fishing licences, authorisations and other permits.<sup>17</sup></li> <li>Gathering, treatment and verification of information concerning fishing activities emanating from different sources.</li> <li>Monitoring and continuous crosschecking of fishing activities through satellite-tracking devices installed onboard Spanish fishing vessels, (e.g. Vessel Monitoring Service (VMS), Electronic Recording and Reporting System (ERRS)).</li> </ul>	<ul style="list-style-type: none"> <li>Planning and carrying out inspection operations as well as coordinating inspections with AA.CC and other units of the State General Administration, such as the Ministry of Defence,<sup>18</sup> and the Ministry of Home Affairs Directorate General of the Civil Guard,<sup>19</sup> according to their scope of competences.</li> </ul>	<ul style="list-style-type: none"> <li>Control on fisheries products imports into Spanish designated ports in accordance with the IUU Regulation provisions.</li> <li>Acting as the national single contact point in Spain for processing Mutual Assistance messages, and promoting cooperation at EU and third country levels in line with Article 51 of the IUU Regulation.</li> </ul>

Source: Barreira A., Ruiz C., *et al.* "Enforcing the Common Fisheries Policy. The implementation of the EU Control Regulation in Spain, Madrid, Instituto Internacional de Derecho y Medio Ambiente (IIDMA), 2015.

In 2015, the State General Administration was staffed with 10 heads of inspection services and 100 inspectors, which in 2016 were decreased to 97 inspectors.<sup>20</sup> In terms of material means, Spain had a total of 56 vessels, 10 aircrafts and 196 terrestrial vehicles (25 cars belonging to

<sup>15</sup>See next section to understand the scope of the inspection tasks over maritime fisheries in external waters.

<sup>16</sup>Information available at: [http://www.mapama.gob.es/es/ministerio/funciones-estructura/organizacion-organismos/organigrama/DG\\_Ordenacion\\_Pesquera.aspx](http://www.mapama.gob.es/es/ministerio/funciones-estructura/organizacion-organismos/organigrama/DG_Ordenacion_Pesquera.aspx).

<sup>17</sup>As confirmed by the SGCI, this authority can also, as a provisional measure, withdraw fishing licences, authorisations and permits when significant serious infringements are identified during inspections. If those licences, authorisations and permits are withdrawn as a result of a sanctioning procedure, it is the Sub-Directorate General on Legal Affairs of the SGP that is the competent authority to withdraw them.

<sup>18</sup>The Spanish Ministry of Defence and the MAPAMA signed in 1988 a Joint Agreement regarding inspection and surveillance of maritime fisheries activities.

<sup>19</sup>This cooperation is based on the 1997 Framework Agreement between the Ministry of Home Affairs and the MAPAMA regarding control, inspection and surveillance of maritime fisheries activities.

<sup>20</sup>EMFF Spanish Operative Programme (2014-2020) approved by the Commission Implementing Decision of 13.11.2015, C (2015) 8118 Final, available at [https://ec.europa.eu/fisheries/sites/fisheries/files/docs/body/op-spain\\_es.pdf](https://ec.europa.eu/fisheries/sites/fisheries/files/docs/body/op-spain_es.pdf) p. 138 and 200. Its final version was submitted by Spain to the European Commission by 9<sup>th</sup> October 2015. According to the most updated information in the MAPAMA Annual Report (2015), by that year Spain had 97 inspectors, and reflects the intention to incorporate 10 more by 2016, p.247. This Annual report is available at: [http://www.mapama.gob.es/es/ministerio/servicios/publicaciones/h-pesca\\_tcm7-432184.pdf](http://www.mapama.gob.es/es/ministerio/servicios/publicaciones/h-pesca_tcm7-432184.pdf).

the Ministry of Finance and Public Services).<sup>21</sup> However, the European Maritime and Fisheries Fund (EMFF) Spanish Operative Programme has stressed the lack of adequate material and human resources for control and inspection in Spain.

**Table 3.- Investments on fisheries control and inspection allocated by the General Budget (K €)** <sup>22</sup>

2014	2015	2016	2017 (foreseen)
16,141.09 <sup>23</sup>	16,949.12 <sup>24</sup>	18,099.12 <sup>25</sup>	16,400.00

Source: Ministry of Finance and Public Service

In line with Article 9(7) of the Control Regulation, Spain established in 1999 a **Fisheries Monitoring Centre (FMC)** operating 24 hours a day, located in Madrid at the offices of the SGCI.<sup>26</sup> The FMC monitors the fishing activity of Spanish vessels<sup>27</sup> as well as EU or third countries flagged fishing vessels operating in Spanish waters through the collection and processing of Vessel Monitoring System (VMS) and Electronic Recording and Reporting System (ERRS) data.<sup>28</sup>

### 1.1.2. AA.CC level: Andalucía and Galicia

AA.CC competent authorities are allowed to participate in national inspection and control programmes on fisheries through collaboration agreements with the MAPAMA.<sup>29</sup> AA.CC such as Galicia, Andalusia and Cataluña have reached such agreements.<sup>30</sup>

**Table 4.- Distribution of inspection and control competences in Andalusia and Galicia**

A.C of Andalusia
Department of Agriculture, Fisheries and Rural Development
Main authority responsible for control on fisheries in Andalusian (internal) waters, aquaculture and shellfishing as well as for managing the fishing sector and marketing of fisheries products. Functions on control, inspection and surveillance are divided between two bodies:

<sup>21</sup>In particular, in 2015 and 2016 the SGCI counted with 3 patrol boats operated by the Spanish Navy, 7 light boats operated by the Civil Guard and 2 vessels transferred to the AACC of Galicia and Cataluña for their operation. Regarding aerial means, in 2016 there were 4 helicopters and 3 equipped airplanes, out of which only 2 helicopters and 1 airplane were operative. Information on material means for inspection is also available at: <http://www.mapama.gob.es/es/pesca/temas/control-e-inspeccion-pesquera/medios-control-e-inspeccion/>.

<sup>22</sup>The 2017 State General Budget has not been approved yet. 2017 data reflect the predictions of the new budget distribution allocated to investment on fisheries control and inspection. Information available at: <http://www.mapama.gob.es/es/prensa/noticias/alberto-l%C3%B3pez-asejo-los-presupuestos-para-2017-permitir%C3%A1n-impulsar-la-mejora-de-las-estructuras-y-mercados-pesqueros-as%C3%AD-como-la-protecci%C3%B3n-de-/tcm7-456363-16>.

<sup>23</sup>Budgetary year 2014- Directorate General of Fisheries Management of the SGP, Annex on investments, available at: [http://www.sepg.pap.minhfp.gob.es/Presup/PGE2014Ley/MaestroDocumentos/PGE-ROM/doc/1/3/18/3/2/9/3/N\\_14\\_E\\_R\\_31\\_123\\_1\\_2\\_3\\_1415B\\_C\\_2\\_2\\_101\\_116\\_0.PDF](http://www.sepg.pap.minhfp.gob.es/Presup/PGE2014Ley/MaestroDocumentos/PGE-ROM/doc/1/3/18/3/2/9/3/N_14_E_R_31_123_1_2_3_1415B_C_2_2_101_116_0.PDF).

<sup>24</sup>Budgetary year 2015, available at: [http://www.sepg.pap.minhfp.gob.es/Presup/PGE2015Ley/MaestroDocumentos/PGE-ROM/doc/1/3/18/3/2/10/3/N\\_15\\_E\\_R\\_31\\_123\\_1\\_2\\_3\\_1415B\\_C\\_2\\_2\\_101\\_116\\_0.PDF](http://www.sepg.pap.minhfp.gob.es/Presup/PGE2015Ley/MaestroDocumentos/PGE-ROM/doc/1/3/18/3/2/10/3/N_15_E_R_31_123_1_2_3_1415B_C_2_2_101_116_0.PDF).

<sup>25</sup>Budgetary year 2016, available at: [http://www.sepg.pap.minhfp.gob.es/Presup/PGE2016Ley/MaestroDocumentos/PGE-ROM/doc/1/3/18/3/2/9/3/N\\_16\\_E\\_R\\_31\\_123\\_1\\_2\\_3\\_1415B\\_C\\_2\\_2\\_101\\_116\\_0.PDF](http://www.sepg.pap.minhfp.gob.es/Presup/PGE2016Ley/MaestroDocumentos/PGE-ROM/doc/1/3/18/3/2/9/3/N_16_E_R_31_123_1_2_3_1415B_C_2_2_101_116_0.PDF).

<sup>26</sup> Website of the Spanish FMC, available at: <http://www.mapama.gob.es/es/pesca/temas/control-e-inspeccion-pesquera/control-actividad-pesquera/default.aspx>.

<sup>27</sup>For tracking the actual position of Spanish fishing vessels, the FMC, in line with Article 22 of the Control Regulation Implementing Regulation, uses equipment called 'cajas azules' (or blue boxes) which are installed on national vessels. This is the VMS.

<sup>28</sup>Information available at: <http://www.mapama.gob.es/es/pesca/temas/control-e-inspeccion-pesquera/control-actividad-pesquera/>.

<sup>29</sup> Article 40 of Law 3/2001.

<sup>30</sup> EMFF Spanish Operative Programme (2014-2020), p.136.

<b>Directorate General (D.G.) of Fisheries and Aquaculture</b>	Leads and coordinates inspection and surveillance operations in relation to fishing in internal waters, aquaculture and shellfishing activities, control of landings of fishing catches in fish auctions, and other matters resulting from the management of the fishing sector, such as the approval and implementation of inspection plans at the regional level.
	It is also competent for the regulation of fisheries marketing with a particular focus on first sales at fish auctions and control of authorised buyers to promote transparency in fisheries marketing. <sup>31</sup>
<b>Agency of Agricultural and Fisheries Management of Andalusia ("AGAPA")</b>	Specific inspection and surveillance activities are delegated to this independent body, which is ascribed to the Department of Agriculture, Fisheries and Rural Development. <sup>32</sup>
<b>A.C of Galicia</b>	
Sea Ministry (' <i>Consellería del Mar</i> ')	
Main authority responsible for the fisheries management in Galician waters.	
This authority deals with control and inspections, under the direct responsibility of the <i>Consellería del Mar</i> , through two main bodies: <sup>33</sup>	
<u>Service for Inspection and Resources Control:</u>	
Carries out inspection and surveillance operations concerning: food safety chain, protection of fishing resources (minimum sizes, closure areas and total allowable catches (TACs)), first sale of fisheries products in fish auctions and other authorised places, as well as the control of marketing including transport of marine species. <sup>34</sup>	
<u>Service for the Resources Protection:</u>	
Deals with the coordination, organisation and monitoring of the material and human means as well as with control of incidents, inspection minutes and reports. <sup>35</sup>	

Source: Own elaboration

With regard to control and inspection by human means, by 2016 the Sub-Directorate General of Coastguards in Galicia had 7 official inspectors, 18 sub-inspectors and 61 marine guards, which were distributed across 10 operational units on fisheries inspection and control.<sup>36</sup> Meanwhile, the D.G of Fisheries and Aquaculture of Andalusia together with the AGAPA had in 2016 19 fisheries inspectors and 9 marine guards, which were distributed across the different operational units for control and inspection existing in this region.<sup>37</sup>

With regard to control and inspection material means, by 2016 the AC of Galicia had 2 helicopters, 68 terrestrial vehicles, and 25 fishing vessels (out of which 5 were special vessels,

<sup>31</sup> Articles 9 paras.b) and e) of Decree 215/2015, of 14 July, establishing the organic structure of the Department of Agriculture, Fisheries and Rural Development (BOJA, num.136, of 15.07.2015).

<sup>32</sup> Article 2 (1) of Decree 99/2011, of 19 April, approving the Statutes of the Agency of Agricultural and Fisheries Management of Andalusia (BOJA, num.83, of 29.04.2011).

<sup>33</sup> The Sub-Directorate General of Coastguards in Galicia also has a third service 'Service for Search, Maritime Rescue and Fight against pollution' but it is not involved in fisheries inspections.

<sup>34</sup> Article 3 (3)(3) of Decree 168/2015 of 13 November approving the organic structure of *Consellería del Mar* (DOG num. 221, of 19.11.2015).

<sup>35</sup> Article 3(3)(1), *ibid*.

<sup>36</sup> The operational units of the Sub-directorate General of Coastguards in Galicia are located in: Central Service located in Santiago de Compostela, A Coruña, Ferrol, Muxía-Portosín, Ribeira, Celeiro-Viveiro (Lugo), Pontevedra, Vigo, Vilaxoán-Vilagarcía, and the Galician Institute for Aquaculture Training ("*Instituto Gallego de Formación en Acuicultura*", or IGafa). Moreover, the Sub-directorate General for Coastguards in Galicia counts with 1 Sub-Directorate General, 3 Heads of Service, 5 Heads of Section, 1 Head of Operating Room, 26 veterinaries of fisheries inspection, 20 masters and 22 mechanical technicians."

<sup>37</sup> The operational units of the D.G of Fisheries and Aquaculture of Andalusia and the AGAPA are located in Almería, Cádiz, Granada, Huelva, Málaga and Sevilla. Moreover, these bodies count with: 9 Heads of Department, 1 Head of Service, 7 captains, 11 mechanical technicians, 19 technical experts, 7 drivers and 2 masters"

9 were patrol boats and 11 were small and auxiliary vessels). The A.C of Andalusia had that year 44 terrestrial vehicles and 20 vessels.<sup>38</sup>

## 1.2. Organisation of fisheries controls

To control compliance with the CFP rules, the EU rules require inspections to be carried out by agents designated by the national authorities of the Member States, the European Commission, and the European Fisheries Control Agency (EFCA).<sup>39</sup> The EMFF Spanish Operational Programme identified compliance assurance with the CFP rules as a priority.

In Spain, inspection procedures are regulated by Law 3/2001 and Royal Decree 176/2003, of 14 February 2003,<sup>40</sup> regulating inspections under the scope of State competence. At the regional level, there are AA.CC rules on inspections in the field of fisheries planning and management, as well as marketing.

The SGCI coordinates the control activity of all State-level concerned authorities.<sup>41</sup> To guarantee a better exercise of the inspection function, it cooperates with:

- i. The AA.CC control authorities: this takes place through the adoption of joint action plans, the coordination of inspections and control operations through a **Technical Control Group**.<sup>42</sup>
- ii. Other Member States and the EU: this happens through the participation to different joint inspection and surveillance missions of the EU or other Member States, in national and foreign land, as well as within EU or international waters.<sup>43</sup> For example, Spain participated in 2013 jointly with France, the United Kingdom and Ireland in the Common Control Programme for the South West Area (CPSWA).<sup>44</sup>

In addition, the Control Regulation details the procedures to verify the engine power of the fishing vessels. Member States must establish a sampling plan based on high-risk criteria to prepare a random sample of fishing vessels for which a minimum level of information and documents must be verified. Where there are indications that the engine power of a fishing vessel is greater than the power stated in its fishing licence, Member States shall proceed to a physical verification of the engine power.<sup>45</sup>

---

<sup>38</sup>Updated data provided by the Sub-Directorate General of Coastguards of Galicia and by the D.G of Fisheries and Aquaculture of Andalusia in response to our access to information request.

<sup>39</sup>Article 4 paras. 4 and 6 of the Control Regulation.

<sup>40</sup>Royal Decree 176/2003, of 14 February regulating the control and inspection functions over maritime fisheries activities ("Royal Decree 176/2003") (BOE num. 50, of 27.02.2003).

<sup>41</sup>For example, it coordinates with the Spanish Ministry of Defence and the Civil Guard. In 2015, the MAPAMA holds a technical meeting with the Maritime Service of the Civil Guard (SERMAR) and the Nature Protection Service of the Civil Guard (SEPRONA) based on the need to reinforce the coordination of fishing activity surveillance. Information available at: <http://www.mapama.gob.es/es/prensa/noticias/el-ministerio-de-agricultura-alimentaci%C3%B3n-y-medio-ambiente-refuerza-la-coordinaci%C3%B3n-con-la-guardia-civil-para-la-vigilancia-de-actividades-pesqu/tcm7-364003-16>.

<sup>42</sup>The Technical Control Group meets quarterly in order to promote coordination of all control authorities, exchange of information and verification activity. This group is part of the Spanish Network of Fisheries Groups ("Red Española de Grupos de Pesca"), under the responsibility of the Directorate General of Fisheries Management of MAPAMA, and it is also integrated in the European Fisheries Areas Network (FAR-NET).

<sup>43</sup>Some examples of those are national campaigns on the recovery of Bluefin tuna in the Mediterranean, or multiple Joint Deployment Plans (JDP) coordinated by the EFCA such as the "Pelagic Fisheries in Western Waters 2016" one.

<sup>44</sup> MAPAMA Annual Report (2015). See section concerning inspections conducted in inspection programmes in 2015, p. 249, available at [http://www.mapama.gob.es/es/ministerio/servicios/publicaciones/h-pesca\\_tcm7-432184.pdf](http://www.mapama.gob.es/es/ministerio/servicios/publicaciones/h-pesca_tcm7-432184.pdf).

<sup>45</sup> Article 41 of the Control Regulation.

In Spain, competences over control and verification of engine power of fishing vessels are distributed between different authorities:

- On one hand, the Directorate General for Merchant Marine, which is part of the Spanish Ministry of Development, is responsible for the certification of fishing vessels engine power. Faculties on certification can be carried out together with other collaborating organisations authorised for that purpose.<sup>46</sup>
- On the other hand, competencies on control and verification of engine power fall within the competence of the MAPAMA, in collaboration with the DG for Merchant Marine. Following a risk-based analysis, the Directorate General for Fisheries Planning of the MAPAMA is responsible for undertaking data verification based on a representative sampling plan. The conduction of documentary checks, as well as physical verification are mainly carried out by official inspectors of the SGCI, together with the logistic support of inspectors of the Maritime Captain of the DG for Merchant Marine and external certification companies.

### 1.2.1. Controls over maritime fisheries under State competence

According to Law 3/2001, control and inspection in external waters requires the adoption of all necessary measures for guaranteeing compliance with maritime fisheries laws.<sup>47</sup> This includes measures to ensure that imported and exported fisheries products have been caught according to all international rules and are not IUU products.<sup>48</sup> Spanish control authorities are furthermore required to comply with obligations resulting from EU regulations, international conventions and treaties to which Spain is a party.<sup>49</sup>

Table 5.-Scope of the State General Administration inspection tasks

<b>At sea</b>	<ul style="list-style-type: none"> <li>• Waters under Spanish jurisdiction or sovereignty<sup>50</sup> <ul style="list-style-type: none"> <li>- Spanish, EU Members and third country fishing vessels.</li> <li>- Transhipments by EU or third countries fishing vessels.</li> <li>- Transhipments in which a Spanish fishing vessel participates.</li> <li>- Any other fishing activity.</li> </ul> </li> <li>• EU waters outside the sovereignty or jurisdiction of an EU Member State:           <ul style="list-style-type: none"> <li>- Any EU fishing vessel under the condition that EU requirements are met.<sup>51</sup></li> <li>- Any Spanish fishing vessel.</li> <li>- Transhipment operation in which a Spanish fishing vessel participates.<sup>52</sup></li> </ul> </li> </ul>
---------------	--

<sup>46</sup>Article 5 of Royal Decree 1549/2009, of 9 October, regarding the planning and management of the fishing sector and adapting to the European Fisheries Fund (BOE num.245, of 10.09.2009).

<sup>47</sup>Article 39 (1) of Law 3/2001.

<sup>48</sup> Article 40.1, *ibid.* In particular, those measures must be oriented to prevent, deter and eliminate the activity of stateless or flag of convenience fishing vessels as well as fishing vessels from third countries identified by international organisations as having been involved in IUU fishing operations. The control of nationals operating in fisheries abroad, regulated under Royal Decree 1134/2002, has been recognised as a good practice in Spain as provided in a study carried out for the European Parliament. See the Royal Decree 1134/2002, of 31 October, on the application of sanctions over maritime fisheries in external waters to Spanish nationals operating flag of convenience vessels (BOE num.262, of 01.11.2002). This text establishes a number of obligations: those nationals who choose to work in a third country vessel should notify it to MAPAMA, prior to enrolment and give information which includes the vessels registration details. As a result, a national can be prevented from involvement with vessels engaged in IUU activities. This aspect has been highlighted in the 2014 EP study 'Illegal, Unreported and Unregulated Fishing: Sanctions in the EU', available at:[http://www.europarl.europa.eu/RegData/etudes/STUD/2014/529069/IPOL\\_STU%282014%29529069\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2014/529069/IPOL_STU%282014%29529069_EN.pdf).

<sup>49</sup> Article 1 of Royal Decree 176/2003.

<sup>50</sup>Article 3, paras a), b) and e), *ibid.*

<sup>51</sup> The coastal State must authorise it in advance and a specific control and inspection programme must have been adopted (See Article 81 EU Control Regulation).

	<ul style="list-style-type: none"> <li>• In international waters             <ul style="list-style-type: none"> <li>- Any EU fishing vessel.<sup>53</sup></li> <li>- Transshipment operation in which a Spanish fishing vessel participates.</li> </ul> </li> <li>• In any third country waters             <ul style="list-style-type: none"> <li>- Any EU fishing vessel.<sup>54</sup></li> <li>- Transshipment operation in which a Spanish fishing vessel participates.</li> </ul> </li> <li>• Regional Fisheries Management Organisations (RFMO) waters if that is foreseen in the specific RFMO convention or rules, or if that is an obligation derived from the application of international treaties, conventions and agreements on fisheries.<sup>55</sup></li> </ul>
<p><b>In-land<sup>56</sup></b></p>	<ul style="list-style-type: none"> <li>• On loading platforms and ports:             <ul style="list-style-type: none"> <li>- Fishing gears and catches after their landing, before their first sale or before being transported, in cases where fisheries products are not sold in the landing fish auction.</li> <li>- Processing operations on board.</li> </ul> </li> <li>• In warehouse, fish auctions and other establishments and places in which fisheries products are deposited or discharged:             <ul style="list-style-type: none"> <li>- Before their first sale.</li> <li>- Before their transportation in case the fisheries products are not sold in the fish auction of the landing port.</li> <li>- Imported fisheries products, landed or discharged.</li> </ul> </li> </ul>

Source: Barreira A., Ruiz C., *et alter*, *op.cit.*

When exercising inspection functions, agents must follow the guidelines provided in the annual Fisheries Inspection Plan (FIP) prepared by the SGCI.<sup>57</sup> The FIP, which implements Article 46 of the Control Regulation on national control action programmes, establishes annual inspection objectives, taking into account the category of infringements which have, at any time, the highest incidence and cause major prejudice to fishing resources and the marine environment.<sup>58</sup> In addition, special plans within the FIP may be adopted to coordinate the tasks of national and AA.CC inspectors.<sup>59</sup>

Fisheries inspectors hold the status of ‘authority officials’, subject to the obligation to prove their identity and status during the exercise of their powers. Royal Decree 176/2003 provides for an exhaustive list of powers. These include, among others: access to relevant places, registers and retention of documents; the authority to halt vessels to be inspected, order the adoption of all necessary measures to facilitate the boarding of inspectors and halt the landing or unloading activities of any means of transport when there is evidence that those activities do not comply with the applicable legal requirements.<sup>60</sup> In line with Article 76 of the Control Regulation, when control officials suspect that an infringement of fisheries laws is taking place, they are immediately required to take inspection minutes (*‘actas de inspección’*) reflecting all

<sup>52</sup>Article 3, para. d), Royal Decree 176/2003.

<sup>53</sup>Article 3 (2 bis), *ibid.* The scope of inspections conducted by Spain shall also extend to international waters, or other Member States’ jurisdiction waters or their land territory (either as a national or EU inspection), on a case-by-case basis and where acting in accordance with the framework for cooperation and coordination for fisheries control and inspection of fishing activities provided in Regulation (EU) N° 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy (CFP Basic Regulation) (OJ L 354, of 28.12.2013).

<sup>54</sup>*Ibid.*

<sup>55</sup>Article 3.2. para. c), Royal Decree 176/2003.

<sup>56</sup>Article 3.2, paras. f) y g), *ibid.*

<sup>57</sup>Article 8.1, *ibid.*

<sup>58</sup> To determine priority actions, infringements with a higher incidence and damage to fisheries resources are taken into consideration, particularly the actions considered as serious and very serious infringements (Article 8.2., Royal Decree 176/2003). This means that, in general, inspections in Spain, both at State and AA.CC levels, are conducted based not only on precedent but also considering other emerging needs, including a commitment to respond to new legal requirements.

<sup>59</sup>Article 8.3, *ibid.*

<sup>60</sup> Article 4 (1), *ibid.*

the circumstances and the outcome of the inspection.<sup>61</sup> When an infringement is detected through a satellite monitoring system, officials must elaborate an inspection report containing the technical description of the suspected activity and certifying the geographical position of the fishing vessel in question.<sup>62</sup> For example, in 2015, the FMC carried out permanent satellite tracking of 2,136 Spanish fishing vessels and managed a total of 13,703,279 messages through satellite communication. As a result of the information sent through VMS, 61 inspection minutes were drafted that year which found breaches of fisheries laws.<sup>63</sup>

Under Spanish law, inspection minutes and reports are admissible evidence in administrative and judicial sanctioning proceedings. When maritime fisheries inspectors identify a potential infringement to the fishing management sector or to the marketing of fisheries products rules, they shall report it to the AA.CC competent authorities.<sup>64</sup>

In line with Article 78(1) of the Control Regulation, inspection and surveillance reports are uploaded to an electronic database called the Fisheries Surveillance Network<sup>65</sup> (*Red de Vigilancia Pesquera*, or REVIPES).

### 1.2.2. Controls over the planning and management of the fishing sector and marketing of fisheries products

The inspection powers of the AA.CC concerning planning and management of the fishing sector starts from the moment catches are landed or unloaded. Nevertheless, it is necessary to clarify that the State retains the competence to inspect the fishing gears and catches after the landing and unloading as at this stage; it is still a competence related to maritime fisheries in cases in which the fishing license has been granted by the MAPAMA. Meanwhile, inspection powers concerning marketing of fisheries products, notwithstanding their origin, start from their first sale in fish auctions in ports, or from their first sale<sup>66</sup> when products are not sold for the first time in such auctions.<sup>67</sup> Royal Decree 418/2015 regulates the first sale of fisheries products and establishes the basis of the Spanish traceability system. The register of first sales of fisheries products in Spain can only take place in fish auctions or in other establishments authorised by the AA.CC.<sup>68</sup>

---

<sup>61</sup> Article 38 (2) of Law 3/2001.

<sup>62</sup> Article 6 of Royal Decree 176/2003.

<sup>63</sup> MAPAMA Annual Report (2015), p.248.

<sup>64</sup> Article 6 (4), Decree 176/2003.

<sup>65</sup> It is not a publicly available database: <https://aplices.magrama.es/REVIPES/>.

<sup>66</sup> Royal Decree 418/2015, of 29 May, regulating the first sale of fisheries products (BOE num.149, of 23.06.2015). According to Article 5 of Royal Decree 418/2015, the following different modalities of first sale of fisheries products can take place:

- a) Products of extractive maritime fishing (live, fresh and chilled): first sale shall take place in fish auctions in ports.
- b) Shellfish products and other products coming from continental waters: first sale shall take place in fish auctions or other first sale places authorised by AA.CC, notwithstanding if they are located at port areas or not.
- c) Aquaculture products: first sale shall take place in fish auctions in ports, in production centres or in other places authorised by the AA.CC.
- d) Products of extractive maritime fishing stabilised on board or on land: first sale shall take place in fish auctions or in first sale places authorised by the AA.CC.

<sup>67</sup> Article 111 of Law 3/2001, as well as in Article 85 (5) of Law 1/2002, of 4 April on planning, promotion and control of Maritime Fisheries, Shellfishing and Maritime Aquaculture ("Law 1/2002") of the AC of Andalusia (BOJA num.106, of 03.05.2002).

<sup>68</sup> First sales of fisheries products originating from third countries will take place at the time of their entry into the Spanish territory, and their effective traceability and control are subject to validated catch certificates, according to the EU IUU Regulation.

AA.CC control authorities also have the status of ‘authority officials’, subject to a proof of their identity, unless secrecy of the operation is required. They can also take inspection minutes where a violation of fisheries laws takes place under their jurisdiction. Such inspection minutes must contain all the relevant information to secure the proper course of the sanctioning administrative procedure, if applicable.

In the **A.C of Andalusia**, provisions on control and inspection are regulated in Title X of Law 1/2002, of 4 April 2001. This A.C’s inspection powers extend over two fishing grounds: the Cádiz Gulf and the Mediterranean Sea. Andalusian law requires compliance not only with national fisheries laws but also with relevant EU provisions. This A.C is responsible for ordinary inspection procedures in relation to fishing activities in internal waters, shellfishing and marine aquiculture, management of the fishing sector and marketing activity of fisheries products at origin.<sup>69</sup> Such inspections can be conducted by the D.G for Fisheries and Aquaculture or the AGAPA in collaboration with the Police Unit of Andalusia.<sup>70</sup> In addition, extraordinary inspections can be conducted within the framework of a coordinated plan, when the Head of the Department of Agriculture, Fisheries and Rural Development considers it necessary or under special circumstances.<sup>71</sup> Extraordinary controls are undertaken in relation to the marketing of fisheries products at destination.<sup>72</sup> Since December 2016, Andalusia has been running a control programme on the traceability of fisheries and aquaculture products on the basis of the Control Regulation,<sup>73</sup> in accordance with national Royal Decree 418/2015 and Andalusian Decree 147/1997.<sup>74</sup>

In addition, Andalusia is implementing the 2017 Fisheries Inspection Plan<sup>75</sup> which, in line with the MAPAMA FIP, identifies control priority actions at the regional level on the basis of previous infringements with the highest incidence levels and which are causing major prejudice to fishing resources and the marine environment. Thus, one of the main elements is precedent but there are also some other elements used following the MAPAMA FIP.<sup>76</sup> Some of the most relevant priority actions on inspection in this A.C are:

---

<sup>69</sup>Ordinary controls over the marketing activity of fisheries products at origin include inspections at *fish auctions* and dispatch centres in order to verify that first sales take place at authorised places. Marketing of fisheries products at origin refers to the process followed by fresh or frozen products, as well as products processed on board and includes any of these activities: i) their landing in ports of the A.C of Andalusia or their introduction in the territory of this region without having been subject to first sale; ii) their transport to an establishment authorised as a market of origin; iii) their display for first sale in the market of origin and their first sale; and iv) their dispatch to markets of destination (retail places and business, as well as wholesale business) (Article 62 of Andalusian Law 1/2002).

<sup>70</sup> Article 85 of Law 1/2002.

<sup>71</sup> Article 86, *ibid*.

<sup>72</sup> Order of 15 November 2005, regulating the exercise of extraordinary inspection functions by the Fisheries Inspection in the fields corresponding to the management of marketing of fisheries products at destination (BOJA num.230, of 24.11.2005). Marketing of fisheries products at destination refers to the process followed by fisheries products after their dispatch (once the first sale has taken place), or from the start of their transport when the products are not subject to first sale at fish auctions. Marketing at destination includes the following activities: i) transport and distribution; ii) storage, handling, processing and packaging; iii) exhibition, display on the market and sale to wholesale markets, retail places and business; and iv) offer for consumption in restaurants (Article 68 of Law 1/2002).

<sup>73</sup> Available at: [http://www.juntadeandalucia.es/export/drupaljda/PC\\_TRAZABILIDAD\\_2017.pdf](http://www.juntadeandalucia.es/export/drupaljda/PC_TRAZABILIDAD_2017.pdf).

<sup>74</sup> Decree 147/1997, of 27 May, managing, regulating and promoting the marketing of fisheries products (BOJA num. 70, of 19.06.1997). Nevertheless, to update this regulation in line with EU and State rules, Andalusia has developed a new draft Decree with the same title, which is expected to be approved in 2017. Info on the draft text available at: <http://www.juntadeandalucia.es/servicios/normas-elaboracion/detalle/98730.html>.

<sup>75</sup> Available at: <http://www.juntadeandalucia.es/organismos/agriculturapescaydesarrollorural/areas/pesca-acuicultura/inspeccion-control/paginas/plan-inspeccion-pesca-maritima-acuicultura-marina.html>.

<sup>76</sup>See above.

- Control of bluefin tuna marketing, to ensure effective traceability throughout all market stages and to guarantee the legal origin of the product;
- Eradicate poaching, defined as fishing or shellfishing activities that use fishing gears without a corresponding authorisation, and aim to sell catches in the market;
- Control of bluefin tuna caught by unauthorised fishing vessels (this illegal fishery takes place in areas of Estrecho de Gibraltar, Levante Almeriense and Alborán Sea);<sup>77</sup>
- Verifying that all fisheries products comply with relevant regulations on minimum sizes and common marketing standards, and that species with zero quota or exceeding the allocated TACs as well as those banned or subject to closure, are prevented from entering into the market.

In the **A.C of Galicia**<sup>78</sup> provisions on control and inspection are detailed in Title XII of the Galicia Fisheries Law 11/2008, of 3 December 2008,<sup>79</sup> and in Law 2/2004, of 21 April 2004,<sup>80</sup> which created the Coastguard Service of Galicia (today, the Sub-directorate General of Coastguards). When conducting control operations, these officials are required to respect the principles contained in Article 2 of Law 2/2004.<sup>81</sup> The scope of the inspection activity is generally defined under Galician law, which refers to the control of establishments and exploitation activities or marine resources at production and marketing stages, including transport and final consumption.<sup>82</sup> Regional law does not provide further information on how the Galician control system actually works. Such inspections can be also conducted with the collaboration of other national control authorities, as well as with the Police Unit of Galicia.<sup>83</sup>

The A.C of Galicia operates on the basis of a fisheries inspection plan which contains priority actions also based on previous infringements with the highest incidence rates and which are causing major prejudice to fishing resources and to the marine environment. These priority actions concern four main subjects: (i) fisheries control and inspection; (ii) sanitation in primary production and food safety; (iii) aquatic animal health; and (iv) control on the marketing of fisheries products. This A.C runs a control programme over the traceability of fisheries and aquaculture products coordinated by the Sub-directorate General of Coastguards

---

<sup>77</sup>The DG for Fisheries and Aquaculture has several investigations opened in collaboration with the Spanish Civil Guard (SEPRONA) in order to detect such type of infringements and, when this has not been possible, they have been monitoring the place where these catches are destined or sold illegally in the market. Some news covering this matter is available online at: <http://sevilla.abc.es/andalucia/cadiz/20150814/sevi-cerco-pesca-ilegal-atun-201508141704.html> and <http://www.ideal.es/almeria/provincia-almeria/201410/28/intervienen-atun-rojo-kilos-20141028122853.html>.

<sup>78</sup> Article 37 (3) of the Autonomy Statute of Galicia recognises the AC competencies on inspection over those matters falling within its exclusive jurisdiction, such as fisheries in internal waters, shellfish, aquaculture and the management of the fishing sector.

<sup>79</sup> Law 11/2008, of 3 December, of Fisheries of Galicia, amended by Law 6/2009, of 11 December, amending Law 11/2008, of 3 December, of Fisheries of Galicia (DOG num.243, of 15.12.2009).

<sup>80</sup> Law 2/2004, of 21 April, concerning the creation of the Coastguard Service of Galicia, amended by Law 10/2010 of 11 November (DOG num 78, of 23.04.2004).

<sup>81</sup>These operational principles are: a) Performing their function in accordance with the Spanish Constitution, the Statute (Constitution) of Galicia and the rest of the Spanish legal order; b) Performing their function with impartiality and without any discrimination on grounds of race, sex, nationality, religion or opinion; c) Operating with integrity and dignity; d) Implementing their profession with regard to the principles of hierarchy and respect to subordinates; e) Collaborating with the different administrations and authorities; f) Providing at any time a correct treatment when dealing with citizenship; g) Exercised with reasonable care and as quickly as necessary under the principles of congruency, opportunity and proportionality; h) Keeping the secret in relation to all information derived from the implementation of their functions.

<sup>82</sup>Article 3 (4), of Law 2/2004.

<sup>83</sup> Article 4 (3), *ibid*.

of Galicia. It must be highlighted that these documents are not publicly available and access to implementation data concerning the fisheries control system in this A.C is very limited.<sup>84</sup>

Galicia controls the traceability of fisheries products through the implementation of a fisheries technological platform: '*plataforma tecnológica de pesca*' and the installation of TICPESC machines.<sup>85</sup>

### 1.3. Spanish system for infringements and penalties on fisheries

Fisheries enforcement in Spain is mainly based on a combination of provisional measures and administrative sanctions. In addition, the Spanish Criminal Code<sup>86</sup> provides for specific criminal offences concerning the protection of flora, fauna and domestic animals and refers to fishing and shellfishing activities in its Book II, Title XVI, Chapter IV. However, there are other criminal offences included in the Criminal Code which apply when fighting IUU fishing, such as money laundering or document fraud.

It is important to highlight that under the Spanish legal order, the *non bis in idem* principle applies: the same act cannot be punished both by an administrative and a criminal sanction.<sup>87</sup> It is the administrative Maritime Fisheries Law which lists administrative infringements and corresponding sanctions whereas the Criminal Code gives a list of crimes or offenses and of corresponding penalties.

The Spanish fisheries administrative sanctions system is described in Title V of the State Maritime Fisheries Law 3/2001 which:

- i) Establishes administrative infringements and penalties concerning maritime fisheries in external waters which fall under the jurisdiction of the MAPAMA<sup>88</sup>; and
- ii) Establishes the basic rules regarding the treatment of infringements, including with respect to penalties. These rules should be developed and applied by AA.CC authorities when violations within the scope of planning management of the fisheries sector and marketing take place.

Law 3/2001 was later on amended by Law 33/2014 in order to adapt the Spanish enforcement system to the EU Control and IUU Regulations requirements.

#### 1.3.1. Determination of what constitutes serious administrative infringements to the CFP rules

Law 3/2001 contains a wide list of infringements for violations of fisheries law classified in three categories: minor infringements, serious infringements and very serious infringements.

---

<sup>84</sup> Phone interview with the Head of the Service for Inspection and Control of Resources of the Sub-Directorate General of Coastguards of Galicia; IIDMA was informed about the existence of such inspection plan in Galicia and asked about its publicity. According to such authority, the plan is not available for the public since it contains strategic operations on fisheries inspection of confidential character.

<sup>85</sup> The fisheries technological platform works as a database to collect information and provide management tools to fisheries production and marketing sectors, in order to support the control of fisheries resources and its traceability. The TICPESC project consists on the installation of electronic terminals at Galician ports aimed to facilitate administrative procedures through the use of intelligent cards at any time. Information available at: <http://www.laopinioncoruna.es/mar/2017/06/07/mar-resalta-garantias-ofrece-galicia/1188544.html>.

<sup>86</sup> Organic Law 10/1995, of 23 November, of Criminal Code (BOE num.281, of 24.11.1995).

<sup>87</sup> Article 11 of Royal Decree 182/2015, of 13 March, approving the proceedings for the sanctioning regime over maritime fisheries in external waters (BOE num. 63, of 14.03.2015).

<sup>88</sup> Regulated in Chapter III of Law 3/2001.

These are also divided into those related to maritime fisheries<sup>89</sup> and those related to the planning and management of the fisheries sector and to the marketing of fisheries products.<sup>90</sup> After the amendments introduced by Law 33/2014, new infringements on fisheries were established, including those concerning IUU fishing.<sup>91</sup>

Serious **infringements concerning maritime fisheries in external waters** are those defined in Article 100 of Law 3/2001, and are classified depending on whether they concern: the fishing activity, control and inspection, species, or the use of fishing gears, instruments and fishing equipment in contravention of the applicable rules. Meanwhile, serious **infringements related to the planning and management of the fishing sector and marketing of fisheries products** are defined in Article 103. The majority of the infringements established under national Law 3/2001 are reflected in both Andalusian and Galician legislation. While in some cases AA.CC laws develop national provisions in further detail, in others they just mirror what is stated in national provisions.<sup>92</sup> In addition, for those cases where the AA.CC legislation does not include a category of infringement foreseen in Chapter III of Law 3/2001, the AA.CC is bound to follow the basic national provisions when a violation of fisheries regulations occurs.

Although Spanish law provides a wider list of infringements, it also specifically defines serious infringements mentioned in Article 42 of the IUU Regulation and the twelve categories of infringements defined in Annex XXX of the Control Regulation Implementing Regulation. However, serious infringements Nº 11 and 12 of Annex XXX (concerning IUU fishing and stateless vessels) were introduced more restrictively within Spanish legislation, being classified as very serious infringements.<sup>93</sup>

Nevertheless, two categories of serious infringements (those defined in Article 90 (1) paragraphs b) and c) of the Control Regulation) are regulated only in general terms. The infringement contained in paragraph b)<sup>94</sup> is classified under Spanish law as a serious infringement concerning the management of the fishing sector (thus a competence of the AA.CC) and defined as *“Non-compliance with the regulations in force concerning engine powers or other parameters established for vessels (...)”*.<sup>95</sup> Likewise, the infringement defined in paragraph c) of Article 90 (1) of the Control Regulation<sup>96</sup> is introduced as a serious infringement in Spanish law but broadly defined as *“Non-compliance with regulations on total allowable catches or landings permitted”*.<sup>97</sup> This might represent a concern when enforcing the landing obligation set in Article 15 of the CFP Regulation, taking into consideration the different formulation used in the Control Regulation.

---

<sup>89</sup>Articles 99 to 101, *ibid.*

<sup>90</sup>Articles 102 to 104, *ibid.*

<sup>91</sup>In particular 2 new minor infringements, 11 serious and 2 very serious in relation to maritime fisheries in external waters were introduced, as well as 4 serious infringements and 1 very serious infringement concerning the management of the fishing sector and marketing activity.

<sup>92</sup> See title XIV, Chapter II of Galician Law 11/2008 and Title XI, Chapter II of Andalusian Law 1/2002.

<sup>93</sup> Infringements Nº 11 and 12 of Annex XXX of the Control Regulation Implementing Regulation are regulated in Article 101 paragraphs k) and l) of Law 3/2001.

<sup>94</sup> Article 90 (1) para. b) of the Control Regulation: *“(b) the manipulation of an engine with the aim of increasing its power beyond the maximum continuous engine power according to the engine certificate”*.

<sup>95</sup>Article 103, para. e) of Law 3/2001.

<sup>96</sup>Article 90 (1), para. c) of the Control Regulation, amended by Article 7 (14) of Regulation (EU) 2015/812 of the European Parliament and of the Council of 20 May 2015 (OJ L 133, of 29.05.2015): *“the failure to bring and retain on board the fishing vessel and to land any catches of species subject to the landing obligation set out in Article 15 of Regulation (EU) No 1380/2013, unless the bringing and retention on board and the landing of such catches would be contrary to obligations or subject to exemptions provided for in the rules of the common fisheries policy in fisheries or fishing zones where such rules apply”*.

<sup>97</sup>Article 100 (3), para. g) of Law 3/2001.

Violations concerning IUU fishing falling within the management of the fishing sector category are classified as very serious infringements under national law.<sup>98</sup> Given that Andalusian and Galician regulations were adopted prior to Law 33/2014, their penalty systems do not refer directly to this category of infringements. In any case, given the distribution of competences, the State provides for basic legislation in the planning and management of the fishing sector and AA.CC must respect them. Therefore, the national provisions on IUU fishing must be respected and applied by Andalusia and Galicia.

Limitation terms applying to fisheries infringements differ in accordance to the seriousness of violations. Very serious infringements expire at 3 years, serious infringements at 2 years, and at 1 year for the minor ones.<sup>99</sup> Through Law 33/2014, the limitation period for minor infringements was extended from 6 months to 1 year. In any case, these short periods may not allow for an effective prosecution of those most serious infringements of fisheries laws. However, it must be emphasised that if a sanctioning procedure is opened within those terms, the limitation term is suspended but if a sanctioning procedure is not opened within those terms, then the infringement cannot be prosecuted anymore.

### 1.3.2. Provisional measures

In line with Article 91 of the Control Regulation, there is a possibility under Spanish law to adopt provisional measures from the moment there is knowledge that an infringement has taken place, or after an administrative sanctioning procedure has started. Such measures are detailed in Article 97 of Law 3/2001 and Article 17 of Royal Decree 182/2015. According to those articles, provisional measures can be cumulative and must be adopted in writing and in a motivated form with the purpose of guaranteeing the good end of the proceeding, ensuring the effectiveness of the resolution that might be adopted, avoiding maintenance of the effects of the breach, and guaranteeing the protection of the general interest.<sup>100</sup> The adoption of these measures shall be based on a reasonable judgment, choosing the measures causing the least damage to the legal status of the offender.<sup>101</sup>

Spanish law provides different types of provisional measures, and they apply only when serious or very serious infringements are committed. These are: suspension of fishing authorisations; vessel boarding and retention and seizure of fishing gears, catches or fisheries products as well as of goods obtained as a result of the infringement committed including the monetary amount resulting from the sale of goods or products seized.<sup>102</sup> The law includes three types of provisional measures which may be adopted in cases of minor infringements. These include: re-routing the vessel to port, temporary suspension of activities and the deposit of a guarantee which cannot exceed the total of the fine that could be imposed for the suspected infringement. Apart from these, the Spanish national law calls for the adoption of the enforcement measures considered under international and EU law regarding the fight against IUU fishing.<sup>103</sup>

Provisional measures must be adopted under reasoning, and confirmed, modified or drawn up at the start of the administrative sanctioning procedure within a period of 15 days from their adoption. Otherwise, they will have no legal effects.<sup>104</sup> These measures may also be adopted

---

<sup>98</sup>Article 104, para. c), *ibid.*

<sup>99</sup>Article 93, *ibid.*

<sup>100</sup>Articles 17 (1) of Royal Decree 182/2015 and 97 (1) of Law 3/2001.

<sup>101</sup>Article 97 (5) of Law 3/2001.

<sup>102</sup>Article 97 of Law 3/2001 and Article 17 (2) of Royal Decree 182/2015.

<sup>103</sup>Article 97 (2) of Law 3/2001.

<sup>104</sup>Article 17 (4) of Royal Decree 182/2015.

for reasons of emergency or necessity under verbal form, subject to a formal adoption within a period of not less than 5 days after their verbal adoption. Provisional measures will lose their effect once a final administrative decision is adopted.<sup>105</sup>

### 1.3.3. The administrative sanctioning procedure and type of sanctions

The administrative sanctioning procedure to be followed for infringements of maritime fisheries rules in external waters is described in Royal Decree 182/2015, of 13 May 2015. In Galicia, sanctioning procedures for violations of fisheries regulations falling within the jurisdiction of the AA.CC are established in Title XIV, Chapter IV of Galician Law 11/2008. The Spanish Administrative Procedure Law 39/2015, of 1 October 2015<sup>106</sup> also applies. In the case of Andalusia, Law 39/2015, of 1 October is the applicable regulation.

**Table6.- Competent authorities to initiate a sanctioning procedure (depending on the type of infringement)**

Maritime fisheries	Planning and management of the fisheries sector and the marketing of fisheries products	
State General Administration	Galicia	Andalusia
<p style="text-align: center;"><b>Government Delegates in the AA.CC<sup>107</sup></b></p> <ul style="list-style-type: none"> <li>• If infringements are committed by national fishing vessels: Government Delegate of the A.C where the home port of the vessel is located.</li> <li>• If infringements are related to recreational fisheries, or are not linked to any vessel: Government Delegate of the A.C where the infringement has taken place.</li> <li>• If infringements are linked to non-national fishing vessels: Government Delegate of the A.C where the port of arrival is located.</li> </ul>	<p><b>Head of the Sea Ministry territorial office<sup>108</sup></b></p>	<p><b>Provincial Delegate of the Fisheries Department<sup>109</sup></b></p>

Source: Own elaboration

The maximum timeline to proceed, take a decision and notify the sanctioning decision is of six months for minor infringements and nine months for serious and very serious infringements. Otherwise, the delay to take a final decision through the sanctioning procedure expires and the authority has then to declare the expiration of such a procedure. It can open a new sanctioning procedure after, if the limitation term has not lapsed.<sup>110</sup>

The general rules regarding administrative sanctions for violations of fisheries laws are found in Chapter IV of Law 3/2001. In addition to financial sanctions, the national law provides for a list of sanctions which may apply when there is a breach of fisheries laws at both State and regional levels. These administrative sanctions may be cumulative, where appropriate, and may differ depending on the seriousness of the infringement committed as follows:<sup>111</sup>

<sup>105</sup> Article 17 (9), *ibid*.

<sup>106</sup> BOE num236, of 02.10.2015.

<sup>107</sup> Article 3, Royal Decree 182/2015. In exceptional cases where required by economic, social, legal or territorial circumstances, through motivated resolution, the procedure may be initiated by the SGP.

<sup>108</sup> Article 153, Law 11/2008.

<sup>109</sup> Available

at:

[https://www.juntadeandalucia.es/ciudadania/web/guest/procedimientos?p\\_p\\_id=catalogoProcedimientos\\_WAR\\_catalogoProcedimientosportlet&p\\_p\\_lifecycle=0&p\\_p\\_col\\_id=column-2&p\\_p\\_col\\_count=2&catalogoProcedimientos\\_WAR\\_catalogoProcedimientosportlet\\_cmd=detalle&p\\_r\\_p\\_564233524\\_idProcedimiento=975](https://www.juntadeandalucia.es/ciudadania/web/guest/procedimientos?p_p_id=catalogoProcedimientos_WAR_catalogoProcedimientosportlet&p_p_lifecycle=0&p_p_col_id=column-2&p_p_col_count=2&catalogoProcedimientos_WAR_catalogoProcedimientosportlet_cmd=detalle&p_r_p_564233524_idProcedimiento=975)

<sup>110</sup> Article 14, Royal Decree 182/2015.

<sup>111</sup> Article 105, Law 3/2001.

**Table 7.-Type of administrative sanctions in accordance with the infringement committed**

Minor infringements	Serious infringements	Very serious infringements
Warning	Public reprimand	Financial sanctions
Public reprimand	Financial sanctions	Attribution of points
Financial sanctions	Attribution of points	Inability to exercise fishing activities (max. 5 years)
Seizure of fishing catch, products or goods obtained as a result of the infringement.	Inability to exercise fishing activities (max. 3 years)	Seizure of fishing gears
Inability to obtain loans, subsidies or public aid (max. 2 years)	Seizure of fishing gears in case of infringements concerning species and use of fishing gears.	Seizure of fishing catch, products or goods obtained as a result of the infringement.
Temporary detention of the vessel (max. 6 months)	Seizure of fishing catch, products or goods obtained as a result of the infringement.	Suspension, removal or non-renewal of authorisations, licences or permits (max. 7 years)
Suspension of the status of approved economic operator (max. 2 years)	Suspension, removal or non-renewal of authorisations, licences or permits (max. 3 years)	Inability to obtain loans, subsidies or public aid (max. 7 years)
	Inability to obtain loans, subsidies or public aid (max. 3 years)	Vessel seizure
	Temporary detention of the vessel (max. 1 year)	Temporary detention of the vessel (max. 3 years)
	Suspension of the status of approved economic operator (max. 3 years)	Suspension of the status of approved economic operator (max. 7 years)
	Reduction or cancellation of rights or fishing opportunities in case of infringements concerning control and inspection, and species.	Reduction or cancellation of rights or fishing opportunities.

Source: Own elaboration

Pursuant to the EU Control Regulation, Member States shall ensure that administrative sanctions for serious infringements are effective, proportionate and dissuasive.<sup>112</sup> Sanctions must be capable of producing results proportionate to the seriousness of the infringement and must be calculated on the basis of the financial advantage achieved or envisaged when committing the infringement.<sup>113</sup> Under Spanish law, financial sanctions concerning maritime fisheries in external and internal waters or the planning and management of the fishing sector and marketing must be imposed gradually in accordance with the seriousness of the infringement, as follows:<sup>114</sup>

- From 60 to 600 EUR, in case of minor infringements;
- From 601 to 60,000 EUR, in case of serious infringements;
- From 60,001 to 600,000 EUR, in case of very serious infringements;

It must be pointed out that Law 33/2014 introduced a significant amendment by doubling the maximum amount of penalties in case of very serious infringements, which was previously established between 60,001 and 300,000 EUR.

<sup>112</sup> Article 90 (2) of the Control Regulation.

<sup>113</sup> Articles 89 and 90 of the Control Regulation.

<sup>114</sup>Article 106, Law 3/2001.

Regarding the different tranches within each category of infringement, and in accordance with Article 90 (1) of the Control Regulation, the administrative sanctioning authority must impose the penalty at their minimum, medium or maximum grade taking into consideration the following **specific criteria**:<sup>115</sup>

- i) The economic benefit obtained or envisaged as a consequence of the infringement;
- ii) The size and engine power of the fishing vessel;
- iii) The value and nature of the prejudice caused to fishing resources, to third parties, public domain goods, or to areas under environmental or fisheries protection;
- iv) The possibilities for restitution of the damage caused;
- v) The existence of aggravating circumstances, such as, among others: the degree of intentionality and repetition (provided that repetition takes place within a period of 3 years since the previous infringement); the continuation of the offence; undertaking illegal fishing activities in closed or prohibited areas; the overexploitation status of the fisheries resources concerned; the threatening of public health or human lives as a result of the infringement

The Galician law also provides as a criterion to consider *“the price at fish auctions of the species caught, cultivated, transported and placed in the market”* when there is a violation to the planning and management rules of the fishing sector and of marketing rules.<sup>116</sup>

The level of financial sanctions at a minimum, medium or maximum grade works as follows:

- Minor infringements {
  - 1. ° minimum grade: from 60 to 200 EUR
  - 2. ° medium grade: from 201 to 400 EUR
  - 3. ° maximum grade: from 401 to 600 EUR
  
- Serious infringements {
  - 1. ° minimum grade: from 601 to 15,000 EUR
  - 2. ° medium grade: from 15,001 to 40,000 EUR
  - 3. ° maximum grade: from 40,001 to 60,000 EUR
  
- Very serious infringements {
  - 1. ° minimum grade: from 60,001 to 120,000 EUR
  - 2. ° medium grade: from 120,001 to 240,000 EUR
  - 3. ° maximum grade: from 240,001 to 600,000 EUR

In line with Article 89(3) of the Control Regulation and without prejudice to the imposition of other administrative sanctions, Spanish law provides the possibility to adopt a system of fines, whose amount must be proportionate to the turnover of the legal person or to the financial advantage achieved or envisaged. However, under Spanish law, the amount of each of these fines must not exceed, in any case, 20% of the value of the financial sanction corresponding to the category of infringement committed.<sup>117</sup>

**Table 8.-Competent authorities for imposing administrative sanctions depending on the seriousness and amount of the fine**

<sup>115</sup> Article 106 (3) of Law 3/2001, and Article 13 (1), (2) and (3) of Royal Decree 182/2015.

<sup>116</sup> Art. 140.1. para. f) of Galician Law 11/2008.

<sup>117</sup> Art. 105.3, Law 3/2001.

Jurisdiction	Minor infringements	Serious infringements	Very serious infringements
AC of Andalusia <sup>120</sup>	Government Delegates	General Director for Fisheries and Aquaculture Resources	General Secretary for Fisheries (sanctions < 300,000 EUR)
			Minister of Agriculture and Fishing, Food and Environment (sanctions > 300,000 EUR)
	Head of the Territorial Delegation of <i>Conselleria del Mar</i>	Head of the Territorial Delegation of <i>Consellería del Mar</i> (sanctions < 15,000 EUR)	<i>Consellero del Mar</i> (Minister) (sanctions > 60,000 EUR)
		Sub-Director General for Fisheries and Fisheries Market (sanctions between 15,000-60,000 EUR)	
	Regional Delegate of the Department of Agriculture, Fishing and Rural Development	General Director for Fisheries and Aquaculture	Regional Ministry for Aquaculture, Fisheries and Rural Development

Source: Barreira A., Ruiz C., *et al.*, *op.cit*

### 1.3.4. Criminal sanctions

If, during the course of a sanctioning administrative procedure, a Spanish competent authority considers that a violation of the fisheries law can also entail a criminal offence, it shall report it to the Public Prosecutor. If there is an identity of subjects, facts and legal grounds between the administrative infringement proceedings and the criminal offence proceedings, the sanctioning authority shall pronounce the suspension of the administrative proceedings until the end of the criminal ones. In any case, administrative sanctioning authorities are bound by the facts declared proven by the judgment of the criminal court.<sup>121</sup>

Articles 334, 335 and 336 of the Spanish Criminal Code provide for specific criminal offences in relation to fishing and shellfishing activities. However, these offences are exclusively linked to the protection of flora, fauna, and domestic animals (i.e., fishing or trafficking of protected and endangered fisheries species). Different criminal sanctions are foreseen for these types of offences such as imprisonment (from 6 months to 2 years maximum); monetary penalties; and the inability to exercise the right to fish. Notwithstanding the above, although the Criminal Code does not expressly include offences concerning IUU fishing, such illegal conducts can involve not only environmental offences but also other type of criminal offences. These include, among others: money laundering (sanctioned with a minimum imprisonment period of 6 months to 6 years and a fine of up to three times the value of goods); fiscal fraud when the defrauded amount exceeds 120,000 EUR (minimum imprisonment of 1 to 5 years and a fine of up to six times the referred amount); or a criminal organisation<sup>122</sup> (minimum imprisonment of 4 to 8 years if the organisation has the purpose or object of committing serious infringements, or from 3 to 6 years in all other cases).<sup>123</sup>

<sup>118</sup> Art. 112, paras. a), b), c) and d), *ibid.*

<sup>119</sup> Art. 153.3, paras. a), b) and c) of Galician Law 11/2008.

<sup>120</sup> Art. 121, paras. a), b) and c) of Andalusian Law 1/2002.

<sup>121</sup> Art. 11, Royal Decree 182/2015.

<sup>122</sup> The Spanish Criminal Code punishes those who promote, constitute, coordinate or manage a criminal organisation. Those participating actively in the organisation, taking part of it or cooperating economically are also sanctioned with at least imprisonment from 2 to 5 years, if the purpose or aim of the organisation is the commission of serious infringements, and from 1 to 3 years in all other cases (Article 570 bis Criminal Code).

<sup>123</sup> Articles 301-302; 305 and 570 bis of the Spanish Criminal Code.

### 1.3.5. The Spanish penalty point system

Under Article 92 of the Control Regulation, Member States shall apply a penalty point system for serious infringements of the CFP to fishing license holders and masters of fishing vessels. This obligation was brought into Spanish law through Royal Decree 114/2013, of 15 February 2013,<sup>124</sup> which describes the implementing rules for the penalty point system for serious infringements committed at State and AA.CC levels.

Although the deadline to adopt the penalty point system was July 2012,<sup>125</sup> Royal Decree 114/2013 was only approved in February 2013, thus Spain was late in fulfilling such obligation.

The Spanish provisions on the application of the penalty point system to **holders of fishing licences** are in line with the EU Control Regulation,<sup>126</sup> and foresee the assignment of points for the categories of serious infringements listed in Article 42 (1)(a) of the IUU Regulation, in accordance with Annex XXX of the Control Regulation Implementing Regulation.<sup>127</sup> Such serious infringements are included in Articles 100 and 101 of Law 3/2001. Although Royal Decree 114/2013 contains detailed provisions on the functioning of the points system, it calls for the direct application of Title VII of the Control Regulation Implementing Regulation on the point system for serious infringements.<sup>128</sup>

The assignment of points for serious infringements to the CFP is accessory to the corresponding administrative sanctions. Its application is not automatic; it must be included in the final decision of the administrative sanctioning authority. The assignment of points to fishing licence holders and masters is done by the SGP in the case of serious infringements within maritime fisheries in external waters. In the case of serious infringements within maritime fisheries in internal waters and shellfishing, the appropriate amount of points is assigned by the AA.CC competent authorities.<sup>129</sup>

Spanish law is in line with EU provisions concerning the cases of suspension and permanent withdrawal of a fishing licence when the holder of the fishing vessel accumulates a certain number of points (18, 26, 54 and 72, and 90).<sup>130</sup> However, one inconsistency has been identified: national law only provides for an obligation to report to the National Register of Fishing Vessels and to the EU Fishing Fleet Register the permanent withdrawal of a fishing licence, but not its suspension, contrary to what is requested in Article 131 of the Control Regulation Implementing Regulation.<sup>131</sup>

Article 131(3) of the Control Regulation Implementing Regulation requires the update of such data on relevant lists of fishing vessels, detailing the points assigned, and resulting suspensions or permanent withdrawals in the secure part of the website described in Article 116 of the Control Regulation. Although Spain was late in fulfilling the obligation to create its official website, the SGCI has confirmed that it is operational now. Apparently, the secure area covers

---

<sup>124</sup> Royal Decree 114/2013, of 15 December, regarding the creation and regulation of the national register of serious infringements to the common fisheries policy, the establishment of application rules of the penalty point system, and updating the amount of sanctions foreseen in Law 3/2001, of 26 March, of State Maritime Fisheries (BOE num.51, of 28.02.2013).

<sup>125</sup> Article 134, Control Regulation.

<sup>126</sup> Articles 7 and 8 of Royal Decree 114/2013.

<sup>127</sup> Article 6, *ibid.*

<sup>128</sup> Article 7 (8), *ibid.*

<sup>129</sup> Article 3, *ibid.*

<sup>130</sup> Articles 7 (3) and (4), *ibid.*

<sup>131</sup> Article 7 (4), *ibid.*

all the information legally required to be downloaded on the Spanish Fisheries Information System (*'Sistema de Información Pesquera español'*, or SIPE).<sup>132</sup>

The Control Regulation leaves it up to Member States to determine under which conditions the penalty point system will apply to **masters of fishing vessels**. Royal Decree 114/2013 provides for a specific number of points whose accumulation by the master will trigger the inability to exercise fishing activities for a certain period of time, as follows: 30 points (2 months inability); 70 points (4 months); 100 points (8 months); and 130 points (one year).<sup>133</sup> When that decision is taken, it must be reported by the SGP or the AA.CC authority to the Directorate General for Merchant Shipping and the Social Institute for the Navy.<sup>134</sup>

#### 1.4. The national register of infringements

The creation of the national register of infringements to the CFP rules was made in Spain through the approval of Royal Decree 114/2013.<sup>135</sup> In line with Article 93 of the Control Regulation, that Royal Decree provides for the establishment and rules for the operation of the national register for infringements to the CFP rules committed in external and internal waters by Spanish flagged fishing vessels or by Spanish nationals, including those prosecuted in other Member States, indicating the sanctions imposed and the number of points assigned.<sup>136</sup>

While regulating the functioning of the national register, Royal Decree 114/2013 reflects almost literally the provisions in Article 93 of the Control Regulation. Although Spanish law constantly refers to a *"national register for serious infringements"*, it requires the registering of *"all infringements to the CFP rules considered as serious and defined in Regulation (EC) 1224/2009 of 20 November 2009, and in Annex XXX of Regulation 404/2011, of 8 April 2011 either committed in external or internal waters"*.<sup>137</sup> Accordingly, the Spanish register must include all those infringements to the CFP rules provided by Article 90 (1) of the Control Regulation and the 12 categories of infringements regulated in Annex XXX of the Control Regulation Implementing Regulation, which are subject to penalty points.

While transposing the obligation in Article 93 of the Control Regulation, we understand that Royal Decree 114/2013 has made use of the expression *"serious infringements"* because all categories of infringements to the CFP rules defined under the Control and IUU Regulations are, in fact, classified as serious. Thus, the obligation in Article 93 has been correctly transposed into the Spanish legal system.

Under Royal Decree 114/2013, this register is defined as an *"official administrative register with public character"*.<sup>138</sup> In addition to Spanish law not defining *"public character"*, data contained in the register is not accessible via standard internet searches. Several requests on this matter were filed to the Sub-Directorate General for Legal Affairs of the SGP, asking about the publicity of the register and whether access to the register data is possible via a request to

---

<sup>132</sup>Phone call with the Deputy Assistant Director of the SGCI.

<sup>133</sup>Article 8 (4), Royal Decree 114/2013.

<sup>134</sup> Article 8 (5), *ibid*.

<sup>135</sup> Articles 4 and 5, *ibid*. See MAPAMA press release regarding the approval of the national register for serious infringement of the CFP rules, available at: <http://www.mapama.gob.es/es/prensa/noticias/el-gobierno-aprueba-la-creaci%C3%B3n-de-un-registro-nacional-de-infracciones-a-la-pol%C3%ADtica-pesquera-com%C3%B1a-/tcm7-263344-16>.

<sup>136</sup>Article 2, Royal Decree 114/2013.

<sup>137</sup>Preamble, para. 14 of Royal Decree 114/2013.

<sup>138</sup>Article 2 (1), *ibid*.

public access of information. At the time of finalising this report, the SGP had not replied to our request.

The SGP is competent for the management, conservation and maintenance of the register. Data on serious infringements concerning maritime fisheries in external waters shall be registered by the SGP within a maximum period of one month following the adoption of the final decision by the administrative sanctioning authority.<sup>139</sup> Until that moment, the imposed sanctions and assigned points shall be registered with provisional character. Serious infringements committed in relation to fisheries in internal waters and shellfishing shall be registered by the AA.CC competent authorities as required under Royal Decree 114/2013.<sup>140</sup> In fact, Spanish law stresses the need to use such register, with IT support, in order to ensure that all competent authorities concerned have access to the data contained therein.<sup>141</sup>

However, it seems the AA.CC competent authorities do not have direct access to the national register at the time of registering detected infringements to the CFP.<sup>142</sup> This means a lack of transparency and effective connection between the competent national and regional authorities, which makes necessary the implementation of technical means to facilitate both access to data contained at the register and further coordination of fisheries protection policies implemented at State and regional levels.

Registration of such data brings to an end the administrative proceedings, although the decision may be subject to appeal in accordance with the Spanish General Administrative Procedure Law 39/2015.<sup>143</sup> Data is stored in the register for the period foreseen in Article 93 (4) of the Control Regulation (3 years). As a result, it should be deleted by the competent authority after 3 years from the following year when the sanction was legally enforced. However, if another infringement is committed by the same offender within a period of 3 years, the number of points assigned will not be deleted.<sup>144</sup>

In addition, the SGP shall reply to requests for assistance addressed by other Member States or the European Commission concerning data contained in the national register for infringements. If the information requested refers to a matter falling within the AA.CC, it shall be transferred by the SGP to the corresponding A.C for the purpose of gathering all relevant information.<sup>145</sup> However, if the AA.CC have no access to that register it seems difficult they can attend those requests.

## 2. What is happening in practice

This chapter analyses available data on inspections and infringements to fisheries laws at State and AA.CC levels in order to evaluate whether the Spanish control system fulfils the objectives established by the Control and IUU Regulations. To this end, several requests for access to

---

<sup>139</sup> Article 4 (1), *ibid.*

<sup>140</sup> Article 4 (2), *ibid.*

<sup>141</sup> Article 2 (5), *ibid.*

<sup>142</sup> The Fisheries Inspection Service of the D.G of Fisheries and Aquaculture of Andalusia explained to us during a phone interview the process: once serious infringements concerning fisheries in internal waters and shellfishing take place, this AA.CC must report all data to the SGP and request the inscription of all relevant data on infringements, imposed sanctions and assigned points at the national register.

<sup>143</sup> Article 4 (4), Royal Decree 114/2013.

<sup>144</sup> Article 5, *ibid.*

<sup>145</sup> Article 9, *ibid.*

information<sup>146</sup> have been submitted to competent authorities. In addition, several interviews with government officials, NGOs and relevant stakeholders were undertaken.

Before examining data on the control system in Spain, it is important to remark that gaps were identified in the past by the European Commission, which led to the establishment of a Spanish control action plan in 2012.<sup>147</sup> As in the French case, the Spanish plan was triggered by deficiencies identified in the catch registration system, in particular concerning the late collection of control data, the lack of coordination between State and AA.CC control authorities and data reliability. After 4 years of intense work, in January 2017, the European Commission validated the Spanish system for fisheries control by notifying the Spanish Government that the implementation of the action plan was over. Then, the European Commission recognised significant improvements in the Spanish national fisheries control system.<sup>148</sup>

## 2.1. National level

### 2.1.1. Data on inspections

The annual MAPAMA activities report includes detailed information on the inspections undertaken during the previous year on maritime fisheries falling under the State competence.<sup>149</sup> Additional information is provided in the MAPAMA Annual Report on the Spanish Fleet Fishing Activity.<sup>150</sup> The most updated information provided by both sources dates from 2015. Data on 2016 will be shortly published, as confirmed by the MAPAMA at the end of June 2017.

In order to enhance the level of analysis concerning fisheries controls in Spain, a comparative breakdown of data on inspections conducted in 2013, 2014, 2015 and 2016 is set out in the table below:

**Table 9.-Inspections conducted over maritime fisheries under State competence**

Year	Total nº inspections	Ports	Sea	Aerial
2013	11,087	4,835	2,704	3,548
2014	10,994	4,474	2,028	4,492
2015	11,680	4,994	2,198	4,488
2016	10,238	5,210	1,758	2,781

Source: MAPAMA

Although numbers of inspections do not typically vary from year to year, Spain conducted the highest number of inspections in 2015, representing a 5% and 6% increase compared to 2013 and 2014 figures, respectively. In contrast, in 2016 inspections decreased 12.35% compared to previous years, significantly affecting the number of controls conducted at sea, which represents the lowest figure over the four year period. Since 2013 to 2016, inspections were

<sup>146</sup>These have been filed under Law 27/2006 of 18 July, on rights on access to information, public participation and access to justice in environmental matters (BOE num. 171, 19.07.2006).

<sup>147</sup> See [https://ec.europa.eu/fisheries/spains-action-plan-improve-fisheries-control\\_en](https://ec.europa.eu/fisheries/spains-action-plan-improve-fisheries-control_en).

<sup>148</sup> Information available online at: <http://www.lamoncloa.gob.es/lang/en/gobierno/news/Paginas/2017/20170120-fisheriescontrol.aspx>. According to the European Commission, "Based on the action plan the Spanish authorities have set up a coordination mechanism between the central authorities and the Autonomous Communities. They have totally reshaped their catch registration system and have developed effective IT tools. Other concrete actions taken by Spain include the restriction of fishing possibilities for vessels having exceeded their quota, for instance in the hake fishery", available at [https://ec.europa.eu/fisheries/spains-action-plan-improve-fisheries-control\\_en](https://ec.europa.eu/fisheries/spains-action-plan-improve-fisheries-control_en).

<sup>149</sup>Annual Reports are available online at:

<http://www.mapama.gob.es/es/ministerio/servicios/publicaciones/memorias.aspx>.

<sup>150</sup>Annual Reports are available online at: <http://www.mapama.gob.es/es/pesca/planes-y-estrategias/>.

primarily conducted on land and by air means, where almost 90% of control operations in 2014 and 2015 were conducted by the SGCI and the Civil Guard.

Limited information is provided in the MAPAMA annual reports concerning Spain's approach to inspections and controls under the IUU Regulation. Thus, data analysed on IUU is based on the biennial reports submitted by Spain to the European Commission, covering the period 2010 to 2015.<sup>151</sup> In terms of implementation of import controls, between 2014 and 2015, Spain received the highest number of Catch Certificates (CCs) within the EU, exactly 105,365 CCs. Overall 1,643 verifications of CCs were conducted to ascertain compliance of fisheries imports, representing also the highest rates on verification activity across the EU.<sup>152</sup> Furthermore, Spanish authorities undertook 65 and 70 inspections of consignments in 2014 and 2015, respectively, and 58 consignments were rejected for cases of non-compliance with the IUU Regulation requirements. In this regard, during this five year period (2010-2015) Spain rejected an overall number of 120 consignments of fisheries products, which represents more than a third of the overall consignment refusals in the EU.

Spain seems to be a good example of rigorous controls implemented under the IUU Regulation. This has led to significant shifts in trade flows of fisheries products, with an almost 25% decrease of third country landings since 2010, with particular impact on the port of Las Palmas (Canary Islands). Concretely, this represents a decrease from 426 landings in 2010-2011 to 320 landings in 2014-2015. According to the Spanish authorities, third country vessels seem to be landing in other non-EU ports located nearby Spain where less rigorous controls on fisheries are carried out.

Data on Spanish inspection activities can also be found in the 2015 EFCA Annual Report.<sup>153</sup> In relation to the Western Waters JDP (which covers the Northern coast of Spain), it indicates that Spain conducted that year 1,357 inspections on land, out of which 1,249 took place on vessels, 87 on transport and 21 on markets. As a result, 141 suspected infringements were detected, out of which 125 took place on vessels, 14 during transport and only 2 in markets. In addition, 135 inspections were conducted at sea resulting on the discovery of 5 suspected infringements. When compared with the number of inspections and infringement rates reported by other Member States, Spain conducted the highest number of fisheries controls on land and at sea, however it reported the lowest number of inspections with suspected infringement rate at sea (3.7%) but a higher rate detected for inspections on vessels upon landing (8.5%). Although no data has been reported by other Member States in relation to controls on transport, Spain registered 16% of suspected infringements in this field.

In relation to the **Mediterranean JDP** (which covers the Southern and Eastern coast of Spain), the EFCA report indicates that only 9 inspections were conducted by Spain on land (1 in fish farms and 8 on vessels), while 68 took place at sea (58 on vessels and 10 on traps). Available data only reflects the existence of 6 suspected infringements committed by vessels at sea in Spain, which still represents 10.3% of inspections with suspected infringements in this field.

---

<sup>151</sup>Information concerning Spain implementation of the IUU Regulation control requirements has been obtained through the Report "The IUU Regulation. Analysis: Implementation of the EU seafood import controls" (March 2017) elaborated by Oceana, EJF, PEW and WWF. This report reflects accurate data contained at the biennial reports (2010/11, 2012/13, and 2014/15) reported by Spain to the European Commission in accordance with Article 55 (1) of the IUU Regulation. Available online at: [http://www.iuuwatch.eu/wp-content/uploads/2017/03/IUU\\_Import-controls\\_report\\_ENG.pdf](http://www.iuuwatch.eu/wp-content/uploads/2017/03/IUU_Import-controls_report_ENG.pdf).

<sup>152</sup>The top ten third country flag States of origin concerning imports in Spain between 2010 and 2015 were Morocco, China, Chile, South Africa, Mauritania, Peru, Namibia, India, Argentina and US.

<sup>153</sup>Available online at: [https://www.efca.europa.eu/sites/default/files/Annual%20Report%202015\\_1.pdf](https://www.efca.europa.eu/sites/default/files/Annual%20Report%202015_1.pdf).

There is limited available data regarding Spanish controls over the engine power of fishing vessels. However, there is evidence pointing out deficiencies when implementing such obligations. According to the information included in the annual MAPAMA activities report, in 2014 documentary checks were done on a random sample of 97 vessels (out of 7,163 vessels with on-board engines in the Spanish fleet in 31 December 2011). Physical inspections were conducted on 16 vessels, based on indications that the actual engine power was higher than the one displayed in the register, resulting in 7 cases where irregularities were found. During 2015, 5 out of the 7 vessels regularised their excess capacity through their withdrawal from the Spanish fleet, 1 vessel was in a shipyard under modernisation, and the remaining one was under repair given that the difference on the engine capacity was caused by an imbalance on the injection valve.<sup>154</sup> As provided by the ECA 2017 Report,<sup>155</sup> Spain is one of the few Member States carrying out verifications on engine power based on a sampling plan as required. However, controls undertaken in this Member State are not sufficient given the existence of discrepancies between the actual engine power of fishing vessels and the one certified in its fishing licence.<sup>156</sup>

Since January 2015, the landing obligation requires of Member States that all catches of species caught during fishing activities which are subject to catch limits and to minimum sizes (in case of the Mediterranean sea) are *“brought and retained on board the fishing vessels, recorded, landed and counted against the quotas”*<sup>157</sup>. In Spain there is no consistent or available information concerning how the landing obligation is being implemented, or how it is being monitored and controlled.

Over several interviews with stakeholders, technical difficulties were identified when implementing the landing obligation and discarding rules. According to some stakeholders, MAPAMA sustains it is necessary to delay the date of execution of the landing obligation in order to elaborate clear rules for promoting selectivity in each fishery and the effective management of unwanted catches in mixed fisheries. A participatory process has been opened to address how to face the new challenges deriving from the implementation of the landing obligation in which relevant NGOs, competent authorities and other stakeholders are providing their views. As said above, infringements to the landing obligation are widely defined in Spanish Law 3/2011. Nevertheless, interviewed NGOs' view is that the prosecution of this category of infringement is being interpreted in line with Article 90 (1) paragraph c) of the Control Regulation.

### 2.1.2. Data on infringements

The MAPAMA annual reports also provide certain data on **administrative infringements** concerning maritime fisheries falling within the State competence. Such reports do not provide

---

<sup>154</sup>It is important to take into account that, prior to the amendment of Law 3/2001, national law allowed to legalise the registry of fishing vessels whose engine power did not coincide with the registration information in the Registry of Ships and Shipping Companies, as well as in the Census of Operational Fishing Vessels until 31 July 2015. It has been thus implicitly acknowledged that, prior to this date, vessels that did not comply with the prohibition contained in Article 41 of the Control Regulation were allowed to operate, although the EU prohibition was applicable from 1 January 2010.

<sup>155</sup>European Court of Auditors Special Report N° 08/2017 “EU fisheries controls: more efforts needed” (May, 2017), available online at: [http://www.eca.europa.eu/Lists/ECADocuments/SR17\\_8/SR\\_FISHERIES\\_CONTROL\\_EN.pdf](http://www.eca.europa.eu/Lists/ECADocuments/SR17_8/SR_FISHERIES_CONTROL_EN.pdf)

<sup>156</sup>The European Commission observations in reply to the 2017 Special report of the European Court of Auditors, provided that *“based on the findings during the audits conducted in the Atlantic Member States in 2016 for engine power, Spain has only done these checks once and the verification was not approved by the competent body for engine power verification”*, *ibid*, p. 4., Replies of the Commission to the Special Report of the European Court of Auditors *“EU Fisheries Controls: More efforts needed”*.

<sup>157</sup>Article 15 of the CFP Regulation.

the same kind of data every year. Thus, specific information for 2016 was requested to the SGCI, which has been only partially provided. According to the information available at the time of this report, infringements detected in Spain during 2013, 2014, 2015 and 2016 seem to be fairly low if compared to the amount of inspections conducted those years.

**Table 10. - Infringements detected in relation to maritime fisheries under the State national jurisdiction**

Year	Total nº inspections	Total nº infringements	Ports	Sea	Aerial	FMC
2013	11,087	1,510	832	632	46	-
2014	10,994	1,539	899	551	89	-
2015	11,680	1,204	635	443	126	-
2016	10,238	1,058	559	320	52	127

Source: MAPAMA

In 2016, an overall of 1,058 infringements on maritime fisheries were detected, which represented a 12.13% decrease compared to 2015. Infringements detected in 2015 also represented a 21% drop compared to previous year. Violations of fisheries laws over these four years were mainly detected on land and at sea, notwithstanding the increase of infringements detected by aerial means in 2015, which again fell in 2016. According to the information provided by the SGCI, an overall 127 infringements were detected in 2016 by the Spanish FMC.

A description of the most common types of fisheries infringements committed in 2013 and 2014 is included in the MAPAMA Annual Report on the Spanish Fleet Fishing Activity. In particular, the main infringements classified as “serious” under Law 3/2001 are those regulated in its Articles 100 (2) paragraphs b), c), f) and h), and in Article 100 (1) paragraphs a) and b).

**Table 11.- Most common types of serious infringements committed**

Description of serious infringements under Law 3/2001		Nº of administrative decisions imposing sanctions	
		2013	2014
Art. 100 (2), b) and c)	Not keeping on board the fishing logbook or not having installed the electronic fishing logbook (“ <i>Diario de a Borda</i> ”, or DEA), not entering data on it or in the landing declaration, or entering falsified data concerning catches, fishing effort and geographical position of fishing hauls.	344	459
Art.100 (1) a) and b)	Carrying out the fishing activity without the corresponding licence or authorisation, or not complying with the conditions established therein.	311	344
Art. 100 (2), h)	Non-compliance with the obligation to communicate transshipments, prior notification for access to ports, communication of onboard catches or their absence, or information concerning the fishing effort in accordance with the Spanish current regulations.	176	276
Art. 100 (1), f)	Fishing in prohibited areas or grounds and during closed seasons.	179	188

Source: MAPAMA

### 2.1.3. Data on sanctions

As a result of the number of infringements detected, 1,637 administrative sanctioning proceedings were launched in 2013, followed by 1,554 proceedings in 2014, and 976 proceedings in 2015. This shows a considerable decrease in the number of sanctioning procedures initiated in 2015, which may be in part the result of the fall in the number of infringements recorded that year.

It must be pointed out that not all cases of violations of fisheries laws finally lead to the imposition of sanctions. According to the information provided by the MAPAMA, the following administrative decisions adopted in 2013, 2014 and 2015 were of a sanctioning nature:

**Table 12.-Administrative sanctioning procedures regarding infringements within maritime fisheries**

Year	Nº sanctioning administrative procedures	Nº decisions imposing sanctions
2013	1,637	1,259
2014	1,554	1,368
2015	976	865

Source: MAPAMA

In Spain, there is no publicly available information concerning the implementation of the **penalty point system** for serious infringements to the CFP rules. In addition, evidence points out that the system is not being applied in a consistent manner.<sup>158</sup> The ECA Report,<sup>159</sup> itself identifies issues related to the implementation of the penalty point system in Spain, which has been applied to a limited number of cases (49 cases between 2013 and 2015). Furthermore, the report stresses that the system has been applied with caution given the socio-economic impact entailed by the withdrawal of fishing licences. Nonetheless, even without awarding points, the ECA report points out that there have been cases of temporal suspension of fishing licenses for infringements considered to be particularly serious, and masters of fishing vessels have been disqualified for the exercise of the fishing activity. Several requests have been submitted to the Sub-directorate General of Legal Affairs of the SGP to obtain further information on the application of the penalty points system. However, this authority has not replied to our request yet.

Despite the lack of adequate information, the Spanish press has reported on the lack of effectiveness of the penalty point system:

- *“Within 2 years the SGP only assigned 4 points to masters of fishing vessels for fisheries infringements to the common fisheries policy rules, for obstructing the work of officials in the exercise of their inspection duties”;* by 2015 there were no cases of permanent withdrawals of fishing licences nor cases of inability to exercise fishing activities, although 21 cases have resulted in the SGP proceeding with a temporary suspension of fishing licences.<sup>160</sup>

By contrast, the punitive action undertaken by the MAPAMA over the last years against Spanish nationals, moral or natural persons, taking part in IUU fishing operations deserves

<sup>158</sup>An official of an A.C stated that the Spanish penalty point system is almost starting to work now. There have been difficulties in its implementation and a certain lack of commitment by Spanish public authorities.

<sup>159</sup>European Court of Auditors Special Report Nº 08/2017 “EU fisheries controls: more efforts needed” (May, 2017), p. 55.

<sup>160</sup>Available online at: <http://www.farodevigo.es/mar/2015/04/03/pesca-impuso-puntos-cuatro-patrones/1213713.html>.

special mention. Spain has become a leader across the EU on the fight against IUU fishing. As recognised by NGOs such as Oceana or EIJ, the so-called “Operation Sparrow” seems to have demonstrated a strong commitment from the Spanish Government to prosecute nationals engaged in IUU fishing through an effective implementation and enforcement of the IUU Regulation. As shown below, Operation Sparrow has resulted in the imposition of fines higher than any that have previously been imposed by EU governments for IUU fishing.<sup>161</sup>

**Relevant cases of administrative sanctions imposed by the MAPAMA on IUU fishing**

- **Operation “Sparrow 1”:** In March 2016, the MAPAMA notified an administrative resolution ending the sanctioning procedure 1/2015/SGP following the detection of four vessels (KUNKUN, SONGHUA, YONGDING and TIANAI) included in the EU IUU list, which were suspected of illegally fishing Patagonian toothfish in Antarctic waters in 2015. The operation conducted by the SGCI in collaboration with international organisations and the public authorities of New Zealand, Cabo Verde and Belize found clear evidence that several Spanish fishing companies were connected to the IUU vessels activity, and committed serious and very serious infringements to national Law 3/2001. The operation included the analysis of around 3,000 documents and the conduction of raids in company offices subject to prior judicial authorisation. As a result, the MAPAMA has issued fines amounting to **16,750,000 EUR** against nine companies and seven individuals. In addition, several accompanying sanctions were imposed such as the inability to exercise a fishing activity from 5 to 23 years, and inability to obtain loans, subsidies or public aid from 5 to 26 years. Two out of the nine companies were, in addition, sanctioned with a fine of **1,090,001 EUR** for obstruction of the work of officials in the exercise of their duties in inspecting, and destruction of documents (See Annex I, part A for detailed information on sanctions).
- **Operation “Sparrow 2”:** In April 2017, the MAPAMA notified an administrative resolution ending the sanctioning procedure 1/2016/SGP following the detection of two vessels included in the EU IUU vessels list (VIKING and SEABULL 22) which were operated and managed unlawfully by a network of Spanish companies. Evidence was found thanks to the inspection activity conducted by the SGCI, followed by raids on several offices of the companies involved subject to prior judicial authorisation. This operation led to the imposition of financial sanctions amounting to **5,270,002 EUR** to 6 Spanish companies and 6 individuals, in addition to accompanying sanctions such as the inability to exercise a fishing activity from 5 to 14 years, and inability to obtain loans, subsidies or public aid from 5 to 12 years. One of the individuals was also sanctioned with a fine of **60,000 EUR** for obstruction of the work of officials in the exercise of their duties in inspecting, and destruction of documents (See Annex I, part B for detailed information on sanctions).

We consider this an exemplary sanction. Other EU Member States should include in their own legislations specific provisions applicable to their nationals engaged in IUU fishing.

The lack of transparency in Spain concerning access to statistical **data on judicial administrative and criminal cases** concerning maritime fisheries, and other illegal practices involved in IUU fishing must be pointed out.<sup>162</sup>

<sup>161</sup>See MAPAMA press releases for further information on Sparrow Operations available at: <http://www.mapama.gob.es/es/prensa/noticias/la-resoluci%C3%B3n-del-expediente-de-la-operaci%C3%B3n-sparrow-sanciona-a-9-empresas-y-7-personas-f%C3%ADsicas-por-su-implicaci%C3%B3n-en-la-actividad-de--buques-qu/tcm7-415229-16> and <http://www.mapama.gob.es/es/prensa/noticias/el-ministerio-de-agricultura-y-pesca-alimentaci%C3%B3n-y-medio-ambiente-resuelve-el-expediente-de-la-operaci%C3%B3n-sparrow-2-con-una-sanci%C3%B3n-de-53-millon/tcm7-455467-16>.

<sup>162</sup> The General Council of the Judiciary (*Consejo General del Poder Judicial*, or CGPJ) which is the government body of the judicial power in Spain, chaired by the President of the Supreme Court) publishes annual statistical data on judicial cases classified with respect to the respective judicial body, area of jurisdiction and the subject matter for which it has competences to decide. In relation to judicial administrative cases, available data exclusively refers to cases relating to the “field of environment” in global terms, but does not provide disaggregated information concerning judicial cases on maritime fisheries.

In Spain, the First Chamber of the Administrative Section of the National High Court ('*Audiencia Nacional*') is one of the main judicial organs to which judicial reviews on imposed sanctions on maritime fisheries laws are filed. Following research, evidence shows a wide number of cases in which sanctions initially adopted during the administrative proceedings are later on quashed in courts as unlawful.<sup>163</sup> It is important to highlight that under Spanish law, the competent authority must notify the offender and open a hearing within a period of 15 days when the infringement or sanction foreseen is of higher seriousness than the one initially determined in the draft decision.<sup>164</sup> The analysed case law shows circumstances in which the MAPAMA includes in its decisions fines of a higher amount than those previously set or includes accompanying sanctions *ex novo* without following the procedural requirement legally established, undermining the offender's constitutional rights to the presumption of innocence and defence.<sup>165</sup> This reflects an example of deficiencies in the exercise of the sanctioning power by the Spanish Administration, which is leading in some cases to annulments of sanctions imposed for infringements to fisheries laws.

With regard to **data on criminal proceedings**,<sup>166</sup> available statistical data refers in global terms to environmental offences against natural resources, and to offences committed in relation to the protection of flora, fauna and domestic animals, not detailing which offences relate to fishing or aquaculture activities. Notwithstanding the above, according to the 2016 Annual Report, 8 out of 120 criminal investigations initiated in 2015 corresponded to offences taking place outside Spanish jurisdiction. This included the criminal investigation num. 63/2015 concerning IUU fishing of Patagonian toothfish in Antarctic waters by Equatorial Guinea flagged fishing vessels (KULUN, YONGDIND and SHONGUA), which were operated by Spanish nationals, the Galician fishing syndicate 'Vidal Armadores'. The vessels were illegally operating in a protected area under the Convention on the Conservation of Antarctic Marine Living Resources (CAMLR Convention).

#### **Follow-up of Vidal Armadores Case**

- In March 2016, the illegal group Vidal Armadores, based in Ribeira (A.C of Galicia) was dismantled by a joint operation called the "Yuyus Operation" conducted by the Spanish Civil Guard (SEPRONA Operative Central Unit of Environment) and INTERPOL. Accused of committing crimes including money laundering, forgery and crime against the environment and criminal organisations, the Yuyus Operation ended with the arrest of six individuals and other sixteen subject to criminal

<sup>163</sup>Judgments of the National High Court, Administrative Chamber, section 1, num. 143/2015, of 3 March (ES:AN:2015:1268) and num. 56/2017, of 31 January (ES:AN:2017:311); Judgment of the National High Court, Administrative-Contentious Central Courts, section 8, num. 66/2014 (ES:AN:2014:5269).

<sup>164</sup>Spanish General Administrative Procedures Law 39/2015. According to its Article 90 (2): "*The final decision shall not accept different facts than those determined in the course of the proceeding, regardless of its different legal appraisal. However, when the competent body to decide considers that the infringement or the sanction is of higher seriousness than that determined in the draft proposal, it shall notify the offender to submit allegations within a period of 15 days*".

<sup>165</sup>Following the Spanish Supreme Court doctrine, the National High Court claimed that: "*the sanctioning decision cannot impose a heavier penalty under the basis of an aggravating circumstance, sustained in a value judgment or in a fact not expressly taken into consideration by the draft decision, without a prior hearing to the person being prosecuted, since this would lead to a material defenceless and a violation of Article 135 of the Public Administration and General Administrative Procedure Law 30/1992, of 26 November*"<sup>165</sup> (now, Article 90 of Law 39/2015).

<sup>166</sup> Spanish Public Prosecutor Annual Report 2016 available at:

[https://www.fiscal.es/fiscal/publico/ciudadano/documentos/memorias\\_fiscalia\\_general\\_estado/!ut/p/a1/04\\_Sj9CPyKssy0xPLMnMz0vMAfGjzOI9HT0cDT2DDbwsgozNDBwtjNycnDx8jAwsziAKIpEVuPtYuBk4unsGO5I6eBhbBjkQp98AB3A0IKQ\\_XD8KVYm\\_h68R0AWGvqEmli7GBu6G6AqwOBGsAI8bCnJDIwwyPRUByaZ9Ig!!/dI5/d5/L2dBISevZ0FBIS9nQS/Eh/](https://www.fiscal.es/fiscal/publico/ciudadano/documentos/memorias_fiscalia_general_estado/!ut/p/a1/04_Sj9CPyKssy0xPLMnMz0vMAfGjzOI9HT0cDT2DDbwsgozNDBwtjNycnDx8jAwsziAKIpEVuPtYuBk4unsGO5I6eBhbBjkQp98AB3A0IKQ_XD8KVYm_h68R0AWGvqEmli7GBu6G6AqwOBGsAI8bCnJDIwwyPRUByaZ9Ig!!/dI5/d5/L2dBISevZ0FBIS9nQS/Eh/).

investigation, the conduction of five raids on company offices and the seizure of money and other goods of different nature.<sup>167</sup> The Investigating Court nº 3 of the National High Court, as the competent criminal judicial body, ordered as an interim measure the **imprisonment with bail of 600,000 EUR**<sup>168</sup> (corresponding 100,000 EUR per offender). According to the Spanish press, the six offenders were released after paying the bail. However, other provisional measures were adopted such as the prohibition to leave the country, the seizure of the passport, the obligation to set a permanent location of their housing and to show up in court every 15 days.<sup>169</sup> Following the criminal charges against the owners of Vidal Armadores, the defendants appealed to the Spanish Supreme Court. By December 2016, the court concluded in their favour, recognising the **lack of jurisdiction of Spanish Courts in criminal proceedings regarding IUU fishing in international waters** on the basis of the “principle of territoriality”.<sup>170</sup> Based on the reasoning of the Supreme Court, the vessels were not under Spanish flag, although the beneficial owners were Spanish, and the acts were committed in international waters under the protection of the CAMLR Convention. According to the Court, “*from a reading of the main provisions of the Convention it does not become clear the purpose of the contracting parties to impose the obligatory criminal prosecution for fisheries violations in the catch of Patagonian toothfish*”.<sup>171</sup> The Supreme Court declined Spanish jurisdiction on the basis that the national law of the offender was insufficient to attach criminality to an act committed on a territory where it was not classified as a crime. Thus, the criminal interim measures by the High Court was thus overturned and the criminal charges dropped.

- As reported by Spanish press, in March 2017 the Supreme Court accepted the appeal for judicial review presented by the NGO Oceana.

Although Spanish law covers the issue of IUU fishing in international waters, the deterrent of purely administrative sanctions is insufficient. The Vidal Armadores case seems to be a precedent, since it evidences the existing loopholes in Spanish legislation to prosecute IUU fishing activities taking place in areas beyond national jurisdiction under a criminal proceeding. It is necessary to amend and improve national law when the prosecution of IUU fishing in order to ensure that crimes do not go unpunished no matter where they are committed is concerned.

## 2.2. AA.CC level

### 2.2.1. A.C of Andalucía

Given the absence of publicly available data on the implementation of the fisheries control system in Andalusia, an access to information request was submitted to the D.G for Fisheries

<sup>167</sup>MAPAMA press release, available online at: [http://www.mapama.gob.es/es/actuaciones-seprona/noticias/npoperacionyuyus-seprona-interpol\\_tcm7-415452.pdf](http://www.mapama.gob.es/es/actuaciones-seprona/noticias/npoperacionyuyus-seprona-interpol_tcm7-415452.pdf).

<sup>168</sup>See “Prison for the great Galician pirate of illegal fishing”, El País (09.03.2016) available at: [http://politica.elpais.com/politica/2016/03/09/actualidad/1457540406\\_030813.html](http://politica.elpais.com/politica/2016/03/09/actualidad/1457540406_030813.html); “The judge orders prison on bail for the six amounting to 100.000 EUR of the six arrested amounting to 100.000 euros”, La Opinión A Coruña (10.03.2016) available online at: <http://www.laopinioncoruna.es/mar/2016/03/10/juez-envia-prision-fianza-100000/1049414.html>.

<sup>169</sup>See “Arrested for illegal fishing of Patagonian toothfish are released after paying the bail”, Europapress Galicia (10.03.2016), available online at: <http://www.europapress.es/galicia/noticia-salen-libertad-depositar-fianzas-detenidos-pesca-ilegal-merluza-negra-20160310151815.html>.

<sup>170</sup>Pursuant to Article 23 of Organic Law 6/1985, of 1 July, on the Judicial Power, Spanish criminal Courts have jurisdiction when an act is committed within its territory, including acts committed by Spanish flagged aircrafts and vessels, as well as when an act is committed outside Spanish territory by nationals or foreigners who subsequently become nationals, subject to the concurrence of certain requirements, such as the fact that the act constitutes also a crime in the place where it is committed.

<sup>171</sup>Point 8 of the Judgment of the Supreme Court, Criminal Chamber, Section 3, num. 974/2016, of 23 December (ES:TS:2016:5654).

and Aquaculture of this A.C. Although this authority replied to the request within the established legal period of 1 month,<sup>172</sup> it granted only 'partial' access to information as it did not provide data in relation to administrative sanctions. The information provided compiles in a jointly manner data on inspections, and sanctioning procedures corresponding to 2014, 2015 and 2016, without categorising the type of inspections and to which infringements the sanctioning procedures were attached to - fisheries in internal waters or to planning and management of the fishing sector and marketing.

### 2.2.1.1. Data on inspections and infringements

According to the information provided, a comparative breakdown of data on inspections conducted (that is, number of inspection minutes taken by officials) and infringements detected in 2014, 2015 and 2016 is shown in the table below:

Years	Nº of Inspection minutes	Nº of inspection minutes with infringement
2014	6,843	868
2015	6,232	706
2016	6,132	1,106

Source: DG for Fisheries and Aquaculture of Andalusia

Whilst this A.C carried out the highest number of inspections in 2014, there was a subsequent decrease in the number of controls conducted over three years, representing 10% decline in 2016 with respect to 2014 figures. Despite a drop in inspections in 2016, inspections minutes with infringements were the highest, with approximately a 36% increase compared to 2015.<sup>173</sup> Nevertheless, data shows a relatively low infringement rate over the three years when compared with the number of inspections conducted in the region.

The DG for Fisheries and Aquaculture of Andalusia provided a description of the most common infringements detected in 2016 classified in accordance to the inspections field of action, as follows:

- In relation to fisheries in Andalusian internal waters, the following infringements were detected:

Fishing ground	Description of infringement	Percentage
	Non compliance with fisheries schedules	32%
	Fishing in prohibited grounds or closed areas	26%
	Species under minimum reference size	8%
	Fishing in prohibited or closed seasons	8%
	Non-compliance with technical measures in the use of fishing gears	5%
	Fishing in prohibited areas	5%
	Fishing without authorisation	3%
	Obstruction of the work of officials in the exercise of their duties without preventing their exercise	3%
	Not having installed on board the required control devices	1%

<sup>172</sup> Spanish Law, in line with the Aarhus Convention, requires public authorities to respond to an access to information request within a maximum period of one month, upon its receipt, or within two months if justified by the volume and extension of the information. In the latter case, the Spanish Administration must notify about such extension and the reasons justifying. See Article 10 (2) para. c) of Law 27/2006 of 18 July, on the rights on Access to Information, Public Participation and Access to Justice in environmental matters (BOE num. 171, of 19.07.2006).

<sup>173</sup>It must be taken into account that each inspection minute can include several infringements detected within the inspection activity.

The Control and Enforcement of Fisheries in Spain  
Final Report 26 July 2017

Manipulate, modify or damage control devices or interfere in their communications	1%
Not filling-in or falsifying documents on landing	1%
Landing or unloading outside authorised ports and places	1%
Fishing without authorisation	27%
Species under minimum reference size	27%
Fishing in prohibited areas	18%
Obstruction of the work of officials in the exercise of their duties without preventing their exercise	9%
Non-compliance with technical measures in the use of fishing gears	9%
Fishing in prohibited or closed seasons	9%

Source: DG for Fisheries and Aquaculture of Andalusia

- In relation to the planning and management of the fishing sector and marketing of fisheries and aquaculture products, the following infringements were reported in Andalusia:

Economic operator	Infringement	Percentage	Species concerned
	Undersized fish	65%	50% corresponded to clam
	Products without required documentation	12%	Clam and anchovy
	Incorrect identification of fish species	12%	Clam and anchovy
	Lack of certification of the product origin	6%	Clam
	Obstruction to the work of inspectors in the exercise of their duties	6%	Anchovy
	Undersized fish	63%	Clam and "coquina" (type of mollusc in Spain)
	Incorrect identification of fish species	17%	Coquina and "ortiguilla" (sea nettle)
	Products without required documentation	10%	"Coquina" and bluefin tuna
	Illegal establishments	5%	"Coquina"
	Places closed for sanitation reasons	5%	Clam
	Undersized fish	45%	Clam (58%), hake (9%) and anchovy (6%)
	Incorrect identification of fish species	28%	Clam (22%), hake (14%) and anchovy (10%), among others
	Products without required documentation	22%	Clam (33%), hake (15%), anchovy (10%)
	Closed seasons	2%	"Coquina"
	Undersized fish	36%	Clam (40%), hake (39%), coquina (9%)
	Incorrect identification of fish species	35%	-
	Products without required documentation	23%	Hake (39%) and clam (20%)
	Closed seasons	4%	Clam, coquina and sea nettle
	Undersized fish	49%	Clam (49%), hake (32%), coquina (5%), anchovy (4%)
	Products without required documentation	29%	Hake (37%), clam (23%), bluefin tuna (7%)
	Incorrect identification of fish species	18%	Hake (61%), clam (8%)
	Closed seasons	2%	Clam, coquina, ray fish
	Places closed for sanitation reasons	1%	Clam
	Obstruction to the work of inspectors in the	1%	-

exercise of their duties		
Undersized fish	37%	Hake (64%), coquina (29%), clam (7%)
Products without required documentation	37%	Hake (43%), coquina (14%), clam (14%)
Incorrect identification of fish species	26%	Hake (60%), coquina (20%)

Source: DG for Fisheries and Aquaculture of Andalucía

Data shows that the main infringements of fisheries rules in Andalusian internal waters concern the catch of undersized fish both in the Cádiz Gulf and in Mediterranean fisheries grounds, as well as fishing in prohibited areas or closed seasons. With regard to the planning and management of the fishing sector and marketing in Andalusia, apart from the marketing of undersized fish, there is a significant infringement rate in relation to the lack of required documentation of fishery products and their incorrect identification.

### 2.2.1.2. Data on sanctions

The DG for Fisheries and Aquaculture of Andalusia considered not appropriate to provide information on imposed sanctions and their annual amounts.<sup>174</sup>

As a result of the number of infringements detected, 2,460 administrative sanctioning proceedings were launched in 2014 by this A.C, 2,229 in 2015 and 2,182 proceedings in 2016. Although the amount of sanctioning procedures is quite significant compared to the number of inspection minutes with infringements, there is a decrease in the number of sanctioning procedures initiated over the three years in Andalusia:

**Table14.- Data on sanctioning administrative procedures in the A.C of Andalusia**

Years	Nº of inspection minutes with infringement	Nº sanctioning administrative procedures
2014	868	2,460
2015	706	2,229
2016	1,106	2,182

Source: DG for Fisheries and Aquaculture of Andalusia

### 2.2.1.3. Controls over traceability requirements of fisheries and aquaculture products

Articles 56 to 58 of the Control Regulation require Member States to control compliance of the CFP rules at all stages of the marketing of fisheries and aquaculture products, from the first sale to the retail sale, including transport. To this end, AA.CC competent authorities must ensure that all lots of products are traceable at all stages: production, processing and distribution (i.e. catching or harvesting to retail stage - through the enforcement of specific traceability requirements).

Following the Spanish National Programme on the Control of Traceability of Fisheries and Aquaculture products,<sup>175</sup> in 2016 the A.C of Andalusia implemented for first time a traceability

<sup>174</sup>According to this authority, "providing data on imposed sanctions may cause confusion given that final administrative decisions imposing sanctions may be subject to judicial appeal. Therefore, there is a considerable risk that data on sanctions is subject to modification and therefore is not reliable".

<sup>175</sup>Available online at: [http://www.mapama.gob.es/es/pesca/temas/calidad-seguridad-alimentaria/programanacionalcontroldelatrabilidaddelosproductosdelapescayacuicultura2016-2017def\\_tcm7-424211.pdf](http://www.mapama.gob.es/es/pesca/temas/calidad-seguridad-alimentaria/programanacionalcontroldelatrabilidaddelosproductosdelapescayacuicultura2016-2017def_tcm7-424211.pdf).

programme at regional level.<sup>176</sup> The 2016 Final Outcome Report<sup>177</sup> shows the level of implementation of such programme, providing data on controls and infringements detected throughout the whole marketing chain in Andalusia.

It is important to remark that controls on traceability are conducted separately from inspections carried out under the Andalusia Fisheries Inspection Plan.<sup>178</sup> Controls on traceability are conducted in two different phases: a first phase consists on initial '**controls in situ**' to check conformity of the documentation and registers required depending on the type of commercial activity undertaken by the economic operator. These controls are carried out by public controllers (not inspectors), which must fill-in a '*control protocol sheet*' reflecting the existing irregularities,<sup>179</sup> where appropriate, and the applicable remedy term to correct identified breaches.<sup>180</sup>

Once the given remedy term is expired, a second phase of control takes place through a '**monitoring inspection**' to check whether existing irregularities have been corrected or not. In the latter case, an official inspector notes the existing infringement in an inspection minute, which is reported to the competent authority of the Provincial Delegation of Andalusia to initiate the sanctioning procedure.

In Andalusia, controls for the enforcement of traceability requirements are carried out over the following 8 categories of economic operators to which specific minimum levels of control apply in accordance with the MAPAMA national programme on traceability:<sup>181</sup>

**Table 15.- Scope of the traceability programme of fisheries and aquaculture products in Andalusia**

<b>Economic operators</b>	<b>Existing units in the A.C</b>	<b>Minimum level of control required under the Andalusian traceability programme</b>
<b>Lonjas (fish auctions)</b>	25	100% [subject to controls: 25]
<b>First sale authorised places<sup>182</sup></b>	4	100% [subject to controls: 4]

<sup>176</sup>This programme is jointly managed by the DG for Fisheries and Aquaculture, the DG Provincial Delegations and the AGAPA.

<sup>177</sup>2016 Outcome Final Report Programme on Traceability of fisheries and aquaculture products within the Regulation (EC) N° 1224/2009, available online at:

<http://www.juntadeandalucia.es/organismos/agriculturapescayderosarios/areas/pesca-acuicultura/comercializacion/paginas/trazabilidad-pesca-acuicultura.html>.

<sup>178</sup>According to the Chief of the Marketing Department of the DG for Fisheries and Aquaculture of Andalusia, the implementation of controls on traceability of fisheries and aquaculture products have allowed a higher level of control over economic operators and at the same time reinforced routine inspections.

<sup>179</sup>Under the Andalusian traceability programme, "irregularities" are those legal breaches detected during the first phase of control, which are subject to a remedy term. By contrast, infringements involve those breaches concerning traceability requirements for fisheries and aquaculture products, which have not been corrected during the given remedy term, and result in the corresponding sanctioning procedure.

<sup>180</sup>Remedy terms can be granted for a maximum period of 4 months, without prejudice of shorter periods depending on the seriousness of the irregularity and the technical difficulties to remedy the breach.

<sup>181</sup>Based on the minimum levels of control provided by the MAPAMA programme, Andalusia has adopted stricter levels by requiring 100% controls at first sale authorised places (while the national programme requires only 50% as a minimum).

<sup>182</sup>These fish auctions and first sale places are those authorised by DG for Fisheries and Aquaculture of Andalusia.

First sale places for aquaculture products (authorised production centres) <sup>183</sup>	88	20% <sup>184</sup> [subject to controls: 18]
Dispatch centres	60	100% [subject to controls: 60]
Intermediary operators (wholesalers)	615	3% [subject to controls: 19]
Processing centres	41	3% [subject to controls: 2]
Retail business <sup>185</sup>	2.679	1% [subject to controls: 27]
Transport	29	<ul style="list-style-type: none"> <li>- 1 control at each port area with fish auctions representing a volume of sales &lt; 5,000 tonnes,</li> <li>- 2 controls at each port area with fish auctions representing a volume of sales &gt; 5,000 tonnes.</li> <li>- 1 control must be conducted on each landing authorised point where there is no a fish auction.</li> </ul>

Source: 2016 Outcome Report on the control of traceability of fisheries and aquaculture products in the A.C of Andalucía

The level of compliance of the traceability programme in 2016 has been graded by the Department of Agriculture, Fisheries and Rural Development of Andalusia, in general, as successful. The minimum levels of controls required were conducted for all economic operators<sup>186</sup> with two exceptions: controls at dispatch centres only covered 86.7%, and just 66.6% controls were conducted at first sale authorised places for aquaculture products. Some of the problems associated with carrying out controls for such operators were due to the inactivity at dispatch centres and the discontinuous opening and closure hours of establishments.

Great difficulties were faced to obtain reliable and updated lists of all the economic operators involved in the A.C marketing chain, in particular, retail businesses and intermediary operators. Although such lists are provided by the Institute of Statistics and Cartography of Andalusia (IECA), it has been noted that they are highly deficient and outdated. Such difficulties represent an initial problem to guaranteeing effective and reliable traceability of fishery products.

The table below provides data on the number of controls over traceability conducted in 2016/2017, identifying the number of irregularities and infringements detected as well as resulting sanctioning procedures. It is important to take into account that the number of infringements and sanctioning procedures reflected below are already included in the overall data on infringements and sanctions previously provided in sections 2.1.3.1 and 2.1.3.2.

**Table 16.- Controls over marketing of fisheries and aquaculture products at the A.C of Andalusia (2016/2017)**

	Initial controls	Nº Irregularities	Monitoring controls	Nº Infringements	Nº of sanctioning procedures <sup>187</sup>
<b>Lonjas (fish)</b>	25 (100%)	433	25	175	25 <sup>188</sup>

<sup>183</sup>According to Article 48 of Andalusian Law 1/2002, first sale places for aquaculture products are considered as authorised once an operation permit for marine farming is granted by DG for Fisheries and Aquaculture.

<sup>184</sup> For those economic operators where 100% controls on traceability are not required (such as first sale places for aquaculture products, intermediary operators, processing centres and retail business), controls are planned and prioritised according to a risk-based analysis.

<sup>185</sup>Dispatch centres, intermediary operators, processing centres and retail business are those operating according to the National Classification of Economic Activities of the Spanish National Statistics Institute.

<sup>186</sup>It must be pointed out that Andalusia has carried out further controls at processing centres and retail businesses than those required by the minimum levels of control set in the traceability programme.

<sup>187</sup>This data shows the corresponding sanctioning procedures in accordance with the amount of infringements detected, notwithstanding whether they were initiated in 2016 or are still pending. It must be taken into account that one sanctioning procedure is initiated per economic operator, no matter the number of infringements detected in that operator.

auction)					
First sale authorised places	4 (100%)	46	3	39	3
First sale authorised places for aquaculture products	12 (66.6%)	67	0	0	0
Dispatch centres	54 (86.7%)	272	33	256	28
Intermediary operators	19 (100%)	170	14	31	7
Processing centres	8 (>100%)	43	6	1	1
Retail business	28 (>100%)	268	27	110	23
Transport	29 (100%)	70	8	23	7

Source: 2016 Outcome Report on the control of traceability of fisheries and aquaculture products in the A.C of Andalusia

Although the Andalusian traceability programme points out the level of compliance achieved in fish auctions, the truth is that the highest number of infringements detected took place in dispatch centres (256 infringements), followed by fish auctions (175) and retail business (110). Surprisingly, no infringements were reported during 2016/2017 in first sale authorised places for aquaculture products, despite the fact that no monitoring controls were conducted to check if the 67 irregularities previously detected were corrected.

The level of compliance with the Control Regulation traceability requirements significantly differs from one economic operator to another (see Annex 2 where there is a list of the most common infringements detected on traceability per economic operator). Although the Outcome Report provides a wider list of infringements, the most common ones in the A.C of Andalusia in 2016 were:

- The lack of adequate traceability systems and procedures (concerning codes, barcodes, electronic chip or other marking devices or systems);
- Non-compliance with the minimum labelling and information requirements concerning the lots of fishery products; and
- The use of weighing systems not authorised by the competent authorities and without verification in force.

### 2.2.2. A.C of Galicia

The lack of publicly available data on the implementation of the fisheries control system in Galicia made necessary to file an access to information request to the Consellería del Mar, on which the Sub-Directorate General of Coastguards of Galicia depends. As happened with Andalusia, this authority replied to the request within the established legal period, but only provided 'partial' access to information.<sup>189</sup> No public access to data was provided regarding the description of the most common infringements to fishing laws committed in the A.C, nor in relation to the sanctioning procedures resulting from the infringements detected, nor the

<sup>188</sup>This means that a sanctioning procedure has been opened to all fish auctions in Andalusia.

<sup>189</sup> On 30 August 2017 IIDMA was notified of the Resolution of Consellería del Mar of the Autonomous Community of Galicia, dated 7 August 2017. This provided additional information in line with IIDMA's access to information request, which was initially filed during the preparation of this report. The Consellería del Mar provided data on fisheries infringements and sanctions in Galicia. A summary of the main data of interest is provided in Annex 3, although the content of this report remains as it was upon completion on 26 July 2017.

imposed administrative sanctions. The information provided exclusively relates to inspections and infringements corresponding to 2014, 2015 and 2016 in relation to the control over internal waters, planning and management of the fishing sector and marketing, and is classified according to the place where the inspection was conducted.

Unlike for the A.C of Andalusia, for Galicia, it is not clear whether this A.C has produced the outcome report of their regional control programme over traceability of fisheries and aquaculture products, as this is not publicly available. This does not allow anyone to examine the extent to which the A.C of Galicia is compliant with the EU requirements on traceability throughout its supply chain.

### 2.2.2.1. Data on inspections

According to the information provided, a comparative breakdown of data on inspections conducted in 2014, 2015 and 2016 is shown in the table below, identifying those main areas of control activity in Galicia:

**Table 17.- Data on inspections in the A.C of Galicia**

Years	Total N° of inspections	Land (port)	Sea	Aerial	Beach-coast <sup>190</sup>	Marine farms	Transport	Fish Auctions	Establishments for fisheries products sale & others <sup>191</sup>
<b>2014</b>	<b>16,437</b>	4,266	2,706	134	2,581	647	1,180	773	2,884
<b>2015</b>	<b>14,488</b>	3,785	2,754	26	2,663	595	1,128	745	1,953
<b>2016</b>	<b>13,787</b>	3,889	2,779	69	1,759	760	1,063	631	2,000

Source: Sub-Directorate General for Coastguards in Galicia

Data provided by public authorities reveals that inspections in this A.C are conducted by officials of the Sub-Directorate General of Coastguards of Galicia across the 10 operational units distributed in different coastal locations, together with two other specialised control units: the Ascribed Police Unit (UPA) and the Veterinary Inspection Unit (ICR). In addition, Galicia counts with the so-called IP-700 which is, as Galician authorities informed us, a vessel with no fixed base operating within Galician internal waters to control and inspect.

Over the last two years, the highest rates of inspections conducted in Galicia took place in ports, representing around 27% of overall controls, and at sea (20%). These were followed by inspections in beach-coasts, which in 2015 accounted for almost 18% of controls, and at establishments for fisheries products sale representing almost 15% in 2016. However, as in the case of Andalusia, data shows a considerable decrease of inspections conducted in 2016 when compared to 2014 figures. This 16% decrease affected every place of control except for those conducted at sea and in marine farms, which increased last year around 3% and 17% respectively.

<sup>190</sup>To clarify the difference between inspections conducted at sea, and those conducted in beach-coast, the Chief of Inspection of the Sub-Directorate General for Coastguards of Galicia informed us that controls undertaken in beach-coast are conducted in land at the Galician beaches. In particular, controls conducted in beach-coast mainly include shellfishing activities (around 90% of the cases, as confirmed by the competent authority) together with minor cases of recreational fishing.

<sup>191</sup>According to the information provided, the conduction of controls over establishments for fisheries products sale in Galicia mainly includes the following places: storages, fish preserve establishments, fish retail business, local markets (Galician public authorities refer to "Plaza Abastos"), restaurants, wholesalers and supermarkets. It must be taken into account that inspections at fish auctions are counted separately as seen in table 17.

In 2016, the highest rates of inspections in Galicia were undertaken by the operational unit of Vigo (19%), followed by the central services operating from Santiago de Compostela (12%), the ICR (11%) and from the municipality of Celeiro in Lugo (10%).

### 2.2.2.2. Data on infringements

While the A.C of Galicia conducted the highest number of fisheries inspections in 2014, the infringement rates over the last three years remained fairly constant. In 2014 and 2016, the rate of infringements on fisheries almost amounted to 26%, and in 2015 the infringement rate increased up to 30%. Over these three years analysed, the main infringements of fisheries law were almost detected in the same places where inspections were conducted in Galicia, as follows:

Table 18.- Data on infringements in the A.C of Galicia

Years	Total Nº of inspections	Total Nº of infringements	Land (port)	Sea	Aerial	Beach-coast	Marine farms	Transport	Fish Auctions	Establishments for fisheries products sale & others
2014	16,437	4,310	242	1,063	11	2,145	124	144	93	182
2015	14,488	4,464	358	1,093	1	1,958	76	192	103	183
2016	13,787	3,672	430	1,283	6	1,191	83	156	94	159

Source: Sub-Directorate General for Coastguards in Galicia

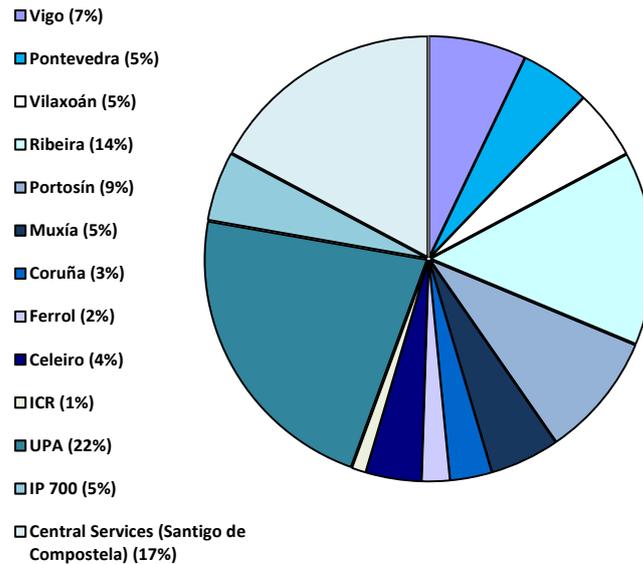
Data shows how the highest number of infringements in Galicia over those three years were detected in beach-coast (representing 50%, 44% and 34% of infringements in 2014, 2015 and 2016 respectively)<sup>192</sup> and at sea, where infringements accounted for 25% of the total in 2014 and 2015 and increased to 34% in 2016. Compared to previous years, the infringement rate of inspections conducted at port increased in 2016, reaching 10% of overall breaches.

In addition, gathered data reveals that the infringement rate of controls conducted in Galician fish auctions in 2015 was almost 13.8%, and in 2016 represented 14.9%. With regard to controls over marine farms, the infringement rate in 2015 and 2016 accounted for around 12% and 10.9%, respectively.

In terms of infringement rates detected per operational unit in the A.C of Galicia, in 2016 the UPA reported the highest number of infringements detected (22%) followed by the central services at Santiago de Compostela (17%). The lowest rates were detected by the ICR (1%), the Ferrol unit (2%) and the Coruña unit (3%). The chart below presents the distribution of the infringement rates detected by each operational unit in Galicia:

#### Illustration 1.- Infringement rates detected at Galician Operational Units

<sup>192</sup> These infringement rates mainly relate to activities of shellfishing in Galicia, together with recreational fishing to a lesser extent.



Source: Sub-Directorate General for Coastguards in Galicia

### 2.3. Lack of transparency in the availability and access to implementation data

Article 3 of the CFP Basic Regulation includes transparency as one of its principles of good governance. It requires “*transparency of data handling, in accordance with existing legal requirements (...)*”, as well as the availability of data to specific stakeholders including “*other defined end-users*”. Existing legal requirements on transparency are found in Articles 4 and 5<sup>193</sup> of the Aarhus Convention on Access to Information, Public Participation and Access to Justice, which was ratified by Spain.<sup>194</sup> In order to comply with its international obligations, Spain adopted Law 27/2006 of 18 July, on the rights on Access to Information, Public Participation and Access to Justice in environmental matters.

Except for the access to information request replied by the D.G of Fisheries and Aquaculture of the A.C of Andalusia and the Sub-Directorate General of Coastguards of the A.C of Galicia, this research has been mainly conducted with the official information publicly available via standard internet search and the results of several consultations with public authorities and relevant stakeholders. Updated implementation data for 2016 is not publicly available at State level, although the SGCI has provided us with certain data on inspections and infringements corresponding to that year.

As said, both AA.CCs responded to our access to information request but provided only ‘partial access’ to information. As in the case of the MAPAMA, AA.CC public authorities have not provided data in relation to the administrative sanctions imposed as a result of breaches of fisheries laws. In addition, Galician authorities did not allow for public access to data concerning the most common infringements detected in their region and the resulting administrative sanctioning proceedings.

<sup>193</sup>Articles 4 and 5 of the Aarhus Convention, which refer to provisions on access to environmental information, and the collection and dissemination of environmental information.

<sup>194</sup> BOE num. 40, of 16.02.2005.

In light of this context, it must be stressed that public authorities are required under Spanish Law 27/2006 to disseminate environmental information in an active and systematic manner. It is mandatory to make publicly available a minimum content of information, which includes, “*data or summaries of data resulting from the monitoring of activities which affect or are likely to affect the environment*”.<sup>195</sup> This evidences the obligation of State and AA.CC public authorities to promote further access to data on fisheries control and enforcement, with no more limitations than the exceptions provided in Article 4 (4) of the Aarhus Convention and Article 13 (2) of Law 27/2006. Among the exceptions to the availability of information, Spanish law in line with EU Law refers to those cases where the dissemination of the information can affect the confidentiality of data in three specific circumstances:

- i. the confidentiality of the proceedings of public authorities where such confidentiality is provided by law;
- ii. the confidentiality of commercial or industrial information where such confidentiality is provided by national or EU law to protect a legitimate economic interest, including the public interest in maintaining statistical confidentiality and tax secrecy; and
- iii. the confidential character of personal data or files, in accordance with the Organic Law 15/1999, of 13 December, on Personal Data Protection,<sup>196</sup> provided that the natural person concerned has not consented to the disclosure of the information to the public.<sup>197</sup>

Accordingly, public authorities cannot allege confidentiality in general terms as an exception to the obligation to provide access to the requested information. To ensure that exemptions to the availability of information are correctly applied, public authorities must specify which exemption applies to each case and the reasons for it.

Linked to the above, Article 113 of the Control Regulation also establishes rules regarding the protection of professional and commercial secrecy. However, confidentiality requirements should not undermine the right of access to environmental information in view of the obligation of public authorities to interpret such limitations “*in a restrictive way, taking into account the public interest served by disclosure*”.<sup>198</sup> This obliges public authorities to interpret these grounds in a restrictive way and weigh the public interest served by disclosure against the interest served by the refusal.

Apart from the Sparrow Operation on IUU fishing, our study also highlights the lack of consolidated and publicly available data regarding the level of imposed administrative sanctions, which makes it difficult to assess whether Spain is actually implementing an effective, dissuasive and proportionate sanctioning system for infringements to the CFP rules.<sup>199</sup>

The fact that fisheries control in Spain is shared between the State and AA.CC competent authorities can cause divergences when implementing fisheries regulations. For instance, this can be seen in the lack of transparency of the national register of infringements to the CFP rules where, although Spanish law defines such register as of a public nature, neither the AA.CC competent authorities nor the public have direct access to the data contained at the

---

<sup>195</sup>Articles 6 and 7 (5), Law 27/2006.

<sup>196</sup>BOE num.298, of 14.12.1999.

<sup>197</sup>Article 13 (2), paras. A), d) and f) of Law 27/2006.

<sup>198</sup>Article 4 (4) last paragraph of the Aarhus Convention, and Article 13 (4) of Spanish Law 27/2006.

<sup>199</sup>In addition, the MAPAMA is taking too long to publish their 2016 annual actuation report. That is the reason why even after two years the most updated information on the Spanish fisheries organisation and management dates from 2015.

register. In any case, and although Article 93 of the Control Regulation does not expressly mention that such register should be publicly accessible, requirements on transparency established at Article 3 paragraph k) of the CFP Regulation must strictly apply. In addition, the Aarhus Convention and Law 27/2006 oblige public authorities to “adopt all necessary measures to guarantee that environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunications networks”.<sup>200</sup> To this end, public authorities must create registers or publicly accessible environmental information lists, indicating where the information can be found.<sup>201</sup>

There are other examples where the right of access to information on fisheries control and enforcement is undermined for reasons of professional and trade secrecy of the fisheries sector. For instance, the High Court of Justice of Madrid in Judgment num. 24/2017, of 13 January 2016 confirmed the refusal of access to environmental information request filed by the NGO Oceana, claiming that information concerning control and verification of engine power of fishing vessels “does not constitute environmental information, since it refers to the planning and management of the fishing sector and protection of the fishing fleet (that is, the sustainability of the fisheries economic sector), and is not connected to the protection and regeneration of fisheries resources.”<sup>202</sup> In our view, information relating to engine power of fishing vessels should be understood by Spanish judges as a basic parameter for managing and protecting fisheries resources and, consequently, be considered as environmental information that must be publicly accessible. In fact, Oceana contended that information concerning control and verification of engine power of fishing vessel was environmental information, because it related to an administrative measure designed to protect marine biodiversity given that higher power involves a higher capacity to destroy the seabed habitats.

### 3. Discussion and recommendations

A review of the Spanish domestic framework for fisheries control and enforcement together with the implementation data provided by Spanish public authorities shows that, although Spanish law reflects most of the obligations provided in the Control and IUU Regulations, further efforts are needed when implementing several control and enforcement requirements.

This section identifies specific findings and recommendations for the Spanish control and enforcement system, by describing 6 areas where, to a greater or lesser degree, Spain is not in line with the CFP Control Regulations. In our view, the following improvements are required including the modification of several aspects of the Spanish legislation.

#### 3.1. The penalty point system

In addition to the lack of publicly available data concerning the implementation of the penalty point system, the ECA has stressed the existence of deficiencies in the enforcement of the system of sanctions in Spain, given the inconsistent manner in which the point system is being implemented. Between 2013 and 2015, Spain only applied such system to 49 cases of non-compliance. This is a very limited number, which shows Spanish authorities are applying the

---

<sup>200</sup>Article 6 (3) of Law 27/2006, in line with Article 5 (3) of the Aarhus Convention.

<sup>201</sup>Article 5 (3) para.c) of Law 27/2006.

<sup>202</sup>Judgment of the High Court of Justice of Madrid, Administrative Chamber, num. 24/2016 of 13 January 2016 (Num. Cendoj: 28079330062016100020).

system with extreme caution given the socio-economic impact of the withdrawal of fishing licences. Spanish media have reported the lack of efficiency of the point system, providing that just 4 points were assigned to masters of fishing vessels in 2015 and that no cases of permanent withdrawal of fishing licences were reported since the creation of the system.

Although the rate of infringements to the CFP rules identified in Spain is relatively low when compared to the amount of controls conducted, weakness in applying sanctions makes enforcement less effective. The partial application of the point system may lead to a loss of its inherent deterrent function, generating a lack of a level playing field for all fisheries operators in Spain. As consulted public authorities informed us, there has been a lack of serious commitment by public authorities to implement the penalty point system in an effective and coordinated manner. Apparently, the system is starting to work now, that is, after 6 years since the Control Regulation required its creation. Thus, the consistent implementation of the point system in Spain is a pending task that must be addressed.

In addition, Spanish law is not consistent with Article 131 of the Control Regulation Implementing Regulation, by not requiring the reporting in the National Register of Fishing Vessels and in the EU Fishing Fleet Register, of cases of suspension of fishing licences. This aspect should be amended in order to ensure that all fishing vessels with suspended fishing licences are easily identifiable in the corresponding national and EU registers.

To ensure the effective enforcement of the system of sanctions, Spain must improve the penalty point system and ensure its consistent application at both State and AA.CC levels. Although the legal basis for its implementation is provided in Royal Decree 114/2013, guidance on how to effectively apply the penalty points system is lacking. Official guidance documents and training would help to improve the enforcement of the penalty point system and at the same time create a level playing field which will serve as a real deterrent.

Further transparency and publicly available data on the system implementation would help to create social awareness about the importance of respecting fisheries rules.

### **3.2. Increasing and improving controls and verification over the engine power of fishing vessels**

As discussed above, there is evidence of deficiencies regarding the control and verification of the engine power of fishing vessels in Spain.

Spain is one of the few Member States carrying out verifications on engine power based on a representative sampling plan. However, as the ECA has noted, controls conducted in Spain are not sufficient given the existence of discrepancies between the actual engine power of operating fishing vessels and those certified on their fishing licences. Prior to the amendment of Law 3/2001, Spanish law gave until the 31 July 2015 for the legalisation of registration for fishing vessels whose engine power did not match with that which was certified in their respective licences. This means that, before that date, vessels exceeding the certified engine power were allowed to operate, notwithstanding the fact that this was prohibited by the Control Regulation from 1 January 2010.

According to several NGOs consulted throughout this study, the effective control and verification over engine power of fishing vessels still represents a major pending issue in Spain. In 2014, document checks were done on a random sample of 97 vessels, out of which physical

inspections were required for 16 vessels. From these 16 cases, 7 resulted in infringements because of the excess of the certified engine power, representing almost 44% of the cases of vessels subject to physical inspections. Likewise, during audits conducted in 2016 on engine power, the European Commission pointed out that in the previous year, Spain only carried out document checks over engine power of fishing vessels in one isolated occasion, and verification was not conducted by the competent authority.

Non-compliance with the regulations in force concerning engine powers is classified as a serious infringement under the AA.CC competence on planning and management of the fishing sector. The available data on infringements detected at regional level lacks information concerning this category of infringement. This raises concerns regarding the efficacy of the current approach to control compliance over engine power requirements and the detection of related infringements in Spain.

To ensure that the prohibition to fish with a fishing vessel whose engine power exceeds the one registered on the fishing licence, controls over engine power should increase and the quality of verification be enhanced. Competencies on this matter should be reinforced at the MAPAMA level, promoting a strong coordination with the General Directorate of the Merchant Marine, and the AA.CC competent authorities in charge of the detection of possible infringements.

### **3.3. Increase controls at sea in order to ensure compliance with the landing obligation and discarding rules**

Our research shows that, while inspections conducted on maritime fisheries under State competence on land and by air were relatively high between 2013 and 2016, inspections at sea only represented around 19.7% of controls carried out over this four year period. Although Spain conducted the highest number of inspections in 2015, only 2,198 out of an overall 11,680 controls were carried out at sea. Indeed, inspections at sea decreased by almost 20% in 2016 compared to 2015 figures. Available data shows that detection of infringements at sea appears to be more effective. In 2016, the infringement rate for inspections conducted at sea was 18.2%, while the infringement rates for inspections conducted on land and by air were 10.7% and 1.8%, respectively.

Compliance with the landing obligation and discarding rules requires a high focus on monitoring and control by competent authorities not only in ports, where catches are landed, but also over those fishing activities taking place at sea. There is no consistent available information on how Spain is implementing the landing obligation related to the catches of specific species which entered into force in January 2015 and 2016 (those provided in sections a), b) and c) of Article 15 (1) of the CFP Regulation), nor concerning how competent authorities are undertaking control and surveillance over it.

Although the CFP Regulation provides the implementation of such obligation on a gradual basis from 2015 through to 2019, Spain is already experiencing technical difficulties such as selectivity and management of unwanted catches at mixed fisheries.

To promote effective implementation of the landing obligation in the coming years, Spain should reinforce controls conducted at sea. In addition, it is essential to elaborate official guidelines establishing methodologies and practical approaches on control and monitoring to ensure that the entire catch is recorded and not just the fraction landed, as previously required.

Furthermore, to avoid any type of misinterpretation at the time of prosecuting infringements to the landing obligation, it would be advisable for lawmakers to further develop the category of infringement contained in Article 100 (3) paragraph g) of Law 3/2001, in line with the detailed legal description provided in Article 90 (1) paragraph c) of the Control Regulation.

### **3.4. Improving controls over the marketing of fisheries and aquaculture products to ensure further compliance with EU requirements on traceability**

This recommendation is mainly based on findings concerning data on controls over the marketing of fisheries and aquaculture products and the established traceability systems in the A.C of Andalusia. No findings concerning compliance with EU traceability requirements have been presented in relation to the A.C of Galicia, given that the outcome report of their control programme over traceability of fisheries and aquaculture products is not publicly available.

While the implementation of the Andalusian control programme over traceability of fisheries and aquaculture products has been a positive tool to better enforce the traceability requirements set in Article 58 of the Control Regulation, compliance with traceability requirements is still an issue that must be addressed.

Evidence gathered through interviews with stakeholders stressed the lack of sufficient resources and implementation capacity at AA.CC level to carry out more comprehensive controls over traceability across the whole marketing chain. A main problem for conducting such controls in Andalusia relates to the lack of reliable data at the time of identifying the list of existing economic operators, and in particular concerning retail businesses and intermediary operators. In addition, controls over traceability at dispatch centres and first sale authorised places for aquaculture products were found to be insufficient in 2016.

In addition, our research raises concerns about the relatively high infringement rate concerning the marketing of undersized fish across all business operators involved in the Andalusian marketing chain. With regards to infringements of traceability requirements, these are mostly taking place in dispatch centres, fish auctions and retail business motivated by failures in compliance with minimum labelling and information requirements, inadequate traceability systems (codes, barcodes, electronic chip or other marking devices) and unauthorised weighing systems, among others.

In our view, the traceability of fisheries products should be understood as a contribution to the common responsibility of all business operators to ensure and document that all fish placed on the market is compliant with applicable quality and safety requirements. Greater awareness on the importance to comply with traceability requirements is needed in order to implement a system which allows to effectively determine the source of any fishery product. Despite significant efforts, and in order to correct the inconsistencies found in the traceability system of the A.C of Andalusia, we recommend to:

- Increase and enhance controls at dispatch centres and first sale authorised places for aquaculture products.
- Improve the identification of all business operators involved in the marketing chain in order to make the traceability system more reliable and meaningful.
- Develop a more integrated and simplified traceability system, and enhance the use of codes, bar codes, electronic chips and other marking devices in the products.

- Raise awareness on the importance for each operator to be able to trace one step before and one step after their operation, keeping all required documentation concerning all lots of products, inputs and processes at all stages (from catching or harvesting to retail sale). Official guidance and further training should be provided in order to help business operators to be more familiarised with the existing legal requirements on traceability.
- Increase compliance with labelling requirements to facilitate traceability when fisheries products are moved from one operator to the next step in the value chain.

Given the limited information available in relation to the A.C of Galicia, we cannot make recommendations.

### 3.5. Increasing transparency and availability of implementation data on fisheries

As previously discussed, publicly available information concerning fisheries inspections, infringements and sanctions in Spain significantly differs between the State and the AA.CC levels. Summaries of implementation data on fisheries, such as the ones published every year by the MAPAMA, are not provided at the AA.CC level. Although AA.CC competent authorities replied to our access to information requests, they only provided 'partial access' to information, without justifying the reasons to apply on each case the exceptions to the availability of information provided at national law.

The Aarhus provisions on access to environmental information, which are effectively reflected in Spanish legislation, must consistently apply when the public access to implementation data on fisheries control and enforcement in Spain is concerned.

Spain should urgently:

- Increase transparency and availability of fisheries data on inspections and infringements, and provide effective access to data on administrative sanctions imposed for infringements of fisheries laws at both State and AA.CC levels.
- Promote the publication of annual reports at the AA.CC level, including data on fisheries control and enforcement. In addition, elaborate and provide statistical data on judicial administrative and criminal cases concerning maritime fisheries, planning and management of the fishing sector and marketing by the Spanish General Council of the Judiciary.
- Increase political awareness and will of Spanish public authorities to correctly apply the Aarhus Convention provisions on access to environmental information. Although Spanish Law 26/2007 reflects in an effective manner the Aarhus provisions, there is evidence showing that national law is not correctly implemented. Official guidance and training should be provided to Spanish public authorities as well as judges and magistrates in order to avoid the inappropriate enforcement of the Aarhus Convention when applying to fisheries control.
- Clarify the public nature of the national register of infringements to the CFP rules.
- Increase and enhance coordination between the different competent authorities involved in the control and enforcement of fisheries at both State national and AA.CC levels. Public authorities at all levels of jurisdiction should be aware of the functioning of the fisheries control and enforcement system in Spain, being able to identify the progress and existing constraints when enforcing the CFP rules and its control regulations.

### 3.6. Reconsidering the effectiveness of the administrative proceeding to prosecute infringements on IUU fishing

In recent years, Spain has taken significant steps to ensure its nationals involved in IUU fisheries are effectively sanctioned. The Sparrow Operation represents a positive example to be pursued by other Member States, where Spanish authorities demonstrated political will in imposing deterrent administrative sanctions.

However, Spanish law classifies IUU fishing activities as very serious administrative infringements but not as criminal offences, raising concerns on whether administrative law is enough to effectively prosecute, in all cases, this type of illegal activity. Our analysis identifies a number of deficiencies and legal loopholes in Spanish legislation likely to undermine the prosecution of IUU fishing activities. In our view, amendments to Spanish legislation should be necessary for the following:

- Limitation terms applying to fisheries infringements under Spanish administrative law should be extended. The statutory limitation term for very serious infringements such as IUU fishing is 3 years. This is likely to undermine the possibilities to effectively investigate and prosecute infringements of such a level of complexity.
- Apart from economic fines, IUU fishing activities should be punished with the permanent withdrawal of fishing licences as well as the permanent prohibition to be recipient of public funds. As seen in the Sparrow Operations I and II, although fines were the highest ever imposed, penalties entailed the suspension of fishing licences and the prohibition to be granted public funds for specific periods of time (between 5 to 26 years in operation Sparrow 1, and between 5 to 14 years in operation Sparrow 2).
- The ruling of the Spanish Supreme Court at the recent case Vidal Armadores shows the existence of significant limitations in Spanish legislation. The main one is the scope of jurisdiction of Spanish criminal courts, which cannot prosecute IUU activities taking place in international waters despite the fact that the vessel owners were Spanish nationals. Since the deterrent of administrative sanctions is insufficient in these cases, Spanish Organic Law 6/1985, of 1 July, on the Judicial Power should be amended to ensure that these type of illegal activities do not go unpunished, no matter where they are committed. In addition, official training of judges and magistrates on IUU fishing activities and the inherent particularities of this category of crimes should be provided.

## Conclusion

This report shows that, although significant efforts have been made over the last years, concerns still remain regarding the implementation of certain EU control and enforcement requirements.

On the enforcement of the IUU Regulation, the report highlights the positive steps taken by the MAPAMA competent authorities when adopting punitive actions against Spanish nationals

and companies engaged in IUU fishing activities. The Sparrow Operation evidences Spanish leadership on the fight against IUU fishing which resulted in the imposition of administrative fines higher than ever imposed at EU level.

Nevertheless, findings of this study show that there are still deficiencies in Spain on the enforcement of the sanctions system. The lack of public access to data on administrative sanctions imposed for infringements to the CFP rules, together with the weak application of the penalty point system since its late creation in February 2013, raises concerns on whether Spain is punishing such infringements with effective, proportionate and dissuasive sanctions.

Moreover, the lack of transparency and availability of implementation data on fisheries control and enforcement in Spain requires an urgent rectification. To be compliant with the Aarhus Convention, to which Spain has been a party since March 2005, confidentiality requirements must be interpreted in a restrictive manner in order to not undermine the effective exercise of the right of access to environmental information regarding fisheries control and enforcement. As said before, public authorities cannot allege confidentiality in general terms as an exception to the obligation to provide access to the requested information. Both the Aarhus Convention and Spanish law provide for three specific circumstances where confidentiality criteria can apply. In case these exceptions are used, public authorities must specify which one applies on each case and the reasons for it.

There is also an inconsistency regarding the public character of the Spanish national register of infringements, which, contrary to the CFP requirements on transparency, is not directly accessible by either the AA.CC competent authorities nor the public.

Although Spain has successfully implemented the 2012 action plan adopted by the European Commission as a result of the gaps identified in the national control system on fisheries, further efforts need to be made to effectively implement EU requirements on control and surveillance. The improvement of control and verification over engine power of fishing vessels, the increase of inspections at sea to guarantee compliance with the landing obligation and discarding rules, and the enhancement of controls over marketing of fisheries and aquaculture products to further comply with EU requirements on traceability are still outstanding issues that Spain must urgently address.

Guidance and training also need to be provided to enforcement authorities at both State and AA.CC levels, as well as to judges and magistrates to increase awareness and willingness to enforce control rules in an effective manner. This would help to create a level playing field for all fisheries operators, ensuring that control rules are there to be respected and enforced on equal terms. Coordination should also increase and improve between all competent authorities involved in the fisheries control and enforcement system at all levels of jurisdiction.

Finally, Spanish legislation presents several deficiencies and loopholes, which make it necessary to reconsider the effectiveness of the current Spanish administrative proceeding to successfully prosecute IUU fishing activities. Following the Vidal Armadores case, amendments to Spanish legislation should be undertaken by recognising the Spanish criminal court's jurisdiction to prosecute IUU fishing activities no matter where they are committed, and ensure that such illegal activities do not go unpunished.

## Bibliography

### EU and International law

Council Regulation (EC) n° 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.

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

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.

Commission Regulation (EC) N° 1010/2009 of 22 October 2009 laying down rules for the implementation of the Council Regulation (EC) N° 1005/2008 of 29 September establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.

Commission Implementing Regulation (EC) No 404/2011 of 8 April 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy.

Aarhus Convention on Access to Information, Public Participation and Access to Justice (“Aarhus Convention”), 2161 UNTS 447; 38 ILM 517 (1999).

### Spanish law

<b>National Legislation</b>	
1978 Spanish Constitution	<a href="https://www.boe.es/buscar/act.php?id=BOE-A-1978-31229">https://www.boe.es/buscar/act.php?id=BOE-A-1978-31229</a>
Organic Law 6/1985, of 1 July, on the Judicial Power	<a href="https://www.boe.es/buscar/act.php?id=BOE-A-1985-12666">https://www.boe.es/buscar/act.php?id=BOE-A-1985-12666</a>
Organic Law 10/1995, of 23 November, of Criminal Code	<a href="https://www.boe.es/buscar/act.php?id=BOE-A-1995-25444">https://www.boe.es/buscar/act.php?id=BOE-A-1995-25444</a>
Law 3/2001, of 26 March, of State Maritime Fisheries	<a href="https://www.boe.es/buscar/act.php?id=BOE-A-2001-6008">https://www.boe.es/buscar/act.php?id=BOE-A-2001-6008</a>
Law 27/2006 of 18 July, on the rights on Access to Information, Public Participation and Access to Justice in environmental matters	<a href="https://www.boe.es/buscar/act.php?id=BOE-A-2006-13010">https://www.boe.es/buscar/act.php?id=BOE-A-2006-13010</a>
Law 33/2014, of 26 December, amending Law 3/2001, of 26 March, of State Maritime Fisheries	<a href="https://www.boe.es/diario_boe/txt.php?id=BOE-A-2014-13516">https://www.boe.es/diario_boe/txt.php?id=BOE-A-2014-13516</a>
Law 39/2015, of 1 October 2015, on the Spanish Administrative Procedure	<a href="https://www.boe.es/buscar/act.php?id=BOE-A-2015-10565">https://www.boe.es/buscar/act.php?id=BOE-A-2015-10565</a>
Royal Decree 1134/2002, of 31 October, on the application of sanctions over maritime fisheries in external waters to Spanish nationals operating flag of convenience vessels	<a href="https://www.boe.es/buscar/act.php?id=BOE-A-2002-21181">https://www.boe.es/buscar/act.php?id=BOE-A-2002-21181</a>

The Control and Enforcement of Fisheries in Spain  
Final Report 26 July 2017

Royal Decree 176/2003, of 14 February regulating the control and inspection functions over maritime fisheries activities	<a href="https://www.boe.es/buscar/act.php?id=BOE-A-2003-4012">https://www.boe.es/buscar/act.php?id=BOE-A-2003-4012</a>
Royal Decree 1549/2009, of 9 October, regarding the planning and management of the fishing sector and adapting to the European Fisheries Fund	<a href="https://www.boe.es/buscar/act.php?id=BOE-A-2009-16144">https://www.boe.es/buscar/act.php?id=BOE-A-2009-16144</a>
Royal Decree 401/2012, of 17 February developing the organic structure of the Ministry of Agriculture, Food and Environment	<a href="https://www.boe.es/buscar/act.php?id=BOE-A-2012-2397">https://www.boe.es/buscar/act.php?id=BOE-A-2012-2397</a>
Royal Decree 114/2013, of 15 December, regarding the creation and regulation of the national register of serious infringements to the common fisheries policy, the establishment of application rules of the penalty point system, and updating the amount of sanctions foreseen in Law 3/2001, of 26 March, of State Maritime Fisheries	<a href="https://www.boe.es/buscar/act.php?id=BOE-A-2013-2209">https://www.boe.es/buscar/act.php?id=BOE-A-2013-2209</a>
Royal Decree 182/2015, of 13 March, approving the proceedings for the sanctioning regime over maritime fisheries in external waters	<a href="https://www.boe.es/buscar/act.php?id=BOE-A-2015-2715">https://www.boe.es/buscar/act.php?id=BOE-A-2015-2715</a>
Royal Decree 418/2015, of 29 May, regulating the first sale of fisheries products	<a href="https://www.boe.es/buscar/act.php?id=BOE-A-2015-6939">https://www.boe.es/buscar/act.php?id=BOE-A-2015-6939</a>
Royal Decree 424/2016, of 11 November, regarding the establishment of the organic structure of the ministerial departments	<a href="https://www.boe.es/buscar/act.php?id=BOE-A-2016-10459">https://www.boe.es/buscar/act.php?id=BOE-A-2016-10459</a>
Order ARM/2077/2010, of 27 July for the access control to port services of fishing vessels of third countries, transit operations, transshipment, import and export of fisheries products to prevent, deter and eliminate IUU	<a href="https://www.boe.es/buscar/doc.php?id=BOE-A-2010-12273">https://www.boe.es/buscar/doc.php?id=BOE-A-2010-12273</a>
<b>AA.CC Legislation</b>	
<b>A.C of Andalusia</b>	
Law 1/2002, of 4 April regarding planning, promotion and control of Maritime Fisheries, Shellfish and Maritime Aquaculture	<a href="https://www.boe.es/buscar/doc.php?id=BOE-A-2002-8488">https://www.boe.es/buscar/doc.php?id=BOE-A-2002-8488</a>
Decree 147/1997, of 27 May, managing, regulating and promoting the marketing of fisheries products	<a href="http://www.juntadeandalucia.es/boja/1997/70/2">http://www.juntadeandalucia.es/boja/1997/70/2</a>
Decree 99/2011, of 19 April, approving the Statutes of the Agency of Agricultural and Fisheries Management of Andalucía	<a href="http://www.juntadeandalucia.es/boja/2011/83/41">http://www.juntadeandalucia.es/boja/2011/83/41</a>
Decree 215/2015, of 14 July, establishing the organic structure of the Department of Agriculture, Fisheries and Rural Development	<a href="http://www.juntadeandalucia.es/boja/2015/136/13">http://www.juntadeandalucia.es/boja/2015/136/13</a>
<b>A.C of Galicia</b>	
Law 2/2004, of 21 April, concerning the creation of the Coastguard Service of Galicia, amended by Law 10/2010 of 11 November	<a href="https://www.boe.es/buscar/doc.php?id=BOE-A-2004-8719">https://www.boe.es/buscar/doc.php?id=BOE-A-2004-8719</a>

Law 11/2008, of 3 December, of Fisheries of Galicia, amended by Law 6/2009, of 11 December, amending Law 11/2008, of 3 December, of Fisheries of Galicia	<a href="http://www.xunta.gal/dog/Publicados/2009/20091215/Anuncio39DB6_es.html">http://www.xunta.gal/dog/Publicados/2009/20091215/Anuncio39DB6_es.html</a>
Decree 168/2015, of 13 November approving the organic structure of Consellería del Mar	<a href="https://www.xunta.gal/dog/Publicados/2015/20151119/AnuncioG0427-181115-0002_es.html">https://www.xunta.gal/dog/Publicados/2015/20151119/AnuncioG0427-181115-0002_es.html</a>

**Others:**

Barreira A., Ruiz C., et al. “Enforcing the Common Fisheries Policy. The implementation of the EU Control Regulation in Spain”, Madrid, Instituto Internacional de Derecho y Medio Ambiente (IIDMA), 2015. Available at: [http://www.iidma.org/attachments/Publicaciones/Enforcing\\_the\\_CFP\\_in\\_Spain.pdf](http://www.iidma.org/attachments/Publicaciones/Enforcing_the_CFP_in_Spain.pdf) and [http://www.iidma.org/attachments/Publicaciones/LaEjecuciondeLaPoliticaPesqueraComun\\_AplicaciondelReglamentodeControlenEspana.pdf](http://www.iidma.org/attachments/Publicaciones/LaEjecuciondeLaPoliticaPesqueraComun_AplicaciondelReglamentodeControlenEspana.pdf)

“Report of the Spanish Fisheries Sector. A year of opportunities” (CEPESCA, 2017) available online at: <http://www.cepesca.es/attachment/e39fc26c-f703-4325-870f-0bd34d52319f>.

EMFF Spanish Operative Programme (2014-2020) approved by the Commission Implementing Decision of 13.11.2015, C (2015) 8118 Final, available online at: [https://ec.europa.eu/fisheries/sites/fisheries/files/docs/body/op-spain\\_es.pdf](https://ec.europa.eu/fisheries/sites/fisheries/files/docs/body/op-spain_es.pdf).

DG Mare Study on the state of play regarding application and implementation of Council Regulation (EC) nº 1005/2008 of 29 September 2008, establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (IUU Regulation), Specific Contract Nº 3 (Final Report, April 2014), available online at: [https://ec.europa.eu/fisheries/sites/fisheries/files/iuu\\_regulation\\_final-report\\_en.pdf](https://ec.europa.eu/fisheries/sites/fisheries/files/iuu_regulation_final-report_en.pdf)

European Parliament, Directorate General for Internal Policies “Illegal, Unreported and Unregulated fishing: Sanctions in the EU” (Study, 2014), available online at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2014/529069/IPOL\\_STU\(2014\)529069\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2014/529069/IPOL_STU(2014)529069_EN.pdf)

Report of 24 April 2017 from the Commission to the European Parliament and the Council on the implementation and evaluation of Regulation (EC) Nº 1124/2009 establishing a Union control system for ensuring compliance with the rules of the common fisheries policy as required under Article 118 (COM (2017) 192 final), available online at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017DC0192&from=EN>

Communication of 1 October 2015 from the Commission to the European Parliament and the Council on the application of Council Regulation (EC) Nº 1005/2008 (COM (2015) 480 final), available online at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0480&from=EN>.

MAPAMA Annual Reports on Activities (2013, 2014 and 2015), available online at: <http://www.mapama.gob.es/es/ministerio/servicios/publicaciones/memorias.aspx>.

MAPAMA Annual Reports on the Spanish Fleet Fishing Activity (2013, 2014 and 2015), available online at: <http://www.mapama.gob.es/es/pesca/planes-y-estrategias/default.aspx>.

Oceana, EJF, PEW and WWF “The IUU Regulation. Analysis: Implementation of the EU seafood import controls” (March 2017), available online at: [http://www.iuuwatch.eu/wp-content/uploads/2017/03/IUU\\_Import-controls\\_report\\_ENG.pdf](http://www.iuuwatch.eu/wp-content/uploads/2017/03/IUU_Import-controls_report_ENG.pdf).

EFCA Annual Report for the year 2015, available online at: <https://www.efca.europa.eu/sites/default/files/EFCA%20Annual%20Report%20for%20the%20year%202015.pdf>.

European Court of Auditors Special Report N° 08/2017 “EU fisheries controls: more efforts needed” (May, 2017), available online at: [http://www.eca.europa.eu/Lists/ECADocuments/SR17\\_8/SR\\_FISHERIES\\_CONTROL\\_EN.pdf](http://www.eca.europa.eu/Lists/ECADocuments/SR17_8/SR_FISHERIES_CONTROL_EN.pdf).

European Court of Auditors Special Report No 7/2007 on the control, inspection and sanction systems relating to the rules on conservation of Community fisheries resources (December, 2007) (2007/C 317/01), available online at: [http://www.eca.europa.eu/Lists/ECADocuments/SR07\\_07/SR07\\_07\\_EN.PDF](http://www.eca.europa.eu/Lists/ECADocuments/SR07_07/SR07_07_EN.PDF).

Spanish Public Prosecutor Annual Report 2016, available online at: [https://www.fiscal.es/fiscal/publico/ciudadano/documentos/memorias\\_fiscalia\\_general\\_estad o/!ut/p/a1/04\\_Sj9CPykssy0xPLMnMz0vMAfGjzOI9HT0cDT2DDbwsgozNDBwtjNycnDx8jAwszIA KlpEVuPtYuBk4unsGO5l6eBhbBJkQp98AB3A0IKQ\\_XD8KVYm\\_h68R0AWGvqEmli7GBu6G6Aqw OBGsAI8bCnJDIwwyPRUByaZ9Ig!!/dI5/d5/L2dBISEvZ0FBIS9nQSEh/](https://www.fiscal.es/fiscal/publico/ciudadano/documentos/memorias_fiscalia_general_estad o/!ut/p/a1/04_Sj9CPykssy0xPLMnMz0vMAfGjzOI9HT0cDT2DDbwsgozNDBwtjNycnDx8jAwszIA KlpEVuPtYuBk4unsGO5l6eBhbBJkQp98AB3A0IKQ_XD8KVYm_h68R0AWGvqEmli7GBu6G6Aqw OBGsAI8bCnJDIwwyPRUByaZ9Ig!!/dI5/d5/L2dBISEvZ0FBIS9nQSEh/).

National Control Programme on Traceability of fisheries and aquaculture products (June 2016), available online at: [http://www.mapama.gob.es/es/pesca/temas/calidad-seguridad-alimentaria/programanacionalcontroldelatazabilidaddelosproductosdelapescayacuicultura2016-2017def\\_tcm7-424211.pdf](http://www.mapama.gob.es/es/pesca/temas/calidad-seguridad-alimentaria/programanacionalcontroldelatazabilidaddelosproductosdelapescayacuicultura2016-2017def_tcm7-424211.pdf).

A.C of Andalusia Control Programme on Traceability of fisheries and aquaculture products (December 2016), available online at: [http://www.juntadeandalucia.es/export/drupaljda/PC\\_TRAZABILIDAD\\_2017.pdf](http://www.juntadeandalucia.es/export/drupaljda/PC_TRAZABILIDAD_2017.pdf).

2016 Outcome Final Report: Control Programme on Traceability of fisheries and aquaculture products within the Regulation (EC) N° 1224/2009, A.C of Andalusia, available online at: <http://www.juntadeandalucia.es/export/drupaljda/Informe-resultados-trazabilidad-2016.pdf>

## List of tables

<b>Table 1.-</b> Distribution of competences on fisheries provided by the 1978 Spanish Constitution.	9
<b>Table 2.-</b> SGCI functions on control and inspection .....	10
<b>Table 3.-</b> Investments on fisheries control and inspection allocated by the General Budget (K €) .....	11
<b>Table 4.-</b> Distribution of inspection and control competences in Andalusia and Galicia .....	11
<b>Table 5.-</b> Scope of the State General Administration inspection tasks .....	14
<b>Table 6.-</b> Competent authorities to initiate a sanctioning procedure (depending on the type of infringement) .....	22
<b>Table 7.-</b> Type of administrative sanctions in accordance with the infringement committed....	23
<b>Table 8.-</b> Competent authorities for imposing administrative sanctions depending on the seriousness and fine amount .....	24
<b>Table 9.-</b> Inspections conducted over maritime fisheries under State competence.....	29
<b>Table 10.-</b> Infringements detected in relation to maritime fisheries under the State national jurisdiction.....	32
<b>Table 11.-</b> Most common types of serious infringements committed .....	32
<b>Table 12.-</b> Administrative sanctioning procedures regarding infringements within maritime fisheries .....	33
<b>Table 13.-</b> Data on inspections and infringements in the A.C of Andalusia .....	37
<b>Table 14.-</b> Data on sanctioning administrative procedures in the A.C of Andalusia .....	39
<b>Table 15.-</b> Scope of the traceability programme of fisheries and aquaculture products in Andalucía.....	40
<b>Table 16.-</b> Controls over marketing of fisheries and aquaculture products at the A.C of Andalusia (2016/2017).....	41
<b>Table 17.-</b> Data on inspections in the A.C of Galicia .....	43
<b>Table 18.-</b> Data on infringements in the A.C of Andalusia.....	44

## List of illustrations

Illustration 1.- Infringement rates detected at Galician Operational Units .....	44
--	----

## Annex I.-Information concerning administrative financial sanctions imposed by the MAPAMA within the Sparrow Operation on IUU fishing

### Part A: Total sanctions under Operation Sparrow 1

Companies name Sanctions for participation to the management of vessels involved in IUU fishing	Financial sanction (EUR)
VIARSA ENERGIA, S.L	1,200,000
VIDAL ARMADORES, S.A	2,100,000
PRIMARY CAPITAL, S.L	2,100,000
ALIMENTA CORPORATION, S.L	1,300,000
ALIMENTA DE TUNIDOS, S.L	450,000
GALLEGA DE PESCA SOSTENIBLE, S.L	100,000
VIARSA CARTERA, S.L	850,000
7 INDIVIDUALS	8,650,000
<b>Total sanctions</b>	<b>16,750,000</b>
Sanctions concerning the obstruction of the work of officials in the exercise of their duties in inspecting: joint liability	Financial sanction (EUR)
VIDAL ARMADORES	
PROPEGARVI Y PROYECTOS Y DESARROLLOS SOSTENIBLES, S.L	
3 INDIVIDUALS	

Source: MAPAMA

### Part B: Total sanctions under Operation Sparrow 2

Companies name_ Sanctions for participation within the management of vessels involved in IUU fishing	Financial sanction (EUR)
CARPENSIS TRADE, S.L	600,000
WORLD OCEAN FISHING, S.L	600,000
INSUABELA, S.L	600,000
BAYMARTEN INVERSIONS, S.L	100,000
GLOBAL SEA TRADING, S.L	300,000
LASTIFF, S.L	250,000
6 INDIVIDUALS	2,820,002
<b>Total sanctions</b>	<b>5,270,002</b>
Sanctions concerning the obstruction of the work of officials in the exercise of their duties in inspecting: joint liability	Financial sanction (EUR)
1 INDIVIDUAL	<b>60,000</b>

Source: MAPAMA

## Annex II.-Description of the most common infringements detected under the Andalusian Control Programme on the traceability of fisheries and aquaculture products

Description of main infringements detected on traceability of fisheries and aquaculture products	Nº infringements per category
Lack of adequate traceability systems and proceedings (code, barcode, electronic chip or a similar device or marking system)	36
Lack of traceability information regarding the commercial designation, scientific name (information to consumers) <sup>203</sup> and FAO alpha-3 code of each species	17
Lack of weighing systems approved by competent authorities with verification in force	15
Lack of identification of production units (including the trip code of the fishing logbook in case of fishing vessels with total 10 meters length or more)	14
Lack of data regarding lot identification number	11
Lack of information regarding quantities of each species in kilograms expressed in net weight or, where appropriate, the number of individuals	9
Lack of adequate traceability systems and proceedings (code, barcode, electronic chip or a similar device or marking system)	8
Lack of data regarding lot identification number	2
Lack of identification of production units (including the trip code of the fishing logbook in case of fishing vessels with total 10 meters length or more)	2
Lack of data regarding the reference to the transport document, takeover declaration data or customs document T2M	2
Lack of traceability information regarding commercial designation, scientific name (information to consumers) and FAO alpha-3 code of each species	1
Lack of information regarding name, port code and data of landing and place of unloading	1
Lack of weighing systems approved by competent authorities with verification in force	1
Lack of data concerning external identification number and name of the fishing vessel or the name of the aquaculture production unit	1
The products transported for its first sale from other port are not accompanied by the corresponding transport document	1
<b>First sale authorised places for aquaculture products</b>	
The 2016 final outcome report does not account for infringements in this field.	0
Lack of adequate traceability systems and proceedings (code, barcode, electronic chip or a similar device or marking system)	41
Lack of weighing systems approved by competent authorities and with verification in force	22
Lack of traceability information regarding commercial designation, scientific name (information to consumers) and FAO alpha-3 code of each species	9
The products transported for its first sale from other port are not accompanied by the corresponding transport document	9
Lack of information regarding geographical or catching area (information to consumers)	8
Lack of data regarding lot identification number	6
Lack of information regarding quantities of each species in kilograms expressed in net weight or, where appropriate, the number of individuals	5
Lack of adequate traceability systems and proceedings (code, barcode, electronic chip or a similar device or marking system)	17
The identification number is not affixed to the corresponding lot, when there	2

<sup>203</sup>Article 58 (5) para. g) Control Regulation and Article 68 of the Control Regulation Implementing Regulation

The Control and Enforcement of Fisheries in Spain  
Final Report 13 July 2017

	is a commercial document physically accompanying it	
	Inadequate labelling	2
	Lack of identification number of each lot	1
	Data on traceability is not reported by immediate suppliers	1
	Lack of data regarding the fishing gear category	1
	Lack of information regarding quantities of each species in kilograms expressed in net weight or, where appropriate, the number of individuals	1
<b>Processing centres</b>	Data on traceability is not reported by immediate suppliers	1
	Lack of adequate traceability systems and proceedings (code, barcode, electronic chip or a similar device or marking system)	47
	Lack of data concerning external identification number and name of the fishing vessel or the name of the aquaculture production unit	9
	Lack of data regarding the fishing gear category	6
	The identification number is not affixed to the corresponding lot, when there is a commercial document physically accompanying it	6
	Lack of data regarding the production method (information to consumers)	4
	Lack of data regarding scientific name of species (information to consumers)	4
	Lack of data regarding the catching or harvesting area	4
	It is not possible to trace the species back to catching or harvesting stage	4
	There is no indication of whether the fisheries products have been previously frozen or not	3
	Lack of adequate traceability systems and proceedings (code, barcode, electronic chip or a similar device or marking system)	21
	Lack of data concerning the quantity of species when concerning products below the applicable conservation minimum reference size	1
	Lack of data regarding lot identification number	1

Source: 2016 Outcome Report on the control of traceability of fisheries and aquaculture products in the A.C of Andalucía

### **Annex III.- Addition to the report received after date of completion: data on infringements and sanctions in Galicia.**

According to the data contained in the administrative database of the competent administrative authority concerning fisheries sanctioning procedures, the overall number of sanctioning procedures launched in 2014 was 3,376, which resulted in the imposition of fines amounting to 3,490,479.39 EUR. In 2015, an overall 2,855 sanctioning procedures were launched resulting in the imposition of administrative sanctions amounting to 3,055,729.67 EUR. Finally, in 2016 an overall 3,092 sanctioning procedures were launched which resulted in the imposition of sanctions for a total amount of 3,418,838.80 EUR. Over the three years (2014, 2015 and 2016) the most common infringement to fishing laws was that established in Article 137.B.2 of Law 11/2008, of 3 December, of Fisheries of Galicia regarding: [the exercise of the extractive activity without the corresponding administrative permit].

July 2017

Katie Miller  
Project Lead, Sustainable Seafood  
020 7749 5970  
kmiller@clientearth.org  
[www.clientearth.org](http://www.clientearth.org)

Elisabeth Druel  
Lawyer/Juriste, Fisheries  
020 7749 5970  
edruel@clientearth.org  
[www.clientearth.org](http://www.clientearth.org)

ClientEarth is a non-profit environmental law organisation based in London, Brussels and Warsaw. We are activist lawyers working at the interface of law, science and policy. Using the power of the law, we develop legal strategies and tools to address major environmental issues.

ClientEarth is funded by the generous support of philanthropic foundations, institutional donors and engaged individuals.

**Brussels**  
5ème étage  
1050 Bruxelles  
Belgique

**London**  
274 Richmond Road  
London  
E8 3QW  
UK

**Warsaw**  
ul. Żurawia 45  
00-680 Warszawa  
Polska