



## STOP ILLEGAL FISHING CASE STUDY SERIES **04**

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# Capture of the Antillas Reefer – AND ITS SUCCESSFUL CONFISCATION

## Background

Located in the south eastern African region, Mozambique is bordering the Indian Ocean, with the third largest coastline in Africa (2,780 km). The long coastline and the adjacent exclusive economic zone (EEZ) present challenges to the maritime and fishery authorities in combating illegal, unreported and unregulated (IUU) fishing.

Historically, due to weak monitoring, control and surveillance (MCS) Mozambican ports were used for transhipment of illegal catch by foreign vessels – primarily shark fins originating from illegal fishing within the EEZ, abalone from South Africa, and toothfish from the area of the Convention of the Conservation of Antarctic Marine Living Resources (CCAMLR<sup>1</sup>).

Today, Mozambique is fighting IUU fishing by implementing relevant international and national policy through a national plan of action to prevent, deter and eliminate IUU fishing and a robust five-year MCS plan. As a result the control of ports has tightened leaving poaching, misreporting, by-catch and the illegal targeting of shark as the main IUU fishing challenges.

The case of the Antillas Reefer – and its successful conclusion – is a reflection of Mozambique's commitment to stop illegal fishing.

The Antillas Reefer, a long-line fishing vessel, was owned by a Namibian company based in Walvis Bay named Ompala Fishing Pty Ltd – a joint venture between Mabenal SA, an Uruguayan company (100 % subsidiary of Vidal Armadores SA<sup>2</sup>) with headquarters in Spain and Gongala Fishing Pty Ltd, a Namibian company. Ompala Fishing, working through the Mozambican company Sabpal Pescas SA, applied to the Fisheries Administration (ADNAP) for a tuna fishing licence for the Antillas Reefer on 18 April 2008. While the application was being processed, on 23 June 2008, the Ministry of Fisheries received information from the fishing fleet that an unknown vessel, the Antillas Reefer, had been identified fishing within Mozambican waters.

Recognizing the limited capacity to enter into a chase, but aware that the vessel was fishing illegally, the authorities requested the vessel representative to bring Antillas Reefer into port for a pre-licence briefing. After some delay, the Namibian operators ordered the vessel to Maputo port. It arrived on the 5 July claiming engine problems had caused the delay. The patrol vessel escorted the vessel to anchor in the harbour, three days later it berthed at the jetty.

### STOP ILLEGAL FISHING CASE STUDIES aim to:

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







## The Story (cont'd)

Fisheries inspectors performed an inspection of the vessel: the logbook revealed that the vessel had indeed been fishing in Mozambican waters – for 50 days. The vessel had onboard; 43 tonnes of shark meat, 4 tonnes of shark fin, 1.8 tonnes of shark tail, 11.3 tonnes of shark liver, 20 tonnes of shark oil, 65 tonnes of bait and illegal fishing gear, including long lines of up to two kilometres in length. All indicating targeted kitemfin shark<sup>3</sup> fishing – an illegal activity in Mozambique.

Following this, an inter-agency group was established to strategize on how to approach the case. The Ministry of Fisheries made inspections and transferred the fish products to freezer facilities. The Navy held the vessel in custody and controlled the movement of people and goods on and off the vessel. Immigration was tasked to grant the evacuation of the 37 crew members (excluding the master and the chief engineer) in order to ensure minimal costs and to reduce any interference.

An in-depth investigation revealed that electronic navigation records had been tampered with and records from telephone calls (mainly to Spain) had been deleted. It is suspected that these manipulations were made, either, during the delay into port in late June 2008 or while the vessel waited

in harbour prior to docking. The master, a Spanish national, Francisco Fernandez Oliveira (whose masters license had expired) initially understated the amount of shark catch onboard but later, as the evidence grew, admitted to the targeting of shark without a fishing license.

On 18 August 2008, a fine of four and a half million US dollars was imposed on the master and ships' owners and the vessel was confiscated along with its contents (equipment, fishing gear and fish products). The penalty was appealed to the Administrative Tribunal – the final ruling of the appeal was announced in August 2010, concluding the long process and ruling in favour of the Minister's decision on the confiscation and a fine of four million US dollars.

In early 2011, the fine had still not been paid. As Mozambique, following Spanish diplomatic pressure, had released the master to his home country, they are now left with only diplomatic channels to ensure that the fine is honoured.

The Antillas Reefer is currently being converted into a patrol vessel to serve Mozambique and the region in the continued battle against IUU fishing.

## Drivers

At the time of the case, Mozambique was attending a Southern African Development Community (SADC) Ministerial Conference on IUU fishing, in Namibia (supported by Stop Illegal Fishing). In signing the ensuing Statement of Commitment<sup>4</sup> Mozambique reconfirmed their commitment to tackle IUU fishing, and this case provided an opportunity to demonstrate their resolve to take firm action.



## Key features and outcomes

- The **strong level of support provided to the field staff** by ministers, senior management and international advisers gave them the confidence, knowledge and practical skills required to persevere with the case over two years.
- The establishment of an **inter-agency cooperation group** to strategize and coordinate an approach – the process presented challenges, but it was key to the ultimate success.
- **Cooperation with the flag State** yielded the record of the vessels movements (from the operating company) and the de-registration of the vessel by Namibia.
- The **application of international instruments** facilitated the case – the United Nations (UN) Convention on the Law of the Sea was applied in the context of a foreign fishing vessel not authorised to fish in Mozambican waters, while the Food and Agriculture Organization (FAO) of the UN Compliance Agreement<sup>5</sup> and the UN Fish Stocks Agreement<sup>6</sup> were applied to facilitate contact with the flag State.
- The **administrative system adopted** gave the Minister power to issue sanctions, these were appealed and that led to a two year court case – but this was still a faster approach than a regular court procedure.
- The **confiscation of the vessel and its ongoing conversion into a patrol vessel** will provide a useful tool in the fight against IUU fishing and a strong deterrent to others that fish illegally.

## Players involved

- **The Ministry of Fisheries:** made inspections, applied the sanctions and coordinated the process.
- **The Ministry of Foreign Affairs:** notified and communicated with the flag State.
- **Mozambican Judiciary (The Administrative Tribunal):** settled the case following appeal.
- **Immigration:** released the crew according to international law.
- **Ministry of Defence (The Navy):** took custody of the vessel.
- **The vessel flag State:** after initial clarification they communicated with Mozambique on the case and de-flagged the vessel.
- **International experts<sup>7</sup>:** provided assistance in conducting the management of the case, case investigation and in collecting and retrieving evidence.
- **The owner of the vessel (Ompala Fishing):** collaborated in the hearing providing all documents as requested.
- **The Government of Spain:** applied diplomatic pressure for the release of the master.

## Lessons learned

- **Ensure robust national fisheries law** with supporting regulations that incorporate the main provisions of international fishery instruments and allow governments to confiscate any item used in illegal fishing.
- **Carry out an inventory** of the vessel, its contents and documentation immediately, to avoid sabotage or removal of evidence and secure all evidence and periodically verify it.
- **Cooperate nationally and internationally** as soon as possible, with government agencies, the flag State and other states to reduce delays in the case.
- **Detain only key officers for the court case** and allow other crew members to be repatriated immediately to reduce costs.
- **Exchange information** to all parties, so that they stay informed and to ensure transparency in the process.
- **Publicise the case in the media** to send a message to other IUU fishing operators and to gain international and popular support for the case.

## Challenges

- **Identification and protection of all evidence** – initially, only evidence such as fish products, logbooks and fishing gear were kept, but later it became evident that navigational and computer equipment was also vital evidence that required safeguarding.
- **Storing the fish products** – maintaining the quality of frozen fish for two years was a challenge and an expense.
- **Lack of experience in fisheries cases for judicial officers** – there was limited understanding of the complexities of fisheries cases or the potential gains of illegal fishing, thus delaying the case.
- **The confiscation of the vessel as a sanction** – this decision was initially challenged due to the legal aspect of 'property rights'.
- **Linking the crime to the criminals** – the vessels true beneficial ownership was concealed behind company structures spanning the globe – however, even with links now recognized between; the Antillas Reefer; Vidal Armadores SA (a company often linked to IUU fishing); and the master of the Antillas Reefer to an IUU fishing vessel chase from Australia to South Africa – ensuring that the true criminals pay still remains a challenge to this case.



## Policy implications

- A mechanism to facilitate regional and international collaboration and exchange in relation to evidence gathering, arrests and prosecutions in fishery cases is required, e.g. by establishing a regional centre of excellence and communications in relation to investigation of foreign fisheries violations.
- A coherent African diplomatic approach – an African Voice – should be developed to ensure that those directly benefitting from fishery crimes against the continent are brought to justice.
- National laws must integrate international and regional fishery obligations.
- Sufficiently experienced and qualified judicial officers are required to deal with international fishery cases.

## Acknowledgements

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## Further Information



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## Next steps

In order for Mozambique to finalise the case of the Antillas Reefer, efforts should focus on:

- Finalizing the conversion of the Antillas reefer into a **fishery patrol boat**.
- Gaining support for increased **diplomatic pressure** for the fine to be paid and action to be taken against the master.

In order to improve the capacity of African countries to take legal action against IUU fishing vessels, companies and owners, efforts should focus on considering:

- The **establishment of environmental courts<sup>8</sup> and special investigation units** to better handle fishery violations or to improve the **training of the judiciary** to sensitise them on fisheries violations in order to facilitate successful and appropriate legal action against offenders.
- The potential role that the **regional MCS coordination centre<sup>9</sup>** might be able to play in relation to this type of case, such as, essentially in regional agreement on exchange of information when IUU fishing is suspected.
- Becoming party to **regional fishery bodies** and to signing, ratifying or acceding to **international fishery agreements** such as the Port State Measure Agreement<sup>10</sup> that will assist in strengthening regional and international cooperation against IUU fishing.

## Footnotes

<sup>1</sup> <http://www.ccamlr.org/pu/e/gen-intro.htm>

<sup>2</sup> Oceana report 20 April 2010, EU, Spanish and Galician Fishing Subsidies financing Illegal Unreported and Unregulated fishing. Case Study: Antonio Vidal Suárez, Manuel Antonio Vidal Pego – [http://na.oceana.org/sites/default/files/o/fileadmin/oceana/uploads/europe/downloads/OCEANA\\_April20\\_CasestudyVidal\\_ENG.pdf](http://na.oceana.org/sites/default/files/o/fileadmin/oceana/uploads/europe/downloads/OCEANA_April20_CasestudyVidal_ENG.pdf)

<sup>3</sup> Listed as a near threatened species on the IUCN red list – <http://www.iucnredlist.org/apps/redlist/details/6229/0>

<sup>4</sup> [http://www.africanfisheries.org/doc/Statement\\_of\\_commitment\\_by\\_SADC\\_ministers.pdf](http://www.africanfisheries.org/doc/Statement_of_commitment_by_SADC_ministers.pdf)

<sup>5</sup> Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas.

<sup>6</sup> Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995.

<sup>7</sup> International experts provided included the Norway supported MCS Adviser to Mozambique and the USA supported NOAA Forensic Experts.

<sup>8</sup> See SIF Case Study 2 – Environmental courts prove to be effective, Gaborone 2010.

<sup>9</sup> To be established in Mozambique, through the SADC Statement of Commitment on IUU fishing.

<sup>10</sup> Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.



**Stop Illegal Fishing**

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