
STOP ILLEGAL FISHING
CASE STUDY SERIES **10**

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# The mystery of the Naham-4

## INTERNATIONAL COOPERATION SHEDS LIGHT ON IDENTITY FRAUD

## Background

Illegal fishing contributes to the depletion of fish stocks, reduces the profitability of legally caught seafood and feeds into illegal trafficking operations. Illegal operators often change vessel names, company details, and flag state, or even flag to more than one state, in order to avoid scrutiny and tracking. Part of the problem is the failure of some flag states to regulate ships on their registers, creating an incentive for unscrupulous owners to register their vessels under these 'flags of convenience'. As a result it is difficult for coastal states, port states and regional fisheries management organisations (RFMOs) to monitor the activities of fishing vessels or to determine whether vessels applying for fishing licenses or for permission to land fish have engaged in illegal activity.

All seagoing merchant vessels of 100 gross tonnage (GT) or more are assigned a permanent unique vessel identifier by the International Maritime Organization (IMO). This number is engraved on the vessel and remains throughout the life of the vessel regardless of changes in ownership, name or flag state. Until 2014 fishing vessels were exempt from this scheme, however this exemption has now been removed paving the way for IMO member states, RFMOs and flag, coastal and port states to require an IMO number for fishing vessels.

22nd March 2013 - a normal day in Table Bay Harbour, Cape Town. An Omani flagged tuna long-liner with the name Naham-4, call sign A4DK6, was discharging fish and undergoing repairs while Fisheries Inspectors from the Department of Agriculture, Forestry and Fisheries (DAFF) were carrying out a routine inspection. However, they became suspicious when they found inconsistencies between the amount of fish on board and the supporting documentation. Then they spotted a second faded name painted on the hull.

As a result the vessel was detained under suspicion that it was falsely claiming to be Naham-4. A South African Police Service Forensic Analyst determined that the second faded name was 'Der Horng 569' and further investigations confirmed that the documentation provided had been falsified. Neither the Omani company owning the seized vessel, Al-Naham Co. LLC[i]., nor the ship's agent, Trade Ocean, could prove that the vessel was the Naham-4. The vessel and the fish on board[ii] were seized by the South African Authorities.

In parallel to these investigations, the regional FISH-i Africa Task Force and Technical Team were also investigating the Naham-4 as part of their routine crosschecking of vessels operating in the Western Indian Ocean.

**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)

Photographs of vessels bearing the name 'Naham-4' were compared and significant differences in the structure of the vessels and inconsistencies between the call signs were observed. The Naham-4 that was placed in the Indian Ocean Tuna Commission (IOTC) Record of Authorised Vessels, based on information provided by the flag state had the call sign A4DK6, but one photograph of a vessel named 'Naham-4' had the call sign A4DK5 painted on the side, the call sign recorded with IOTC for the fishing vessel Naham-3. The 'Naham-4' seized in Cape Town had the correct call sign painted on the side, but showed obvious structural differences to another 'Naham-4' photographed at sea in April 2012: the numbers of windows in the bridge, railings around the bow of the vessels, stairways and the shape of the hawseholes. This indicated that there were at least three vessels named 'Naham-4' in operation.

Triton Naval Architects, on behalf of the South African authorities, then compared photographs taken in Oman in August 2010, at sea in April 2012 and in Cape Town between July 2012 and July 2013, revealing that four different vessels had been operating with the name 'Naham-4'. Although it would be reasonable to conclude that the vessel photographed in Oman was the 'real' Naham-4, they noted that subjectively it appeared to be larger than the vessel seized in Cape Town and the original tonnage certificate was for a vessel even smaller than the seized vessel. This suggested that perhaps none of these vessels was in fact the 'real' Naham-4 – meaning there may be as many as five vessels bearing this name.

If the arrested vessel wasn't the Naham-4, what was its true identity? The faded name on its hull, Der Horng 569, was that of a fishing vessel owned by Der Wei Fishery Co. Ltd. of Taiwan and flagged to Belize. In early 2009 the owners alleged that it had been stolen by a Mr Tsai, a Taiwanese businessman they were in partnership with, along with a sister vessel the Der Wei 686. It was subsequently de-flagged by Belize. Al-Naham Co. purchased Der Horng 569 from Mr Tsai, apparently without knowing its history, but there is no record of the Der Horng 569 changing its name.

In July 2013 Al-Naham Co. applied to the South African High Court to have the case dismissed on the grounds that the vessel and documents had not been lawfully seized. The Honourable Mr Justice Dolamo ruled that the authorities had until 6th September 2013 to conclude their investigations and bring charges or the vessel and documents should be released. Following several representations from both parties, the Director of Public Prosecutions presented to the court a charge sheet and the intention to charge Wu Hai Tao and Wu Hai Ping, the Captain and Engineer of the detained Naham-4.

However, no criminal charges were made in this case and thus no convictions. Wu Hai Tao and Wu Hai Ping were not arrested and have since left South Africa. The ship owners abandoned the vessel[iii], leaving the agent with debts amounting to USD 100 000. The agent is reportedly taking legal action in Taiwan against the owners of Al-Naham Co., who are Taiwanese citizens, to recover their financial losses. The vessel was sold on auction for a reported USD 40 000. Investigations are still underway by the South African Police, who are trying to trace the owners of the Der Horng 569 with the assistance of Interpol, but with little success to-date.

### Drivers

The main drivers for action were firstly the diligence of the South African Fisheries Inspectors during the inspection of the Naham-4, and secondly the cooperation based around the FISH-i Africa Task Force and its partners who facilitated information sharing and support to investigations, improving the probability that evidence of illegal activities and operators is brought to light.


## Key features and outcomes

- **The perseverance demonstrated** by the South African authorities finally resulted in a forfeiture order on the vessel being obtained.
- **The lack of any arrest and charge** due to the many obstacles that had to be overcome, limited the success of the case.
- **The importance in following correct legal procedures** in the seizure of the vessel and documents was crucial; if a charge had been made this would have been essential.
- **Stakeholder participation and integration proved to be effective** as a means for systematic information sharing and crosschecking, contributing to the partial success in the outcome of this case.
- **The use of photographic evidence** was key to the successful identification of the fraudulent identity of the vessel.

## Challenges

- **Getting sufficient evidence** – the use of innovative investigation methodology would increase the chances of getting sufficient evidence for successful prosecution. If the Captain had been charged outright he might have turned state witness and informed on his employers and vessel owners, the real culprits.
- **Tracing owners** – the complicated trail of changed identity and company ownership can make prosecution extremely difficult. For example, between 1997 and 2005 the Australian government apprehended nine vessels engaged in IUU fishing within the Heard and McDonald Island EEZ, but in all nine cases the government was unable to identify or prosecute any of the beneficial owners of the vessels.
- **The ease of avoiding prosecution** – such as by owners abandoning vessels, and the money to be made from illegal fishing means that it is easy to acquire replacement vessels.
- **The true identity of the seized vessel or the location of the 'real' Naham-4** remains a mystery and further investigation is required to turn over new stones and shed more light on this case.

## Players involved

- **The South African Department of Agriculture, Forestry and Fisheries (DAFF):** found inconsistencies in the documentation during a routine port inspection and acted on this.
- **South African Police Service:** provided forensic analysis and investigative services.
- **Triton Naval Architects:** assisted the investigation by examining photographic evidence.
- **FISH-i Africa:** coordinated analytical input from countries and partners[iv].
- **The Secretariat of the IOTC:** assisted with the investigation by verifying information on the vessel.
- **NFDS Africa:** provided operational and intelligence assistance.
- **Trygg Matt Tracking:** provided identification and analytical assistance.
- **Interpol:** assisted the South African authorities in the investigation.

## Lessons learned

- **The cross-border nature of vessel ownership and fishing activities** requires a multi-lateral regulatory system, supported by cooperation and coordination between States, RFMOs and agencies. The failure of any one player responsible for carrying out monitoring and verification can result in failure of the entire system.
- **Flag states should observe agreed international standards and procedures** to carry out pre-registration and historical checks before registering a vessel. If the Omani authorities had followed correct procedures they may have discovered that the vessel had a false identity. By registering the vessel this permitted the 'Naham-4' to operate under false pretences.

## Policy implications

- A global database of information about all fishing vessels over 100 GT including their IMO number, name, flag and fishing authorisations is needed. This would provide a crucial tool towards combatting IUU fishing and tracking fishing vessels around the globe.
- The connection between Al-Naham Co. LLC. and Seas Tawariq Co. LLC. shows that in addition to recording information on vessels involved in IUU fishing, there is a need for a database to record the identity of their owners and operators.
- Using a false vessel identity would be more difficult if the owners of fishing vessels over 100 GT were required to obtain IMO numbers for their vessels. There is an urgent need for flag, coastal and port states and RMFOs to make this a legal requirement for vessels flying their flag, operating in their waters or using their ports.

**The Letter of Declaration**

Two fishing vessels Der Wei No.686 and Der Horng No.569 under the name of Der Wei Fishery Co., LTD were contracted on February 22, 2008 with Mr. TSAI, CHANG-YAN of Fu Hsing Fishing Company to establish a partnership contract. This company provided the above two fishing vessels for Mr. TSAI, CHANG-YEN to dispatch and operate in order to create the greatest benefit for both parties. However, up to the present Mr. TSAI, CHANG-YAN has not yet closed accounts with this company and attempted by illegal means to change their registrations for his own operation. We therefore particularly write this letter for our future reference and as an evidence to inform International Merchant Marine Registery of Belize that without a written agreement of this company from Mr. Hsu Te-Chuan by person, please don't allow or agree with Mr. TSAI, CHANG-YEN (or the other) to change their registrations. We particularly send you this declaration.

Der Wei Fishery Co., LTD
President: Hsu Te-Chuan

Hsu Te Chuan

Notary Public:

## Next steps

In order to facilitate further cooperation, future efforts should include:

- Strengthening of the FISH-i Africa Task Force and Stop Illegal Fishing to work closely with IOTC member countries to broaden and improve cooperation to deal with vessels and cases such as the 'Naham-4'.
- Implementing obligatory IMO numbers for larger vessels in RFMOs – four tuna RFMOs: the Inter-American Tropical Tuna Commission (IATTC), the International Commission for the Conservation of Atlantic Tunas (ICCAT), the Western and Central Pacific Fisheries Commission (WCPFC) and the IOTC will require IMO numbers by January 2016, while other RFMOs are implementing comparable requirements.
- Improving the ease of obtaining IMO numbers – IHS Maritime and Trade, who administer the IMO number scheme, plan to help improve database capture of vessels through electronic data exchange with localized fishing vessel databases, such as tuna RFMOs.
- Implementing the June 2014, FAO Voluntary Guidelines for Flag State Performance at country level to ensure that fishing vessels are not involved in IUU fishing and to promote greater cooperation and information exchange between countries.


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## Footnotes

[i] During the FISH-i Africa investigation it emerged that Al-Naham Co. LLC. uses the same postal address as the Oman based company Seas Tawariq Co. LLC. in the IOTC list of authorised vessels. Tawariq Co. LLC. was the owner of the infamous IUU fishing vessel Tawariq 1 arrested and later confiscated by the United Republic of Tanzania in 2009.

[ii] The South African Independent Online news site reported (October 2014) that Naham-4 was alleged to have had around 150 tonnes of illegally caught fish on board, valued at approximately USD 520 000.

[iii] The Muscat Daily, Oman. Legal brief Africa 15 October 2013.

[iv] FISH-i Africa (www.fish-i-africa.org) is an initiative of Stop Illegal Fishing and is implemented with the support of the Pew Charitable Trusts.