

INVESTIGATION NO. 12

AVOIDANCE OF PENALTIES: THE TXORI ARG1



The Spanish flagged and owned purse seiner TXORI ARG1 was fined for fishing without a licence in Mozambican waters and failing to report their catch. The vessel was detained whilst a settlement of USD 1.2 million was agreed and a bank guarantee was given. Upon release of the vessel, authorities in Mozambique were informed the fine would not be paid. Mozambique responded by proposing to place the TXORI ARG1 on the illegal, unreported and unregulated (IUU) fishing list of the Indian Ocean Tuna Commission (IOTC). In addition, fishing licences of other vessels owned by the same company were suspended by Mozambique. In the end, a settlement of USD 700 000 was agreed, the IUU listing of the vessel was lifted as was the suspension of the fishing licences.

VESSEL TYPE

Purse Seiner

FLAG STATE

Spain

PENALTY/SANCTIONS

Administrative fine of 1.2 million US dollars was agreed but negotiations reduced this to USD 700 000.

KEY EVENTS

12 MAR 2012 Mozambican authorities tracked the TXORI ARG1 via vessel monitoring system (VMS) 20 nautical miles inside the Mozambican exclusive economic zone (EEZ). As obliged by both the European Union Fisheries Partnership Agreement (FPA) and Mozambican law, the vessel had not given prior notice of its entry into the EEZ nor of the catch held on board. Once in Nacala Port, Mozambique denied the vessel's request to depart for Madagascar and ordered a port inspection.

18 MAR 2012 The inspection revealed approximately 1 200 tonnes of tuna and tuna like species in the hold, and no Mozambican fishing licence on board the vessel. The Minister of Fisheries notified the Spanish authorities of the infraction and set an administrative fine of USD 1.2 million. The Mozambican authorities and the Spanish Purse Seiner Association, ANABAC, negotiated the payment of the fine and the vessel was released once a bank guarantee was supplied.

Immediately upon the release of the vessel, the TXORI ARG1 owners INPESCA and ANABAC stated that they had no intention of accepting the sanction and would appeal the case. The appeal stated that INPESCA had the relevant licensing which was purchased on 24 February of that year. INPESCA also argued that the vessel had deployed its fishing gear outside Madagascar waters and was subsequently pushed into Mozambican waters by a current, and unable to correct the course. ►

► **MAR–AUG 2012** Mozambique awaited the end of March deadline for payment of the fine and as it was not paid they then attempted to cash the Bank Guarantee, but the Spanish Bank did not honour its guarantee.

Mozambican authorities responded by refusing two fishing licences to INPESCA vessels and suspending that of a third. The Indian Ocean Tuna Commission (IOTC) were informed that Mozambique wished to discuss the listing of TXORI ARG1 on the IOTC IUU list at the next annual meeting, scheduled for April 2013.

ANABAC made a statement in which it argued against the sanctions and contested the request for IUU listing until the courts reached a binding conclusion.

MAY 2013 Prior to the IOTC meeting, an agreement was reached for payment of a reduced USD 700 000 fine, and the proposed IOTC IUU listing for the TXORI ARG1 was withdrawn. The suspension of licences for all INPESCA vessels was lifted in Mozambique.



WHAT WORKED?

- VMS tracking identified the TXORI ARG1 fishing illegally in Mozambican waters.
- Strong political support from the Minister of Fisheries sent a clear message that illegal fishing would not be tolerated in Mozambique.
- A robust national legislative framework enabled enforcement actions to take place and be followed through.

WHAT DID FISH-i AFRICA DO?

- FISH-i was launched in December 2012. At the initial meeting information on this case was shared.
- Provided legal support to Mozambique.

WHAT NEEDS TO CHANGE?

- RFMO IUU listing provides a serious deterrent both for an operator and a flag State. Stricter systems, and stronger enforcement of regulations, would prevent negotiation on IUU listing and serve as a clearer deterrence against IUU fishing.
- Flag States must monitor their vessels and take action when non-compliance is detected.
- Market States must monitor imports through catch certification schemes to stop illegally caught fish from entering the supply chain.



In working together on over thirty investigations, FISH-i Africa has shed light on the scale and complexity of illegal activities in the fisheries sector and highlighted the challenges that coastal State enforcement officers face to act against the perpetrators.

FISH-i investigations demonstrate a range of complexity in illegalities – ranging from illegal fishing, to fisheries related illegality, to fisheries associated crime to lawlessness.

In this case evidence of illegal fishing was found.

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HOW?

The evidence uncovered during FISH-i investigations demonstrates different methods or approaches that illegal operators use to either commit or cover-up their illegality and to avoid prosecution.

AVOIDANCE OF PENALTIES The original fine of USD 1.2 million was not paid. It was only after strong action by Mozambique that INPESCA agreed to pay a lesser amount.

