



# The application of administrative sanctions in the fight against IUU fishing: An assessment of Spanish practice

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## ABSTRACT

In the last decade, Spain has been notable for large administrative sanctions imposed on its nationals and operators implicated in illegal, unreported and unregulated (IUU) fishing activities. This paper examines, first, the practice of the Spanish authorities under the administrative sanction regime for IUU fishing activities conducted by Spanish nationals and operators. Second, an assessment of the legal framework under which the Spanish authorities have been established such administrative sanctions will be examined.

## 1. Introduction

Since its entry into force in 2010, the European Union (EU) system to prevent, deter and eliminate Illegal, unreported and unregulated (IUU) fishing, created by virtue of Council Regulation (EC) No 1005/2008, [1] has proven itself as a key tool for the EU and its Member States to deter, control and sanction IUU fishing [2–4]. Over the last two decades, Spain,

which is the fourth largest global importer of fish and fishery products and the biggest importer of such products in the EU [5], has made a variety of efforts and has adopted many administrative and judicial measures to combat and punish this type of illegal fishing.

So far, Spain has been the EU Member State that has undertaken the most relevant efforts and action to fight IUU fishing.

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Selected indicator for tracking of progress	Biennium 2012/2013	Biennium 2014/2015	Biennium 2016/2017	Biennium 2018/2019
Modification of national law or any administrative guidelines for the application of the IUU Regulation	yes	yes	no	no
Number of officials involved in controls under the IUU Regulation	94	116	126	165
Percentage of verifications of catch certificates and processing statements	100%	100%	100%	100%
Number of inspections of third-country fishing vessels in Member States' ports	701	914	300	294
Number of imports that have been refused	42	58	24	13
Use of a risk assessment approach for verification of catch certificates	yes	yes	yes	yes
Number of requests for verifications sent to third-country authorities	1031	1113	771	1120
Refusal of catch certificate validations	yes	yes	yes (504)	yes (785)
Use of an IT tool to monitor the catch certificates and processing statements accompanying imports	yes	yes	yes	yes
Number of infringements detected	102	99	58	37
Number of serious infringements detected	3	3	11	11

Source: ClientEarth, Spain – A progress report on a decade of combating IUU fishing, January 2021, p. 2; <https://www.clientearth.org/media/v1id3clg/spain-a-progress-report-on-a-decade-of-combating-iuu-fishing.pdf>.

For instance, during 2014–2015, Spain was the EU State that received the highest number of catch certificates according to Article 12 of Regulation 1005/2008, it accepted just 3 % of the import catches certificates from third countries with a yellow card, and made the highest number of port inspections of third country vessels [6,7]. It should also be mentioned that, during the last decade, Spain has used a risk assessment approach for verification of catch certificates, and in this way verified 100 % of the certificates that were allocated to the State, which each EU Member State should aim to do [8].

In addition, the Spanish legal system is the only one that contains all types of possible sanctions provided for under Article 45 of Regulation 1005/2008. This is particularly relevant given that the sanctions provided for in the relevant EU secondary law are of an ancillary nature. They may only be enforced when the State has transposed and implemented the prohibited activities into domestic law. As this article will show, the Spanish legal framework includes a broad administrative sanctioning regime that has allowed its authorities to wage a legal ‘war’ against IUU fishing activities conducted by Spanish nationals and operators. Operations *Sparrow 1*, *Sparrow 2*, and *Banderas* [Flags] (as dis-

Biennium 2012/2013	Biennium 2014/2015	Biennium 2016/2017	Biennium 2018/2019
100%	100%	100%	100%

Source: ClientEarth, Spain – A progress report on a decade of combating IUU fishing, January 2021, p. 11; <https://www.clientearth.org/media/v1id3clg/spain-a-progress-report-on-a-decade-of-combating-iuu-fishing.pdf>.

cussed below) are proof of this, and Spain has become the EU Member State that imposed the highest fines for serious infringements in terms of IUU fishing [8].

Against this background, this article will be divided into two parts. The first part will provide an overview of the national administrative sanctions already imposed for IUU activities conducted by Spanish nationals and operators (Section 2). The second part will focus on the domestic legal framework that has allowed the Spanish authorities to establish sanctions against IUU fishing, a scourge that plagues virtually all seas and oceans (Section 3).

## 2. The administrative sanctions imposed by the Spanish authorities in their fight against illegal, unreported and unregulated fishing

The 2021 report ‘Study on the sanctioning systems of Member States for infringements to the rules of the Common Fisheries Policy’, which has been published by the European Commission’s Directorate-General for Maritime Affairs and Fisheries [8] confirms that the Spanish authorities have engaged in an extensive administrative sanction practice in the last decade. For instance, from 2015 to 2019, up to 5334 administrative decisions have been recorded in relation to IUU fishing practices in the Register corresponding to Spanish central Government administrative proceedings [8]. It is worth mentioning that, under Article 89 of Law 3/2001 on State Maritime Fisheries [9], the central State administration is responsible for the application of the system of penalties in the field of maritime fishing, and the autonomous Spanish local communities implement and develop legislation related to the sanctioning system of the organisation of the fishing sector and the commercial activity of fishing products.

Furthermore, by virtue of Article 92(4) of Law 3/2001, the Spanish administrative authorities responsible for the fight against IUU fishing have the duty to stop the administrative sanction procedure and inform the courts when it appears that the activity under investigation might be a criminal offence [10–12]. In such cases, the administrative authorities will abstain from any act until de judicial authority issues a final judgement (i), the proceedings are dismissed or closed (ii), or the case is returned to the Public Prosecutor’s Office (iii). This has only very rarely occurred, however. For example, according to the Environmental and Urban Planning Office, administrative proceedings were only suspended 35 times whilst the cases were brought before the Spanish courts between 2015 and 2019 [8].

Since 2014, three major operations have been carried out by the Spanish authorities that are responsible for the fight against IUU fishing: Operations *Sparrow 1*, *Sparrow 2*, and *Banderas*. These operations have resulted in numerous and substantial administrative sanctions imposed on Spanish nationals and operators. Some of these administrative sanctions have been appealed in administrative proceedings, and several contentious-administrative appeals have been submitted before the Administrative Chamber (First Section) of the National High Court.<sup>2</sup>

*Operation Sparrow 1* has been the first major operation of the Spanish public authorities to sanction Spanish nationals and operators that conducted IUU fishing activities [10,12,13]. In 2016, the Ministry of Agriculture, Fisheries and Food (MAPAMA) imposed administrative sanctions worth €17,840,001; as well as significant penalties such as disqualification from exercising or carrying out fishing activities for 5–23 years; and the exclusion of obtaining loans, aid or subsidies for a period between 6 and 24 years [13,14]. These sanctions were imposed as

a result of the involvement of Spanish nationals and fishing operators with IUU activities carried out by the vessels *KUNLUN* (IMO 7322897), *YONGDING* (IMO 9042001), *SONGHUA* (IMO 93198856) and *TIANTAI* (IMO 7905039). These vessels had been earlier identified by regional fisheries management organizations (RFMOs) or other international organizations as having engaged in IUU fishing activities, or as acting in contravention of conservation and management measures of fishing resources. Additionally, it was held that the nationals and operators seriously obstructed the inspections as well as destroyed evidence and were involved in the exercise of trade, commercial, corporate or financial activities related to IUU fishing activities. In the MAPAMA’s view, these were very serious infringements of the offenses enshrined in Article 101(l) of Law 3/2001 on State Maritime Fisheries [9]<sup>3</sup> and, some of them, also in Article 101(i) of this Law [9].<sup>4</sup>

The parties concerned appealed the decision of the MAPAMA in administrative proceedings on 22 February 2016. Following the dismissal of the appeal, the interested parties filed an appeal for judicial review, which gave rise to two appeals. First, this concerned the sanctions imposed on PROEGARVI (a company that was sanctioned only for the obstruction of inspections and the destruction of documents), on 24 October 2018, of which the appeal was partially upheld [15]. Therefore, the amount of the pecuniary sanctions was lowered from €400,000 to €200,000 and from €600,000 to €210,000, respectively, and costs were not awarded. This was because the judge considered that there were no aggravating circumstances to justify the imposition of the maximum fines. Second, on 7 January 2020, the sanctions imposed on the rest of the nationals and operators were also partially upheld [16].

With regard to this second appeal, the National High Court upheld all the sanctions imposed for participation in the exploitation, management and ownership of the IUU fishing vessels. The National High Court held that the imposition of the administrative sanctions in 2016 was consistent with the law and was proportionate to the serious infringements committed. However, it reduced the sanctions imposed concerning the obstruction of the inspections, considering that a ‘medium’, instead of the maximum, sanction should be imposed; these sanctions thus were lowered from €400,000 to €200,000 and from €600,000 to €210,000, respectively. In all the appeals, which were partially upheld, the judges considered that the financial penalties imposed on the natural persons and companies concerned by the Spanish administration had been disproportionate. However, this ‘disproportionality’ referred only to the sanctions for obstructing the inspections and for destroying evidence. Consequently, in the case of *Operation Sparrow 1*, the total sanctions imposed for participating in the management of the four vessels involved in IUU fishing<sup>5</sup> amounted to €16,750,000, whereas the sanctions for obstructing the inspections (joint and several liability) amounted from €1090,001 to €500,001.<sup>6</sup>

<sup>3</sup> According to Article 101(l) of Law 3/2001, the participation in the operation, management and ownership of stateless vessels, or third country vessels identified by RFMOs or other international organisations as having engaged in IUU fishing activities or contrary to the conservation and management measures for fisheries resources, or the exercise of commercial, commercial, corporate or financial activities related thereto, is a very serious infringement.

<sup>4</sup> By virtue of Article 101(i) of Law 3/2001, the resistance, disobedience or serious obstruction of the competent maritime fisheries authorities, officers and observers acting by delegation or under any other legal form provided for by law, preventing them from carrying out their duties is a very serious infringement.

<sup>5</sup> *KUNLUN*, *YONGDING*, *TIANTAI* and *SONGHUA*.

<sup>6</sup> *Operation Yuyu* has been another operation conducted by the Spanish authorities, which was in strong connection with *Operation Sparrow 1* [13]. However, it raised a criminal investigation of different companies involved in *Operation Sparrow 1*, which were accused of money laundering, organized crime, fraud, and environmental crimes according to the Spanish Criminal Code [6,17]. In the author’s view, *Operation Yuyu* will not be analysed in this article as it did not refer to administrative sanctions *stricto sensu*.

<sup>2</sup> In Spanish, “Sala de lo Contencioso-Administrativo (Sección Primera) de la Audiencia Nacional”.

**Total sanctions under Operation Sparrow 1**

Name of the company that received a sanction for participation in or the management of vessels involved in IUU fishing	Amount of financial sanction (EUR)
VIARSA ENERGIA, S.L	1200,000
VIDAL ARMADORES, S.A	2100,000
PRIMARY CAPITAL, S.L	2100,000
ALIMENTA CORPORATION, S.L	1300,000
ALIMENTA DE TUNIDOS, S.L	450,000
GALLEGA DE PESCA SOSTENIBLE, S.L	100,000
VIARSA CARTERA, S.L	850,000
7 INDIVIDUALS	8650,000
<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	<b>1090,001</b>
PROPEGARVI Y PROYECTOS Y DESARROLLOS SOSTENIBLES, S.L	
3 INDIVIDUALS	

Source: MAPAMA. Information available at: ClientEarth and Instituto Internacional de Derecho y Medio Ambiente, The Control and Enforcement of Fisheries in Spain, 2017, p. 59; <https://www.documents.clientearth.org/wp-content/uploads/library/2017-09-29-the-control-and-enforcement-of-fisheries-in-spain-ce-en.pdf>

In the case of *Operation Sparrow 2*, the Spanish authorities investigated two different bands. The first one – *Operation Sparrow 2A* – referred to the management and exploitation of the following two vessels involved in IUU fishing: *VIKING* (IMO 8713392) and *SEABULL 22* (IMO 6803961). The second band – *Operation Sparrow 2B* – concerned two other vessels, namely the *THUNDER* (IMO 6905408) and *TCHAW* (IMO 6818930). All these fishing vessels had been identified by several RFMOs, such as the Commission for the Conservation of Antarctic Marine Living Resources, as being involved in IUU fishing and were well known to have changed their names and flags on multiple occasions.

First, in relation to the *VIKING* and *SEABULL 22* vessels, six Spanish nationals and six Spanish operators were sanctioned with fines of €5270,002; disqualification from engaging in fishing activities for periods of between 5 and 14 years; and a ban on obtaining any type of public aid or subsidy for a period of between 5 and 12 years. Furthermore, one of the Spanish nationals was sanctioned with a separate fine of €60,000, because he/she was held to be involved in obstructing inspections. Therefore, the administrative sanctions totalled €5330,002 [18].

Second, as for the *THUNDER* and *TCHAW* vessels, eight Spanish nationals linked to three Spanish operators were administratively sanctioned for a total amount of €8260,001. They were also disqualified from fishing activities ranging from 11 to 12 years each, and banned from receiving public assistance for between 12 and 14 years [19].

The accused parties in *Operation Sparrow 2A* (concerning the *VIKING* and *SEABULL 22*) either filed direct appeals for judicial review or filed administrative appeals, and, once those had been rejected, filed appeals

for judicial review with the National High Court. Specifically, four such appeals were filed with the National High Court by CAPENSIS TRADE SL [20], GLOBAL SEA TRADING SL [21], WORLD OCEAN FISHING SL [22], and the person responsible for these companies [23]. In judgements delivered on 17, 21, 22 and 23 May 2019, the National High Court rejected all four appeals in their entirety, thereby confirming the sanctions that were earlier imposed.

As for the management and exploitation of the *THUNDER* and *TCHAW*, administrative inquiries were carried out in two separate cases. In the first case, opened in October 2016, FLOPEMAR SL [24] was sanctioned with a fine of €200,000 for its participation in the marketing of the catches that were made during a trip by the vessel *THUNDER*. The company appealed this administrative sanction, but the appeal was rejected in June 2018. Subsequently, it filed an appeal for judicial review with the National High Court, which was dismissed on 7 April 2021. In the second case, initiated in June 2017, administrative sanctions were set at more than €8000,000. The accused parties first filed administrative appeals, which were rejected. Subsequently, they filed appeals for judicial review with the Administrative Division of the National High Court. So far, the National High Court has issued judgements on 7, 16, 26 and 27 April and 18 June 2021 on the appeals filed by BACAMAR SL [25], FRIGORIFICOS FLORINDO E HIJOS SL [26], and three of the natural persons involved [27–29]. This court dismissed all five appeals in their entirety and, thus, rendered final administrative sanctions.

Consequently, €31,040,004 was the total amount of the administrative sanctions that were imposed in relation to Operations *Sparrow 1* and *Sparrow 2*.

**Total sanctions under Operation Sparrow 2**

Companies name_Sanctions for participation to 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	2820,002
<b>Total sanctions</b>	<b>5270,002</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. Information available at: ClientEarth and Instituto Internacional de Derecho y Medio Ambiente, The Control and Enforcement of Fisheries in Spain, 2017, p. 59; <https://www.documents.clientearth.org/wp-content/uploads/library/2017-09-29-the-control-and-enforcement-of-fisheries-in-spain-ce-en.pdf>

Finally, in the context of *Operation Banderas*, two more judicial review appeals were filed with the Spanish National High Court, which were partially upheld in 2018 and 2019 in relation to Article 101(l) of Law 3/2001 [9]. These cases concerned the fishing vessels *Antony* (IMO 7236634) and *Northern Warrior* (IMO 8808903), which had been detained at the Port of Vigo. These vessels had, at the time of their request to access the port, submitted false flag documentation with which they had obtained fishing licences in 2015. In practice, both vessels were, however, stateless. Following their detention, both vessels appeared to have been linked to companies registered in the context of *Operation Sparrow 2*, as well as to other vessels involved in IUU fishing [30].

With regard to the vessel *Northern Warrior*, a €450,000 fine was imposed on CAPENSIS TRADE SL for an infringement of Article 101(l) of Law 3/2001 [9], and a second €200,000 fine was imposed for a separate infringement of Article 101(c) of Law 3/2001 [9,31]. As for the vessel *Antony*, three fines were imposed on WORLD OCEANS FISHING SL: one for €450,000 and two for €200,000 each, for infringements classified as very serious under Articles 101(l), 101(k) and 101(c) of Law 3/2001 [32].

In the two cases that were filed for judicial review, the National High Court held that it was not enough for the vessel to be stateless; it had also to be included on the IUU fishing list of the EU or an RFMO. In this regard, under Article 101(j) of Law 3/2001, 'the violation of obligations established under international treaties on matters of maritime fisheries or of rules established in the framework of regional fisheries management organizations or other international organizations, when their breach may endanger or undermine the normal implementation thereof or entails or may entail a breach of the obligations assumed by the State,' is considered a very serious infringement of the law.

The National High Court found that the vessels *Northern Warrior* and *Antony* were not included on IUU fishing lists of the EU or an RFMO when they entered into port. The Spanish authorities later (successfully) pushed for their inclusion on the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR)'s IUU vessel list, which happened on 28 October 2016 [33–35]. Finally, on 27 December 2018 and 22 March 2019, the National High Court annulled the two €450,000 sanctions and thus partially upheld the two appeals that were filed in relation to the fishing vessels *Northern Warrior* [31] and *Antony* [32].

### 3. Regulatory framework of the administrative sanctions imposed by the Spanish authorities in their fight against illegal, unreported and unregulated fishing

In the light of the appeals brought before the National High Court in relation to administrative sanctions imposed by the Spanish authorities against Spanish nationals and operators, it can be concluded that Law 3/2001 on State Marine Fisheries [9] represents the most relevant Spanish regulatory act in the field of administrative offences in the fight against IUU fishing. Special mention should moreover be made to Law 33/2014 of 26 December, which amended Law 3/2001 [36], and to Royal Decree 182/2015 of 13 March, which approved the sanctioning regulation on external waters maritime fishing [37]. Furthermore, Royal Decree 114/2013 of 15 February, created a national register of serious fishing infringements, established the rules for the implementation of the points system, and updated Spanish Law 3/2001 [8,13,38].

Additionally, a process was launched in 2021 to reform the general regulation of maritime fishing in Spain. On 1 June 2021, the Draft Bill on Sustainable Fishing and Fishery Research was published, following its passing by the Council of Ministers. This legal text is part of a more ambitious legislative package, which will also include a law to modernize control and inspection, and the sanctioning regime in fishery matters. A law on digitization, management and planning and marketing in the fisheries sector is also envisaged in the 2021 Draft Bill.

In conformity with Article 26 of Law 50/1997, which regulates the

procedure for the drafting of provisions with the rank of law or regulation in Spain [39], a public hearing was held on this Draft Bill from 3 to 24 June 2021, during which suggestions and observations could be submitted. Furthermore, the autonomous communities, the most relevant organizations and associations in the sector, trade unions and non-governmental organizations (NGOs) were consulted and given the opportunity to convey any suggestions they might have to the government. On 7 July 2021, the Spanish Economic and Social Council published its Opinion on the Draft Bill on Sustainable Fishing and Fishery Research [40], and the final Draft Bill of this new law on fisheries is expected to be made public shortly. It will then need to be submitted to the Council of State, which will have to issue its opinion, after which the proposal will be submitted, as is usual, to the General Commission of Secretaries of State and Undersecretaries, so as next to be submitted to the Council of Ministers for approval and, finally, sent on to the Spain's Lower House or, where applicable, the Spanish Senate. It was expected that the new law would enter into force on 2 January 2022. However, at the time of writing this article (May 2022), this has not happened yet.

Article 55 of Title X of the future Law on Sustainable Fishing and Fishery Research refers to the sanctioning regime. It provides that '[i]nfringements of the provisions of this law and its implementing provisions will be sanctioned in accordance with the provisions of Title V of Law 3/2001, of 26 March, Chapters I, II and IV'. Therefore, it may affirm that this pillar of the reform of the Law 3/2001 on State Maritime Fisheries does not make any significant contributions to the IUU fishing sanctioning regime. On the contrary, it is the second law that is expected to usher in true reforms in this area.

Regarding the current legal framework for the administrative sanctions imposed by the Spanish authorities in their fight against IUU fishing, it should be mentioned that according to Articles 99–101 of Law 3/2001 [9], there are three types of possible administrative violations concerning fishing performed in external waters, namely: minor infringements (Article 99), serious infringements (Article 100), and very serious infringements (Article 101) [12]. As shown in Section 2 of this article, Article 101(c), (j) and (l) of Law 3/2001 [9] have been invoked before Spain's National High Court in relation to administrative sanctions imposed by the public authorities to Spanish nationals and operators for IUU fishing activities.

In relation to the specific administrative sanctions for each type of infringements in matters of maritime fisheries, Article 105(1) of Law 3/2001, as amended by Law 33/2014, sets out thirteen different sanctions that may be applied and even cumulated where appropriate, namely: warning; public admonition; financial penalty; assignment of penalty points; disqualification from the exercise or development of fishing activities; confiscation of fishing gear, equipment or fishing tools; confiscation of fishing catches or fishery products, or of products or goods obtained in the commission of the infringements; goods obtained in the commission of the infringements; suspension, withdrawal or non-renewal of authorisations, licences or permits; ineligibility for loans, subsidies or public aid; seizure of the vessel; temporary detention of the vessel; suspension of the status of authorised economic operator; and reduction or withdrawal of fishing rights or opportunities.

Furthermore, the current Spanish legislation contains three different categories of financial penalties.<sup>7</sup> First, minor infringements shall be punished with a penalty of €60 to €600. Second, the penalty may be between €601 and €60,000, in case of serious infringements. Third, the financial penalty will be between €60,001 and €600,000 in case of very serious infringements of the law. Additionally, Article 106(2) of Law 33/2014 provides for three different levels for each category of sanctions, namely: minimum, medium, and maximum. Therefore, in the case of minor infringements, the financial penalty will be between €60 to €200 at the minimum level, between €201 to €400 at the medium level, and between €401 to €600 at the maximum level. The financial penalty for a

<sup>7</sup> Article 106(1) of Law 33/2014.



serious fishing infringement will be between €601 to €15,000 at the minimum level, between €15,001 to €40,000 at the medium level, and between €40,001 to €60,000 at the maximum level. Finally, in the case of very serious infringements, the financial penalty will be between €60,001 to €120,000 at the minimum level, between €120,001 to 240,000 at the medium level, and between €240,001 to €600,000 at the maximum level.

Under Article 106(3) of Law 33/2014, the public authorities should take into account different criteria for setting the financial penalties, such as: the economic benefit obtained or expected to be obtained by the alleged offender because of the infringement committed; the size and power of the fishing vessel; the nature of the damage caused, economic resources, etc.; as well as the possibility of restitution of the damage caused as a consequence of the infringement.

As recognized by the European Commission in January 2021, the amount of the penalties provided for in the Spanish system differ significantly from those that have been established in other EU Member States. These range considerably across the EU: from €1624 in Romania to €600,000 in Spain, in the case of administrative sanctions for very serious infringements [8].

The complexity of the administrative structure in Spain, as it is a State that is organised into seventeen autonomous communities and two autonomous cities should also be emphasised. Thereby, by virtue of Article 112 of Law 33/2014, which amends Law 3/2001 on State Maritime Fisheries [36], the jurisdiction to sanction maritime fishing infringements corresponds to the representatives of the central Government in each autonomous community or autonomous city in the case of minor infringements, and to the Director General for Fisheries Management and Aquaculture in the case of serious infringements. In the case of very serious infringements, this competence belongs to the Secretary General of Fisheries for penalties up to €300,000, and to the Minister of Agriculture and Fisheries for penalties between €300,001 and €600,000.

Furthermore, by virtue of Article 40 of Law 3/2001 [9], the competent authorities of the autonomous communities have the possibility to participate in national fisheries inspection and control programmes through collaboration agreements with the MAPAMA/MAPA. So far, only Galicia, Andalusia and Catalonia have signed this type of agreement, i.e. only three of the ten coastal autonomous communities have made use of it. The action relating to the allocated resources for fisheries control and inspection, or concerning the possibility for the civil society of having access to the administrative sanctions imposed differs between autonomous communities [14].

The author of this contribution would like to emphasise that the administrative sanctions regime in Spain has been revoked by Royal Decree 182/2015 on the procedural regulation of the penalty system for maritime fishing in external waters. This Act has introduced a new procedural regulation, substituting the one adopted in 2008, and has therefore modified the Spanish law in order to comply with Regulation 1005/2008 [1], the Council Regulation 1224/2009 establishing the EU control system for ensuring compliance with the rules of the Common Fisheries Policy [41], and the Commission Implementing Regulation 404/2011 regarding detailed rules for the implementation of Council Regulation 1224/2009 [42].

Finally, reference to the Spanish Royal Decree 114/2013 has to be made [38]. This Decree has created and regulated the domestic register of serious infringements of the Common Fisheries Policy, established the rules for the application of the points system, and updated the amounts of the penalties provided for in Law 3/2001 [13]. Among all the provisions of this Decree, the points system (which are given to licence holders and to the masters of vessels acting contrary to IUU fishing rules) in the Decree, which is of an ancillary nature to the administrative sanction, is worth mentioning. Thus, under Article 6(2) of Royal Decree 114/2013 [38], the competent authorities to assign points are the same

as the responsible authorities for taking decisions on administrative sanctions.

It is worth noting that all data recorded concerning the imposed sanctions will automatically be cancelled three years after the final sanction has been imposed. However, the points will not be cancelled if another infringement committed by the same offender, with the same licence and vessel, is recorded in that three-year period (Article 5). For example, according to Article 7(3) of Royal Decree 114/2013 [38], a vessel's fishing licence may be suspended for 2 months, which would be the equivalent of 18 points, 4 months (36 points), 8 months (54 points), or 1 year (72 points). Additionally, under Article 7(4) of Royal Decree 114/2013, the accumulation of 90 points by the licence holder will automatically result in the permanent revocation of the licence, which will be communicated to the National Fishing Vessel Register and the Community Fishing Vessel Register (Article 7). In the case of masters, Article 8 of Royal Decree 114/2013 sets out that they will be disqualified to engage in any fishing activity when they reach the following points and periods: 2 months – 30 points; 4 months – 70 points; 8 months – 100 points; and 1 year – 130 points [8].

The experience accumulated over the last decade or so in relation to the effectiveness of the application of the point system in Spain allows us to argue/confirm that it is necessary to improve the functioning of this system in relation to serious infringements of the Common Fisheries Policy, and that a coherent application both at national and autonomous community level should/must be ensured. Royal Decree 114/2013 [38] provides the legal basis for the implementation of the point system. However, Spain still lacks guidelines on how to effectively implement such a system. This is particularly necessary not only to improve the implementation of the points system for serious infringements, but also to create a level playing field for the different operators, which is a real problem at present [14].

#### 4. Final considerations

Over the last decade, Spain's efforts to combat IUU fishing has shown to be a fruitful collaboration between the different public authorities with powers to prosecute and administratively sanctioning IUU fishing activities. The Spanish practice is even more commendable, given that Spain is a country of self-governing regions and cooperation between these public sectors is not always easy to manage. But without real cooperation concerning the exchange of information, for example, it would be unthinkable for an operation investigating possible IUU fishing activities to succeed. It must not be forgotten that the sanctions for serious administrative infringements, such as those related to IUU fishing activities, cancel three years later. In the author's view, this is a fairly short period for such complex investigations to be completed and to result, where applicable, in prescribing the imposition of an administrative sanction.

On some occasions, the administrative sanctions imposed have had to be defended in court, before the Administrative Chamber (First Section) of the National High Court. The Operations *Sparrow 1*, *Sparrow 2* and *Banderas* have provided proof of this. As seen in this article, the vast majority of administrative sanctions imposed in the context of these operations have been confirmed in the last five years in appeals that were heard before the National High Court. At present, several appeals are still pending, awaiting the final decision.

This administrative and judicial scenario has also been made possible by the legislative changes completed in 2013, 2014 and 2015 in relation to Law 3/2001 on State Maritime Fisheries. At present, the Spanish regulatory framework, which has been assessed throughout this article, is under review. It is expected that the amended legal basis for the fight against IUU fishing will reflect the legislative developments in the EU on this matter in the last years.

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## References

- [1] Council Regulation (EC) , 2007. No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999, OJ L 286/1, 29.10.2007.
- [2] A.N. Honniball, Unilateral trade measures and the importance of defining IUU fishing: lessons from the 2019 USA “Concerns” with china as a fishing flag state, *J. Territ. Marit. Stud.* 7 (2) (2020) 7.
- [3] G.A. Oanta, New Steps, The Control of Illegal, Unreported and Unregulated Fishing, in: H.J. Koch, D. König, J. Sanden, R. Verheyen (Eds.), *Legal regimes for environmental protection: governance for climate change and ocean resources*, Brill/Nijhoff, Leiden, 2015, pp. 247–251.
- [4] M. Rosello, Cooperation and unregulated fishing: interactions between customary international law, and the European Union IUU fishing regulation, *Mar. Policy* 84 (2017) 306.
- [5] Food and Agriculture Organization, 2022. The State of World Fisheries and Aquaculture. Contributing to food security and nutrition for all, 2016, p. 52 (<https://www.fao.org/3/i5555e/i5555e.pdf>) (Accessed 3 February 2022).
- [6] Environmental Justice Foundation, 2022. Oceana, The Pew Charitable Trusts and WWF, Improving performance in the fight against illegal, unreported and unregulated (IUU) fishing. Spain – Leading implementation of the EU’s Regulation to combat illegal fishing, 2017, 3 and 7, ([http://www.iuwatch.eu/wp-content/uploads/2015/07/IUU\\_SPAIN\\_Brief\\_ENG\\_FINAL\\_June\\_HIGH.pdf](http://www.iuwatch.eu/wp-content/uploads/2015/07/IUU_SPAIN_Brief_ENG_FINAL_June_HIGH.pdf)) (Accessed 3 February 2022).
- [7] ClientEarth, 2022. Spain – A progress report on a decade of combating IUU fishing, January 2021, pp. 2 and 11, (<https://www.clientearth.org/media/v1id3clg/spa-in-a-progress-report-on-a-decade-of-combating-iuu-fishing.pdf>) (Accessed 4 February 2022).
- [8] European Commission, 2022. Study on the sanctioning systems of Member States for infringements to the rules of the Common Fisheries Policy, 2021, pp. 51, 72 and 176, (<https://op.europa.eu/es/publication-detail/-/publication/dfb452c8-c4df-11eb-a925-01aa75ed71a1>) (Accessed 15 December 2021).
- [9] BOE No. 75, of 28 March 2001.
- [10] M. García García-Revillo, Falta de jurisdicción de los tribunales españoles para conocer de delitos contra el medio ambiente (pesca IUU) cometidos por españoles mediante buques de pabellón extranjero en alta mar (Sentencia del Tribunal Supremo, de 23 de diciembre de 2016, asunto Vidal Armadores), *Rev. Esp. De. Derecho Int.* 69 (2) (2017) 345.
- [11] E. Morelle Hungria, La pesca ilegal como actividad delictiva: una aproximación a la problemática española, *Actual. Juríd. Ambient.* 74 (2017) 19.
- [12] R. Pons Rafols, Spain and the fight against IUU fishing, *Span. Yearb. Int. Law* 21 (2017) 436.
- [13] G.A. Oanta, Spain’s action to control and suppress illegal, unreported and unregulated fishing: current status and future prospects, *Int. J. Mar. Coast. Law* 34 (2019) 642.
- [14] Client Earth and Instituto Internacional de Derecho y Medio Ambiente, The Control and Enforcement of Fisheries in Spain, 2017, pp. 11, 12, 30, 36–46 (<https://www.documents.clientearth.org/wp-content/uploads/library/2017-09-29-the-control-and-enforcement-of-fisheries-in-spain-ce-en.pdf>) (Accessed 15 December 2021).
- [15] Appeal No. 14/2017. Roj: SAN 5097/2018 – ECLI:ES:AN:2018:5097.
- [16] Appeal No. 856/2016. Roj: SAN 522/2020 – ECLI:ES:AN:2020:522.
- [17] La Vanguardia, 2016. Seis detenidos en Galicia por pesca ilegal en la ‘operación Yuyus’ declararán mañana en la Audiencia Nacional, 8 March 2016, (<https://www.lavanguardia.com/vida/20160308/40295457615/seis-detenidos-en-galicia-por-pesca-ilegal-en-la-operacion-yuyus-declararan-manana-en-la-audiencia-nacional.html>) (Accessed 6 February 2022).
- [18] Ministerio de Agricultura y Pesca, 2022. Alimentación y Medio Ambiente, El Ministerio inicia un expediente sancionador por presunta pesca ilegal contra los propietarios y gestores de dos buques, 2 August 2017 ([https://www.mapa.gob.es/es/prensa/170802expedientesancionadorsparrow2\\_tcm30-419830.pdf](https://www.mapa.gob.es/es/prensa/170802expedientesancionadorsparrow2_tcm30-419830.pdf)) (Accessed 5 February 2022).
- [19] Ministerio de Agricultura y Pesca, 2022. Alimentación y Medio Ambiente, El Ministerio de Agricultura y Pesca, Alimentación y Medio Ambiente avanza en la lucha contra la pesca ilegal, no declarada y no reglamentada, 6 April 2018 (<https://www.mapa.gob.es/es/prensa/historico/el-ministerio-de-agricultura-y-pesca-alimentacion-y-medio-ambiente-avanza-en-la-lucha-contra-la-pesca-ilegal-no-declarada-y-no-reglamentada-tcm:30-446049>) (Accessed 15 December 2022).
- [20] Appeal No. 321/2017. Roj: SAN 2888/2019 – ECLI:ES:AN:2019:2888.
- [21] Appeal No. 317/2017. Roj: SAN 2383/2019 – ECLI:ES:AN:2019:2383.
- [22] Appeal No. 319/2017. Roj: SAN 2608/2019 – ECLI:ES:AN:2019:2608.
- [23] Appeal No. 324/2017. Roj: SAN 2770/2019 – ECLI:ES:AN:2019:2770.
- [24] Appeal No. 606/2018. Roj: SAN 1362/2021 – ECLI:ES:AN:2021:1362.
- [25] Appeal No. 1026/2018. Roj: SAN 1370/2021 – ECLI:ES:AN:2021:1370.
- [26] Appeal No. 1044/2018. Roj: SAN 1734/2021 – ECLI:ES:AN:2021:1734.
- [27] Appeal No. 1034/2018. Roj: SAN 1733/2021 – ECLI:ES:AN:2021:1733.
- [28] Appeal No. 1027/2018. Roj: SAN 1732/2021 – ECLI:ES:AN:2021:1732.
- [29] Appeal No. 1050/2018. Roj: SAN 2797/2021 – ECLI:ES:AN:2021:2797.
- [30] Ministerio de Agricultura, 2021. Alimentación y Medio Ambiente, En el puerto de Vigo y en la denominada “Operación Banderas”: El Ministerio de Agricultura, Alimentación y Medio Ambiente retiene a dos buques por la posible comisión de infracciones muy graves relacionadas con la pesca ilegal, (<http://www.magrama.es>) (Accessed 15 December 2021).
- [31] Appeal No. 81/2017. Roj: SAN 5436/2018 – ECLI:ES:AN:2018:5436.
- [32] Appeal No. 82/2017. Roj: SAN 836/2019 – ECLI:ES:AN:2019:836.
- [33] Commission for the Conservation of Antarctic Marine Living Resources, Northern Warrior, ([https://www.ccamlr.org/en/node/96055#quicktabs-vessel\\_tabs=0](https://www.ccamlr.org/en/node/96055#quicktabs-vessel_tabs=0)) (Accessed 6 February 2022).
- [34] Commission for the Conservation of Antarctic Marine Living Resources, Non-Contracting Party IUU Vessel List, (<https://www.ccamlr.org/en/compliance/non-contracting-party-iuu-vessel-list>) (Accessed 6 February 2022).
- [35] Combined IUU Fishing Vessel List, Vessel Details – Antony – Currently Listed, (<https://iuu-vessels.org/Vessel/GetVessel/5818f230-d5d6-4346-a738-b73d8de-c823f>) (Accessed 6 February 2022).
- [36] Law 33/2014, of 26 December, amending Law 3/2001, of 26 March, on State Maritime Fisheries (BOE No. 313, 27 December 2014, p. 105798).
- [37] BOE No. 63, of 14 March 2015.
- [38] BOE No. 51, of 28 February 2013.
- [39] 1997. Law 50/1997, of 27 November, on the Government (BOE No. 285, of 28 November 1997).
- [40] 2021. Spanish Economic and Social Council, Dictamen 3/2021 sobre el Anteproyecto de Ley de Pesca sostenible e investigación pesquera’, extraordinary plenary session, 7 July 2021 (<http://www.ces.es/documents/10180/5251137/Dic032021.pdf>) (Accessed 15 December 2021).
- [41] Council Regulation, 2009. (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006, OJ L 343/1, 22.12.2009.
- [42] Commission Implementing Regulation 2011. (EU) 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, OJ L 112/1, 30.04.2011.