

El Salvador, December, 16th, 2013
SG OSP 216-13

Sirs.

International Tribunal for the Law of the Sea
Present.

Dear Sirs:

We gladly respond to your request for information but making clear that the comments are ours, from a Regional Unit, therefore the government agencies of each OSPESCA country can give you the full official information. Their information thus will prevail.

1. What are the obligations of the flag State in cases where illegal, unreported and unregulated (IUU) fishing activities are conducted within the Exclusive Economic Zone of third party States?

The flag State of the vessel that carried out illegal, unreported and unregulated fishing in the EEZ of a third State has the obligation to:

- a) Initiate an immediate investigation at the time the situation is acknowledged-
- b) Apply the sanctions available according to its internal law for the violation of permits issued to such vessel, including fines and cancellation of the permit or license, as applicable.
- c) Notify the third state of facts and investigations and sanctions applied.
- d) Report that fact to a regional fisheries organization as appropriate.

2. To what extent shall the flag State be held liable for IUU fishing activities conducted by vessels sailing under its flag?

The assumption is that the flag State has granted a permit for lawful acts as expressly set out in the relevant contract and is not liable, in principle, by the illegal acts that could be carried out with lack of knowledge of the flag State. A principle of presumption of innocence in his favor would be considered.

However, the flag state can have legal liability if failed in its duty to supervise, monitor and control that such vessels operate in the areas specifically authorized. If there is a proven negligence of the flag State in relation to their duties to investigate situations where IUU fishing is suspected, or acts negligently against allegations of these facts (e.g. without starting the investigations) a liability for the Flag State can arise.

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3. Where a fishing license is issued to a vessel within the framework of an international agreement with the flag State or by an international agency, shall the State or international agency be held liable for the violation of the fisheries legislation of the coastal State by the vessel in question?

The flag State or the International Organization has to monitor and control the fishing vessels and can be found responsible if negligent or violate its duties. Furthermore, it does not seem that the mere existence of an international agreement for granting fishing permits override the State that issued the permit duties to control and monitor that the vessel's activities are carried out within the rights granted by the fishing license and without affecting the rights of third parties in the EEZ. It is possible that mechanisms for collaboration, communication and cooperation between the State issuing the fishing license, the flag State and / or the international organization should be established.

4. - ¿What are the rights and obligations of the coastal State in ensuring the sustainable management of shared stocks and stocks of common interest, especially the small pelagic species and tuna?

The rights and duties of the coastal State, in the case of Central America, would be the ones assumed under its own national legislation and international conventions on the subject as well as those under other communitarian regulations and the Central America Fisheries and Aquaculture Policy. Among others, the commitments contained in the United Nations Convention on Law of the Sea (except for a country that is not a party), the inter-American conventions related to tuna fisheries and those established by the regional legislation and within the framework of the Food and Agriculture Organization of the United Nations (FAO), e.g. Code of Conduct for Responsible Fisheries, can be mentioned.

Hope the information is useful

Sincerely yours,

Mario González Recinos
Regional Director
SICA/OSPESCA

