

STATES OF JERSEY



Jersey

DRAFT ILLEGAL, UNREPORTED AND UNREGULATED FISHING (JERSEY) REGULATIONS 202-

**Lodged au Greffe on 19th April 2021
by the Minister for the Environment
Earliest date for debate: 8th June 2021**

STATES GREFFE

REPORT

Background

Illegal, Unreported and Unregulated (IUU) fishing constitutes one of the most serious threats to the sustainable exploitation of living aquatic resources and jeopardises fisheries policy and management and international efforts to promote better ocean governance. IUU fishing also represents a major threat to marine biodiversity. Action against IUU fishing is an international effort under the auspices of the United Nations Convention on the Law of the Sea (UNCLOS) and co-ordinated by the FAO.

Jersey has a comprehensive and well-established system for the monitoring and enforcement of fishing activity in Jersey Territorial Waters under the legal framework of the [Sea Fisheries \(Jersey\) Law 1994](#) and other Agreements (e.g. Fisheries Management Agreement (FMA)). It is not considered that Jersey has an issue with IUU fishing either with fishing vessels in Jersey Waters or indeed the Jersey fleet fishing in waters external to Territorial Waters. Jersey has no exclusive economic zone because its territorial sea is completely surrounded by those of France and Guernsey at a distance of no more than 12 miles.

Certain aspects of EU legislation, which could be considered as part of the wider IUU regulatory package, have been adopted as appropriate (for example around vessel monitoring, reporting and landing declaration). Relevant Jersey Regulations are [Sea Fisheries \(Vessel Monitoring Systems\) \(Jersey\) Regulations 2014](#) and [Sea Fisheries \(Log Books, Transhipment and Landing Declarations\) \(Jersey\) Regulations 2014](#).

However, further legislation is required in light of the UK new arrangement with the EU under the Trade and Co-operation Agreement (TCA).

Details

The UK's decision to exit the EU and the resulting termination of the arrangements for Jersey and the other Crown Dependencies in Protocol 3 to the EU Treaty, meaning that Jersey will no longer be within the EU customs territory, is thought likely to have an impact on trade in fish and fish products, specifically, on Jersey vessels ability to land catch into the EU (i.e. France) and French vessels ability to land into Jersey. Implementing IUU measures in Jersey is thought to be an important element in assuring the continuation of trade in fishery products between Jersey and the EU. Implementation of IUU measures is therefore vital for the continued trade in capture fishery products in addition to the health, customs and trade requirements.

If IUU controls are not implemented in Jersey, there is potential for exploitation of a loophole in respect of third country vessels landing fishery products in Jersey which could then be exported to either the UK or the EU. Resolving this aspect at this time will give the necessary reassurance to the UK, EU and International Bodies (e.g. Regional Fishery Management Organisations (RFMO) that Jersey is meeting international standards in prevention of IUU fishing. In addition, it would also future proof legislation should markets and opportunities change over time.

Further, from a reputational perspective it is important to ensure that Jersey is not seen as a potential backdoor or weak spot in relation to the financial controls over IUU fishing, with respect to ownership of vessels, insurance and other services which may be offered to vessels and operators engaged in IUU fishing.

Some aspects of IUU control (reporting, monitoring, transshipping etc.) are already provided for under the Sea Fisheries (Log Books, Transhipment and Landing

Declarations) (Jersey) Regulations 2014 and Sea Fisheries (Vessel Monitoring Systems) (Jersey) Regulations 2014. However, the intention of these Regulations was to fulfil obligations under other EU regulations related to fishing activity.

Whilst the legislation concerning IUU fishing is often complex (the EU Regulation is more than 50 pages) the objectives for implementation in Jersey can be summarised concisely –

- to provide a legal framework and obligations that allows Jersey vessels and exporters of fisheries products to continue to land and trade into EU ports;
- to ensure that vessel landing into Jersey ports and that vessels and companies connected to Jersey that engage in fishing activities comply with legal requirements that demonstrates they are no engaged in IUU fishing;
- to prevent the current gaps in legislation being exploited by those, some of whom may also be involved in organised crime, who are engaged in IUU fishing.

Financial and manpower implications

These obligations, together with the requirement of the Trade and Co-operation Agreement (TCA), require resourcing. A business case has been submitted.

EXPLANATORY NOTE

These Regulations, if passed, would implement, with the modifications necessary for it to apply in Jersey, Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (the “IUU Regulation”).

Regulation 1 contains definitions and provides that, subject to the modifications set out in these Regulations, terms used in both these Regulations and the IUU Regulation have the meaning that they have in the IUU Regulation.

Regulation 2 sets out that the IUU Regulation applies to illegal, unreported and unregulated fishing and associated activities carried out within Jersey and the territorial sea of Jersey, as well as within waters under the jurisdiction or sovereignty of other countries and territories and on the high seas.

Regulation 3 sets out modifications to the IUU Regulation to allow it to apply in Jersey as Jersey is not a Member State of the European Union.

Regulation 4 provides that the Minister for the Environment (“the Minister”) is the competent authority for the purposes of the IUU Regulation.

Regulation 5 designates St. Helier as a designated port for the purposes of the IUU Regulation. It allows the Minister to designate other ports by Order.

Regulation 6 allows the Minister to exempt specified categories of third country vessels from the obligations relating to prior notification under Article 6(1) of the IUU Regulation, or to allow for a different notification period. An exemption must be for a limited period, which may be renewed and if specifying a different notice period the Minister must take into account the type of product and the fishing ground, landing places and ports where the vessels are registered.

Regulation 7 allows the Minister to grant the status of approved economic operator to an importer satisfying the requirements of Article 16(3) of the IUU Regulation.

Regulation 8 requires the Minister to notify the competent authority of the flag state of a fishing vessel where the Minister decides not to authorise landing or transshipment operations.

Regulation 9 makes provision for an appeal against a decision of the Minister to refuse importation.

Regulation 10 provides that when exercising any function under the IUU Regulation or these Regulations, fishery officers may exercise the powers conferred under Articles 16 and 17 of the Sea Fisheries (Jersey) Law 1994 (“the Law”). Fishery officers are defined in the Law.

Regulation 11 allows the Minister to disclose information to a competent authority in the British Islands, to a Member State of the European Union or to the European Commission in order to allow the Minister to carry out functions as the competent authority under the IUU Regulation.

Regulation 12 contains offences. For the following offences a person is liable to an unlimited fine:

- conducting a transshipment with a third country fishing vessel contrary to Article 4(3) of the IUU Regulation;
- failure to make a prior notification to the Minister in accordance with Article 6 of the IUU Regulation;

- entry into port without authorisation under Article 7 of the IUU Regulation;
- failure to submit to the Minister a declaration under Article 8 of the IUU Regulation relating to fishery products to be landed or transhipped;
- failure to cooperate with an inspection under Article 10 of the IUU Regulation;
- importation of fishery products without a validated catch certificate under either Article 12 or 14 of the IUU Regulation;
- exportation of fishery products without a validated catch certificate under Article 15 of the IUU Regulation;
- transshipment or joint fishing operations with a vessel that has engaged in illegal, unreported or unregulated fishing, is on the European Union's Community IUU vessel list or is on an IUU vessel list of a regional fisheries management organisation;
- entering into an agreement to operate or beneficially own a fishing vessel on the European Union's Community IUU vessel list, furnishing such a vessel with any supplies, gear or people or engaging in employment on such a vessel;
- in relation to a non-cooperating country listed on a list established under Article 33 of the IUU Regulation: importing fishery products caught by a fishing vessel flying the flag of that country unless the products are from stock or species to which the listing does not apply; purchasing a fishing vessel flying the flag of that country; reflagging a vessel flying the flag of a Member State of the European Union or registered in any part of the British Islands so that it flies the flag of that country; entering into a charter agreement with that country in relation to a fishing vessel flying its flag; exporting to that country a vessel flying the flag of a Member State of the European Union or registered in any part of the British Islands; entering into an agreement for a vessel flying the flag of a Member State of the European Union or registered in any part of the British Island to use the fishing possibilities of that country; participating in joint fishing operations with a fishing vessel flying the flag of that country;
- conducting business directly connected to illegal, unreported and unregulated fishing within the meaning of Article 42(1)(b) of the IUU Regulation.

A person commits an offence, and is liable to imprisonment for a term of 2 years or an unlimited fine, or both, if they knowingly or recklessly make any statement or provide any information that is false or misleading in any material particular in or in connection with any document required, or in providing any information, under the IUU Regulation or these Regulations.

A person commits an offence if they fail, without reasonable cause, to comply with any requirement imposed by a fishery officer under the powers conferred by Article 10 of the IUU Regulation or by Article 16 of the Law; they without reasonable excuse, prevent, or attempt to prevent, any other person from complying with such a requirement; or they intentionally obstruct any such officer in the exercise of those powers. They are liable to imprisonment for a term of 2 years or and unlimited fine, or both.

Regulation 13 provides that Articles 20, 21 and 22 of the Law apply in relation to offences committed under these Regulations.

Regulation 14 gives the title of these Regulations and provides that they come into force 7 days after they are made.



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Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES make these Regulations under Article 2 of the European Union Legislation (Implementation) (Jersey) Law 2014¹ –

1 Interpretation

- (1) In these Regulations –
- “fishery officer” has the same meaning as in the Law;
 - “IUU Regulation” means Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (OJ L 286, 29.10.2008, p.1), as amended from time to time;
 - “Law” means the Sea Fisheries (Jersey) Law 1994²;
 - “Minister” has the same meaning as in the Law;
 - “third country fishing vessel” means a fishing vessel registered in any country or jurisdiction other than Jersey.
- (2) Subject to the modifications in Regulation 3, terms used in these Regulations that are also used in the IUU Regulation and are not defined in paragraph (1) have the meaning they have in that Regulation.

2 Application

The IUU Regulation applies with the modifications in Regulation 3 in relation to all illegal, unreported and unregulated fishing and associated activities carried out within Jersey, within the territorial sea of Jersey, within maritime waters under the jurisdiction or sovereignty of other countries and territories and on the high seas.

3 Modifications of the IUU Regulation

The IUU Regulation applies with the following modifications –

- (a) unless the context otherwise requires, a reference to a “Member State” includes a reference to Jersey;
- (b) a reference to a third country is a reference to any country or territory other than Jersey or any other part of the British Islands;
- (c) a reference to a third country fishing vessel is a reference to a fishing vessel registered in any country or jurisdiction other than Jersey;
- (d) a reference to the territory of the Community is a reference to the territory of Jersey;
- (e) a reference to Community waters is a reference to the territorial sea of Jersey;
- (f) a reference to a fishing vessel flying the flag of a Member State is a reference to a fishing vessel registered in any place in the British Islands;
- (g) a reference to importation into the Community or movement of fishery products into the Community is a reference to importation or movement of fishery products into Jersey;
- (h) a reference to any of the following is a reference to Jersey –
 - (i) port Member State,
 - (ii) inspecting Member State,
 - (iii) Member State of importation,
 - (iv) flag Member State,
 - (v) Member States of transshipment,
- (i) the definition of “Community fishing vessel” in Article 2 of the IUU Regulation is to be read as referring to a fishing vessel registered in any place in the British Islands.

4 Competent authority

For the purposes of the IUU Regulation, the Minister is the competent authority.

5 Designated ports

- (1) For the purposes of the IUU Regulation, St. Helier is a designated port.
- (2) The Minister may, by Order, designate other ports as designated ports for the purposes of the IUU Regulation.

6 Different notice provisions

- (1) The Minister may, by Order, exempt specified categories of third country fishing vessels from the obligations in Article 6(1) of the IUU Regulation or specify a different notice period from the one set out in Article 6(1).
- (2) An exemption must be for a limited period, but may be renewed.
- (3) When specifying a different notice period, the Minister must take into account –
 - (a) the type of fishery product; and

- (b) the distance between the fishing ground, landing places and ports where the vessels are registered or listed.

7 Approved economic operators

The Minister –

- (a) may grant the status of approved economic operator to an importer if that importer satisfies the conditions in Article 16(3) of the IUU Regulation; and
- (b) must publish a list of any approved economic operators.

8 Infringement

Where the Minister decides not to authorise landing or transhipment operations in accordance with Article 11(2) of the IUU Regulation, the Minister must –

- (a) notify the competent authority of the flag state of the inspected fishing vessel; and
- (b) transmit a copy of the inspection report to that competent authority.

9 Appeal of refusal of importation

- (1) Where the Minister has refused importation under Article 18(1) or (2) of the IUU Regulation, the importer may, within 28 days after the day on which the importer is notified of the refusal, appeal to the Royal Court.
- (2) The decision is not suspended pending its appeal unless the Royal Court directs otherwise.
- (3) Once it has heard an appeal under this Regulation, the Royal Court must either –
 - (a) confirm the Minister's refusal; or
 - (b) order the Minister to rescind or vary the Minister's decision and may make such other order as the Court considers appropriate.

10 Powers of fishery officers

For the purpose of exercising any functions under the IUU Regulation, including those in Article 10, or these Regulations, a fishery officer may exercise the powers conferred by Articles 16 and 17 of the Law.

11 Disclosure of information to other competent authorities

- (1) For the purposes of enabling the Minister to carry out functions as the competent authority under the IUU Regulation, the Minister may disclose information that the Minister has received in the performance of the Minister's functions to a competent authority in the British Islands, a Member State of the European Union or the European Commission.
- (2) Nothing in paragraph (1) affects any other power or requirement of the Minister to disclose information under an enactment.

12 Offences

- (1) A person who conducts a transshipment with a third country fishing vessel contrary to Article 4(3) of the IUU Regulation commits an offence and is liable to a fine.
- (2) A master of a third country fishing vessel who does not comply with the notification requirements in Article 6 of the IUU Regulation commits an offence and is liable to a fine.
- (3) A master, owner or charterer, or agent of the master, owner or charterer, of a third country fishing vessel which enters port without authorisation under Article 7 of the IUU Regulation commits an offence and is liable to a fine.
- (4) A master of a third country fishing vessel who does not submit to the Minister a declaration in accordance with Article 8 of the IUU commits an offence and is liable to a fine.
- (5) A master of a fishing vessel who does not cooperate with an inspection under Article 10 of the IUU Regulations commits an offence and is liable to a fine.
- (6) A person who imports fishery products into Jersey without a validated catch certificate under Article 12 of the IUU Regulation commits an offence and is liable to a fine.
- (7) A person who imports fishery products into Jersey without a validated catch certificate under Article 14 of the IUU Regulation commits an offence and is liable to a fine.
- (8) A person who exports fishery products from Jersey without a validated catch certificate under Article 15 of the IUU Regulation commits an offence and is liable to a fine.
- (9) A person commits an offence and is liable to a fine if that person tranships fish or fishery products between, or participates in joint fishing operations with, a vessel that –
 - (a) has engaged in IUU fishing;
 - (b) is on the Community IUU vessel list; or
 - (c) is on an IUU vessel list of a regional fisheries management organisation.
- (10) A person commits an offence and is liable to a fine if that person –
 - (a) enters into an agreement to operate or beneficially own a fishing vessel on the Community IUU vessel list;
 - (b) furnishes such a vessel with any supplies, fishing gear or people; or
 - (c) engages in employment on such a vessel.
- (11) A person commits an offence and is liable to a fine if that person, in relation to a non-cooperating country listed on a list established under Article 33 of the IUU Regulation –
 - (a) imports fishery products caught by a fishing vessel flying the flag of that country unless the products are from stock or species to which the listing does not apply;
 - (b) purchases a fishing vessel flying the flag of that country;
 - (c) reflags a relevant fishing vessel so that it flies the flag of that country;

- (d) enters into a charter agreement with that country in relation to a fishing vessel flying its flag;
- (e) exports a relevant fishing vessel to that country;
- (f) enters into an agreement for a relevant fishing vessel to use the fishing possibilities of that country; or
- (g) participates in joint fishing operations with a fishing vessel flying the flag of that country,

and in this paragraph “relevant fishing vessel” means a vessel flying the flag of a Member State of the European Union or registered in any part of the British Islands.

- (12) A person who conducts business directly connected to IUU fishing within the meaning of Article 42(1)(b) of the IUU Regulation commits an offence and is liable to a fine.
- (13) A person commits an offence, and is liable to imprisonment for a term of 2 years and to a fine, if the person knowingly or recklessly makes any statement or provides any information that is false or misleading in any material particular in or in connection with any document required, or in providing any information, under the IUU Regulation or these Regulations.
- (14) A person commits an offence and is liable to imprisonment for a term of 2 years and to a fine if the person –
 - (a) fails, without reasonable cause, to comply with any requirement imposed by a fishery officer under the powers conferred by Article 10 of the IUU Regulation or by Article 16 of the Law;
 - (b) without reasonable excuse, prevents, or attempts to prevent, any other person from complying with such a requirement; or
 - (c) intentionally obstructs any such officer in the exercise of those powers.

13 Application of Articles 20, 21 and 22 of the Law

Articles 20, 21 and 22 of the Law apply to offences under these Regulations.

14 Citation and commencement

These Regulations may be cited as the Illegal, Unreported and Unregulated Fishing (Jersey) Regulations 202- and come into force 7 days after they are made.

ENDNOTES

Table of Endnote References

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| 1 | <i>chapter 17.245</i> |
| 2 | <i>chapter 14.825</i> |