

PAS 1550:2017

Exercising due diligence in establishing the legal origin of seafood products and marine ingredients –
Importing and processing –
Code of practice



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Foreword

This PAS was developed with the support of the Environmental Justice Foundation (EJF), Oceana, The Pew Charitable Trusts (Pew) and WWF.¹⁾ Its development was facilitated by BSI Standards Limited and it was published under licence from The British Standards Institution (BSI). It came into effect on 31 July 2017.

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- Environmental Justice Foundation (EJF)
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- MRAG Ltd.
- Oceana
- The Pew Charitable Trusts (Pew)
- Seafish
- UK Seafood Industry Alliance
- Tesco Stores Limited
- Wm. Morrison Supermarkets plc
- WWF

Acknowledgement is also given to the members of a wider review panel who were consulted in the development of this PAS.

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Use of this document

As a code of practice, this PAS takes the form of guidance and recommendations. It should not be quoted as if it were a specification and particular care should be taken to ensure that claims of compliance are not misleading.

Any user claiming compliance with this PAS is expected to be able to justify any course of action that deviates from its recommendations.

It has been assumed in the preparation of this PAS that the execution of its provisions will be entrusted to appropriately qualified and experienced people, for whose use it has been produced.

Presentational conventions

The provisions of this PAS are presented in roman (i.e. upright) type. Its recommendations are expressed in sentences in which the principal auxiliary verb is "should".

Commentary, explanation and general informative material is presented in smaller italic type, and does not constitute a normative element.

¹⁾ EJF, Oceana, Pew and WWF are working together to secure the harmonized and effective implementation of the EU Regulation to end illegal, unreported and unregulated fishing [1]. This coalition is financially supported by Oceans 5 and Paul M. Angell Family Foundation.

Where words have alternative spellings, the preferred spelling of the *Shorter Oxford English Dictionary* is used (e.g. “organization” rather than “organisation”).

The word “should” is used to express recommendations of this PAS. The word “may” is used in the text to express permissibility, e.g. as an alternative to the primary recommendation of the clause. The word “can” is used to express possibility, e.g. a consequence of an action or an event.

Notes and commentaries are provided throughout the text of this code of practice. Notes give references and additional information that are important but do not form part of the recommendations. Commentaries give background information.

Contractual and legal considerations

This publication does not purport to include all the necessary provisions of a contract. Users are responsible for its correct application.

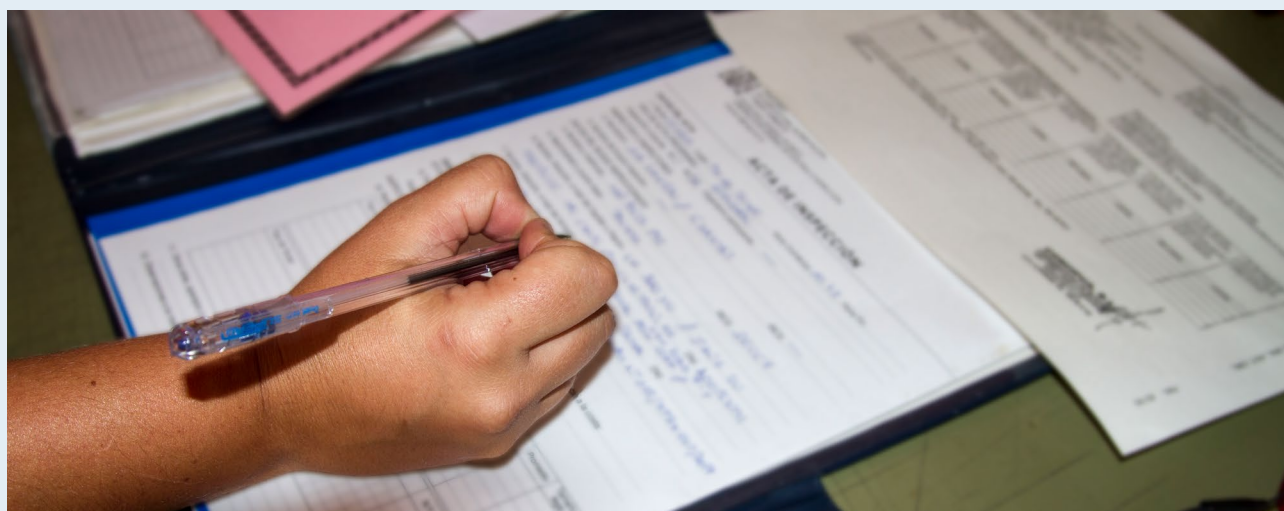
Compliance with a PAS cannot confer immunity from legal obligations

Particular attention is drawn to the following legislation.

- Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (“the EU IUU Regulation”) [1].
- Commission Regulation (EU) No 202/2011 of 1 March 2011 [2].
- Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015 [3].

Attention is also drawn to the following agreements/ guidelines.

- Cape Town Agreement of 2012 on the implementation of the provisions of the 1993 Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977 (“Cape Town Agreement”) [4].
- Food and Agricultural Organization (FAO) Agreement To Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas [5].
- FAO Agreement on Port State Measures (PSMA) to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. Revised Edition [6].
- FAO Code of Conduct for Responsible Fisheries [7].
- FAO International Plan of Action for the Management of Fishing Capacity [8].
- FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated (IUU) Fishing [9].
- FAO Voluntary Guidelines for Flag State Performance [10].
- International Convention for the Safety of Life at Sea (SOLAS) [11].
- International Labour Organization (ILO) Work in Fishing Convention, 2007 (C188) [12].
- IMO Circular Letter 1886/Rev. 6 (extending the IMO number scheme) [13].
- United Nations Convention on the Law of the Sea (UNCLOS) [14].
- United Nations Convention on the Conditions for Registration of Ships [15].
- United Nations Fish Stock Agreement (UNFSA): The United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks [16].
- United Nations Guiding Principles on Business and Human Rights (UNGPs) [17].



0 Introduction

0.1 Illegal, unreported and unregulated fishing – why it matters

Seafood is an increasingly important source of livelihoods and food security across the globe, particularly in developing countries. Fishing and aquaculture provide over 250 million jobs world-wide and approximately 50% of protein intake in many countries including small-island developing States [18]. Globally, 60% of the world's fisheries are considered fully exploited (fished at maximum capacity) and 30% are overexploited (over-fished) [18]. Year-on-year, more fisheries are moving into an increasingly overfished state, therefore there is restricted potential for industry expansion [18].

A significant reason for the pressure faced by fisheries around the world is illegal, unreported and unregulated (IUU) fishing. The most comprehensive estimates are that IUU fishing costs the world between \$10 billion to \$23.5 billion annually; this represents between 11 to 26 million tonnes of catch [19]. IUU fishing activities devastate the marine environment, deny the possibility to fairly allocate resources and provide unfair competition to legitimate fishers.

These issues can be addressed by all actors in the supply chain working towards the same goal – ensuring that seafood and marine ingredients (herein “seafood”) have been sourced in a legal manner.

0.2 The EU IUU Regulation

The European Union (EU) Council Regulation (EC) No. 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing [1] came into force in 2010. The existence of this Regulation has positioned the EU as a global leader in the fight against IUU fishing. The EU accounts for 24% of the value of global trade in seafood and as the world's largest seafood importer, it is well placed for this role [18]. Prior to the introduction of the IUU Regulation [1], the EU stated that 1.1 billion Euros of IUU fish was entering the EU each year [20].

The EU IUU Regulation [1] has three key features. First of all it introduces a “catch certificate” (CC) scheme that requires seafood imports to be accompanied by a catch certificate that is validated by the flag State of the vessel that caught the fish. Secondly, it features a “carding” system whereby non-EU countries can be warned about inadequate design or implementation of legal and administrative fisheries management frameworks. If the warned non-EU countries do not improve their monitoring, control and enforcement systems, they can be sanctioned and their fisheries products blocked from being exported into the EU. EU flagged vessels would also face restrictions for fishing in the non-EU country's exclusive economic zone (EEZ). Thirdly, it puts on EU Member States an obligation to take appropriate action with respect to their nationals engaged in IUU fishing, even when they do so using vessels flagged to non-EU States.

Those affected by the EU IUU Regulation [1] include:

- owners and operators of fishing vessels catching fish for the EU market;
- processors of seafood destined for the EU market;
- Member State authorities;
- importers of seafood into the EU;
- distributors and retailers of imported seafood in the EU; and
- nationals subject to the jurisdiction of EU Member States that support or engage in fishing (e.g. workers on board fishing vessels, operators or beneficial owners of vessels, insurers, or investors), even if utilized vessels are flagged to non-EU States, or if fish is destined for non-EU markets.

0.3 The UK and the EU

The UK, one of the EU's largest seafood importers, voted to leave the EU on 23 June 2016. This exit-transition will not be complete in the very near future so looking at the impacts of the exit of the UK from the EU will be part of any potential first review of the PAS. Regardless of the UK leaving the EU, retailers, processors and importers will still want to be able to verify assurances that seafood they purchase has been caught in compliance with this code of practice.

0.4 Decent working conditions in the seafood industry

There is a growing recognition of the close relationship between IUU fishing and a lack of decent working conditions for workers in seafood supply chains. In this context, “decent” conditions are defined as those that comply with the eight fundamental International Labour Organization (ILO) Conventions ([21] to [28]) and ILO Convention C188 [12] (see 3.3.3, Note 5).

Fishers are among the most vulnerable of all workers and as such it is important that the utmost is done for their protection. The maritime sector (including fishers) is unique in the nature of the work and the risks involved in living on a vessel. It has been repeatedly documented that IUU fishing often coincides with abuses including human trafficking and modern slavery. For example, Thailand received a yellow-card or warning from the EU over concerns that it may be a non-cooperating country in the fight against IUU fishing. At the same time, public concerns were expressed regarding working conditions in the fishing industry there. Since then, Thailand has engaged in efforts to reduce this threat, but the EU Commissioner for Fisheries also pointed out that: “apart from the fishing issues, the Commission also believes that Thailand should also address promptly the human rights issues”²⁾.

Due to the close correlation between IUU fishing and a lack of decent working conditions, as well as the related reputational threats both of these issues pose to all actors in the supply chain, this PAS incorporates labour issues and considers illegal treatment of crew on fishing vessels to be linked with illegal fishing. The PAS provides recommendations to only work with organizations that have decent working conditions in their supply chains. One of the aims of this PAS is to help enable decent working conditions to be provided not only on board vessels but at all factories, work stations and during all activities throughout supply chains.

On 16 June 2011, the United Nations Human Rights Council (UNHRC) unanimously endorsed the Guiding Principles for Business and Human Rights (UNGPs) [17], which are the authoritative global standard on business and human rights. The UNGPs state that States are to negotiate and sign up to treaties and conventions, and then translate them into domestic laws and enforcement processes. Their duties include respecting human rights in what they do by protecting human rights against abuse by others, and ensuring the protection of human rights over time where that requires considerable resources, for example in providing access to education or clean water. The

²⁾ Reported in <https://www.undercurrentnews.com/2015/12/18/eu-warns-thailand-to-promptly-address-human-rights-issues/>

corporate responsibility to respect human rights does not increase or decrease depending on whether States meet their own duty to protect human rights, so organizations need to put in place proactive policies and processes to respect human rights.

The UNGPs [17] have three pillars that outline how the UNGPs are to be implemented: the State duty to protect human rights, the corporate responsibility to respect human rights, and access to remedy for victims of business-related abuses.

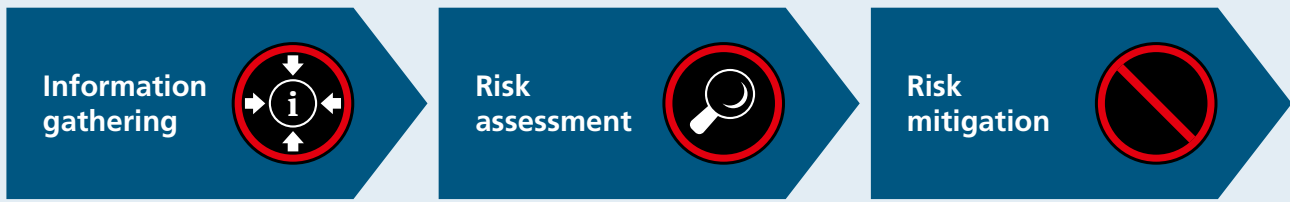
0.5 Due diligence and risk assessment

Many organizations, implicitly or explicitly, operate a system of due diligence on those from whom they are procuring seafood. Historically, this will have been to address concerns over the reliability of supply, food hygiene and quality assurance. The introduction of the EU IUU Regulation [1] means there is also a regulatory need to undertake due diligence on whether or not seafood has been legally caught, transported and processed. The UNGPs [17] also call on businesses to undertake a due diligence process to address human rights risks. For good decisions to be made, it is critical that organizations invest to gather sufficient information on their supply chain in order to assess the level of risk of illegality and a lack of decent working conditions occurring in the supply chain.

This code of practice sets out information that is to be requested by processors and importers as part of this due diligence process. Where this process finds evidence of illegality or a lack of decent working conditions and compliance with this PAS is to be claimed, processors are not to procure the seafood in question. However, more often a risk assessment will not provide definitive evidence of illegality or a lack of decent working conditions but will instead need to inform a subjective decision based on the perception and perspective of the processor and its clients. If the processor continues to procure seafood that has potentially heightened levels of risk, the findings of the risk assessment will outline both the level and type of measure that organizations are to take to mitigate the identified risks. Figure 1 demonstrates the three main stages for businesses to implement risk management.

Many factors will affect the risk rating or level within a particular fishery or supply chain, such as: Is the supply chain short and uncomplicated? Does it use trusted vendors with whom they have had a relationship for a long time? Is the species of high value? The questions that organizations applying the PAS will ask go beyond checks of legal compliance. A number of considerations that are not legal requirements are assessed to inform the risk assessment.

Figure 1 – Stages of risk management



0.6 The approach taken for this PAS

This PAS has been developed by collaboration among industry, governmental authorities and non-governmental organizations (NGOs), in order to help improve understanding of the EU IUU Regulation [1] and to help industry adapt their due diligence and risk assessment systems to reduce the risk of supplying or procuring IUU fisheries products, or fisheries products either caught or processed by workers who are not provided with decent working conditions. The PAS highlights the critical role that traceability plays to enable the tracking of products and enable each chain to be identified, monitored and regulated.

0.7 What about the other actors in the supply chain?

The audience for the PAS is the importing and processing actors in the global seafood supply chains. However, the PAS acknowledges that responsibilities to ensure legal, ethical and traceable supply chains exist at every stage and for every actor; each of which has their own role to play and activities to complete in order to achieve a demonstrable legal supply chain. The PAS would direct retailers and brands to the guidance of the *Advisory Note for the UK supply chain on how to avoid IUU fishery products* produced by the British Retail Consortium (BRC), the Environmental Justice Foundation (EJF) and WWF [29] and to Annex A. Additionally Annexes B, C and D provide important information to the rest of the supply chain. These Annexes aim to enhance application and provide guidance to these other stages of the supply chain.

0.8 How does the PAS help?

The PAS addresses a number of questions and issues that exist in modern seafood supply chains. These have been brought into one document to emphasize the need for businesses to address any potential risks in seafood supply chains and highlight the fact that “legality” does not disentangle IUU fishing, ethical labour and traceability. The PAS offers guidance in the hope that consolidation and simplification both complement and strengthen existing efforts to tackle these critical issues.

The PAS builds on the work of the BRC Advisory Note on avoiding the purchase of IUU seafood [29] and gives further recommendations to the importers and processors of seafood on traceability and decent working conditions. It is envisaged that the PAS complements the BRC Advisory Note [29] by providing the actors with a tool to guide them towards asking the right questions and considering the key elements that would satisfy the BRC Advisory Note’s [29] request of a due diligence approach.

The PAS is not a replacement for the EU IUU Regulation [1] or any other legal text or legal guidance on the traceability and legality of seafood or on working conditions on board fishing vessels or within the seafood supply chain. Rather, it is intended to be used alongside the EU IUU Regulation [1], ILO conventions and other measures and any subsequent regulations, implementing acts or guidance issued by competent authorities. It does not give legal advice.

1 Scope

This PAS gives recommendations for exercising due diligence in relation to Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate IUU fishing [1] (“EU IUU Regulation”), and to ensure robust traceability and decent working conditions in the seafood industry.

This PAS gives recommendations on the following.

- a) What are the considerations within a due diligence system in order to minimize the risk of IUU fish/seafood in the supply chain?
- b) What needs to exist to assure decent conditions at work in the seafood sector?
- c) What traceability systems are used to deliver the ability to verify claims?

This PAS covers those seafood products affected by the EU IUU Regulation [1], a list of which is given in Annex 1 of the Regulation [2]. In addition to those products listed in the Annex of the EU IUU Regulation [1], this PAS applies to all aquatic ingredients used in seafood or products sold into the retail, food service or any other sector that contain aquatic items (e.g. pharmaceuticals, pet food).

NOTE Annex 1 of the EU IUU Regulation [1] was most recently amended by Commission Regulation (EU) No 202/2011 of 1 March 2011 [2].

This PAS is for use by importers and processors (referred to as “organizations” throughout this PAS) that have an obligation to meet the requirements of the EU IUU Regulation [1], which includes the supply chains of seafood imported into and subsequently sold in the EU. This PAS can be of interest to any other organization involved in the seafood supply chain interested in improving or promoting legal sourcing practices, full chain traceability and decent work conditions (e.g. ILO Convention C188 for fishing vessels [12]).

This PAS can also be used by organizations trading products not covered by the EU IUU Regulation [1] such as marine ingredients, pet food, etc.

This PAS is of interest to competent authorities and other entities (such as NGOs, industry associations and certification bodies) where it can provide a benchmark for developing a due diligence system and provide information on the expectations of processors and importers.



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