

# THE USE OF SHELL COMPANIES IN FISHERIES OPERATIONS

A shell company is an incorporated company that is created to hold funds and manage another company's or individual's financial transactions, and which 'holds no independent operations, significant assets, ongoing business activities, or employees'<sup>1</sup>. While in many countries shell companies are legal, their use can be exploited by individuals and companies involved in illegal fishing by hiding the true ownership and control of fishing operations and facilitating associated illegal activity - adding to the difficulty and complexity of investigating and successfully prosecuting such cases.

Shell companies are often registered in tax havens or in secrecy jurisdictions where access to company information by the public or authorities is restricted. The names of shareholders and individuals tied to the companies are often hidden, with only accountants or attorneys listed on company documents. These pseudo company representatives have no real operational control and may be listed as directors of hundreds of other companies.

In countries that restrict access to fisheries resources to national operators or joint ventures, foreign vessel owners may use shell companies to conceal their beneficial ownership of locally registered vessels. Further, the shell company will generally hold few tangible assets. This structure can make it challenging or impossible for authorities to identify the real vessel owner, or extract financial sanctions other than through seizure of the vessel itself, which may not have a significant financial impact on the owner, and can instead have a significant cost to the country in the form of port, resale or scrapping expenses.

Shell companies can also be exploited for tax evasion purposes, particularly those set up in recognized tax haven countries, which have low or non-existent tax rates and reporting requirements. Profits that should be taxable in the country where fishing operations are taking place can be funnelled through these tax havens, depriving developing countries sorely in need of important tax revenue from their fishery resources.

FoC registers frequently require little more than demonstration of a locally registered company, and therefore shell companies are frequently established by fishing companies in the flag jurisdiction to meet this requirement. As many FoC countries also have legal frameworks that encourage the establishment of shell companies (and are frequently tax havens), this process is made easy for high risk operators.

## FLAGS OF CONVENIENCE

Opaque company structures are also frequently used by beneficial owners in conjunction with 'open' vessel registries, so-called Flags of Convenience (FoC) that further obscure the identity of beneficial owners of fishing vessels. Perhaps unsurprisingly, several countries that operate FoC registries also facilitate the setting up of shell companies and/or tax avoidance schemes.

## CASE STUDY

# SHELL COMPANIES HIDE HIGH-RISK REEFER BENEFICIAL OWNERSHIP

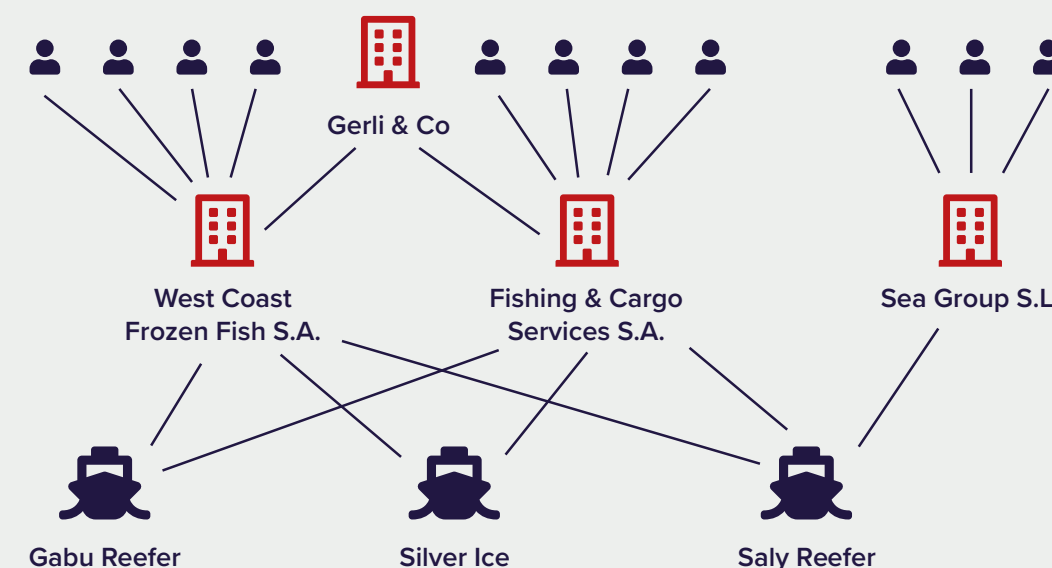
Since 2009, three reefers in Guinea-Bissau have operated under the ownership of Fishing & Cargo Services S.A., a shell company incorporated in Panama - a country frequently criticized by experts for serving as a haven for tax evasion, money laundering, and other illicit activity<sup>2</sup>. The directors of Fishing & Cargo Services are also linked to hundreds of other companies in the Panamanian business registry. Similarly, the company's resident agent, Gerli & Co., a Panamanian law firm whose services include 'incorporation & management of offshore and onshore companies... and services in ship registration,'<sup>3</sup> acts as the resident agent of many other companies. This strongly suggests that neither the company's proxy directors nor resident agent are in control of Fishing & Cargo Services.

Fishing & Cargo Services' three reefers, currently operating under the names SALY REEFER, GABU REEFER, and SILVER ICE, have been implicated in a variety of high risk and illegal activity in West Africa. The vessels regularly change their names and flags. For instance, all three were previously flagged to Comoros, a country that was issued an EU IUU Regulation 'red card'<sup>4</sup> for operating an open register that was found to be unable to control the activities of its flagged fishing vessels and reefers. They have since reflagged to Moldova, which is also considered a high-risk FoC State.

In 2014, both the GABU REEFER and SILVER ICE were investigated and fined by Liberia for landing fish without the necessary authorizations<sup>5</sup>. In 2015, the SILVER ICE was identified as a high risk vessel by the FCWC West Africa Task Force (WATF) after the government of Comoros raised concerns about the vessel's flag status and the fact that it was operating outside the Western Indian Ocean, against the terms of Comoros fisheries regulations<sup>6</sup>. In 2017, the SALY REEFER was found to be conducting transshipments at sea with the fishing vessels FLIPPER 3, FLIPPER 4 and FLIPPER 5 in Guinea-Bissau by national fisheries inspectors supported by Greenpeace<sup>7</sup>; the FLIPPER vessels themselves have frequently changed flags through various FoC and are owned by a separate shell company structure.

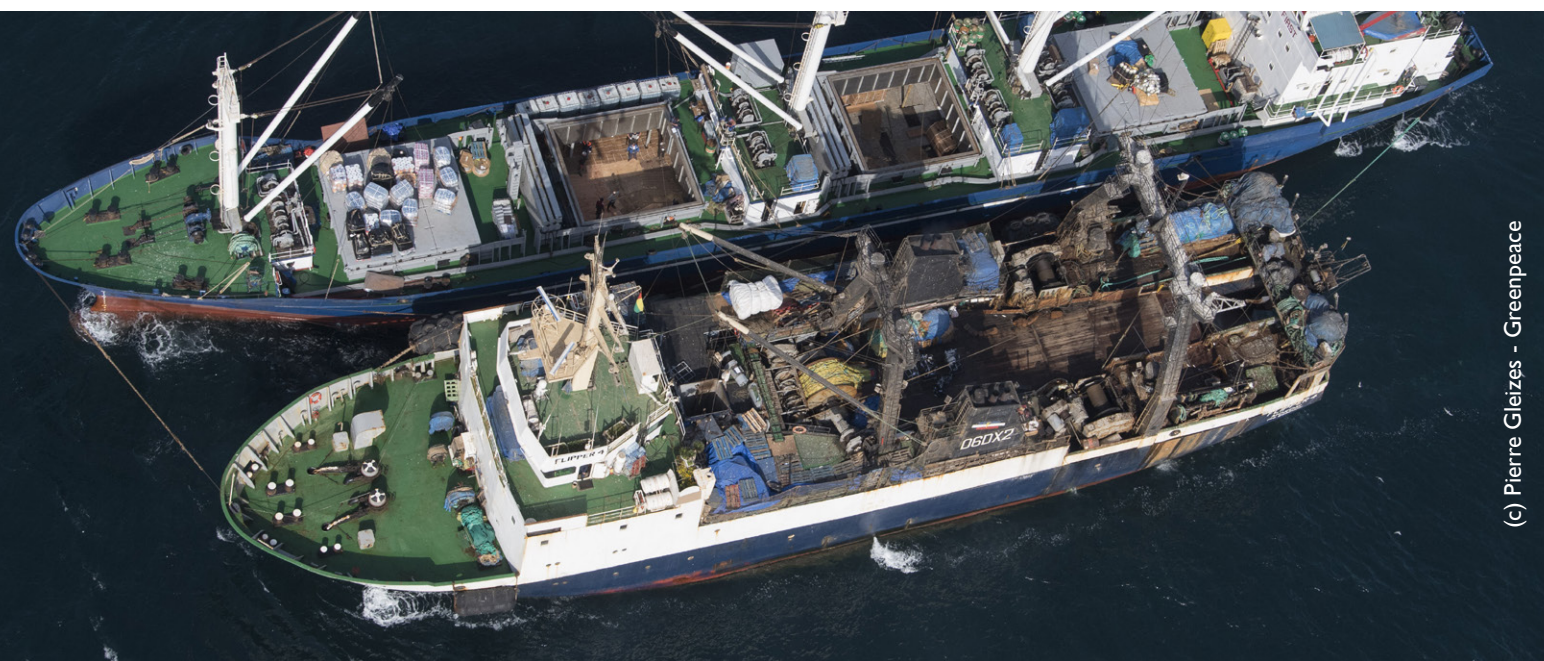
In all known cases where legal action was taken, small fines were levied against the vessels or local agents only. As Panama does not require the inclusion of beneficial ownership in company paperwork, the actual beneficial owners that should ultimately be held accountable for potential offences by these vessels remain unknown<sup>8,9</sup>. All three reefers continue to operate in West Africa despite their high-risk profiles, infraction records, and company structures.

Figure 1.



Above: Overview of the ownership structure of Fishing & Cargo Services and the three reefers SALY REEFER, GABU REEFER, and SILVER ICE

Left: Transshipment at sea taking place between SALY REEFER and FLIPPER 4



(c) Pierre Gleizes - Greenpeace

# FISHERIES JOINT VENTURE AGREEMENTS

A joint venture agreement is an arrangement whereby two or more companies develop a new company to their mutual benefit. They can be set up between companies, or between companies and governments. Joint venture agreements are used widely, and often legally, in fisheries worldwide. In some countries, nationally owned vessels receive priority access to fisheries resources, with fully foreign-owned vessels excluded. In these circumstances it may make sense for a foreign actor to establish a joint venture agreement with a local individual or company in order to establish a nationally registered company that can legally access fisheries resources.

If implemented effectively, a joint venture agreement can make it easier for Coastal States to ensure national licensing and fisheries management conditions are met. For example, in the case of established violations, the joint venture model can make it easier to prosecute and sanction vessel owners, since joint ventures can be required to register as a local company and to keep company assets within the country.

However, these types of agreements can also be exploited to perpetrate illegal fishing and related offences, or to enable foreign actors to access fisheries resources without bringing any material benefit to local operators. Local partners, who in theory should be majority shareholders in a joint venture if it is to be regarded as a local company, can in fact have little say or control over the fishing operation in practice. In some cases, the joint venture agreement may be privately 'backed' by a separate agreement that contradicts the legal company documents and pays the local partner a nominal fee to not actually be involved with the operation. In other cases, although the national partner is a citizen, they are paid to act in the best interest of the foreign partner.

In many countries there are indications that joint venture agreements are frequently signed with politically or otherwise influential local partners, who may be provided with regular payments to be ready to step in and influence the allotment of licenses or quotas, or suppress any investigation into illegal fishing that may take place. This set up ensures profits and protects vessels, senior crew, operators, and beneficial owners from prosecution and fines. It also represents a conflict of interest for political appointees, drives corruption, and undermines the integrity of public servants and institutions.

Joint ventures signed with a government agency of the Coastal State can be for fish catching, but can also be for processing, market development, research etc. However, this scenario can contribute to a significant conflict of interest. Governments eager for or needing short term revenue may ignore sustainability measures. Port or processing areas can be established that are not subject to normal oversights, particularly if given tax exempt and/ or freeport status. Further, when a government agency is both a joint venture partner and responsible for fisheries enforcement, conflict of interest arises, and significant compliance measures are unlikely to be enacted if they have to investigate or prosecute a vessel they are part owner of.

Finally, the beneficial ownership of the foreign company in any of these partnerships is often opaque and may be hidden behind the name of the joint venture, or even behind a further shell company.

## FRONT COMPANIES

Adding to the complexity is the use of 'front' companies. Although generally like a shell company in their establishment, usage and risk, a front company generally exhibits the characteristics of a fully functioning company / legitimate business (e.g. operations, employees, assets, expenses). Ultimately, however, front companies also serve to hide the ownership and true operations of the beneficial owners and can be set up under a joint venture model, which may be legal or illegal, depending on national laws.

## CASE STUDY

# ABUSE OF JOINT VENTURE AGREEMENTS

Distant water fishing companies can use joint venture agreements to operate vessels and gain access to fishing grounds in otherwise inaccessible jurisdictions. Recent cases in Ghana and Namibia provide insight into how joint venture agreements have been used to facilitate illegal fishing and broader fisheries offences.

In Ghana, the fisheries law prohibits foreign investment in joint ventures in the industrial trawler sector. Yet many Ghanaian vessels appear to be owned through front companies created by foreign businesses in order to obtain Ghanaian fishing licenses<sup>10</sup>. For example, the Ghana-flagged trawler Lu Rong Yuan Yu 956 (鲁荣远渔956) is reportedly owned and operated by Gynam Fisheries & Sons Limited, a Ghana-incorporated company controlled by Ghanaian nationals<sup>11,12</sup>. However, according to various Chinese Government sources, the Chinese fishing company Rongcheng Ocean Fisheries Company Limited (荣成市远洋渔业有限公司) is the owner of the Lu Rong Yuan Yu 956.

In 2019, the Lu Rong Yuan Yu 956 (鲁荣远渔956) was detained at sea for catching 13.9 tons of pelagic fish while using nets with a mesh size below the legal limit. According to media reports, an out-of-court settlement was agreed upon with the owners of the vessel for a fine of \$1 million USD, marking the first time the legal minimum fine has been imposed on an industrial trawler in Ghana<sup>13,14</sup>. However, the fine was not paid and the vessel allowed to resume fishing activity; on 30 May 2020 the Ghana Marine Police re-arrested the vessel for exactly the same offences<sup>15</sup>.

Rongcheng Ocean Fisheries appears to have a sophisticated company structure set up in Ghana - as well as Gynam Fisheries and Sons Ltd, the company has vessels 'owned' locally under other similar front company structures, including companies called El Shadi Fisheries Co. Ltd, Dong Sheng Fisheries Ltd. and Rockpoint Co. Ltd.

Unlike Ghana, Namibia has publicly welcomed joint venture arrangements as a mechanism to spur foreign investment. To ensure national control of joint venture operations, the majority of shares in any joint venture must be owned by Namibian interests or nationals in order to apply for and access national catch quotas.

While this strategy has largely been considered a success, the release of the "Fishrot" whistle-blower files in 2019 unveiled serious alleged incidents of corruption by senior Namibian officials, including the improper distribution of fishing rights and quotas to foreign interests and joint venture companies<sup>16</sup>. The Fishrot files were leaked by a former employee of the Icelandic fisheries giant Samherji and consisted of thousands of documents and e-mails from the employee's time in Namibia.

The files show that although Samherji - in order to meet the nationality requirement for access to Namibian fisheries quotas - appeared to maintain a minority ownership in their Namibian subsidiary Katla, in reality Samherji maintained majority control of the company. This was achieved through payments to Katla's apparent majority Namibian shareholder to act on behalf of Samherji, allowing the Icelandic company to take control of Katla's profits and operations.

The leaked documents also provided evidence of financial transactions that were made in a complicated web between Samherji, a number of their subsidiaries, and other companies, including in Mauritius, Cyprus, the United Arab Emirates, and the Marshall Islands (all countries that facilitate shell companies), Namibia, and Norway. The whistle-blower identified a number of these transactions as payments to high ranking politicians and senior officials in Namibia, including the Minister of Fisheries and the Minister of Justice, to facilitate and allocate Namibian quotas for Samherji. The case is still under investigation in Namibia, where the ministers in question have resigned.

Figure 2.

