

Introduction



The European Union's ban on discarding fish dead or dying at sea, or the Landing Obligation (LO), was introduced in 2013 as part of the reformed Common Fisheries Policy, and was actively supported by over 870,000 EU citizens. The objective of the LO is to eliminate discards and drive change in fishing practices, e.g. avoid catching unwanted and non-valuable fish, incentivise improvements in selectivity, count everything that is caught, and promote ecosystem-based management. This means that all catches of all species for which there is a Total Allowable Catch (TAC), and Mediterranean species that have a minimum landing size, caught by EU fishing vessels, must be landed and counted against quota.

The European Fisheries Control Agency (EFCA) has assessed that a majority of fishing activities using active gears, e.g. trawling, are at medium to very high risk of being non-compliant with the Landing Obligation. Consequently, there is increased illegal and unreported fishing, with unaccounted catches impacting on the reliability and quality of scientific data, stock assessments and management. It is thus essential to ensure that EU Member States enforce effective at-sea monitoring and enforcement programmes to end discarding and ensure fully documented fisheries.

The European Commission is proposing to use a review of its Control Regulation¹ to introduce Remote Electronic Monitoring (REM). To achieve this, it will need the support of Member States and of the European Parliament. So far, few Member States have been outspoken supporters of REM. One reason given is the issue of individual's right to privacy and protection of their data, especially in the context of the new General Data Protection Regulation (GDPR).

This report, *Legal Opinion on Video Monitoring on Fishing Vessels with Special Focus on Other Comparable Cases² - Requirements, Concerns, Solutions* shows that while there are justifiable concerns, they are not reason for inaction. Other sectors, such as slaughterhouses are grappling with the same challenge, and are showing it is possible to have effective monitoring while observing data protection requirements. Under the GDPR, video monitoring of an individual is only permissible when it is justified and conforms to strict criteria. All possible measures have to be taken to minimise any intrusion of privacy.



It is essential to ensure that EU Member States implement effective at-sea monitoring and enforcement programmes to end discarding and ensure fully documented fisheries.



Photo credit: Greenpeace

¹ https://ec.europa.eu/fisheries/cfp/control_en

² http://our.fish/rem_report2019

Privacy issues



Since May 2018, the GDPR³ covers data protection and privacy for all individuals in the European Union (EU) and the European Economic Area (EEA), and covers the transfer of personal data outside the EU and EEA. It gives control of data to individuals while simplifying the legislative framework for data managers.

When video images of an individual are captured in such a way that they can be identified, the GDPR applies. If the individual is not identifiable, or pixelated, the GDPR does not apply. If an individual is filmed and the GDPR is relevant, then there needs to be justified grounds for the "processing" of such data, including: legitimate interest (article 6 (1) (f) GDPR); compliance with legal obligations (article 6 (1) (c) GDPR); and consent (article 6 (1) (a) GDPR). If there is no legal basis for filming, then processing of personal data is unlawful and therefore forbidden.

Conforming with a legal requirement on employers or operators (e.g. on board fishing vessels) is a compelling cause for video monitoring. These obligations may include: security reasons, economic interests, fraud prevention, etc. In the case of fishing, an operator may have a legitimate interest that all on board fishing activities are carried out in accordance with the legal requirements, including the landing obligation. Similarly, the operator may have a legitimate interest in avoiding any penalty incurred by any misdemeanours carried out by their onboard crews e.g. illegal discards.

Video monitoring is widely considered to be the most effective way to detect any misdemeanour. However, in cases of continuous video monitoring it is necessary to balance protection of the individual's data with the operator's interest. The longer any monitoring lasts (e.g. a whole day) the greater the obligation by the operator to satisfy the need. The operator must demonstrate the legal obligation to carry out monitoring is balanced with the individual's right to privacy under the GDPR. And the in the case of consent by any individual, it must be shown that it was given freely, and not as a result of any pressure or coercion.



Remote Electronic Monitoring operating on vessels in America, Australia and Europe, ensures the focus is on working areas to protect the privacy of individuals. Photo credit: Funding Fish.

Comparison with other sectors



Video monitoring in slaughterhouses within the EU has been the subject of political debate. Increased inspections and pressure from civil society have revealed many cases of animal cruelty in slaughterhouses. In response, several EU Member States have considered video monitoring.

The United Kingdom (in England only) is currently the only Member State that has implemented legislation⁴ on video surveillance in slaughterhouses. This legislation predates the GDPR, so it may not conform to the privacy requirements. The legislation obliges slaughterhouse operators to have a video monitoring system in place to provide a complete and clear image of killing and related operations in all areas of the slaughterhouse where live animals are present. The legislation further stipulates that any individual must be identifiable in the images and that such data must be processed in line with data protection requirements.

³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R0679&from=EN>> accessed 26 February 2019.

⁴ 'CCTV in slaughterhouses: rules for operators' (4 May 2018) <<https://www.gov.uk/government/publications/cctv-in-slaughterhouses-rules-for-operators>> accessed 18 January 2019.

Supermarkets are typically video monitored, but individuals do not typically visit daily, or spend protracted periods of time there, so their their privacy is not threatened. And for employees, statistically the number of criminal offences, such as theft and fraud, committed in supermarkets and department stores, is sufficiently high for it to justify constant video monitoring.

Conclusion



Legislators have to balance the need to monitor activities with the privacy rights of the individual. The EU's Court of Justice requires that exceptions and limitations in relation to the protection of personal data must be restricted to what is absolutely necessary.

There must be a sound suspicion (not only an assumption or a general suspicion by operators or employers) to justify video monitoring for the working day or longer. Such monitoring may be possible when it comes to certain identifiable "risk groups", but may be problematic regarding monitoring all fishing vessels at all times, as it would violate the presumption of innocence and could infringe privacy rights.

For video monitoring onboard fishing vessels to confirm compliance with the landing obligation and to fully document fisheries, legislators and operators should consider:

CCTV surveillance of risk groups:

When there is cause to suspect non-compliance with legal requirements, temporary monitoring of the fishing activities would be appropriate.

Avoiding personal data

Monitoring only the technical process without making individuals identifiable. This would also mean the GDPR would not apply.

Anonymisation:

Monitoring the entire process and pixelating any recorded persons in such a way that identification is not possible.

Data minimisation:

Limit the video monitoring to a minimum time i.e during landing, sorting and processing the catch.

Data ownership and review:

Vessel operators may be the owners of the footage, the review conducted by a third party, and the resulting data provided to governments for auditing purposes of catches and landings. This audited data could also be shared with other interested or relevant parties such as scientists.

Each of these considerations can be addressed in the revision of the Control Regulation, when implementing rules will be adopted at the EU level and further guidance will be provided by Member State competent authorities. To that end, the above demonstrates that the revised Control Regulation should provide for the introduction of REM on a level playing field in the EU.



Protecting privacy, maximising industry ownership of footage, and ensuring fully documented fisheries and compliance with the landing obligation, are all possible with video monitoring on board fishing vessels.

More details, including full report:
http://our.fish/rem_report2019
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