

# **Proposal for a EU regulation establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing**

## **NGOs<sup>1</sup> comments**

*Draft April 3d*

### **General Comments**

- The fact that the definition of IUU fishing activities used in the proposal is that which is used at the international level within the FAO action plan to prevent, deter and eliminate IUU fishing<sup>2</sup>, is to be welcome, as well as the fact that the European Commission proposes to take measures as Flag State, port State, market State and State of the beneficial ownership. These measures should apply in a non discriminatory manner to all vessels engaged in IUU fishing activities, including EU vessels.
- Fighting illegal fishing starts at sea, and, to effectively fight IUU fishing outside EU waters, emphasis should be put in the proposal on the necessary support and collaboration that EU should provide to developing countries for improving surveillance at sea and governance. Unfortunately, nothing concrete is contained in the proposal to that end.
- The fact that provisions for concrete support to developing countries is lacking will undermine the efficiency of measures proposed like the certification of catches for stopping imports of IUU fish products. Moreover, if appropriate support is not provided to developing countries, the measures proposed for certification may also become a non trade barrier for legal fish products coming from developing countries, particularly from small and medium scale enterprises, which will not be able to comply with the administrative burden posed by the certification schemes proposed.

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<sup>1</sup> list

<sup>2</sup> See article one of the proposal for regulation: “*measures proposed shall apply, in a non discriminatory way, to all IUU fishing activities and to all associated activities carried out within the territory or within the maritime waters subject to the sovereignty or jurisdiction of the Member States or by Community fishing vessels or nationals, as well as to IUU fishing activities carried out by non Community vessels on the high seas or in the waters under the jurisdiction of a third country*”

## Specific comments

### Port state control scheme

- The general port state control scheme proposed (art 4, 5, 6, 8, 9, 10, 11) is very positive.
- We welcome the fact that measures are proposed to ban transshipments at sea, and we feel that such ban should be extended to all transshipments at sea. In that context, we emphasized the fact that LDRAC has adopted an opinion asking for a general ban on tuna transshipment at sea.
- However, in terms of authorisation by derogation for port access and landing (Art 7.4.) in cases where a vessel is suspected to be engaged in IUU fishing, the proposed delay for completing the verification of the information is 14 days. This may pose problems to developing countries exporters given the perishable nature of fish products. In case the verification concludes that the fish is not coming from IUU fishing activities, the length of the process (14 days) means that products may be spoiled and a net loss to the developing countries producers/exporters.
- In Article 12, dealing with the Procedure in the event of infringements, it is said (art 12.2.) that “*if the results of the inspection provide **reasonable evidence** that a third country fishing vessel did engage in IUU fishing activity..., the competent authorities in the port Member State shall not authorise such vessels to land, tranship or process its catch on board*”. To base such an important decision on ‘reasonable evidence’ seems a very subjective way of dealing with the matter. This may generate the application of double standards. The criteria to take such action should be objectivated.
- In the same article (Art 12.4.), it is said that “*The port Member State shall cooperate with the flag state in carrying out an investigation into the suspected breach and, where appropriate, in applying the penalties provided for under national law. In addition, where the suspected breach has taken place in the waters of a third country, the port Member State shall also cooperate with the coastal state concerned*”.

This last item highlights the necessity to provide developing coastal states with the means to cooperate efficiently –surveillance at sea, cooperation agreements to share data, etc

### Catch certification (from Article 13 to Article 21)

- The system proposed for access of third countries fisheries products to the EU territory (catch certificates) **will not work** if it’s not supported by / based on at sea

observations. In case certification of catches are not supported by efficient and appropriate Monitoring, Control and Surveillance systems in countries where catches are made, there is a high risk that such certificates will be tampered with, with no impact on the fight against IUU fishing.

- The system of catch certification proposed should be confronted to the reality and the concrete difficulties before being put in place. We propose that an *ex ante evaluation* is conducted, based on concrete case studies, looking at potential impacts of the measures proposed, to see whether they effectively deter IUU fishing and whether they are not an obstacle to legal imports.
- It is proposed that the flag state will be the sole responsible to certify catches entering EU market. We feel it is not appropriate to restrict this responsibility to flag states, and that coastal states, ie countries where the fish has been caught, should also be involved in the certification of the legality of catches.

#### Identification of vessels engaged in IUU fishing activities

- Concerning the Establishment of the European Community IUU vessel list (Article 26), the EU should also put on the IUU list vessels that have been identified by third countries, sub regional/regional fisheries bodies as being engaged in IUU fishing activities. This exchange of information with third countries could be facilitated through cooperation agreements. Provisions for such cooperation agreements already exists in the latest Fisheries Partnership Agreements, and could provide a basis for developing ACP-EU cooperation agreements for the exchange of data in view of fighting IUU fishing.
- Concerning the removal of vessels from the European Community IUU vessels list (Article 27), the proposal says that one reason why a vessel could be removed from that list is when “*the Commission is satisfied that the vessel concerned, its owner or operators, maintain no links, whether direct or indirect, with any other vessels or operators presumed or confirmed to be engaged in IUU fishing activities*”. To base such decision on ‘*the Commission’s satisfaction*’ will be very subjective and may generate the application of double standards. The criteria to take such action should be objectivated.

#### Non-cooperating third states

- About the identification of non-cooperating third states (Article 30), the proposal says that “*A state may be identified as a non-cooperating state if it fails to discharge the duties incumbent upon it under international law as flag, port, coastal or market states, to take action to prevent, deter and eliminate IUU fishing activities.*”

Although this is a very positive measure, it needs to be acknowledged that, for some

ACP coastal states, the lack of human and financial means leads to an incapacity to “*discharge its duties as coastal state*”. The Article 30 recognizes that partially, saying this situation should be “taken into consideration”, but nothing is proposed to help ACP coastal states to improve concretely their capacities to discharge their duties as coastal state. Moreover, the “taking into consideration” of the ACP difficulties is a subjective way of addressing the issue and may lead to the application of double standards.

- Concerning the removal from the list of non-cooperating states (article 33), the proposal says that “The Commission, in accordance with the procedure established in Article 52, shall remove a state from the list of non-cooperating states if the state concerned demonstrates that the situation that warranted its listing has been rectified. A removal decision shall also take into consideration whether the identified states concerned have taken **concrete measures** capable of achieving a lasting improvement of the situation.”

This also highlights the importance for developing states to continue and increase their efforts to develop and implement national/regional plans of action against IUU (NPOA IUU), derived from FAO International Plan of Action against IUU. The establishment of such plans of actions would be the best basis to answer concerns expressed in Article 31.1. and 31.2. The EU should provide appropriate support for further development and implementation of these plans by coastal ACP.

#### Measures in respect of vessels and states involved in IUU activities

- Concerning the actions to be taken in respect of non-cooperating states, the Article 37 stipulates, inter alia, that “*the importation into the Community of fishery products caught by vessels flying the flag of such states shall be prohibited*”; that “*the Commission shall propose the denunciation of any standing bilateral fisheries agreement or fisheries partnership agreements with such states*”; and that “*the Commission shall not enter into negotiations to conclude a bilateral fisheries agreement or fisheries partnership agreements with such states.*”

In cases where some developing countries may be identified as non cooperating states, such measures may affect unfairly ACP operators:

- A blanket ban on fish imports from this country will affect both legal and illegal operators from this country. In case of ACP small scale fishing sector exporting to the EU, who are already badly affected by IUU industrial activities, particularly by long distance fishing fleets, this measure will only make their situation worse.
- It's positive to see that the EU will not seek access for its fleets to waters which are plundered by IUU fleets, although doubts can be expressed whether the best way to improve the situation in these waters is to denounce any

existing partnership agreement, which main objective, stated many times by the EU, is to promote sustainable development in the ACP country concerned. Partnership agreement should to the contrary, form the basis for dialogue between the EU and the ACP country concerned so that they can join efforts to combat IUU fishing in the ACP country concerned.

#### Involvement of EU Nationals in IUU activities

- In terms of prevention and sanction (Article 39), it's particularly welcome that the EC proposes not to grant any public aid under national aid regimes or under Community funds to (EU) operators involved in IUU operation, management or ownership of fishing vessels engaged in IUU fishing, particularly if the EU wants to make IUU fishing activities non economically viable.

#### Mutual assistance between the Member States, with third states and with the Commission and the IUU fishing information system

- The fact that provisions for cooperation between Member States and third countries authorities, including an "IUU fishing information system", are included (Article 50) is to be welcome, although there are no concrete proposals on how this will be achieved, and financially and humanly supported in developing countries. Such cooperation should be organised through the signing of administrative cooperation agreement between the EU and ACP coastal states, which would stipulate not only what information will be shared and how, but also how support will be provided to make the system efficient and sustainable.

#### Reporting obligations

Reporting obligations include:

1. the Member States shall transmit to the Commission a yearly report on the application of this Regulation during the previous calendar year. On the basis of the reports submitted by the Member States and its own observations, the Commission shall draw up a report every three years to be submitted to the Council and the European Parliament.

3. An evaluation of the impact of this regulation on IUU fishing activities shall be undertaken by the Commission 5 years after the entry into force of this regulation.

Developing coastal states should be involved in these evaluations processes

#### Article 55 – Entry into force

We feel that Chapter III, dealing with certification of catches, shall apply after an ex ante evaluation of measures proposed has been made.