

**EC REGULATION 1005/2008 TO PREVENT, DETER AND ELIMINATE
ILLEGAL, UNREPORTED AND UNREGULATED (IUU) FISHING**

INFORMATION NOTE

1. STATE OF PLAY

Council Regulation (EC) No 1005/2008 to prevent, deter and eliminate illegal, unreported and unregulated fishing (the IUU Regulation) was adopted on the 29 September 2008 and entered into force on 1 January 2010.

In connection with the adoption of the IUU Regulation the European Commission undertook to assist third countries in the implementation of the Regulation. As a result, DG Maritime Affairs and Fisheries (MARE) has since 2008 been engaged in bilateral discussions with the vast majority of its trading partners to ensure a smooth implementation of the Regulation. DG MARE has also presented the IUU Regulation at various multilateral forums including the FAO, ACP, APEC, CTA, ASEM, ASEAN etc.

In line with its commitment to assist developing countries, DG MARE organised a series of regional seminars for the benefit of authorities in developing countries. The Commission invited (and financed) in 2009 for three officials per country to attend one regional seminar. The first seminar took place in South Africa on 4-5 March 2009 and covered African countries south of the equator, island countries in the Western part of the Indian Ocean and the Arabic peninsula. The second seminar in Colombia on 26-27 March 2009 covered Latin America and the Caribbean. The third seminar took place in Vietnam on 14-15 May 2009 for Asian countries and the forth seminar in Cameroon on 11-12 June 2009 covered Western and Northern African countries. The fifth seminar was organised on New Caledonia on 11-12 November 2009 for the benefit of island countries in the Pacific.

DG MARE has throughout the implementation ensured that operators based inside and outside the EU have been regularly informed through existing working groups and stakeholder consultative bodies and the Brussels Seafood Fair.

The Commission has also published a handbook to provide practical advice for authorities and stakeholders in EU Member States and third countries on the application of the Regulation.

As foreseen in the IUU Regulation, the European Commission has adopted an Implementing Regulation (Commission Regulation No. 1010/2009 of 22 October 2009) laying down technical details of certain provisions in the IUU Regulation including,

- Prior notification of landings, transshipments and consignments (Articles 1, 2);
- Landing and transshipment declarations (Article 3);
- Benchmark criteria for port inspections (Articles 4, 5);
- Simplified catch certification scheme for fishery products with specific characteristics (catches obtained by small fishing vessels, Article 6);

- List of recognised catch documentation schemes in Regional Fisheries Management Organisations (Article 7);
- Deadlines for the submission of catch certificates (Article 8);
- Approved economic operators (Articles 9-30);
- Risk management criteria for verifications related to catch certificates (Articles 31, 32);
- Administrative cooperation with third countries concerning catch certificates (Article 33);
- Sighting reports (Article 34);
- Mutual assistance (Articles 35 – 52);
- Amendments to the list of excluded products (Article 53).

The Commission regulation was amended on 29 January (No 86/2010) to revise the list of excluded fishery products and include administrative arrangements with third countries. A second amendment was introduced on 28 May 2010 (No 468/2010) establishing an EU list of vessels engaged in IUU fishing.

The Commission remains committed to assist in the functioning of the IUU Regulation and are constantly in contact with flag States, operators, regional and international organisations and NGOs on issues pertaining to the Regulation.

2. BACKGROUND

IUU fishing is one of the most serious threats to the sustainable exploitation of living aquatic resources, jeopardising the very foundation of the Common Fisheries Policy (CFP) and the EU's international efforts to promote better ocean governance. IUU fishing also represents a major hazard to the marine environment, the sustainability of fish stocks and marine biodiversity.

The Commission has been tremendously active in the fight against IUU fishing for over a decade. The main thrust of its policy comes from its 2002 Action Plan, directly inspired by the FAOs International Plan of Action adopted in 2001 to prevent, deter and eliminate IUU fishing.

However, efforts of the international community have not succeeded in reducing the scope of IUU fishing activities. A wider range of species is now affected in all oceans throughout the world. This critical situation is mainly caused by IUU operators who find new markets and circumvent current control systems, which are insufficiently adapted to the inherent complexity of trade flows.

Overall figures show that IUU fishing practices amount to approximately 10 billion Euros a year worldwide, making IUU fishing the second largest producer of fishery products in the world.

The European Union has one of the largest fishing fleets in the world and is the third largest catching power. In addition, it is also the largest importer of fishery products in the world. In 2007, the EU imported nearly 16 billion Euros of fisheries products. Imports derived from IUU catches have been conservatively estimated at 1,1 billion Euros in 2005.

Processed products account for roughly half of total EU imports of fishery products. The high demand for processed products exposes the EU to be a potentially attractive market for IUU operators as, due to the lack of control mechanisms based on traceability, IUU catches can be easily laundered.

3. THE IUU REGULATION

The IUU Regulation is a transparent and non discriminatory instrument which applies to all vessels engaged in the commercial exploitation of fishery resources, and seeks to prevent, deter and eliminate all trade of fishery products into the EU deriving from IUU fishing in all waters, and the involvement of EU nationals in IUU activities conducted under any flag.

In order to achieve this ambitious goal, a EU catch certification scheme has been introduced to improve traceability of all marine fishery products traded with the EU, irrespective of means of transport, and at all stages of the production chain, from the fishing net to the plate. The certification scheme is one of the main elements of the Regulation which will also provide adequate support for cooperation with third countries.

The certification scheme is described in detail in a separate document, the "technical note".

3.1 MAIN PROVISIONS OF THE IUU REGULATION

3.1(a) general principles and definitions (*Chapter I*)

The IUU Regulation applies to all IUU fishing activities in any waters in as much they are related to the EU through trade flows, or the flag of fishing vessels, or the nationality of operators.

Illegal, Unreported and Unregulated fishing

The definition of IUU fishing in this Regulation is directly inspired from the definition introduced by the FAO International Plan of Action to prevent, deter and eliminate IUU fishing, which was adopted in 2001.

In line with this definition, and for the sake of clarity, the scope of the EU policy to prevent, deter and eliminate IUU fishing covers:

- infringements to rules on management and conservation of fisheries resources in national and international waters;
- fishing activities in high seas areas covered by a Regional Fisheries Management Organisation (RFMO) carried out by vessels without nationality or registered in a non Party to the RFMO and in a manner contravening the rules issued by this organisation;
- fishing activities carried out in high seas areas not covered by a RFMO in a manner inconsistent with state responsibilities for the conservation of fisheries resources under international law.

The EU policy against IUU fishing encompasses fishing activities occurring within EU waters as well as beyond those waters. This policy is geared towards deterring and punishing the most damaging infringements.

Presumed IUU fishing activities

Under the Regulation, a fishing vessel is notably presumed to be engaged in IUU fishing activities if it is shown that its operators have carried out activities in contravention with the conservation and management measures applicable in the area concerned, such as fishing without a valid licence, in a closed area, beyond a closed depth or during a closed season, or by using prohibited gear, as well as the failure to fulfil reporting obligations, falsifying its identify, or obstructing the work of inspectors.

The Regulation contains definitions of all the behaviours which shall be qualified as presumed IUU fishing activities.

3.1(b) Inspections of third country fishing vessels in EU Member States (*Chapter II*)

- The Regulation provides an improved framework for port state control, allowing EU Member State authorities to better monitor and supervise incoming fishing vessels and their catches. Access to port services, landings and transshipment by third country fishing vessels will therefore only be authorised in ports designated by EU Member States. Masters of third country fishing vessels must also notify the competent authority of the EU Member State whose port facilities they wish to use at least 3 working days prior to estimated time of arrival. This deadline helps to plan ahead their verifications and avoid unnecessary congestion in ports. Exceptions to this notification period have been included in Commission Regulation 1010/2009 by taking into account the type of fishery products and the place of catch. In addition, masters of third country fishing vessels (or their representatives) shall submit to the EU Member State authority a declaration indicating the quantity of fishery products by species and the date and place of the catch prior to landing or transshipment. The forms for prior notification for vessels landing directly in an EU port are available in Regulation 1010/2009.- As it is generally acknowledged to be a way to launder illicit catches, transshipment operations will be submitted to improved control rules. All transshipment operations between third country fishing vessels and EU fishing vessels may only take place in designated ports in EU Member States. Fishing vessels flying the flag of a EU Member State shall not be authorised to tranship at sea catches from third country fishing vessels outside EU waters unless the fishing vessels are registered as carrier vessels under the auspice of a (RFMO). Transshipment declarations are available in Regulation 1010/2009.
- Inspections will be carried out on at least 5% of all landings and transshipments by third country vessels each year, in accordance with risk management benchmarks laid down in article 4 of Regulation 1010/2009. However, vessels will systematically be inspected in cases of suspicion or findings of non compliance with conservation and management rules (i.e. sightings, notification under the Community Alert System, or identification for IUU fishing).

There will be no authorisation to land or tranship catch in a EU Member State port if the inspection shows evidence that the vessel has been engaged in IUU fishing activities. If the suspected IUU activity was carried out on the high seas or in the waters of a coastal

state, the inspecting EU Member State shall cooperate with the State concerned in carrying out an investigation and if given permission (by that State), sanction the fishing vessel accordingly.

Fishing vessels appearing on the EU IUU vessel list will not be authorised to enter into ports of EU Member States (except for reason of force majeure or distress).

3.1(c) The catch certification scheme for importation and exportation of fishery products (*Chapter III*)

The Regulation lies down that the trade with the EU of fishery products obtained from IUU fishing will be prohibited.

To ensure the effectiveness of this prohibition, consignments of fishery products shall only be imported into the EU when accompanied by a catch certificate. Through this instrument, the competent authorities of flag State of the vessel catching the fish will certify that the export consignment of catches have been taken in accordance with applicable laws, regulations and international conservation and management measures. This certificate shall be validated by the competent authority of the flag State, and if necessary, other documents envisaged by the certification scheme in the event of an indirect import after transshipment, transit or processing of the products in another third country. The catch certificate is available in Annex II of the IUU Regulation.

In order to ensure that smaller vessels can continue to export to the EU, the Commission has introduced a simplified catch certificate. For vessels meeting the criteria of small vessels as laid down in article 6 of Regulation 1010/2009 the master of these vessels need not to be identified. Instead, an exporter trading fish stemming from several small vessels only need to list the vessels which he has bought fish from hence the master or his representative do not need to sign the catch certificate. The simplified catch certificate is laid down in Annex IV of Regulation 1010/2009. Catches by EU vessels are submitted to strict control mechanisms, which is reinforced by the new Control Regulation (EC) No 1224/2009 which also entered into force on 1 January 2010. More information on the Control Regulation is available on http://ec.europa.eu/fisheries/cfp/control/index_en.htm

The catch certification scheme will apply to all unprocessed or processed catches, except for freshwater fish, ornamental fish, aquaculture products obtained from fry or larvae or certain molluscs, contained in Annex I of the Regulation. The list of excluded products has been updated in Commission Regulation 86/2010.

By ensuring product-traceability from the fishing net to the plate, including processing operations, the certification scheme aims to strengthen compliance with management and conservation rules and to support international cooperation in the fight against IUU fishing.

The certification scheme is described in detail in a separate technical document.

3.1(d) The Community alert system (*Chapter IV*)

The Community alert system seeks to assist competent authorities to effectively identify situations at risk, improve the efficiency of their controls and avoid unnecessary verifications. In addition to its expected preventive effect, it will also contribute to

ensuring transparency due to its public nature and facilitate cooperation with third countries.

In effect, the Commission will publish an alert notice on its website and in its Official Journal where there are well founded doubts as to the compliance with applicable laws, regulation and international conservation and management measures in respect of fishing vessels or fishery products from third countries. These alert notices, updates and the final outcome of verifications will also be communicated to the third countries concerned.

3.1(e) Identification of vessels engaged in IUU fishing activities, non-cooperating third countries and measures in respect of vessels and states in IUU activities
(Chapters V, VI and VII)

The EU will be entitled to take certain steps towards vessels engaged in IUU fishing or countries which do not cooperate to put an end to those practices, pursuant to criteria laid down in the IUU Regulation.

The provisions described below are widely inspired from instruments adopted by certain RFMOs in respect of vessels and States within the context of their fight against IUU fishing.

Any flag State whose fishing vessels are presumed to carry out IUU activities will be notified with an official request for an enquiry into the IUU allegations. Irrespective of its flag (EU Member State or third country), the fishing vessel will be listed on the EU IUU vessel list if the flag State fails to take appropriate measures in response to that official request. The vessel owner and its flag State will be informed of the listing, and of its reasons. Fishing vessels included in IUU vessel lists adopted by RFMOs shall also be included in the EU IUU vessel list. Restrictive measures will be applied to infringing vessels to prevent them from continuing such activities. These measures include withdrawal of fishing authorisations, a ban on trade of the products from the vessels with the EU, prohibition to enter into EU Member State ports (except in cases of force majeure or distress).

A vessel will be removed from the list if its flag State demonstrates that appropriate sanctions have been applied or when the owner/operator can prove that at least two years have elapsed since the listing during which no further reports of IUU activities have been reported and there are no financial links with other operators presumed to carry out IUU activities.

The EU IUU vessel list is laid down in Commission Regulation 468/2010.

The Commission will identify third countries that do not cooperate fully in the fight against IUU fishing, by failing to discharge their duties under international law as a flag, port, coastal or market State and notify its position and the supporting evidence to that country. If no appropriate measures are taken by that country to improve the situation, the European Council may list the country as a non-cooperating third country; the list will be published in the Official Journal and on the website of the European Commission.

It will be prohibited for non cooperating third countries to trade any fishery products, directly or indirectly, with the EU. Joint fishing operations between vessels flagged to these countries and EU vessels will be prohibited, likewise the sale or purchase of vessels to/from EU operators. The Commission shall also propose the denunciation of any

standing bilateral fisheries agreements or Fishery Partnership Agreements (FPAs) or not enter into any negotiations creating one with such countries.

The implementation of these measures will be lifted only if the third countries listed as non-cooperating can prove that the situation which warranted their identification has been rectified.

The constraints of developing countries in the field of monitoring, control and surveillance of fishing activities will be taken into account. Likewise, the Commission issued a statement prior to adoption of the Regulation where it undertakes to assist third countries in the implementation of this Regulation, and notably, the EU catch certification scheme.

3.1(f) Nationals (*Chapter VIII*)

This chapter aims to prevent all nationals of EU Member States from engaging or supporting IUU fishing activities.

As it is not unusual that fishing vessels engaged in IUU fishing and registered under the flag of a given country are owned or managed by nationals of another country or are benefitting from their financial or operational support, the Regulation prohibits all EU nationals from engaging or supporting, directly or indirectly in IUU activities under any flag and provides for sanctions in case of violation of these provisions. These sanctions will be applied without prejudice to the primary responsibility of the vessel's flag State.

3.1(g) Immediate enforcement measures, sanctions and accompanying measures (*Chapter IX*)

IUU fishing can only be prevented, deterred and eliminated if States can effectively track down IUU operators. The Regulation therefore consists of a system of effective, proportionate and dissuasive sanctions for serious infringements in respect of natural and legal persons.

The Regulation contains a comprehensive harmonised system of administrative sanctions, enforcement and accompanying measures for serious infringements in order to ensure that operators engaging in or supporting IUU fishing, including by trading, can be deprived from the benefits of these activities and be discouraged from participating in such activities. To this end, EU Member States will have to impose a maximum sanction of at least five times the value of the fishery products obtained by committing the serious infringement, and 8 times the value of the fishery products in case of a repeated infringement within a 5 year period for any serious infringement.

3.1(h) Implementation of provisions adopted within certain RFMOs pertaining to vessel sightings (*Chapter X*)

Recorded sightings will enable coastal States to more easily track down IUU operators in their waters.

Sightings by EU Member States authorities or fishing vessel masters shall be recorded accordingly and shall be reported to the States and RFMOs concerned. The sighting report may also be used for the purpose of investigations.

3.1(i) Mutual assistance between the EU Member States, with third states and with the Commission and the IUU fishing information system (*Chapter XI*)

Chapter XI aim to improve cooperation between competent authorities of EU Member States and third countries and the European Commission by establishing an "IUU fishing information system".

Therefore, a systematic and automated administrative cooperation and exchange of information concerning potential and detected IUU fishing activities will be established, which will cover the following areas:

- exchange of information on request;
- exchange of information on spontaneous basis, without prior request;
- requests to take enforcement measures (e.g. verifications, administrative enquiries or any other type of appropriate enforcement action).

Moreover, an electronic database, the IUU Fishing Information System, will be set up and managed by the European Commission (or a body designated by it) to assist authorities in EU Member States and third countries in preventing, investigating and prosecuting IUU fishing activities. The rules of mutual assistance are further elaborated in articles 35-52 of Commission Regulation 1010/2009.

4. COOPERATION

The Regulation seeks to improve cooperation between EU Member States and third countries in the fight against IUU fishing.

IUU fishing is a global problem which affects all countries and in particular coastal developing countries where certain communities are sometimes solely dependent on the fishing industry. It is therefore vital to set up efficient cooperation mechanisms between EU Member States and third countries in order to curb IUU fishing and provide opportunities for operators acting in compliance with applicable conservation and management measures.

The EU will support third countries in respecting the Regulation in order to ensure that legitimate trade is not impeded. However, cooperation mechanisms set out in the Regulation are on a voluntary basis and third countries must take steps to cooperate with the EU and to efficiently act in compliance with the Regulation and other applicable conservation and management measures. It would be mutually beneficial for the EU and third countries alike to fight IUU fishing activities. The livelihood of fishermen, the environment and global trade are areas that are already at stake and will be even more in jeopardy if IUU continues unabated.

Further details on cooperation can be found in a separate "Cooperation Note". Cooperation in relation to the Community catch certification scheme can also be found under the "Technical Note".