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*Accompanying document to the*

Proposal for a

**COUNCIL REGULATION**

**establishing a Community system to prevent, deter and eliminate  
illegal, unreported and unregulated fishing**

**IMPACT ASSESSMENT**

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## Table of contents

Glossary.....	6
Executive summary.....	8
Section 1: Procedural issues and consultation .....	9
Section 2: Problem definition.....	10
1. Background.....	10
1.1. Definition.....	11
1.2. Impacts of IUU fishing .....	11
1.2.1. Environmental damages.....	11
1.2.2. Socio-economic consequences.....	12
1.2.3. IUU fishing undermines effort for better oceans governance.....	13
1.3. Scale of IUU fishing .....	14
1.4. The economics of IUU fishing.....	15
1.4.1. Economic incentives to engage in IUU fishing .....	15
1.4.2. Fighting IUU: the economics perspective.....	16
1.5. Drivers of IUU fishing.....	17
1.5.1. IUU fishing remains a profitable activity .....	17
1.5.2. No substantial hurdles for the IUU operators .....	18
2. Main challenges faced by the Community in its policy against IUU fishing .....	19
2.1. What has been achieved by the Community so far?.....	20
2.2. Examples of specific mechanisms implemented by third States against IUU fishing.....	22
2.3. Current challenges that the Community needs to face to curtail IUU fishing .....	23
Section 3: Objectives.....	27
Section 4: Policy options.....	28
Option 1: continue current policy and focus on implementation and enforcement of existing framework.....	28
Option 2: Focus on fishing activities outside the EC only.....	29
Option 3: Case by case approach, specific to stocks and areas subject to IUU fishing .....	31
Option 4: Undertake a new and comprehensive initiative, covering both Community and non Community waters .....	32
Section 5: Likely environmental, economic and social impacts of the different options .....	42

1.	Continuation of current policy and focus on implementation and enforcement of existing framework .....	44
1.1.	Impact on IUU fishing .....	44
1.2.	Socio-economic impact.....	47
1.3.	Environmental impact.....	47
2.	Focus EC policy on fishing activities outside the Community.....	48
2.1.	Impact on IUU fishing .....	48
2.2.	Socio-economic impact.....	49
2.3.	Environmental impact.....	49
3.	Case by case approach, specific to species and areas subject to important IUU fishing .....	49
3.1.	Impact on IUU fishing .....	49
3.2.	Socio-economic impact.....	51
3.3.	Environmental impact.....	53
4.	Undertake a new and comprehensive initiative, covering both Community and non Community waters .....	54
4.1.	Impact on IUU fishing .....	54
4.2.	Socio-economic impacts .....	58
4.2.1.	Economic impacts of Option 4 in the Community .....	58
4.2.2.	Overall economic impacts of Option 4 on third countries.....	63
4.2.3.	Specific economic impacts on processors/exporters and on fishermen from developing countries.....	64
4.2.4.	Social impacts of Option 4.....	67
4.3.	Environmental impact.....	68
4.4.	Impact on the Community trade obligations and position.....	68
4.5.	Impact on RFMOs and international position of the Community .....	69
4.6.	Contribution to a simplification of the Community framework derived from the measures agreed by RFMOs .....	70
4.7.	Administrative costs.....	70
	Section 6: How do the options compare?.....	72
	Section 7: How could future monitoring and evaluation be organised?.....	77
1.	Trade measures .....	77

2.	Measures for identification and sanction of vessels and States involved in IUU activities .....	77
2.1.	Community action within RFMOs and towards developing States.....	77
2.2.	EC measures.....	78
3.	Compliance within EC waters and by EC nationals .....	78
4.	overall assessment of the efficiency of the Regulation.....	79
1.	Introduction.....	81
2.	Consultation procedure .....	81
3.	General observations.....	82
4.	Summary of the responses to the public consultation by issue.....	83
4.1.	Improve control of third country vessels and their catches accessing fishing ports of the European Community .....	83
4.2.	Improve control of compliance of conservation and management measures by third country fishery products transported by other means than fishing vessels.....	83
4.3.	Close the EU market to IUU fisheries products.....	84
4.4.	Address IUU activities carried out by nationals from the European Community .....	85
4.5.	Improve the legal means to ascertain IUU fishing activities .....	85
4.6.	Introduce an efficient regime of penalties aiming to deter serious infringements to fisheries measures .....	86
4.7.	Improve action against IUU fishing within Regional Fisheries Management Organisations .....	86
4.8.	Support the policy and means of developing countries against IUU fishing.....	87
4.9.	Increase synergies in the field of Monitoring, Control and Surveillance .....	88
5.	new measures advanced by the respondents .....	88
6.	Conclusions.....	89
6.1.	Les coûts administratifs .....	90
6.1.1.	Incidence des nouvelles tâches induites par la mesure .....	90
6.1.2.	Etape 1 : identification et classification des obligations d'information.....	91
6.1.3.	Etape 2 : Détermination des actions requises .....	91
6.1.4.	Etape 3 : Classification en fonction de la source de la réglementation.....	92
6.1.5.	Etape 4 : les groupes cibles .....	92
6.1.6.	Etape 5 : Fréquence des actions .....	93
6.1.7.	Etape 6 : Indication de facteurs de coûts pertinents.....	94

7.	Coût de main d'œuvre.....	94
8.	Nombre d'heures de travail rendu nécessaire par la mesure de certification.....	95
8.1.1.	Conclusion : le coût administratif de la mesure.....	96

## GLOSSARY

ACP	African, Caribbean and Pacific countries
CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
CDS	Catch Documentation Scheme
CFP	Common Fisheries Policy
COFI	FAO Committee on Fisheries
EC	European Commission
EEZ	Exclusive Economic Zone
EU	European Union
FAO	Food and Agriculture Organisation of the United Nations
FOC	Flag of Convenience
FPA	Fisheries Partnership Agreements
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GFCM	General Fisheries Council for the Mediterranean
ICCAT	International Commission for the Conservation of Atlantic Tunas
ILO	International Labour Organisation
IOTC	Indian Ocean Tuna Commission
IPOA-IUU	International Plan of Action to prevent, deter and eliminate illegal, unreported and unregulated fishing
IUU	Illegal, Unreported and Unregulated fishing
MCS	Monitoring, Control and Surveillance
NAFO	Northwest Atlantic Fisheries Organisation
NEAFC	North East Atlantic Fisheries Commission
NGO	Non-Governmental Organisation
OECD	Organisation for Economic Co-operation and Development
RFMO	Regional Fisheries Management Organisation

SEAFO	Southeast Atlantic Fisheries Organisation
SIOFA	Southern Indian Ocean Fisheries Arrangement
TAC	Total Allowable Catch
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNFSA	UN Fish Stocks (Straddling Stocks and Highly Migratory Species) Agreement
VMS	Vessel Monitoring System

## EXECUTIVE SUMMARY

This report presents possible options designed to improve the efficiency of the policy of the Community in order to curb Illegal, Unreported and Unregulated (IUU) fishing and minimise its environmental and socio-economic impacts.

The report highlights the important damages caused by IUU fishing on the marine environment and on the economic situation of the fishing industry (both within and outside the Community). It provides data on the scale of the problem and clarifies which drivers are encouraging operators to carry out IUU fishing.

The report summarizes the main results achieved so far by the Community in its policy against IUU fishing, since the adoption of its Action Plan on the matter in 2002. It sets out which are the current challenges that the Community needs to address to improve the efficiency of its action (prevent the importation into the Community of fisheries products stemming from IUU fishing; discourage fishing operators and States from supporting or engaging in IUU fishing, notably via the use of "Flags of non-compliance"; improve compliance with the rules of the Common Fisheries Policy within Community waters).

The report analyses the efficiency and impacts of four options for future action by the Community:

- (1) Continue the current policy and focus on implementation and enforcement of existing framework only, without tabling new regulatory proposals;
- (2) Focus on fishing activities outside the EC only (through international and RFMOs actions);
- (3) Pursue a case by case approach, specific to stocks and areas subject to important IUU fishing;
- (4) Develop a comprehensive package, comprising both regulatory measures and political principles guiding the EC policy, which would cover both EC and external waters, complete the current framework and ensure better compliance with applicable rules, as well as allow the EC to adopt unilateral ambitious measures when multilateral measures fall short of EC expectations.

The report suggests that the latest option would be the only one able to address effectively the current challenges of the Community to increase the efficiency of its action against IUU fishing. Its comprehensive scope would allow covering the current loopholes which affect the Community system and encourage the continuation of IUU fishing. This options supports far-reaching measures in all areas concerned (certification scheme for imports; possibility for the Community to implement unilateral measures towards States or fishing vessels engaging or supporting IUU fishing; approximation of maximum levels of sanctions in relation to serious infringements to CFP rules). This option would entail important changes and would not be exempt from some costs, notably related to the commercial dimension of the approach promoted. It appears however that the ambitious approach promoted via this option would be the only one commensurate with the scale of the problem.



## **SECTION 1: PROCEDURAL ISSUES AND CONSULTATION**

This impact assessment report lays the ground for the legislative package to be proposed by the Commission to enhance the Community policy to fight against Illegal, Unreported and Unregulated (IUU) fishing. This package, which should comprise a Communication and a proposal for a Council Regulation, is part of the Commission Legislative and Work Programme for 2007.

Work on this impact assessment was kicked-off by setting up an Inter-Service Steering Group (ISG) in November 2006 mandated to carry out the analysis on possible fields of action and their respective measures. The ISG comprised representatives of Directorates General for Fisheries and Maritime Affairs, Trade, Health and Consumer Protection, Taxation and Customs Union, Development, Environment, Energy and Transport, EuropeAid, Justice, Freedom and Security, Legal Service and Secretariat General of the Commission.

The data for this impact assessment was gathered following a diversified consultation process with the stakeholders as well as from external expertise. A wide consultation process was held between January and March 2007, on the basis of a public document tabled by the Commission services. Numerous meetings were organised and several written contributions received by the Commission as a result of this consultation. The issue was debated within an informal Council of Fisheries Ministers on 17 April 2007. In addition, the European Parliament passed a resolution on that matter on 15 February 2007<sup>1</sup>. The outcomes of the consultation process have been summarized in a Report annexed to the present document.

The Commission services made use of external expertise to support some of the elements relating to the present report. Two Specific Conventions were concluded within the framework contracts (respectively FISH/2003/02 and FISH/2006/20) in force between the Commission and the external consultancy firm Oceanic Development.

The Specific Convention no.36/2006 had as purpose to analyse the impact of trade measures envisaged in the IUU package under elaboration within the Commission. The specific Contract no.5 /2007 was assigned to provide other necessary external elements and input that could be used by the Commission in the final preparation of the impact assessment pertaining to the measures that might be part of the future proposals of the Commission against IUU fishing.

Certain parts of the present report (notably on the social impact of "option 4", the impact of this option on our trade relationships with third countries and the justification for proposing an approximation at Community level of the maximum levels of sanctions corresponding to serious infringements to the CFP) have been introduced or clarified to take into consideration the opinion delivered by the "Impact assessment Board" of the European Commission.

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<sup>1</sup> European Parliament resolution on the implementation of the EU action plan against illegal, unreported and unregulated fishing, adopted on 15 February 2007 (2006/2225(INI)).

## SECTION 2: PROBLEM DEFINITION

### 1. BACKGROUND

Illegal, unreported and unregulated (IUU) fishing is one of the most serious threats worldwide to the sustainability of fish stocks and to marine biodiversity. There is a large consensus within the international community on the recognition of the particular gravity of this problem and the imperious need to adopt appropriate measures to prevent, deter and eliminate it. This consensus has been expressed in various international instruments and most notably in the voluntary International Plan of Action on this matter adopted under the auspices of the FAO in 2001<sup>2</sup>.

Since then, calls for strong actions against IUU fishing have intensified within the international community, be it within international arena (notably via the annual Resolutions by the General Assembly of the United Nations on sustainable fisheries<sup>3</sup>, the 2005 Rome Declaration on IUU fishing at the Ministerial Meeting on Fisheries within the FAO in 2005, or the Declaration agreed Ministerial level at the St John's Conference on the Governance of High Seas fisheries and the UN Fish Agreement in 2005), or at regional level (notably within all the 13 Regional Fisheries Management Organisations to which the Community is party, or, notably, at the North Atlantic Fisheries Minister Conference in 2006 and within the ACP-EU Joint Parliamentary Assembly in 2006<sup>4</sup>).

The issue has been extensively documented, in particular by the OECD<sup>5</sup> as well as independent consultancy agencies<sup>6</sup>. Non Governmental Organisations have also produced numerous reports and studies on the various manifestations of IUU fishing in the world.

The international legal regime relating to the conservation and management of marine resources stems from various international binding instruments to which the Community is Party, and most notably the United Convention on the Law of the Sea<sup>7</sup>, the Agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas ("FAO Compliance Agreement")<sup>8</sup>, and the UN fish stocks agreement<sup>9</sup>. Those

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<sup>2</sup> International Plan of Action to prevent, deter and eliminate illegal, unreported and unregulated fishing, Food and Agriculture Organisation (FAO), 2001.

<sup>3</sup> Cf. for 2007 the United Nations General Assembly Resolution 61/105 of 6 March 2007 "Sustainable fisheries, including through the 1995 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, and related Instruments".

<sup>4</sup> Resolution adopted by the ACP-EU Joint Parliamentary Assembly on fisheries and their social and environmental aspects in developing countries on 22 June 2006 (notably paragraphs K and 17).

<sup>5</sup> Cf. in particular the OECD publications "Fish Piracy: Combating Illegal, Unreported and Unregulated Fishing" (2004), and "Why Fish Piracy Persists: The Economics of Illegal, Unreported and Unregulated Fishing" (2005), as well as the report of the High Seas Task Force (2006), which was hosted by the OECD: "Closing the net: Stopping illegal fishing on the high seas (Governments of Australia, Canada, Chile, Namibia, New Zealand, and the United Kingdom, WWF, IUCN and the Earth Institute at Columbia University)".

<sup>6</sup> Cf. notably "Review of Impacts of Illegal, Unreported and Unregulated fishing on developing countries, July 2005", report by Marine Resources Assessment Group (MRAG).

<sup>7</sup> Council Decision 98/392/EC of 23 March 1998 concerning the conclusion by the European Community of the United Nations Convention of 10 December 1982 on the Law of the Sea and the Agreement of 28 July 1994 relating to the implementation of Part XI thereof (OJ L 179, 23.6.1998, p. 1).

<sup>8</sup> Council Decision 96/428/EC of 25 June 1996 on acceptance by the Community of the Agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas (O J L 177, 16.7.1996, p. 24).

provisions set out the principle that all States have the duty to adopt appropriate measures to ensure sustainable management of marine resources and to cooperate with each other to this end. They notably spell out which are the obligations of a State towards fishing vessels flying its flag.

The Community adopted its own Plan of Action against IUU fishing in 2002 as part of the Common Fisheries Policy<sup>10</sup>. The Commission considers that, more than five years after this adoption, time has come to review the Community policy against IUU fishing and evaluate how it could be improved.

### 1.1. Definition

The only internationally agreed definition of "IUU fishing" is to be found in the IUU FAO Action Plan. In line with this definition, and for the sake of clarity, the Commission considers that the scope of the Community policy to deter, prevent and eliminate IUU fishing should cover:

- behaviours infringing applicable rules on the management and conservation of fisheries resources, occurring in waters subject or beyond the jurisdiction of a State;
- fishing activities carried out in an high seas area and subject to a Regional Fisheries Management Organisation (RFMO) by fishing vessels without flag or flying the flag of States not party to the RFMO and in a manner contravening with the rules issued by this organisation;
- and fishing activities carried out in an high seas area not subject to any conservation and management measures and conducted in a manner inconsistent with State responsibilities for the conservation of fisheries resources under international law.

### 1.2. Impacts of IUU fishing

The necessity for a strengthened Community action lies in the multiple detrimental impacts associated with IUU fishing.

#### 1.2.1. Environmental damages

IUU fishing firstly results in disastrous **environmental damages** to marine biodiversity. The General Assembly of the United Nations recognises that "*IUU fishing remains one of the greatest threats to marine ecosystems and continues to have serious and major implications for the conservation and management of ocean resources*"<sup>11</sup>.

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<sup>9</sup> Council Decision 98/414/EC of 8 June 1998 on the ratification by the European Community of the Agreement for the implementing 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 stocks and highly migratory fish stocks (OJ L 189, 3.7.1998, p. 14).

<sup>10</sup> Communication from the Commission "Community action plan for the eradication of illegal, unreported and unregulated fishing" - COM(2002) 180, 28.5.2002 -, and Council Conclusions of 7.6.2002.

<sup>11</sup> United Nations General Assembly, Res. 61/105 of 6 March 2007 "Sustainable fisheries, including through the 1995 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, and related Instruments", chap IV, p. 9.

It greatly damages **sustainability of fisheries**. This is the case in many fisheries where catches get un-or misreported to public authorities and contribute to overfishing. Those practices have negative short term consequences, but they also distort the scientific assessment of the stocks concerned and thereby undermine their future management, as the catch data used for reference do not reflect the reality of the fishery. Other widespread manifestations of IUU practices include fishing activities targeting juveniles, in contravention with rules on minimum sizes, or fishing during periods or in areas normally closed to let the stocks spawn. They jeopardize the renewal of fish stocks concerned and may put into question their survival.

According to the FAO, 25% of the marine fish stocks are overexploited, depleted or recovering from depletion. This proportion rises to 66% for high-seas and straddling fish stocks, which are particularly vulnerable to IUU fishing. For those stocks, IUU practices trigger dramatic consequences. This is for instance the case for blue fin tuna in the Mediterranean, where IUU fishing is estimated to reach such high levels that a perpetuation of those illegal practices would lead the stock on the brink of extinction. While some stocks are currently subject to particularly high level of IUU fishing, those practices impact the global state of fisheries and should be addressed as such.

The environmental consequences of IUU fishing go beyond damages to fish stocks. Those practices may also endanger **marine ecosystems and habitats**. Fishing with prohibited methods can notably result in a high proportion of unwanted species (fish species, but also seabirds or turtles for example) being discarded. This is the case for example for driftnet fishing. Fishing in protected areas may trigger irreversible damages to vulnerable marine ecosystems, like coral reefs.

#### *1.2.2. Socio-economic consequences*

IUU fishing does not only damage the marine environment. It also has serious socio-economic consequences. Estimates on illicit practices are by nature difficult to perform. The value of IUU fishing has been assessed to amount worldwide between 10 billion € a year<sup>12</sup>. By comparison, the value of landings by the Community fleet was worth 6,8 billion € in 2004<sup>13</sup>.

This has an important impact on the **Community fishing industry**, which is subject to a comprehensive set of rules and has to face fierce competition from IUU operators disregarding any kind of obligations and active on the same fishing grounds or targeting the same final markets (ex. cod from Barents Sea). Community fishermen operating legally face unfair practices from IUU operators, which notably result in loss of market shares for the Community industry and decrease of market prices due to the sale of cheap products stemming from illegal operators.

The **Community trade, processing and retail industry** is also affected by IUU fishing. They face indeed competition from a limited number of firms deliberately engaged in the trade of IUU products. More generally, the difficulty to guarantee the legality of the fisheries products which they purchase may also harm their image among their trade partners and final consumers, who may see those firms as taking part in the laundering of fisheries products stemming from IUU fishing.

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<sup>12</sup> Study "Impact of trade measures envisaged in the IUU package under elaboration within the Commission", Oceanic Development (May 2007), 2003/FISH/02.

<sup>13</sup> Figures for 2004, from the "Annual Economic report 2005 on the Economic Performance of selected European fishing fleets" (March 2006).

IUU fishing has also dramatic consequences for **coastal communities in developing countries**. Fish resources play a major role in food security and poverty alleviation for many of those populations. They constitute an important source of income for some countries, via the wealth generated through the supply of the local market or through exports (in some cases, income derived from exports of fisheries products constitutes a non negligible share of the total exports and an important source of foreign currencies). Coastal developing countries often lack the means and capacity necessary to manage and control properly maritime waters under their jurisdiction. Unscrupulous illegal operators take advantages of those weaknesses to carry out their activities without authorization from the coastal States and to plunder resources which are vital to local fishermen. This represents theft of fish resources, as well as a financial loss for the public authorities as those operators do not pay the fees which are legally due as a counterpart from the awarding of licences and fishing possibilities by coastal States. This may also result in job losses for legal fishermen facing competition from operators practicing illegal fishing, which has specific detrimental consequences in regions particularly dependent on fishing activities where there are few other employment alternatives.

Beyond the fishing sector itself, it is detrimental to the local processing and marketing sector, and notably to women who represent the largest share of employed persons in this field. The existence of important IUU fishing activities in coastal waters of a given country also dissuades economic actors from investing in its local fishing sector. This is a major problem for Sub Saharan African coastal countries, where losses resulting from IUU fishing have been assessed to reach 800 million € each year. The situation in West Africa is of special concern in that regard.

### *1.2.3. IUU fishing undermines effort for better oceans governance*

Some firms practicing illegal fishing operate substandard vessels flying the flag of States which maintain a very poor level of social standards, or no standards at all, and where crews often coming from poor parts of the world and working far from their home country, must endure unacceptable living and working conditions. This undermines efforts for international progress on social standards for fishermen, notably those reflected in the new consolidated convention on work in the fishing sector adopted within the International Labour Organisation in June 2007.

IUU operators trading fisheries products also tend to circumvent applicable Community rules for imports pertaining to health and hygiene standards or to the origins of fisheries products.

For all those reasons, the continuation of illicit practices undermines the legitimacy among Community fishermen of the rules of the Common Fisheries Policy (CFP). Indeed, fishermen practising their activities legally are tempted to denounce the flaws of a regime which results in multiple obligations imposed on them, but which does not permit to stop illegal operators from developing their activities outside any kind of framework.

All those elements demonstrate that IUU fishing represents a major danger for the sustainability and future of common resources from the oceans and jeopardizes the very foundation of the European Community policy designed to ensure sustainable management of fisheries resources within and beyond Community waters and improve oceans governance.

### 1.3. Scale of IUU fishing

IUU activities are of a very complex nature and wide-world spread. Estimating the volume and value of catches of vessels infringing conservation and management measures is a very difficult exercise due to the clandestine nature of those activities. Some Regional Fisheries Management Organisations provided some estimation related to their fields of competence but those are empiric and partial estimations based on the occurrences in their specific areas.

Several studies have attempted to evaluate the magnitude of IUU fishing. When considering just high seas and the Exclusive Economic Zones (EEZs) of African countries, it is estimated that the sales from IUU fishing to be roughly 2 billion euros for a volume ranging from 1.5 to 2 million tons per year. **When extrapolated to a global scale, estimated sales from IUU fishing could amount to some 10 billion euros per year or 19% of the worldwide reported value of catches from marine capture fisheries.**

On the high seas, the most important catches from IUU fishing comprise shark species and small pelagic species, along with tuna and tuna-like species (Indian and Pacific Ocean), cod (Barents Sea) and cephalopods. Illegal catches on the high seas totalise a value at first sale of about 1 billion euros and almost 45% of this value stems from catches of tunas and tuna-like species (bigeye, yellowfin, albacore, and swordfish) and 20% from catches of demersal species (cod and redfish) from the North Atlantic.

The Exclusive Economic Zones (EEZs) of Sub-Sahara African countries are also subject to high level of IUU fishing. The main species targeted there, in large majority by foreign-flagged fishing vessels, are crustaceans (40 000 tons), tuna and tuna-like species, in particular on the coast of Atlantic and Indian Ocean (220 000 tons), and other fish species and shellfish (170 000 tons). In some countries (Somalia, Liberia, Guinea Conakry), the value of IUU fishing can represent more than 50% of the value of the total catches. It is assessed that the overall value of IUU fishing in those areas amounts to approximately 800 million €.

Cod and other demersal species form the principal species subject to IUU fishing in the EEZs of the North Atlantic and Baltic Sea (including in Community waters). They are estimated to reach approximately 45 000 tons per year, with an estimated value of 50 millions euros. Within Community waters, other stocks like Northern stock of European hake are considered to be subject to important illegal fishing (misreporting and non respect of minimum landing size).

Other stocks are affected by IUU fishing in other EEZs of coastal countries around the world. Assessments are difficult to perform as to their magnitude, and those activities have a less direct impact on the Community as fishing or trade entity.

Due to its appeal, the EC market attracts a substantial share of many products stemming from IUU fishing. Studies show that species such as tuna and cod are among the most concerned, as are all fish, shellfish and mollusc species with high commercial value fished in coastal zones of developing countries. On the whole, IUU fishing imports are estimated to be the equivalent of 9% of the tonnage imported into the EC (500,000 tons) and 10% of the value of the imports (1.1 billion euros). Seen from another angle, the EC market provides a commercial outlet for 10% of fish caught in violation of conservation and management measures.

## 1.4. The economics of IUU fishing<sup>14</sup>

### 1.4.1. Economic incentives to engage in IUU fishing

Incentives to engage in IUU fishing activities are economic by nature. They can be of two main, complementary, types: to earn higher revenues and/or to incur lower costs than otherwise would be the case if rules were observed.

#### 1.4.1.1. Higher expected revenues

The premise is that everything else being equal, a vessel may engage in IUU fishing to catch more fish than it could have expected when complying with the rules.

This is one fundamental factor influencing IUU. It is normally the result of an imbalance between the vessel's fishing technical capabilities and fishing possibilities. In cases where some countries are committed to developing their own fishing fleets, the imbalance between fishing capacity and fishing possibilities decided within RFMOs may act as a powerful driver for these nations to tolerate IUU activities under their flags.

Two other factors further increase the likelihood that vessels, in particular those flying flags of convenience, will fish more than regular ones: the incompleteness of the international legal framework and the failure of some States to implement international obligations.

A related powerful driver of IUU fishing is the prospect of earning higher revenues than when complying with the rules. This driver is the more powerful the closer are the prices between regular and illegal catches of a given species and the higher the market price of a given species is.

#### 1.4.1.2. Lower costs

As long as the overall costs of IUU fishing remain lower than those of regular fishing activities, there would be a net positive incentive to engage in IUU fishing.

Regarding operating/fixed fishing costs, on the one hand, IUU fishing is associated with poor labour, safety and hygienic conditions on board, with poor repair and maintenance and with deficient insurance coverage. On the other hand, IUU fishing is associated with additional steaming and, hence, fuel consumption. On balance, though, operating fishing costs are in general lower for IUU vessels than from regular vessels. The same applies to fixed (capital) costs of IUU fishing. Many IUU vessels are very old, more often than not transferred from fleets characterised by overcapacity.

Regarding IUU-specific costs, first IUU vessels need to invest in avoidance costs. These costs can take the form of costs associated with the early detection of MCS devices or costs resulting from activities intended to deceive control (manipulating VMS data, changing names, flags or the physical appearance of the vessel). Generally speaking, these costs will be lower for fishing on the high seas than for fishing in EEZs.

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<sup>14</sup> This section is largely based on the OECD publication *Why Fish Piracy Persists; the economic of illegal, unreported, unreported and unregulated fishing* and on the final report of the Task-force on IUU fishing on the High Seas, *stopping Illegal Fishing on the High Seas*.

In addition, in order to convert IUU catches into revenues, it is necessary to circumvent reporting, labelling, fiscal or any other regulatory measures. In practice, they can do so by various means (misnaming catches, repackaging and re-labelling), but any of them will involve some extra costs.

Furthermore, IUU fishing can result in some moral/reputation costs. They can take the form of being outlawed from the fishing community or boycotted. These costs could become important as consumers are becoming more aware of conservation issues.

Finally, IUU-fishing vessels continuously face the risk of being caught and sanctioned, which depends on national MCS capabilities and on expected the level of sanctions.

In the EEZ of coastal countries, the probability of being caught depends on the enforcement capacity of the coastal state, the quality of MCS, the size of the fishing ground and whether or not fishing grounds are close to the high seas. Avoidance and circumvent costs are therefore expected to be higher than when engaging in IUU fishing on the high seas. However, IUU vessels will not pay access rights to the coastal state.

On balance, these factors should lead to expected revenues that should be lower than these resulting from engaging in IUU fishing on the high seas. However, the enforcement capabilities of coastal states are a crucial factor in that respect. It is not surprising that IUU fishing concentrates on the EEZ of some countries (in particular in Sub-Saharan Africa) which as a result of their political and/or economic situation or other factors are unable to exercise any meaningful control.

The continuation of IUU fishing supports the view that, on balance, IUU costs are lower.

#### *1.4.2. Fighting IUU: the economics perspective*

Curbing economic incentives for engaging into IUU fishing would require taking actions to (a) reduce the expected revenues from IUU fishing and (b) increase the expected costs of IUU fishing. Both actions are necessary to ensure success against IUU.

Other types of actions are also important: first these aim at improving the economic, social situation and prospects of countries where IUU fishing is known to be taking place. This could reduce the incentives to engage in IUU fishing, for instance by increasing the opportunity cost of labour and the fraud costs incurred by IUU operators. Second, actions intended to match fishing capabilities and possibilities. It has to be noted that actions within the latter category are costly (e.g. scrapping programmes) and require time to yield positive effects. Others, such as reducing or eliminating subsidies for vessel construction or modernisation could imply a significant political cost.

##### 1.4.2.1. Reducing IUU revenues

The possible avenues to reduce the revenues of IUU fishing are limiting IUU catches, limiting IUU trade or increasing the value of legal catches.

As regards reducing catches, it is important to reduce the gaps and shortcomings of the current international legal framework, notably via the adhesion by all Flag States to international conventions on conservation and management of fisheries resources, an extension of the coverage of high seas areas by new RFMOs as well as a higher participation by interested States to existing RFMOs.



Further actions could be proposed, in particular those intended to increase MCS capabilities and cooperation between States to address the cross-border dimension of IUU fishing. This is of particular importance in coastal developing countries.

Trade measures intend to prevent IUU catches from entering regular markets. They could take different forms (certification schemes, import restrictions and/or embargoes of fish products from countries the flag of which is used by vessels involved in IUU fishing or where operators dealing with IUU fishing products are located). Regarding ways of increasing the value of regular catches, the central question is whether consumers are willing to pay a higher price for regular fish. Some evidence from the CCAMLR shows that this could be the case. Measures intended to educate and inform customers, such as labelling or certification schemes, are keys for success, although their proliferation could be counterproductive if they confuse customers.

#### 1.4.2.2. Increasing IUU costs

A very important field of action is that of the expected sanctions, which depends on the probability of detection and on the level of sanctions. MCS capabilities have to be enhanced. Enforcement failures (either by insufficient material means, by dispersion of competences or both) favour IUU activities. Enhanced MCS capabilities will add to deterrence. Furthermore, enhanced MCS capabilities are also likely to increase avoidance costs.

Measures intended to (i) widen the risk incurred, in particular the extra-territorial application of domestic sanctions to fishing firms or individuals (in particular skippers or fishing masters working on IUU vessels), and (ii) making the trade of IUU fish illegal, so that processors and distributors are exposed to sanctions, are also important.

Other possible ways of increasing the operating costs of IUU vessels, are:

- Restrictions of the provision of goods and services to IUU vessels or flags;
- Port control measures intended to prohibit transshipments and/or landings;
- The ratification and implementation by flag States of international conventions regarding the working conditions of fishers (notably ILO conventions).

### 1.5. Drivers of IUU fishing

The most important drivers supporting the continuation of IUU fishing are briefly described below.

#### 1.5.1. *IUU fishing remains a profitable activity*

Incentives to practice IUU fishing persist as long as it remains a profitable activity for the operators concerned.

- As already discussed in the previous section, operators practising IUU activities are able to maintain **low operating costs** and enjoy **substantial benefits**. The operating costs of the firms involved in illegal fishing are generally lower than those of average fishing firms operating legally, although the circumvention of control measures infers costs which should not be neglected. Costs resulting from social and tax charges can be reduced to a minimum or be inexistent for fleets carrying out IUU activities under cover of offshore companies or flags of convenience. Non respect of fisheries rules and trade of catches outside official

channels also result in lower expenses. Finally, IUU operators are rarely penalized, and the sanctions they incur are usually not deterrent and can be perceived as any other operational costs. While operating costs are low, benefits expected from IUU activities are generally high, notably as illegal operators tend to target valuable species which command higher market prices (for example toothfish, blue fin tuna or cod).

- In some fisheries, the **overcapacity of fishing fleets** compared to the fishing possibilities available also generates illicit fishing activities, as some vessels tend to overpass the catch limits to which they are subject in order to maintain a level of catch ensuring their profitability.

In a context of steady increase in the consumption of fisheries products worldwide, the incentives for supplying illegal fisheries products to the final markets will remain high as long as operators are able to gain benefits out of their activities.

#### *1.5.2. No substantial hurdles for the IUU operators*

Profitability explains why the IUU fishing phenomenon persists. Another key element in the explanation of IUU fishing is how it persists. The continuation of IUU practices relies to a large extent on the easiness with which illegal operators are able to pursue their activities along the whole supply chain and escape any kinds of obligation or constraint which would hamper them to do so.

#### **IUU operators firstly take advantage of the benefits they can gain from national systems of flag registration.**

A large number of fishing vessels, in particular those operating outside Community waters, are registered in States which run open registers and are unwilling or unable to exercise a proper control over their fishing fleet as to the respect of conservation and management measures. Registration in those States hosting "flags of convenience" or "flags of non compliance" proves to be a very simple and inexpensive operation, which can be completed within some hours. Under the law of the sea, the duty to exert control over a vessel is primarily incumbent upon the Flag State. Whenever the Flag State does not discharge this duty, and in the absence of an internationally-agreed understanding of what the "genuine link" between a Flag State and fishing vessels flying its flag should consist of, there are only limited means to remedy illegal harvesting activities committed by such vessels. As a result, most of the vessels identified as committing IUU activities in different parts of the world are registered in States known for the absence of adequate control over their fishing fleet. Registration is often made under cover of offshore companies, often located in the Flag State. The beneficial owners of the operation have no or very limited contact with this State which renders their identification is difficult. Estimations have been provided according to which the number of fishing vessels over 24 meters flying flags of convenience amounts to approximately 1300 vessels, registered in a small number of countries (among them Panama, Sierra Leone, Cambodia, Vanuatu, Marshall Island, Mauritius, Bolivia, Equatorial Guinea, Honduras, Georgia, Bolivia, Belize, Togo...).

#### **These problems are exacerbated by the insufficient cooperation at international level between States and international bodies in charge of control of fishing activities.**

IUU fishing is by essence an international activity. IUU operators tend to exert their catching activities in fishing grounds where control activities are difficult to perform (notably remote high seas areas) or where control capacities of the competent public authorities are reduced

(notably in the Exclusive Economic Zones of developing countries). To dissimulate their illegal origin, catches can then be transported along complex routes before reaching their final market, including transshipments at sea, landings in "ports of convenience" and processing in a country which is different from the Flag and the market States. Those activities can be qualified in some instances as cross-border organised crime, where the working methods and patterns are similar to other illegal activities, like drug or arm smuggling. In addition, the small probability of being penalized and the actual sanctions they sometimes incur can be seen as still insufficient to constitute an actual deterrent to engage in IUU fishing.

Cooperation at all levels (international, regional, Community and national) is of paramount importance in order to properly track and investigate those activities. It should encompass control at sea, monitoring of trade flows as well as port State measures. Despite some progress, the coexistence of scattered services in charge of various aspects of maritime surveillance and border control and the absence of sufficient exchange of information between control authorities have not allowed to put in place efficient mechanisms able to deter IUU operators from continuing their activities.

Illegal operators within Community waters also use the weakness of the control, inspection and enforcement system of Member States to develop their activities. The volume of fisheries products which are harvested in contravention of Community rules and then sold outside official channels on the Community market (so-called "black fish") can reach a very high proportion in some fisheries (for example cod in the Baltic Sea).

## **2. MAIN CHALLENGES FACED BY THE COMMUNITY IN ITS POLICY AGAINST IUU FISHING**

The Community has one of the largest fishing fleets in the world, with approximately 90 000 fishing vessels with a global capacity of 6,7 million kW. Its landings amounted to approximately 5,7 million tons of fish worth 6,8 billion €<sup>15</sup> in 2004, which makes of the Community the third catching power in the world.

It is also the biggest market and the first importer for fisheries products. The Community market for fisheries products depends for 60% on imports. In particular, the processing industry within the Community relies heavily on imported products. As a result, the value of fisheries products imported into the Community rose to nearly 14 billion € in 2005<sup>16</sup>, representing 40% of the total of importations of fisheries products worldwide. Due to the poor state of many fish stocks in Community waters and the rising demand for fisheries products, this dependency on imported products is deemed to increase in the coming years.

In addition, Community operators are believed to feature among those registering a large number of fishing vessels in States hosting flags of convenience.

Given its status of major fishing, Flag and Market power, and in line with its international commitments and its overall objective to improve management and avoid overexploitation of natural resources (as set out in the EU Sustainable development Strategy agreed at the European

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<sup>15</sup> Figures for 2004, from the "Annual Economic report 2005 on the Economic Performance of selected European fishing fleets" (March 2006).

<sup>16</sup> Sources Eurostat.

Council of June 2006), the Community has a specific responsibility in leading international efforts on the fight against IUU fishing.

## **2.1. What has been achieved by the Community so far?**

The fight against IUU fishing has emerged relatively recently as one of the main priorities of the Community in its international fisheries policy.

Building on by its 2002 action plan<sup>17</sup> derived from the international plan of Action adopted by the FAO in 2001, the first objective of the Community policy against IUU fishing has been to establish international and regional norms designed to curtail those practices.

It is also fair to say that the fight against IUU fishing has been seen over the past years as an international problem rather than as an internal issue for the Community.

The main measures and initiatives adopted by the European Community against IUU fishing are briefly presented below.

**At international level**, the European Community has been fostering progress against IUU fishing in bodies in charge of fisheries and law of the sea (FAO, UN).

The European Community notably supports international discussions to define the genuine link between Flag States and their fishing fleets.

The EC was also actively involved in the work led by FAO to establish a model port State scheme endorsed in 2005, and has supported the initiative agreed by the Fisheries Committee ("COFI") of the FAO in 2007 to develop a new legally binding instrument based on this model port State scheme.

**Fighting IUU fishing occurring on the high seas** requires the development of a strategy at regional level. This has triggered important changes in the mandate of Regional Fisheries Management Organisations: while their initial purpose was mainly to determine and allocate in a fair and sustainable manner fishing possibilities in a given high sea area among their Parties, those RFMOs have been engaged for some years in the elaboration of a policy for control and inspection, which constitutes nowadays a growing part of their activities. In addition, the Community has actively contributed in the recent years to the setting up of new RFMOs in high seas areas which were not subject to any multilateral regulation (cf. SIOFA, SEAFO, South Pacific...). Here again, the willingness to prevent IUU fishing has been instrumental in the policy carried out by the Community.

Most measures in place to combat IUU fishing within RFMOs have been introduced at the initiative of the Community, or with its active support. Most RFMOs have now developed sets of rules against IUU fishing. They include inter alia:

- the establishment of control and inspection schemes,
- the obligation for vessels to be equipped with VMS,

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<sup>17</sup> Communication from the Commission "Community action plan for the eradication of illegal, unreported and unregulated fishing" - COM(2002) 180, 28.5.2002 -, and Council Conclusions of 7.6.2002.

- the registration of catches,
- the regulation of fishing gear,
- specific measures targeting non-Parties vessels present in the RFMO areas,
- the imposition of accompanying documents for certain species to certify compliance with conservation and management measures, without which no commercialization is possible,
- lists of vessels authorised to fish;
- lists of vessels identified as having engaged in IUU activities ("IUU vessels"), and which are subject to a large array of penalties (notably prohibition to land and be provided with services in the ports of the Parties to the Organisation),
- the adoption of port state control measures,
- trade measures towards States non complying with relevant measures,
- regulation of transshipments at sea....

These rules have been progressively been put in place over the past years or are in the process of establishment.

**In relation to coastal developing countries,** Fisheries Partnership Agreements provide an adequate framework to undertake actions to control unlawful fishing. An important part of the assistance for developing countries provided under those agreements is devoted to combating IUU fishing and strengthening control and surveillance methods. Joint initiatives with the countries concerned are under way, particularly in West Africa, East Africa, Southern Africa and the Pacific, to improve infrastructure, means of control and the legislative framework. These initiatives may also move forward on a regional basis, as reflected in the recent launching of a regional plan of action for the Indian Ocean.

Through the European Development Fund (EDF), the European Community provides assistance for a range of fisheries initiatives both at national and regional levels, notably with a view to combating IUU fishing. The EC is currently financing about 15 fisheries initiatives in ACP countries, mostly under the 8<sup>th</sup> and 9<sup>th</sup> EDF (programming periods 1997-2002 and 2002-2007 respectively), with a total financial envelope of roughly 170 million €. Monitoring, Control and Surveillance features as one of the key theme under this program.

**At EU level,** an important set of rules has been established since 1993 already, instituting a system of control, inspection and enforcement of fisheries rules<sup>18</sup>. Its scope extends to Community waters as well as to Community operators and it aims at ensuring compliance with the rules of the Common Fishery Policy. Implementing those provisions fall within the competence of Member States. The duties of Member States in respect of fishing vessels flying their flags, as well as in respect of other fishing vessels acting within Community waters, are clearly spelt out within this regulatory framework.

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<sup>18</sup> Cf. Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy.

Insofar as this system is designed to deter and sanction illegal fishing activities, it should be seen as participating to the efforts of the Community to curtail IUU fishing, despite the fact that this terminology has often been used in the past to qualify "external" fishing practices. Over the past years, the policy of the Community in this field has notably consisted in pressing Member States to fulfil their obligations for implementing international and European Community law provisions<sup>19</sup>. The European Community legislation has also been reinforced to establish the responsibility of the beneficiaries of infringements (responsibility of nationals, regardless of the flag under which the vessels concerned operate).

## 2.2. Examples of specific mechanisms implemented by third States against IUU fishing

In addition to their contribution to international solutions against IUU fishing, some of the most important fisheries partners of the Community have developed their own tools to prevent those activities. This section provides for a brief description of some of those tools, as they might constitute useful precedents for the Community.

In the **United States**, the domestic legislation entitles the authorities to take severe sanctions against operators importing into the US territory fisheries products harvested in violation to the rules of a foreign country. According to the Lacey Act<sup>20</sup>, *"it is unlawful for any person (...) to import, export, transport, sell, receive, acquire, or purchase (...) any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law"*. On this basis, operators importing fisheries products caught in violation of rules of third countries or RFMOs have been sentenced to very heavy fines and imprisonment terms.

The new US legislative framework on the conservation and management of fisheries<sup>21</sup> requires that the US authorities identify those fishing nations whose vessels are engaged in IUU fishing and put in place adequate procedures to certify whether those nations have taken adequate corrective actions to address the problem. On the basis of this certification exercise, the US authorities are entitled to adopt import prohibitions and other measures towards those nations which are not positively certified.

In **Canada**, specific rules are in place with regard to the access of foreign fishing vessels to Canadian waters and ports<sup>22</sup>. Access is authorized only for those vessels which have been awarded licences to this end by the Canadian authorities. The licences are granted to foreign fishing vessels (1) flying the Flag of States which are considered as fulfilling their general obligations as Flag State under international law and (2) which, among other criteria, carry out their activities in accordance with the relevant norms on conservation and management of fisheries resources. If those conditions are not met, no licence is granted, and the vessels considered shall not be entitled to access Canadian waters and ports.

In **Norway**, on the basis of a domestic legislation, the authorities operate their own "black list" and "IUU list" of fishing vessels. Fishing vessels are listed when it has been demonstrated that they have been carrying out IUU fishing or have been alleged to do so. Depending on the kind of listing, the vessels concerned are subject to a set of measures designed to restrict their action

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<sup>19</sup> Cf. for example the judgment of the European Court of Justice of 12 July 2005 in Case C-304/02: Commission of the European Communities v French Republic.

<sup>20</sup> The Lacey Act Amendments of 1981. 16 United States Code § 3371.

<sup>21</sup> Magnuson-Stevens fishery conservation and management reauthorization act (p. l. 109-479) amending the High seas Driftnet Fishing Moratorium Protection Act (new Section 609), 2007.

<sup>22</sup> Cf. the Coastal Fisheries Protection Act and its implementing Regulations.

(prohibition to sail in Norwegian waters, to access Norwegian ports, to be registered under Norwegian flag...) or increase scrutiny over their activities (systematic inspection in ports).

### 2.3. Current challenges that the Community needs to face to curtail IUU fishing

During the last decade, the main focus of the Community action against IUU fishing has been the setting up and consolidation of norms and bodies mainly dedicated to the monitoring, control and surveillance of activities occurring at sea. At this stage, such action was necessary in order to establish the first mechanisms designed to address IUU fishing at international level.

A screening of the current situation has shown that it is now necessary to develop a new approach to the IUU problem.

This assessment is notably based on the following considerations:

- The international commitments of the Community against IUU fishing require the adoption of additional measures in different fields (notably to implement the instruments agreed within the FAO and the UN);
- Various events have demonstrated the deficiencies of the current system in some areas, notably the difficulty to exert an adequate control over the legality of fisheries products imported into the Community;
- The outcome of the consultation launched by the Commission in January 2007 shows a general support for the idea that the Community should step up its action against IUU fishing. Most of the contributions also encourage the Commission to initiate new proposals in all the fields of action identified in the "consultation paper";
- Numerous measures against IUU fishing have been adopted within RFMOs; such measures vary from one organisation to the other, notably with respect to their scope and their degree of sophistication. As a result, different measures are incorporated into the Community legislation, whose application depends on the areas and species covered. This is source of confusion for Community operators and control authorities, and reflects a lack of consistency and efficiency. To remedy this situation, a generalization throughout the Community of the most advanced measures adopted within RFMOs could be envisaged;
- External studies commissioned by the Commission have also confirmed that serious weaknesses undermine some aspects of the current approach of the Community against IUU fishing.

On the substance, there is a widespread recognition that a new approach should aim to complete the existing framework, improve its efficiency and place the focus on the need for better enforcement and compliance with the measures agreed at international and Community levels to deter, prevent and eliminate IUU fishing.

More precisely, this assessment relies on the following findings:

- **the vulnerability of the Community market to the importation of fisheries products which have been illegally caught** has been illustrated at several occasions. The current Community legislation lays down the requirements that foreign-flagged vessels must follow in order to be entitled to land fishing products in Community ports (prior notification, data on the origins of the catches...). Its scope is however limited to direct landings of fisheries

products in fishing ports, which represent only about 2% of the total amounts of fishing products imported into the Community<sup>23</sup>. Various examples have also shown that this legislation contains loopholes, including the cases of foreign-flagged fishing vessels landing their products into Community ports without being subject to a proper control as to their legality. Suspicions have arisen that those products may stem from illegal fishing, but the current legal framework does not allow performing adequate checks in that regard. A recent report by the inspection services from the Commission has concluded that the current framework is not even implemented in a satisfactory manner by national authorities. It should be underlined that the legislation applying to landings of catches by Community fishing vessels is much more complete than the legislation covering landings and imports into the Community of fisheries products caught by foreign-flagged vessels. Under the relevant legislation applying to Community fishing vessels<sup>24</sup>, information on the quantity of catches, the location of the fishing grounds, the gear used and the period considered are collected by the master and transmitted to the control authorities, through various documents (log book during operation at sea, landing declaration handed over to the Port authorities, and sales note transmitted to the buyer of the catches). All Community fishing vessels over 15 meters also have an obligation to have a VMS system on board, which provides information on their location. This system allows national authorities to check if catches from Community fishing vessels have been harvested in conformity with the rules in place. Under the current regime, this can not be said for landing and imports of fisheries products caught by foreign-flagged vessels. Taking account of all modes of transport, it is being assessed that approximately 500000 tons worth 1,1 billion € fisheries products caught illegally by foreign-flagged fishing vessels end up on the Community market every year. This easiness to use the Community market as outlet for fisheries products caught illegally represents a clear incentive for the operators concerned to continue their practices. This issue has been recognised widely in the consultation process. The Community fishing industry complains about the massive arrival on the Community market of imported products stemming from IUU fishing which drives prices down. The Community processing and retail sectors depend to a large extent for their supply on imported products; they are not satisfied with the current situation, under which they suffer from a lack of clear rules which would guarantee that imported products have been harvested legally, and they are sometimes blamed for allegedly laundering illegal products. Problems have also arisen due to the presence in Community ports of foreign vessels listed as IUU by RFMOs, as well as to the fact that the status for those vessels depends on the regime put in place in the various RFMOs, and is not regulated in a consistent way all over the EU territory. As a Market and Port public entity, the Community needs to adopt the necessary measures to avoid that IUU fishing is encouraged via the arrival of illegal products into its territory.

- **Despite improvements in the international legislation, the situation is still worrying in high seas areas and in waters of developing countries** where IUU fishing remains a very serious problem. As explained above in section 2, one of the main reasons for this continuation lies in the fact that a large number of fishing vessels carrying out IUU fishing are registered in States which do not exert an adequate control over their fishing fleet. Operators opt for those registers in order to disregard rules for the conservation and

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<sup>23</sup> On an annual basis, direct landings of fisheries products from countries flying the flag of third countries into Community ports amount to 75 000 tons, while the overall volume of importations of fisheries products is 4,5 million tons.

<sup>24</sup> Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy.



management of fisheries resources without being subject to prosecution or sanction by their Flag State. They are qualified as "Flags of non compliance". A limited number of measures have been enacted at regional level, within RFMOs, to counteract this problem. Black lists of vessels have been adopted in most RFMOs. The possibility to implement specific trade measures against States identified as non-cooperative by the Parties is also foreseen in some of those bodies. Such measures represent valuable steps in the right direction, but they have been only seldom used, notably because of the decision-making process of RFMOs, which rely on consensus and annual meeting. In addition, in waters under the jurisdiction of developing States, operators responsible for IUU fishing benefit from the lack of appropriate control capacities from the competent national authorities. Devising solutions which would be efficient enough to curb the activities of those vessels and address the complacency of those States towards IUU fishing is a major challenge for the Community policy against IUU fishing.

- The problems set out above result from the activities of foreign-flagged fleets committed outside community waters, and IUU fishing is often assimilated to those practices. The definition of IUU fishing agreed by the FAO encompasses however also illegal activities occurring in the EEZ of coastal States. This requires that the state of the implementation of the rules of the CFP within the Community is also taken into account as part of the assessment of the impact of IUU fishing on the Community. The current Community framework provides for a comprehensive system of control, inspection and enforcement of fisheries rules applying within Community waters and to Community operators. **The Community is however deeply affected by illegal fishing taking place within Community waters and/or carried out by Community operators.** This has been acknowledged again recently by the Commission which has stated that "*compliance with key rules of the CFP remains poor in many fisheries*"<sup>25</sup>. Noticeable examples include the cod fishery in the Baltic Sea, with important levels of catches going underreported, or the fishery for the Northern stock of European hake, where landing of undersized fish is still a considerable problem in many Member States. Reaching a higher degree of compliance within Community waters and by Community operators shall constitute a major task for the Community in its efforts to step up its policy against IUU fishing. This is a necessity to avoid that the rules and principles of the CFP designed to conserve and manage fish stocks are put in jeopardy, as well as for the credibility of the international action of the Community against IUU fishing.

From the elements described above, it results that the main challenges which the Community has to face in its policy against IUU fishing are the following:

- How to prevent the importation of IUU products from 3<sup>rd</sup> countries into the Community market? This should be considered as the main challenge for the Community, given the shortcomings of the current Community system against IUU fishing in that respect.
- How to enact more efficient measures for identification and sanction of vessels and States engaged in or supporting IUU activities in the high seas or in waters of developing countries?
- How to improve the level of compliance with the rules of the Common Fishery Policy within

<sup>25</sup> Report from the Commission to the Council and the European Parliament on the monitoring of the Member States' implementation of the Common Fisheries Policy 2003-2005 - COM(2007) 167.

EC waters and/or by EC operators?

Those three challenges can be considered as constituting the main problems caused by IUU fishing to the Community, and for which an adequate strategy needs to be devised.

## SECTION 3: OBJECTIVES

### General Objective

The general objective of the Community is to review and enhance its contribution to the fight against IUU fishing in order to increase the efficiency of action against this international plague and its environmental, economic and social consequences.

This objective should result in improved management of fisheries resources, and should be seen within the general aim of the Common Fisheries Policy to "*ensure exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions*"<sup>26</sup> and, more generally, as contributing to the Sustainable Development Strategy agreed by the European Council in June 2006 via its focus on the protection of natural resources. It is also in line with the objectives set out at the World Summit on Sustainable Development in 2002 regarding fisheries management<sup>27</sup>.

Striving for better ocean governance is also one of the main principles guiding the current reflections on a future Maritime Policy for the Community.

### Specific objectives

In line with section 2, pursuing this general objective implies that the following specific goals are attained:

- Reduce the vulnerability of the Community market to imports of fisheries products stemming from IUU fishing so that only products legally harvested are imported into the Community;
- Improve mechanisms designed to identify and sanction vessels and States engaged in or supporting IUU fishing in the high seas and/or in the waters of developing countries;
- Increase compliance with the rules of the Common Fisheries Policy with a view to adequately sanctioning illegal fishing carried by Community operators within or beyond Community waters.

It is critical that the strategy by the Community is comprehensive and cover all the facets of the IUU problem and all activities along the supply chain (from the net to the plate). Against this background, the Community policy should aim to fulfil all the specific objectives identified

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<sup>26</sup> Article 2 of Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy (OJ L 358, 31.12.2002, p. 59).

<sup>27</sup> Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August - 4 September 2002 (United Nations publication), cf. in particular paragraph 31" To achieve sustainable fisheries, the following actions are required at all levels: (...) Urgently develop and implement national and, where appropriate, regional plans of action, to put into effect the international plans of action of the Food and Agriculture Organization of the United Nations, in particular the International Plan of Action for the Management of Fishing Capacity by 2005 and the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing by 2004. Establish effective monitoring, reporting and enforcement, and control of fishing vessels, including by flag States, to further the international plan of action to prevent, deter and eliminate illegal, unreported and unregulated fishing".

below according to a coherent approach, as leaving aside one of them would result in major gaps remaining in place and jeopardizing the whole approach.

For all those three specific objectives, the Community should be guided by its overarching approach consisting in a full implementation of its existing international commitments against IUU fishing and a consolidation of its action at international, regional and Community levels on this matter.

## **SECTION 4: POLICY OPTIONS**

The policy options which should underpin the future Community policy against IUU fishing should be assessed against their relevance in respect of achieving the objectives identified in section 3.

The following different policy options will be considered:

- *Continue current policy and focus on implementation and enforcement of existing framework only, without tabling new regulatory proposals;*
- *Focus on fishing activities outside the EC only, through action at international level and within Regional Fisheries Management Organisations;*
- *Develop a policy based on a case by case approach, which would be adapted to the specific features of the various fish species and areas subject to important levels of IUU fishing;*
- *Undertake a new and comprehensive initiative, covering both Community and non Community waters, relying on clear political principles and regulatory measures, which would complete the current framework and ensure better compliance with applicable rules, as well as allow the EC to adopt unilateral ambitious measures when multilateral measures fall short of EC expectations.*

### **OPTION 1: CONTINUE CURRENT POLICY AND FOCUS ON IMPLEMENTATION AND ENFORCEMENT OF EXISTING FRAMEWORK**

The starting point for this option lies in the observation that the continuation of illegal fishing by Community operators depends to a large extent to the deficient application of the current Community system for control, inspection and enforcement of the rules of the CFP.

Within the Community regime, the implementation of those rules falls within the competence of Member States. They have to establish appropriate mechanisms and adopt action guaranteeing that operators from the fishing sector abide by the rules agreed at Community level. In numerous occasions, the Commission has raised serious concerns as to the lack of sufficient measures by Member States for this purpose and the low priority given to improving the situation<sup>28</sup>.

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<sup>28</sup> Cf. report by the Commission on the implementation of the CFP, footnote n° 8, and the annual "compliance scoreboard" published under the following link:  
[http://ec.europa.eu/fisheries/cfp/control\\_enforcement/scoreboard\\_en.htm](http://ec.europa.eu/fisheries/cfp/control_enforcement/scoreboard_en.htm).

While situations differ from one Member State to another, a global assessment denotes the persistence of major shortcomings. The resulting need for action has been highlighted by the European Parliament in its Resolution adopted on 15 February 2007, which states that the EP *"reiterates its conviction that a crucial and obvious first step for the European Union to take is, first, to fully implement the existing provisions of the CFP and other relevant Community legislation in an effective, fair and rigorous manner, in order to reduce unreported and illegal fishing by Community vessels and in Community waters"*<sup>29</sup>.

Instead of launching new regulatory initiatives, which might just face the same implementation deficit as previous regulations and not be properly applied, the Community should give priority to an improvement of the implementation of the current framework.

The Commission could make a better and more frequent use of its own powers under its responsibility to ensure that Member States control, inspect and enforce adequately the rules in place.

Better regulation and good governance in the CFP decision-making process should also help improving the culture of compliance among fishing operators with regard to the implementation of measures affecting their activities.

Finally, this option could also rely on the best practices developed by the sector itself to contribute to the combat against IUU fishing, notably by Community operators involved in the importation of fisheries products investing in the establishment of their own certification schemes designed to avoid purchasing and selling fisheries products stemming from IUU fishing.

Technical aspects could be solved via a minimalist regulatory initiative. This would allow updating elements pertaining to control, inspection and enforcement in Community waters which for their majority date back from 1993.

Under this option, the Community should in the first place enhance the implementation of the current framework designed to address illegal fishing and use all existing means to this end.

## **OPTION 2: FOCUS ON FISHING ACTIVITIES OUTSIDE THE EC ONLY**

IUU fishing affects all oceans and many stocks.

Important fish stocks (notably tuna species) subject to high level of IUU fishing are composed of migratory species which spend a large part of their life on the high seas.

The accession to high sea fishing grounds by new fleets and the development of new technology for fishing practices have contributed to increase fishing effort in all parts of the oceans. International fish trade has also considerably increased over the past decades. It is not uncommon for catches from a fishing vessel flying the flag of a State A to be transhipped to another vessel with the flag of a State B, landed and processed in country C, re-embarked on a container ship flying the flag of a State D, before eventually reaching its final destination on the market of a State E.

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<sup>29</sup> European Parliament resolution on the implementation of the EU action plan against illegal, unreported and unregulated fishing, adopted on 15 February 2007 (2006/2225(INI)), paragraph 8.

Operators carrying out IUU fishing are taking advantage of this increased globalisation of fishing activities.

There is general consensus on the international dimension of IUU fishing, and on the fact that an effective response to the problem must be given at international level.

On its own, the Community is unable to address all the features of IUU fishing, notably when it comes to fishing activities occurring outside Member State's jurisdiction (non Community fishing vessels on the high seas or in waters of developing countries). The only way to regulate those areas and deter IUU practices there is via multilateral efforts.

Multilateral instruments dedicated to ensure sustainable management of fisheries resources are in place, both at global (FAO in particular) and regional (various RFMOs) levels. They have developed over the past decade policies and instruments designed to combat IUU fishing. Together with some of its international partners, the Community was a pioneer in prompting those bodies to make of the fight against IUU fishing one of their main fields of activity.

Discussions at global level within FAO focus currently on the need to improve and generalize the instruments and practices of Port State to tackle IUU fishing. To this end, Parties to this body have agreed to work on the text of a future international binding convention covering Port State control.

Other negotiations have been engaged as to the content of what should the "genuine link" between a vessel and its Flag State consist of. This is instrumental with a view to deterring the practices of some States to register fishing vessels over which they do not exert any control, and which are carrying out IUU fishing in total impunity.

Multilateral cooperation and exchange of information are also of particular importance to enhance Monitoring, Control and Surveillance (MCS) capabilities and efficiency of national administrations in charge of the fight against IUU fishing. To this end, projects are under development within the international MCS Network.

The Community is an important actor in those international negotiations, and should intensify its efforts to reach multilateral solutions to the problems caused by IUU fishing.

The same can be said at regional level within RFMOs. Those organisations are the best able to regulate fishing activities in high seas areas, which escape any national jurisdiction. Bringing together coastal States and long distant fishing nations with an interest in the area, their decisions constitute the single binding framework applying to the area considered. While their first purpose was mainly to allocate fishing possibilities between its members, RFMOs now devote an increasing amount of efforts to the establishment of an array of measures designed to combat IUU fishing. As a member of the vast majority of RFMOs, the Community should continue to push for the implementation of ambitious schemes against IUU fishing in those bodies.

Under this option, the priority should be for the Community to continue and strengthen its action to promote multilateral effective answers to the damages generated by IUU fishing.

### **OPTION 3: CASE BY CASE APPROACH, SPECIFIC TO STOCKS AND AREAS SUBJECT TO IUU FISHING**

IUU fishing is a world-wide problem. Yet it does not have the same intensity everywhere. It is clear that some fish stocks are subject to illegal harvesting at a larger scale and intensity than others. Current indications point out that, for example, blue fin tuna in the Mediterranean, cod in the Barents Sea or in the Baltic Sea, red fish outside the Icelandic EEZ, toothfish in the Antarctic feature as some of the stocks particularly hit by IUU fishing.

Against this background, it would seem appropriate for the Community to promote measures targeting the most important manifestations of IUU fishing. For each fishery, a specific analysis of the characteristics of IUU fishing would be performed, and tailor-made solutions would have then to be devised.

It should not result in uniform application of similar rules which may be excessively burdensome for fishing industry and administrations.

This variety would be reflected in the different manners according to which the Community is affected via the various manifestations of IUU fishing. IUU fishing does not call for the same Community action in all circumstances; this depends notably on whether the Community is directly affected when illegal fishing occurs within Member State's waters or indirectly affected as a market for fisheries products caught illegally beyond those waters. It also depends on which degree the Community is concerned by those practices.

Different approaches should be devised depending on whether the Community has direct jurisdiction over the offenders or if the Community intends to act against IUU fishing occurring outside areas under its jurisdiction. In both situations, focus should be placed on the identification of fisheries subject to particularly high levels of IUU fishing and the implementation of specific measures to remedy their problems. The nature and types of action to be promoted would however have to be different.

As far as **illegal fishing occurring within Community waters or by Community operators** outside those waters is concerned, the Community has direct means to act for a better enforcement of rules in place. Those activities fall under the respective competences of the Community or Member States as Flag States or coastal States. For those stocks identified as being subject to important illegal activities, specific monitoring and control measures could be put in place by the Community (for example more stringent catch reporting procedures than within the normal Community framework, increased inspection rate for vessels involved in the fisheries concerned...).

Member States should monitor in priority the implementation of those rules using all legal instruments at their disposal to this end, and the Commission would also pay particular attention to their correct enforcement by national authorities. Under the current situation, stocks concerned by this approach should include cod in the Baltic Sea or the Northern hake stock. Depending on the evolution of illegal fishing practices, new stocks could become subject to this particular scrutiny.

The Community on its own is not in a position to directly halt **illegal fishing activities occurring outside its jurisdiction**.

The Community acts within RFMOs to achieve that aim. As outlined in paragraph 2, this is necessary but insufficient. The main difficulty would still be the impossibility to adopt and implement stringent measures towards vessels flying flags of non compliance.

As a complement to its policy within RFMOs, the Community, acting as Market State, may also use various instruments to prevent products stemming from IUU fishing from reaching its territory. One of them is the establishment of certification systems which would apply to stocks subject to intense IUU fishing, on the model of the one covering toothfish under the CCAMLR, as well as those existing and under development in RFMOs competent for regulating tuna stocks (notably ICCAT). Under such schemes, all consignments of fisheries products from a given stock should be accompanied by a certificate guaranteeing their legality; without such certificates, trade of such products is prohibited. Building upon those precedents, the Community could decide on the establishment of certification schemes covering imports of fisheries products stemming from certain stocks. The stocks should be selected according to a combination of two criteria: the importance of the volume of importation of products from this stock for the Community, and the suspected high degree of IUU fishing affecting it. This could for instance be applied to cod from the Barents Sea or tuna stocks (insofar as they are not covered by existing schemes developed under the auspices of RFMOs). Such schemes could be extended to new stocks if their situation warrants it.

#### **OPTION 4: UNDERTAKE A NEW AND COMPREHENSIVE INITIATIVE, COVERING BOTH COMMUNITY AND NON COMMUNITY WATERS**

This option relies on the fundamental principle that an efficient strategy against IUU fishing should cover all the facets of the problem, along the whole supply chain, at international, regional and Community levels. If one link of the chain is not covered, this loophole is used by illegal operators and the whole system is undermined.

All the objectives identified in section 3 of this report should be addressed via adequate measures, and according to a coherent approach.

**The first objective relates to the need to reduce the vulnerability of the Community market to imports of fisheries products stemming from IUU fishing** so that only products legally harvested are imported into the Community.

To this end, the Community should use instruments at its disposal as trade entity. They should allow prohibiting or at least discouraging the importation into the Community of fisheries products caught in contravention of applicable norms. The compatibility of such measures with WTO requirements would have to be ensured.

**Two alternative approaches** could theoretically be followed in that respect:

- (1) the bilateral trade agreements of the Community with its international partners could include a clause allowing preferential market access for imports of fisheries products subject to the compliance of the third country with agreed conservation measures. This approach would however raise substantial difficulties. It could be read as establishing a preferential treatment to the benefits of countries respecting international conservation and management rules, while other countries would not be granted this advantage but still continue to be entitled to export their products into the Community. This would actually not solve the problem of the Community linked to the arrival on its territory of



fisheries products stemming from IUU fishing. Moreover, most of the major partners of the Community for fisheries trade, as well as many developing countries, already enjoy preferential treatments for access to the Community market. The impact of the measure would then be limited to a small number of third States, and not be comprehensive. Finally, the procedure would require a change in existing agreements or an inclusion of a specific clause in forthcoming trade agreements, which would take a long time. It would also imply that illegal fishing activities will contribute to the EC budget through the payment of the customs duties. For those reasons, this approach does not seem suitable to reach the objective of the Community to close its doors to the importation of fisheries products stemming from IUU fishing, and will not be analysed further in the present report;

- (2) another approach would consist in **declaring illegal under Community law the importation of fisheries products stemming from IUU fishing, and, as a complement, making the imports of fisheries products into the Community conditional upon the certification by the Flag State of the vessel which caught the products that they stem from non-IUU fishing.** Fishing vessels are indeed placed under the primary jurisdiction of their Flag State. It is therefore incumbent on Flag States to ensure that their fishing fleet carries out its activities in accordance with the relevant rules on conservations and management of fisheries resources.

Approaches based on the certification of the legality of catches have been developed by some RFMOs. The scope of such measures is however limited to some stocks (for example toothfish in the CCAMLR, or tuna species for tuna RFMOs, where such schemes are under development). Within the NEAFC, new measures have entered into force on 1<sup>st</sup> May 2007, which oblige fishing vessels wishing to land in the port of another Party to obtain a guarantee by its Flag State that catches on board are legal. The scope of those measures covers a delimited area (North East Atlantic), certain types of products (frozen products) and transport means (fishing vessels and vessels used for processing or transshipment operations).

The Community has been initiating or supporting those measures within RFMOs, and will continue to promote their adoption and generalisation. This will however not be achievable on a short term basis. In addition, this multilateral approach will not be suitable for stocks under the jurisdiction of third States, which are sometimes heavily exploited by foreign vessels practicing IUU fishing (for example in some Sub-Saharan African coastal States).

Against this background, the Community could consider the establishment of its own certification scheme, applying to all imports of fisheries products into its territory. Under this scheme, each consignment of fisheries products imported into the Community would have to be accompanied by such certificates. Those documents, based on the model existing for some stocks in some RFMOs, would gather all information relevant for defining the legality of the fisheries products concerned. The presence and exactitude of the certificate would be checked by the authorities of the Member States at the moment of the entry into the Community of the products concerned. If there are no certificates or if they are not complete or found to be invalid, the entry would be refused.

To be efficient and comprehensive, the certification scheme should encompass all importations of products stemming from marine capture fisheries, including processing products. This notably implies that third countries where fish is processed before being exported into the Community are able to guarantee that the products processed stem from legal fishing, even when the vessel which harvested the catches flies the flag of another country. All means of

transportation should be covered (fishing ports, but also maritime ports and airports notably). To a certain extent, this certification scheme would rely on an approach similar to the system on health requirements which apply to all products imported into the Community<sup>30</sup>.

In case of doubts on the validity of catch documents, the third countries concerned (flag states countries of processing or transit) would be requested to cooperate in their verifications.

To assist control authorities from Member States in their tasks, an alert system could be set up, designed to inform them about the doubts pertaining to the compliance with conservation measures by products which could be exported to the EC. Similar mechanisms applying to imports currently exist in the sanitary field as well as within the context of preferential tariff arrangements<sup>31</sup>.

To complete those trade measures, specific provisions could apply to transshipments at sea and access to Community ports.

When operated at sea (in particular on the high seas), transshipment operations generally escape any kind of proper control by public authorities as to the legality of the catches and the activities of the vessels concerned. Transshipments at seas therefore constitute a privileged manner for operators involved in IUU fishing to dissimulate their catches and render their tracking difficult. With a view to ensuring a better monitoring of the supply chain and closing such loopholes, the Community should continue to press for the adoption of tighter regulation of transshipments at sea, which could include a total ban of those practices. To show its commitments to adopt stringent measures in that respect, the Community could already, in parallel to international progress on the issue, propose initiative on that matter which would apply to Community fishing vessels wherever they operate.

A generalization of stringent measures prohibiting access by vessels listed as IUU by RFMOs to Community ports, or authorizing access on the condition that their catches are confiscated should also be put in place in an harmonized manner across the Community.

**The second objective consists in improving mechanisms designed to identify and sanction vessels and States engaged in or supporting IUU fishing on the high seas and/or in the waters of developing countries.**

Increase monitoring and surveillance of those areas and sanction adequately vessels responsible for IUU fishing and States hosting their flags should be the two pillars of Community action to attain this objective.

- **The first step in that direction consists in a consolidation and intensification of the Community policy against IUU fishing at multilateral and bilateral levels.**

**At multilateral level**, the Community should pursue its action for the development and implementation of control and inspection schemes covering high seas areas subject to the

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<sup>30</sup> Cf. Council Directive 91/493/EEC of 22 July 1991 laying down the health conditions for the production and placing on the market of fishery products (OJ L 268, 24.9.1991, p. 15).

<sup>31</sup> Cf. Communication from the Commission to the Council and the European Parliament setting out conditions, in the context of preferential tariff arrangements, for informing economic operators and Member State administrations of cases of reasonable doubt as to the origin of goods (OJ C 348, 5.12.2000, p. 4).

competence of RFMOs. In addition, the recent approach by those bodies consisting in identifying and listing vessels carrying out IUU fishing should also be intensified. The same logic should apply to the identification of States supporting IUU fishing, which has resulted in the application of trade sanctions against some of them in only one RFMO (ICCAT) so far.

The Community should also support international progress towards better social standards on board all fishing vessels. More specifically, it should promote a rapid and large ratification of the new consolidated international labour convention on work in the fishing sector adopted by the International Labour Organisation in June 2007. The Convention establishes minimum standards for working and living conditions on board ships and introduces enforcement and inspection mechanisms. In line with the communication on the contribution of the EU on promoting decent work for all in the world of 24 Mai 2006 and the Council Conclusions of 1 December 2006 on decent work, the Commission intends to explore ways to facilitate the speedy ratification and implementation of this Convention by EU Member states.

A similar approach should be promoted in relation to international instruments on safety for fishermen and fishing vessels. This is in particular the case for the 1993 Torremolinos Protocol of the International Convention for the safety of fishing vessels, which has so far been ratified by an insufficient number of countries to enter into force.

**In relation with coastal developing States**, the Community should also make use of all instruments at its disposal to contribute to improve management and control of their maritime waters. In that context, at bilateral level, the mutation from purely fisheries access agreements to Fisheries Partnership Agreements (FPAs), initiated in 2004, should be confirmed. An important part of those FPAs is dedicated to the support and financing by the Community of measures precisely designed to ameliorate the management and control of fishing activities accruing in the Economic Exclusive Zones of our Partner countries.

Within its development policy, the Community also attaches a great importance to this aspect. To render this strategy more efficient, the Community has recently engaged a shift towards a regional approach, implying all coastal States concerned to put in place a coherent strategy in areas known for their vulnerability to IUU fishing. A first step has been recently achieved in the South-West Indian Ocean, where a Regional Plan for Surveillance of fishing activities has been agreed in January 2007 gathering the Community and five coastal and island States, supported by Community financing of MCS actions for an amount of 7 Million € over three years. An extension of such regional schemes to new areas should be promoted in the future. The future Economic Partnership Agreements under negotiation between the Community and different ACP regions could also be used as a framework for developing and funding action against IUU fishing.

- **The second step would be based on a generalisation, at Community level, of the most advanced measures adopted within RFMOs against IUU fishing. RFMOs have all developed policy and instruments dedicated to the combat IUU fishing.** Yet, this has been according to the proper agenda and priorities of each of those bodies. Being Party to a large number of those organisations, the Community is bound to implement all their decisions (which cover different areas), but is also able to assess their different degree of efficiency and ambition on the various items covered. As far as possible, the Community should continue to press for a harmonized approach amongst RFMOs in their fight against IUU fishing. Without waiting for such convergence to be achieved, the Community should generalize the implementation of the most advanced action agreed within RFMOs on control, inspection and enforcement as far as Community operators are concerned. This

would provide for simpler rules for them and for national administrations as there would only be a single set of measures to consider. This should also provide for better efficiency in action against IUU fishing.

Measures concerned by such generalisation could notably include provisions adopted within CCAMLR on prosecution and sanction of "nationals" of Parties supporting or engaged in IUU fishing outside the territory of their Flag States, or provisions adopted within ICCAT on the sightings of vessels infringing the rules by vessels from Parties to the organisation.

- **Finally, the Community should consider the adoption of unilateral action to overcome the problems faced by the international community in identifying and sanctioning properly vessels and States engaged in or supporting IUU fishing.** While progress realised within RFMOs to list IUU vessels and adopt measures against their Flag States should be supported, the Community also considers that it is under its responsibility to enact unilateral measures when there are clear and objective elements demonstrating that those efforts fall short of effectively addressing the problem created by Flag States unwilling or unable to exert an adequate control over their fishing fleet. The behaviour of such States is a major reason for the persistence of IUU fishing, and the decision-making process within RFMOs, relying on consensus by all Parties and annual meeting, sometimes hinder them to enact efficient measures targeting those States or vessels flying their flag. The diplomatic demarches engaged by the Community in respect of States hosting flags of fishing vessels suspected or confirmed to have carried out IUU fishing usually result in limited outcomes.

Under the current situation, the number of vessels listed as IUU by RFMOs is rather limited compared to the overall activity of vessels suspected of carrying out IUU fishing. In 2007, it amounted to 121 vessels within the main RFMOs<sup>32</sup> to which the Community is a Party, less than 10% of the estimated overall number of fishing vessels flying a flag of convenience. In addition, those vessels-based lists established by RFMOs by nature do not cover vessels active outside areas covered by those Organisations (for example in the EEZ of third countries off the West African coast). On the model of what is being done by some of our international partners (notably Norway), the Community should put in place mechanisms for the identification and subsequent application of penalty **measures in respect of "IUU vessels"**, which would complement lists drawn up by RFMOs. The rights of the operators should be guaranteed through a contradictory procedure with its Flag State, the criteria for the listing should be clear, objective and transparent, and the de-listing process when the criteria are not met any longer should also be foreseen.

As to **measures directed towards States hosting "flags of non compliance"**, their adoption is only foreseen in very few RFMOs, and they have been under-used so far anyway. Addressing those shortcomings, the Community should build itself a transparent and fair mechanism to identify those States which place themselves outside the international legality and thereby facilitate IUU practices, and to apply appropriate measures to encourage them to ensure compliance by their vessels with management and conservation rules. The procedure for adopting those measures should comply with all the requirements laid down under the GATT agreement, notably prior hearing of the authorities of the third State concerned and full motivation.

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<sup>32</sup> ICCAT, IATTC, IOTC, CCAMLR, NAFO, NEAFC.

The listing by the Community should be based on a combination of criteria, including:

- the status of a State as Party or not to the international instruments dedicated to the conservation and management of fisheries resources,
- its participation to RFMOs and its willingness to apply the rules agreed by those organisations
- its track record and current practices in relation to manifestations of IUU fishing, and notably its cooperation with the Community in the investigation and follow up given to such activities, as well as whether effective enforcement measures have been adopted against operators responsible for IUU fishing activities,
- the history, nature, circumstances, extent and gravity of IUU fishing activities carried out by vessels flying the Flag of the State considered, by its nationals or by vessels operating in its waters or using its ports, or involving the importation into its market of fisheries products stemming from IUU fishing .

The measures should also be proportionate and not introduce arbitrary or unjustifiable discrimination between countries or disguised restrictions on international trade. Such measures should include trade measures (including import bans) as well as restrictions for Community operators to engage in commercial relations pertaining to fishing activities with operators from the third State concerned. A procedure for the de-listing of the States concerned should also be put in place, once they are able to demonstrate that they are fulfilling their international obligations with respect to IUU fishing.

The relevance of using trade-related measures towards States failing to comply with their international obligations for the conservation and management of fisheries resources has been highlighted, albeit usually within a multilateral context, by the UN General Assembly, notably in its latest Resolution on sustainable fisheries, which "*requests States and relevant international bodies to develop, in accordance with international law, more effective measures to trace fish and fishery products to enable importing States to identify fish or fishery products caught in a manner that undermines international conservation and management measures agreed in accordance with international law (...)*". This should also be considered against point 10 of the declaration drawn up at a Ministerial Conference held in 2005 in St John's (Canada): "*We recognize that States, REIOs or entities that are neither members of RFMO/As nor have agreed to apply their conservation and management measures shall not have access to the fisheries resources to which those measures apply and any catches of such fishery resources should be denied market access in accordance with international law*".

The European Parliament also "*considers that the Commission should include the following actions in its proposal to be adopted in EU law: the legal origin of fish must be demonstrated before it is allowed to be offloaded in EU ports or imported into the EU; such proof must include, for both landings from fishing vessels and transshipments:*

- *in the case of fish products from waters regulated by an RFMO, documents establishing that the fish products to be landed have been caught in accordance with the rules of that RFMO and that the quotas allocated to the contracting party under whose flag the vessel is sailing have been respected;*

- *in the case of fish products caught in the exclusive economic zones of third countries, documentation establishing that the vessel is authorised to fish or is in possession of a fishing licence for those waters and for the species to be landed*<sup>33</sup>"

**The third objective** would aim at addressing the lack of compliance with the rules of the CFP by Community operators within or beyond Community waters.

- **As outlined in option 1, one key aspect is the improvement of the policy carried out by the Community and the strengthening of the means devoted by Member States to the enforcement of Community rules.** This should be the first step to improve compliance by Community operators within or beyond Community waters.
- **A second, complementary step would be to promote at Community level the approximation of sanctions corresponding to serious infringements against the rules of the CFP perpetrated by Community operators.**

**Sanctions in place within the Community vary to a great extent across Member States.** Furthermore their levels are often too low to ensure the loss by violators of the financial benefits gained from their illegal activities.

This can be deduced from the various provisions on penalties corresponding to serious infringements in force in the Member States. An examination of the **existing legislation** in 10 Member States<sup>34</sup> (Belgium, Denmark, Spain, France, Ireland, Italy, Netherlands, Portugal, United Kingdom) reveals that the maximum levels for such penalties vary between 6000€ and 300 000€ (bearing in mind the fact that, in some countries, judges are free to decide on fines exceeding maximum levels in the most serious cases, and there may be no maximum set out in the legislation in some other Member States).

Accompanying sanctions may also be pronounced in addition to fines (essentially confiscation of the catches or gear, and withdrawal of fishing licences). In the legislation of some Member States, the level of fines may be linked to the value of illegal catches. In some others, the maximum levels of sanctions vary depending on the size of the vessels (notably in Ireland). Jail sentences are foreseen in two Member States (Netherlands and Italy). In most Member States, various administrative penalties are also in place (suspension or withdrawal of fishing licence, deduction of quotas, confiscation of catches or gear, prohibition to carry out fishing activities for a certain period of time, interdiction to receive public aid for a certain period of time following the conviction, written warnings, fines...).

The **application of the national systems** on sanctions has been documented by the Commission since 2000 in yearly reports, drawn up on the basis of reporting by Member States<sup>35</sup>. Data show notably that the number of serious infringements recorded by Member

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<sup>33</sup> European Parliament resolution on the implementation of the EU action plan against illegal, unreported and unregulated fishing, adopted on 15 February 2007 (2006/2225(INI)), paragraph 18.

<sup>34</sup> Cf. Study by Océanic Développement (FISH/2006/20) on the definition of a new list of serious infringements against the rules of the CFP, and introduction a maximum level for sanctions corresponding to serious infringements and offences (2007).

<sup>35</sup> Council Regulation (EC) No 1447/1999 of 24 June 1999 establishing a list of types of behaviour which seriously infringe the rules of the common fisheries policy ( OJ L 167, 2.7.1999, p. 5), and yearly reports by the Commission on that basis (cf. for the latest edition covering 2004: Communication from the Commission to the Council and the European Parliament - Reports from Member States on behaviours which seriously infringed the rules of the Common Fisheries Policy in 2004 - COM(2006) 387).

States has been steadily growing since 2000, while no tangible increase in the amount of the penalties imposed can be noticed. The average amount for the sanctions pronounced in relation to the most serious infringements (fishing without authorisation or without licence, misreporting of catches, non respect of minimum landing sizes) amounts to approximately 2000€. In average, this is equivalent to the value of the turnover generated by a vessel for between one to four fishing days (depending on the fisheries concerned).

The confiscation of catches coming as a complement to fines is used only in relation to one third of the serious infringements detected, while the suspension of the fishing licence is even less common (less than 20% of the cases). There are considerable variations in the manner according to which similar infringements are penalized across the Community. As an example, the average level of fines pronounced in relation with serious infringements to fisheries law amounts to approximately 50€ in Estonia, while reaching a level of approximately 13000€ in the United Kingdom. Moreover, the use of accompanying measures coming in addition to fines is widespread in some Member States and less common in others. The same difference prevails with respect to the use of administrative measures.

Fisheries policy falls within the exclusive competence of the Community. As a result, all rules pertaining to this activity are adopted at Community level. Those rules feature in Regulations and are directly binding on all Community fishermen. It is vital for the credibility of the Common Fisheries Policy that those rules are applied evenly in all Member States. This is currently not the case: the same breach of the same rule is punished very differently depending on the Member State concerned. As a result, IUU firms are encouraged to operate, tranship or land in States where penalties can be assumed as regular operational costs, and the overall level of sanctions within the Community is generally viewed as not sufficiently dissuasive.

An effective sanctioning system is considered essential to deter illegal operators to perpetuate their activities. This in line with the FAO Plan of Action<sup>36</sup>, according to which "*States should ensure that sanctions for IUU fishing by vessels and, to the greatest extent possible, nationals under its jurisdiction are of sufficient severity to effectively prevent, deter and eliminate IUU fishing and to deprive offenders of the benefits accruing from such fishing*". And the European Parliament "*considers that the Commission should include the following actions in its proposal to be adopted in EU law: (...) common minimum penalties for serious infringements must be applicable in all Member States, and must be sufficiently dissuasive*<sup>37</sup>".

At Community level, progress has been made recently towards the definition of infringements and corresponding sanctions in the field of environmental crime<sup>38</sup> or ship source pollution<sup>39</sup>. Just like in those two sectors, illegal fishing can be in some instances qualified as a criminal activity. Nothing can be done by a single Member State to remedy the current problem of inconsistent and insufficient levels of sanctions across the Community. It is therefore legitimate for the Community to act in that domain. In 2002, within the framework of the CFP reform, the

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<sup>36</sup> International Plan of Action to prevent, deter and eliminate illegal, unreported and unregulated fishing, Food and Agriculture Organisation (FAO), 2001, paragraph 21.

<sup>37</sup> European Parliament resolution on the implementation of the EU action plan against illegal, unreported and unregulated fishing, adopted on 15 February 2007 (2006/2225(INI)), point 18.

<sup>38</sup> Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law - COM(2007) 51, 9.2.2007.

<sup>39</sup> Directive 2005/35/EC of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements and Council Framework Decision 2005/667/JHA of 12 July 2005 to strengthen the criminal-law framework for the enforcement of the law against ship-source pollution.

Council undertook to adopt future initiatives pertaining to the establishment of "*a catalogue of measures to be applied by Member States relating to serious infringements*"<sup>40</sup>.

Along this line, a system to approximate the maximum levels of sanctions that Member States must impose in respect of serious infringements to fisheries laws could be defined at Community level. In line with the case law of the Court of Justice<sup>41</sup>, the Community shall not be prevented from taking measures which relate to the criminal law of the Member States which it considers necessary in order to ensure that the rules which it lays down are fully effective and when the application of effective, proportionate and dissuasive criminal penalties by the competent national authorities is an essential measure for combating serious offences in the area covered.

The definition of serious infringements would rely on lists of such infringements adopted under Community law (cf. Council Regulation 1447/1999) and by some RFMOs (notably NAFO or NEAFC). The maximum level of sanctions should be set at a much higher level than what is currently observed in the Member States, to reflect the imperative need to impose strong and deterrent measures dissuading fishermen from infringing the rules. Given that one primary aim of the Common Fisheries Policy is to manage properly and conserve natural resources, the levels should be comparable to those proposed by the Commission for the protection of environment through criminal law. This would notably imply that prison sentences are foreseen for the most serious offences.

It could be accompanied by a regime of immediate enforcement measures, applying to persons found in flagrante delicto while committing serious infringements, and designed to prevent the continuation of those infringements. Those measures would include the immediate cessation of fishing activities, the rerouting to port of the vessel, the ordering of a bond, the temporary seizure of illegal fishing gear, catches or fisheries products, and the temporary immobilisation of the vessel or the suspension of the fishing licence. In addition, the Community could encourage the adoption by Member States of accompanying sanctions to fines (such as the confiscation of catches or gear, suspension or withdrawal of fishing licences...) as they often constitute more deterrent penalties than "traditional" financial penalties.

Finally, in line with the objective to prohibit the importation into the Community of fisheries products stemming from IUU fishing, the infringement against this prohibition should be subject to the regime of sanctions defined at Community level. The scope of such regime would extend to Community waters, to persons on board Community vessels, as well as to Community legal and natural persons wherever they exercise their activities.

Such system would create a level playing field within the Community in terms of sanctions of fisheries offences, and address the problem caused by infringements from Community nationals involved in international IUU activities.

- **Specific provisions on Community nationals would also have to be devised, with a view to forcing Member States to prosecute and sanction effectively those who carry out IUU fishing outside the Community.** Transparency should be increased as to the legal and financial links maintained by Community nationals with fishing vessels flagged in third

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<sup>40</sup> Article 25(4) of Council Regulation (EC) No 2371/2002.

<sup>41</sup> Cf. ruling of the Court of 13 September 2005 (Case C-176/03 Commission v Council) and the Communication by the Commission on the implications of the Court's judgment of 13 September 2005 (COM(2005) 583 final/2, 24.11.2005).



countries. The recent progress made by some RFMOs regarding rules to improve the investigation, prosecution and sanction of Community nationals should also be generalized within the Community.

- **Finally, the Community should contemplate the setting up of a black list of fishing vessels flying the flag of Member States.** Such lists have been established so far only within RFMOs.

The list could be directed towards those Community vessels seriously suspected to have committed serious infringements, pending their sanction by their Flag States. In the absence of sanction by this Flag State, and if elements demonstrate that the infringement effectively occurred, the vessels in question would be subject to a set of penalties decided by the Commission, on the model of the measures in place in RFMOs targeting vessels placed on an IUU list. The main impact of this list would be to address the situation of Flag States within the Community which do not properly sanction vessels flying their flag despite their involvement in illegal fishing.

Alternatively, the black list of Community vessels could gather those vessels which have been repeatedly sanctioned by their Flag State (or coastal States in the waters of which they infringed applicable rules). The list would be maintained by the Commission or the Community Fisheries Control Agency. All vessels listed would be subject to particular attention by their Flag State as well as by Port or coastal States where the vessels carry out their activities or wish to land. In particular, they would be subject to a systematic inspection when halting in Community ports.

## **SECTION 5: LIKELY ENVIRONMENTAL, ECONOMIC AND SOCIAL IMPACTS OF THE DIFFERENT OPTIONS**

The **different actors which may be affected** by the future policy of the Community are the following:

**The Community fishing sector.** It suffers from competition by operators responsible for IUU fishing on fishing grounds as well as on the final market (notably for species subject to important international trade like tuna, swordfish, cod, shrimps or cephalopods). It is composed of approximately 70 000 SMEs, for a total of fishing vessels registered in the Community reaching some 90 000 units. The number of Community fishermen working on board those vessels is assessed to amount to 210 000 persons. The overall turnover of this sector has been estimated at amounting to around 8,8 billion €.

**The Community industry active in the processing and marketing of fisheries products.** This sector relies heavily on the supply of imported products (which represent 60% of the fisheries products market within the Community) for raw material and semi-processed products. The majority of the 6 000 firms concerned generate a turnover of approximately 18 billion € and employ some 150000 workers. An important feature of this sector is its high degree of internalisation: in order to benefit from reduced labour costs and preferential tariffs, important firms from this sector have invested in third countries and delocalized part of their production. This is notably the case in the tuna sector, where Community firms have created subsidiary companies processing raw material on the spot (canning or filleting).

The tables below present a repartition of employment in those sectors broken down by Member States, as well the regions within the Community where employment linked to the fisheries sector has the highest proportion<sup>42</sup>.

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<sup>42</sup> Cf. European Commission "*Employment in the fisheries sector*" Luxembourg: Office for Official Publications of the European Communities, 2006.

Table 1. EU overview – employment by country and fisheries sub-sector, 2002-2003

Member State	Total employment (*1000)	Total fisheries sector	Fisheries sector as % of total employment	Fishing	Processing	Aquaculture
Austria a)	3,736	734	0.0%		234	500
Belgium a)	4,070	1,743	0.0%	666	993	84
Cyprus	327	1,175	0.4%	926	122	127
Czech Rep.	4,701	2,267	0.0%		100	2,167
Denmark	2,707	14,060	0.5%	4,258	8,948	854
Estonia	594	6,700	0.0%	2,500	4,100	100
Finland	2,365	2,740	0.5%	900	1,339	501
France b)	24,584	64,712	0.3%	21,436	21,676	21,600
Germany a)	35,927	16,409	0.1%	1,972	11,404	3,033
Greece	4,042	37,701	0.9%	30,196	3,360	4,145
Hungary a)	3,922	1,680	0.0%		150	1,530
Ireland	1,797	10,584	0.6%	5,147	3,439	1,998
Italy	22,054	47,957	0.2%	38,157	6,708	3,092
Latvia a)	1,007	10,580	1.1%	3,670	6,484	426
Lithuania	1,433	6,565	0.4%	2,550	3,700	315
Luxemburg						
Malta a)	148	1,441	1.0%	1,303	33	105
Netherlands	8,121	9,049	0.1%	2,547	6,382	120
Poland	13,617	19,923	0.1%	4,500	13,423	2,000
Portugal	5,118	33,229	0.6%	20,457	6,300	6,472
Slovak Rep.	2,162	1,180	0.1%		947	233
Slovenia	897	623	0.1%	132	237	254
Spain a)	16,695	92,777	0.5%	53,849	27,000	11,928
Sweden a)	4,314	3,955	0.1%	1,912	1,843	200
United Kingdom	28,696	33,534	0.1%	11,774	18,180	3,580
<b>Total</b>	<b>193,034</b>	<b>421,318</b>		<b>208,852</b>	<b>147,102</b>	<b>65,365</b>
- male		310,152		200,231	64,944	44,978
- female		111,165		8,621	82,158	20,386

a) 2004-2005; b) incl. Drom.

Table 2. Classification of the NUTS-2 regions according to the role of the total fisheries sector, 2002-2004

Fisheries sector as % of total employment	Number of employed persons in the fisheries sector			
	> 10,000	7,500-10,000	5,000-7,500	2,500-5,000
> 2.0%	Es: Galicia	Pt: Algarve	UK: NE Scotland	Gr: Sterea Ellada, Voreio Aigaio, Notio Aigaio Pt: Açores
1.0-2.0%	Fr: Bretagne Lv: Latvia	Fr: Poitou-Charent.	Pl: Pomorskie Ee: Estonia Fr: Basse-Normandie	UK: Highl. and Islands; E. Riding, N. Lincoln. Ie: Border, Midl., West. Es: Cantabria; De: Bremen Gr: Peloponnisos, An. Maked., Thraki
0.5-1.0%	Dk Denmark Es: Andalucia It: Sicilia		It: Puglia Es: Pais Vasco Gr: Kentriki Makedonia	Pl: Zach. Pomorskie Es: Canarias, Murcia Fr: Lang.-Roussillon It: Sardegna, Calabria

For the **retail industry and consumers**, which are at the end of the supply chain, the policy of the Community should also have some impact.

The **authorities of Member States** in charge of control of fishing activities and customs will also be impacted by the proposals by the Commission, which may entail some additional tasks and a more active role in their practices against IUU fishing.

The **fishing sector from third countries** will be affected by the future strategy of the Community. This is in particular true for trade measures which might be adopted by the Community to avoid the importation of IUU fisheries products into its market.

The **fishing trade and processing sector from third countries** should also be considered in the context of those possible trade measures decided by the Community.

**Public authorities from third States** will also be affected in so far as Community measures may imply a strengthening of their policy with regard to fishing vessels flying their flags, with regard to the monitoring of their maritime waters and in respect of the monitoring of products which are processed in or transit via their territory. Specific attention should be paid to developing countries exporting fisheries products into the Community;

**Regional Fisheries Management Organisations** might also be affected by the measures envisaged by the Commission

Finally, **operators carrying out IUU fishing** should be the main target of the strategy by the Community.

As outlined in section 2, **IUU fishing has multiple negative environmental, economic and social consequences. The impacts of the four policy options identified in section 4 will be assessed against their efficiency to curtail IUU fishing and thereby reduce those negative consequences.** In addition, the impacts of those options which are not directly linked to the fight against IUU fishing needs also to be considered.

Due to the clandestine nature of IUU fishing, reliable data on IUU catches and trade do not exist or are not publicly available. As described in the preceding sections, there are rough estimations of IUU catches, value of landings and imports into the Community, but even the authors of such estimations warn against the accuracy and usefulness of their own estimations.

As a consequence the measurement of economic impacts will largely be of a qualitative nature. It is expected that some of the measures advocated in the different policy options (increased cooperation for Monitoring, Control and Surveillance of fishing activities, certification scheme applying to imports of fisheries products) will significantly enhance the quantity and quality of data relevant for measuring IUU catches and trade. However, any positive effect in this respect will only arise in the medium to long term. Potentially measurable or at least tangible socio-economic and environmental impacts will result mainly from some of the measures included in the different options, which will be discussed in the present section.

## **1. CONTINUATION OF CURRENT POLICY AND FOCUS ON IMPLEMENTATION AND ENFORCEMENT OF EXISTING FRAMEWORK**

### **1.1. Impact on IUU fishing**

The development of an approach focused on a better implementation of the current framework and aiming to increase compliance by Community operators could contribute to a certain reduction of illegal practices.

One key aspect in that regard should be for Member States to substantially step up their control and enforcement policies and practices. In many Member States, the efforts devoted to the control of fishing activities are too limited, notably when carried out by services responsible for

multiple tasks and for which fisheries control is a low priority. Prosecutions and sanctions of offenders seldom result in deterrent penalties.

The Commission has at its disposal several instruments which could be used to remedy some of those weaknesses. The main tool is the possibility to launch infringement procedures under Article 226 of the EC Treaty against those Member States which do not comply with their duties to implement correctly the provisions on control, inspection and enforcement laid down in Regulations 2847/93 and 2371/2002. Those procedures could rely to some extent on the findings by Commission inspectors whose missions are precisely to investigate the state of the implementation of the CFP by public authorities from Member States.

Various examples have shown that the launching of comprehensive infringement procedures pertaining to the main shortcomings of the national system of control and sanction of a Member State has been able to prompt significant changes in its enforcement policy and practices. In some cases, those changes occurred at an early stage of the procedure, even before the submission of the case by the Commission to the Court.

Cases brought before the Court also produced important impacts, compelling for example one Member State (France) to improve considerably its control system in order to implement the Court ruling C-304/02 delivered on 12 July 2005. This ruling resulted in a fine to France of a total amount of 78 Million € for failing to comply with its obligation to monitor the landing of undersize fish and sanction offenders. The consequences included notably for the French administration a substantial increase in control means and staff dedicated to fishing activities and an amendment to its sanctioning system to fix higher levels of fines corresponding to infringements to fisheries rules.

Infringement procedures by the Commission can therefore produce significant improvements in the national control systems of Member States. Other instruments could also be used by the Commission against failure by Member States to implement correctly their duties under the CFP. Early fishery closures for a given Member State or preventive measures decided by the Commission on its own constitute very efficient and immediate measures<sup>43</sup>. The logic is that the Commission should be entitled to adopt decisions impacting fishing activities and potentially suspending those when it is clear that Member states have not acted according to CFP rules.

Going beyond the simple "repressive" side of the question of illegal fishing, it seems also essential to develop a culture of compliance among fishing operators. In some cases, fishermen infringe the rules because they do not perceive them as legitimate or justified. In that regard, it is of high importance to associate the fishing sector to the decision-making process leading to the adoption of the rules governing their professional activities.

In that context, a key element for Community institutions is an early consultation of representatives of the fishing sector and due consideration given to their advice before the tabling of new policy or regulatory proposals pertaining to the management of fisheries. Interesting work has been engaged since the reform of the CFP in 2002 with the setting up of the Regional Advisory Councils, and it should be intensified to raise fishing operators' ownership of Community rules.

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<sup>43</sup> Cf. in particular the measures foreseen in Article 23(4) and 26(2), (3) and (4) of Council Regulation (EC) No 2371/2002; for an example of the use of those measures, cf. Commission Regulation (EC) No 804/2007 of 9 July 2007 establishing a prohibition of fishing for cod in the Baltic Sea (Subdivisions 25-32, EC Waters) by vessels flying the flag of Poland (OJ L 180, 10.7.2007, p. 3).

Pursuing this option could trigger some important improvement in reducing illegal fishing carried out by Community operators within and beyond Community waters, as they would be subject to more frequent and adequate control and sanctions by their national administrations. On a longer term, better ownership of the rules should lead to better respect of legality by operators, dissuading those who infringe the law to continue to do so.

**Increasing effort towards better compliance within the existing framework is an absolute necessity, but it will not on its own allow to address all the facets of the IUU problem and its implications for the Community.**

The first reason is that the means to ameliorate the situation remain quite limited compared to the scope of the problem. The efficiency of the powers of the Commission is restrained due to the lengthiness of the infringement procedure under Article 226 (it takes several years for a case to be brought before the Court) or the punctual effect of some of its autonomous decisions, which are usually linked to a precise issue (for example overfishing of a specific stock for a given year).

The second major shortcoming of this approach is that it does not tackle the international dimension of IUU fishing, and notably the weakness of the Community with respect to the importation of fisheries products stemming from IUU fishing.

On this point, it could be envisaged to rely on and encourage private initiatives from the fishing, processing and retail sectors to ensure full traceability of the products along the supply chain. Some schemes are already being developed under the initiative of the European processing and retail industry, most notably the one applying to cod from the Barents Sea under the auspices of the European Fish Processors and Traders Association (AIPCE/CEP). Reference is also often made to the certification schemes developed by the Marine Stewardship Council, aiming to guarantee the sustainability of fisheries.

It is however difficult to envisage that such privately-run mechanisms will effectively result in a comprehensive protection of the Community market against all importations of IUU products. The first reason is that their scope remains focused on a limited number of stocks so far, and that the adherence to the various schemes in place remains voluntary. The second reason lies in the fact that the private sector is generally not in a position to determine fully the legality of catches; the processing industry has at its disposal well developed means to ensure the traceability of the raw material which is used in their plants. This allows tracing back the origins of the products, and notably the different steps which have been followed from the point where the fish was caught until its arrival in the processing facility.

However, the fact that the catches have been harvested legally is very difficult to ascertain without guarantee provided by public authorities which are in charge of controlling this aspect. This point has been outlined by the European Fish Processors and Traders Association (AIPCE/CEP) in their contribution to the consultation process: "*As processors and purchasers of fishery products, we are able to put traceability processes in place back to the fishing vessels and original purchase, but would find it difficult to validate legality of catch. This is the authorities' responsibility*"<sup>44</sup>.

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<sup>44</sup> Cf. AIPCE- CEP, 8 March 2007.  
[http://ec.europa.eu/fisheries/cfp/governance/consultations/contributions150107/aipce\\_cep.pdf](http://ec.europa.eu/fisheries/cfp/governance/consultations/contributions150107/aipce_cep.pdf)

This option would therefore contribute to a certain extent to a reduction of illegal fishing within Community waters, but would not be sufficient to address the major problem caused by the continuation of IUU fishing on the high seas and in waters of third countries, and the subsequent importation of products stemming from those practices into the Community.

## **1.2. Socio-economic impact**

The economic and social impact of this option would remain quite limited, due to its moderate consequences on the overall IUU fishing problem. In particular, there would be no impact on the socio-economic difficulties encountered by third States as a consequence to the continuation of IUU fishing in their waters or on the high seas.

For illegal operators carrying out their activities within Community waters, increased control and sanction would reduce incentives to pursue their practices. This would indeed entail higher costs for them, as they would need to invest in additional means to avoid being controlled and would be more severely sanctioned when arrested. This should also reduce their possibility to sell their catches due to tighter controls.

Illegal operators acting outside the Community, however, would not see their activities affected by this policy.

For the Community fishing sector, this option would yield some reduced economic advantages. Legitimate operators who suffer from direct competition with illegal operators fishing within Community waters are likely to benefit from an improved situation. Prices of some fish species may rise as a consequence from this option. Given the high degree of international competition on the fisheries market and the dependence of the Community over imported products, this impact will however be of limited importance.

For national administrations in charge of control of fishing activities, the option would require a significant effort over the medium term to improve and intensify their activities. This will in the first place affect those Member States which have not so far implemented comprehensive and efficient strategies to control, inspect and sanction illegal fishing activities occurring in their waters and by their vessels.

## **1.3. Environmental impact**

A reduction of illegal fishing within Community waters would entail positive environmental impact.

This would be in particular tangible for fish stocks which are subject to heavy exploitation. For those stocks indeed, overfishing via under or misreporting of catches might lead to very serious threat as to their sustainability. A reduction of illegal practices implies a direct release of fishing effort which is of particular importance. The example of cod in the Baltic illustrates this situation.

Eradication of illegal practices within Community waters should also trigger the complete disappearance of prohibited fishing gear or techniques, which are particularly detrimental to the marine environment. Example includes the use of driftnet which is widely recognised as entailing a significant amount of bycatches (notably mammals).

This option would however not entail any reduction of the environmental damages created by IUU fishing occurring outside Community waters.

## **2. FOCUS EC POLICY ON FISHING ACTIVITIES OUTSIDE THE COMMUNITY**

### **2.1. Impact on IUU fishing**

A multilateral approach to IUU fishing is undoubtedly the most appropriate in order to solve what is in essence an international problem. Due to the features of the international governance system, the most tangible outcomes of a strategy which would solely be based on a multilateral approach risk however to be felt only on a medium or long term basis. This would be clearly insufficient given the urgency to reduce rapidly IUU practices.

The main advantage of the multilateral approach consists in bringing a maximum number of actors together. This has triggered a clear recognition by the international community of the seriousness of the IUU phenomenon and a consensus for call for action to address it.

On this basis, international principles and Plan of Actions have been agreed, and the tools for implementing them have been elaborated at regional level within RFMOs.

At international level however, moving from words to action often proves difficult or lengthy. As an example, international negotiations on the definition of the "genuine link" between a Flag State and its fishing vessels have been going on for a certain number of years and seem currently stalled. Due notably to the link with maritime shipping, there does not seem to be a wide consensus to see them reach a conclusive outcome.

At regional level, at the initiative or with the support of the Community, the creation of new RFMOs has extended the scope of fishing grounds subject to international regulation. Within existing RFMOs, the Community has been and still is supportive of the measures aiming to identify and penalize IUU operators (via the adoption of lists of IUU vessels and of subsequent sanctions) or to encourage States to ensure compliance with conservation and management rules for their fishing fleets, including by means of trade measures.

The "IUU lists" contain however a limited number of vessels, which often change flags and names. The efficiency of the listing procedure may sometimes can be questioned in cases when, despite clear indications as to their implication in IUU fishing, fishing vessels escape any black listing due to the opposition of their Flag State to support a proposal in that sense within the RFMO to which it is a Party. Trade measures directed towards States have been seldom used by RFMOs and have not proven to be fully efficient as they cannot properly address the issue of how to detect marketing channels for IUU products.

One of the main shortcoming of action within RFMOs and at international level is that it has not been sufficiently efficient so far to target the behaviours of States qualified as hosting "Flags of non compliance", which support IUU fishing practices and act as free riders on the international arena.

An international action which would be purely directed towards IUU fishing on the high seas and promote multilateral solutions to this end would not either provide an answer to IUU fishing occurring in the EEZs of third countries (and notably developing countries) or within Community waters.

Pursuing and enhancing the policy of the Community against IUU fishing within multilateral bodies is a necessity to provide for a consistent approach within the international community against this plague and develop a better governance of the high seas.



Those efforts alone would however not bring the expected results which are urgently required to curtail IUU fishing, in particular with the need to implement more stringent measures towards fishing fleets carrying out IUU fishing on the high seas and States which are not acting under their international obligations to put an end to those practices.

## **2.2. Socio-economic impact**

The overall socio-economic impact of this option is quite limited. This is due to the fact that it does not provide solutions which are commensurate to the IUU problem as a whole, and that its effects on IUU fishing will probably be felt by economic operators in the medium rather than in the short term.

The option might entail a certain decrease of IUU fishing on the high seas, and therefore benefit legal operators from the Community as well as from third countries who abide by the rules and target high seas stocks (essentially tuna species), via a reduction of competition from unfair practices.

It may also impact some parts of the processing industry, which could see certain sources of supply for its facilities reduced due to the difficulties encountered by operators to continue their illegal activities.

For the rest of the actors involved in the fishing sector within and outside the Community, the socio-economic consequences would be negligible.

## **2.3. Environmental impact**

The most tangible environmental impact will concern fish stocks which are subject to the regulation of RFMOs and targeted IUU fishing. An intensification of the anti-IUU measures in those bodies should lead to a reduction of fishing pressure and yield positive consequences for those stocks. Those stocks which are currently known as being overfished due to IUU fishing should normally be the main beneficiaries of this policy (for example blue fin tuna in the Mediterranean).

The slowness of the decision-making process within RFMOs notably in respect of IUU-condoning States might however limit those positive impacts, notably for stocks which require urgent recovery measures. The current limited system for sanctioning those vessels and States which act outside the rules agreed by RFMOs could also undermine the positive effects of those measures for the marine environment.

The main limitation for this option lies obviously in the fact that it would not cover fish stocks falling outside the competence of RFMOs (present in Community or third countries waters), and which are also subject to IUU fishing.

## **3. CASE BY CASE APPROACH, SPECIFIC TO SPECIES AND AREAS SUBJECT TO IMPORTANT IUU FISHING**

### **3.1. Impact on IUU fishing**

The case-by-case strategy should theoretically entail significant progress in the fight against IUU fishing in Community waters and on the high seas and be able to effectively curtail some IUU practices. With the definition of clear priorities associated with targeted and strong actions,

it would allow to concentrate control measures towards the stocks which are the most threatened by IUU fishing. For those selected stocks, this approach is likely to entail a real decrease in IUU practices.

Within the Community, such focus on better control of designated stocks has produced encouraging results, as illustrated by the considerable improvement observed for the situation of pelagic fisheries: while important underreporting of catches used to be a major problem for these fisheries, the introduction since 2004 of new Community measures (such as prior notification of landing at designated ports and compulsory weighing of landings), coupled with active scrutiny by the Commission on the control policy of Member States, has led to solve the problem of 'black fish' landings.

The specific measures in place within CCAMLR with respect to the monitoring and control of toothfish (notably with trade measures through a certification scheme) have also been assessed as yielding positive consequences on the reduction of illegal fishing.

In practice, however, the adoption of this case-by-case approach is likely to face substantial difficulties. Essentially, it may be very difficult to ensure that such a system is watertight enough to prevent IUU activities and products from escaping targeted controls and seep through the system's loopholes. IUU fishing is a fast evolving activity and fisheries which are currently exempt of IUU practices could be hit in the future. Such evolution is difficult to anticipate. The regime would need to be intrinsically adaptive and even so it would be difficult to ensure a timely response to evolving practices.

Operators responsible for IUU fishing easily change fishing grounds or species which they target; they are used to adapting their practices in order to escape specific constraints. Misreporting of catches is notably a current practice. Submitting trade of a given stock to a certification scheme could be circumvented by illegal operators who would report the catches under the name of another species or as stemming from fishing areas not covered by the scheme. Such misreporting has already been observed for toothfish caught in the CCAMLR zone, and which were reported as stemming from areas adjacent to this zone. This could also occur if the approach relies on stocks (i.e. a species in a given area) rather on species: while some stocks of cod for example are known to suffer from high IUU pressure, this is not the case for other stocks from this species. Introducing measures covering one cod stock could be undermined by the possibility for illegal operators to declare their cod catches as stemming from those stocks which are healthy and not subject to the specific anti-IUU provisions.

Moreover, a specific approach relying on stocks on the high seas or in Community waters would not produce tangible results in the fight against illegal fishing occurring in waters of developing countries. In those areas, IUU fishing generally affects various species caught in mixed fisheries more than single stocks (with the exception of tuna which is a highly migratory species and can be harvested both in EEZs and in the high seas, and the catches of which are considered to represent around one third of the overall value of IUU fishing affecting African countries). Selecting some stocks particularly hit by IUU fishing in those waters would constitute a very difficult task.

Fisheries products caught in the coastal waters of third countries are estimated to represent approximately two thirds of the importation of IUU products into the Community, with an

overall value of more than 700 million €<sup>45</sup>. The main products concerned are cephalopods, crustaceans and frozen fish from various species. If those products are not covered, other measures should be devised to counteract this problem. Otherwise, developing countries will continue to be particularly vulnerable to IUU fishing. There is even a probability that the fishing effort by illegal operators on those coastal species rises as a consequence of the entry into force of the measures covering other species, as they would tend to transfer their activities towards those stocks which are exempt of specific trade measures. Failing to address this major problem would represent a considerable shortcoming for the future Community policy against IUU fishing.

Another problem lies in the absence of efficient measures which would result in the sanctioning of vessels and States which would not abide by those new rules.

This selective approach would therefore leave an important number of gaps.

### 3.2. Socio-economic impact

**Operators responsible for IUU fishing** which currently target and supply the Community market with products from the stocks which would be covered by this specific approach would be the first actors affected. It would result for them in a rise in their operating costs in case they would try to escape the new rules and develop fraudulent techniques to this end (for example via the forging of certification documents or the tampering with VMS). It could also entail a change in their organisation if they decide to stop marketing their products in the Community and shift for new outlets, or in the case where they would decide to focus their activities on new stocks and abandon those which are covered by the new policy of the Community.

**Within the Community market**, this approach would entail a certain reduction of supply of fisheries products subject to the targeted measures and a subsequent increase in prices for those products (for example cod and tuna species). This would be the case both for fisheries products from stocks within Community waters and those outside those waters. This would benefit in the first place legitimate Community and foreign operators who target those stocks. They would indeed see a reduction of competition from unfair practices and consequently a drop in the supply which stemmed from illegal operators. The tendency by illegal operators to circumvent the rules may however undermine their effectiveness and therefore reduce those benefits.

This approach would not produce any significant change in the harvesting and supply of fisheries products which are not covered by the specific measures. Legitimate Community and foreign operators targeting those species would still continue to face unfair competitive practices. This option would therefore not be efficient to halt the importation into the Community of a substantial amount of fisheries products stemming from IUU fishing.

For the **Community processing and retail sectors**, this approach would have various impacts. It should firstly guarantee that products covered by the specific measures do not originate from IUU fishing. This would bring certainty for those important buyers of fisheries products and reduce their exposure to the risk of being involved in the trade of products from IUU fishing, as well as to the criticisms from the civil society on this point. It would also probably trigger some increase in costs for those products, further to the reduction of the volume of fisheries products proposed on the market as a consequence of the introduction of the measures. Soaring prices

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<sup>45</sup> Study "Impact of trade measures envisaged in the IUU package under elaboration within the Commission", Oceanic Development (May 2007), 2003/FISH/02, p. 18.

would concern all products subject to the measures and thus the entire processing and retail sector; it should therefore not result in any competitive advantages for one or the other firms. Obviously, firms which deliberately or by negligence currently rely on the supply of fisheries products illegally caught would face significant problems with the entry into force of this approach.

For all those operators, this option will in addition create non negligible administrative costs. They will have indeed to check if the products which are proposed for sale to them are covered or not by the specific measures (notably if they should be subject to certification or not). This would mean that they would have to follow different procedures in their purchase policy depending on whether a given fishing product comes from a certain species or a certain area. They would in particular have to refuse the purchase of products for which a required certificate is lacking or not providing sufficient information. This implies that they should have a perfect knowledge of the different stocks affected by the certification schemes and of the data which should be attached to them.

For **national administrations** in charge of customs and control of the entry of fisheries products into the Community, this option will also trigger important additional administrative tasks. They will need to check whether the products imported into the Community should be accompanied or not by a specific certificate. The current certification systems in place within some RFMOs encompass a very limited number of stocks (essentially toothfish from the CCAMLR area and, to a lesser extent, some tuna species from the ICCAT area). The products concerned by those existing schemes represent a very limited amount of the importations of fisheries products into the Community. In actual fact, the quasi-totality of those products is directed towards Asian markets. As a consequence, many customs and fisheries services within Member States have little experience in the management of those certification regimes. The introduction of new certification schemes which would only cover certain well defined stocks would imply that a change in the practices of customs services, notably as it would only makes sense if they are able to differentiate the products subject to the certificate from those which are exempt from it.

For **third countries**, this option seems to create a cost-effective approach for addressing the problem of halting imports of some products derived from IUU fishing into the Community. Requiring that those countries guarantee the legality of the products caught by their fishing fleet corresponds to their obligation as Flag State to manage and conserve fisheries resources in a sustainable manner. Limiting this scheme to the stocks which are particularly hit by IUU fishing would seem to be proportionate to the goals pursued and not entail over prescriptive burden on the side of those third States.

This option presents the weakness that it would not allow to alleviate substantially the considerable losses suffered by **developing countries** as a consequence of IUU fishing. As outlined above, given the limitation of the scope of this approach to some stocks, and the subsequent difficulty to extrapolate this policy to the diverse local stocks present in national waters from those countries, developing countries would only gain limited benefits from it.

Beyond this important problem, the impact will also differ depending on the extent with which third States are involved in fishing activities, and on their capacities to monitor the activities of fishing vessels flying their flag.

For all commercial partners of the Community involved in the trade of fisheries products targeted by the specific approach, this option will create administrative burdens which should

not be underestimated. This will indeed require that they establish a system for certification for the exportation of those fisheries products. This will also entail the obligation to invest time and resources to make this system run. The limitation of the scope of the certification scheme to some stocks will generate important additional burden. Indeed, this would require that in depth controls are carried out by national administrations in order to check before all exportations of fisheries products towards the Community whether or not they should be subject to the certificate. In operational terms, the additional workload would be considerable.

Developed countries should not face substantial difficulties in showing how their national system is managed in view of guaranteeing the legality of the catches by their fishing vessels. Developing countries with a long distant fishing fleet under their flag, as well as those which have developed a significant processing industry would have to face the most important administrative impacts. As the products from stocks likely to be covered by the specific trade measures would be either targeted by their fleet or processed in their facility, they would have to demonstrate that they have been harvested legally or that the processed products stemmed from legal fishing activities. This may in particular affect South-East Asian countries which have an important long distant fishing fleet as well as other developing countries which are specialised in the processing industry and exportation into the Community (for ex. Thailand, Seychelles, Mauritius, Ivory Coast, Ghana, Senegal...). For developing countries without long distant fishing fleet and limited or no processing industry, the impact of the option will be negligible as they would probably not be concerned by the products subject to the certification schemes.

### **3.3. Environmental impact**

For those stocks covered by the specific approach, the environmental impact should be globally positive. It should indeed result in a lower fishing effort towards the stocks concerned. As stocks subject to important IUU fishing are often those which are also affected by a very high fishing pressure, or even fished beyond sustainable level (for ex. cod in the Baltic Sea, blue fin tuna), a decrease in fishing activity would provide a real relief necessary to ensure the survival of the stocks concerned. Fraud against the measures in place could reduce those positive impacts.

Here again however, the main shortcoming of this approach is its lack of comprehensiveness. While some stocks would be subject to stringent anti-IUU measures, other would face a continuation of the current situation. As already explained, fish stocks in developing countries waters risk being among the less protected through this approach. This would just compound the state of fisheries resources in those areas, which are usually subject to limited or inexistent management regime.

Another important negative side effect of this option would be the incentives created in favour of a transfer of fishing activities from the stocks identified as warranting specific attention towards new stocks which are not covered by those measures. The temptation would be considerable for operators engaged in IUU fishing to leave a fishery subject to strict anti-IUU measures in order to carry on their activities elsewhere, this time targeting other stocks which fall outside this selective regime.

#### 4. UNDERTAKE A NEW AND COMPREHENSIVE INITIATIVE, COVERING BOTH COMMUNITY AND NON COMMUNITY WATERS

##### 4.1. Impact on IUU fishing

This option would allow the Community to have at its disposal strong and efficient instruments against IUU fishing; it should result in a reduction of those practices and place the Community at the forefront on the international arena in the fight against this plague.

The option is structured around three objectives, and should bring tangible outcome for each of them.

**The first objective is to remedy the vulnerability of the Community market to importations of fisheries products stemming from IUU fishing.** The approach pursued by this option should result in a much stricter control of the legality of those importations, and constitute an important step towards closing the doors of the Community to fisheries products stemming from IUU fishing by foreign-flagged vessels. The Community represents the first market for fisheries products in the world, which absorbs yearly about 1,1 billion € of fisheries products stemming from IUU fishing: this option would therefore directly reduce economic incentives for illegal operators, which are the main drivers of IUU fishing

Making the importation of fisheries products coming from IUU fishing illegal under Community law and requiring that all importations of fisheries products be accompanied by a certificate under which the Flag State guarantees the legality of the catches should have direct impact on the operators involved in IUU fishing and trading their products into the Community.

**The certification requirement applying to all consignments of fisheries products to be imported into the Community** should provide border control authorities with new means to avoid the arrival of IUU products into the Community market. They would have at their disposal a sound legal basis and a simple way to exercise a first and systematic control over the legality of all fisheries products imported into the Community. The wide scope of the measure, which would cover all fisheries products for importation notwithstanding their origin (high seas or waters under the jurisdiction or sovereignty of a State) or mode of transportation, ensures that the approach followed encompasses the problem in its entire and global dimension.

Operators responsible for IUU fishing would probably face substantial difficulties in getting their catches certified as legal by their Flag State. In the case of fishing vessels flying a Flag of Non Compliance, the State concerned may not be in a position to deliver any certificate or to guarantee the validity of the certificate at all.

The operators would then be barred from accessing the Community market. Those States usually run open registers and lack the willingness or operational means to exert a control as to legality of the activities of their fishing fleet. They may well be tempted to issue certificates without effectively checking the reality of the operations performed by their fishing fleet. They would however in such situation be faced with the prospect of being the subject of verifications under the alert system, of being placed by the Community on its lists of States which do not act according to their international obligations as Flag States and be subject to a set of sanctions directly targeted against them (cf. below). This should be seen by many of those States as sufficiently deterrent to avoid a generalized practice of producing fake certificates. Fishing vessels which would have carried out IUU fishing but which fly the Flag of States exercising a

proper control over their fishing fleet would not be in a position to receive the required certification, as this should logically be refused by the Flag State.

The penalisation of the importation of such products would imply that the continuation of the activities of operators carrying out IUU fishing would become more risky. They would indeed be liable to sanctions which could reach a potentially quite high level, and this would represent an important stiffening compared to the current situation.

The establishment of the certification scheme would represent a major change compared to the current situation, and address the key problem of the vulnerability of the Community market to importation of fisheries products stemming from IUU fishing, which is the principal weakness undermining the existing framework.

There may be a risk that illegal operators continue their activities, but divert their exportations from the Community to other markets (mainly Japan and the United States, which represent the other largest fisheries importation States in the world, with characteristics similar to the Community market). In such cases, the reduction of IUU fishing could be less important than expected. It should however be noticed that those countries work in close collaboration to combat IUU fishing. This includes notably exchange of trade data on fisheries products, which would allow to detect any suspect shift in trade flows resulting from the establishment of the certification scheme by the Community. Those exchanges of information take place within the framework of RFMOs and on more informal basis. They should be improved via the reinforcement of the international MCS Network and the setting up of the Community alert system. Once our trade partners receive information on the arrival on their market of suspect products, they should be able to take appropriate action to prevent their importation and/or sanction the operators concerned. In addition, the trade measures by the Community only represent one element of the global approach advocated under this option. The intensification of the Community multilateral efforts via RFMOs (for high seas areas) and the Community policy with respect to coastal States with a view to improving management and conservation of fisheries resources in their waters should also be taken into consideration. They should entail a reduction of IUU fishing even when the catches are not traded into the Community. Moreover, it is not excluded that the trade policy promoted by the Community could inspire other international partners which could develop similar schemes in order to protect their market from imports of fisheries products stemming from IUU fishing.

Together with the certification scheme, a tightening of the rules on **transhipments at sea** would prove a useful complementary action. Regulate or even forbid those practices would improve the control of the supply chain and render more difficult or even deprive illegal operators of techniques widely used as part of clandestine channels to trade and launder their catches.

Finally, generalizing and harmonizing within the Community the various measures derived from recommendations adopted by RFMOs and pertaining to **access to ports** and to the supply of port services to vessels listed as IUU by those organisations would also help the Community to reach a robust protection against the activities of operators engaged in IUU fishing. This would remove the inconsistencies between the various regimes applying throughout the Community, which have been a source of a certain confusion benefiting illegal operators over the past years. Such initiative would simplify the regulatory framework and provide a sound basis for national port authorities to adopt efficient measures towards vessels placed on the IUU lists of RFMOs.

**This option would also bring an appropriate answer from the Community to the second main challenge in its policy against IUU fishing, which is related to the identification and sanction of vessels and States engaged in or supporting IUU fishing on the high seas and/or in the waters of developing countries.**

In relation to IUU fishing occurring within the waters of coastal developing countries, the action by the Community would rely on two pillars; strengthen its contribution to enhance the capacities of local authorities to manage and control fishing activities in their EEZs, and reduce the opportunities for illegal operators active in those areas to trade their products into the Community market (via the certification scheme applying to all imports). Both measures should result in the establishment of new hurdles hampering the continuation of IUU fishing in those vulnerable areas.

Via the **possibility for the Community to produce its own lists of vessels and States engaged in or supporting IUU fishing, and apply its own set of sanctions**, the Community would overcome the difficulties experienced in RFMOs, place illegal operators and unscrupulous States in front of their responsibilities and reduce their scope of action. The link with IUU fishing and the multiple problems caused by vessels flying the Flag of States unwilling or unable to exert appropriate control over their fishing fleet has been regularly condemned by the international community. Despite some progress on the international arena for better governance on the high seas and positive evolution in some regions, such vessels continue to operate and nothing demonstrates that their activities have decreased on a global scale. Given the urgency of the situation and its status as a major fishing power, the Community's most effective policy against those vessels and their supporting States would be to foresee the possibility to enact specific measures targeting them. The Community would then send a clear signal to those operators and authorities, as well as to the rest of the international community, showing its determination to effectively tackle the problem of Flags of non compliance.

Targeting **illegal operators** via the listing of their vessels used for these activities represents *prima facie* the most adequate solution. This would allow to concentrate on the actual culprits and, through the sanctions to be applied by the Community (notably prohibition to land, import and access into the Community), substantially hamper the continuation of their activities, notably through an increase in their operational costs. The possibility for the Community to decide unilaterally on the listing and subsequent sanctioning of private operators is not a complete novelty: it is already being used in other fields, like aviation safety (listing of airlines<sup>46</sup>).

Beyond the listing of vessels, the **listing by the Community of irresponsible States** also seems an adequate means. In accordance with the international legal order, it is primarily for States to make sure that international rules on management and conservation of fisheries resources are properly implemented. Their failure to do so is at the roots of the choice by illegal operators to opt for such flags. The Community approach aims to emphasise that States which place themselves outside the international legality should face the consequences of their behaviours. It is not uncommon that the Flag State of fishing vessels black-listed by RFMOs

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<sup>46</sup> Regulation (EC) No 2111/2005 of the European Parliament and of the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier, and repealing Article 9 of Directive 2004/36/EC (OJ L 344, 27.12.2005, p. 15).



does not really feel concerned by the problem and does not react very swiftly to the listing. This might be different if the country itself is placed on a black list by the Community. This "name and shame" policy would probably result in much more attraction towards the State concerned and encourage it to adopt the measures necessary to be de-listed. The simple prospect of being listed could actually be viewed as sufficiently dissuasive to impose a change of policy and practices. It should be recalled that, in the shipping sector, Community law<sup>47</sup> foresees that, for safety reasons, port access should be denied to vessels flying the flag of certain States and having being subject to detention in another port in a previous period.

The need for a dual approach targeting both fishing vessels and irresponsible States is in actual fact a necessity in order to address the problem of flag-hopping which would result in fishing vessels flying the flag of a State featuring on a black list leaving the register of this Flag in order to opt for a new one.

**Finally, this option should considerably help improving compliance with the rules of the Common Fisheries Policy within Community waters and among Community operators.**

As set out below (section 5, paragraph 1.1), enhancing control means and turning the fight against IUU fishing into a priority within Member States are a prerequisite in order to reduce illegal practices occurring in Community waters or perpetuated by Community operators outside the Community.

The efficiency of this approach would greatly improve if it is completed with a Community initiative addressing the problem caused by the absence of a deterrent system for sanctioning infringements to the rules of the CFP within the Community and the large variations observed between penalties in that area across Member States.

The fixation at Community level of maximum levels of sanctions corresponding to serious infringements against the rules of the Common Fisheries Policy means that national judicial authorities would be in a position to pronounce much higher fines than what is currently the case, while keeping their discretion as to the sanction effectively issued, which would depend on the particular circumstances of each case. The fixation of each penal sanction would obviously remain within the remits of the judge, and there would be no guarantee that he would opt for going up to the maximum levels set by Community law. The probability for illegal operators to be subject to very high fines and even jail sentence is however a key element for deterring them to pursue their activities.

In addition, the Community initiative would be completed by specific provisions on administrative enforcement measures which should be adopted by Member States with regard to fishing operators found in flagrante delicto while committing serious infringements. Those measures are issued by national enforcement authorities and have an immediate effect on the operators concerned. They are generally considered as very efficient and usually entail important operating costs for the operators affected. A generalization of such practices within the Community would increase the chances for illegal operators to be rapidly penalized and constitutes another step towards the establishment of a real level playing field within the Community in terms of sanctions against IUU fishing.

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47 Cf. Article 7(b) of Directive 95/21/EC on port State control of shipping, the objective of which is to reduce substandard shipping in EU waters and promote compliance with safety, environment protection and decent working conditions on board ships of all flags.

Finally, the establishment of a black list of Community vessels would reinforce the scrutiny of public authorities towards those vessels infringing the rules of the CFP and encourage the adoption of strict measures towards them. This would highlight the need to effectively tackle the problem of Community fishing vessels in situation of serious infringements and provide a clear tool to publicize the names of the offenders and call for a reaction by public authorities.

## **4.2. Socio-economic impacts**

### *4.2.1. Economic impacts of Option 4 in the Community*

The basic result of the IUU package as described in option 4-if successful- is expected to be a significant reduction of the imports of IUU fish into the Community and to dissuade illegal operators to target the EU market in the future. This will be basically the result of the combination of the general certification scheme, the black lists of countries and vessels and the alert system.

It is to be expected that a significant reduction of IUU imports into the Community will result on a sudden reduction of products placed on the market and, consequently, on short term first sale price increases for fish, in particular for these species most affected by IUU such as cod, tuna and sword fish, but maybe also for species which are substitutes to them.

The above trend is supported by the fact that fishermen firmly believe that imports of IUU fish into the Community are currently putting a downward pressure on sale prices of legal fish. Furthermore, evidence from CCAMLR shows that fish certified under the CCAMLR catch document scheme commands a premium of 20-30% over uncertified fish.

Furthermore, significant price increases were also the result of commercial actions (import bans) imposed in the context of ICCAT against countries non respecting management measures for tuna and associated species (swordfish in particular).

Other pieces included in the package are required either to reduce further the expected revenues of IUU, in particular the measures which would generalise RFMOs measures within the Community and the consolidation and intensification of actions in RFMOs, or to increase further the costs of IUU, in particular the provisions on nationals and the approximation of sanctions.

As indicated before, both types of elements are required to change in a significant manner the incentives to engage in IUU fishing by private operators. Without them, the package will be incomplete and its effectiveness will be severely hampered. Individual pieces of the package can be bypassed by means of forged documents, misnaming catches or changing the appearance of vessels. As the relatively successful experience of CCAMLR against IUU has shown the key for success is the combination of elements and in particular actions at government level combined with actions against traders and individuals, so that all fronts are covered

#### 4.2.1.1. Economic impacts on the EU fishermen

The decrease in quantities will result on first sale price increases. This will benefit legal Community fishermen. It is very difficult to provide an accurate extra figure of what the additional income would be, as doing it will require a level of data desegregation much higher than what is available.

According to the very rough estimation done by Oceanic<sup>48</sup>, 8% of the total EU imports of fish in total weight will come from IUU fishing; i.e., 500000tonnes a year.

Species	IUU - Weight equivalent (K Tonnes)	Value (€ million)
<b>High Sea Species</b>		
Tuna	150 - 220	210
Deep water red fish	11.5	23
Cod	100	200
<b>Third countries EEZ's</b>		
Crustaceans	68	378
White fish (fillets)	42	91
Molluscs	105	269
<b>Total</b>	<b>500</b>	<b>1100</b>

As seen in the above table, the yearly market value of Community IUU imports will be around €740 million or 10% of the total value of Community imports per year. It can be assumed then that if IUU imports into the Community would be totally blocked, the income of Community fishermen will be increased by a figure corresponding to that amount. Most of this additional income will be received by Community fishermen catching species most affected by IUU fishing and imports into the Community.

Furthermore, the use of data about price flexibilities (i.e. the percentage of price increase resulting from a quantity decrease of 10%) could allow to come to a rough estimation of the price increase that could be expected following a reduction of IUU imports into the Community. The price flexibilities in the table below have been estimated on the basis of data on quantities and prices available from Eurostat.

For the sake of the analysis, it is assumed that the entry into force of the package referred to Option 4 will result on a decrease of IUU imports and hence of imported quantities into the Community equivalent to the estimation of these imports made by Oceanic in his study of IUU<sup>49</sup> for individual species.

Species	Estimation of IUU imports (in % of total) <sup>50</sup>	Estimation of Price Increase if IUU disappears	Estimation of average price flexibility <sup>51</sup>

<sup>48</sup> Étude d'impact des mesures commerciales considérées dans le paquet INN en cours d'élaboration par la Commission, p. 13-19.

<sup>49</sup> Study "Impact of trade measures envisaged in the IUU package under elaboration within the Commission", Oceanic Development (May 2007), 2003/FISH/02, p. 13-19.

<sup>50</sup> Estimations by Oceanic Development 2003/FISH/02,(May 2007).

<sup>51</sup> Price flexibilities are different for every point of the demand curve. Values in the table are averages of point price flexibilities.

<b>Cod</b>	10%	+11.66%	+1.27
<b>Tuna</b>	10%	+7%	+0.35
<b>Frozen hake</b>	19%	+7.33%	+0.37
<b>Frozen lobster</b>	19%	+63.3%	+3.1

Even if they can not be taken at face value, the above results show a significant potential for price increases, in particular for cod and frozen lobster. The lower values for tuna and frozen hake can be explained by the much globalised nature of trade of these species, with many suppliers and buyers.

It is further expected that prices increases of a magnitude close to some of these above, would attract more imports, this time of legal products, which could attenuate the increase in prices until a new equilibrium is reached. However, end prices will still be higher than at the present time, because of the elimination of the very negative effect on prices resulting from IUU imports.

Further benefits are to be expected for legal Community fishermen: the elimination or reduction of IUU fishing will alleviate pressure on fishing resources. This could reduce some operating costs of catching (fuel consumption travelling distance, fishing time). Crew share will also increase, accordingly.

Higher prices and reduced costs could have a positive effect on profitability, in particular of these fleets specialised in species currently affected by IUU. These profitability increases could be attenuated if additional imports of legal fish occur. However, the mid to long term effect would still be positive.

Compliance costs would normally be the same, although they could get somewhat reduced if Community IUU operators would start abiding by the rules.

However, it is quite impossible to quantify these figures and, in any event, any effect will only materialize in the medium to long term

#### 4.2.1.2. Specific economic impacts resulting from concrete measures included in the Community package

To the extent that the intended measures will only apply to imports into the Community, the specific economic impact of the proposed certification scheme and alert system will be neutral for the majority of the Community fleet. It could however be positive if, as expected, first sales prices of the species more affected by IUU fishing increase. If so, the positive effect will be felt on fleets, mainly long distance and industrial fleets specialised in these species.

Part of the fleet, however, will be affected by the obligation to obtain a certification of origin from their flag States. These are Community vessels landing in developing countries and selling to local processing facilities before the fish is exported to the Community. Oceanic estimates that around 500 Community vessels will be affected; most of them long distance vessels from

Spain, Portugal, France, the UK, the Netherlands and Denmark<sup>52</sup>. Getting the certificate would imply some costs for them, but they are difficult to quantify. It is worth noting that the implementation of RFMOs certification schemes did not entail negative comments by operators in relation with their costs.

The impacts of the rest of measures foreseen in option 4 will depend on the current behaviour pattern of Community fishermen or groups of fishermen.

For legal Community fishermen, the economic impacts of all these measures will be neutral.

It is to be expected that for Community fishermen currently involved in or considering engaging in IUU activities either in the high seas, in the EEZs of third countries or in Community waters, the combination of measures taken at the RFMO level and, in particular, the approximation of sanctions and the provisions on nationals should reduce their incentives to carry out IUU fishing.

These effects will take some time to materialize. Hence their main effect will only be felt in the medium to long term. However, they could have some positive effects in the short term, following the announcement of the new policy.

#### 4.2.1.3. Economic impacts on the Community processing and distribution sectors

A distinction has to be made between likely economic impacts on fish processors and the distribution sector, in particular big retailers.

Regarding **Community processors**, they will be forced to concentrate supplies on secure, certified-sources of supply, irrespective of pure market considerations (quality or price). This could alter their market behaviour and expose them to costs increases, resulting from possible price increases of fish and to some additional cost increases resulting from the necessity to ensure compliance with the certification requirement, and to security of supply issues. This is likely to affect more severely small firms operating with different traders purchasing fisheries products from various sources, and which may not be in a position to receive a regular supply of certified products.

Generally speaking, costs increases are not expected to have a significant negative economic impact on Community processors, given the strong internal demand for fish products, as they will normally be able to pass at least part of the cost increases further down the distribution chain.

Security of supply could be more delicate, in particular if alternative, certified sources of supply do not have the same production capacity or are less efficient than current suppliers. This potential negative effect will get attenuated overtime as developing countries improve their own internal capabilities and procedures to deal with the certification requirement. However, it is not to be excluded that the same countries decide that it not worth for them to comply with the certification scheme for perfectly legitimate reasons, either because fish exports are not very important for them or because the Community is not an important destination of their fish

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<sup>52</sup> Study "Impact of trade measures envisaged in the IUU package under elaboration within the Commission", Oceanic Development (May 2007), 2003/FISH/02, p. 64.

exports. The economic impact on Community processors dependent on supplies from these countries could then be quite severe<sup>53</sup>.

It is not expected that the certification requirement will force Community processors to delocalise as delocalising will not avoid that the Flag State certifies the legality of the fish.

On the other hand, they could benefit from the positive image of certified fish.

The effects on **big retailers** are expected to be similar but less severe, because, as they are further down the distribution chain, they have better chances of passing on to consumers any cost increases and are more flexible than processors to deal with security of supply issues.

Being closer to the consumer also means that they could get more significant benefits from any image issue favouring fisheries, although they are also more sensitive to the proliferation of brands/logos. One of the means they are developing to fight that proliferation is to develop their own certification programs.

Other measures included in this Option have some potential impacts on Community processors and distributors. This is in particular the case of sanctions.

The fact that trading IUU fish would be made a serious infringement would make Community processors and distributors liable for sanctions if they deal with fisheries products stemming from IUU fishing. By doing so, imports of IUU products will be more difficult, as processors and distributors control the many channels through which IUU products get into the Community. Furthermore, exposure of processors and distributors to sanctions would also decrease the income of IUU fishers or processors from third countries in proportion with the risk of being sanctioned run by processors/distributors in the Community.

The impact of the certification scheme on the various **labels or certification procedures developed by the private sector** (above all in the processing and distribution sectors) should also be assessed. The establishment of a general certification scheme for all imported products might be seen as adding to the confusion created by the current proliferation of brands and labels. It could be argued that consumers might find it misleading to be confronted with yet another certificate. This risk remains moderate though, as the certification scheme envisaged under option 4 should normally be primarily used by operators trading fish products and should not serve to inform consumers. Its purpose is also different as it would demonstrate the legality of the imported products and apply to all of them, while the current private labels usually refer to the sustainability of a given fishery and cover a very limited number of stocks.

For the retail and processing operators which have developed their own certification schemes, the establishment of new public and general certification scheme would also have consequences. Those actors acknowledge that their own certification procedures do not fully guarantee the legality of the products covered but provide useful information as to their origins and the supply chain which they followed. The existence of a certification scheme guaranteed by public authorities would remove the uncertainty pertaining to the legality of the products. The information gathered by the operators through their own arrangements on the traceability of the products should actually ease their adaptation to the new certification scheme, as they already have steady relations with their suppliers based on a good knowledge of the trade

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<sup>53</sup> From information in the Oceanic study, Chile, Argentina and India could be countries not interested in taking the necessary steps to comply with certification scheme.

channels used. Thanks to their investments in this area, they should be able to ensure that they only deal with responsible operators, and those operators should normally not meet substantial difficulties in getting their products certified under the new scheme.

#### 4.2.1.4. Economic impacts on providers of port services

The prohibition to provide goods and services to blacklisted IUU vessels or vessels flying a flag of convenience was referred to before as one possible means to increase operating costs of IUU vessels. In fact, these prohibitions are already part of the NEAFC, NAFO and CCAMLR regulatory measures and hence they are applicable in the Community. As part of Option 4, these measures will be generalised.

The general prohibition to deal will have some negative economic impacts on providers of port services. However, these impacts are not expected to be significant when compared to what is already the case and will concentrate on a handful of Community ports.

#### 4.2.2. Overall economic impacts of Option 4 on third countries

For developing countries, the disappearance of the Community as a market for IUU products taken in their waters would reduce their losses both in terms of catch and value. Figures indicate that for sub-Saharan region, the elimination of IUU in EEZs would mean an increase of 19% of total value of catch and 23% of declared value of the catch. Losses from the Sub-Saharan Africa waters amount to 800 million € per year, roughly equivalent to a quarter of Africa's total annual fisheries exports.

To the extent that IUU activities are replaced by legal ones, income from landing fees, licence fees taxes and other levies would increase. Significant positive impacts on other economic activities upstream/downstream are to be expected. This would then positively contribute to GNP, both to private operators and to Government income. Furthermore, it will contribute to sustainable livelihoods (in terms of contribution to food security and per capita consumption of fish proteins).

These positive economic impacts are expected to be particularly important for developing countries for which export of fish products to the EU account are an important component of their balance of payments. Examples of these countries are Senegal, Mauritania, Tanzania, Kenya, Maldives or Seychelles<sup>54</sup>.

In the end, compliance with the certification scheme and other measures proposed in Option 4 could be a source of significant competitive advantage between nations and could result in additional price increases for certified fish.

This of course presumes that IUU activities are effectively reduced. If instead, IUU products are simply derived to other markets, the net, positive effect on developing countries of action by the EU will be small.

As will be explained below, positive effects depend crucially on whether governments will take the necessary actions to comply with the new EU requirements, in particular by increasing their own MCS activities, as required in particular by the certification scheme. Enforcement is very

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<sup>54</sup> See Study "Impact of trade measures envisaged in the IUU package under elaboration within the Commission", Oceanic Development (May 2007), 2003/FISH/02, p. 62.

expensive and will compete with other pressing needs for the attribution of resources from the national budgets.

On the positive side, this fact, combined with specific measures that could be taken against flags of non compliance, would mean that the attractiveness of those flags would in general be severely reduced from the point of view of IUU operators. Maybe some of them (or their representatives) would further engage in criminal activities to put in place fake certification schemes. However, if they do so, the costs for IUU operators will likely increase, in accordance with the perceived value of the certification scheme as a guarantee of access to the lucrative Community market.

There would be cases, however, where even if Governments would like to put in place the necessary means and procedures to comply with the certification scheme, they will not be able to do so.

It would be then necessary to provide assistance to them. In that respect, the measure of Option 4 which proposes to use all available instruments (FPAs, development, regional approach ) to contribute to better control and management of maritime waters under jurisdiction of those States, should necessarily be part of the anti-IUU package.

As indicated above, for (more) developed countries, complying with the certification scheme could be cost-ineffective. If they are not truly interested in making the necessary effort to abide by the certification scheme, exports of fish products from the fishing sector of those countries into the Community will be penalised.

Finally, the certification scheme creates a potential for commercial conflict with third countries. Many people and governments in these countries could consider the certification scheme as a classic non-tariff trade barrier unilaterally imposed by the Community to protect its market from third country imports.

It is difficult to anticipate the risk of a serious commercial incident. However, it is important to have a package which is as complete as possible to cover all possible angles of attack to the IUU problem, also including measures that apply to Community nationals and mechanisms which could mitigate the impact of the certification scheme. In this respect, the alert system could be very important. There are already similar procedures in place dealing with food safety hazards<sup>55</sup> or rules of origin.

#### *4.2.3. Specific economic impacts on processors/exporters and on fishermen from developing countries*

Developing countries have a 51 % share of the global fish export destined for human consumption (2004). ACP countries represent nowadays the most important supplier of fisheries products to the Community: the value of the importations from those countries amounted to nearly 2 billion € in 2005, worth 14% of all imports into the Community. Other countries like China, Morocco, Thailand, Ecuador, India or Brazil featured in 2005 in the list of the top ten suppliers of the Community market for fisheries products.

Fishermen and processors/exporters in developing nations could be the main beneficiaries of a situation in which IUU activities get significantly reduced. Compliance with the Community

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<sup>55</sup> Rapid Alert System for Food and Feed (RASFF).



future scheme as described in Option 4 will give their products an easier access to the Community and could also put them in a position to get better prices for their certified products.

However, the materialisation of these benefits crucially depends on whether the relevant governments will put in place the means to ensure continued compliance with the package in Option 4, in particular with the certification scheme. If they do not, either because of lack of resources or of willingness, the expected benefits could turn into significant negative effects for their domestic fishermen, processors and exporters.

In that case, the certification scheme could have severe economic impacts on some third countries.

As it will apply to all species – even to those for which there are not suspicions of significant IUU catches – and countries, its effects risk being negatively significant for exporters in some developing nations for which the Community market is very important. Not only for those exporting to the Community directly, but also for those which do that indirectly, through processing in intermediate countries. This will affect particularly exporters from African countries suffering from significant IUU activities by foreign fleets in their respective EEZs. The persistence of IUU activities can be seen as an indicator that Governments in these countries do not have the means to eradicate IUU fishing and hence, are unlikely to be able to comply properly with the certification system.

The certification will be an additional requirement fish products will need to comply with to enter the Community market. It will need to be added to existing phyto-sanitary and quality requirements. In cases where the flag state is not able to certify the origin, products exported from that country will be unable to access the Community markets. As a result, local exporters will be forced to find alternative markets. However, the Community, Japan and the US account for two thirds of all fish consumed in the world. Exports of fish products by African countries to the US are negligible and Japan does not seem to be as significant a destination as the Community for these products.

Hence, exclusion from the Community market would severely impact some of these countries. These negative economic impacts will affect not only processing, marketing and distribution activities. Auxiliary services driven by fish trade would also be very negatively affected and risk having significant social consequences. Access to foreign currency will also be reduced. In summary, they run the risk of getting progressively disconnected from the global market.

Being at the end of the chain, the negative effects described above for processors/exporters would get amplified as regards fishermen in developing countries, in particular for artisanal fishermen. In order to survive, it is not to be excluded that they would engage on further IUU activities and/or over fishing. This is, however, more theoretical than practical as artisanal fisheries play a negligible role on exports markets.

**It is to be expected that the impact of the option 4 for developing countries may vary sensibly depending on the States concerned.**

Developing countries which have already developed policies and means of control over their waters and fishing vessels flying their flags and are committed to pursue those efforts should not face substantial difficulties in demonstrating their ability to fight against IUU fishing and getting their products certified. This should be particularly true for those States whose exports mostly stem from their local fishing fleet (the activities of which are easier to monitor). This

would also be the case for countries specialised in the processing of fisheries products which are able to trace back their origins. New compliance costs may have to be covered in the short term. Those costs should be outweighed in the long run by the advantages resulting from their compliance with the Community rules, which would ensure a reduction of IUU fishing in their waters and a sound access to the Community market for their local fleet; this could even encourage foreign fleets operating legally to register their vessels in States which have made the necessary efforts to comply with the Community obligations.

The measures under consideration by the Commission would have a more negative impact on third States exporting fish products to the Community which do not maintain any kind of control over their fishing fleets and run open registers to attract foreign vessels, or which attract fish products for processing purposes without any control as to their legality. This represents a fairly limited number of developing countries. In most cases, those States can be qualified as hosting "Flags of non compliance". Vessels able to export their products to the Community and flying those flags are often owned by foreign companies with limited or no contact with the Flag State. The economic advantages generated to the benefit of the local economy from those vessels are often restricted to a few thousands Euros, representing the fees paid for the registration of the vessels.

The Community measures may lead long distant fishing vessels to de-register and try to find another shelter to pursue their activities. This would generally not represent a significant loss for the Flag State concerned, insofar as those vessels are operated by foreign companies. In most cases, the local fleets in such countries do not export fisheries products into the Community. If this were the case, they would indeed be penalized due to the poor performance of their Flag States against illegal fishing. The Community measures may then result in pressure from the local fishing sector against public authorities, asking them to effectively enact measures to address the IUU fishing problem. In many cases, the continuation of IUU fishing in developing countries is closely linked to poor governance and such pressure may contribute to put this problem on the front scene.

It should be underlined that a large number of developing countries are Parties to international conventions on conservation and management of fisheries resources, as well as to some RFMOs. There is nothing more in the provisions under the certification scheme than a requirement that those international standards are effectively implemented. In addition, the assistance granted to those countries by the Community under its fisheries and development policies will be confirmed and will contribute to mitigate the costs resulting from the new certification scheme. Finally, the assessment by the Community will take the situation of the various States concerned into consideration when deciding on its trade policy towards each of them.

To a certain extent, the measures proposed bear similarities with the regime put in place at the beginning of the 1990's by the Community with respect to the health requirements applying to fishery products imported into the Community<sup>56</sup>. Nearly 90 countries are currently considered by the Commission as fulfilling those health requirements, which are set out by the Community<sup>57</sup>. This demonstrates that the vast majority of our international trade partners,

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<sup>56</sup> Cf. Council Directive 91/493/EEC of 22 July 1991 laying down the health conditions for the production and placing on the market of fishery products (OJ L 268, 24.9.1991, p. 15).

<sup>57</sup> Cf. Commission Decision 97/296/EC of 22 April 1997 drawing up the list of third countries from which the import of fishery products is authorized for human consumption (OJ L 122, 14.5.1997, p. 21), as lastly amended via Commission Decision 2006/200/EC of 22 February 2006.

including many developing countries, have been able to put in place the necessary means and structures to comply with Community health standards for fisheries products in view of their exportation into the Community. A similar outcome could be expected as to the respect by the same countries of Community requirements relating to international norms on conservation and management of fisheries resources.

As regards suspected IUU vessels, the prohibition to land and obtain products and services will certainly increase their operating costs and probably will also reduce their expected revenues. As any landings will be illegal, operators involved in such landings will pay less for the fish, according to their perceived risk of being caught.

#### 4.2.4. *Social impacts of Option 4*

The elimination or significant reduction of IUU activities resulting from Option 4 will destroy employments on board vessels carrying out IUU fishing and probably on other IUU-related activities down the production and distribution chain. IUU is often associated with very poor labour, social and safety conditions, and it is expected that at least part of the losses will be replaced by additional employments created in legal activities in particular in third countries.

Regarding, **EU fishermen**, as indicated above, some IUU-related employments will be lost, but they are impossible to quantify. Generally speaking, to the extent that crew share will increase, the income of legal fishermen will also increase, in particular for fishermen working in fleets catching species affected by IUU. It is not expected that significant numbers of new employments will be created because quotas and effort limitations will put a limit to such increases. The measures will help safeguard employments on board EU fleets which target species particularly hit by IUU fishing (notably tuna and cod), via the elimination of competitors using illegal and unfair practices. The attractiveness of the sector for new generations of workers may also increase. It should be underlined that, to an extent which can be very important in some segments of the Community fleet (notably the long distant fleet), people employed on board Community fishing vessels are not Community nationals but come from developing countries.

Some employment losses could be felt also to the extent that small, vulnerable **EU processors** would leave the industry. However, it is not expected that such losses would be very significant and could at least partially be compensated by job creation in other processors. The Community processing industries depending on the supply by Community fleets of species like tuna or cod should also benefit from the measure, which should have a positive effect on employees of the facilities concerned.

The population in the Community dependent on tuna activity is estimated to amount to approximately 85 000 persons (direct and indirect jobs), and 55 000 in Spain alone<sup>58</sup>.

As indicated above, **port services** in some very concrete EU ports could be negatively affected. Some job losses could then be expected, but most likely they would be negligible.

As regards **third countries**, the net effect of the elimination or significant reduction of IUU activities in their waters will be very positive in terms of direct employment in fisheries and in indirect employment in related activities.

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<sup>58</sup> Océanic Développement, Poséidon Aquatic Resources Management Ltd and Megapesca Lda (2005) "Study on the European tuna sector", p. 261.

However, for countries which do not have the willingness or the means to put in place the mechanisms required to comply with the package in Option 4 severe job losses could happen all along the national production and distribution chain. The second category of countries is particularly worrying as many of them are significantly dependent from fishing. As indicated above, all available instruments should be used to help them put in place the required mechanisms and so compensate or at least attenuate these potential negative impacts.

#### **4.3. Environmental impact**

Through the combination of measures at international, regional and Community levels, this option is the most efficient one for addressing the different components of IUU fishing. It would indeed cover all stocks, whether in Community waters, on the high seas or in the EEZs of third States. It will therefore be able to mitigate the negative impacts of IUU fishing on fisheries resources and on the marine environment. This should result in a reduction of fishing pressure benefiting especially fish stocks in need of recovery. The damages caused to fragile marine ecosystems as well as to species caught as by catches through prohibited techniques should also be reduced.

This approach should strengthen the management and conservation regime in place or under development in all areas (under the auspices of RFMOs for high seas zones, or by coastal States for EEZs). A reduction of IUU fishing would indeed reinforce the effectiveness of those measures, as this is usually a major cause for undermining their proper functioning. Moreover, the data collected via the fishing sector (for example on levels of catches for a given fishery) for the purpose of devising fisheries management measures should be more accurate with the end of illegal fishing, and should provide sounder a basis for the long-term sustainability of the stocks.

This option should entail real progress in the reduction of the important damages caused by illegal operators in the waters of developing countries. The combination of Community bilateral or sub regional efforts to contribute to the establishment of regimes designed to improve MCS capacities in those countries with the certification scheme should result in decrease of IUU fishing there. It should in the first place benefit Sub-Saharan African States, where a large part of IUU fishing is used to supply the Community market.

#### **4.4. Impact on the Community trade obligations and position**

Some of the measures promoted under this option (in particular the certification scheme applying to importation of fisheries products; trade measures like import bans targeting fisheries products from given States or vessels, or prohibition for Community operators to maintain trade relations with those identified States or vessels; provisions on access to ports) should be assessed against the international trade obligations agreed by the Community within the WTO.

Similar measures have already been adopted within RFMOs. They have never been challenged before the WTO. One important difference is that those measures were enacted within a multilateral context (RFMOs) while the Community would envisage, under option 4, to adopt unilateral measures.

In order for such measures to be deemed compatible with WTO requirements, the Community would need in the first place to follow a fair and transparent procedure in respect of the authorities or operators targeted. This would in particular require that the relevant authorities of

the third countries are given the possibility to be heard on the facts incriminated before any measure could be tabled by the Community. As to the content of the measures, the Community would have to demonstrate that they are not discriminatory against imported products or foreign services suppliers, are justified by legitimate policy objectives (like the conservation of exhaustible natural resources ), are necessary and are not disguised restriction on trade.

A possible legal basis for the adoption by the Community of such trade measures would be Article XX(g) of the GATT agreement, which provides that:

*"Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures (...) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption".*

The case law of the WTO relating to those provisions should be considered by the Community, in particular the decisions on the two so-called "Tuna-Dolphin" (1991 and 1994) and "Shrimp-Turtle" (1998 and 2000) cases.

Against this background, one key element relates notably to the fact that the Community should be able to show that the regime applying to Community fishing operators is at least as strict as the conditions which would be applied to operators from third countries. In that regard, the question of the level of compliance of Community operators with the rules of the CFP is of crucial importance. Another important prerequisite to justify a unilateral Community initiative would be to clearly base it on the international commitments of the Community.

Any measure by the Community would therefore have to be duly motivated in order to fulfil all those criteria.

Beyond the question of the WTO-compatibility of unilateral trade measures by the Community, it can not be completely excluded that they give rise to the adoption of trade counter measures by the public authorities of a third State affected. Such action might harm the commercial relations of the Community.

#### **4.5. Impact on RFMOs and international position of the Community**

Posing the principle that the Community could act unilaterally might also be perceived as a departure from the traditional multilateral approach defended by the Community, undermining global efforts to improve the regulation of fishing activities and combat IUU fishing. The rationale underpinning option 4 is however that the Community should rely in the first place on multilateral action (in particular within RFMOs); unilateral measures are not intended to replace this principle but should only be used in case multilateral solutions prove insufficient to address serious manifestations of IUU fishing. The Community measures might actually serve as useful precedents and be taken up by other international partners or organisations.

In addition, the certification schemes established by RFMOs in relation to the trade of certain fish species should normally be considered as equivalent to the Community general certification scheme.

#### **4.6. Contribution to a simplification of the Community framework derived from the measures agreed by RFMOs**

Beyond the creation of new possibilities for action by the Community, this option also intends to render more coherent and efficient the implementation within the Community of measures against IUU fishing decided by RFMOs. After their adoption, those provisions need to be implemented into the Community. In the current system, those measures are transposed into EC law by the Council on a case-by-case basis, via regular amendments to existing regulations specific for each RFMO or each type of RFMOs. This results in a proliferation of different regulations and a very complex and changing regulatory environment, where rules differ for Community operators depending on its location.

The solution proposed under option 4 consists in harmonizing and generalizing the application of the most far-reaching measures adopted within one RFMO to all Community operators present in RFMOs areas. This would for example relates to provisions on sightings of fishing vessels suspected of carrying out IUU fishing (which have been initially developed within tuna RFMOs like ICCAT), provisions on nationals engaged in or supporting IUU fishing in relation with a fishing vessel flying the flag of a third State (initially created within the CCAMLR) or provisions on sanctions (which have been introduced within NAFO).

This harmonization should result in a simpler framework for the fishing sector and national administrations in charge of control of fishing activities. It would entail the repeal of numerous provisions of the existing framework and contributes to the efforts for better regulation within the Common Fisheries Policy.

#### **4.7. Administrative costs**

The main administrative costs generated by this option would relate to the establishment of a Community certification scheme applying to all imports of fisheries products.

**Within the Community**, the costs will be supported by the marketing and processing industry trading imported products, as well as by public authorities in charge of controlling the importation of goods into the Community.

Importers would have to check that the products supplied are accompanied by the certificate and that information contained in this certificate is accurate. Formally, this would only represent the addition of one document to all documents already required for importation operations (certificate for health conditions, certificate relating to the origins of the product, invoices, bank documents, etc). The presentation of this document would become part of the normal business relationships between exporters and importers and not trigger particularly demanding tasks.

For Member's State control authorities, this new formality would also imply the verification of the presence of the certificate at the Inspection Border Posts, its coherence with other the other documents required, physical checks on some of the consignments and, in some cases, the conduct of investigations *a posteriori* to cross check the conformity of the information provided in the certificate with other sources. The collaboration between authorities in charge of customs and fisheries will be instrumental for the good functioning of the system. Specific training would have to be provided to the operational services.

The target group would be the Community processing and marketing industry. It is assessed that it comprises roughly 6000 firms (50% being SMEs) with a turnover of 18 billion €. Spain, France, Italy, Greece, the United Kingdom, Poland and Germany are the countries where such firms are the most active.

The operation would have to be conducted at each arrival a Community Inspection Border Post of a consignment of fisheries products. Taking account of the overall volume of fisheries products imported each year into the Community (4,5 million tons) and the mode of transportation (by containers for the vast majority), it has been assessed that this represents roughly 300 000 operations each year.

The overall costs would be composed essentially by labour costs (i.e. time devoted to ensure the running of the system). No specific investments would be required.

Taking account of the estimated time required to perform the checks, the average labour cost per hour and the number of operations, it is estimated that the overall administrative costs will amount to approximately 4 Million €. This would be mainly supported by the Community marketing and processing industry (3 Million €); compared to the size and turnover of the sector, this would represent a negligible amount (500 € per firm). The costs for public national administrations will represent 1 Million €, to be distributed within the 4000 Inspection Border Posts across the Community.

The alert system will anyway contribute to rationalize the additional costs as it will assist the authorities to focus their verifications and the operators in detecting in advance possible risky products.

Costs generated for economic operators and public authorities **outside the Community** are difficult to assess, due to the diversity of situation and organisation in third States exporting fisheries products into the Community. For economic operators, the costs will result in the need to have their products certified by their national administrations. For those administrations, new mechanisms would have to be put in place to guarantee the legality of the catches and deliver in a timely manner this confirmation. For some countries, and notably some developing countries, this may imply important administrative reorganisations, with a view to improving their control system in particular.

## **SECTION 6: HOW DO THE OPTIONS COMPARE?**

The table below presents the efficiency of the various options with respect to their impact on the reduction of IUU fishing. To this end, their relevance is assessed against the three specific objectives identified in section 3 which should be reached by the Community with a view to substantially improving its contribution to a reduction of IUU fishing.



	<b>Option 1</b>	<b>Option 2</b>	<b>Option 3</b>	<b>Option 4</b>
<b>Objectives</b>	Better implementation of current framework within the EC, without regulatory initiatives.	Focus on fishing activities outside the EC, through action at international level and within RFMOs.	Case by case approach focused on fish stocks subject to important levels of IUU fishing.	New comprehensive initiative completing the current framework and ensuring better compliance with applicable rules.
<b>Objective 1</b> Reduce the vulnerability of the Community market to imports of fisheries products stemming from IUU fishing.	Very limited impact due to the reduced efficiency of private certification schemes.	Positive but limited impact as measures will depend on progress achieved by multilateral organisations, where the adoption of trade measures and sanctions often comes up against serious difficulties or delays.	Positive impact on stocks subject to specific measures (notably certification schemes), but high risks of fraud and of transfer of IUU fishing to stocks not covered. This option is difficult to implement in respect of IUU fishing in waters of developing States.	Positive impact as the certification scheme applying to all imports of fisheries products and harmonized Port State measures should result in effectively closing the doors of the Community market to imports of fisheries products stemming from IUU fishing.
<b>Objective 2</b> Improve identification and sanction of vessels and States engaged in or supporting IUU fishing outside the Community.	No impact.	This option does not solve the problem posed by IUU fishing in waters of developing countries.	Limited impact as a selective approach does not allow to target all actors responsible for IUU fishing.	Positive impact with combination of action within RFMOs and possibility to enact unilateral measures against States or vessels if RFMOs action is insufficient.
<b>Objective 3</b> Increase compliance with the rules of the Common Fisheries Policy.	Positive impact but shortcomings remain with wide discretion left to Member States to improve the situation and variety of sanctions pronounced within the Community (absence of level playing field).	Impact limited to compliance with the CFP rules that implement internationally agreed conservation and management measures.	Positive impact on stocks subject to specific measures, but risk of transfer of IUU fishing to stocks not covered.	Positive impact with combination of strong commitment to improve control and enforcement within the Community and new regime on harmonized maximum levels of sanctions across the Community which would address one of the most tangible shortcomings of the current situation.
<b>Overall impact on reduction of IUU fishing.</b>	Limited impact as the option would leave out the international and market-related aspect of the problem and only address only partly its Community dimension.	Limited impact as the option relies on international action, which on its own does not deliver results efficient and rapid enough. The internal aspect of the IUU problem is not addressed either.	The impact would be positive but globally insufficient due to its lack of comprehensiveness: a selective approach is difficult to put in place and does not allow to address all the manifestation of IUU fishing.	Positive impact as this option covers in a comprehensive manner all loopholes of the current Community system and provides for a consistent approach on all facets of the problem.

The second table compares, in line with a cost-benefits analysis, the advantages and drawbacks of each option, taking into account the performance of each of them compared to the overall objective for reducing IUU fishing, and their associated costs.

Options	Advantages	Drawbacks
<p><b>Option 1</b></p> <p>Better implementation of current framework within the EC, without regulatory initiatives.</p>	<ul style="list-style-type: none"> <li>- demonstrates commitment of the Community to tackle illegal fishing within the Community and reinforce the CFP framework;</li> <li>- does not require the adoption of additional regulatory measures which would come in addition to the current framework.</li> </ul>	<ul style="list-style-type: none"> <li>- limited impact on a reduction of the overall level of IUU fishing and on its associated socio-economic and environmental damages.</li> <li>- depends to a large extent on the willingness of Member States to consider enforcement of CFP rules as high priority and devote adequate means and resources to this end and does not bring an answer to the absence of level playing field across the Community for sanctions.</li> </ul>
<p><b>Option 2</b></p> <p>Focus on fishing activities outside the EC, through action at international level and within RFMOs.</p>	<ul style="list-style-type: none"> <li>- promotes multilateral solutions adapted to the international nature of IUU fishing, which corresponds to the Community commitment for international governance of the oceans;</li> <li>- does not require the adoption of additional regulatory measures which would come in addition to the current framework.</li> </ul>	<ul style="list-style-type: none"> <li>- limited impact for a reduction of the overall level of IUU fishing and on its associated socio-economic and environmental damages.</li> <li>- efforts against IUU fishing depends on willingness of EC international partners to move forward.</li> </ul>
<p><b>Option 3</b></p> <p>Case by case approach focused on fish stocks subject to important levels of IUU fishing.</p>	<ul style="list-style-type: none"> <li>- promotes solutions adapted to the various manifestations of IUU fishing;</li> <li>- does not rely on a one-size-fits-all approach and requires initiatives only when this is justified by the specific features of a fishery.</li> </ul>	<ul style="list-style-type: none"> <li>- lack of comprehensiveness seriously undermines the efficiency of a selective approach against IUU fishing and its associated socio-economic and environmental damages.</li> <li>- imply the adoption of numerous different regulatory instruments.</li> <li>- important compliance costs for economic operators and EC and third countries control authorities who would need to check systematically whether fisheries products are subject to specific measures or not, as well as the compliance with those measures.</li> </ul>
<p><b>Option 4</b></p> <p>New comprehensive initiative completing current framework and ensuring better compliance with applicable rules.</p>	<ul style="list-style-type: none"> <li>- this option provides the most efficient solution against IUU fishing, due to its comprehensive approach which allows the Community to meet the most important challenges it is facing to reduce IUU fishing;</li> <li>- generalization of measures adopted within RFMOs contributes to simplification of current legislation.</li> </ul>	<ul style="list-style-type: none"> <li>- non negligible compliance costs for third countries which would need to respect requirements for imports of fisheries products into the EC;</li> <li>- requires a new important regulatory instrument.</li> <li>- Community action might be perceived as a departure from traditional multilateral approach to IUU fishing;</li> <li>- important resistance expected from Member States to engage on discussions on penal matters in the fisheries field.</li> </ul>

As illustrated by the two tables, a comparison between all options demonstrates that option 4 supports the most efficient strategy for the future Community policy against IUU fishing. Being the most ambitious, this option is also very demanding and would trigger non negligible costs.

The **first and second options** rely too much on a sectoral approach to IUU fishing (internal or external). Even combined, they would not bring a sufficient reply to the urgency of the problem, as well as to the most serious problems which harm the current system, namely the vulnerability of the Community market against the importation of IUU products and the persistence of fishing activities by vessels flying flags of non compliance. Those options would simply mean that the Community places more emphasis on the need to fight against IUU fishing, but without putting in place the instruments required to this end. There is real risk that those options only result in declarations of good will, do not entail substantial changes and solely perpetuate the status quo.

The cost of implementing those two options would be limited. It may trigger an increase in means and resources devoted by Member States to control and inspection activities, but this remains uncertain as it will depend on their readiness to do so. The options should not result in additional regulatory prescriptions defined at Community level, as it would not require new regulation.

The **third option (case-by case approach)** would not address the problem comprehensively either. It may appear as a proportionate solution to the various manifestations of IUU fishing and difficulties created for the Community, and could provide real progress with respect to the stocks to which it is applied. The changing and clandestine nature of the IUU phenomenon renders however its efficiency uncertain. There is a high risk that this option delivers solutions which are no more adapted to the actual problem by the time of their adoption, and finally misses the real targets. In particular, the difficulty to transpose this approach to IUU fishing in waters of developing countries is a serious weakness.

This option would not be cost-free. Its implementation would translate into the adoption of a set of regulatory instruments specific to each of the situations to be covered. This would result in the creation of a complex and possibly growing regulatory environment. In addition, costs for compliance would be high, and, in respect to the specific import certification schemes applying to a limited number of species, possibly even higher than the costs of a general certification scheme applying to imports of all fisheries products (as advocated in option 4). For the fishing industry (notably trade and processing industry) as well as for control authorities (within and outside the Community), this would imply systematic checks to determine if fisheries products to be imported need to be certified or are exempt from this obligation. Incentives to circumvent those selective measures would be important, and their efficiency therefore depends to a large extent on increased scrutiny by public authorities in charge of control, which is also costly.

The efficiency of the **fourth option** lies in its comprehensive coverage of all the challenges posed by IUU fishing to the Community. Through a combination of ambitious measures, this option provides appropriate answers to all those challenges. Contrary to all other three options, it does not leave important loopholes in place.

The implementation of option 4 would be demanding and would require considerable changes. It implies in the first place that the Community adopts a substantial regulatory

instrument. It would also generate new tasks and costs, which should however be mitigated through various mechanisms.

The establishment of a general certification scheme applying to all imports has been assessed to entail administrative costs of around 4 million € (cf. annex on this point), which would be mainly supported by the Community processing and trading sector. Compared to the size of the sector, those costs are limited. In addition, the setting up of a Community alert system designed to warn operators and control authorities as to the risk associated with the trade of products from identified countries or operators should allow them to set priorities in their control and purchase policies, and thereby avoid that they operate a systematic and costly check over all imported products. The main consequences would have to be borne by third States exporting to the Community, which will have to abide by its new import standards. Some developing countries may face real difficulties in catching up with those standards. Here again, the approach defended in option 4 should permit to alleviate the costs generated, as the Community would clearly commit itself to intensify its efforts within its fisheries and development policies towards those coastal developing countries wishing to reinforce their capacities for management and control of their waters. This should greatly improve their ability to comply with the requirements from the certification scheme.

The possibility for the Community to enact unilateral trade measures (certification scheme, import ban) may also generate some risks. In the first place, such action may be challenged before the WTO as breaching the international trade obligations of the Community. In that respect, one essential element is for the Community to be able to demonstrate that the level of compliance with international rules on fisheries conservation and management by Community fishermen is satisfactory. The adoption of the measures promoted within option 4 designed to apply to Community fishing operator are of great importance in that respect.

The perception that the Community option to act unilaterally would weaken the multilateral framework (and in particular RFMOs) can not be totally excluded. It should however not be overstated, as the Community would continue to rely primarily on the multilateral approach and only foresee to develop its own approach in well delimited cases. The overall future policy of the Community should actually serve as incentives for its international partners and regional organisations to step up their efforts against IUU fishing.

Finally, the measures proposed to improve compliance within Community waters and by Community fishing operators might come up against the reluctance of Member States to strengthen their control and inspection policy and engage into the possibility that levels of sanctions against fisheries offences are set at Community level. The awareness by Member States of the imperative need for action and their vibrant calls for a vigorous policy against IUU fishing might however overcome those difficulties.

**The expectations are high that the Community proposes in the coming months an ambitious policy making a real difference in the fight against IUU fishing, which is one of the most serious environmental problems faced by the international community. The present impact assessment report shows that there is a possibility for the Community to adopt a comprehensive and far-reaching approach (option 4) on that matter. This strategy is not exempt from risk, but would actually be the only one commensurate with the scale of the problem.**

## **SECTION 7: HOW COULD FUTURE MONITORING AND EVALUATION BE ORGANISED?**

### **On the monitoring arrangements:**

The Commission will ensure that the Member States' compliance with obligations laid down in the "IUU package" is adequately monitored.

Reporting obligations will provide information that can be used to check the extent to which the envisaged trade, control and enforcement measures have been adopted and implemented.

The Commission will inform the European Parliament and Council regularly on the implementation of the new initiative.

#### **1. TRADE MEASURES**

Benchmarks/indicators for assessing efficiency of the system:

- Number of certificates which are refused/number of operation and volume/value of imports not authorized/number of vessels which are refused access to ports;
- Number of notices issued under the alert system;
- Number of countries against which trade "sanctions" are implemented;
- Variation of trade flows of fisheries products from third States as a consequence of the entry into force of trade measures

#### **2. MEASURES FOR IDENTIFICATION AND SANCTION OF VESSELS AND STATES INVOLVED IN IUU ACTIVITIES**

##### **2.1. Community action within RFMOs and towards developing States**

Benchmarks/indicators for assessing efficiency of the system:

- Extension of regulation of high seas areas with new RFMOs, or of new species within RFMOs;
- Adoption of new measures against IUU fishing within RFMOs (ex. trade measures);
- Implementation by RFMOs and Parties of existing measures in an efficient manner (for ex. effective use of black lists);
- Generalisation at Community level of the most advanced measures against IUU fishing adopted within RFMOs;
- Full integration of measures agreed within the Community bilateral fisheries policy or development policy designed to improve capacity of developing States to manage/monitor fishing activities in their EEZs;

- Implementation of existing provisions within FPAs designed to fight against IUU fishing (for ex. rate of financial use in reference to action for this purpose foreseen in the agreement; reality of implementation of the foreseen measures; assessment of the state of IUU fishing in the waters of those countries compared to situation before...);
- Number of FPAs signed compared to previous kinds of bilateral agreement which were focused on access to waters and did not contain specific anti-IUU measures;
- Number of areas covered by sub-regional approach on IUU fishing;
- Integration of IUU perspective in EPA approach.

## **2.2. EC measures**

Benchmarks/indicators for assessing efficiency of the system:

- Effective establishment of Community lists of vessels and States (and timing for adoption), and number of vessels and States recorded on the lists;
- Number of vessels/States removed from the lists further to adequate action by third states (for ex. sanction by the Flag State, de-registration of the vessels concerned...);
- Number of action effectively implemented towards listed vessels/States (for ex. number of vessels listed which have been refused access to port or port services, number of consignments from listed States which have been barred from access to the Community market at the Community border...);
- Member States with adequate policy and means for an effective enforcement of Community rules and sanctioning those who carry out IUU fishing outside the Community.

## **3. COMPLIANCE WITHIN EC WATERS AND BY EC NATIONALS**

Benchmarks/indicators for assessing efficiency of the system:

- New means devoted by and/or policy carried out by Member States for the control of fishing activities in their waters and by their vessels and nationals;
- Change in national law of MS to incorporate new (harmonised and strengthened) levels of sanctions adopted at EC level for serious infringements against CFP rules;
- Data on average level of sanctions and number of sanctions pronounced by MS further to serious infringements (trend for comparison with current figures from annual communication);
- Data on the use of immediate enforcement measures (where/if available);
- Data on prosecution of nationals.

#### 4. OVERALL ASSESSMENT OF THE EFFICIENCY OF THE REGULATION

Benchmarks/indicators for assessing efficiency of the system:

- estimation of level of IUU fishing occurring within and outside Community water (comparison before and after implementation of the Regulation);
- state of fish stocks which are currently subject to IUU fishing;
- data on economic situation of Community fishing industry which is currently facing competition from operators carrying out IUU fishing.

##### **On the evaluation arrangements:**

The Commission should undertake an intermediate evaluation of its new initiative within four years of its adoption assessing the extent to which its realisations, results and impacts on economy, society and environment are consistent with the objectives set.

The evaluation results will be used for decision-making needs on the future of and amendments to the regulatory framework if appropriate.

The Commission will communicate the evaluation results to the European Parliament and Council.

**Annex 1**

**Report on the public consultation**

**on the initiatives envisaged by the Commission to improve the fight of the European Community against Illegal, Unreported and Unregulated (IUU) fishing**

(15 January -12 March 2007)



## 1. INTRODUCTION

The European Commission set out as a priority for 2007 to strengthening the European Community's effort to fight against illegal, unreported and unregulated (IUU) fishing activities.

The European Community adopted its own Action Plan against IUU fishing in 2002 as part of the Common Fisheries Policy<sup>59</sup>.

In view of getting stakeholders' opinion on the opportunity to adopt and possible content of a new Community initiative on that matter, the Commission published a consultation paper. The stakeholders were questioned about the appropriateness of engaging in such a new initiative, the relevance of adopting measures in nine fields of action, the concrete actions to be taken and their potential socio-economical impacts on the Community fishing industry as well as on third countries.

The objective of this report is to present the main ideas, views and concerns arising from the contributions received and the report has no aim to assess the consultation process as such.

## 2. CONSULTATION PROCEDURE

The consultation paper prepared by DG Fisheries and Maritime Affairs to guide the debate presented a brief analysis of the problem and was structured on nine possible fields of action: (1) improve control of the legality of the activities of third country fishing vessels and of their catches accessing fishing ports of the European Community, (2) improve control of compliance with conservation and management measures by third country fishery products imported into the Community by other means than fishing vessels, (3) close the EU market to IUU fisheries products, (4) address IUU activities carried out by nationals from the European Community outside its territory, (5) improve the legal means to ascertain IUU fishing activities, (6) introduce an efficient regime of penalties aiming to deter serious infringements to fisheries measures, (7) Improve action against IUU fishing within Regional Fisheries Management Organisations, (8) support the policy and means of developing countries against IUU fishing and (9) increase synergies in the field of Monitoring, Control and Surveillance.

The consultation paper was published on *Europa web site* (DG Fisheries and Maritime Affairs and *Your Voice in Europe*) on the 15 January 2007. Interested parties were invited to send their contributions by post or e-mail by 12 March 2007. Except one, all the respondents agreed to publish their contributions on the web site of DG Fisheries and Maritime Affairs.

Stakeholders were made fully aware of the on-line consultation through different channels. Moreover, the consultation also included several meetings between the Commission services and key stakeholders:

- The Advisory and Committee on Fisheries and Aquaculture (ACFA), which gathers at Community level all stakeholders from the fishing sector (representatives of the extracting

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59 Communication from the Commission "Community action plan for the eradication of illegal, unreported and unregulated fishing" - COM(2002) 180, 28.5.2002 - and Council Conclusions of 7.6.2002.

sector, the processing and trade industry, trade unions, banks, consumers, NGOs..) was invited to participate in the consultation and to disseminate the information to its members; the staff from DG FISH took part in several working group meetings and discussed the consultation paper to ACFA's members;

- Fisheries National administrations were gathered in a seminar organised jointly by the Commission and Spanish Government in Santiago de Compostela (Spain) on the 6 and 7 February 2007 to discuss the consultation paper;
- Non-governmental organisations were invited to a meeting held on the 28 February 2007 in Brussels to express their views on the Commission's initiative;
- The upcoming consultation was announced to various stakeholders meetings (like sectoral groups, Regional Advisory Committees, parliamentary committees etc.);

On the margins of this consultation process, the issue was discussed during an informal meeting of Fisheries Ministers on 17<sup>th</sup> April 2007 in Luxembourg.

The European Parliament passed a Resolution on that matter on 15 February 2007. This was preceded by discussions between the Commission and the EP's rapporteur as well as by participation of the Commission to meetings at the EP Fisheries Committee.

### **3. GENERAL OBSERVATIONS**

A total of 25 contributions were received, from a wide range of entities linked to the fisheries sector, notably the Advisory Committee for Fisheries and Aquaculture (ACFA) with a wide representation of interests at Community level, European and national fishing organisations (France, Spain, Greece), processing industry, retailers, banks and consumers, trade unions, numerous NGOs, (specialised in environmental and development matters) public authorities from Germany, United Kingdom, a Member of a national Parliament (Netherlands), as well public authorities from Norway and the World Bank and one company specialised in traceability.

The initiative of the Commission received a very positive feedback from the participants of the consultation process. Almost all the contributions proved to have a good understanding of the IUU problematic and stressed the appropriateness for reinforcing the Community action in this field. They generally considered as the relevant the field of actions identified by the Commission in its consultation paper.

One divergent point amongst the stakeholders related to the scope of the initiative. A part of the fishing extractive sector considered that the initiative should not cover the Community fishing fleet, which is subject to a comprehensive control regime, and can not be considered as carrying out IUU fishing. Most of the respondents however supported the idea that the initiative should be broad and encompass fishing activities by all fishing fleets (Community and non Community).

There were also concerns expressed by some stakeholders about the problems which could result from the adoption by the Community of a uniform approach to the problem, ignoring the specificities of fisheries and regions affected by IUU fishing and producing unnecessary

new constraints. The fact that the Community should focus its future action toward the most serious breaches of fisheries law was underlined.

Some stakeholders insisted that the priority should relate to a better implementation of the existing framework, and that new regulatory initiatives should only be introduced where needed.

Another important concern expressed was that the potential negative impacts of trade measures on developing countries and the need for an in-depth analysis on this issue was underlined.

#### **4. SUMMARY OF THE RESPONSES TO THE PUBLIC CONSULTATION BY ISSUE**

##### **4.1. Improve control of third country vessels and their catches accessing fishing ports of the European Community**

The European Community is encouraged to reinforce its Port State policy with respect to landings of third countries. Reference is made to the need to implement the FAO model Port State scheme endorsed by the FAO and supports future work at international level to render this scheme mandatory, as agreed at the latest FAO COFI meeting in March 2007.

Most of respondents are in favour of denial of access to ports and port's facilities for vessels flying the flag of a state blacklisted by any country and regional fisheries organisations or non-cooperating with the RFMOs or which have been identified as practising or supporting IUU fishing activities. There is a general support for promoting the creation of "white" and "black" lists of vessels involved in IUU fishing as this measure is seen as an important control tool for Port authorities.

Reinforcing the flag state responsibility represents a key role in fighting against IUU fishing but the point was made that the requirement to prove that the fish has been legally caught should also involve the vessel captain/owner, especially in developing countries where public authorities might not be in a position to certify the legality of the activities of their vessels.

Some respondents advocated for the confiscation of fish products that are suspected to be illegal pending receipt of information from the Flag State or when fish products are proved to be illegal.

This option raised concerns regarding the possible bureaucratic approaches that might obstruct the legal activities. Equally the need for a good communication network among control services of Member States as well between EU and third countries was stressed.

##### **4.2. Improve control of compliance of conservation and management measures by third country fishery products transported by other means than fishing vessels**

The majority of respondents see as essential that the approach of the Community towards import of fisheries products stemming from IUU fishing encompasses all means of transport (notably products in containers on board shipping vessels, but

also road and air transport), and is not limited to third country fishing vessels landing their catches in fishing ports.

The need for traceability of fish products from the point of capture to the point of consumption was emphasised. While a large part of respondents found the idea of catch certification interesting and a valid option, there were interrogations regarding who should deal with the burden of proof: the captain, the Flag State, wholesaler or seller. The definition of rules of origins was considered in some contributions as essential in that regard.

The certification option raised important concerns with regard to its feasibility and the administrative burden that might be created for developing countries. Some contributions insisted that a specific treatment should be awarded to those countries, and notably that it should be for the master of the vessel and not up to the public authorities to certify the legality of the catches. Requests were made on analysing how specific traceability systems could be applied to fish products originating from small scale fisheries in ACP countries, where small quantities of fish are collected from several vessels. The importance of Community assistance to contribute to set up and reinforce capacity of developing countries was underscored.

NGOs supported a prohibition of at-sea transshipment, except in specifically designed areas or ports which are closely monitored and reported in real time to relevant management authority. Some respondents were more flexible in this approach and considered that transshipment at sea could be allowed provided that an appropriate regime is in place to monitor how operations take place.

There was also a general acknowledgement that control at inspection border posts should be strengthened. In that context, a formalised cooperation between the fisheries inspections services, veterinary services, customs services at all points of entry into the EU would maximise the effect of deterring the IUU products from acceding to the Community market.

#### **4.3. Close the EU market to IUU fisheries products**

There was a general support as to the idea that trade measures should be used by the Community in order to avoid product stemming from IUU fishing to reach the Community market.

Notwithstanding, clearly defined criteria and transparent procedures should be in place for identifying when a ban on fisheries products should be introduced.

Also, a special attention must be paid to the implications of introducing an import ban without warning buyers and the seriousness of impact on the developing countries. If there is a suspicion that supplies of fish are derived from IUU activities, the importers should be informed of the possibility that their source of supplies may have been involved in IUU activities.

Some NGOs insisted that the Community should be entitled to enact ban on import of fisheries products from identified operators and vessels but should refrain from doing so in respect of a State, as this might harm legitimate operators from this State.

Related to this action, a special attention should be given to the developing coastal countries providing them a support for strengthening the Monitoring, Control and Surveillance (MCS) mechanisms and to encourage a steady and effective cooperation at regional level.

A part of respondents called for more measures in this field, like considering an infringement the commercial relations with companies involved in IUU fishing and banning the import of fish from vessels or companies involved in IUU fishing, on the model of the US legislation (Lacey Act).

#### **4.4. Address IUU activities carried out by nationals from the European Community**

The problem caused by Community nationals active on board fishing vessels flying Flags of Convenience and carrying out IUU fishing was considered as very serious by all respondents. Equally, there was an agreement on the principle that the Community should do more to address this issue, as well as to enhance its action against States hosting Flags of Convenience.

An important scope of this option should be to discourage Community ship owners from using flag of convenience and prevent them from engaging in IUU fishing using vessels flying flags of third countries. The difficulty to obtain sufficient evidence in order to prosecute the European citizens for presumed allegation of IUU activities carried out outside the Community territory is an important shortcoming of the existing system, which should be part of the future Community initiative.

Some respondents pointed out that financing and operating vessels under flag of convenience by Community nationals should be subject to legal proceedings in European countries when the purpose of such arrangements is to carry out IUU fishing.

Some reservations were expressed with regard to the possible new administrative burden which may result from new provisions. It was also recalled that any new Community measures should respect the principle of subsidiary.

Some NGOs considered that it should be useful to negotiate legal instruments for the right to pursue delinquents outside national boundaries.

#### **4.5. Improve the legal means to ascertain IUU fishing activities**

This measure received a wide support and there is a consensus that this is a key point to be improved, both at the EU level and international level.

The need to make the FAO guidelines on the marking of fishing vessels and support vessels compulsory and to support the creation of an international register that would be available to the public and regularly up-dated, listing all the fishing vessels and support vessels and including basic information on former and current owner was highlighted. The inscription on this register would be a pre-requisite for obtaining a fishing licence.

Another possible option in this field of action is to help the costal countries to obtain real time access to VMS data according to EU law while always guaranteeing confidentiality.

Control and inspection could be made more efficient via exchange of data and the setting up of shared methodology and benchmarks at Community level.

#### **4.6. Introduce an efficient regime of penalties aiming to deter serious infringements to fisheries measures**

The need to ensure a uniform application of the rules of the CFP across the Community was highlighted in all contributions.

NGOs and processing industry showed a strong support for the setting up at Community level of a list of serious infringements against the rules of the Common Fisheries Policy and a harmonisation of levels of sanctions corresponding to those infringements.

However, serious reservations came from most of fishing sector and many Member States on the competence of the Community in this field. The particularities and the different nature of penal systems existing in the Member States were also emphasised as constituting an obstacle to a Community initiative. The principle of subsidiarity was invoked as argument in favour of maintaining the competence of Member States to penalise its nationals based on the provisions of its own national legislation for IUU fishing activities carried out by fleets flying their flag or by fishing vessels in their waters.

NGOs pledged for harmonised minima of penalties of sufficient severity at EU and regional level to deprive offenders of the benefits of IUU activities. The risk of being caught and severely penalized is indeed crucial to deter the continuation of illegal practices. Beyond fines, sanctions should include supplementary measures like the confiscation of catches, gear and/or vessels, as well as withdrawal of fishing licences. No public aid should be granted to offenders. The judicial authorities should be made aware of the damages caused by IUU fishing to ensure a proper application of sanctions. Some NGOs also request more transparency with respect to the identification of offenders.

The need for a similar level of sanctions is not a sole preoccupation of the fisheries sector, therefore inspiration on how this can be achieved should be sought in other Community policy areas where measures have already been taken.

#### **4.7. Improve action against IUU fishing within Regional Fisheries Management Organisations**

A general consensus was noted for this measure. The Community is encouraged to continue to play a pro-active and major role in RFMOs and to support the cooperation within and between the RFMOs.

Stronger actions within the RFMOs in fighting against IUU fishing and the creation and up-dating regional list of vessels authorised to fish (white lists) and list of vessels known for their involvement in IUU fishing activities (blacklist) was advocated. The completion of inspection and control schemes within RFMOs was also supported, in view of notably of allowing the arrest by one Party's authority of the vessel of another Party in case of infringement.

Efforts should be undertaken to encourage developing countries to join RFMOs and participate fully in their discussions.

Some contributions insisted that the implementation of RFMOs recommendations is of paramount importance. In some ACP countries, implementation may be deficient due to a lack of information or lack of coordination between public administration in charge of negotiations within RFMOs and public administration responsible for control and management of fisheries activities. Implementation also a logistic, financial and technical support to make sure that the rules agreed are effectively enforced on the ground.

In preparing its initiative, it is important that the Commission take due notice of the forthcoming recommendations from RFMOs in relation to international cooperation between Parties but also the cooperation between RFMOs.

#### **4.8. Support the policy and means of developing countries against IUU fishing**

All contributions confirmed the crucial need to strengthen the cooperation with developing countries in order to improve the governance and management of fishery sector in those countries.

In the framework of Fisheries Partnership Agreements (FPA), the European Community should aim at increasing MCS capacities with a particular focus on the coastal areas. Satellite surveillance and inspection vessels are important means for fighting against IUU fishing and those could be provided via FPAs. Low-cost and low-tech systems should also be promoted.

NGOs pointed out the necessity to include such aspects in the framework of Economic Partnership Agreement (EPA) process.

Cooperation with other major donors (World Bank, national development agencies...) should be reinforced.

A national administration pointed out that the support to the developing countries for the fight against IUU should not be limited to countries with whom a partnership agreement was concluded and all the developing countries should benefit of assistance to develop the its MCS capacities.

Corruption is often the nub of the matter in respect to IUU fishing occurring in the EEZs of developing country, and the Community should also promote good governance as part of its policy against IUU fishing.

Some NGOs and representatives of the ACP insisted that a policy towards developing countries could also be developed at a regional scale, gathering all coastal States for a given region. This should also involve Community Member States especially when their ports are used by operators responsible for IUU fishing.

Better synergies with the services responsible for fisheries, health conditions and customs within the Community were also called for in respect of the treatment of fisheries products and vessels from developing countries.

#### **4.9. Increase synergies in the field of Monitoring, Control and Surveillance**

A general support emerged from the contributions on this issue.

The need to ensure better cooperation within the Community and in relations with third States in the field of MCS was considered globally necessary.

The key role attributed to the Community Fisheries Control Agency on that matter was highlighted.

Some national administrations recalled however that the control attributions reflect different realities and traditions in Member States and expressed their reserve on the practical efficiency of increased synergies in the control field.

The Community was also invited to look for the reinforcement of the International MCS network mainly via bilateral arrangements aimed at cooperation on MCS activities.

#### **5. NEW MEASURES ADVANCED BY THE RESPONDENTS**

A few other proposals were put forward by the respondents to the consultation; they mainly consist in completing the actions presented by the Commission in its consultation paper. The Commission was encouraged to:

- Pay more attention to the problem caused by flags of convenience. Despite its harmful consequences on human and labour rights, safety, environment, resources conservation and the development of coastal communities, the flag of convenience issue which was mentioned in the introductory part of the consultation paper was not included in any field of action envisaged.
- Support the creation of publicly available, up to date and reliable international register listing the fishing and support vessels as well as a unique vessel identifying system.
- Take measures that establish incentives and encouragements for industry operators to take part in the fight IUU fishing. Foster public and retail sector awareness, including better engagement with retailers/cater on passing incentives back along the supply chain towards importers and vessel operators.
- Training on traceability measures for developing countries.
- Withhold EU funds from vessels owners (fishing companies) confirmed to have engaged in IUU fishing.
- Engage EUROPOL in the investigating organised transboundary crime involving IUU catches.
- Create a special label for Non-IUU products.
- Require the use onboard of electronic recording and joint centralised registration of catches for all vessels of a determined size, amongst others to ensure that catch



figures are translated into immediate deductions of the quota of the vessel concerned.

- Take into account the link between IUU activities and labour law.

## 6. CONCLUSIONS

The main results of the public consultation on the initiatives envisaged by the Commission to improve the fight of the European Community against Illegal, Unreported and Unregulated (IUU) fishing can be summarised as it follows:

- The general tone of the contributions received is very supportive of the Community's initiative.
- There is a general recognition that the Community needs to reinforce the tools for fighting against IUU fishing;
- All the field of actions proposed were considered important or very important by an overwhelming majority of stakeholders.
- Reluctance of some part of fishing sector to see the scope of initiative extending to the Community fleet.
- Concern from a part of the fishing sector and some administrations over the relevance to embark on a new far-reaching legislative proposal with a general scope, while the priority should be a better application of the current framework, and while any new initiative against IUU fishing should not be general but specific to each fishery.
- Important concern expressed by some NGOs and representatives of the ACP countries relating to the impact of future Community trade measures and requirements on coastal developing countries, which could create tremendous difficulties for them to continue to export fisheries products into the European Community.

## Annex 2 Administrative costs

### **Details on administrative costs generated by the establishment of a certification scheme applying to all imports of fisheries products into the Community**

This document sets out the methodology used by Océanic Développement (in the framework of the Specific Convention no.36/2006 linked to the framework contract FISH/2003/02) to assess the administrative costs generated by the certification scheme.

#### **1. LES COÛTS ADMINISTRATIFS**

##### **1.1. Incidence des nouvelles tâches induites par la mesure**

La mesure envisagée par la Commission prévoit la soumission à chaque opération d'importation de produits de la pêche d'un certificat validé par l'autorité du pavillon du navire qui est à l'origine de la matière première. Cette mesure est soutenue par la création d'une liste de pays autorisés à exporter (ceux qui auront fourni les éléments indiquant qu'ils respectent les mesures de gestion internationales) et par un système d'alerte spécifique qui mettra en garde autorités européennes en charge du contrôle et les opérateurs européens contre des risques d'introduction de marchandise d'origine INN.

Les autorités des Etats membres en charge du contrôle aux frontières devront

- Réaliser un contrôle documentaire : vérifier la présence du certificat dans la liasse de pièces justificatives (qui inclut également selon les cas la facture, le certificat sanitaire, le certificat d'origine) et en contrôler la cohérence (entre les informations contenues dans le certificat de capture et celles présentes dans les autres documents d'importation) ;
- Effectuer des contrôles physiques des lots : par sondage dans les containers suivant une méthodologie connue, vérifier la cohérence entre le contenu et les déclarations. Dans le schéma prévu, ces contrôles physiques seront ciblés ;
- Des enquêtes a posteriori : vérifier l'authenticité du document par investigation et recoupement après soupçon ou information extérieure nouvelle. Cette action peut impliquer la mise à contribution des autorités en charge de la pêche.

Les autorités en charge de la pêche des Etats membres seront donc amenées à collaborer au cas par cas avec les autorités douanières pour des opérations relevant du contrôle. En outre, si l'on considère que la mesure est amenée à se généraliser et que les autorités européennes devront certifier les captures de leurs navires vendues à des Etats tiers, les administrations en charge de la pêche des Etats membres seront amenées à s'organiser de manière à répondre

L'entrée en vigueur de la mesure demandera également une information et une formation des agents spécifiques.

La mesure concerne également les entreprises privées car elle ajoute une formalité supplémentaire. Sur le plan formel, l'acquisition d'un document supplémentaire de la part de

l'exportateur ou directement du navire de pêche ne représente pas une charge importante pour l'entreprise qui souhaite importer des produits de la mer, si ce document fait partie intégrante d'un système existant. Ce document sera simplement joint aux autres documents mentionnés (factures, certificat sanitaire, certificat d'origine etc.).

La fourniture de ce nouveau document sera intégrée aux procédures déjà négociées entre fournisseurs de pays tiers et acheteurs européens concernant le respect d'un cahier des charges relatif au respect des règles hygiène, à la traçabilité des produits, et au suivi financier le cas échéant. Ces tâches demandent déjà de nombreux échanges entre les deux partenaires commerciaux, et des audits techniques et financiers impliquant des visites sur place. L'intégration de la fourniture du certificat de capture dans la démarche ne demandera pas la mise en œuvre de moyens supplémentaires substantiels pour les importateurs européens.

Sur ces constats et sur les bases techniques explicitées dans ce rapport d'étude, l'évaluation des coûts administratifs peut être conduite conformément aux lignes directrices préparées par le Secrétariat Général de la Commission. La méthodologie recommandée conduit à obtenir les informations nécessaires au remplissage d'un tableau standardisé proposé sous format tableur.

## **1.2. Etape 1 : identification et classification des obligations d'information**

- Pour les importateurs (groupe cible), l'obligation consiste donc à vérifier la présence d'un certificat de capture et à en prévoir l'intégration lors des négociations commerciales. Dans la typologie des types d'obligations proposés dans les lignes directrice, on propose de sélectionner le cas n° 5 « Demande d'autorisation ou de dérogation ponctuelle » dans la mesure où le certificat doit être présenté lors de chaque opération d'importation. On ne trouve pas dans la nomenclature d'autre possibilité, si ce n'est la catégorie 12 des divers « autre type d'obligation » (ligne 1<sup>60</sup>)
- Pour les autorités des Etats membres en charge du contrôle à l'entrée des frontières, l'obligation se rapproche du cas n° 9 « inspection » car il s'agit de vérifier la présence d'un document dans une liasse et d'en vérifier la cohérence avec les autres éléments disponibles, y compris le contenu des lots (ligne 2 et 3).
- Pour les autorités des Etats membres en charge de la pêche, l'obligation générée par la mesure peut se rapprocher dans la nomenclature proposée du cas n°8 « certification de produits ou de processus » car il s'agira bien de valider et certifier les documents de captures des navires communautaires qui vendent à des pays tiers (ligne 4).

## **1.3. Etape 2 : Détermination des actions requises**

- Pour les importateurs, on sélectionne le cas n° 11 « Présenter les informations (les envoyer à l'autorité compétente) » (ligne 1)
- Pour les autorités des Etats membres en charge du contrôle à l'entrée des frontières, la mesure génère deux types d'action : premièrement une action initiale de formation cas n° 2 de la typologie (« Dispenser une formation sur les obligations d'information ») (ligne 3), et

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<sup>60</sup> Ligne 1 se réfère à la ligne du tableau de synthèse des coûts administratifs présenté en annexe. Les autres renvois à des numéros de ligne suivent la même logique de présentation.

deuxièmement une action récurrente rattachable au cas n° 9 de la typologie « Inspecter et Contrôler » (ligne 2).

- Pour les autorités des Etats membres en charge de la pêche, l'action requise se rapproche du cas n°7 « Compléter des formulaires et des tableaux ». On pourrait également choisir de l'affecter au cas n°3 de la typologie « Extraire des informations pertinentes de données existantes » (ligne 4).

#### **1.4. Etape 3 : Classification en fonction de la source de la réglementation**

L'analyse de l'origine de la mesure implique de se référer au contexte international.

La FAO a adopté en 2001 un plan d'action international visant à prévenir, à contrecarrer et à éliminer la pêche illicite, non déclarée et non réglementée<sup>61</sup>. Le plan détaille une série de mesures que les Etats de pavillon, côtiers, ou de port devraient prendre pour lutter contre la pêche INN. Parmi celles-ci, le plan d'action prévoit que les Etats puissent coopérer, notamment par le biais des ORP, pour prendre des mesures contre le commerce international des produits de la pêche INN.

Près de 6 années après son adoption, force est de constater que les mesures adoptées par la communauté internationale pour faire obstacle au commerce de produits de la pêche INN sont insuffisantes. Les ORP ont réussi à mettre en place des schémas de documentation / certification mais qui ne répondent que partiellement aux besoins identifiés. Le mode de décision par consensus qui prévaut dans les ORP ne permet pas d'espérer à moyen terme l'adoption de mesures réellement contraignantes, et sanctionnables, qui permettraient de faire passer dans le droit international contraignant les dispositions de droit mou prévues par le plan d'action de la FAO.

Compte-tenu de la difficulté d'œuvrer rapidement dans un cadre multilatéral, la Communauté européenne décide de prendre de manière autonome, mais dans le respect de différents accords internationaux existants, la mesure de certification des captures afin de lutter contre le commerce international des produits INN, et ce, dans l'attente que le reste de la communauté internationale se mette d'accord conformément aux principes détaillés dans le plan d'action de la FAO.

Pour les besoins de l'analyse des coûts administratifs, on prendra comme hypothèse que 99% de la mesure est d'origine UE. Le 1% restant est attribuable à des obligations internationales. Ce sont les divers documents / certificats pour les produits de la pêche qui sont imposés dans le cadre multilatéral des ORP. Ces documents / certificats concernent 36 000 tonnes de produits importés, sur le total toutes espèces / produits de 4,3 millions de tonnes (arrondi à 1%, d'où la part proposée).

#### **1.5. Etape 4 : les groupes cibles**

Il n'y a pas lieu de distinguer des groupes cibles parmi les opérateurs du secteur privé impacté par la mesure de la Commission (le secteur de la commercialisation et de la transformation des produits de la pêche). La mesure est obligatoire pour toute la population d'entreprises. Les entreprises qui auront le moins à souffrir du poids administratif seront celles qui seront les mieux organisées, petites ou grandes.

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<sup>61</sup> [http://www.fao.org/figis/servlet/static?dom=org&xml=ipoa\\_IUU.xml](http://www.fao.org/figis/servlet/static?dom=org&xml=ipoa_IUU.xml)

Il y a peu de données sur ce secteur. On estime le nombre d'entreprises à environ 6 000, dont 50% de SME de moins de 20 salariés. Sous réserve de données d'enquêtes actualisées, l'Espagne, la France, l'Italie, la Grèce, le Royaume-Uni, la Pologne et l'Allemagne seraient les Etats membres qui concentreraient la majorité des entreprises actives dans ce secteur.

#### **1.6. Etape 5 : Fréquence des actions**

Pour les importateurs, présenter le document de certification des captures devra se faire à chaque opération d'importation d'un lot. On ne connaît ni le nombre total d'entreprises européennes susceptibles d'importer, ni le nombre d'opérations d'importation qu'elles sont susceptibles de faire chacune. En ce qui concerne le contrôle des documents réalisé par les autorités douanières, le problème est le même : on ne peut pas estimer la fréquence des opérations ni le nombre de points de contrôle concerné.

Pour le calcul des coûts (étape suivante) supporté par ces deux groupes d'intervenants (lignes 1 et 2), on propose de modifier la méthode de calcul du coût administratif présentée dans les lignes directrices : on estime le nombre d'opérations d'importation de produits de la pêche à partir du tonnage total importé et du poids unitaire d'une opération que l'on peut raisonnablement prendre comme hypothèse. Sur cette base, *i)* constatant que 86% des importations se font par voie maritime, donc essentiellement par container d'un contenu moyen de 25 tonnes, *ii)* que chaque container contient en moyenne 1,5 lots, et *iii)* que le volume total des importations de produits de la pêche approchait les 4,5 millions de tonnes en 2005, le nombre d'opérations d'importation est estimé à  $4,5 \text{ millions} \times 1,5 / 25 = 270\,000$  opérations par an. Pour tenir compte des arrivages de lots de taille plus modeste par avion ou par route, on arrondi le nombre à 300 000. Ce nombre sera multiplié par le coût unitaire d'une opération pour obtenir le coût administratif de la mesure.

Pour les autres actions requises, la fréquence peut être estimée de manière plus conventionnelle.

En ce qui concerne la formation initiale que devront assurer les autorités responsables du contrôle aux frontières, la fréquence est 1, reportée en italique pour souligner son aspect non récurrent (ligne 3).

S'agissant de la certification des captures des navires communautaires vendant à des pays tiers par les autorités en charge de la pêche (ligne 4), on prendra comme hypothèse que les 500 navires potentiellement concernés font des marées d'une durée moyenne de 20 jours<sup>62</sup>. Compte-tenu d'un arrêt technique des navires d'au moins 60 jours par an, ces navires font en moyenne 15 marées par an et auront besoin d'une certification à une fréquence équivalente (de 15).

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<sup>62</sup> Les thoniers senneurs, principale source d'exportation de matière première vers les pays tiers font des marées plus longues (60 jours). La fréquence retenue est par conséquent une hypothèse haute.

## 1.7. Etape 6 : Indication de facteurs de coûts pertinents

### 2. COUT DE MAIN D'ŒUVRE

Les coûts de main d'œuvre sont les seuls imputables à cette mesure. En effet, il n'y a pas de coût d'investissement identifiable. Les personnes qui auront à se charger des formalités nouvelles sont estimées se placer au niveau de qualification employé.

Le coût moyen horaire des salaires charges comprises pour l'ensemble des pays européens est de 21 € de l'heure en 2006 (données de 2004 Eurostat). Cependant il a été décidé de ne pas appliquer ce coût moyen car d'une part, les écarts moyens de salaires entre les 27 pays sont très importants allant de 30.43 € / heure pour la suède à 13.37 € pour la Grèce et 4.01 € / heure pour l'Estonie et la part des pays importateurs n'étant pas homogène, 8 pays représentant 86% des importations de produits de la mer.

Le tableau suivant synthétise ces informations et permet ainsi de valider le taux horaire moyen finalement choisi

<b>PAYS</b>	<b>Coût moyen salaires/heure (en euros)</b>	<b>Part d'importation des produits de la mer (en %)</b>
Espagne	14.21	23 %
Danemark	30.30	13%
Royaume-Uni	23.56	10 %
France	27.68	9 %
Allemagne	26.05	9 %
Italie	20.64	9 %
Pays-Bas	25.19	7 %
Suède	30.43	6 %

En prenant en compte les salaires moyens des plus gros pays importateur, on arrive à un salaire moyen supérieur au salaire moyen des 27 pays de l'Union Européenne. Une moyenne de 24 euros / heure a donc été validée pour cette estimation auquel se rajoute les frais généraux estimé à 25% ; soit un coût horaire définitif de 30 € de l'heure. Par convention, on considèrera des coûts identiques pour le secteur privé et le secteur public (lignes 1, 2 et 4).

S'agissant de l'action de formation, on considèrera que les salaires à considérer se placent au niveau des cadres, avec une valeur moyenne de 35 € de l'heure, plus 25% de frais généraux, soit 44 € de l'heure (ligne 3).

Enfin, une partie des formalités seront effectuées par des entreprises sous-traitantes (type transitaire). Dans ce cas, on considère un coût horaire double du coût interne, soit 60 € de l'heure (ligne 1).

### 3. NOMBRE D'HEURES DE TRAVAIL RENDU NECESSAIRE PAR LA MESURE DE CERTIFICATION

#### Importateurs européens de produits de la pêche (ligne 1)

Concernant l'action de présentation des certificats pour les entreprises importatrices, on a considéré que celle-ci nécessitait une part en tarif interne (action administrative exercée par l'entreprise elle-même) et une autre part en tarif externe (action administrative sous-traitée par une autre entreprise type transitaire en douanes)

Tarif interne : l'action administrative étant intégrée à des formalités déjà existantes, on considère que la présence d'un document supplémentaire ne représentera quasiment pas de charges supplémentaires hormis le signalement lors de la commande, la vérification de sa présence, sa transmission et son classement en retour. Ce taux a été estimé à 6 mn supplémentaire sur un dossier de formalité pour un lot soit 0.10 heure. C'est une moyenne qui bien entendu ne prend pas en compte la gestion des dossiers incomplets et la période de rodage consécutive à la mise en route de cette nouvelle obligation.

Tarif externe : L'action administrative du transitaire étant intégrée à des formalités déjà existantes, la présence de ce document complémentaire ne représentera pas une charge très importante de la même manière. Cependant, cela nécessitera néanmoins des tâches supplémentaires de vérification et de contrôle devant les 2 administrations concernées. Le temps de traitement supplémentaire par dossier a été estimé à 0,1 heure également. Après enquête auprès de transitaires, le temps moyen de traitement sur le plan documentaire d'un dossier d'importation de produit de la mer est 30 mn (estimation large) dont le traitement le plus fastidieux des listes de colisages.

#### Autorités des Etats membres en charge du contrôle aux frontières (ligne 2)

Concernant l'action de contrôle de la documentation par les services en charge de l'inspection aux frontières, on va considérer qu'aucune intervention externe n'est nécessaire. Le tarif interne ne prendra en compte que la partie de vérification documentaire supplémentaire, qu'elle soit exécutée au niveau des services douaniers ou des services vétérinaires. Ce travail de vérification et de cohérence des informations est estimé à 6 mn par lot soit 0,10 heure.

Comme indiqué supra, l'estimation ne prend pas en compte le contrôle d'identité des marchandises déjà pris en compte pour d'autres contrôles.

A titre indicatif, le traitement moyen d'un dossier d'importation sur le plan documentaire par les autorités est estimé, quelque soit l'administration, à une moyenne de 20 mn par lot (si le dossier est complet).

#### Autorités des Etats membres en charge de la formation à la nouvelle procédure (ligne 3)

On estimera que la rédaction d'une note explicative (type circulaire d'application) et la présentation de la procédure aux autorités en charge du contrôle demandera l'équivalent de 3 semaines de travail (soit environ 120 heures) pour chacun des 27 Etats membres (avec une distribution inégale : les gros Etats membres importateurs auront besoin de plus de moyens, les petits Etats moins).

#### Autorités des Etats membres en charge de la pêche (ligne 4)

Ces autorités auront à valider des certificats de capture pour les débarquements de leurs navires auprès de pays tiers. Normalement, cette tâche sera courte car les données nécessaires sont le plus souvent disponibles dans des bases de données centralisées (licences de pêche, VMS, journaux de bord). On anticipe un temps moyen de 10 mn par déclaration à valider, soit 0,17 heure.

### **3.1. Conclusion : le coût administratif de la mesure**

Comme indiqué dans le tableau récapitulatif présentée en annexe 1, le coût administratif de la mesure se situera aux alentours de 4 M€ par an. Ces coûts sont essentiellement des coûts récurrents. Ils seront supportés à près de 70% (un peu moins de 3 M€) par le secteur privé européen. Ramené au nombre estimé d'entreprises (6 000) et au chiffre d'affaires du secteur (18 milliards d'euros), ce coût apparaît faible (environ 500 € par entreprise en moyenne) et d'un rapport modeste avec le chiffre d'affaires (quelques centièmes de %). Le solde du coût administratif (1 M€) est à la charge des administrations des Etats membres en charge du contrôle aux frontières pour l'essentiel. Il existe environ 4 000 PIF en Europe. Si le coût administratif s'applique sur tous ces PIF, l'incidence de la mesure est également modeste.

Le coût administratif de la mesure pour les pays tiers ne peut être estimé du fait de la diversité des situations. Son importance dépendra de l'existant en matière d'organisation administrative et de base légale pour le suivi des navires. Il pourra être de quelques dizaines de milliers d'euros pour les pays les mieux organisés à plusieurs centaines de milliers pour les Etats tiers pour lesquels l'introduction de la mesure demandera des réformes importantes du système administratif.



(Projet) impact des mesures commerciales prévues dans le paquet INN						Tariff (€ per hour)		Time (hour)		Price (per action or equip)	Freq (per year)	Nbr of entities	Total nbr of actions	Total cost	Regulatory origin (%)						
NIL / projet						i	e	i	e						Int	EU	Nat	Reg			
1	/	/	Application for individual authorisation or exemption	Submitting the information (sending it to the designated recipient)	Importateurs et mandants produits de la mer	30	60	0,10	0,10	9,0	n.a.	n.a.	300.000	2.700.000	1%	99%			OK	Types of obligation	
2			Inspection	Inspecting and checking (including assistance to inspection by public authorities)	Administrations de contrôles aux frontières	30		0,10		3,0	n.a.	n.a.	300.000	900.000	1%	99%			OK	Notification of (specific) activities	
3			Inspection	Training members and employees about the information obligations	Administrations de contrôles aux frontières	44		120,00		5.280,0	1,00	27	27	142.560	1%	99%			OK	Submission of (recurring) reports	
4			Certification of products or processes	Filling forms and tables	administration chargée de la pêche	30		0,17		5,1	15,00	500	7.500	38.250	1%	99%			OK	Information labelling for third parties	
5																					
6										0,0			0	0						Total not equal to 100%	Application for individual authorisation or exemption
7										0,0			0	0						Total not equal to 100%	Application for general authorisation or exemption
8										0,0			0	0						Total not equal to 100%	Registration
9										0,0			0	0						Total not equal to 100%	Certification of products or processes
10										0,0			0	0						Total not equal to 100%	Inspection
11										0,0			0	0						Total not equal to 100%	Cooperation with audits
12										0,0			0	0						Total not equal to 100%	Application for subsidy or grant
13										0,0			0	0						Total not equal to 100%	Other
14										0,0			0	0						Total not equal to 100%	
15										0,0			0	0						Total not equal to 100%	
<b>Total administrative costs (€)</b>													<b>3.780.810</b>								

Administrative costs by origin (€)

37808	3743002	0	0
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Regulatory act refers to legislative and statutory acts

For the reference of the proposal / act, use EU-Lex format ('cut and paste' of the reference given by [http://europa.eu.int/eur-lex/lex/RECH\\_menu.do?ihmlang=en](http://europa.eu.int/eur-lex/lex/RECH_menu.do?ihmlang=en)).

No. = gives a number for each action.

Ass. Art.= article and § detailing the obligation assessed on that line.

Orig. Art. = if the act assessed is the transposition of an act adopted at another level, insert here the article and § of the 'original' act corresponding to the obligation assessed on that line

(for ex., article of the EC directive at the origin of one specific obligation imposed by national law)

i = internal tariff (administrative action carried by the enterprise itself). e = external tariff (administrative action contracted out).

Price per action =  $(TA_i * T_{li}) + (TA_e * T_{le})$ . Total Nbr of actions = Frequency \* Number of entities. Total cost per action = P\*Q.

For equipment, yearly cost based on the depreciation period must be put in the 'price' column; the 'tariff' and 'time' columns must be left empty column

For one-off costs, put '1' in the frequency column in italics

When the act amends existing provisions and diminishes the number of hours or frequency, negative figures corresponding to the burden reduction should be typed in the corresponding columns