

# Hitting Where It Hurts

**The European Community's move to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing is fraught with problems**

According to data from the Food and Agriculture Organization of the United Nations (FAO), in 2007, the European Community (EC) of the European Union (EU)—an economic and political union of 27 member States, often abbreviated as EU27—with imports of nearly nine mn tonnes of fish and fish products, valued at over US\$40 bn, accounted for the world's largest import market for fish and fish products. The EC accounted for over 32 per cent of quantity, and 43 per cent of value, of global imports of fish and fish products. These came from over 130 countries. Norway alone accounts for the largest share of EC imports of fish products, but developing countries such as China, Vietnam, Morocco, Argentina, India and Chile figure among the top ten exporters of fish and fish products to the EC market. Based on this market power, the EC is now flexing its muscles to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing.

At one stroke, by creating strong market provisions, the Council Regulation (EC No. 1005/2008) establishing a system to prevent, deter and eliminate IUU fishing, and the Commission Regulation (EC No. 1010/2009) dealing with rules to implement the system, shift the burden of proof for demonstrating compliance with conservation and fisheries management measures to the fishing vessel and the flag State.

The EC feels that IUU fishing—namely, fishing without permission or which flouts State rules and regulations; or which does not report catches; or fishing in marine space having no fishing regulation in place—constitutes one of the most serious threats to

the sustainable exploitation of living aquatic resources. The EC believes that IUU fishing jeopardizes the foundation of its Common Fisheries Policy, that it undermines international efforts to promote better global governance, and that it poses a major threat to marine biodiversity. The EC is keen to ensure that the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate IUU fishing (IPOA-IUU) is endorsed as widely as possible. The EC feels that such an endorsement will be in line with discharging duty under international law as flag, port, coastal or market States.

In line with its international commitments, and given the scale and urgency of the problem, the EC is keen to substantially enhance its action against IUU fishing and adopt new regulatory measures to

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cover all facets of the phenomenon. The EC is implementing its resolve to prevent, deter and eliminate IUU fishing through establishing a Council Regulation whose scope would extend to fishing activities on the high seas and maritime waters, including the internal waters and territorial seas under the jurisdiction of all coastal States.

## **Serious damage**

The aim is to target IUU fishing activities that cause the most serious damage to the marine environment, to

*This article is by **Sebastian Mathew** (icsf@icsf.net), Programme Adviser, ICSF*

sustainability of fish stocks, and to the socioeconomic situation of fishers.

Since 1993, the EC believes, it has provided for a comprehensive system designed to monitor the legality of catches from EC fishing vessels. The current system that applies to fishery products caught by non-EC vessels and imported into the EC does not ensure an equivalent level of control. The EC would like to, therefore, address this

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weakness, which is a strong incentive for foreign IUU operators to profitably trade their products in the EC. As the world's largest market for—and importer of—fishery products, the EC thinks it has a responsibility to ensure that fishery products imported into its territory do not originate from IUU fishing. It is thus asserting its role as a market State. The fishery products, however, would exclude items such as freshwater fishery products, Atlantic and Pacific salmon, live oysters, scallops, mussels, aquaculture products and ornamental fish.

The EC is thus introducing a new, three-level regime to ensure proper

and equal control of the supply chain for fishery products imported into the Community. Firstly, trade with the EC in fishery products originating from IUU fishing will be prohibited. A certification scheme that applies to all trade in fishery products with the EC will be implemented. This would apply to transshipments as well as re-export of fish and fish products. It will be mandatory for flag States to furnish certificates establishing the legality of fishery products. EC member States can refuse import consignments if the catch certificates violate the prescribed conditions. The EC will set up an alert system to spread information about such violations.

Third-country fishing vessels—classified as those (a) with an overall length of up to 12 m, without towed gear; (b) with an overall length of under 8 m, with towed gear; (c) without superstructure; and (d) with less than 20 gross registered tonnes (GT)—will be allowed simplified catch certificates if their catches are landed in their respective flag States. Thus, one certificate would suffice for many such vessels if their catch would together constitute a consignment. The flag State has only to indicate in the certificate the species caught, the landed weight, applicable conservation and management measures, and a list of vessels with names and registration numbers. It will not be required to provide information on, for example, area of fishing, licences, type of onboard processing, and the live weight of the catch, as would be required of other fishing vessels.

### Conservation measures

Secondly, a fishing vessel would be presumed to have engaged in IUU fishing if it is shown that it has, contrary to the conservation and management measures applicable to the fishing area concerned, undertaken fishing activities that are considered to constitute IUU fishing. These include: fishing without a valid licence, not fulfilling obligations to record and report catch, fishing in closed areas or during closed seasons, engaging in fishing for a stock that is subject to a moratorium or prohibition, using

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Vessels at the port of Las Palmas, Canary Islands, Spain. It will be mandatory for flag States to furnish certificates establishing the legality of fishery products imported into the EC

prohibited gear, landing undersized fish, and carrying out fishing activities in the area of a regional fisheries management organization (RFMO) inconsistent with, or in contravention of, its conservation and management measures. The EC can prohibit the importation of fishery products caught by such vessels. Both EC and non-EC fishing vessels suspected of carrying out IUU fishing will be identified by the EC and put on its IUU vessel list after a due process of allowing the competent flag States to take effective action.

Thirdly, flag, port, coastal or market States would be required to ensure that their fishing vessels or nationals comply with rules on conservation and management of fisheries resources. Failing this, the EC would be entitled to identify them as non-co-operating States. If a country has not taken adequate measures to address recurrent IUU fishing by its vessels or nationals, or by vessels operating in its maritime waters or using its ports, or if access of fisheries products stemming from IUU fishing is allowed to its market, then the EC might identify it as a non-co-operating State. In identifying a non-co-operating State, the EC might also consider the status of ratification of third countries of the United Nations Convention on the Law of the Sea (UNCLOS), the United Nations Fish Stocks Agreement and the FAO Compliance Agreement, and their status in relation to RFMOs.

The EC can act against non-co-operating third countries through trade measures such as prohibiting importation of fishery products caught by fishing vessels flying the flags of such countries. The catch certificates accompanying such products would not be accepted. Trade measures would also include prohibition on EC operators from purchasing the catches of fishing vessels flying the flags of such countries. Exports by EC vessels to such countries could also be prohibited. The EC would not negotiate fisheries partnership agreements with such countries.

### Significant implications

The implications of the proposed measures are significant, considering



*Pamariles*, wooden hulled vessels in the Philippines targeting yellowfin tuna. The EC will soon make mandatory certificates establishing the legality of imported fishery products

that almost every marine fish-producing country exports to the EC. While countries with conservation and management regimes that have equivalent provisions as in the EC would benefit, those that are yet to establish such mechanisms would suffer. The requirement to comply with conservation and management measures to access the EC market and to exercise equivalent level of flag State control would reduce competition from cheap imports into the EC, especially from developing countries, and would help EC fishers to receive a better price for their fish.

Unlike most international trade measures dealing with conservation and management of overfished resources or protected associated or dependent species, the EC Regulation 1005/2008 focuses on compliance with applicable national and international laws, regulations or conservation/management measures, irrespective of the status of fish stocks. Although measures proposed for third-country flag States and fishing vessels are consistent with measures applicable to the EC member States and their fishing vessels, it is moot if they are, in fact, essential for the protection of fish life and for the conservation of an exhaustible natural resource such as fish.

It remains to be seen how far cleaning up IUU fishing operations by the market State would actually make a difference to the status of fish stocks in general, considering that only a limited share of total capture fishery production would end up in the EC market. In light of the experience with food safety standards, the IUU regulation would, most likely, lead to a dualistic scenario where fish production for the EC market would be forced to comply with national and international conservation and management measures as required by EC, and fish production for domestic and other less demanding export markets would continue to function as

explored or exhausted all other measures to deter IUU and whether these have already proved to be unsuccessful. The temptation within the EC seems to be too great to hit where it really hurts. One has to wait and watch to see if asserting market power is indeed the silver bullet for the problem of IUU fishing, especially by turning up the pressure on coastal, flag and port States to uphold their duties towards conservation and management of fishery resources. 3

**It is unclear if the EC has explored or exhausted all other measures to deter IUU and whether these have already proved to be unsuccessful.**

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before. It remains to be seen if such a scenario, in the long run, would benefit all fisheries.

The scarce financial resources of developing countries would probably be redirected to set up conservation and management measures for high-value fishery resources for the EC's export market, at the expense of similar measures for low-value species for the domestic and other less demanding, but potentially more destructive, international markets. Establishing conservation and management priorities in accordance with the dictates of the import State, and not in accordance with the actual status of fish stocks, could deprive fish stocks and fisheries habitats of effective management intervention.

The IPOA-IUU—which the EC is keen to see endorsed as widely as possible—cautions that “trade-related measures should only be used in exceptional circumstances, where other measures have proven unsuccessful to prevent, deter and eliminate IUU fishing, and only after prior consultation with interested States. Unilateral trade-related measures should be avoided”. It is, however, unclear if the EC has

#### For more



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#### **Technical Forum of Asia-Pacific Fishery Commission on IUU**