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COMMUNICATION FROM THE COMMISSION

**Community action plan for the eradication of illegal,
unreported and unregulated fishing**

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1. INTRODUCTION

The control of illegal, unreported and unregulated (IUU) fishing is one of the international community's priorities for action to ensure the sustainability of fisheries worldwide. The European Community has played an active role in drawing up the international plan of action to prevent, deter and eliminate illegal, unreported and unregulated fishing. The plan, which was prepared by the FAO Committee on Fisheries (COFI) within the framework of the FAO Code of Conduct for Responsible Fisheries, was endorsed by the FAO Council on 23 June 2001.

In accordance with the commitments it has given, the European Community must now adopt the measures needed to implement the plan agreed at international level in the Community.

As Community rules in this area/on this matter are already relatively developed, the aim of this working paper is not to draw up a list of the resources available for controlling IUU fishing. Instead, new measures or initiatives need to be identified that should be undertaken under Community rules, in the context of regional fisheries organisations, or by international multilateral organisations in order to achieve that goal. The role the European Community can play in taking account of the specific needs of developing countries should not be overlooked either.

The introduction of effective and coherent arrangements for monitoring fishing activities is a key element in the success of a sustainable policy for the conservation and management of fish stocks. The more restricting these conservation and management measures are, the greater the temptation to seek to evade them. Fishermen and the various stakeholders involved will acknowledge their legitimacy only if they feel that they are being applied fairly.

The phenomenon of "flags of convenience" represents in this respect a considerable threat to the survival of fisheries worldwide. Their existence undermines the entire monitoring system both in relation to the drawing up of rules and their application. The European Community has a duty to act, therefore, in its own interest and in that of the international community, to combat this phenomenon.

The reform of the common fisheries policy (CFP) is a particularly appropriate framework in which to conduct a coherent debate on the matter. The timetable for the reform should mean that the European Community will be able to present a model document at the next session of the FAO's COFI in 2003.

2. MEASURES AT COMMUNITY LEVEL

2.1. Action 1: State control over nationals

- **Objective:** to discourage Community Member State nationals from flagging their fishing vessels under the jurisdiction of a State which is failing to fulfil its flag State responsibilities and from committing infringements.
- **Justification:** flags of convenience lead to unfair competition and present a serious threat to the sustainability of fish stock management. In the absence of international rules making it possible to establish a substantive link between a State and vessels flying its flag, Community operators should be discouraged from using these flags in order to ensure equal treatment between operators. The European Community, moreover, has already given international legal undertakings of this nature (SEAFO Convention), which have to be implemented in a non-discriminatory way at Community level.
- **Means**
 - (a) inserting a special article in the control Regulation defining the responsibilities of Member States in relation to their nationals (shipowners or captains of fishing vessels) engaging in fishing activities which are contrary to the rules for the conservation and management of fish stocks on board a vessel flying the flag of a non-member country.
 - (b) including in Community rules a ban on the use of a Community fishing authorisation to charter vessels involved in IUU fishing.

2.2. Action 2: Defining procedures for the implementation of arrangements approved at international level relating to the sustainability of fish stocks

- **Objective:** to give binding effect to various instruments approved at international level for the (responsible and/or) sustainable management of fish stocks, using for that purpose certain trade policy instruments.
- **Justification:** the inclusion, in Community rules, of procedures for excluding protectionism together with the adoption of objective implementation conditions will allow equal treatment to be established between States. The best known example is the United Nations resolution banning the use of large driftnets, incorporated in the Community legal order but not observed by some non-member countries.
- **Means:** adoption of Community rules compatible with the rules of the common market organisation banning trade in fishery products taken in breach of international agreements on responsible fishing and/or sustainable management of fish stocks.

2.3. Action 3: Control of activities associated with IUU fishing

- **Objective:** to ensure that importers, transshippers, buyers, consumers, equipment suppliers, banks, insurers and other service providers do not maintain business relations which they might have with vessels identified as engaging in IUU fishing.
- **Justification:** if IUU vessels do not have outlets for disposing of products they have obtained unlawfully, they will no longer have any financial interest in engaging in this kind of fishing.
- **Means:** inserting a provision in the control Regulation under which the conduct of such business or trade in fish or products derived from illegal, unreported and unregulated fishing would constitute an infringement. To facilitate the task of these parties, the Community should publish lists of IUU vessels and, where appropriate, of operators directly associated with their activities, as drawn up and approved by the regional fisheries organisations.

2.4. Action 4: Alerting the fishing industry, consumers and the public in general to the need to control IUU fishing

- **Objective:** to ensure that the whole of the fishing industry together with consumers and the public in general are aware of the detrimental effects of IUU fishing on the conservation and responsible management of stocks and the sustainability of fisheries worldwide, and on the efforts of the European Union, both internally and internationally, to root out this scourge.
- **Justification:** the Community has undertaken, within the framework of the application of the FAO Code of Conduct for Responsible Fisheries and its international plan of action against IUU fishing, to alert operators in the fishing industry and other circles concerned to the need to control IUU fishing. Implementation of the action plan will be more effective if it is backed by public opinion.
- **Means:** Organisation of a number of information and public awareness campaigns on the various aspects of the plan of action as and when it is implemented. These will be conducted in different forms depending on the aspect dealt with and the public targeted. They will include the dissemination of information in printed, audiovisual and electronic form, including via special Internet pages, press campaigns, communication and profile-raising measures, and public events.

3. MEASURES AT THE LEVEL OF REGIONAL FISHERIES ORGANISATIONS

3.1. Action 5: Development of framework plans for control and inspection within each regional fisheries organisation

- **Objective:** to secure the adoption by each regional fisheries organisation of a framework plan for control and inspection, at sea and/or in port, and, where appropriate, an observer plan tailored to the fishing characteristics of each one.
- **Justification:** the effective implementation of conservation and management measures adopted by the regional fisheries organisations requires appropriate and consistent control and inspection arrangements. The entry into force of the United Nations Agreement on Straddling Stocks implies, firstly, that the rules contained in the Agreement should be tailored to the characteristics of the fisheries covered by the different regional fisheries organisations and, secondly, that more precise and more operational rules than those contained in the Agreement should be drawn up in order to ensure the more effective and comprehensive guarantee of the rights of States and users based on transparent and non-discriminatory procedures.
- **Means:** The European Community will have to take the initiative in putting forward outline plans for control and inspection which are as developed and detailed as possible for all regional fisheries organisations which do not have them and amendments to existing plans in order to strengthen their effectiveness in controlling IUU fishing.

3.2. Action 6: Regulation of certain fishing activities on the high seas

- **Objective:** to secure the adoption by the regional fisheries organisations of conservation and management measures, for fishing activities (e.g. a ban on the use of driftnets), or for catches of species (e.g. deep-water species) which have not been regulated at international level up to now.
- **Justification:** The FAO plan of action covers not only unlawful fishing but also unregulated fishing. Progress achieved in regulating and controlling certain fishing activities runs the risk of fishing effort being transferred to techniques which are not environment friendly or towards species which for that reason will be rapidly overfished. The Community must at the same time, in the interests of effectiveness and fairness, seek the uniform and non-discriminatory application of the measures it requires its own fishermen to observe both in Community waters and on the high seas. This lack of internationally approved rules on the high seas threatens also to encourage the development of fishing activities under flags of convenience as a way of evading Community rules.
- **Means:** The European Community will have to take the initiative in putting forward conservation and management measures for the high seas in order to limit as far as possible the types of fishing which are unregulated at international level. Priority will be given to cases where Community rules are more stringent than existing international rules.

3.3. Action 7: Identification and monitoring of IUU vessels

- **Objective:** the identification by regional fisheries organisations of vessels engaging in IUU activities in accordance with transparent and non-discriminatory procedures and criteria in order to impose sanctions on account of those activities and, secondly, to allow action to be taken against flag States to discourage those activities.
- **Justification:** The number of vessels involved in IUU fishing is not properly known. IUU vessels change flag, waters or owner frequently, making it difficult to identify them. Besides, the criteria used by regional fisheries organisations are not sufficiently clear and are the subject of dispute, which is to the benefit of IUU vessels. In some cases, lists are drawn up on the basis of information from a few States and are not verified before being adopted by the regional fisheries organisations, thus undermining their legitimacy. The management procedures (enrolment, striking off) are not transparent. In addition, the consequences associated with listing are not spelled out. It is crucial therefore to clarify the procedures and criteria for identifying IUU activities in order to achieve standardisation within regional fisheries organisations.
- **Means:** The Community will take action, within regional fisheries organisations, to establish objective and transparent criteria for identifying IUU fishing activities. It will support the action taken by regional fisheries organisations to invite flag States to take action to eliminate IUU fishing activities. It will encourage the regional fisheries organisations to exchange information about vessels identified as such. The European Community will seek ways of improving data collection on vessels, to support the action of the regional fisheries organisations.

3.4. Action 8: Promoting uniform action plans to curb illegal fishing

- **Objective:** to introduce in a uniform and transparent way action plans to curb illegal fishing in the regional fisheries organisations, in particular for species targeted by IUU fishing activities.
- **Justification:** Generally speaking, IUU fishing activities focus on species with a high commercial value. Reducing IUU fishing for those species requires targeted action and effective monitoring therefore. These plans need to be transparent and non-discriminatory, however, since their ultimate goal is the imposing of business sanctions. If the regional fisheries organisations adopt uniform action plans covering the same target species, this will help prevent the transfer of IUU fishing from one ocean to another.
- **Means:** The European Community will call upon the regional fisheries organisations to adopt action plans to eradicate IUU fishing in accordance with uniform, transparent and non-discriminatory procedures. Priority will be given to species that are most heavily targeted by IUU fishing (those with a high commercial value).

3.5. Action 9: Identifying and quantifying illegal catches

- **Objective:** to quantify through the regional fisheries organisations the volumes taken by IUU vessels in order to assess the impact of these activities in the context of stock evaluation.
- **Justification:** in order to adopt management and conservation measures, stock evaluation needs to be carried out properly, and this is very difficult for some stocks as the scale of IUU catches is not fully known. In addition, if the control of IUU activities is to be effective, it is important to identify and quantify illegal catches so that action can then be taken against flag States.
- **Means:** The Community will encourage the regional fisheries organisations to implement procedures for collecting data on quantities taken illegally (information about trade, sampling organised at ports, information about catches and landings) and identifying the origin of these catches so that action can be taken against the flag States.

3.6. Action 10: Certificates and documents

- **Objective:** to set up, on the basis of common criteria, certification/documentation systems to support the effective implementation of the action plan without excessive cost to operators.
- **Justification:** the present arrangements (ICCAT statistical document, CCAMLR catch document), focusing on the collection of data which are used primarily for future stock management, meets the needs of the action plan only partly. Developed independently, they lack uniformity and make no distinction between the respective responsibilities of operators and authorities. This latter factor is a major drawback when applying an action plan which seeks to make the various stakeholders more accountable and provides for the use of sanctions.

Their practical design could encourage the forging of documents, a situation that could become worrying with the extension of the systems to species other than bluefin tuna and toothfish or their adoption by other regional fisheries organisations.

The arrangements for the exchange of information about documents by electronic or other means are legally and technically inadequate for satisfactory verifications to be carried out, either immediately or later.

In order to meet the aims of the action plan, steps should be taken, on the basis of a common framework:

- to focus the content of documents once again on information concerning vessels and their activities, which would be valuable for the management of stocks and for verifying having regard to Article 3 of the action plan defining IUU fishing;¹

¹ Community experience of certification and checks on origin may provide reference information about these particular points.

- to review their practical design in order to limit the risk of documents being forged;¹
 - to affirm the character of a mandatory declaration of documents and confer on them legal effects that can be used for the action plan;
 - to put in place procedures for consulting documents electronically and administrative cooperation arrangements giving the authorities technical and legal means of exchanging information and carrying out all necessary verifications.¹
- **Means:** a Community initiative involving the regional fisheries organisations and the States mainly concerned to encourage the reform of certification/documentation systems and the preparation of a prototype document for the meeting of FAO experts on the application of Article 76 of the action plan.

4. MEASURES AT INTERNATIONAL LEVEL

4.1. Action 11: Improvement of information concerning fishing vessels

- **Objective:** to improve exchanges of information about fishing vessels concerning their right to fish in order to identify as early as possible vessels that have been struck off the register or whose authorisation to fish has been cancelled.
- **Justification:** under the Agreement to promote compliance by fishing vessels on the high seas with international conservation and management measures (FAO1993), in order to engage in fishing activities on the high seas authorisation must be granted by the flag State, and, secondly, a register must be established of fishing vessels authorised to fly its flag and authorised to be used for fishing on the high seas. In addition, certain information must be made available to the FAO to strengthen international cooperation for the purposes of identifying authorised fishing activities. The Community has already ratified the FAO Agreement which has not yet entered into force because the number of ratifications is insufficient. Many regional fisheries organisations have given an undertaking to establish lists of authorised vessels or of vessels operating in contravention in order to improve cooperation between contracting parties with a view to improving the pursuit of and curbing unlawful fishing activities. Access to a joint database administered by the FAO should improve exchanges of information between regional fisheries organisations, and make the system more effective. Since many countries (United States, Canada, Japan, Norway) have already given an undertaking to cooperate with the FAO voluntarily, the European Community cannot remain uninvolved.

- **Means:** the transmission to the FAO on a voluntary basis of information concerning the Community fleet register pending the formal entry into force of the 1993 FAO Agreement.

4.2. Action 12: Strengthening of international cooperation

- **Objective:** to strengthen international cooperation on monitoring, control and surveillance by improving exchanges of information between authorities responsible for implementing measures to conserve and manage fish stocks.
- **Justification:** fishing vessels, by definition, are mobile and move around on the high seas in areas that are not directly under the jurisdiction of States. The implementation of the United Nations Agreement on Straddling Stocks will require closer coordination and cooperation between States in order to determine as quickly as possible the situation of vessels suspected of being in contravention, having regard to the laws of its flag State.
- **Means:** Participation of the European Community and its Member States in the network of monitoring agencies (MCS Network) proposed by Chile and the United States.

4.3. Action 13: Definition of a substantial link between a State and a vessel

- **Objective:** to establish objective legal criteria for ensuring that an authorisation to fly the flag of a State is based on the existence of a substantive link between that State and the fishing vessel concerned, as required under Article 91 of UNCLOS.
- **Justification:** the phenomenon of open registers which encourages the proliferation of flags of convenience is particularly harmful to the sustainability of fishing activities. The current legal vacuum means that some States are allowing their flag to be flown by fishing vessels which enjoy freedom to fish on the high seas without those States performing their duty to cooperate by controlling the fishing activities of those vessels effectively. The adoption of criteria for defining what is meant by a substantive link will mean that the scope for dishonesty afforded by the lack of an international rule can be excluded, and will make it possible for States which refuse, out of hand, to engage in international cooperation to secure the sustainable conservation and management of fish stocks to be identified objectively. This approach should make it possible to emphasise the capacity of the flag State to exercise its responsibilities effectively over fishing vessels flying its flag.
- **Means:** a Community diplomatic initiative to convene an international conference to negotiate an international agreement determining conditions for implementing Article 91 of UNCLOS for fishing vessels.

4.4. Action 14: Definition of rights and responsibilities of port States

- **Objective:** to define the rights and responsibilities of port States regarding access for fishing vessels to port facilities in order to carry on business, transit or first marketing operations, involving fishery products coming directly from fishing grounds.
- **Justification:** the rights and responsibilities of States on this matter are not defined in any international convention. This legal vacuum encourages the existence of ports of convenience just as flags of convenience exist. The absence of international rules governing access to and controls at ports does not foster the development of international cooperation in this area. It serves, furthermore, as an alibi for countries which do not wish to be too rigorous to avoid checking the origin of products that sustain their port operations.
- **Means:** a Community diplomatic initiative to convene an international conference to negotiate an international agreement defining the rights and responsibilities of port States concerning access by fishing vessels to port facilities.

5. MEASURES IN PARTNERSHIP WITH DEVELOPING COUNTRIES

5.1. Action 15: Assistance for developing countries to control unlawful fishing

- **Objective:** to help developing countries comply in full with the undertakings they are going to give under the international plan of action to prevent unlawful fishing.
- **Justification:** the formulation and implementation by developing countries of policies for monitoring and controlling fishing activities at national and/or regional level represent a burden which many of them do not have the resources to undertake. The European Community should contribute towards their resources, especially where its vessels are engaged in fishing activities in those countries under fisheries agreements.
- **Means:** technical and financial assistance with monitoring, control and surveillance of fishing activities should be put in place in partnership with the developing countries on terms to be determined on a case by case basis.