

ACP/84/088/17

*Department of Sustainable Economic
Development and Trade*

Brussels, 31 August 2017

**Item 4 of the draft agenda of the meeting of senior fisheries
officials.**

Background Note:

**IUU fishing: Combating and eradicating unlawful
fishing practices**

IUU fishing: Combating and eradicating unlawful fishing practices

The Concepts

1. SDG Target 14.4 of the UN Sustainable Development Goals focuses on effective management of fisheries resources with a specific goal on ending illegal, unreported and unregulated (IUU) fishing.
2. IUU fishing is a recognised global problem which undermines the integrity of responsible fisheries management arrangements and results in lost value to coastal states. Previous studies have estimated the value of IUU catch globally at between EUR 10 billion and EUR 21 billion annually representing between 11 and 26 million tonnes (Agnew et al, 2009). For instance, total catches in West Africa are estimated to be 40 percent higher than reported catches. In the Western and Central Pacific Ocean (WCPO), the value of IUU catch in tuna fisheries was estimated at between EUR 470 million and EUR 670 million annually, with actual lost revenue to Pacific Island countries around EUR 140 million (MRAG Asia Pacific, 2016). The impacts of IUU fishing on sustainability are multiple. The following Figure summarises the main environmental, economic and social impacts of IUU fishing.

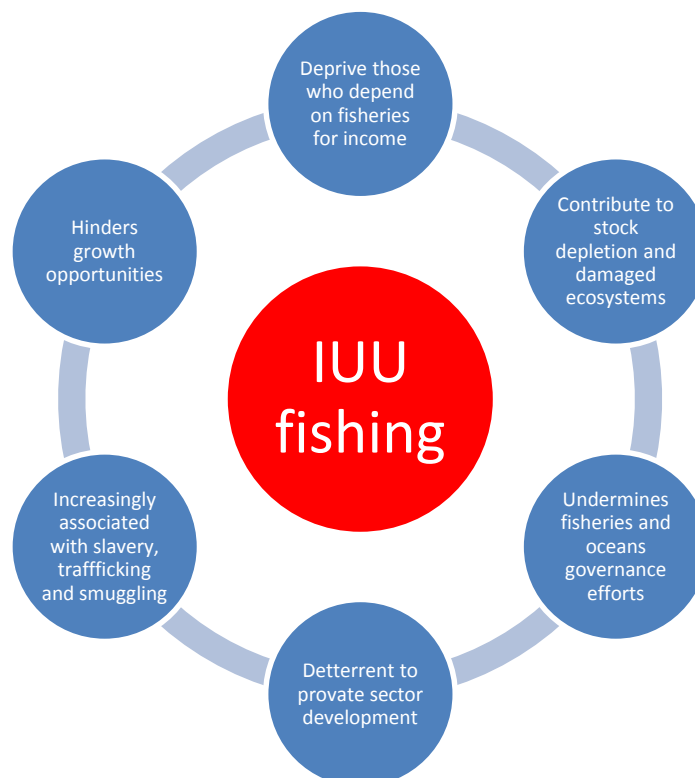


Figure 1: Main impacts of IUU fishing on sustainability (adapted from FAO)

3. The FAO International Plan of Action (IPOA) against IUU fishing provides a definition of IUU fishing. IUU fishing generally refers to fishing conducted in violation of national laws or internationally agreed conservation and management measures in effect in the

different ocean basins. IUU fishing can typically include fishing without a license or quota for certain species, unauthorized transshipments at sea, failing to report catches or making false reports, keeping undersized fish or fish that are otherwise protected by regulations, fishing in closed areas or during closed seasons, and using prohibited fishing gear.

4. Several legally binding international instruments address IUU fishing. This includes:
 - The United Nations Convention on the Law of the Sea (signed in 1982 and in force as from 1994) and its implementing agreement relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the UN fish stock agreement signed in 1995 and in force as of December 2011)
 - The FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (signed in 1993 and in force as of 2003)
 - The FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated (IUU) Fishing (signed in 2009 and in force as of 2016)
5. International instruments 1 and 2 set out duties and responsibilities of States as flag state (enforcement of rules to be complied with by own vessels wherever they operate) or as coastal state (enforcement of rules to be complied with by any vessel active in the area under jurisdiction).
6. The recently adopted FAO Port State Measures Agreement (PSMA) establishes a duty for port States to take a number of measures against foreign-flagged fishing vessels and other vessels supporting or servicing fishing vessels that are known or suspected to be engaged in IUU fishing. Measures include denial of port entry to vessels; denial of port uses and services if such vessels are already in port; and inspections of vessels, depending on the circumstances. The PSMA aims at putting an end to “ports of convenience” that unwittingly attract foreign flagged IUU fishing vessels because of their lack of controls. This often happens due to limited capacity to inspect and to access and share information.
7. The following table shows that ACP States have widely ratified United Nations Convention on the Law of the Sea (UNCLOS), 77 States out of 79. Most ACP States having an interest in the conservation of straddling fish stocks and highly migratory fish Stocks have ratified the United Nations Fish Stocks Agreement (UNFSA) and/or became members or cooperating parties of the relevant multilateral arrangements for conservation (i.e. RFMOs). The process of accession to the PSMA is ongoing, but as from June 2017, 27 ACP States had already ratified or signed the instrument. Further accessions to PSMA are expected over the next few years, in particular from those ACP States having considerable amounts of fisheries products landed or transhipped in their ports (e.g. Pacific Islands). Note that RFMOs conservation and management measures already include binding requirements in relation to controls of fishing and support vessels entering into contracting or cooperating parties ports, which may have the same effect.

Table 1: Situation of ACP States vis a vis major international agreements

	UNCLOS	UNSFSA	PSMA
Number of ACP States having accessed / ratified	77	30	27

8. These binding instruments are complemented by (non-binding) soft law instruments including the FAO Code of Conduct for Responsible Fisheries (1995), the FAO International Plan of Action (IPOA) to prevent, deter and eliminate Illegal, Unreported and Unregulated Fishing (2001) and the FAO Voluntary Guidelines for Flag State Performance (2013). These non-binding instruments essentially provide guidance and recommendations to States or Regional Fisheries Management Organisations for enforcement and improved compliance with international arrangements.
9. In its advisory opinion on case 21, the International Tribunal for the Law of the Sea (ITLOS) concluded that flag States may be held liable for IUU fishing activities conducted by vessels sailing under its flag in the event it did not take all necessary and appropriate measures to meet its “due diligence” obligations to ensure that flagged vessels are compliant with applicable regulations. (ITLOS, 2015)
10. In addition to international binding instruments, some entities have adopted specific regulations to reinforce their means of action against IUU fishing, in particular to prevent imports of IUU fisheries products in their own custom territories. This is the case of the IUU regulation¹ adopted by the European Union in 2008 which sets out the conditions for dialogue with third countries to promote compliance with international rules. The Regulation uses, as a key tool, a catch certification scheme applied to imports, exports and re-exports to and from the EU. In parallel, the EU is developing a new regulation to improve control of EU vessels in external waters. One of the other new tools to be adopted is the prohibition for EU vessels to access the EEZ of a third country that is not party to the relevant RFMO.
11. In 2014, the USA created the Presidential Task Force on Combating Illegal, Unreported, and Unregulated (IUU) Fishing and Seafood Fraud to oversee implementation a set of recommendations including the development as from 2016 of a risk-based traceability program as a means to combat IUU fishing and seafood fraud. The risk-based traceability program tracks fish and fish products identified as being at risk of IUU fishing or seafood fraud from point of harvest to point of entry into the U.S. custom territory.

¹ Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999

Key areas to reinforce

12. The EU IUU regulation 1005/2008 includes a specific instrument to assess the level of cooperation of non-EU countries in the fight against IUU fishing and to identify those countries assessed as non-cooperating. As shown in the following table; a total of 24 countries have been pre-identified as potential non-cooperating countries (yellow card), of which 16 are ACP States. While improvements supported revocation of the yellow card of 10 countries (of which 6 are ACP States), absence of relevant satisfying corrective measures within a reasonable time frame led to identification of 6 countries (of which 4 are ACP States) as non-cooperating. For 3 countries, the red card was eventually lifted. As of June 2017, three countries (Cambodia, Comoros, Saint Vincent and Grenadines) remain identified as non-cooperating countries by the EU and subject to relevant sanctions which include a trade ban of fisheries products and further measures such a fishing ban for EU vessels in the third countries' waters.

Table 2: Number of countries subject to the different stages of the EU carding process

	Pre-identification	Pre-identification revoked	Identification	Delisting	Still identified
Number of third countries concerned	24	10	6	3	3
<i>Of which ACP States</i>	16	6	4	2	2

Source: adapted from DG MARE web site

13. The rationale developed by the EU for pre-identification of third countries provides good insights into how States should reform their governance framework to address shortcomings and effectively combat and deter IUU fishing. The following table presents the result of an analysis carried out by a coalition of NGOs supporting States effort to fight against IUU fishing.

Table 3: Overview of the rationale used by the EU for pre-identifying third countries under Reg (EC) 1005/2008

Area	Sub-area	Number of time cited
1- National legal framework	Legal framework in line with international and regional obligations / Conservation and Management Measures (CMMs)	20
	Development and implementation of a NPOA	13
	Sanctioning system established in legislation	20
	Provision for the control of national in legislation	18
2- Fulfilment of flag State obligations to control flagged vessels	Implementation of CMMs	15
	Fisheries monitoring, control and inspection scheme	15
	Registration of fishing vessels	15
	Management of licenses	4
	Implementation of CMMs	6

3- Coastal State enforcement of CMMs	Fisheries monitoring, control and inspection scheme	5
4- Regional and multilateral cooperation	Compliance with RFMO measures	17
5- Market State measures and traceability	Traceability procedures and systems	9

Source: EJF / Oceania / Pew / WWF analysis of EU Commission proposals for pre-identification of third countries pursuant to Reg (EC) 1005/2008

National legal framework

14. Countries should ensure that their legal framework addresses all aspects required to prevent, deter and eliminate IUU fishing. This may require the adoption of specific legislation to address IUU fishing or the incorporation of specific provisions on IUU fishing into existing legislation. In all cases, National legislation should be aligned with international binding requirements and open for transposition of applicable conservation and management measures adopted by RFMOs to which the country is party. Importantly, the National legal framework must include provisions for monitoring activities of own fishing vessels wherever in the world they operate, whether industrial or artisanal, and activities of foreign vessels active in the EEZ. The National legal framework must also include a comprehensive system of proportionate and deterrent sanctions for those engaged in IUU activities.

15. Although not legally required by international conventions, the development and the adoption of a NPOA against IUU fishing can prove useful to develop a National response to IUU fishing in particular when several agencies are concerned (fisheries, customs and defense) with identification of measures to be implemented to close any loopholes underpinning IUU fishing activities.

ACP States responses

16. Over the past few years, a number of ACP States have implemented substantial reforms of their legal frameworks. Alignment of legal framework with international obligations has been or is being implemented in West Africa in particular under the World Bank funded WARFP programme, in the Indian Ocean under the EU funded Smartfish and World Bank funded Swiofish programmes, and in the Pacific under various programmes. For some ACP States, pre-identified by the EU as non-cooperating countries, yellow card revocation process has been accelerated, for example in Papua New Guinea or in Ghana.

17. According to feedback received from ACP States, most coastal States have adopted NPOA-IUU.

Fulfilment of flag State obligations to control own vessels

18. A central aspect of flag State responsibility is to ensure compliance of own vessels with international rules and standards, and with regional, sub-regional and national conservation and management measures. A number of measures must be taken by flag States in order to exercise effective responsibility over their fleets. These include establishing a system of licensing, authorisations or permits for fishing activities and a national record of vessels authorised to fish outside the EEZ; requiring the marking of fishing vessels in accordance with international standards; requiring the recording and timely reporting of key data (vessel position, catch and fishing effort); and establishing a system of MCS, including implementation of VMS, inspection and observer requirements. This is especially important where flagged vessels call rarely in their home ports and where beneficial owners of the vessels are based in another country.
19. A critical weakness identified under the EU identification process is the registration of fishing vessels. Some countries appeared to have a vessel registration system disconnected from the fisheries administration, either with registration system managed by third entities located outside the country, or with registration system managed by a different national administration with no exchange of information with the fisheries administration (typically the case of registration system maintained by national transport authorities).

ACP States responses

20. Use of electronic reporting systems to monitor industrial fishing vessels, Vessel Monitoring System (VMS), is now widespread in most ACP States with in some cases, mechanisms to exchange VMS positions with neighbouring States. Over the next few years, electronic reporting systems may include electronic transmission of logbooks as it is already the case in some ACP Member States (e.g. Sao Tome y Principe, Senegal, Mozambique and Seychelles). Strengthened monitoring of artisanal fleets may also be required, in particular in overcapacity situations. AIS monitoring of artisanal fleets has been recently trialled in some West African countries with positive outcomes in terms of surveillance as well as in terms of security at sea.
21. Concerning observer schemes, most ACP States still lack capacities to reach acceptable coverage rates of national and foreign vessels. Main problems lie in the recruitment and training of observers, lack of financial resources and sometimes, an inadequate legal framework. At Regional level, while the Pacific region remains an exception with a comprehensive observer scheme developed and managed by the competent RFMO (i.e. WCPFC), West and Central African States and South-West Indian Ocean States still have problems setting up appropriate regional observer schemes that adequately cover transnational fisheries (e.g. highly migratory species), for the same reasons as above, compounded by issues in relation to mutual recognition of regional observers.

22. On the issue of ACP fishing fleet register, several ACP States (e.g. Belize, Equatorial Guinea) considered to provide conditions for flags of convenience have repatriated their registers to strengthen the monitoring conditions of flagged fishing vessels in accordance with international treaties.

Coastal State enforcement of Conservation and Management Measures (CMMs)

23. Coastal States are responsible for establishing and enforcing conservation and management measures to regulate fisheries in their EEZs. In the case of straddling and highly migratory fish stocks, CMMs should adopt compatible measures implemented in the region/ neighbouring high seas areas, including requirements established by competent RFMOs.
24. Ensuring CMMs are complied with by vessels operating in the areas under jurisdiction require the development of an effective MCS system for fishing activities, as well as cooperation and information exchange mechanisms with other States. Whilst electronic reporting systems such as VMS, Automatic Identification System AIS or electronic logbooks are considerable assets for monitoring fishing vessels, and in some cases to detect infringements, effective MCS requires also that coastal States have the necessary capacities to conduct inspections at sea and in ports, including trained inspectors and resources to patrol the EEZ.

ACP States responses

25. The maintenance of a patrol fleet is a problem in most ACP States. Patrol vessels are expensive to purchase and require substantial operational budgets, which are not easy to sustain. Nonetheless, some ACP States in West Africa and in the Indian Ocean could develop their control means with support of international donors.
26. To resolve the problems, some ACP States have engaged in the mutualisation of control resources (seaborne and airborne, inspectors) to organise joint deployment plans covering one or several EEZ during a same operation.
27. The Regional Plan for Fisheries Surveillance (PRSP) is an initiative implemented by Coastal States of the South-West Indian Ocean with support of the EU. Started in 2006 by Indian Ocean Commission Member States and France, the PRSP organizes regional cooperation for controlling fishing fleets active in the region. PRSP supports the organisation of joint deployment plans involving seaborne and airborne control means and inspectors of participating countries, sharing of information (VMS, intelligence), as well as capacity development tools (training of inspectors).

28. In West Africa, SRFC Member States agreed to pool control resources to support joint deployment plans with financial support of the EU and of the World Bank. Several joint operations have been organized, the latest (end of 2016) supporting inspection of 70 fishing vessels of which 14 were found non-compliant with applicable CMMs. The forthcoming EU PESCAO programme will further support sub-regional integration of control resources in the West African region.
29. In the Western Central Pacific, coastal States with support of their quadrilateral Defence cooperation counterparts from Australia, New Zealand, France and the United States deploy annual joint operations to inspect both at sea and in ports tuna fishing vessels under coordination arrangements implemented by FFA.

Regional and multilateral cooperation

30. International cooperation is pivotal to effectively conserve fish stocks and to fight against IUU fishing.
31. As of June 2017, most straddling and migratory stocks are managed by competent RFMOs. As outlined in previous paragraphs, RFMOs membership imposes obligations to parties in particular for submissions of data on fishing activities, enforcement of applicable CMMs and implementation of monitoring systems up to RFMOs standards. However, the recent performance reviews of existing RFMOs shows that compliance with international rules by parties remains a problem, in particular, but not only, in the Indian Ocean.
32. At sub-regional level, ACP States have implemented south-south cooperation mechanisms through sub-regional fisheries organisations whose mandate include facilitation of cooperation between the parties and provision of advisory services for improved fisheries management, including the fight against IUU fishing. Such organisations include in Africa the Sub-Regional Fisheries Commission (SRFC), the Fisheries Committee for the West Central Gulf of Guinea (FCWC), the *Commission Régionale des Pêches du Golfe de Guinée* (COREP), the Caribbean Regional Fisheries Mechanism (CRFM) in the Caribbean, the Forum Fisheries Agency (FFA) in the Western Central Pacific, and the Southwest Indian Ocean Fisheries Commission (SWIOFC) in the Indian Ocean.
33. The results achieved by these sub-regional cooperation mechanisms in the fight against IUU are varied.
34. In Africa, although sub-regional commissions succeeded in approving minimum terms and conditions for access of foreign vessels and protocols for exchange of information, experience demonstrates that member countries do not fully apply the guidelines when licensing vessels and do not consistently implement the provisions for exchanging information, like lists of licensed fishing vessels or the records of infringements detected. Concerning SRFC, a draft landmark convention on cooperation for monitoring, control and surveillance of fishing activities in the areas under jurisdiction

of Member States was prepared in 2016, but is still not adopted. The lack of result achieved by the African sub-regional commissions can be attributed to some extent to a lack of political willingness from Member States to strengthen the regional management component as evidenced by arrears in payment of statutory contributions or delays or reluctance in designating executive staff of the organisation. At the other end of the scale, in the SW Pacific the FFA has succeeded in becoming a central vehicle in the fight against IUU fishing on behalf of its member states by defining and adopting minimum access conditions, centralising VMS monitoring, publishing consolidated lists of licensed fishing vessels or fulfilling coordination role for international joint deployment plans.

Market State measures and traceability

35. While traceability of fisheries products is not an obligation under international law, the FAO IPOA IUU contains a number of recommendations relating to facilitate traceability to ensure that trade of fisheries products is in line with conservation and management practices. Verification of the origin of the products through traceability is an essential measure if IUU operators are to be denied access to lucrative markets. For countries exporting fisheries products to the EU and also to the USA, verification of the conditions under which the fisheries products have been caught is a requirement before exporting the products.
36. Most ACP States for which trade of fisheries products with the EU is an important economic activity have taken steps to implement the traceability systems required to certify the legality of fisheries products exported, often with technical assistance from the EU. In some cases, implementation of traceability systems required substantial reforms to ensure registration of operators of the fishing and of the fish processing industry and/or to streamline and monitor flows of landed or imported fisheries products.

37. Key conclusions for the consideration by ACP Fisheries Ministers

- ACP States, which did not do so as yet, should consider full alignment of national legislation and international obligations stemming from international treaties. Full alignment concerns the basic fisheries law or act, but also implementing regulations. For those ACP States which are parties to RFMOs, the national legislation should be sufficiently flexible to include current and forthcoming binding conservation and management measures.
- International instruments create rights and obligations. Concerning the fight against IUU fishing, and as confirmed by the recent ITLOS Advisory Opinion on case 21, flag States have a due diligence obligation to prevent IUU fishing by vessels flying their flags. ACP States should therefore ensure that the activities of their flag vessels are adequately monitored through use of modern technologies including Electronic Reporting Systems such as VMS, AIS or electronic logbooks and that their flag vessels comply with RFMO CMMs.

- For some flag States, IUU fishing is not exclusively conducted by industrial vessels. Small-scale fleets can also operate illegally in the areas under jurisdiction of neighbouring countries. The due diligence obligation mentioned above also apply to small-scale vessels.
- International and Regional cooperation is pivotal to ensure the effectiveness of ACP States initiatives against IUU fishing. States should develop further multilateral cooperation arrangements through the international or sub-regional commissions to which they are party in particular for exchange of information and good practices, joint surveillance deployment plans, training of inspectors and implementation of regional observer schemes.
- International or sub-regional organisations must have adequate capacities to play a central role in the fight against IUU fishing. States should therefore ensure that these organisations are adequately staffed, managed and funded in particular through timely payments of statutory contributions.
- ACP States exporting fisheries and aquaculture products to the EU or to the USA should implement traceability systems to facilitate verification of the legality of exported catches. Traceability systems should encompass catches of own vessels and catches of foreign vessels used by domestic processing industries, and requires a system of verifiable landing declarations.

Literature cited

Agnew DJ, Pearce J, Pramod G, Peatman T, Watson R, Beddington JR, et al. (2009) Estimating the Worldwide Extent of Illegal Fishing. PLoS ONE 4(2): e4570. <https://doi.org/10.1371/journal.pone.0004570>

Environmental Justice Foundation, Oceana, Pew Charitable Trusts, WWF (2016) Improving performance in the fight against illegal, unreported and unregulated (IUU) fishing The EU IUU Regulation carding process: A review of European Commission carding decisions. Issue Brief

ITLOS (2015) Advisory Opinion on a request submitted by the Sub-Regional Fisheries Commission (SRFC) - Case # 21 - 2 April 2015

MRAG Asia Pacific (2016). Towards the Quantification of Illegal, Unreported and Unregulated (IUU) Fishing in the Pacific Islands Region. 101pp.