

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

TECHNICAL NOTE

1. INTRODUCTION

The European Community catch certification scheme is an essential part of the IUU Regulation which will improve traceability of all fishery products traded with the EU and facilitate the control of their compliance with conservation and management rules, in cooperation with third countries. In addition to the certification scheme, the Regulation also comprises provisions on port state control, mutual assistance and the establishment of a Community alert system, an EU IUU vessels list and a list of non cooperating third countries. In order to ensure effective enforcement, the Regulation also includes a harmonised system of proportionate and dissuasive sanctions for serious infringements.

The main provisions of the Regulation are described in the "Information Note".

2. GENERAL INFORMATION ON THE CERTIFICATION SCHEME

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

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

EU catches will also be subject to the catch certification scheme if the flag State notifies the Commission of this. However, all catches by EU vessels are submitted to strict control mechanisms, which are reinforced by the new Control Regulation (EC) No 1224/2009 which also entered into force on 1 January 2010. More information on the Control Regulation is available on http://ec.europa.eu/fisheries/cfp/control/index_en.htm

The objectives of the certification scheme are threefold:

- To ensure product traceability at all stages of production, from catch to processing and marketing; and
- To be a tool for compliance with conservation and management rules; and,
- To support cooperation between flag States - country of processing and – country of marketing (which facilitate controls and compliance with conservation and management rules).

The provisions on the catch certification scheme can be found in Chapter III of the IUU Regulation and the catch certificate is laid down in Annex.

In order to ensure that smaller vessels can continue to trade to the EU, the Commission has introduced a simplified catch certificate. Vessels which meet the criteria of a small vessel are laid down in article 6 of Commission Regulation 1010/2010 (laying down the detailed rules for the implementation of the IUU Regulation) and exclude the master of such vessels to be identified. Instead, an exporter trading fish stemming from several small vessels only need to list the vessels which he has bought fish from but does not have to specify the quantities of fish used by vessel making up the consignment.

The simplified catch certificate is laid down in Annex IV of Regulation 1010/2010.

3. SCOPE

3.1 PRODUCTS

The certification scheme applies to all catches of marine fishery products, with the exception of aquaculture obtained from fry or larvae, ornamental fish, mussels, snails and other products of minor importance.

A detailed list of excluded products can be found in Annex I of Commission Regulation 86/2010 (amending Annex I to the IUU Regulation). The Regulation and will be amended on an annual basis.

The definition of fishery products can be found in Article 2 of the Regulation with a reference to a universal recognised criterion, namely Chapter 03 and tariff headings 1604 and 1605 of the Harmonized Commodity Description and Coding System (HS) of the World Customs Organisation, on which the Community Combined Nomenclature is also based.

3.2 TRADE FLOWS

The Regulation applies to all trade of marine fishery products, processed or not, originating from third country fishing vessel and exported to the EU by any means of transport, and to catches originating from EU fishing vessels to be exported to third countries.

Transshipments and processing operations of fishery products are also included in the scope of the certification scheme.

4. THE COMMUNITY CATCH CERTIFICATION SCHEME AND CATCH DOCUMENTATION SCHEMES ADOPTED BY REGIONAL FISHERIES MANAGEMENT ORGANISATIONS (RFMOs)

Instead of the Community catch certificate, the forms introduced by documentation schemes of RFMOs may also be used by the countries having notified their implementation according to the rules laid down by these RFMOs, for trading of species covered by these schemes. The list of recognised documentation schemes of RFMOs can be found in Commission Regulation 1010/2010.

(Reference: Article 13)

These provisions will also apply for trade of EU catches to third countries with the relevant species covered by the RFMOs concerned.

(Reference: Article 15)

5. THE PARTICIPANTS IN THE CERTIFICATION SCHEME AND THEIR RESPECTIVE ROLES

5.1 IN THIRD COUNTRIES THE CERTIFICATION SCHEME WILL CONCERN:

- Operators responsible for activities of fishing vessels, processing and of export to provide information on the documents required by the certification scheme;
- Relevant authorities designated by the third (flag State or State of transit or processing) country to validate the documents, to verify their validity and the information submitted by the operators, and the compliance with conservation and management measures applicable to the products listed in the documents. A list of competent authorities can be found on:

http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/index_en.htm

5.2 IN MEMBER STATES OF THE EUROPEAN COMMUNITY THE CERTIFICATION SCHEME WILL CONCERN:

5.2(a) flows to third countries

- Operators responsible for catches by EU fishing vessels which are intended for third countries;
- The relevant authorities designated by that Member State to validate the applicable documents, to verify their validity and the information submitted by the operator and the compliance with conservation and management measures applicable to the products listed in the documents.

5.2(b) Flows from third countries

- The importers of fishery products will be required to submit to the authorities of the importing Member State a catch certificate, which has been validated by the competent authority of the flag State of the catching vessel, and if necessary, other documents envisaged by the certification scheme in the event of an indirect import after transshipment, transit or processing of the products in another third country. The general deadline for submission of these documents to the authorities of the importing Member State is fixed at three working days prior to the anticipated arrival of the consignment in that Member State. This deadline aims at facilitating the checks of the documents to avoid unnecessary trade flow delays. It is however adaptable according to the type of fishery product, the distance to the place of catch or the type of transport. (Commission Regulation 1010/2010)
- the relevant authority designated by that Member State must check and verify these documents and the related products, where appropriate in cooperation with the third countries concerned, in order to make sure that the information obtained is valid and

true and the products have been harvested in compliance with the applicable management and conservation rules.

5.3 RESPONSIBILITIES OF THE EUROPEAN COMMISSION

The European Commission is responsible for various activities aiming to ensure and facilitate the operation of the Regulation. Such activities include:

- Distribute information on the Regulation to third countries and support projects which are aimed at facilitating compliance with the Regulation (training sessions, seminars etc);
- Develop detailed procedures to facilitate the implementation of the Regulation, in cooperation with third countries, to take into account specific situations, such as the profile of certain fisheries (in particular small scale fishing) the national control system, the use of computer systems, arrangements, deadline for submission of documents (non-exhaustive list);
- Monitor notifications from competent authorities for the application of the Regulation in third countries and Member States and publish this information;
- Establish and publish the list of catch documents of RFMOs which will be accepted for scope of the Regulation; and,
- Update and publish the list of fishery products excluded from the scope of the certification scheme.

6. ENFORCEMENT

6.1 FISHERY PRODUCTS ORIGINATING FROM THIRD COUNTRIES

In the event of non-compliance with the Regulation, authorities of Member States shall refuse imports of the fishery products concerned under specific conditions, which are laid down in (Article 18).

The right of appeal of operators against the refusal of importation is applied in accordance with the provisions in force in the Member State concerned. The authorities of the Member State also have to notify their refusal decisions to the flag State and if needed, to the third country concerned in the event of indirect import.

6.2 FISHERY PRODUCTS ORIGINATING FROM THE COMMUNITY;

EU catches exported to third countries have to be accompanied by a Community catch certificate in accordance with agreements with the third countries concerned. The same pre-requirements as for third country products imported to the EU therefore applies in respect of validation of the legality of catches by the competent authority of the flag Member State.

7. OTHER COMMUNITY LEGISLATION APPLICABLE TO FISHERY PRODUCTS (HEALTH REGULATIONS, RULES OF ORIGIN AND CUSTOMS RULES)

Other legislation which implies the application of certification exists with regard to fishery products such as health regulations, rules of origin remains without effecting this Regulation and vice-versa. The existence of a health approval granted for an establishment or a vessel or

an origin certificate do not infer that the fishery products comply with conservation and management rules. Adversely, the documents introduced by the certification scheme will not be substitutes for health certificates and/or certificates of origin.

8. PRACTICAL ISSUES RELATING TO THE FUNCTIONING OF THE CATCH CERTIFICATE

The certification scheme is widely inspired from existing catch documentation schemes already adopted by RFMOs for certain species and which are implemented in many countries. Operators and authorities have therefore already acquired a certain degree of expertise and experience in handling catch certificates. However, the Commission aims to assist third countries in the handling and procedures of a catch certification scheme.

8.1 NOTIFICATIONS OF AUTHORITIES OF VALIDATION TO THE COMMISSION AND FOLLOW-UP

Notifications are a fundamental part of the Regulation.

The acceptance of catch certificates validated by a given flag State for the purposes of the Regulation shall be subject to the condition that the Commission has received a notification from the flag State concerned certifying that:

- (a) It has in place national arrangements for the implementation, control and enforcement of laws, regulations and conservation and management measures which must be complied with by its fishing vessels;
- (b) Its public authorities are empowered to attest the veracity of the information contained in catch certificates and to carry out verifications of such certificates on request from the Member States. The notification shall also include the necessary information to identify those authorities.

These notifications have to include the details of these authorities that must also be able to:

- Manage the registration of vessels under their flag;
- Deliver, suspend or withdraw fishing licences;
- Verify compliance by their vessels with conservation and management rules;
- Validate and verify catch certificates.

The notification shall also include sample forms of the catch certificate to be used by the State concerned, in accordance with the specimen in Annex II.

The information to be given in the notification is set forth in Annex III of the Regulation.

The Commission will analyse the submission from third countries and assess whether the statements provided are true and accurate based on publicly available information (e.g. IUU vessel list, etc.) before accepting the notification. The Commission has to make available to the Member States the details of the notifications submitted by flag States (and possible updates) electronically. It also has to publish a list of flag States having communicated such notifications and the names of their competent authorities. A list of competent authorities can be found on: http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/index_en.htm

(References: Articles 20(1), (4) and (5), 22 (1) and (2), Annex III)

8.2 PROCEDURE OF CERTIFICATION

The presentation of this procedure, which takes place after the notification is published in chronological order from the establishment of the catch certificate - to its communication - to the EU importer.

8.2(a) Forms

Forms will have to be identical to the model communicated in the notification. In order to ensure the validity of the documents and prevent any falsification or fraudulent disclosures, all catch certificates submitted at export must be validated by a competent flag State authority. It is therefore also important to number the catch certificates.

For this reason, the following will be requested from the flag State authorities when adopting a numbering structure for catch certificates:

- ISO code for each Flag State;
- Identifying code for the competent authority;
- Year of validation;
- Number in continuous series.

In the event of where several competent authorities per flag State (at local or regional level) have been designated, each of them will be identified by a separate code to be communicated in the notifications.

The form in Annex II of the Regulation is made of two parts, the catch certificate and the re-export certificate. The catch certificate concerns directly flag States. The re-export certificate will be used by Member States to verify if products which were imported into the EU and are due to be re-exported, were accompanied with a catch certificate validated by the flag State.

8.2(b) Establishment of catch certificates

- Section 1 of the catch certificate and boxes "document number" and "validation authority" are used to identify the document and the authority which validates it. They are therefore reserved for that purpose.
- Sections 2-5 (details of the vessel, of the products and of the applicable measures) should to be filled out by the master of the fishing vessel, except for the "Verified Weight Landed (kg) where appropriate" box in Section 3, which should to be filled by the validation authority on the basis of such a checking.
- Section 6 ("declaration of transshipment at sea") should to be filled jointly by the masters of the fishing vessel and of the receiving ship.
- Section 7 ("transshipment authorisation within a port area") should to be filled by the authority responsible for its control.
- Section 8 should to be filled by the exporter of the consignment to the EU, which also has to provide the transport details of section 10 in Appendix I of the Regulation.

By providing the information referred to in sections 2, 8 and 10, the operators concerned take responsibility for the accuracy and exhaustiveness of the data they supply.

8.2(c) Validation of catch certificates

The exporter will then have to submit the catch certificate, containing all the information required in sections 2 to 8 and 10 and in Appendix I (and sections 6 and/or 7 in the event of transshipment) to the competent authority of the flag State. If the authority is satisfied with the information in the catch certificate and has no grounds to doubt its exhaustiveness and accuracy and the compliance with applicable management and conservation measures, it may complete section 1 ("Document Number" and "Validating Authority") and section 9 ("Flag State Authority Validation"). The catch certificate is thus validated and can be returned to the exporter.

If, at the time of submission of the catch certificate by the exporter, the competent flag State authority does not have all the elements allowing it to ensure the reliability of the information which appears in that certificate and/or of the compliance with applicable conservation and management measures, the authority should carry out any check or verification it considers appropriate to determine if it can, or not, validate the document.

8.2(c) Simplified catch certificates

In order to ensure that smaller vessels can continue to trade to the EU, the Commission has introduced a simplified catch certificate. Vessels which meet the criteria of a small vessel are laid down in article 6 of Regulation 1010/2010 and exclude the master of such vessels to be identified. Instead, an exporter trading fish stemming from several small vessels only need to list the vessels which he has bought fish from but does not have to specify the quantities of fish used by vessel making up the consignment.

A simplified catch certificate may be used if the vessel:

- has an overall length of less than 12 metres without towed gear, or
- has an overall length of 8 metres with towed gear, or
- has no superstructure; or
- has less than 20GT.

The simplified catch certificate is laid down in Annex IV of Regulation 1010/2010.

8.2(e) Communication of a validated catch certificate by the exporter

Once he has received the validated catch certificate from the competent authority, the exporter must make sure that its original be made available to the importer in the EU who will have to submit it to the authorities of the Member State of importation, irrespective of the ways by which the consignment concerned will be dispatched:

- (a) Directly towards the EU; or
- (b) Towards another third country, from where it will be re-exported towards the EU without modification and without having undergone processing; or
- (c) Towards another third country where it will undergo processing before being re-exported to the EU.

The precise means by which the exporter will make sure that the validated catch certificate (original) can be made available cannot be determined in the Regulation. It is a private issue, which depends from the way the consignment is dispatched (see a), b) and c) above) and/or from the nature of the commercial transaction (direct sale, involvement of a third party...).

In all these cases, the EU importer will have the obligation to submit these catch certificates to the competent authority of the importing Member State.

In the above cases b) and c), the importer will also have to submit the documents provided for in Article 14 (1) and (2) which will be used to ensure full traceability by determining if the product imported in the EU corresponds to the catch certificate(s).

The conditions for issuing these documents are described in Article 14 (1) and (2). The same basic principles pertaining to the catch certificates apply, i.e. the operators concerned engage their responsibility on their exhaustiveness and accuracy of the information they provide on these documents and the authorities may undertake any checks or verifications they feel to be necessary prior to issuing these documents.

8.2(f) "Approved economic operators" and communication of validated catch certificates

By derogation to the general rule, EU importers benefiting from "approved economic operators" status will not be obliged to submit the validated catch certificates to the competent authorities of the importing Member State prior to the anticipated arrival of the consignment concerned. However, they will have to inform these authorities of the arrival of the products in the same manner as other operators and to hold at their disposal the catch certificates and other relevant documents for the purpose of checks or verifications.

The fact that an EU importer is an "approved economic operator" or not is not of any relevance to exporters.

(References: Articles 12, 14 and 16 of the IUU Regulation, Section 3-5 Commission Regulation 1010/2010)

8.3 REQUIREMENT TO KEEP CATCH CERTIFICATES

The originals of the catch certificates have to be preserved for a minimum period of three years in the EU. It is also suitable that the validation authorities in the third countries retain a copy of these documents for a corresponding period.

(References: Article 22 (4) and (5))

9. CONTROLS OF CATCH CERTIFICATES

This control will be carried out by the competent authority of the Member State of the final destination, and not in the Member State of first entry (i.e. if the products have been transhipped or in transit), in order not to affect the traffic flow.

Procedures have been set up in order to ensure the information flow of the concerned consignments between these Member States of first entry and those of effective destination. Whilst these procedures will not concern the authorities in third countries, it is important to mention these provisions in order to avoid any possible confusion for exporters, in respect of the operator in the EU who will need to have the catch certificate available for submission to the authority of the actual Member State of destination.

(Reference: Article 19)

9.1 DOCUMENTARY CHECKS

The competent authorities of Member States will check the validated catch certificates together with the elements provided for in the notification of the flag State. The methods of this control of a purely documentary nature will be defined on the basis of risk management to ensure their proportionality and therefore to avoid useless delays in the treatment of the consignments.

(Reference: Article 16 (1) and (2), Chapter II Regulation 1010/2010)

9.2 VERIFICATIONS

The competent authorities of Member States may carry out all additional verifications considered necessary if the initial check of the catch certificate simply does not make it possible to permit the import of the products. These verifications will be organised and will be led on the basis of national and EU criteria of risk management in order to ensure their proportionality and their harmonisation in all Member States.

Similarly, the Regulation specifies the cases in which verification will be obligatory, and the methods of cooperation with the third countries concerned (flag States or other States in the event of transit or processing operations in another third country). The authorisation of access to the market will remain suspended whilst awaiting the results of the checks.

(Reference: Article 17, Chapter II Regulation 1010/2010)

10. CHECKS AND VERIFICATIONS IN CASE OF USE OF FORMS OF CATCH DOCUMENTATION SCHEMES OF RFMOs

When applying Article 13 of the Regulation, the rules to be followed to fill out and validate such catch certificates are those laid down by the catch documentation scheme of that RFMO concerned.

The applicable provisions for controls, the checks and the acceptance of the catch certificates and cooperation are also the general provisions of the Regulation

(References: Articles 16 and 17 and 18 and 20)

11. COMMUNITY RE-EXPORT CERTIFICATES

As indicated above, this document, which is contained in the second half of Annex II of the IUU Regulation and Annex IV of Regulation 1010/2010, concerns only the authorities in Member States.

In view of the volume and of the diversity of exports from the EU, it was important to avoid having trade flows that could possibly be used to launder products of third countries. The latter would have been imported fraudulently (without a valid catch certificate) by dispatching them on other markets, via its territory.

12. COOPERATION

Cooperation is an essential element of the Regulation which will not be limited to the specific aspects concerning the catch certification scheme. A separate document is dedicated to cooperation in general, and to the Commission's information and assistance scheme for third countries.

In respect of the catch certification, this cooperation will apply to all third countries (flag States and other countries in case of indirect import) and will cover both processed and unprocessed products.

It also has to cater for specific situations, deriving from the diversity of the third countries and trade flows and provide a legal basis for exchange of information to combat IUU fishing.

12.1 COOPERATION FOR VERIFICATION

Like other certification systems applying to international trade, Chapter III on the catch certification scheme comprises a control mechanism of the operations, which calls for cooperation with the third countries concerned.

In the presence of well founded doubts on the validity of the catch certificates or the respect of the management and conservation measures, Member States will inform the third country concerned and ask it to carry out all relevant verifications, the results of which will make it possible to take a decision for accepting or refusing the goods on the market.

(References: Articles 17 and 18 and .20 (2) and (3))

12.2 COOPERATION FOR THE FUNCTIONING OF THE CERTIFICATION SCHEME

However, cooperation with third countries should not be limited to the sole purpose of verifying catch certificates or related documents. It should aim at adapting the general lay-out of the catch certification scheme to specific needs and situations.

A non-exhaustive list of areas where such cooperation could take place, depending on the needs and situations identified and discussed with the interested third countries, is provided below:

- Use of electronic means to establish, validate or submit the catch certificates,

- Adaptation of the deadline for the submission of the catch certificates (three working days before estimated time of arrival of products), taking into account to their nature (fresh, frozen, etc), to the geographical distance or to the mode of transport (air route or others),
- Adaptation of the process of certification to the specific nature of exports of small-scale fishing,
- Replacement of the catch certificate by other electronic systems for tracing the origin of goods under the authorities' control, according to methods to be agreed with interested flag States,
- On-the-spot audits to verify effective implementation of the administrative arrangements.

(References: Articles 12 and 20 (2) and (3))