



June 13, 2017

Subject: Regulation on the sustainable management of external fleets (EC 2015/636).

Dear Minister,

We are writing to you with regard to the trilogue negotiations on the Regulation on the sustainable management of external fleets. This Regulation seeks to secure the future of EU external fisheries, in line with the reformed Common Fisheries Policy (CFP) and a global context that increasingly demands transparency and accountability, especially where activities concern developing countries. Over one quarter of the catches of the EU fleet are taken in non-EU waters, mostly in the waters of developing coastal States in the Indian and Pacific Oceans and off the coast of West and Central Africaⁱ.

The revision of the EU's external fishing fleet regulation is an opportunity to achieve and maintain fisheries that are transparent, sustainable and accountable, and to ensure the continued leadership of the EU in matters of global fisheries governance. Your leadership is essential to delivering a robust reform that will meet these aims and we therefore ask you to work within the Council and together with the European Parliament on an ambitious compromise so that the new framework can be implemented without delay.

We call on you, in particular, to ensure that the following key provisions are included in the reformed Regulation:

- The European Commission is able to exert appropriate and effective oversight of the activities of the European fleet (Articles 7.5 & 7.6).
- A public database is created that includes key information such as vessel name, flag, type of authorisation and period, IMO number, fishing opportunities as well as details of beneficial ownership (Article 39). Private authorisations should also be included in this public database.

- High standards are set for all fishing activities carried out by EU operators, regardless of where in the world they are carried out or under what type of agreement. This is especially relevant for direct (or private) and chartering authorisations (Articles 5, 18, 19, 28 and 29).
- Unjustified reflagging activity is brought to an end (Article 6).

Please find more details on the first two points in the Annex below.

Having achieved a robust CFP reform, it is crucial that a key implementing pillar of the CFP – the Regulation governing the activities of the EU’s external fleet – reflects its core principles and standards. The CFP enshrines a sustainable, precautionary approach to fisheries management and requires that the activities of EU vessels outside EU waters be based on the same principles and standards as activities within EU waters. The future Regulation for the EU external fleet needs to be consistent with the CFP, as well as with the EU’s policies to combat IUU fishing globally.

Should you require any additional information, please do not hesitate to contact us.

Thank you for your time and attention.

Yours sincerely,

On behalf of the coalition

Steve Trent - Executive Director - Environmental Justice Foundation (EJF)

Maria-José Cornax - Fisheries Director- Oceana

Ness Smith - Manager, Ending Illegal Fishing Project – The Pew Charitable Trusts

Samantha Burgess - Head of Marine and Fisheries– WWF European Policy Office

Annex – Priorities trilogue negotiations on the regulation on the sustainable management of external fleets (EC 2015/636).

Under the current external fleet Regulation, depending on where fishing takes place, and under what type of agreement, vessel operators are subject to widely differing requirements to receive their authorisation, as well as levels of monitoring. These loopholes make it possible for EU vessels to evade EU standards and laws, and be authorised to fish (and benefit from public funds) in spite of a poor record of compliance with applicable rules. This creates unfair competition among operators, and prevents EU authorities from ensuring that vessels are fishing legally and sustainably.

The current shortage of publicly available information on who is fishing for what species and in which waters further limits the accountability of EU operators abroad, and seriously undermines the effective monitoring and scrutiny of their activities.

For the upcoming trilogue meetings we therefore ask you to:

1. Ensure that appropriate and effective oversight can be exercised by the European Commission (articles 7.5 & 7.6)

Under the current external fleet Regulationⁱⁱ, the European Commission has no power to withdraw external fishing authorisations issued by member states, even where a member state has failed to perform the necessary crosschecks to ensure the eligibility criteria and relevant conditions are complied with before issuing an authorisation.

There have been cases where vessels operating under flags of countries known to be failing in their efforts to stop illegal fishing have been able to return to the EU register and obtain a fishing authorisation with relative ease, suggesting a lack of proper crosschecks of the legality or sustainability of their previous fishing activities under non-EU flags. Oversight by the EC would help put an end to these mis-authorisations and contribute to achieving the level playing field that the European fleet and member states have been striving to create for the purposes of improved monitoring and control.

The conservation of fisheries resources is an exclusive competence of the EU, therefore the Commission should play an active role in ensuring that the eligibility criteria for granting a fishing authorisation are complied with. Furthermore, the Commission has a duty to ensure proper implementation of the reformed CFP and as the guardian of the Treaties to ensure that the member states fulfil their obligationsⁱⁱⁱ.

This is particularly relevant in view of the recent Advisory Opinion of The International Tribunal for the Law of the Sea (ITLOS), delivered on 2 April 2015, which concluded that flag States have a duty of due diligence to ensure that their fishing vessels do not engage in IUU fishing in the waters of other countries and can be held liable for breach of this duty^{iv}. Importantly, the Advisory Opinion concluded that the EU could have the same duty of due diligence as a flag State with regard to the activities of EU member state vessels fishing under Sustainable Fisheries Partnership Agreements (SFPAs) in non-EU countries. The due diligence obligation means that flag States must take all necessary and appropriate measures to ensure compliance and to prevent their vessels from engaging in IUU fishing activities in the Exclusive Economic Zones (EEZs) of non-EU countries.

2. Create a public database that includes key pieces of information such as vessel name, flag, type of authorisation and period, unique vessel identifiers (IMO numbers), fishing opportunities as well as details of beneficial ownership (article 39)

As an economic leader, the EU has an obligation to ensure its fishing fleets comply with global transparency standards. We therefore call on you to support the European Parliament's proposal on article 39, which provides for full transparency in relation to EU vessels granted authorisations to fish outside EU waters. This would advance legal and sustainable fishing of the European fishing fleet, as well as contributing to global financial transparency, tax governance and the fight against corruption and illegal fishing.

Moreover, it is also coherent with the growing momentum on EU and international transparency with regard to beneficial ownership:

- Bulgaria, Denmark, France, the Netherlands, Slovenia and the UK have set up, or are currently in the process of setting up, public databases of beneficial ownership information.
- In 2013, the Organisation for Economic Co-operation and Development^v recognised that the lack of transparency and access to beneficial ownership information makes the fishing sector vulnerable to tax crime and related offences.
- In 2013, G8 Members committed to compiling comprehensive data on beneficial ownership of their companies^{vi}; and in 2014 G20 Members^{vii} adopted a 10-point policy on how they will increase transparency of beneficial ownership of companies and trusts, including the commitment to establishing central registries. This is a G20 high priority.
- In 2016, the United Nations Office on Drugs and Crime recommended that financial investigations should be developed to uncover broader criminal networks and reveal beneficial ownership structures in the fisheries sector (25th Session of the Commission on Crime Prevention and Criminal Justice (CCPCJ)^{viii}.
- In 2016, at the 4th Open Government Partnership Global Summit^{ix}, partners committed to ending abuse of anonymous companies by reducing the opacity around corporate ownership.

ⁱ More information: https://ec.europa.eu/fisheries/cfp/international_en

ⁱⁱ Council Regulation (EC) No 1006/2008, of 29 September 2008, concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters

ⁱⁱⁱ Strategic Plan 2016-2020 DG Maritime Affairs and Fisheries

^{iv} ITLOS case 21: <https://www.itlos.org/en/cases/list-of-cases/case-no-21/>

^v OECD *Evading the Net: Tax Crime in the Fisheries Sector*, 2013

^{vi} 2013 Lough Erne G8 Leaders' Communiqué

^{vii} G20 Leaders' Communiqué Brisbane Summit, 15-16 November 2014

^{viii} May 2016 UNODC http://www.unodc.org/unodc/en/frontpage/2016/May/fisheries-crime_-bringing-to-light-the-perfect-storm-of-illegal-activities-in-the-fishing-sector.html?ref=fs4

^{ix} <https://paris-declaration.ogpsummit.org/topic/5810a95bfade72c82462b343>