

Reaction to the European Commission's proposal for a regulation on the sustainable management of external fishing fleets (EC 2015/0636)

The EU is the world's largest market for seafood products, worth an estimated EUR 20.5 billion per year, and fishing under the flag of an EU member state provides tariff-free access to this market. Over one quarter of the catches of the EU fleet are caught in non-EU waters¹. The EU's so-called "Long Distance Fleet", which operates in non-EU waters for more than 90% of the year, was estimated to comprise around 718 vessels in 2008². All EU vessels that operate in non-EU waters need to obtain an authorisation from their flag State - the EU member state in which they are registered - in order to do so. This can range from

vessels over 100 metres in length that operate far from the EU for long periods of time, to small scale fishing boats fishing in the Mediterranean Sea that spend only part of their time outside EU waters. Taking into account all activities of the EU fleet (this includes the long distance fleet, as well as vessels fishing in Regional Fisheries Management Organisations or in the waters of Norway, Iceland and Faroe Islands) more than 22,085³ EU vessels have received an authorisation from their flag member state to spend all or part of their time fishing outside the EU since 2008 (see www.whofishesfar.org).



Spanish purse seiner *Ondartzape* in Dakar harbour, Senegal.
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The legal framework that sets standards for obtaining such authorisations is now being revised. The European Commission's (EC) proposal for a regulation on the sustainable management of external fishing fleets (EC 2015/0636) was published in December 2015 and will replace the current Fishing Authorisation Regulation (Council Regulation (EC) No 1006/2008⁴). This revision offers a critical opportunity to ensure that the activities of the EU's external fishing fleet are transparent, accountable and sustainable, and in line with the EU's Common Fisheries Policy (CFP)⁵ and the EU's global policies to prevent, deter and eliminate IUU fishing⁶.

The current legal framework contains loopholes that make it possible to carry out activities that evade EU standards and laws. This creates uneven standards across the different external fishing activities of the EU fleet and unfair competition among operators. The European Parliament (EP) already underlined the importance of the EU external fleet as one of the world's main fishing players in a 2012⁷ Resolution and again in 2016⁸. These Resolutions called on the EU to adopt and promote the highest environmental and social standards; implement rigorous control and inspection measures; and ensure transparency in all its activities related to external fisheries.

¹ For more information: http://ec.europa.eu/fisheries/cfp/international/index_en.htm

² Study on the European External Fleet contract FISH/2006/02 Final Report. Please note that this study looked only at vessels that operated more than 90% of the time outside EU waters.

³ www.whofishesfar.org shows that between 2008 and 2015 a total of 19,772 individual EU vessels were authorised to fish in the ICCAT area. Of this 19,772, almost half (9,988) were Italian-flagged vessels. In March 2016, the Italian government adjusted the number of Italian vessels targeting swordfish in the ICCAT area, bringing it down from over 8,400 vessels in 2015 to 849 vessels. The current review of the external fleet Regulation provides member states with a crucial opportunity to ensure that vessels authorised to fish in Regional Fisheries Management Organisations areas are actually active or operating in these areas. Accurate information on where vessels are fishing and which species they are targeting is vital to ensuring transparency and accountability in global

fisheries, and the sustainable management of fish stocks.

⁴ 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.

⁵ EU 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy.

⁶ Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.

⁷ European Parliament resolution of 22 November 2012 on the external dimension of the Common Fisheries Policy 2011/2318 (INI).

⁸ Common rules with a view to the application of the external dimension of the CFP, including fisheries agreements 2015/2091(INI).

We therefore call on you to ensure that, under the future revised regulation:

- All fishing activities under flags of EU member states are required to adhere to the same standards and EU laws regardless of the type of agreement or authorisation
- A public database of all fishing authorisations is created
- Stricter standards are set for private and chartering agreements
- Vessels that have engaged in abusive reflagging are prohibited from gaining access to EU fishing authorisations
- IMO numbers are a requirement for EU vessels to operate in non-EU waters
- Appropriate and effective oversight is exercised by the European Commission.

These six elements are explained in more detail below.

1. All operations under flags of EU member states are required to adhere to standards set out in the Common Fisheries Policy and comply with EU fisheries and labour laws

Under the current regulation, eligibility criteria (requirements that need to be met by a vessel to be able to apply for an authorisation) only apply to vessels fishing under official EU access agreements (Sustainable Fisheries Partnership Agreements - see section 3 below). However, any vessel applying for an authorisation to fish outside EU waters should provide proof of their historic behaviour through unique vessel identification numbers (IMO numbers – see section 5) or prove that they have not been involved in IUU fishing, abusive reflagging or a serious infringement of EU fisheries law prior to their application. Only the creation of such common standards and requirements will ensure that the activities of the EU fleet outside of the EU are legal, transparent and accountable.

We ask: Support the eligibility criteria as laid down in article 5 of the EC proposal.



Spanish trawler in the harbour of Dakar, Senegal. © OCEANA/LX

2. Creation of a public database of all fishing authorisations

The EU fleet has operated in non-EU waters, under various types of agreements, for decades, however basic information about which vessels fish where and for what has never been disclosed. A public database should be created that discloses basic information on vessels, fishing opportunities, target species and periods/areas of operation, as well as the IMO numbers of all vessels operating in non-EU waters. This transparent registry of fishing authorisations would improve accountability and fisheries management in the EU and in non-EU countries, and enhance fair competition. Indeed, the 2016 EP resolution calls on the Commission to set up a public database covering the activities of EU vessels under all fisheries agreements, including data on their activities and catches⁹.

We ask: Support article 39.2 of the EC proposal and strengthen it by adding the following information to the public database: IMO numbers, fishing opportunities and target fishery.

3. Enhance standards for private and chartering agreements

As part of the CFP reform, strict standards were established for official EU access agreements with non-EU countries - termed Sustainable Fisheries Partnership Agreements or SFPAs. These SFPAs are concluded by the EU with non-EU countries to allow EU vessels to fish for surplus¹⁰ stocks¹¹ in that country's exclusive economic zone (EEZ). In 2015, the EU paid a total of EUR 145 million to allow EU vessels to fish in the waters of 13 non-EU countries¹². According to the CFP, SFPAs must be of mutual benefit to the EU, the EU fleet and the non-EU country ("including its local population and fishing industry") and must respect democratic principles and human rights. These agreements can only target the surplus of the allowable catch, as calculated based upon scientific information and taking into account all fishing effort on that stock¹³.

However, there are EU vessels that operate outside of these strict standards by setting up agreements with non-EU countries where there is no official EU access agreement (SFPA). Even though these vessels fly the flags of EU member states, under these so-called "private" or "chartering" agreements, there are no common standards or procedures established to ensure that the activities comply with international and EU laws and adhere to CFP standards. In addition, there is currently no mechanism within the regulation to provide assurance to EU operators, let alone the EU, that their authorisations are valid.

In addition, under the current regulation, EU member states whose vessels engage in fishing activities in non-EU country waters through private or chartering agreements must inform the European Commission only of the names of the vessels concerned. There is no requirement to provide other relevant information, such as the target species, fishing area, period or

gear, or for this information to be made publically available. This makes it impossible for the Commission, non-EU countries with a fishing or management interest in the same stocks and other stakeholders to fully understand the activities carried out by these vessels and to ensure they are legal and sustainable.

A call for increased transparency and standards for private agreements was made in a resolution of December 2015 by the Long Distance Advisory Council (LDAC), a consultative body made up of the European catching and processing industry, organisations of fisheries workers, and development and environment NGOs¹⁴. In addition, the 2012 and 2016 EP resolutions called for private agreements to be included in a public database with information on the identity of the vessels and associated fishing activities¹⁵.

We ask: Support article 18 and 29 of the EC proposal to ensure that private and chartering agreements entered into are sustainable, legal and in line with EU standards and laws (equivalent to SFPA standards).

4. Stop abusive reflagging

Abusive reflagging happens when an EU vessel exits the EU fishing fleet and reflags to a non-EU country, in order to continue fishing after exhausting the EU quota or to circumvent conservation and management measures or applicable laws. Later, the vessel can regain access to the EU fishing fleet and its benefits by reflagging to the original or another member state. It has been observed that vessels which have been operating under flags of countries known to be failing in their efforts to stop illegal fishing¹⁶ have been able to return to the EU fleet and obtain a fishing authorisation with relative ease, without proper crosschecks of the legality or sustainability of their previous fishing activities under non-EU country flags. While reflagging is legal, it becomes an issue when the objective is to circumvent CFP rules or existing conservation and management measures.

In the future regulation, any vessel leaving and coming back to an EU flag within 24 months (from the date of leaving), during the five-year period prior to the request for a fishing authorisation, should be required to demonstrate that the activities of the vessel have been compliant with EU and international conservation and management measures and applicable laws. Any vessel returning to an EU flag should be able to show at least the following: its catches under the third country flag, a copy of the fishing authorisation from both the flag State of the vessel and the country whose waters the vessel operated in, as well as an official statement of the third country that the vessel or operator did not receive any sanctions.

We ask: Support the proposed measures in article 6 of the EC proposal that aim to stop abusive reflagging.

⁹ Common rules with a view to the application of the external dimension of the CFP, including fisheries agreements 2015/2091(INI).

¹⁰ Surplus of allowable catch means the portion of the allowable catch that a coastal State does not harvest, which results in an overall exploitation rate for individual stocks that remains below levels at which stocks are capable of restoring themselves and the maintenance of populations of harvested species above desired levels based on the best available scientific advice; Regulation (EU) 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy.

¹¹ For more information: http://ec.europa.eu/fisheries/cfp/international/agreements/index_en.htm

¹² Idem.

¹³ Article 31 of Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy.

¹⁴ Recommendations: LDAC Conference on External Dimension of the CFP Las Palmas De Gran Canaria, 16-17 September 2015.

¹⁵ European Parliament resolutions of 22 November 2012 on the external dimension of the Common Fisheries Policy 2011/2318 (INI) & 12 April 2016 on the Common rules with a view to the application of the external dimension of the CFP, including fisheries agreements 2015/2091 (INI).

¹⁶ Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing. For more information: http://ec.europa.eu/fisheries/cfp/illegal_fishing/index_en.htm

5. Make IMO numbers mandatory to apply for a fishing authorisation

From 1 January 2016 onwards, IMO numbers have been made mandatory for all vessels above 24 metres in length fishing in EU waters and EU vessels over 15 metres fishing in non-EU waters¹⁷. However, to fish in non-EU waters all activity should be monitored, regardless of the size of the vessel. Therefore, any fishing vessels applying for a fishing authorisation should have an IMO number in order to increase transparency and allow the effective tracking of the vessel's behaviour.

We ask: Support making IMO numbers mandatory for obtaining a fishing authorisation as proposed in article 5 of the EC proposal.

6. Allow the European Commission to withdraw, suspend or amend authorisations

Under the current regulation, the European Commission has no power to withdraw, suspend or amend 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.

However, 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 fulfill their obligations¹⁸.

A recent Advisory Opinion of The International Tribunal for the Law of the Sea (ITLOS), delivered on 2 April 2015, ruled 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 duty¹⁹. Importantly, the Advisory Opinion also concluded that the EU has the same duty of due diligence and potential liability as a flag State with regard to the activities of EU member state vessels fishing under SFPAs in non-EU countries. The due diligence obligation means that flag States must take all necessary and appropriate measures to ensure compliance with regulations in the EEZs of non-EU countries and to prevent their vessels from engaging in IUU fishing activities.

We ask: Ensure that the European Commission can refuse, withdraw or suspend authorisations as proposed in articles 7.5 and 7.6 of the EC proposal.



French purse seiner *Pere Briant* setting up nets and preparing to go to sea, Dakar harbour, Senegal, 2007.
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The Environmental Justice Foundation (EJF), Oceana, The Pew Charitable Trusts and WWF are working together to secure the harmonised and effective implementation of the EU Regulation to end illegal, unreported and unregulated (IUU) fishing.

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¹⁷ Commission Implementing Regulation (EU) 2015/1962 of 28 October 2015 amending Implementing Regulation (EU) No 404/2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy.

¹⁸ Strategic Plan 2016-2020 DG Maritime Affairs and Fisheries.

¹⁹ ITLOS case 21: <https://www.itlos.org/en/cases/list-of-cases/case-no-21/>