

## **Draft North Sea RAC Position on a Commission Proposal on Illegal, Unreported and Unregulated Fishing: For Discussion**

Commission Proposal for a Council Regulation Establishing a Community System to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing: Brussels 17.10.07; COM 2007; 602 Final.

### **A Political Priority**

An estimated 10% to 15% of the EU's fish trade may be derived from illegal, unreported and unregulated fishing. We can safely assume that as a result, the North Sea RAC's members are systematically and significantly disadvantaged through distorted competition on the markets. There is no question therefore of ignoring IUU fishing and we agree that its eradication should continue to be a high political priority.

### **Costs and Burden on the Legal Trade**

Having made this point we have to say that it is our view that the Commission's proposal, centred as it is, on a detailed certification process to establish chain of custody, is seriously deficient and is likely to impose a range of costs and regulatory burdens on the legal trade in fish, without significantly impacting on the way illegally caught fish is sold in the European market.

### **Political Momentum and Bad Regulation**

There is of course on this issue a political momentum in Europe. The Commission wants to be seen to be doing something about IUU fishing, especially as it has adverse consequences for some of the poorest countries on this planet. Good intentions however are not sufficient to ensure proportionate and effective legislation; and the hurry to put "something" in place during the course of this year is likely to result, on the evidence so far, in a poorly thought-through, unworkable, piece of legislation that impedes, rather than advances a serious attempt to extinguish IUU fish appearing on European markets.

### **Commission Approach**

IUU fishing is acknowledged as a widespread problem both inside and outside European Waters but in this draft Regulation the Commission concentrates on Third Country imports, through:

- A blanket certification scheme for imports

- Measures against nationals involved in IUU fishing, including financial measures
- Measures against transshipment at sea
- A black list for those EU member states that fail to tackle IUU fish
- Alerts through information exchange to identify IUU fish

There are issues to address in all of these features of the Commission's proposal but principally our concerns focus on the blanket certification requirement which places the onus on the importer to demonstrate a chain of custody back to where the fish was taken from the water.

The fundamental problem in all of this is that in many cases the importer may not have information about, and have no way of obtaining information from, all the links in the supply chain. This problem becomes especially vivid once it is understood that any batch of fish may include components from many different sources. A certification system with checks at every stage, in this context, is a purely theoretical construct and a practical nightmare.

### **CFP and Simplification**

The intention is that the IUU Regulation will not ramp up the CFP beyond existing requirements, except where a member state fails to act against black listed IUU fishing vessels. The worry is however, that a blanket, paper based, certification system will create a further tier of bureaucracy adding to the regulatory burden throughout the supply chain, contrary to the political commitment by Council and Commission to simplify the CFP. Progress on simplification has been painfully slow but if this legislation is adopted as it stands, or even with minor adjustments, it will represent a major increase in the regulatory burden and a step away from simplification and better regulation.

### **Third Countries**

The Regulation is very broad in scope, perhaps necessarily so. It however, skates over whether it is enforceable in Europe and hardly touches the capacity of Third Countries to implement this legislation.

### **Provisions**

The text of the proposal is, we understand, being discussed in Management Committee in Brussels. What is clear already is that there is wide latitude for interpretation within the draft Regulation, dependent on whether it is understood in a very strict literal way or in a very liberal way. Apart from the scope that this provides, over time, for a move to a highly restrictive, high cost, regime that places a heavy burden on businesses already operating legally, there is also much scope for confusion and ambiguity.

The Proposal's treatment of transshipment is instructive. The assumption is that because some trans-shipments are illegal, all trans-shipments should be prohibited. This ignores the practical and commercial realities that mean that in some circumstances, and with some fleet operations, trans-shipment is a practical and commercial necessity. Admittedly, incorporating transshipment

into a validated system of catch notification is a challenge but the presumption that transshipment, *per se*, is a means of facilitating illegal activity is wrong and misguided. Because a system of notification works under conditions found in for example, NEAFC waters, it cannot be assumed that such a system would work in say Sub-Saharan Africa, where the conditions may be quite different. This and other aspects of the IUU legislation seem to be heavily based on a Western industrialised model.

Even under current NEAFC rules and highly competent authorities in, for example Norway, there is scope for bureaucratic misalignment between different reporting systems. The reality is that in some developing countries even the levels of literacy assumed may not exist. It may not even be possible to identify the appropriate competent authority. There appears in this and other parts of the proposal, a failure to apply the necessary reality checks. Indeed, throughout, there appears to have been a lack of consultation at the base of the pyramid.

### **Certification**

It is worth emphasising that large batches of multi-processed, multi-source, fish do not lend themselves to certification at individual unit level. Even identifying a potential certifying authority, or at least ones, that have the resources to make this legislation work, is not without problems.

### **Alternatives**

It is important to strongly make the point that the Commission Proposal, on the evidence so far, will not deliver its objectives. It will however, if adopted, create a further burden for legitimate businesses in the food chain whose activities are already transparent, and legal.

To say that tackling IUU fish should not be done in the way proposed by the Commission is, emphatically, not to say that it should not be tackled at all. The ingredients for a successful approach will include:

- adequate time for thought and consultation
- application of the principles of good governance
- building on the existing legislation and systems where these are available
- a move away from a blanket, one size fits all, approach to a targeted approach
- a risk based approach
- the use of strategic alliances of the authorities and businesses that are operating legally already
- recognition of the inherent flexibility and fluidity of fisheries
- a proper dialogue with developing countries
- possibly, certification of the process to demonstrate an effective fisheries management system, rather than certification of batches of caught fish

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