

Legal briefing: A new and comprehensive Fishing Authorisation Regulation

Recommendations

- The report adopted by the European Parliament on the proposal issued by the European Commission on the sustainable management of external fishing fleets generally delivers on the commitments made by the European Union (EU) at the international level and should be supported during inter-institutional negotiations.
- The following amendments from the European Parliament are of particular importance and should be maintained in the final agreement:
 - Article 5 (1)(d) – Eligibility criteria: Amendment 78 on the obligation for masters and fishing vessels to demonstrate a clean record of compliance for a 12 month period prior to their application for a fishing authorisation to operate outside EU waters;
 - Article 39 – Union fishing authorisation register: Amendment 69 on the obligation to include information on beneficial ownership in the Union fishing authorisation register;
 - Recital 17, Articles 25(1)(a) and 26(1) – Fishing activities by Union fishing vessels on the high seas: Amendments 19, 56 and 57 on the obligation for operators to provide to their flag Member States a scientific evaluation assessing the sustainability of proposed fishing activities that will take place on the high seas.
- Amendments 19, 56 and 57 are important to maintain as they close a loophole in the existing governance framework by ensuring that high seas fisheries take place sustainably and in a manner compatible with the principles of the Common Fisheries Policy (CFP). They would also ensure that the EU meets its own commitments with respect to the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction.

Background

In December 2015, the European Commission issued a proposal for a regulation on the sustainable management of external fishing fleets.¹ This proposal sets the conditions that must be fulfilled by fishing operators before they can be authorised to fish outside EU waters. It is comprehensive as it covers all possible situations: operations in third countries' waters under Sustainable Fisheries Partnerships Agreements or through direct authorisations; chartering under a third country flag and subsequent reflagging in the EU; fishing under the auspices of a Regional Fisheries Management Organisation (RFMO), whether on the high seas or in areas under national jurisdiction; and fishing operations in the high seas, including for fisheries not regulated by an RFMO.

The last case is not as anecdotal as it may first appear. While RFMOs do cover a great deal of the high seas, which represent approximately 50% of the planet's surface, some gaps remain. This is the case, for example, for some parts of the Central and Southwest Atlantic Ocean; of the Arctic; and of the Northern Indian Ocean. In addition, even where RFMOs are in place, they do not manage all the species found in their area of competence. Many RFMOs only apply to certain species, such as tunas. Fishing for some stocks in some areas continues to be unregulated, including fishing activities conducted by EU flagged vessels.²

According to Articles 25 and 26 of the Commission's proposal, the conditions which must be met before being authorised to fish on the high seas for a stock not managed by an RFMO are only of an administrative nature.³ As a consequence, the sustainability of the planned fishing activity is not taken into account as an eligibility criterion. This is a loophole which should be addressed to maintain policy coherence, as all the other types of fishing operations which can be authorised under this regulation require evidence of the sustainability of the planned activity.⁴

This loophole also contradicts Article 28(1) and 28(2)(d) of the CFP Basic Regulation,⁵ which states that *"In order to ensure sustainable exploitation, management and conservation of marine biological resources and the marine environment, the Union shall conduct its external fisheries relations in accordance with its international obligations and policy objectives, as well as the objectives and principles set out in Articles 2 and 3"* and that *"the Union shall (...) ensure that Union fishing activities outside Union waters are based on the same principles and standards as those applicable under Union law (...)"*. Indeed, Article 2 of the CFP Basic Regulation contains a requirement to fish at maximum sustainable yield (MSY) exploitation rates by 2015 where possible and by 2020 at the latest, and explicit references to managing fisheries according to the precautionary and ecosystem-based approaches.

¹ Proposal for a Regulation of the European Parliament and of the Council on the sustainable management of external fishing fleets, repealing Council Regulation (EC) No 1005/2008.

² See for example: <http://www.franciscoblaha.info/blog/2017/1/23/the-fisheries-complexities-of-the-south-atlantic>. The findings in this article are based on AIS data provided by the Global Fishing Watch project and show that numerous vessels, including EU-flagged vessels, have been operating in the high seas close to Argentina, where no RFMO exists and where hake, hoki, shrimp and squids can be found. This is an unregulated fishery, managed only on a "first come, first served" basis.

³ This includes for example (i) providing complete and accurate information about the vessels involved; (ii) having a valid fishing licence; (iii) having an International Maritime Organisation (IMO) number; or (iv) having a clean record of compliance in the 12 months prior to the application for the fishing authorisation.

⁴ For example, under Article 18 of the Commission proposal, an operator wishing to fish under a direct authorisation regime in the waters of a third country must provide to its flag Member State evidence of the sustainability of the planned fishing operations.

⁵ Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy.

The current loophole in the Commission's proposal is also in contradiction with the commitments taken by the EU at the international level. Through Goal 14 of the Sustainable Development Goals, the EU committed to *"effectively regulate harvesting and end overfishing, illegal, unreported and unregulated fishing and destructive fishing practices and implement science-based management plans, in order to restore fish stocks in the shortest time feasible"*.⁶ In addition, the Voluntary Guidelines for flag State performance (adopted by the Food and Agriculture Organisation of the United Nations (FAO)), which apply to fishing activities in marine areas beyond national jurisdiction, include as one of their criteria that *"the flag State has in place a regime for authorising fishing and fishing related activities (e.g. licencing) which ensure that no vessel is allowed to operate unless so authorised in a manner consistent with international law and with the sustainability of the relevant stocks, including: (a) appropriate scope for authorisation of fishing and fishing related activities, including conditions for the protection of marine ecosystems (...)"*.⁷

For the reasons outlined above, the European Parliament introduced three amendments to the Commission's proposal to ensure that fishing operations on the high seas will only be authorised when the operator has submitted to its flag Member State scientific evidence of the sustainability of the planned operations. The amendments also require that the flag Member State is satisfied that these operations are based on an ecosystem-based approach to fisheries management as defined in the CFP Basic Regulation.

To maintain Union policy coherence and comply with international commitments, these amendments must be supported during the upcoming inter-institutional negotiations. As part of the new regulation, they would also show that the EU "leading by example" in relation to the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction, an issue of particular importance as negotiations are currently open under the auspices of the United Nations General Assembly for the adoption of a new international treaty on the subject.⁸

⁶ United Nations General Assembly, Resolution A/RES/70/1 of 25 September 2015, Sustainable Development Goal 14.4.

⁷ FAO Voluntary Guidelines for flag State performance, §29.

⁸ See: <http://www.un.org/depts/los/biodiversity/prepcom.htm>.

Specific recommendations

Support the following amendments from the European Parliament:

Recital 17, Amendment 19

*“Fishing activities under the auspices of regional fisheries management organisations and **unregulated fisheries** on the high seas should also be authorised by the flag member State and comply with regional fisheries management organisation specific rules or Union legislation governing fishing activities on the high seas”.*

Article 25 (1)(a) - Scope, Amendment 56

*“(a) it has been issued with a fishing authorisation by **the flag Member State of that vessel based on a scientific evaluation assessing the sustainability of the proposed fishing activities which has been validated by its national scientific institute or, as appropriate, the scientific institute of a Member State with competence in the relevant fishery; and**”.*

Article 26(1) – Conditions for fishing authorisations by the flag Member State, Amendment 57

“A flag Member State may only issue a fishing authorisation for fishing activities on the high seas if:

(a) the eligibility criteria in Article 5 are fulfilled;

(b) the planned fishing activities are:

- based on an ecosystem-based approach to fisheries management as defined in point 9 of Article 4 of Regulation (EU) No 1380/2013; and*
- in accordance with a scientific evaluation, taking into account the conservation of living marine resources and marine ecosystems, provided by the national scientific institute of the flag Member State”.*

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