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TRADE AND AGRICULTURE DIRECTORATE FISHERIES COMMITTEE

Scoping Paper: Combatting Illegal, Unreported or Unregulated fishing.

Scoping Paper

17-19 October 2016

This work is planned under item 3.2.3.4.1 Combatting Illegal, Unreported or Unregulated Fishing. This is a scoping paper that proposes to update COFI's knowledge about determinants of IUU fishing and the regulatory and institutional situation in OECD countries and beyond. It is expected to help identify what tools countries have and what tools must be strengthened or introduced, but also to help countries develop collaborations to better tackle IUU. This paper is presented to the 118th Session of the Fisheries Committee for DISCUSSION under item 11 of the draft agenda.

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NOTE BY THE SECRETARIAT

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TABLE OF CONTENTS

NOTE BY THE SECRETARIAT	2
Background information	
Objectives and desired outcomes	6
Nature of final output	7
Methodology and data sources	
Implementation steps proposed	9
Preliminary communication plans	10
Actions required	10
REFERENCES	1.1
KEFEKENUES	1 1

Background information

Illegal, unreported and unregulated fishing is widespread and damaging to resources and societies

- 1. Illegal, unreported and unregulated (IUU)¹ fishing remains the greatest threat to marine ecosystems and undermines any effort undertaken at national, regional and international level to manage fisheries appropriately (Love, 2010; Ros, 2012). In addition, IUU fishing reduces the resources available to all stakeholders involved in legal fishing activities, creating unfair competition that reduces income and employment. This in turn has an important social impact on fishing communities with negative implications for food security in countries that depend on fishing resources.
- 2. IUU has strong economic consequences including beyond the fisheries sector. Apart from the value of the fish that are illegally removed, other costs of IUU fishing include the loss of local economic activities related to fisheries and lost fees and other tax revenues. IUU fishing undermines governments' capacity to, *inter alia*, enforce policy, manage fish stocks, promote food security, reduce poverty, fund public expenditure and support development activities. Poor socio-economic conditions in turn make fishers and fishing communities vulnerable to recruitment into criminal activities.
- 3. IUU is at its core an economic crime in that it is rooted in opportunities for profit. Billions of dollars are annually lost from these activities. Illegal and unreported fishing has been estimated to cost the global economy up to \$23 billion annually (Agnew, 2009). This figure excludes the cost of unregulated fishing and other related economic losses. Furthermore, the situation may have worsened as while the total volume of capture fishing has not increased since 2009, the total value for the global catch has increased by about 90% over the past 10 years (FAO, 2014). The FAO estimates that IUU fishing represents 15% (FAO, 2016b) of global capture fisheries production of US\$125.2 billion in 2014 (FAO, 2016a). This represents USD 18.5 billion at minimum, as IUU fishing generally targets high value species.

¹ According to the FAO's International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated (IUU) fishing;

I Illegal fishing refers to activities:

i conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations;

ii conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or

iii in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.

II Unreported fishing refers to fishing activities:

i which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or

ii undertaken in the area of competence of a relevant regional fisheries management organization which have not been reported or have been misreported, in contravention of the reporting procedures of that organization.

III Unregulated fishing refers to fishing activities:

i in the area of application of a relevant regional fisheries management organization that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization; or ii in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.

4. There is also ample evidence that IUU fishing activities intersect with other criminal activities (see for example, Standing, 2008, UNODC, 2011; ILO, 2013; EJF, 2015; Daniels, 2016). This link has been pointed out in the United Nations General Assembly (UNGA) Resolutions 67/79 in 2012 and 68/71 in 2013 which highlight the vulnerability of the fisheries sectors to multiple crimes such as human trafficking, smuggling of migrants, drug trafficking, document fraud, corruption, money laundering, tax fraud and occasionally terrorism financing.

Governments have moved IUU fishing up the policy agenda, but much remains to be done

- 5. The issue of IUU fishing is now high on the political agenda. The United Nations Sustainable Developments Goal (SDG) 14 sets a target 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, at least to levels that can produce maximum sustainable yield as determined by their biological characteristics" by 2020². There are also implications for the fight against IUU fishing in SDG 1 'No poverty', SDG 2 'No hunger' and SDG16 dedicated to the promotion of 'Peace, justice and strong institutions'.
- 6. While the importance of fighting IUU has been recognised for many years, progress has been slow. Despite some increased effort and attention, many developed and developing states are still not fully meeting their responsibilities. This is the case, for instance, with the poor monitoring, control and surveillance of fishing vessels by flag States, particularly those flying flags of convenience, transhipments or the commercialisation of IUU harvested fish which are a still a common denominator (OECD, 2013; UNODC/WWF, 2016). These conditions underline the necessity to consider IUU fishing as an interdisciplinary issue that calls for multiple tools and institutions to deal with it.
- 7. Addressing IUU requires strong, well-coordinated actions from and among governments. The problem cannot be solved by a country on its own. IUU fishing exists everywhere around the world and, illicit operators quickly move to new fishing jurisdictions in response to new opportunities (OECD, 2005). Furthermore, many of the underlying crimes fall outside the mandate of fisheries authorities, who are not supported, resourced or authorised to deal with such economic crimes that contribute to the persistence of IUU fishing. Consequently, a large number of government's authorities and agencies have a direct interest in gathering and sharing information and undertake joint audits or investigations within the mandate of more than one authority in order to improve capacities and cooperation in the prevention, detection and investigation of such operations.
- 8. Knowing where countries stand in their efforts to fight IUU fishing would help to monitor progress and facilitate the development of cooperation among countries. Past and more recent work helped identify the type of policies that are needed to limit IUU providing minimum standards and recommendations (OECD, 2005; OECD, 2013, UNODC, 2011, FAO, 2015). The 2016 OECD-FAO-UNODC workshop on *Combating Tax Crime and other Crimes in the Fisheries Sector* will further provide guidance in that direction. What is needed now is an assessment identifying the remaining policy gaps in the fight against IUU. This starts with the identification of key determinants of IUU fishing to establish a basis for assessments and understanding of the fisheries and economic management measures that can deter IUU fishing through, for instance, strengthened law enforcement, prosecutorial and judicial capacity.
- 9. The last time an analysis on key determinants and an international inventory of national measures against IUU fishing activities was done was in 2005 by COFI with the report *Why Fish Piracy Persists*. Since then, international institutions have been acting to improve the international legislative framework

² SDG Goal 14: Conserve and sustainably use the oceans, seas and marine resources

and countries have made important progress. The information of the 2005 inventory needs to be updated to see what progress has been made since and upgraded to account for new elements that have developed especially with the better knowledge acquired on determinants these last years. For instance, policies aimed at tackling economic crimes associated with IUU need in particular to be taken into account. That is what the OECD proposes to do through this project.

Objectives and desired outcomes

- 10. This work item as agreed under output 3.2.3.4.1 of the 2017-18 Programme of Work and Budget (PWB) of the Fisheries Committee (COFI) will update previous OECD work on key determinants of IUU fishing and collect data on the current regulatory and institutional situation in OECD countries and other countries. This will help identify cost-effective best practices approaches to reduce IUU fishing, will provide policy makers with a better understanding of the remaining policy gaps and loopholes. It will help identify what tools countries have and what tools must be strengthened or introduced. Although, there is no "one size fits all" option, promoting greater transparency and awareness of procedures and legal systems will be an effective way to introduce countries to better approaches. Moreover, this should also help countries develop collaborations to better tackle IUU.
- 11. The first goal of this project will be to update and expand the inventory of countries' legislation systems and regulations that help reduce IUU development. As indicated before, the information of the 2005 inventory (OECD, 2005) needs updating. Furthermore, the 2005 inventory would need to be upgraded to take into account our improved understanding of what legislations are useful against IUU. For instance, the development of complementary approaches such as the European legislation which reinforce market state responsibilities or the task forces for a stronger inter-agency cooperation in the USA and Norway have shown some success. The FAO³ has also facilitated the development of voluntary and binding instruments⁴ providing guidance for the implementation of such instruments. Updating and expanding the inventory will help assess progress and what remains to be done in that field.
- 12. The upgrading of the inventory of policies against IUU will also need to take into account policies aiming to undermine the economic and financial drivers that can be related to IUU. Since 2005, studies have shown that financial and economic measures beyond fisheries have a potentially strong influence on the way IUU fishing develops:
 - Tax crimes are involved as part of an IUU fishing act. This covers a broad range of offences including the evasion of import and export duties on fish and fish products transported across international borders or tax avoidance when incorrectly declaring the origin, the volume or the categorisation of fish (OECD, 2013). Fishing companies often take advantage of weak legal frameworks, low technical capacity to monitor activities at sea or corrupt officials to avoid paying their full share of taxes (OECD, 2013).
 - Corruption weakens enforcement of domestic and international legislation, such as when bribes are
 used to avoid investigation or to impede ongoing judicial or investigative processes (OECD,
 2014b). Corruption can take place when allocating fishing licences (fees, issuance and quotas),

³ These include: the 1993 FAO Compliance Agreement, the 2001 International Plan of Action to prevent, deter and eliminate IUU fishing; the 2015 Voluntary Guidelines for Flag State Performance, and the 2009 FAO Agreement on Port State Measures to prevent, deter and eliminate IUU fishing (PSMA).

landing of catches in ports, dealing with port controls, smuggling of illegal catches, trafficking of workers, the control of fisheries management compliance regulation, access rights, flag States registers for these access rights and bribes of scientific observers on board fishing vessels (U4, 2008; Hansish & al, 2009; UNODC, 2011; standing, 2015).

- OECD countries' national regulations and their implementation still have weaknesses that allow the entry of illicit funds (FATF, 2012; OECD, 2014a). Investigating the underlying economic crimes such as money laundering, corruption, tax crimes, illicit financial flows related to IUU fishing can serve as powerful deterrent (OECD, 2014a). In fact, tracing the money path from IUU fishing can provide critical evidence of the real organisers, the beneficial owners of the activity and their networks (FATF, 2012) thus increase the chance of catching operators.
- 13. Measures to tackle tax crime, money laundering, bribery and corruption are not specific to fisheries but can strongly influence IUU development as they affect the potential benefit of these activities. The OECD already supports its members on issues related to economic and financial crime through numerous initiatives and instruments such as the OECD Task Force on Tax Crime and Other Crimes (CTP/TFTC), the OECD Anti-bribery Convention, the Financial Action Task Force. The idea is to rely on such existing tools and indicators used in these frameworks which are of special interest for the fisheries sector.
- 14. The second goal of the project will be to analyse in more detail the modalities of enforcement of the legal measures developed to fight IUU fishing. Looking at past IUU fishing court cases and infringements, the project will try to identify good practices and areas of progress in the way IUU fishing activities are actually fought against in practice.
- 15. Beyond the immediate objectives of the project, countries may also consider the potential interest of a regular updating of the information to be collected (e.g. every three or five years) as such regular updating could help COFI's effort to monitor how countries fare in the direction of COFI's Long-Term Strategic Vision [TAD/FI(2015)13/REV1]. Moreover, a regular updating would also feed well into the monitoring of progress towards meeting part of SDG targets 14 *life below the water* (goal 14.4 in particular). The OECD appears well positioned to advance this agenda given its expertise in developing policy indicators and in assessing interconnectedness and policy-coherence (OECD, 2016), and the strong economic drivers of IUU fishing.

Nature of final output

- 16. The project will produce a report of the inventory and a publication based on an analysis of results with the identification of possible margin of progress and best practices.
- 17. This project is targeted towards the most important and measurable features of policies related to the fight against IUU fishing. It has the potential to establish best practices to tackle IUUs. This has several advantages:
 - It will be based on an agreed objective of the Committee
 - It will legitimise the involvement of other governments and entities to combat IUU fishing
 - It could help reinforce understanding and cooperation

Methodology and data sources

- 18. The project will start with a literature review updating COFI's previous work on key determinants of IUU fishing and identifying which policies are best suited to deterring it, and whether there are any that may inadvertently facilitate it.
- 19. This review will help and justify areas that need revision and expansion in the 2005 OECD inventory in the *Why Fish Piracy Persists* report. We expect that the inventory will be expanded to include newly developed policy instruments that have proven effective against IUU and policies, beyond fisheries, that help undermine the economic and financial drivers of IUU. Many of the new measures to be incorporated in the inventory have in recent years seen their inclusion and development in internationally endorsed guidelines and legal instruments.
- 20. To update and upgrade the inventory, a questionnaire will be developed and sent to all participating countries. The questionnaire will include two sections: one related to fisheries legislations and one focused on economic and financial measures beyond fisheries. The first section will look at four main areas of concerns:
 - The coastal state responsibilities with fishing and fishing related activities in the economic exclusive zone: this concerns national and foreign fishing vessel activities within national jurisdictions. For instance, the opacity of fishing licensing regimes is leading to many offences which are still a common way to avoid compliance (Commission decision, 2015; Interpol, 2014).
 - Flag state responsibilities: the lack of effective flag state control is considered as one of the main causes of IUU fishing within other countries national jurisdiction and on the high sea (Erceg, 2006; Kao, 2015). The inventory will focus on major flag state responsibilities with regards to international law, new guidelines such as the maintenance of a register or record of fishing vessels, the registration of vessels with a history of non-compliance and flag state registration procedures.
 - Port state related measures: with the entry into force of the PSMA, there is a growing reliance on
 port states to combat IUU fishing. This stems to a great extent from the failure of flag states. The
 inventory include measures such as the prior notification of port entry, use of designated ports,
 restrictions on port entry and landing/transhipment of fish, restrictions on supplies and services,
 documentation requirements and port inspections.
 - Information sharing and coordination among different authorities as inter-agency cooperation, which is of key importance to any IUU fishing investigation.
- 21. The second section will focus on economic measures to fight against IUU fishing. It will include:
 - Market related measures including trade rules (IUU fishing flows into the postharvest stage across different jurisdictions in the utilisation of fish and marketing).
 - Institutional and regulatory mechanisms to uncover bribery and money laundering in line with the United Nations Convention against Corruption, the United Nations Convention against Transnational Organized Crime and the OECD anti-bribery Convention recommendations.
 - Legislations restricting and eliminating access to insurance and investments on illegal fishing activities.

- Measures to prevent the misuse of legal persons, or arrangements to hide illegal activities or money laundering and sometimes terrorist financing. Therefore, the study will take into account the FATF framework especially recommendations 33 and 34 related to the transparency and beneficial ownership of legal person and arrangements.
- 22. The project aims to identify all the policies that have a positive impact against IUU, consider these as best practices and see, for each country and region what margin of progress towards these practices can be tapped. The project will thus produce an analytic report and an inventory (updated and upgraded) of country level policies against IUU.
- 23. To complement information on legal and institutional frameworks, the second part of the study will focus on court cases and infringements related to IUU fishing over the last 10 years. Countries will be asked to provide a list of cases with information on what IUU fishing activities are brought to court, how they are detected and how they are punished. To protect the confidential nature of some of the information that may be provided by national authorities, the study will include only an aggregate analysis of case information.
- 24. The information provided by countries on court cases will be analysed to provide an overview of the nature of the sanctions that went to court in various countries, the type of offences that were identified during the investigation and by which authorities (fisheries, customs, tax, other frauds), and whether interagency co-operation was a key factor in successfully investigating a case. The aim is not to count how many cases are pursued but to understand the features of investigations to develop insights on the enforcement of existing legal measures and provide recommendations.
- 25. The project aims to cover a range of countries beyond the OECD Members and in particular to include countries where IUU fishing occurs and is of significant impact on policies at the global level. The Secretariat thus proposes to include information on China, Indonesia, Vietnam, Belize, and Senegal depending on available resources and time for the Secretariat. Cooperation will be sought with these countries, but should this effort fail, a review of existing information on their situation will be developed. The information gathered indirectly will be based on national sources to secure strong evidences. The list is not exhaustive and could be extended based on OECD member's proposal and support. This list may also be extended to Parties to the General Fisheries Commission for the Mediterranean (GFCM) that recently agreed to reinforce cooperation with the OECD on IUU fishing issues (GFCM, 2016).

Implementation steps proposed

- 26. The project would be implemented following these steps:
 - 1. Literature review to identify key determinants in order to detail the analytical framework and the data that will be collected.
 - 2. Collection of data with a questionnaire (OECD countries), with direct Secretariat information research for non-OECD countries if needed
 - 3. Analysis of results with the identification of possible margin of progress and best practices.
 - 4. Report and inventory submitted for declassification

Preliminary communication plans

27. Once the final report and the inventory have been declassified by member countries, its findings could be distilled into policy notes. Further development could consider the design of an interactive portal to keep track of progressive improvements in policies against IUU.

Actions required

- 28. Delegates are invited to:
 - Provide their views and comments on the scope, objective, and methods proposed for this project.
 - Identify any relevant policies or initiatives in your country that could be useful for the analysis.

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