Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999

COUNCIL REGULATION (EC) No 1005/2008

of 29 September 2008

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament[(1)],

Having regard to the opinion of the European Economic and Social Committee[(2)],

After consulting the Committee of the Regions,

Whereas:

(1) The Community is a Contracting Party to the United Nations Convention on the Law of the Sea of 10 December 1982 (Unclos), has ratified the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 August 1995 (UN Fish Stocks Agreement) and has accepted the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas of 24 November 1993 of the Food and Agriculture Organization of the United Nations (FAO Compliance Agreement). Those provisions predominantly set out the principle that all States have a duty to adopt appropriate measures to ensure sustainable management of marine resources and to cooperate with each other to this end.

(2) The objective of the common fisheries policy, as set out in Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy[(3)], is to ensure exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions.

(3) Illegal, unreported and unregulated (IUU) fishing constitutes one of the most serious threats to the sustainable exploitation of living aquatic resources and jeopardises the very foundation of the common fisheries policy and international efforts to

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promote better ocean governance. IUU fishing also represents a major threat to marine biodiversity which needs to be addressed in accordance with the objectives set out in the Communication from the Commission — Halting the loss of biodiversity by 2010 — and beyond.

(4) The FAO adopted in 2001 an international plan of action to prevent, deter and eliminate illegal, unreported and unregulated fishing, which the Community has endorsed. Furthermore, regional fisheries management organisations, with the active support of the Community, have established an array of measures designed to counteract illegal, unreported and unregulated fishing.

(5) In line with its international commitments, and given the scale and urgency of the problem, the Community should substantially enhance its action against IUU fishing and adopt new regulatory measures designed to cover all facets of the phenomenon.

(6) The action by the Community should be targeted primarily at behaviour falling under the definition of IUU fishing and which causes the most serious damage to the marine environment, the sustainability of fish stocks and the socioeconomic situation of fishermen abiding by the rules on conservation and management of fisheries resources.

(7) In line with the definition of IUU fishing, the scope of this Regulation should extend to fishing activities carried out on the high seas and in maritime waters under the jurisdiction or sovereignty of coastal countries, including maritime waters under the jurisdiction or sovereignty of the Member States.

(8) In order to properly address the internal dimension of IUU fishing, it is vital for the Community to adopt the necessary measures to improve compliance with the rules of the common fisheries policy. Pending the revision of Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy[(4)] provisions to this end should be inserted in this Regulation.

(9) Community rules, and in particular Title II of Regulation (EEC) No 2847/93, provide for a comprehensive system designed to monitor the legality of catches from Community fishing vessels. The current system applying to fishery products caught by third country fishing vessels and imported into the Community does not ensure an equivalent level of control. This weakness constitutes an important incentive for foreign operators carrying out IUU fishing to trade their products in the Community and increase the profitability of their activities. As the world's largest market for, and importer of fishery products, the Community has a specific responsibility in making sure that fishery products imported into its territory do not originate from IUU fishing. A new regime should therefore be introduced to ensure a proper control of the supply chain for fishery products imported into the Community.

(10) Community rules governing access to Community ports of fishing vessels flying the flag of a third country should be strengthened with a view to ensuring a proper control over the legality of the fishery products landed by fishing vessels flying the flag of a third country. This should notably imply that access to Community ports is only authorised for fishing vessels flying the flag of a third country which are able to provide accurate

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information on the legality of their catches and to have this information validated by their flag State.

(11) Transhipments at sea escape any proper control by flag or coastal States and constitute a usual way for operators carrying out IUU fishing to dissimulate the illegal nature of their catches. It is therefore justified for the Community to authorise transhipment operations only if they occur within the designated ports of Member States, in ports of third countries between Community fishing vessels, or outside Community waters between Community fishing vessels and fishing vessels registered as carrier vessels under the auspices of a regional fisheries management organisation.

(12) It is appropriate to lay down the conditions, procedure and frequency according to which checking, inspection and verification activities shall be carried out by Member States, on the basis of risk management.

(13) Trade with the Community in fishery products stemming from IUU fishing should be prohibited. In order to make this prohibition effective and ensure that all traded fishery products imported into or exported from the Community have been harvested in compliance with international conservation and management measures and, where appropriate, other relevant rules applying to the fishing vessel concerned, a certification scheme applying to all trade in fishery products with the Community shall be put in place.

(14) The Community should take into account the capacity constraints of developing countries for the implementation of the certification scheme.

(15) It is appropriate that, under this scheme, a certificate be required as a precondition for the import of fishery products into the Community. That certificate should contain information demonstrating the legality of the products concerned. It should be validated by the flag State of the fishing vessels which caught the fish concerned, in line with its duty under international law to ensure that fishing vessels flying its flag comply with international rules on conservation and management of fisheries resources.

(16) It is essential that this certification scheme apply to all imports of marine fishery products into the Community and exports from the Community. This scheme should also apply to fishery products which have been transported or processed in a country other than the flag State before reaching the territory of the Community. Specific requirements should therefore apply with respect to those products, in order to guarantee that the products arriving into the territory of the Community are not different from those the legality of which has been validated by the flag State.

(17) It is important to ensure an equal level of control for all imported fishery products, without prejudice to the volume or frequency of trade, by introducing specific procedures for granting the status of approved economic operator.

(18) The exportation of catches from fishing vessels flying the flag of a Member State should also be subject to the certification scheme under the framework of cooperation with third countries.

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(19) Member States into which the products are intended to be imported should be able to check the validity of the catch certificates accompanying the consignment and be entitled to refuse the importation where the conditions laid down in this Regulation with respect to the catch certificate are not met.

(20) It is important that checking, inspection and verification activities pertaining to fishery products in transit or transhipment be carried out primarily by the Member States of final destination in order to improve their efficiency.

(21) In order to assist control authorities within Member States in their tasks of monitoring the legality of fishery products traded with the Community, as well as to warn Community operators, a Community alert system should be established, designed to spread information, where appropriate, about well-founded doubts as to compliance by certain third countries with applicable conservation and management rules.

(22) It is essential that the Community adopt dissuasive measures against fishing vessels carrying out IUU fishing and which are not subject to appropriate action by their flag State in response to such IUU fishing.

(23) To this end, the Commission, in collaboration with Member States, the Community Fisheries Control Agency, third States and other bodies, should identify fishing vessels suspected of carrying out IUU fishing, on the basis of risk management, and the Commission should seek information from the competent flag State as to the accuracy of the findings.

(24) In order to facilitate enquiries pertaining to fishing vessels presumed to have carried out IUU fishing and prevent the continuation of the alleged infringement, those fishing vessels should be subject to specific control and inspection requirements by Member States.

(25) When, on the basis of the information obtained, there are sufficient grounds to consider that fishing vessels flying the flag of a third country have been engaged in IUU fishing and that the competent flag States have not taken effective action in response to such IUU fishing, the Commission should place those vessels on the Community IUU vessel list.

(26) When, on the basis of the information obtained, there are sufficient grounds to consider that Community fishing vessels have been engaged in IUU fishing and that the competent flag Member States have not taken effective action pursuant to this Regulation and to Regulation (EEC) No 2847/93 in response to such IUU fishing, the Commission should place those vessels on the Community IUU vessel list.

(27) With a view to remedying the absence of effective action by flag States towards fishing vessels flying their flags and placed on the Community IUU vessel list, and to restrict the continuation of fishing activities by those vessels, Member States should apply appropriate measures against those vessels.

(28) To safeguard the rights of the fishing vessels placed on the Community IUU vessel list and of their flag States, the procedure for the listing should give the flag State the opportunity to inform the Commission of the measures taken and, where possible, give

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the owner or operators concerned the possibility of being heard at each stage of the procedure and allow for the delisting of a fishing vessel when the criteria for its listing are no longer met.

(29) In order to provide for a single framework within the Community and to avoid proliferation of lists pertaining to fishing vessels involved in IUU fishing, fishing vessels included in the IUU lists adopted by regional fisheries management organisations should automatically be included in the corresponding list drawn up by the Commission.

(30) The failure by some States to discharge the duty incumbent on them under international law as flag, port, coastal or market States, to take appropriate measures to ensure compliance by their fishing vessels or nationals with rules on the conservation and management of fisheries resources is one of the main drivers of IUU fishing and should be addressed by the Community.

(31) To this end, in addition to its action at international and regional levels, the Community should be entitled to identify those non-cooperating States, on the basis of transparent, clear and objective criteria relying on international standards, and, after giving them adequate time and to respond to a prior notification, adopt non-discriminatory, legitimate and proportionate measures with respect to those States, including trade measures.

(32) It is for the Council to adopt trade measures in respect of other States. As the establishment of a list of non-cooperating States should entail trade counter-measures in respect of the States concerned, it is appropriate that the Council reserve itself the right to exercise implementing powers directly in this specific case.

(33) It is essential that nationals of Member States be effectively deterred from engaging in or supporting IUU fishing by fishing vessels flying the flag of third countries and active outside the Community, without prejudice to the primacy of the responsibility of the flag State. Member States should therefore put in place the necessary measures and cooperate between themselves and with third countries to identify their nationals carrying out IUU fishing, make sure that they are adequately sanctioned and verify the activities of their nationals involved with third country fishing vessels, outside the Community.

(34) The persistence of a high number of serious infringements against the rules of the common fisheries policy within Community waters or by Community operators lies to a large extent in the non-deterrent level of sanctions prescribed within Member States' legislation in relation to serious infringements to those rules. This weakness is compounded by the wide variety of sanctions levels across Member States, which encourages illegal operators to operate in maritime waters or the territory of the Member States where these are the lowest. To address this weakness, building upon the provisions set out in Regulations (EC) No 2371/2002 and (EEC) No 2847/93 in this area, it is appropriate to approximate within the Community the maximum levels of administrative sanctions foreseen in relation to serious infringements against common fisheries policy rules, taking into account the value of the fishery products obtained by committing the serious infringement, their repetition and the value of the prejudice