

COMMISSION IMPLEMENTING DECISION**of 14 October 2014****identifying a third country that the Commission considers as a non-cooperating third country pursuant to Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing**

(2014/715/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 ⁽¹⁾, and in particular Article 31 thereof,

Whereas:

1. INTRODUCTION

- (1) Regulation (EC) No 1005/2008 (the IUU Regulation) establishes a Union system to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing.
- (2) Chapter VI of the IUU Regulation lays down the procedure with respect to the identification of non-cooperating third countries, demarches in respect of countries identified as non-cooperating third countries, the establishment of a list of non-cooperating countries, removal from the list of non-cooperating countries, publicity of the list of non-cooperating countries and any emergency measures.
- (3) Pursuant to Article 31 of the IUU Regulation, the European Commission may identify third countries that it considers as non-cooperating countries in fighting IUU fishing. A third country may be identified as a non-cooperating third country if it fails to discharge the duties incumbent upon it under international law as flag, port, coastal or market State, to take action to prevent, deter and eliminate IUU fishing.
- (4) The identification of non-cooperating third countries shall be based on the review of all information as set out under Article 31(2) of the IUU Regulation.
- (5) In accordance with Article 33 of the IUU Regulation, the Council may establish a list of non-cooperating countries. The measures set out in Article 38 of the IUU Regulation apply to those countries.
- (6) Pursuant to Article 20(1) of the IUU Regulation, third country flag States are requested to notify the Commission of their arrangements for the implementation, control and enforcement of laws, regulations and conservation and management measures which must be complied with by their fishing vessels.
- (7) Pursuant to Article 20(4) of the IUU Regulation, the Commission cooperates administratively with third countries in areas pertaining to the implementation of the catch certification provisions of that Regulation.
- (8) In accordance with Article 32 of the IUU Regulation, by Commission Decision of 15 November 2012 ⁽²⁾ (Decision of 15 November 2012), the Commission notified eight third countries of the possibility that they could be identified as non-cooperating countries pursuant to the IUU Regulation.

⁽¹⁾ OJ L 286, 29.10.2008, p. 1.

⁽²⁾ Commission Decision of 15 November 2012 on notifying the third countries that the Commission considers as possible of being identified as non-cooperating third countries pursuant to Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (OJ C 354, 17.11.2012, p. 1).

- (9) In its Decision of 15 November 2012, the Commission included the information concerning the essential facts and considerations underlying such preliminary identification.
- (10) Also on 15 November 2012, the Commission notified the eight third countries with separate letters of the fact that it was considering the possibility of identifying them as non-cooperating third countries. The Decision of 15 November 2012 was attached to those letters.
- (11) The Commission underlined, in those letters, that in order to avoid being identified and proposed for formal listing as a non-cooperating third country as respectively provided for Articles 31 and 33 of the IUU Regulation, the third countries concerned were invited to establish and implement, in close cooperation with the Commission, an action plan to rectify the shortcomings identified in the Decision of 15 November 2012. A timely and effective implementation of the action plan by the concerned countries could have avoided them being identified as non-cooperating third countries and proposed for final listing.
- (12) As a consequence, the Commission invited the eight third countries concerned: (i) to take all necessary measures to implement the actions contained in the action plans suggested by the Commission; (ii) to assess the implementation of the actions contained in the action plans suggested by the Commission; and (iii) to send every six months detailed reports to the Commission assessing the implementation of each action as regards, inter alia, their individual and/or overall effectiveness in ensuring a fully compliant fisheries control system.
- (13) The eight third countries concerned were given the opportunity to respond in writing to issues explicitly indicated in the Commission Decision as well as to other relevant information. Those countries were allowed to submit evidence to refute or complete the facts invoked in the Decision of 15 November 2012 or to adopt, as appropriate, a plan of action to improve and measures taken to rectify the situation. The eight countries were assured of their right to ask for, or to provide, additional information.
- (14) Therefore, by its Decision and letters of 15 November 2012, the Commission opened a dialogue process with the eight third countries and indicated that it considered a period of six months as being in principle sufficient for reaching an agreement.
- (15) The Commission continued to seek and verify all information it deemed necessary. The oral and written comments submitted by the eight third countries following the Decision of 15 November 2012 were considered and taken into account. The eight countries were kept informed either orally or in writing of the Commission's considerations.
- (16) The Democratic Socialist Republic of Sri Lanka (Sri Lanka) failed to refute the facts invoked by the Commission or to implement the plan of action to rectify the situation.
- (17) This Commission Implementing Decision identifying Sri Lanka as a third country that the Commission considers as non-cooperating in fighting IUU fishing is the result of an investigation and dialogue process in the context of the implementation of the IUU Regulation. That process complied with the substantive and procedural requirements laid out in that Regulation, which refers, inter alia, to the third country's duties incumbent upon it under international law as flag, port, coastal or market State to prevent, deter and eliminate IUU fishing.
- (18) The Commission Implementing Decision to identify Sri Lanka as a third country that the Commission considers as a non-cooperating third country in fighting IUU fishing entails the consequences stated in Article 18(1)(g) of the IUU Regulation.

2. PROCEDURE WITH RESPECT TO SRI LANKA

- (19) On 15 November 2012, the Commission notified Sri Lanka pursuant to Article 32 of the IUU Regulation that it considered the possibility of identifying Sri Lanka as a non-cooperating third country ⁽¹⁾.
- (20) The Commission invited Sri Lanka to establish in close cooperation with its services an action plan to rectify the shortcomings identified in its Decision of 15 November 2012.

⁽¹⁾ Letter to the Minister of Fisheries and Aquatic Resources Development of Sri Lanka of 15 November 2012.

- (21) The main shortcoming identified by Commission in the suggested plan of action were related to several failures to implement international law obligations, linked in particular to the adoption of an adequate legal framework, lack of adequate and efficient monitoring, lack of observer scheme, lack of a deterrent sanctioning system, and to improper implementation of the catch certification scheme. Other identified shortcomings relate, more generally to the compliance with international obligations including Regional Fisheries Management Organisations (RFMOs) recommendations and resolutions. A lack of compliance with recommendations and resolutions from relevant bodies such as the International Plan of Action against Illegal, Unreported and Unregulated fishing of the United Nations (IPOA-IUU) was also identified. However, the lack of compliance with non-binding recommendations and resolutions was considered only as supporting evidence and not as a basis for the identification.
- (22) Through its submission of 14 December 2012, Sri Lanka informed the Commission of institutional arrangements set up in order to address the shortcomings identified in the suggested action plan.
- (23) Sri Lanka submitted written comments on 31 December 2012 and 4 January 2013.
- (24) By letter of 7 February 2013, the Commission requested Sri Lanka to provide updated information on key areas of the suggested action plan.
- (25) On 13 March 2013, the Sri Lankan authorities submitted the following documents: (i) cover letter and explanatory letter; (ii) update on Sri Lanka's timing for all measures to be taken; (iii) updated information on key areas of the suggested action plan; (iv) the 2013 National Plan of Action for the fight against IUU fishing; (v) updates on administrative procedures and guidelines for the use of catch certificates; (vi) the budget allocation 2013 for the establishment of a sub-office of the Quality Control Division of the Department of Fisheries and Aquatic Resources Development in the airport; (vii) draft texts for revised legislation relating to compliance with legal obligation, monitoring of the long distance fleet and deterrent sanctions; (viii) awareness schemes for operators on the catch certification scheme; (ix) inspection scheme and (x) guidelines for procedures to investigate IUU activities in the high seas.
- (26) Technical consultations between the Commission and Sri Lanka took place on 17 April 2013 in Brussels. During that meeting, the Sri Lankan authorities presented to the Commission its recent National Plan of Action to combat IUU fishing as well as planned measures to improve cross-checking of information contained in catch certificates and the initiated revision of the legal framework.
- (27) With its submissions on 30 May 2013 and 3 June 2013, Sri Lanka stressed its commitment to timely implementation of a road map, elaborated by Sri Lanka, while adopting the legislative amendments to enhance punitive measures for IUU fishing and initiating the Vessel Monitoring System (VMS) procurement process.
- (28) Based on the progress detected in the period from November 2012 to early June 2013, the Commission informed Sri Lanka by letter of 11 June 2013 that in order to achieve tangible results addressing the shortcomings highlighted in the Decision of 15 November 2012 and concluding the necessary actions, the Commission would maintain the dialogue with Sri Lanka for an additional period of nine months, until 28 February 2014. This letter was followed by an updated proposal for the plan of action by the Commission on 20 June 2013.
- (29) Sri Lanka submitted a progress report on 22 August 2013 for the period 31 May 2013 to 15 August 2013, followed by a submission on 28 October 2013 with information on adoption procedure for the amended legislation.
- (30) The Commission visited the Sri Lankan authorities concerned from 28 to 30 January 2014. Those authorities were kept informed of the progress of the situation in line with the Decision of 15 November 2012 and the proposed action plan. During the Commission's visit, the Sri Lankan authorities had the opportunity to make statements and provide relevant documents in response to the Decision of 15 November 2012 and to inform the Commission of the latest developments on the progress of the plan of action.
- (31) Sri Lanka provided another progress report on 27 March 2014 covering the period 16 August 2013 to 21 March 2014 while submitting the following documents: (i) updated information on key areas of the suggested action plan; (ii) updated timeframe for the implementation of the National Plan of Action in the fight against IUU; (iii) letters from the Ministry of Fisheries and Aquatic Resources Development to the Ministry of External Affairs requesting accession to the FAO Compliance Agreement and investigations of nationals involved in IUU

fishing under flags of other states; (iv) request for VMS funding and demonstration of transponder requirement; (v) information on awareness training and (vi) specimens of the revised Fishing Log Book 2014 and inspection plan in ports for Deep Sea and High Seas Fishing Vessels. The information also included the adoption of the revised Fisheries Act by the Sri Lankan Parliament on 5 November 2013. Sri Lanka provided an additional progress report on 1 August 2014 covering the period up to July 2014 which in addition to updated information on key areas of the suggested action plan; and updated timeframe for the implementation of the National Plan of Action in the fight against IUU also contained; a letter from the Ministry External Affairs to the Ministry of Fisheries and Aquatic Resources Development informing that a copy of the instrument of acceptance for accession to the FAO Compliance Agreement will be submitted once the accession has happened; a request to the Attorney General to introduce increased sanctions into the current legislation; 2 letters from the Legal Draftsmen with the revised draft regulations on respectively High Seas Fishing Operations and Fish Catch Data Collection plus a summary of the awareness programmes for high seas skippers and the implementation report to the IOTC on a regional observe scheme. Sri Lanka provided additional information on 29 August 2014 explaining advancements on the established shortcomings (i.e. draft regulations on High Seas Fishing Operations and Fish Catch Data Collection, information Circular on sanctioning, information on observer and inspection programmes and information on progress made on the established shortcomings). Sri Lanka provided new submissions on 18 and 19 September 2014 confirming adoption of regulations on High Seas Fishing Operations and Fish Catch Data Collection, reflection on internal work for drafting a Cabinet Memorandum on deterrent sanction system, reflection on achieving IOTC compliance, information on logbook, inspection and observer coverage and information on possible partial step-by-step introduction of VMS transponders (although the contract with contractor was not yet signed and implemented) to its fishing vessels for the period starting from January 2015 to August 2015.

- (32) The Commission continued to seek and verify all information it deemed necessary. The oral and written comments submitted by Sri Lanka following the Decision of 15 November 2012 were considered and taken into account while Sri Lanka was kept informed either orally or in writing on the Commission's considerations.
- (33) In the light of the elements gathered, as shown in recitals 34 to 67, the Commission believes that Sri Lanka has not sufficiently addressed the areas of concern and shortcomings described in the Decision of 15 November 2012. Nor has Sri Lanka fully implemented the measures suggested in the accompanying action plan.

3. IDENTIFICATION OF SRI LANKA AS A NON-COOPERATING THIRD COUNTRY

- (34) Pursuant to Article 31(3) of the IUU Regulation, the Commission has reviewed the compliance of Sri Lanka with its international obligations as flag, port, coastal or market State, in line with the findings of the Decision of 15 November 2012 and with relevant information provided by Sri Lanka, with the proposed plan of action as well as with the measures taken to rectify the situation. For the purpose of this review the Commission has taken into account the parameters listed in Article 31(4) to (7) of the IUU Regulation.

3.1. Recurrence of IUU fishing (Article 31(4)(a) of the IUU Regulation)

- (35) As highlighted in recital 292 of the Decision of 15 November 2012, the Commission established that Sri Lanka had no legislation providing for the licensing of high seas fisheries.
- (36) As mentioned in recital 296 of the Decision of 15 November 2012, 13 Sri Lankan vessels were listed in the draft IUU vessel list of IOTC as they had been caught fishing in breach of the Indian Ocean Tuna Commission (IOTC) conservation and management measures. Since the Decision of 15 November 2012, Sri Lanka has not prohibited its vessels from fishing illegally on the high seas nor has it immediately adopted legislation allowing for high seas fishing and for issuance of licences for high seas fishing in order to avoid the illegal fishing activities of its fishing vessels. Sri Lanka has instead finally adopted a revised Fisheries Act on 5 November 2013 allowing high seas fishing. It drafted implementing legislation for licensing of high seas vessels, this implementing legislation has been adopted in September 2014 (according to submission of authorities) but has not been implemented yet. Sri Lanka has also reduced the number of vessels operating in the IOTC from 3 307 to 1 758 vessels but these vessels are still fishing with an administrative high seas licence and not a legal licence. In this respect, it is recalled

that pursuant to Article 18(3)(b)(ii) of the United Nations Fish Stocks Agreement ⁽¹⁾ (UNFSA), a flag State must take measures to prohibit fishing on the high seas by its vessels which are not duly licensed or authorised to fish. The current established situation demonstrates clearly that Sri Lanka is not acting in accordance with its international responsibilities as a flag State.

- (37) Since the Decision of 15 November 2012 according to information retrieved from the IOTC ⁽²⁾, three Sri Lankan flagged vessels, *Malshiri No 1*, *Gold Marine 5* and *Lakpriya 2* were caught by coastal States in 2013 as presumably involved in IUU activities. It is recalled that, pursuant to Article 18(1) and (2) of the UNFSA, the flag State is responsible vis-à-vis its vessels operating on the high seas. In addition, pursuant to Article 118 the United Nations Convention on the Law of the Sea (UNCLOS), a flag State must cooperate in the conservation and management of living resources which is clearly undermined by the presence of its fleet which is operating in IOTC without legal fishing licences and thus conducting IUU activities in line with definitions of Article 2 of the IUU Regulation.
- (38) Moreover, in 2013 it was found that 13 other Sri Lankan vessels, inspected while transiting through the Exclusive Economic Zone (EEZ) of a coastal State, were in breach of the IOTC conservation and management measures. The Commission considers that the continued fishing by Sri Lankan vessels in breach of conservation and management measures of the IOTC is a clear indication that Sri Lanka has failed to undertake its flag State responsibilities under international law as stated in recital 37.
- (39) It also demonstrates the failure by Sri Lanka to ensure that fishing vessels entitled to fly its flag do not engage in or support IUU fishing, which is not in line with point 34 of the IPOA-IUU stipulating that States should ensure that fishing vessels entitled to fly their flag do not engage in or support IUU fishing. Furthermore, the existence of the Sri Lankan flagged vessels referred to recitals 36 to 38 also highlights Sri Lanka's failure to fulfil its obligations under Article 19(1) and (2) of the UNFSA pursuant to which a flag State is required to ensure compliance by its vessels flying its flag with RFMO conservation and management rules.
- (40) The Commission also found that adequate measures in respect of recurrent IUU fishing could not be effectively taken by Sri Lanka due to the shortcomings of its legal framework. It thus suggested, in the action plan, a revision of the legal framework to ensure compliance with international obligations in relation to the high seas; to remedy the lack of sufficient operational means to effectively monitor the Sri Lankan long distance fleet and to create a deterrent sanction scheme.
- (41) As mentioned in recital 36 of this Decision, Sri Lanka adopted in November 2013 a revised Fisheries Act allowing its vessels to fish outside its EEZ. However, the act required for the implementation of high seas licensing system is still a draft and thus not applicable. Licences are currently issued by the administration without a predetermined procedure in a non-systemic way. In addition, the revised Fisheries Act also provided for increased sanctions on IUU infringements, which could be considered as deterrent only for a part of the Sri Lankan long distance fleet (specifically, for the small scale boats which are fishing outside the Sri Lankan EEZ, for which sanctions might be considered appropriate in view of the limited fishing capacity of these vessels. However, the Sri Lankan fleet of large scale vessels (above 24 meters in length) has increased in 2013 and 2014, and the level of sanctions foreseen by the new Fisheries Act which is applicable to this part of the fleet cannot be considered as being deterrent, these vessels having a fishing capacity from 10 to 20 times larger than that of the smaller vessels. Current legislation ⁽³⁾ foresees a maximum fine of EUR 8 429 (LKR 1 500 000 ⁽⁴⁾) which cannot be considered effective in securing compliance, to discourage violations and to deprive offenders of the benefits accruing from their illegal activities. Thus, such level of sanctions cannot be considered as being in line with Article 19(2) of the UNFSA which stipulates, inter alia, that sanctions should be adequate in severity and deprive offenders of the benefits accruing from their illegal activities. The Commission therefore considers that the sanctioning system introduced by Sri Lanka is manifestly inadequate and is clearly not proportionate to the seriousness of possible infringements, to the potential impact of the infringements on the resources and to the potential benefit that could derive from such illegal actions.

⁽¹⁾ 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

⁽²⁾ <http://iotc.org/meetings/11th-session-compliance-committee-coc11>

⁽³⁾ Fisheries and Aquatic Resources (amendment) Act, No 35 of 2013

⁽⁴⁾ 8 429 EUR based on the exchange rate of 27 May 2014

- (42) Consequently, the actions undertaken by Sri Lanka in light of its duties as a flag State are insufficient to comply with the provisions of Articles 118 of the UNCLOS and Articles 18, 19 and 20 of the UNFSA.
- (43) In view of recitals 292 to 299 of the Decision of 15 November 2012 and the developments after 15 November 2012, the Commission takes the view, pursuant to Article 31(3) and 31(4)(a) of the IUU Regulation, that Sri Lanka has failed to discharge its duties under international law as a flag State in respect of IUU vessels and IUU fishing carried out or supported by fishing vessels flying its flag or by its nationals and has not taken sufficient action to counter documented and recurring IUU fishing by vessels previously flying its flag.

3.2. Failure to cooperate and to enforce (Article 31(5)(b), (c) and (d) of the IUU Regulation)

- (44) As described in recitals 302 to 311 of the Decision of 15 November 2012, the Commission analysed whether Sri Lanka cooperated effectively with the Commission on investigations and associated activities.
- (45) Concerning the vessels referred to in recital 293 of the Decision of 15 November 2012, Sri Lanka was, as indicated in recital 296 of that Decision, obliged to report on a monthly basis on actions taken against those vessels. That reporting only materialised for 9 out of 12 months in 2013 and 2 out of 4 months in 2014. In contravention with the provisions of Article 20 of the UNFSA which sets out obligations of States to investigate, cooperate either directly or through RFMO's to ensure compliance with and enforcement of RFMO conservation and management measures, Sri Lanka has therefore failed to fulfil its obligations under international law with respect to international cooperation and enforcement.
- (46) As described in recital 302 of the Decision of 15 November 2012 as well as recital 45 above, Sri Lanka did not fulfil its monthly reporting obligations towards the IOTC for the 13 Sri Lankan vessels presumed to be involved in IUU activities but not listed by the IOTC. Thus, Sri Lanka failed to demonstrate that it fulfils the conditions of Article 94(2)(b) of the UNCLOS which stipulates that a flag State assumes jurisdiction under its internal law over each ship flying its flag and its master, officers and crew.
- (47) Additionally, as described in recitals 306 to 307 of the Decision of 15 November 2012, the Commission analysed whether Sri Lanka took effective enforcement measures in respect to operators responsible for IUU fishing and whether sanctions of sufficient severity to deprive the offenders of the benefits accruing from IUU fishing were applied.
- (48) As explained in recital 41, following the adoption of the Decision of 15 November 2012, Sri Lanka did not put in place a deterrent sanctioning system for the segment of large vessels in its fleet. The current catalogue of sanctions is not in line with Article 19(2) of the UNFSA which stipulates, *inter alia*, that sanctions should be adequate in severity and deprive offenders of the benefits accruing from their illegal activities.
- (49) Available evidence still confirms that Sri Lanka has not fulfilled its obligations under international law with respect to effective enforcement measures. In this respect, as explained in recitals 36 to 38 the continued existence of vessels fishing in breach of conservation and management measures of the IOTC highlights Sri Lanka's failure to honour its responsibilities *vis-à-vis* its vessels operating on the high seas as set out in Article 18(1) and (2) of the UNFSA.
- (50) As highlighted in recital 309 of the Decision of 15 November 2012, the level of development of Sri Lanka cannot be considered as a factor undermining the capacity of the competent authorities to cooperate with other countries and pursue enforcement actions. The evaluation of the specific constraints on the development is further described in recitals 65 to 67.
- (51) Consequently, the actions taken by Sri Lanka in light of its duties as flag State are insufficient to comply with Articles 94(2)(b) of the UNCLOS and Article 18 and 19 of the UNFSA.
- (52) In view of recitals 302 to 311 of the Decision of 15 November 2012 and the developments after 15 November 2012, the Commission takes the view, pursuant to Article 31(3) and 31(5)(b), (c) and (d) of the IUU Regulation, that Sri Lanka has failed to discharge the duties incumbent upon it under international law as flag State in respect of cooperation and enforcement efforts.

3.3. Failure to implement international rules (Article 31(6) of the IUU Regulation)

- (53) As described in recitals 314 to 334 of the Decision of 15 November 2012, the Commission analysed any information deemed relevant with respect to Sri Lanka's status as Contracting Party to the IOTC. The Commission has therefore analysed any information deemed relevant with respect to Sri Lanka's agreement to apply conservation and management measures adopted by the IOTC following the Decision of 15 November 2012.
- (54) It is recalled that since the Decision of 15 November 2012, the IOTC issued annual Compliance Reports for respectively 2013 ⁽¹⁾ and 2014 ⁽²⁾, which show that Sri Lanka is still not compliant or only partially compliant in the years 2012 and 2013.
- (55) With respect to the Compliance Report for 2013, Sri Lanka failed to submit some of the information required on statistics and on some conservation and management measures.
- (56) In particular, as regards the IOTC Resolution 10/08 ⁽³⁾ for the list of active vessels, Sri Lanka did not provide information on the international radio call sign for each vessel. As regards the IOTC Resolution 06/03 ⁽⁴⁾ on the adoption of a vessel monitoring systems (VMS), Sri Lanka failed to equip its vessels above 15 meters in overall length with VMS and to construct a Fisheries Monitoring Centre (FMC). Nor has Sri Lanka submitted the mandatory VMS progress report. Regarding the IOTC Resolution 10/02 ⁽⁵⁾ on the mandatory statistical requirements, Sri Lanka has not reported the size frequency data for coastal fisheries and has not reported nominal catch, catch and effort data and size frequency at the standard required by that Resolution for the coastal fisheries, surface fisheries and longline fishery. As regards the IOTC Resolution 05/05 ⁽⁶⁾ on the submission of data regarding sharks, Sri Lanka is only partly compliant, as catch data for gillnet and longline are reported combined. As regards the IOTC Resolution 12/05 ⁽⁷⁾ on transshipments in port, Sri Lanka has not provided the mandatory report. As regards the IOTC Resolution 11/04 on the observers ⁽⁸⁾, Sri Lanka has not implemented the regional observer scheme as required by this Resolution. In particular, Sri Lanka has not established the observer scheme for the mandatory 5 % at sea for the vessels longer than 24 m and is not in compliance with the observer reporting obligation.
- (57) With respect to the Compliance Report for 2014, Sri Lanka did not submit some required information on statistics, nor on some conservation and management measures.
- (58) In particular, as regards the IOTC Resolution 13/02 ⁽⁹⁾, Sri Lanka has not adopted legislation making gear marking mandatory. Regarding IOTC Resolution 13/08 ⁽¹⁰⁾, Sri Lanka has not submitted a Fish Aggregating Devices (FADs) management plan, nor have any legal and administrative measures been taken for the 8 purse seiners as required under IOTC Resolution 12/13 ⁽¹¹⁾. Again in 2014, as regards the IOTC Resolution 06/03 ⁽¹²⁾, Sri Lanka has not equipped its vessels above 15 meters in overall length with VMS, nor constructed an FMC and nor has the mandatory VMS progress report been submitted. Regarding IOTC Resolution 10/02 on the mandatory statistical requirements Sri Lanka has not reported nominal catch, catch and effort data and size frequency at the standard required by this Resolution. As regards IOTC Resolutions 13/06 ⁽¹³⁾ and 12/04 ⁽¹⁴⁾, Sri Lanka has not transposed prohibition on oceanic whitetip sharks nor has it implemented the obligations for purse seiners to carry dip nets and for longliners to carry line-cutters and de-hookers. Also repeated in 2014, as regards the Resolution 11/04 ⁽¹⁵⁾, Sri Lanka has not implemented the observer scheme as required. In particular, Sri Lanka has not

⁽¹⁾ IOTC Compliance Report for Sri Lanka, Compliance Committee Session 10, 2013, CoC10-CR25

⁽²⁾ IOTC Compliance Report for Sri Lanka, Compliance Committee Session 11, 2014, CoC11-CR25 Rev1.

⁽³⁾ Resolution 10/08 Concerning a record of active vessels fishing for tunas and swordfish in the IOTC area

⁽⁴⁾ Resolution 06/03 on establishing a vessel monitoring system programme.

⁽⁵⁾ Resolution 10/02 Mandatory statistical requirements for IOTC Members and Cooperating Non-Contracting Parties (CPC's).

⁽⁶⁾ Resolution 05/05 concerning the conservation of sharks caught in association with fisheries managed by IOTC.

⁽⁷⁾ Resolution 12/05 on establishing a programme for transshipment by large-scale fishing vessels.

⁽⁸⁾ Resolution 11/04 on a regional observer scheme.

⁽⁹⁾ Resolution 13/02 concerning the IOTC record of vessels authorised to operate in the IOTC area of competence.

⁽¹⁰⁾ Resolution 13/08 Procedures on a fish aggregating devices (FADs) management plan, including more detailed specifications of catch reporting from FAD sets, and the development of improved FAD designs to reduce the incidence of entanglement of non-target species.

⁽¹¹⁾ Resolution 12/13 for the conservation and management of tropical tunas stocks in the IOTC area of competence.

⁽¹²⁾ Resolution 06/03 on the adoption of a VMS and on VMS progress report.

⁽¹³⁾ Resolution 13/06 on a scientific and management framework on the conservation of sharks species caught in association with IOTC managed fisheries.

⁽¹⁴⁾ Resolution 12/04 on the conservation of marine turtles.

⁽¹⁵⁾ Resolution 11/04 on a regional observer scheme

established the observer scheme for the mandatory 5 % at sea for the vessels longer than 24 meters and is not in compliance with the observer reporting obligation. Regarding IOTC Resolution 10/10⁽¹⁾, Sri Lanka has not provided the report on import, landing, transshipment of tuna and tuna-like fish products in ports.

- (59) Sri Lanka's failure to provide the IOTC with the required information and to fulfil the IOTC obligations as referred to in recitals 56 and 58 demonstrates its failure to fulfil its obligations as flag State laid down in the UNCLOS and the UNFSA. In particular, the failure to provide timely information on statistics, VMS, catch and effort, transshipment in port, observer programme undermines Sri Lanka's ability to fulfil its obligations under Articles 117 and 118 of the UNCLOS. Those articles stipulate a State's duties to adopt measures for their nationals for the conservation of living resources of the high seas and to cooperate on conservation and management measures for living resources in the areas of the high seas.
- (60) As described in recital 322 of the Decision of 15 November 2012, a number of elements were revealed during the Commission's visit to Sri Lanka in November 2010, in particular regarding the lack of VMS and the lack of legislation for catch reporting. Other elements of concern, such as lack of observer scheme and the poor reporting on vessels and nationals identified as involved in IUU fishing were highlighted in recitals 319 and 321 of the Decision of 15 November 2012 as a result of the IOTC Compliance Reports for 2011 and 2012. In that regard, the information submitted by the Sri Lankan authorities in relation to the high seas fishing legislation, creation of a functional VMS, a reliable observer scheme and catch registration and reporting revealed that the authorities have not ensured effective and efficient control and monitoring of the Sri Lankan flagged vessels in line with international obligations. In particular as indicated in recitals 36, 40 and 41, Sri Lanka was invited to develop a thorough legal framework for allowing fishing in high seas accompanied by high seas fishing licences and the fulfilment of the IOTC resolutions, in particular with respect to monitoring, control and surveillance of its own fleet, including a VMS, logbook and catch reporting system and an observer scheme. With regards to the high seas fishing legislation, the Fisheries Act was amended to allow for fishing in the high seas and the implementing regulation for issuance licence was drafted and finally adopted in September 2014. However, as the implementing regulation was only adopted in September 2014 and no information exists on how it would be implemented, only administrative licences are being issued while Sri Lankan vessels operate with no VMS. As for the regional observer scheme, the documents provided by Sri Lankan authorities revealed that despite the selection and recruitment of some inspectors, a large part of the fleet will not be covered due to the small number of inspectors (45) compared to the large number of the vessels (1 758 in IOTC register of vessels). Sri Lanka has nevertheless not made any proposals to address this serious problem in the context of the IOTC which means that there is no proper coverage of the Sri Lankan flagged fleet operating in the high seas because of inadequate means of inspection. In that respect, it is also recalled that Sri Lanka has serious problems in reporting data to the IOTC which undermines the country's capacity to exercise its obligations as flag State.
- (61) In relation to the VMS, as described in recitals 316, 321 and 322 of the Decision of 15 November 2012 and recital 60 of this Decision, the Commission recalls various problems highlighted by the IOTC. Following the Decision of 15 November 2012, Sri Lanka stated that it was in the process of introducing VMS. It submitted to the Commission the legislation demonstrating the requirement of a transponder on board as of 1 November 2011 and indicated that a service provider had already been selected. However, the funding was not in place and negotiations between the Sri Lankan authorities and the relevant financial institution have been on-going for more than 18 months. The negotiations concern the terms and conditions of a loan to purchase and install an FMC and provide financial assistance to operators to install and operate within a reasonable time period VMS for the entire high seas fleet. As a result, Sri Lanka does not have an FMC. In addition, the VMS is still under development and has never become operational. The Commission established during its visit in January 2014, as confirmed by Sri Lanka's subsequent submissions and the IOTC Compliance Reports 2013 and 2014, that Sri Lankan fishing vessels are still not fitted with VMS. As for compliance with the IOTC's VMS requirements, there are discrepancies between the IOTC Compliance Reports for 2013 and 2014 and Sri Lanka's actions. The Compliance Reports claim partial compliance while the information provided by Sri Lanka clearly shows that there has been no actual implementation of a VMS. Therefore, Sri Lanka does not fulfil the conditions stipulated in Article 18(3)(g) of the UNFSA in view of the information gathered on the monitoring, control and surveillance abilities of the Sri Lankan authorities, in particular on its operational ability to manage its fleet and the development and implementation of a functional VMS.

⁽¹⁾ Resolution 10/10 concerning market related measures.

- (62) The facts set out in Section 3.3 demonstrate that Sri Lanka is in breach of Article 18(3) of the UNFSA.
- (63) Consequently, Sri Lanka in light of its duties as flag State has insufficiently complied with Articles 117, 118 of the UNCLOS and Article 18(3) of the UNFSA.
- (64) In view of recitals 314 to 334 of the Decision of 15 November 2012 and the developments after that Decision, the Commission takes the view, pursuant to Article 31(3) and (6) of the IUU Regulation, that Sri Lanka has failed to discharge its duties under international law with respect to international rules, regulations and conservation and management measures.

3.4. Specific constraints of developing countries

- (65) It is recalled that, according to the United Nations Human Development Index ⁽¹⁾, Sri Lanka is considered as a medium human development country (92nd in 186 countries). That is also confirmed by Annex II to Regulation (EC) No 1905/2006 of the European Parliament and of the Council ⁽²⁾ where Sri Lanka is listed in the category of lower middle income countries.
- (66) As described in recital 337 of the Decision of 15 November 2012, no corroborating evidence has been found to suggest that Sri Lanka's failure to discharge its duties under international law is the result of lacking development. After 15 November 2012 no additional concrete evidence was submitted to demonstrate that the identified shortcomings are a consequence of the lack of capacity and administrative infrastructure.
- (67) In view of recitals 336 to 337 of the Decision of 15 November 2012 and the developments after 15 November 2012, the Commission takes the view, pursuant to Article 31(7) of the IUU Regulation, that the development status and overall performance of Sri Lanka with respect to fisheries are not impaired by its level of development.

4. CONCLUSION ON THE IDENTIFICATION OF A NON-COOPERATING THIRD COUNTRY

- (68) In view of the conclusions reached with regard to Sri Lanka's failure to discharge its duties under international law as flag, port, coastal or market State and to take action to prevent, deter and eliminate IUU fishing, that country should be identified, in accordance with Article 31 of the IUU Regulation, as a country the Commission considers to be a non-cooperating third country in fighting IUU fishing.
- (69) Having regard to Article 18(1)(g) of the IUU Regulation, the competent authorities of the Member States are bound to refuse the importation into the Union of fishery products without having to request any additional evidence or send a request for assistance to the flag State where they become aware that the catch certificate has been validated by the authorities of a flag State identified as a non-cooperating State in accordance with Article 31 of that Regulation. The adverse impact to trade should, to the extent possible, be gradually phased in, in order to facilitate in the period between the entry into force of this Commission Implementing Decision and the possible measures taken by the Council, the adjustment by parties to the new situation and to provide economic operators the appropriate time to adapt, given the special characteristics of the fishery products from Sri Lanka and of the Sri Lankan supplying enterprises, among others their small and medium size. Consequently, the application of this decision should be postponed by three months. Such a postponement should not have any impact on the need for swift measures by the Council to address expeditiously the situation in Sri Lanka related to IUU fishing.
- (70) It should be stated that the identification of Sri Lanka as a country the Commission considers to be non-cooperating for the purposes of this Decision does not preclude any subsequent step taken by the Commission or the Council for the purpose of establishment of a list of non-cooperating countries.
- (71) In the event that the Council should place Sri Lanka on the list of non-cooperating third countries in accordance with the provisions of Article 33 of the IUU Regulation, this preceding identification Decision would become obsolete.

⁽¹⁾ For reference to UN Human Development Index see (ranking of countries mentioned in this Decision updated in line with the last available UN report): http://hdr.undp.org/en/media/HDR2013_EN_Summary.pdf

⁽²⁾ Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation (OJ L 378, 27.12.2006, p. 41).

5. COMMITTEE PROCEDURE

- (72) The measures provided for in this Decision are in accordance with the opinion of the Committee for Fisheries and Aquaculture,

HAS ADOPTED THIS DECISION:

Article 1

The Democratic Socialist Republic of Sri Lanka is identified as a third country that the Commission considers as a non-cooperating third country in fighting illegal, unreported and unregulated fishing.

Article 2

This Decision shall enter into force on 14 January 2015.

Done at Brussels, 14 October 2014.

For the Commission
The President
José Manuel BARROSO
