

COMMISSION DECISION**of 21 April 2015****on notifying a third country of the possibility of being identified as a non-cooperating third country in fighting illegal, unreported and unregulated fishing**

(2015/C 142/06)

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 32 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 to identify non-cooperating third countries, the *démarches* in respect of such countries, the establishment of a list of such countries, the removal from that list, the publicity of that list and any emergency measures.
- (3) In accordance with Article 32 of the IUU Regulation, the Commission is to notify third countries of the possibility of their being identified as non-cooperating countries. Such notification is of a preliminary nature. The notification is to be based on the criteria laid down in Article 31 of the IUU Regulation. The Commission is also to take all the *démarches* set out in Article 32 of that Regulation with respect to the notified third countries. In particular, the Commission is to include in the notification information concerning the essential facts and considerations underlying such identification, provide those countries with the opportunity to respond and provide evidence refuting the identification or, where appropriate, a plan of action to improve and measures taken to rectify the situation. The Commission is to give to the notified third countries adequate time to answer the notification and reasonable time to remedy the situation.
- (4) Pursuant to Article 31 of the IUU Regulation, the Commission is to identify third countries that it considers as non-cooperating countries in fighting IUU fishing. A third country is to be identified as non-cooperating 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.
- (5) The identification of non-cooperating third countries is to be based on the review of all information as set out under Article 31(2) of the IUU Regulation.
- (6) In accordance with Article 33 of the IUU Regulation, the Council is to establish a list of non-cooperating third countries. The measures set out, inter alia, in Article 38 of the IUU Regulation apply to those countries.
- (7) Pursuant to Article 20(1) of the IUU Regulation, the acceptance of validated catch certificates from third country flag States is subject to a notification to the Commission of the arrangements for the implementation, control and enforcement of laws, regulations and conservation and management measures which must be complied with by the fishing vessels of the concerned third countries.
- (8) In accordance with Article 20(4) of the IUU Regulation, the Commission is to cooperate administratively with third countries in areas pertaining to the implementation of that Regulation.

2. PROCEDURE WITH RESPECT TO KINGDOM OF THAILAND

- (9) The notification of the Kingdom of Thailand as flag State was received by the Commission in accordance with Article 20 of the IUU Regulation on 6 October 2009.

⁽¹⁾ OJ L 286, 29.10.2008, p. 1.

- (10) From 18 to 22 April 2011, the Commission, with the support of the European Fisheries Control Agency (EFCA), carried out a visit to Thailand in the context of administrative cooperation provided for in Article 20(4) of the IUU Regulation.
- (11) The visit sought to verify information concerning Thailand's arrangements for the implementation, control and enforcement of laws, regulations and conservation and management measures which must be complied with by its fishing vessels, measures taken by Thailand in order to implement its obligations in the fight against IUU fishing and to fulfil its requirements and points pertaining to the implementation of the catch certification scheme of the Union.
- (12) The final report of the visit was sent to Thailand on 30 June 2011.
- (13) A technical meeting took place between Thailand and Commission services on 27 April 2012. Thailand provided an update on developments since April 2011 regarding the implementation the IUU regulation. Thailand presented a revised Fisheries Act accepted by Cabinet and ready for adoption by the Senate and Parliament, a Vessel Monitoring System program that had been launched with further rollout planned for 2013 and a final draft National Plan of Action on IUU that was ready for translation.
- (14) A subsequent visit of the Commission to Thailand to follow up the actions taken in the first visit was conducted from 9 to 12 October 2012.
- (15) The final report of the visit was delivered to Thailand on 9 November 2012.
- (16) Thailand submitted additional information 29 November 2012 and its comments to the visit report of November 2012 on 23 January 2013.
- (17) On 15 February the Commission responded to the comments in the report from Thailand dated 23 January 2013.
- (18) Thailand provided additional information in the form of an action plan to improve traceability systems for imported fishery products on 11 April 2013.
- (19) A subsequent visit of the Commission to Thailand to follow up the actions taken in the October 2012 mission was conducted from 8 to 9 October 2014.
- (20) The final report of the visit was sent to Thailand on 29 October 2014. The Commission established during the visit that little or no progress had been achieved on the critical weaknesses detected from 2011.
- (21) A meeting took place between Thailand and Commission services on 19 November 2014 in which additional comments were stated by Thailand. Thailand provided, subsequent to the meeting, a number of written representations. On 28 January 2015 Thailand submitted an unofficial version of the revised Fisheries Act which was published on 9 January 2015 (reference Fisheries Act B.E. 2558 (2015)).
- (22) Thailand is a member of the Indian Ocean Tuna Commission (IOTC). Thailand has ratified the 1982 United Nations Convention on the Law of the Sea (UNCLOS).
- (23) In order to evaluate the compliance of Thailand with its international obligations as flag, port, coastal or market State as set out in the international agreements referred to in recital 22 and established by the relevant Regional Fisheries Management Organisation (RFMO) mentioned in that recital, the Commission sought and analysed all the information it deemed necessary for the purpose of that exercise. The current main legal text for Thai fisheries management is the Fisheries Act of 1947. The revised publication of January 2015 is expected to come into force in 2015. This is complemented by a number of ministerial regulations and notifications covering technical aspects of fisheries management. Most of these texts are more than 10 years old and have not been updated. The authorities of Thailand have accepted the need for revision of the fisheries act and work for years to develop the new instrument.
- (24) The Commission also used information derived from available data published by IOTC as well as publicly available information.

3. POSSIBILITY OF THAILAND BEING IDENTIFIED AS A NON-COOPERATING THIRD COUNTRY

- (25) Pursuant to Article 31(3) of the IUU Regulation, the Commission analysed the duties of Thailand as flag, port, coastal or market State. For the purpose of that review the Commission took into account the criteria listed in Article 31(4) to (7) of the IUU Regulation.

3.1. Recurrence of IUU Vessels and IUU trade flows (Article 31(4) of the IUU Regulation)

- (26) The Commission established on the basis of information retrieved from its on-the-spot visits and of publically available information that at least 11 vessels have been involved in IUU activities during the 2010 to 2014 ⁽²⁾ ⁽³⁾ ⁽⁴⁾ period.
- (27) Based on the evidence retrieved, Thai flagged vessels are reported to have committed the following serious infringements contrary to the conservation and management measures of the fishing areas concerned, as they have: fished without a valid licence, authorisation or permit issued by the flag State or the coastal States concerned; fished without Vessel Monitoring System (VMS) equipment on-board in the high seas and in coastal States where VMS is a requirement for all foreign flagged vessels; presented erroneous information regarding fishing areas to obtain validation of catch certificates from the Thai authorities and importation of the products into the EU; falsified or concealed their markings, identity or registration; obstructed the work of coastal State officials in the exercise of their duties in inspecting for compliance with the applicable conservation and management measures. Furthermore, some of these vessels did not fulfil their obligations to record and report entry, exit and catch data to the coastal states authorities. The Thai Department of Fisheries (DOF) has investigated one of the cases as explained in this Decision (recital 79) but no evidence of other actions were provided to the Commission.
- (28) In October 2014, 5 Thai vessels were arrested for fishing illegally in Papua New Guinea' (PNG) Exclusive Economic Zone (EEZ). The absence of VMS on-board most Thai vessels (as described in recitals 37) combined with weak collaboration with neighbouring states (Section 3.2 of this Decision) suggests that the risk of IUU activity occurring in the Thai fleet is high. This is supported by the extensive distribution of Thai vessels involved in IUU activities in the Indian and Western Pacific oceans in 2011 to 2014 (as stated in recital 26). The location and spread of these incidences tie in with that of the distribution of the Thai distant water fleet prior to 2012.
- (29) Historically the Thai fleet contributed to 40 % of overall marine capture fisheries production. This has considerably declined in recent years due to overfishing of demersal and pelagic stocks in Thai waters ⁽⁵⁾. In 2007, the Thai fleet was reported to be fishing in Indonesia, Cambodia, Malaysia, Bangladesh, Somalia, Madagascar and Myanmar with more than 460 known vessels. Today the distant water fleet is reduced to 10 longliners authorised to fish in the IOTC area and 52 trawlers licenced to fish in Papua New Guinea. The decline of fish stocks in Thai territorial waters combined with reduced fishing area through the loss of rights of access to third country waters suggests that high number of fishing vessels continue to operate illegally without regulation or reporting of catches both on the high seas and in coastal States waters.
- (30) The fleet has expanded by more than 15 000 vessels since 2011, now reaching *circa* 40 000 vessels of which 7 000 are classified as commercial vessels (each having a gross tonnage of more than 20 tonnes). Of the total, less than a fifth use logbooks, which suggests that the majority of catches go unreported. In this respect, Thailand has failed to uphold its responsibilities as coastal State to ensure optimum utilization of fishery resources in its EEZ according to scientific, environmental and economic factors as prescribed for in Articles 61 and 62 of UNCLOS. This also contravenes point 24 of the International Plan of Action to prevent, deter and eliminate illegal, unreported and unregulated fishing (IPOA IUU ⁽⁶⁾) that provides for the obligation to submit regularly logbook information on catches.
- (31) Recitals 28 to 30 demonstrate that Thailand's fisheries and industry are characterised by declining fish stocks, reduced fishing area (EEZ area closures and loss of access to third country coastal states waters) and an increasing fishing capacity (*circa* 4 000 commercial vessels in 2011 to 7 000 in 2014). The facts described in these recitals all support the preliminary conclusion that the Thai fleet operates illegally outside Thai territorial waters with catches are either unreported or mis-declared.

⁽²⁾ Information (2010 infringements) retrieved from country report 'Accompanying developing countries in complying with the Implementation of Regulation (EC) No 1005/2008 on Illegal, Unreported and Unregulated (IUU) Fishing', EuropeAid/129609/C/SER/Multi.

⁽³⁾ Information (2011 infringements) retrieved from IOTC data available on: <http://www.iotc.org/sites/default/files/documents/proceedings/2012/coc/IOTC-2012-CoC09-R%5BE%5D.pdf> and pages 5-6 of <http://iotc.org/sites/default/files/documents/proceedings/2012/coc/IOTC-2012-CoC09-08a%5BE%5D.pdf> as of 27.11.2014.

⁽⁴⁾ Information (2014 infringements) retrieved from PNG Loop Online news <http://www.pngloop.com/2014/10/27/record-12-fishing-vessels-investigation-ffas-operation-kurukuru/> and <http://www.emtv.com.pg/article.aspx?slug=Illegal-Fishing-Vessels-Apprehended&asof20.11.2014>.

⁽⁵⁾ Information retrieved from country report 'Accompanying developing countries in complying with the Implementation of Regulation (EC) No 1005/2008 on Illegal, Unreported and Unregulated (IUU) Fishing', EuropeAid/129609/C/SER/Multi.

⁽⁶⁾ International Plan of Action to prevent, deter and eliminate illegal, unreported and unregulated fishing, Food and Agriculture Organization of the United Nations, 2001.

- (32) With regard to information laid down in recitals 26, 27, 28 and 31, the Commission considers that Thailand has failed to uphold its responsibilities as flag State to prevent its fleet from engaging in IUU activities. In this respect it is recalled that, pursuant to Article 94(2)(b) of the UNCLOS, the flag State must assume jurisdiction under internal law over ships flying its flag, including the actions of master, officers and crew on-board. It is noted that the flag State has the duty to take, or to cooperate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of living resources of the high seas.
- (33) Under Article 31(4)(b), the Commission also examined the measures taken by Thailand in respect of access of fisheries products stemming from IUU fishing to its market.
- (34) The Commission analysed documentation and other information relating to Thailand's monitoring and control of its marine capture fisheries and that of imported products. Following this assessment, the Commission considers that Thailand cannot ensure fishery products entering its ports and processing plants do not stem from IUU fishing. The Thai authorities were not able to demonstrate they have all the necessary information required to certify the legality of imports and processed products destined for the EU market. The main elements at the basis of the Commission's assessment are summarised hereinafter.
- (35) Registration and licensing of Thai vessels is done by the Marine Department (MD) and Department of Fisheries (DOF) respectively, the latter involved in both activities since 2010. The number of registered vessels almost doubled in 2011 following an exercise in which the authorities encouraged non-registered and non-licensed vessels to register.
- (36) The 2012 visit revealed that the two departments involved in registration do not cooperate and that difference in number of registered vessels varies by a few thousand. The absence of cooperation between MD and DOF weakens the ability of Thailand to monitor the size and capacity of the fleet and allows would be illegal operators to operate from Thailand without detection. The risk that Thai vessels operate without registration or licence and land undeclared catches for processing is still high.
- (37) Furthermore, the lack of VMS as a tool to monitor fishing activity location undermines the validation process of Thai catch certificates as the authorities cannot systematically and independently verify and cross check area of capture with those declared by operators. In this respect, Thailand fails to comply with requirements to ensure comprehensive and effective monitoring, control and surveillance of fishing under Article 94 of UNCLOS and Paragraph 24 of the IPOA-IUU.
- (38) Third country vessels are not authorised to fish in Thai waters. Thailand processes large quantities of third country fishery products from both notified and non-notified third countries.
- (39) Some third country fish originates from vessels flying the flag of countries that were notified by the Commission as potentially being identified as non-cooperating third country pursuant to Article 32 of Regulation (EC) No 1005/2008. These include: Korea, Papua New Guinea and Philippines.
- (40) Thailand also processes fish from third countries not notified to the Commission under Article 20 of the IUU Regulation including Vanuatu, the Federated States of Micronesia and Marshall Islands. This increases the risk that fish products destined to the EU market cannot be guaranteed as not being sourced from IUU fishing (as described in recitals 48 to 51).
- (41) The Thai authorities have developed a number of traceability schemes to monitor and control third country fishery products entering its ports for processing and onward export.
- (42) According to information provided from the authorities, 10 % of landings in Thai ports are verified. However the authorities have no legal basis to inspect, sanction or refuse access of third country vessels into Thai ports. All imports are issued with an import permit upon presentation of a set of documents (vessel registration, licence, etc.) and a catch certificate in case of products destined for the EU market. The 2012 and 2014 visits revealed that catch certificates often arrive weeks or even months after import into Thailand. The linkage between import permit and catch certificate number is very difficult if not impossible to establish, rendering traceability even more difficult.

- (43) Paragraphs 11(2) and 11(3) of the FAO Code of Conduct state that international trade in fish and fishery products should not compromise sustainable development of fisheries and should be based on transparent measures as well as on simple and comprehensive laws, regulations and administrative procedures. The IPOA-IUU further provides guidance on internationally agreed market-related measures (points 65 to 76) which support reduction or elimination of trade in fish and fish products derived from IUU fishing. The traceability systems observed by the Commission (as described in recitals (44) to (48)) clearly demonstrate how Thailand has failed to take measures to improve the transparency of their markets which would prevent the risk of IUU products being traded through Thailand.
- (44) In 2012 the Commission visited several operators, brokers and tuna processing plants to evaluate transparency and traceability in the Thai fishery market. A number of deficiencies were identified (as described in recitals (45) to (47)).
- (45) The Thai authorities have implemented a traceability system developed to ensure that all products destined to the EU market could be traced back to their origin and all products were accounted for. The Commission evaluated this traceability system both at the level of authorities and at the level of processing companies during its visit in October 2012. The Commission established that the traceability systems developed by the Thai public authorities are not incorporated into the accounting systems of companies and therefore do not ensure that data is exhaustive and reliable since there is no link between what is recorded in the authorities' systems with what is recorded in the companies' accounting and production systems. This situation undermines the reliability of the traceability chain at company level. Furthermore, the electronic databases supporting the authorities' systems are incomplete and crucial documents in the supply chain such as the Import Movement Document do not record critical data (e.g. name of supplying vessels and actual total quantity purchased by the processing company). This highlights the failures of the traceability system as a whole.
- (46) National documentation schemes developed by the authorities for the purpose of traceability are used incorrectly by operators, who were found to inaccurately record incoming quantities of fish. This exposes the system to potential abuse by allowing operators to over declare incoming quantities from erroneous catch certificates and to launder fish through these overestimations.
- (47) Companies complete a Raw Material Balance Stock sheet for the purpose of this scheme. They fill out the sheet referring to the full quantities declared on the catch certificate as opposed to those actually purchased. The sheet is completed by companies without linkage to internal accounting systems and done so after processing in order to obtain the Annex IV processing statement from the authorities. This demonstrates that data recording systems observed were inadequate in that they didn't account for production yield differences and conversion rates. Furthermore, the inability to link quantities of raw material with those of processed products using internal accounting systems exposes and opens the system to mis-declarations and laundering of IUU products. The relative low number of audits by Department of Fisheries and the lack of demonstrable action against these failing traceability systems shows an unwillingness to ensure transparency in the supply chain and a failure to take measures against operators connected directly or indirectly with IUU fishing activities in line with those outlined in point 72 to 74 of the IPOA-IUU.
- (48) The 2012 visit also revealed that 40 000 tonnes of imported tuna had not been controlled by the Customs authorities. Collaboration between DOF and Customs to ensure accuracy of imports for raw materials is weak.
- (49) In preparation for the 2014 visit, the European Fisheries Control Agency (EFCA) analysed a few hundred catch certificates presented at EU borders for consignments originating from Thailand. These catch certificates were validated from the Thai fishing authorities on the basis of information provided from the Thai operators. The impact of problems with data recording systems as outlined above can be seen in the irregularities listed below (as described in recitals 50 and 51).
- (50) The analysis of domestically caught product revealed the following inconsistencies: different quantities of same raw material presenting equal weights of final processed products; two catch certificates issued for the same trip; dried products increasing in weight as opposed to expected decrease observed after dehydration process; yield production varied from exporter to exporter with final products found to be up to twice the amount of raw material; exportation date 3 to 4 years after catch and production dates; catch area not indicated; International, regional and national conservation and management measures not indicated.

- (51) The analysis of third country catch certificates processed in Thailand revealed the following irregularities: catch certificate linked with known IUU activity; incorrect or inconsistent data on catch certificates such as: incorrect IMO number, inconsistencies between caught, landed and processed weights, vessel not listed in RFMO approved registers, carrier vessel not on the list of RFMO established carrier vessels, landing dates prior to transshipment dates, quantities and dates amended on catch certificates. This processing of products issued from catches directly linked to IUU activities as well as catches stemming from catch certificates with clearly identifiable errors demonstrates that Thailand has failed to cooperate with other States and regional fisheries management organizations to adopt appropriate market related measures to prevent, deter or eliminate IUU fishing as is specified in point 68 and 72 of the NPOA-IUU.
- (52) The information described in recital (50) and (51) demonstrate that products processed through Thailand undermine sustainable post-harvest rules as described in Article 11 of the FAO Code of Conduct and further highlight how Thailand has failed to impose rules to ensure adequate cooperation with Third country catching states and to implement measures that ensure transparency and traceability of products through the market in accordance with points 67 to 69 and 71 to 72 of the NPOA-IUU in order to allow the traceability of fish or fish products.
- (53) In view of the situation explained in this Section of the Decision and on the basis of all factual elements gathered by the Commission as well as the statements made by the country, it could be established that, pursuant to Article 31(3) and 31(4)(b) of the IUU Regulation, that Thailand has failed to discharge the duties incumbent upon it under international law as a coastal and market State to prevent access of fisheries products stemming from IUU fishing to its market.

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

- (54) Under Article 31(5)(a) the Commission analysed its collaboration with Thailand to see if they had effectively cooperated in responding to questions, providing feedback or investigating matters related to IUU fishing and associated activities.
- (55) Collaboration was assessed against progress achieved by Thailand year on year.
- (56) Following the 2011 visit, the Commission invited Thailand to cooperate on a number of fisheries management issues that needed urgent attention. These are listed hereinafter. The legal and administrative framework for fisheries management needed updating with the adoption of a revised Fisheries Bill and National Plan of Action on IUU to ensure transposition of international and regional fisheries management legislation into national law. The Commission invited Thailand to develop a coherent and deterrent sanctioning scheme supported by a register of infractions and sanctions. The Commission suggested an improvement of the monitoring, control and surveillance framework to ensure control of the Thai fleet and third country vessels' access to Thai ports. Development of the Vessel Monitoring System as well as that of an inspection plan. The effectiveness and transparency of the catch certification and traceability scheme for exports destined to the EU market should have been improved.
- (57) The 2012 visit to Thailand revealed little or no progress in the areas of concern highlighted by the Commission in 2011 (as described in the recital above). The fisheries bill and NPOA-IUU were still in draft with vague timelines for adoption. No developments in the Monitoring Control and Surveillance (MCS) framework were observed and except for an additional cross linkage between import documents and third country catch certificates no significant achievements were noted in the implementation of their traceability system. The Commission report of November 2012 details the various issues mentioned in this recital, these are the same as those found in the recent visit of November 2014.
- (58) The Commission re-iterated the need for cooperation and corrective actions in its report of 9 November 2012. Thailand commented on the report on 23 January 2013. The Commission responded to these comments on 15 February 2013 emphasising that Thai actions refer to future initiatives without providing detailed objectives or timelines for completion. No concrete actions or solutions were provided to problems highlighted in the 2011 and 2012 visits and questions as to the adoption of the Fisheries Bill and improvements of the traceability system remained unanswered.
- (59) Thailand responded with an *Action Plan of the Improvement of Traceability System for Imported Fishery Product* on 11 April 2013. This was complemented with a technical meeting on 27 April 2013 during which Thailand committed on timelines for adoption of the new legal framework (set for 2013) with detailed objectives of ongoing fisheries and traceability projects.

- (60) The next communication was initiated by the Commission on 30 June 2014 to request a follow up to the 2012 visit. The subsequent October 2014 visit revealed no progress had been achieved since 2012. The critical adoption of the fisheries bill that would enable implementation and enforcement of key fisheries management and traceability tools was still in draft with adoption scheduled for some time in 2015. VMS coverage was reduced to fewer boats than in 2012 and analysis of catch certificates processed in Thailand highlighted risks that IUU products were reaching the EU market. For these reasons, the Commission considers that Thailand failed to address all the issues identified in 2012 and failed to exercise its jurisdiction over the administrative, technical and social matters of its fleet in line with Article 94 of UNCLOS. Furthermore, it has failed to implement provisions of paragraph 24 of the IPOA IUU in respect of monitoring, control and surveillance over its fleet, particularly in respect of VMS implementation and logbook requirements (as described in recitals (36) to (38) and (69) to (74)).
- (61) Overall the Thai authorities were cooperative and generally quick to respond to requests for information or verifications from both Member States and the Commission under Article 17(6) of Regulation (EC) No 1005/2008. However the accuracy of their responses was undermined by the inadequacies of their traceability systems as outlined in Section 3(1) of this Decision. These weaknesses are exacerbated by the lack of cooperation between the Thai authorities and third country flag States from which it imports raw materials.
- (62) Under Article 63 and 64 of UNCLOS coastal and flag States should cooperate with regards to the management of straddling and highly migratory fish species. Points 28 and 51 of IPOA IUU outline practices and areas of work in which States should seek to cooperate. These include development of common policies, mechanisms for data sharing and joint working on monitoring, control and surveillance.
- (63) Thailand is the world's largest tuna importer, importing between 800 000 to 850 000 metric tonnes of tuna per year (2008 data) to supply over 50 processing plants all specialising in tuna processing. 90 % of these imports originate from the Western and Central Pacific Ocean and the remainder from the West Indian Ocean⁽⁷⁾. These figures highlight the important role that Thailand plays in the supply chain of processed fishery product to Europe and therefore the importance of cooperating with third country from which it imports raw fishery products.
- (64) Since 2010 Thailand has carried out only 26 verifications out of thousands of imports from third country flag States and only 14 of these verifications have been replied to by the third country flag States. Considering the issues highlighted in recitals 51 and 52 regarding problems with third country catch certificates, the Commission considers that Thailand has failed to cooperate with other States to facilitate communication by firstly not publicising formal contact points for inter-State communication and secondly by not entering into agreements or arrangements with States from which it imports fishery products for processing.
- (65) In 2011 Thailand had bilateral fishing arrangements in place with Myanmar, Yemen, Oman, Iran Papua New Guinea and Bangladesh. Of these, only one bilateral arrangement remains in force today with individual fishing associations in Papua New Guinea.
- (66) In October 2014, 5 Thai vessels were arrested for fishing illegally in the PNG EEZ. This point was raised by the Commission in the meeting with Thailand on 19 November 2014 but the DOF stated it knew nothing of the event. This highlights the poor cooperation between Thailand and other third countries, even those with which it holds bilateral agreements.
- (67) In accordance with Article 31(5)(b), the Commission analysed existing enforcement measures to prevent, deter and eliminate IUU fishing in Thailand.
- (68) The rules governing registration of vessels and licencing are unclear and failure to comply with the obligation to register provided for in Thai law has not been adequately sanctioned by the Thai authorities⁽⁸⁾. This situation is aggravated by the lack of cooperation between administrations to compare data on registration and leaves the system open to fraud (recitals 35 and 36). Article 94 of UNCLOS and points 42 and 43 of NPOA-IUU clearly specify the obligations that flag States hold in respect of their record of fishing vessels. In this respect the Commission considers that Thailand has failed to ensure vessels flying its flag are recorded and licenced and failed to take effective enforcement measures to remedy the situation.

⁽⁷⁾ Information retrieved from country report under Accompanying developing countries in complying with the Implementation of Regulation (EC) No 1005/2008 on illegal, Unreported and Unregulated (IUU) Fishing, EuropeAid/129609/C/SER/Multi.

⁽⁸⁾ See footnote 7.

- (69) During the November 2014 meeting, the Commission highlighted the low levels of penalties provided for in the revised draft Fisheries Bill. The current level of fines is not sufficient to deprive large commercial vessels of the benefits accrued from potential illegal activities. Penalties in their current form are not comprehensive and severe enough to achieve a deterrent function. Furthermore, the DOF does not hold a register of infringements or sanctions and consequently cannot readily link infringements to detect repeated offences. This is aggravated by the lack of clarity and transparency of laws and procedures, in particular in relation to vessel registration and licensing and traceability and reliability of information on data relating to landings and catch. Thailand fails to uphold its obligations to impose effective enforcement measures under Article 94 of UNCLOS and has failed to demonstrate it has in place an adequate sanction regime to combat IUU as outlined in point 21 of the IPOA IUU.
- (70) Vessel Monitoring System (VMS) requirements are not specified in Thai legislation and vessels are not legally obliged to operate a VMS system in Thai territorial waters.
- (71) In 2011, the Department of Fisheries presented the launch of a VMS pilot project involving more than 300 vessels. The system was operated by private providers and reporting frequency did not meet international standards on VMS reporting such as those established by RFMOs. Furthermore, irregularities in reporting frequency and in VMS reporting were not adequately followed up on by DOF.
- (72) In 2012 the VMS pilot project covered 110 vessels, these vessels operated in coastal states or high seas area where VMS is required by law. The project was to be extended to the entire commercial fleet by 2014-15. By October 2014 however, VMS coverage had reduced to 50 vessels and no legal framework was yet in place to lay down VMS requirements for the Thai fleet.
- (73) The absence of VMS coverage in the majority of the fleet demonstrates the inability to monitor fishing operations at sea and undermines the ability of DOF to effectively enforce rules applicable to the different sea areas concerned. This, combined with the lack of cooperation with third countries has resulted in Thai vessels fishing without VMS in PNG waters where PNG law requires VMS on-board for all third country vessels. Thailand has outlined a draft programme for installation of VMS transponders to its fleet (all vessels above 30 Gross Tonnage). Thailand's failure to implement an effective VMS system affects its compliance with Article 94 UNCLOS and the recommendations of point 24 of the IPOA-IUU. The Commission therefore believes that Thailand does not ensure comprehensive and effective monitoring, control and surveillance of fishing vessels flying its flag.
- (74) The relative few verifications carried out by the competent authorities on third country imports into Thailand (recital 64) demonstrates that Thailand has not proactively collaborated with third countries to ensure the legality of processed products. This weakens transparency of the traceability chain and DOF's ability to detect infringements and take appropriate enforcement action.
- (75) The Commission notes that, on the basis of information derived from the Commission missions in 2011 and 2012, it cannot be considered that the Thai authorities are lacking financial resources but rather the necessary legal and administrative environment to ensure efficient and effective performance of their duties as flag, coastal and market state.
- (76) Thailand is considered as an advanced developing country⁽⁹⁾ receiving aid through joint partnerships with a variety of international organisations (e.g. FAO) and the EU. Thailand has a high human development index and was ranked 89 out of 187 countries in 2014⁽¹⁰⁾ according to the United Nations Human Development Index. Considering these elements and information derived from the 2011 to 2014 visits, the Commission considers that Thailand does not lack financial resources to fulfil its duties as flag, coastal, port and market states but rather the necessary legal and administrative instruments to ensure efficient and effective performance of its duties.
- (77) In view of the situation explained in this Section and on the basis of all the factual elements gathered by the Commission as well as all the statements made by the Kingdom of Thailand, it could be established, pursuant to Article 31(3) and (5) of the IUU Regulation, that Thailand failed to discharge its duties under international law with respect to cooperation and enforcement efforts.

⁽⁹⁾ Information retrieved from <http://www.fao.org/fi/oldsite/FCP/en/THA/profile.htm>

⁽¹⁰⁾ Information retrieved from http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/THA.pdf

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

- (78) Thailand has ratified UNCLOS in 2011 and is Contracting Party to the IOTC.
- (79) Under Article 31(6)(b) the Commission analysed all information regarding the status of Thailand as contracting party to the IOTC. The main issues were the arrest of a Thai flagged fishing vessel fishing without authorisation or licence in the Mauritian EEZ ⁽¹¹⁾ in 2011 and the possible infractions of tuna longliners during transshipments at sea in 2013 ⁽¹²⁾. Thailand investigated and provided a satisfactory response ⁽¹³⁾ to the 2013 case but did not respond to the 2011 case and no report was provided regarding an investigation of the matter ⁽¹⁴⁾. This is not entirely consistent with the requirements for flag States to investigate matters relating to infringements of its vessel under Article 94 of UNCLOS and with the duty to cooperate with States on issues relating to conservation and management of living resources in accordance with Article 118 of UNCLOS. Other minor issues regarding late submission of observer and catch data were reported but all were responded to within the appropriate deadlines ⁽¹⁵⁾.
- (80) The revised Fisheries Act 2015 was first drafted back in 1999 with minor additions inserted in December 2014 that provide for additional measures relating to fisheries control, aquaculture, food hygiene and a penalty system. The current draft provided however does not sufficiently address the complexities of fisheries activities and trade of products through Thailand as exist today. Firstly, definitions appear insufficient as they do not include definitions of activities that are considered IUU or make up a serious infringement. Secondly, the scope is too narrow in that it mainly provides for management of fishing activities in territorial waters and 3 areas outside the Thai EEZ for which it currently has no arrangements or authorisations to fish in. To be effective, the scope should apply to all vessels operating in its waters and Thai vessels operating outside the EEZ. Thirdly, drafting preceded Thailand's ratification of UNCLOS in 2011 and the proposed text does not transpose key international conservation and management principles such as those under article from 61 to 64 of UNCLOS. Furthermore, the text was drafted prior to the development of a number of key international fisheries management instruments such as the IPOA-IUU in 2001 and thus does not incorporate the principles and definition of this widely accepted, although non-binding text. Finally, a deterrent sanctioning scheme is not included which undermines Thailand's capacity to fulfil the requirements of Article 73 of UNCLOS regarding enforcement of laws and regulations, and point 21 of the IPOA IUU.
- (81) Article 62(1) of the UNCLOS states that coastal States must adopt measures compatible to those applying in the region and in the high seas to ensure the long term sustainability of straddling and highly migratory fish stocks and to promote the optimum utilisation of fisheries resources. The Thai legal framework only provides for limited conservation and management measures in territorial waters.
- (82) With the exception of UNCLOS 1982, Thailand has not ratified other international legal instruments related to fisheries management. Considering the importance of Thailand's as a market State particularly for migratory tuna and tuna like species, these findings undermine efforts to fulfil its obligations of cooperation under UNCLOS (Articles 62 and 63 and 116 and 117).
- (83) The deficiencies in respect of VMS implementation are not in line with paragraph 24(3) of the IPOA IUU which stipulates that States should undertake comprehensive and effective monitoring, control and surveillance of fishing from its commencement, through the point of landing, to final destination, including by implementing a VMS, in accordance with the relevant national, regional or international standards. Ratification and transposition of conservation and management measures from international instruments above would prevent the Thai fleet from being identified as potentially engaging in IUU activities.
- (84) The Food and Agriculture Organization (FAO) Code of Conduct for Responsible Fisheries (FAO Code of Conduct) also not adopted by Thailand recommends transparency in fisheries laws and their preparation as well as for respective policy- and decision- making and management processes (paragraphs 6(13) and 7(1)(9) respectively). It provides principles and standards applicable to the conservation, management and development of all fisheries

⁽¹¹⁾ Information retrieved from <http://www.iotc.org/sites/default/files/documents/proceedings/2012/coc/IOTC-2012-CoC09-R%5BE%5D.pdf>

⁽¹²⁾ Information retrieved from <http://www.iotc.org/documents/report-eleventh-session-compliance-committee-0>

⁽¹³⁾ Information retrieved from <http://www.iotc.org/documents/response-possible-infractions-thailand-under-rop>

⁽¹⁴⁾ Information retrieved from <http://www.iotc.org/documents/report-eighth-session-iotc-working-party-ecosystems-and-bycatch>

⁽¹⁵⁾ See footnote 12.

and covers, amongst others, capture, processing and trade of fish and fishery products, fishing operations and fisheries research. The lack of acknowledgement as to the importance of these principles expressed by DOF in the November 2014 meeting strengthens the conclusions preliminarily reached by the Commission about Thailand's failure to ensure clear, comprehensive and transparent rules and procedures (as described in recitals 80). Furthermore the traceability failures as described in Section 3.1 of this Decision go against the principle of Article 11(1)(11) of the FAO Code of Conduct which requests States to ensure that fish and fishery products are traded internationally and domestically in accordance with sound conservation and management practices through improving the identification of the origin of fish and fishery products. Considering the importance of Thailand as one of the biggest fish processing nations, the application of such principles would seem of vital importance to ensuring sustainable conservation of living resources both in coastal and high seas area as provided for in Article 61, 117 and 119 of UNCLOS.

- (85) The performance of Thailand in implementing international instruments is not in accordance with the recommendations of point 10 of the IPOA IUU which advises States, as a matter of priority, to ratify, accept or accede to the UNFSA. The Commission considers that, for Thailand which has a significant fleet of fishing vessels engaged in fishing operations concerning highly migratory species (mainly tuna in the IOTC and possibly in the WCPFC area), this recommendation is of particular relevance.
- (86) In view of the situation explained in this Section of the Decision and on the basis of all the factual elements gathered by the Commission as well as all the statements made by the country, it could be established, pursuant to Article 31(3) and (6) of the IUU Regulation, that Thailand has failed to discharge the duties incumbent upon it under international law with respect to international rules, regulations and conservation and management measures.

3.4. Specific constraints of developing countries

- (87) It is recalled that according to the United Nations Human Development Index (UNHDI), Thailand is considered to be a high human development country (ranked 89 out of 187 countries). It is also recalled that, according to Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006, establishing a financing instrument for development cooperation⁽¹⁶⁾, Thailand is listed in the category of Upper Middle Income Countries and Territories⁽¹⁷⁾.
- (88) It should be noted that the notification of Thailand as flag State was accepted by the Commission in accordance with Article 20 of the IUU Regulation as of 6 October 2009. Thailand confirmed, as required by Article 20(1) of the IUU Regulation, that it has national arrangements in place for the implementation, control and enforcement of laws, regulations and conservation and management measures which must be complied with by its fishing vessels.
- (89) It is also pertinent to note that the Union has already funded a specific technical assistance action in Thailand with respect to the fight against IUU fishing in 2011⁽¹⁸⁾.
- (90) Account taken of the above UNHDI ranking and observations during the 2011 to 2014 visits, no evidence suggests that the failure of Thailand to discharge its duties under international law is the result of low levels of development. No tangible evidence exists to correlate shortcomings in fisheries monitoring, control and surveillance with poor capacity and infrastructure. Thailand has never argued that development constraints affect their ability to deliver strong MCS and only recently (November 2014) requested support from the EU to improve traceability and catch certification schemes. The Commission has responded positively on this general request.
- (91) In view of the situation explained in this Section and on the basis of all the factual elements gathered by the Commission as well as all the statements made by the country, it could be established, pursuant to Article 31(7) of the IUU Regulation, that the development status and overall performance of Thailand with respect to fisheries management are not impaired by its level of development.

⁽¹⁶⁾ OJ L 378, 27.12.2006, p. 41.

⁽¹⁷⁾ DAC list of ODA recipients:

<http://www.oecd.org/dac/stats/documentupload/DAC%20List%20of%20ODA%20Recipients%202014%20final.pdf>

⁽¹⁸⁾ See footnote 7.

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

- (92) In view of the conclusions reached with regard to the failure of Thailand 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 notified, in accordance with Article 32 of the IUU Regulation, of the possibility of being identified by the Commission as a non-cooperating third country in fighting IUU fishing.
- (93) In accordance with Article 32(1) of the IUU Regulation, the Commission should notify Thailand of the possibility of being identified as a non-cooperating third country. The Commission should also take all the *démarches* set out in Article 32 of the IUU Regulation with respect to Thailand. In the interest of sound administration, a period should be fixed within which that country may respond in writing to the notification and rectify the situation.
- (94) Furthermore, the notification to Thailand of the possibility of being identified as a country which the Commission considers to be non-cooperating for the purposes of this Decision does neither preclude nor automatically entail any subsequent step taken by the Commission or the Council for the purpose of the identification and the establishment of a list of non-cooperating countries,

HAS DECIDED AS FOLLOWS:

Sole Article

Thailand shall be notified of the possibility of being identified by the Commission as a non-cooperating third country in fighting illegal, unreported and unregulated fishing.

Done at Brussels, 21 April 2015.

For the Commission

Karmenu VELLA

Member of the Commission
