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COMMISSION STAFF WORKING PAPER

EXECUTIVE SUMMARY_OF THE IMPACT ASSESSMENT

Accompanying the document

**Proposal for a Regulation of the European parliament and of the Council
on certain measures directed to non-collaborating countries for the purpose of the
conservation of fish stocks.**

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1. PROBLEM DEFINITION: WHAT IS PRECISELY THE PROBLEM, WHO IS MOST AFFECTED AND WHY IS PUBLIC INTERVENTION NECESSARY?

The UN Convention on the Law of the Sea¹ as well as the UN Fish Stocks Agreement² require coastal states and states fishing for such stocks on adjacent high seas to cooperate in managing responsibly straddling and highly migratory fish stocks in order to ensure their long-term sustainability, either by direct consultation amongst each other or via the appropriate Regional Fisheries Management Organizations (RFMOs).

It may happen that a third country fails to cooperate on the management of a straddling and highly migratory fish stock in which the EU shares an interest and, more importantly, that the attitude of such country, by action or by omission, poses a risk of overfishing. It becomes then imperative to use all possible means to convince the country in question to abandon that risky attitude. If the customary consultations and technical exchanges do not succeed, a clear option would be to implement trade-related restrictions, but the EU does not have a fast mechanism allowing their adoption in useful timeframes.

At present the EU faces the immediate threat of overexploitation of the stock of mackerel due to management measures adopted by Iceland and Faroe Islands without due regard to the rights of other coastal States and those of the EU. The sooner the EU is enabled to react appropriately, the more efficiently these problems and other potential ones would be dealt with.

The problem of overfishing due to non-cooperation by third countries affects nearly all actors within the fisheries domain:

The fishing industry, both in the short and long term: competition for the limited market and the decrease of yields due to resource depletion may lead to important economic and job losses.

¹ [United Nations Convention on the Law of the Sea](#) of 10 December 1982.

² [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](#) (in force as from 11 December 2001)

The processing industry might have an increased availability of supply of raw material at low prices in the short term, but would suffer in the medium to long term the consequences of the depletion of the stock.

The consumers will not likely benefit from the increased supply in the short term; the effects in prices will probably be neutralized by increased earnings and jobs in the processing and distribution industries. They will, in turn, feel the effects of decreased supply in the long term by paying higher prices.

The EU and national administrations would be seen, both in the short and long terms, as incapable of dealing with the problem. Lack of confidence in public institutions will be reflected in opinion polls and this may have important repercussions in other policy fields.

In defence of the long-term interests of these actors, public authorities have a primary responsibility to act.

2. Analysis of subsidiarity: Is EU action justified on grounds of subsidiarity (Necessity and EU value added)?

The ultimate purpose of the intended instrument is to avoid overexploitation of certain straddling and highly migratory fish stocks in the context of the EU common fisheries policy, but the intended instrument (restriction or prohibition of imports) falls under the competence of the common commercial policy. Both policies fall under the exclusive competence of the EU, and therefore the principle of subsidiarity does not apply in this case.

3. Objectives of EU initiative: What are the main policy objectives?

The underlying general policy objective of this initiative is to contribute to the conservation of fish resources, which is the main objective of the common fisheries policy. The operational objective is to provide the EU with a trade-based instrument to contribute to that general objective.

4. Policy options: Which options have been considered and which have been assessed

The following five options were analysed:

- (1) To take no action;
- (2) to take measures in the form of non-legislative instruments, such as mechanisms of the type "blame and shame", sustainability labels or diplomatic démarches in different forms;
- (3) to provide the common fisheries policy with a regulatory instrument allowing a quick response to the problem by imposing a ban on trade on fish products derived from the relevant fish stock and that have an origin in the country concerned;

- (4) to impose limited trade restrictions including only easily identifiable fish products;
- (5) to issue a regulatory instrument providing for "counter-measures" in response to an "internationally wrongful act" committed by another State.

5. Assessment of impacts: What are the main economic, environmental and social impacts of each option particularly in terms of (quantified/monetised) benefits and costs (including estimates on administrative burden), other compliance costs and implementation cost for public administrations?

In order to better address the environmental, economic and social impacts of these options, the analysis of these options was done for the mackerel situation as a case study. This case corresponds to the current dispute on the management of the stock of North-east Atlantic mackerel, where Iceland and the Faroe Islands have adopted measures without due regard to the rights of other coastal States and that put in jeopardy the sustainability of the fishery. The data and information available on this stock allow conducting a comparative analysis of the options above mentioned.

To the extent possible, the analysis included a simulation of the evolution of the fishery in the next twelve years, based on the results of the most recent scientific assessment of the stock. It also included ad-hoc estimations of administrative burden and other considerations about possible advantages and drawbacks.

The results of the analysis show that

- Option 1 (the no-action option) is not acceptable. The EU should act.
- While non-legislative action (Option 2) may potentially help in some cases, the option to take decisive legal action is highly preferable in most cases. Even if it were preferable in few cases, this would justify the adoption of the necessary legal mechanism so the action could really be implemented in such few cases.
- A brief summary of the impacts of Options 3, 4 and 5 is given in the table below:

	Option 3	Option 4	Option 5
Environmental, economic and social effects	• Very rapid recovery to desired levels • No risks of depletion(*) • MSC certification maintained • Improved confidence in managers • Improved wages after recovery • Better prices for consumers •	• As Option 3, but effect perhaps delayed	• As Option 3, perhaps in a more effective manner
	1	2	1

RANK:			
Administrative burden	Heavy: very detailed legislation (traceability), monitoring of many products	Light: simpler legislation, less products to monitor	Heavier than for Option 1; more detailed range of measures; controversial legislation, complex monitoring
RANK	2	1	3
Main drawbacks	- Difficulties related to determination of products containing the species - Prove of respect of proportionality and equity of measures	No major difficulties. Easier to prove respect of proportionality and equity	As for Option 3, but more complex set of measures faces more complex difficulties of compatibility with law.
RANK	2	1	3

(*) In the case study of mackerel, of SSB falling below the limit value of 1.7miot

6. Comparison of options: What is the preferred option on the basis of which criteria/justification?

The environmental, economic and social effects are very closely interlinked and very similar to the three options; the only difference is that it is expected Option 4 may produce effects a given time later, since the measures adopted are not as stringent as in options 3 and 5. The lesser effectiveness of Option 4 is however compensated by a much easier application both in terms of drafting of legislation and of actual enforcement. The cumulated rankings (5, 4, 7) does not give dramatic results allowing either to select or deselect one or another option.

It is moreover difficult to generalize the analysis made above for mackerel to other future cases. There could be situations where Option 3 is not applicable in cases where the imported goods made from the species in question have undergone substantial processing or transformation. In other cases, trade measures would be inapplicable (for example, if the species in question is not subject to trade) but there is scope to adopt counter-measures for which an effective EU legal mechanism is lacking.

With this in mind, it has been concluded that the best option would perhaps be one sufficiently flexible to absorb the main advantages of the 3 options above and capable to minimize their drawbacks and administrative costs. A possible description of that option would be an EU legal instrument with the following characteristics:

- (a) Primarily based on Article 207 TFEU; other basis are also conceivable if measures envisaged are not trade-related

- (b) Describing its field of application as for this exercise: situations of lack of cooperation in fisheries management and adopting measures that go far against common international sharing practice and threaten sustainability.
- (c) Establishing a list of possible measures to apply, from trade restrictions to counter-measures of diverse nature.
- (d) Setting out the main principles and criteria upon which these measures should apply: effectiveness, proportionality, equity, compatibility with law, etc;
- (e) Giving the Commission implementing powers to apply the appropriate measures to the appropriate solution, in accordance with the above-mentioned criteria;
- (f) Setting out the specific mechanisms for control by Member States in accordance with the new Comitology Regulation;
- (g) Establishing clear rules for the automatic or very rapid suspension of the measures when the non-cooperating State has adopted appropriate corrective measures;
- (h) The Commission would also be authorised to create, where necessary, new monitoring mechanisms whenever the existing ones would be insufficient.

The field of application should clearly exclude the cases covered by the IUU legislation and by other instruments. The list of measures should be sufficiently wide ranging so it would not exclude newly conceived effective and uncontroversial measures whenever these arise. The principles and criteria under d) should instead be very strict so that the margin of manoeuvre for the Commission is clearly established.

7. Monitoring and evaluation: What are the arrangements to establish the actual costs and benefits and the achievement of the desired effects

The objective of the whole exercise (see section 3) is to contribute to the conservation of fish resources and to bring them to levels that can produce maximum sustainable yield. The indicators commonly used to monitor the status of fish resources are the spawning stock biomass (SSB), i.e., the amount of fish that is ready to spawn at the time of spawning and the fishing mortality (F), which indicate the rate at which fish is removed from the stock by the fishing activity. Other indicators exist that complement these and that illustrate the extent to which fishing activities do not just have an effect on the stocks targeted, but also on other fish or marine organisms that are incidentally captured or damaged.

At present there is a highly sophisticated system designed to guarantee a timely and scientifically-based monitoring. The system includes the collection of data on the fishing activity, sampling and collection of biological data, scientific surveys at sea using research vessels and a framework for the international collaboration of fisheries scientists allowing to collate and exchange data and information, conducted fish stock assessments and provide scientific advice for fisheries management. In the case of the North-east Atlantic, most of these activities are coordinated by the International Council for the Exploration of the Sea (ICES). Similar bodies exist for other fishing areas of EU fishing interest.

The current framework for the collection of data for scientific analysis³ and the mandate of the Scientific and Technical Committee for Fisheries also provide a routine basis for the production of economic data useful to monitor the performance of the intended measure by indicators such as economic yields, turnover of EU fleets and their dependence from one or another fish stock. Follow-up of imports is also routine work. There is no reason therefore, for the time being, to create new systems or reinforce any of the existing systems to monitor the state of fish resources.

³ [Council Regulation \(EC\) No 199/2008](#) of 25 February 2008 concerning the establishment of a Community framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the Common Fisheries Policy