

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

## CHAPTER II

### INSPECTIONS OF THIRD COUNTRY FISHING VESSELS IN MEMBER STATES PORTS

#### SECTION 1

#### Conditions for access to port by third country fishing vessels

##### *Article 4*

#### **Inspection in port schemes**

1 With a view to prevent, deter and eliminate IUU fishing, an effective scheme of inspections in port for third country fishing vessels calling at the ports of Member States shall be maintained.

2 Access to ports of Member States, the provision of port services, and the conduct of landing or transshipment operations in such ports shall be prohibited for third country fishing vessels unless they meet the requirements laid down in this Regulation, except in cases of *force majeure* or distress within the meaning of Article 18 of the Unclos (*force majeure* or distress) for services strictly necessary to remedy those situations.

3 Transshipments between third country fishing vessels or between the latter and fishing vessels flying the flag of a Member State shall be prohibited in Community waters and shall take place only in port, in accordance with the provisions of this Chapter.

4 Fishing vessels flying the flag of a Member State shall not be authorised to tranship at sea catches from third country fishing vessels outside Community waters unless the fishing vessels are registered as carrier vessels under the auspices of a regional fisheries management organisation.

##### *Article 5*

#### **Designated ports**

1 Member States shall designate ports, or places close to the shore, where landings or transshipment operations of fishery products and port services referred to in Article 4(2) are permitted.

2 Access to port services and the conduct of landing or transshipment operations by third country fishing vessels shall be authorised only in designated ports.

3 Member States shall transmit to the Commission no later than 15 January of each year a list of designated ports. Any subsequent changes to this list shall be notified to the Commission at least 15 days before the change takes effect.

4 The Commission shall, without delay, publish the list of designated ports in the *Official Journal of the European Union* and on its website.

#### Article 6

##### **Prior notice**

1 Masters of third country fishing vessels or their representatives shall notify the competent authorities of the Member State whose designated port or landing facilities they wish to use at least three working days before the estimated time of arrival at the port, of the following information:

- a vessel identification;
- b name of the designated port of destination and the purposes of the call, landing, transshipment or access to services;
- c fishing authorisation or, where appropriate, authorisation to support fishing operations or to tranship fishery products;
- d dates of the fishing trip;
- e estimated date and time of arrival at port;
- f the quantities of each species retained on board or, where appropriate, a negative report;
- g the zone or zones where the catch was made or where transshipment took place, whether in Community waters, in zones under the jurisdiction or sovereignty of a third country or on the high seas;
- h the quantities for each species to be landed or transhipped.

Masters of third country fishing vessels or their representatives shall be exempted from notifying information contained in points (a), (c), (d), (g) and (h), where a catch certificate has been validated in accordance with Chapter III for the full catch to be landed or transhipped in the territory of the Community.

2 The notification set out in paragraph 1 shall be accompanied by a catch certificate validated in accordance with Chapter III if the third country fishing vessel carries on board fishery products. The provisions laid down in Article 14 on the recognition of catch documents or port State control forms which are part of catch documentation or port State control schemes adopted by regional fisheries management organisations shall apply *mutatis mutandis*.

3 The Commission, in accordance with the procedure referred to in Article 54(2), may exempt certain categories of third country fishing vessels from the obligation stipulated in paragraph 1 for a limited and renewable period, or make provision for another notification period taking into account, *inter alia*, the type of fishery product, the distance between the fishing grounds, landing places and ports where the vessels in question are registered or listed.

4 This Article shall apply without prejudice to special provisions set forth in fisheries agreements concluded between the Community and third countries.

## *Article 7*

### **Authorisation**

1 Without prejudice to point 5 of Article 37, a third country fishing vessel shall be granted authorisation to access the port only if the information set out in Article 6(1) is complete and, if the third country vessel carries on board fishery products, is accompanied by the catch certificate referred to in Article 6(2).

2 Authorisation to commence landing or transshipment operations in port shall be subject to a check to determine the completeness of the information submitted as prescribed in paragraph 1 and, where appropriate, to an inspection carried out in accordance with Section 2.

3 By way of derogation to paragraphs 1 and 2 of this Article the port Member State may authorise port access and all or part of a landing in cases where the information set out in Article 6(1) is not complete or its check or verification is pending, but shall, in such cases, keep the fishery products concerned in storage under the control of the competent authorities. The fishery products shall only be released to be sold, taken over or transported once the information set out in Article 6(1) has been received or the checking or verification process is completed. If this process is not completed within 14 days of the landing, the port Member State may confiscate and dispose of the fishery products in accordance with national rules. The cost of storage shall be borne by the operators.

## *Article 8*

### **Recording of landing or transshipment operations**

1 Masters of third country fishing vessels or their representative shall submit to the authorities of the Member State whose designated ports of landing or transshipment facilities they use, if possible by electronic means prior to landing or transshipment operations, a declaration indicating the quantity of fishery products by species to be landed or transhipped, and the date and place of each catch. Masters and their representatives shall be held responsible for the accuracy of such declarations.

2 Member States shall keep the originals of the declarations set out in paragraph 1, or a hard copy when transmitted electronically, for a period of three years or longer in accordance with national rules.

3 Landing and transshipment declaration procedures and forms shall be determined in accordance with the procedure referred to in Article 54(2).

4 Member States shall notify the Commission by computer transmission before the end of the first month of each calendar quarter of the quantities landed and/or transhipped by third country fishing vessels in their ports during the previous quarter.

## SECTION 2

### **Port inspections**

#### *Article 9*

#### **General principles**

1 Member States shall carry out inspections in their designated ports of at least 5 % of landing and transshipment operations by third country fishing vessels each year, in accordance with the benchmarks determined by the procedure referred to in Article 54(2) on the basis of risk management, without prejudice to the higher thresholds adopted by regional fisheries management organisations.

2 The following fishing vessels shall be inspected in all cases:

- a fishing vessels sighted in accordance with Article 48;
- b fishing vessels reported in the framework of a notification made under the Community alert system in accordance with Chapter IV;
- c fishing vessels identified by the Commission as presumed to have engaged in IUU fishing in accordance with Article 25;
- d fishing vessels appearing in a IUU vessel list adopted by a regional fisheries management organisation notified to Member States in accordance with Article 30.

#### *Article 10*

#### **Inspection procedure**

1 Officials in charge of inspections (officials) shall be able to examine all relevant areas, decks and rooms of the fishing vessel, catches processed or not, nets or other gear, equipment and any relevant documents which officials deem it necessary to verify in compliance with applicable laws, regulations or international management and conservation measures. Officials may also question persons deemed to have information on the matter subject to inspection.

2 Inspections shall involve the monitoring of the entire landing or transshipment operations and include a cross-check between the quantities by species recorded in the prior notice of landing and the quantities by species landed or transhipped.

3 Officials shall sign their inspection report in the presence of the master of the fishing vessel, who shall have the right to add or cause to be added any information that he considers relevant. Officials shall indicate in the logbook that an inspection has been made.

4 A copy of the inspection report shall be handed over to the master of the fishing vessel, who may forward it to the owner.

5 The master shall cooperate with and assist in the inspections of the fishing vessel and shall not obstruct, intimidate or interfere with the officials in the performance of their duties.

## *Article 11*

### **Procedure in the event of infringements**

1 If the information collected during the inspection provides evidence to the official to believe that a fishing vessel has engaged in IUU fishing in accordance with the criteria set out in Article 3, the official shall:

- a record the suspected infringement in the inspection report;
- b take all necessary action to ensure safekeeping of the evidence pertaining to such suspected infringement;
- c immediately forward the inspection report to the competent authority.

2 If the results of the inspection provide evidence that a third country fishing vessel has engaged in IUU fishing in accordance with the criteria set out in Article 3, the competent authority of the port Member State shall not authorise such vessels to land or tranship their catch.

3 The inspecting Member State shall immediately notify its decision not to authorise landing or transhipment operations taken in accordance with paragraph 2, accompanied by a copy of the inspection report, to the Commission or to a body designated by it, which shall immediately transmit it to the competent authority of the flag State of the inspected fishing vessel with a copy to the flag State or States of donor vessels where the inspected fishing vessel has engaged in transhipment operations. Where appropriate, a copy of the notification shall also be communicated to the Executive Secretary of the regional fisheries management organisation in whose area of competence the catch was made.

4 Where the suspected breach has taken place in the high seas, the port Member State shall cooperate with the flag State in carrying out an investigation into it and, where appropriate, shall apply the sanctions provided for by the legislation of that port Member State, under the condition that, in accordance with international law, that flag State has expressly agreed to transfer its jurisdiction. In addition, where the suspected breach has taken place in the maritime waters of a third country, the port Member State shall also cooperate with the coastal State in carrying out an investigation into it and, where appropriate, shall apply the sanctions provided for by the legislation of that port Member State, under the condition that, in accordance with international law, that coastal State has expressly agreed to transfer its jurisdiction.