

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 III

#### **CATCH CERTIFICATION SCHEME FOR IMPORTATION AND EXPORTATION OF FISHERY PRODUCTS**

##### *Article 12*

##### **Catch certificates**

1 The importation into the Community of fishery products obtained from IUU fishing shall be prohibited.

2 To ensure the effectiveness of the prohibition established in paragraph 1, fishery products shall only be imported into the Community when accompanied by a catch certificate in conformity with this Regulation.

3 The catch certificate referred to in paragraph 2 shall be validated by the flag State of the fishing vessel or fishing vessels which made the catches from which the fishery products have been obtained. It shall be used to certify that such catches have been made in accordance with applicable laws, regulations and international conservation and management measures.

4 The catch certificate shall contain all the information specified in the specimen shown in Annex II, and shall be validated by a public authority of the flag State with the necessary powers to attest the accuracy of the information. In agreement with flag States, within the framework of the cooperation set out in Article 20(4), the catch certificate may be established, validated or submitted by electronic means or be replaced by electronic traceability systems ensuring the same level of control by authorities.

5 The list in Annex I of the products excluded from the scope of implementation of the catch certificate may be reviewed each year on the basis of the results of the information gathered under Chapters II, III, IV, V, VIII, X and XII, and amended in accordance with the procedure referred to in Article 54(2).

##### *Article 13*

##### **Catch documentation schemes agreed and in force in the framework of a regional fisheries management organisation**

1 Catch documents, and any related documents, validated in conformity with catch documentation schemes adopted by a regional fisheries management organisation which are recognised as complying with the requirements laid down in this Regulation, shall be accepted as catch certificates in respect of the fishery products from species to which such catch documentation schemes apply and shall be subject to the check and verification requirements incumbent upon the Member State of importation in accordance with Articles 16 and 17 and to the provisions on refusal of importation laid down in Article 18. The list of such catch

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documentation schemes shall be determined in accordance with the procedure referred to in Article 54(2).

2 Paragraph 1 shall apply without prejudice to the specific regulations in force whereby such catch documentation schemes are implemented into Community law.

#### Article 14

### Indirect importation of fishery products

1 In order to import fishery products constituting one single consignment, transported in the same form to the Community from a third country other than the flag State, the importer shall submit to the authorities of the Member States of importation:

- a the catch certificate(s) validated by the flag State; and
- b documented evidence that the fishery products did not undergo operations other than unloading, reloading or any operation designed to preserve them in good and genuine condition, and remained under the surveillance of the competent authorities in that third country.

Documented evidence shall be provided by means of:

- (i) where appropriate, the single transport document issued to cover the passage from the territory of the flag State through that third country; or
- (ii) a document issued by the competent authorities of that third country:
  - giving an exact description of the fishery products, the dates of unloading and reloading of the products and, where applicable, the names of the ships, or the other means of transport used, and
  - indicating the conditions under which the fishery products remained in that third country.

Where the species concerned are subject to a regional fisheries management organisation catch documentation scheme which has been recognised under Article 13, the documents referred to above may be replaced by the re-export certificate of that catch documentation scheme, provided that the third country has fulfilled its notification requirements accordingly.

2 In order to import fishery products constituting one single consignment and which have been processed in a third country other than the flag State, the importer shall submit to the authorities of the Member State of importation a statement established by the processing plant in that third country and endorsed by its competent authorities in accordance with the form in Annex IV:

- a giving an exact description of the unprocessed and processed products and their respective quantities;
- b indicating that the processed products have been processed in that third country from catches accompanied by catch certificate(s) validated by the flag State; and
- c accompanied by:
  - (i) the original catch certificate(s) where the totality of the catches concerned has been used for the processing of the fishery products exported in a single consignment; or

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- (ii) a copy of the original catch certificate(s), where part of the catches concerned has been used for the processing of the fishery products exported in a single consignment.

Where the species concerned are subject to a regional fisheries management organisations catch documentation scheme which has been recognised under Article 13, the statement may be replaced by the re-export certificate of that catch documentation scheme, provided that the third country of processing has fulfilled its notification requirements accordingly.

3 The documents and the statement set out in paragraphs (1)(b) and (2) of this Article respectively may be communicated by electronic means within the framework of the cooperation laid down in Article 20(4).

#### *Article 15*

### **Exportation of catches made by fishing vessels flying the flag of a Member State**

1 The exportation of catches made by fishing vessels flying the flag of a Member State shall be subject to the validation of a catch certificate by the competent authorities of the flag Member State, as established in Article 12(4), if required within the framework of the cooperation laid down in Article 20(4).

2 Flag Member States shall notify to the Commission their competent authorities for the validation of the catch certificates referred to in paragraph 1.

#### *Article 16*

### **Submission and checks of catch certificates**

1 The validated catch certificate shall be submitted by the importer to the competent authorities of the Member State in which the product is intended to be imported at least three working days before the estimated time of arrival at the place of entry into the territory of the Community. The deadline of three working days may be adapted according to the type of fishery product, the distance to the place of entry into the territory of the Community or the transport means used. Those competent authorities shall, on the basis of risk management, check the catch certificate in the light of the information provided in the notification received from the flag State in accordance with Articles 20 and 22.

2 By way of derogation to paragraph 1, importers who have been granted the status of approved economic operator may advise the competent authorities of the Member State of the arrival of the products within the deadline referred to in paragraph 1 and keep the validated catch certificate and related documents as referred to in Article 14 available to the authorities for the purposes of checks in accordance with paragraph 1 of this Article or verifications in accordance with Article 17.

3 The criteria for granting the status of approved economic operator to an importer by the competent authorities of a Member State shall include:

- a the establishment of the importer on the territory of that Member State;
- b a sufficient number and volume of import operations to justify the implementation of the procedure referred to in paragraph 2;
- c an appropriate record of compliance with the requirements of conservation and management measures;

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- d a satisfactory system of managing commercial and, where appropriate, transport and processing records, which enables the appropriate checks and verifications to be carried out for the purposes of this Regulation;
- e the existence of facilities with regard to the conduct of those checks and verifications;
- f where appropriate, practical standards of competence or professional qualifications directly related to the activities carried out; and
- g where appropriate, proven financial solvency.

Member States shall communicate to the Commission the name and address of the approved economic operators as soon as possible after having granted this status. The Commission shall make available this information to the Member States by electronic means.

The rules relating to the status of approved economic operator may be determined in accordance with the procedure referred to in Article 54(2).

### *Article 17*

#### **Verifications**

1 The competent authorities of the Member States may carry out all of the verifications they deem necessary to ensure that the provisions of this Regulation are correctly applied.

2 Verifications may, in particular, consist in examining the products, verifying declaration data and the existence and authenticity of documents, examining the accounts of operators and other records, inspecting means of transport, including containers and storage places of the products and carrying out official enquiries and other similar acts, in addition to the inspection of fishing vessels at port under Chapter II.

3 Verifications shall be focused towards risk identified on the basis of criteria developed at national or Community level under risk management. Member States shall notify to the Commission their national criteria within 30 working days after 29 October 2008 and update this information. The Community criteria shall be determined in accordance with the procedure referred to in Article 54(2).

4 Verifications shall be carried out, in any case, where:

- a the verifying authority of the Member State has grounds to question the authenticity of the catch certificate itself, of the validation seal or of the signature of the relevant authority of the flag State; or
- b the verifying authority of the Member State is in possession of information that questions the compliance by the fishing vessel with applicable laws, regulations or conservation and management measures, or the fulfilment of other requirements of this Regulation; or
- c fishing vessels, fishing companies or any other operators have been reported in connection with presumed IUU fishing, including those fishing vessels which have been reported to a regional fisheries management organisation under the terms of an instrument adopted by that organisation to establish lists of vessels presumed to have carried out illegal, unreported and unregulated fishing; or
- d flag States or re-exporting countries have been reported to a regional fisheries management organisation under the terms of an instrument adopted by that organisation to implement trade measures vis-à-vis flag States; or
- e an alert notice has been published pursuant to Article 23(1).

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5 Member States may decide to carry out verifications at random, in addition to the verifications referred to in paragraphs 3 and 4.

6 For the purpose of a verification, the competent authorities of a Member State may request the assistance of the competent authorities of the flag State or of a third country other than the flag State as referred to in Article 14, in which case:

- a the request for assistance shall state the reasons why the competent authorities of the Member State in question have well-founded doubts as to the validity of the certificate, of the statements contained therein and/or the compliance of the products with conservation and management measures. A copy of the catch certificate and any information or documents suggesting that the information on the certificate is inaccurate shall be forwarded in support of the request for assistance. The request shall be sent without delay to the competent authorities of the flag State or of a third country other than the flag State as referred to in Article 14;
- b the procedure for verification shall be completed within 15 days of the date of the verification request. In the event that the competent authorities of the flag State concerned cannot meet the deadline, the verifying authorities in the Member State may, on request by the flag State or by a third country other than the flag State as referred to in Article 14 grant an extension of the deadline to reply, which shall not exceed a further 15 days.

7 The release of the products onto the market shall be suspended while awaiting the results of the verification procedures referred to in paragraphs (1) to (6). The cost of storage shall be borne by the operator.

8 Member States shall notify to the Commission their competent authorities for the checks and verifications of the catch certificates in accordance with Article 16 and paragraphs (1) to (6) of this Article.

### *Article 18*

#### **Refusal of importation**

1 The competent authorities of the Member States shall, where appropriate, refuse the importation into the Community 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:

- a the importer has not been able to submit a catch certificate for the products concerned or to fulfil his obligations under Article 16(1) or (2);
- b the products intended for importation are not the same as those mentioned in the catch certificate;
- c the catch certificate is not validated by the public authority of the flag State referred to in Article 12(3);
- d the catch certificate does not indicate all the required information;
- e the importer is not in a position to prove that the fishery products comply with the conditions of Article 14(1) or (2);
- f a fishing vessel figuring on the catch certificate as vessel of origin of the catches is included in the Community IUU vessel list or in the IUU vessel lists referred to in Article 30;
- g the catch certificate has been validated by the authorities of a flag State identified as a non-cooperating State in accordance with Article 31.

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2 The competent authorities of the Member States shall, where appropriate, refuse the importation of any fishery products into the Community, following a request for assistance pursuant to Article 17(6), where:

- a they have received a reply according to which the exporter was not entitled to request the validation of a catch certificate; or
- b they have received a reply according to which the products do not comply with the conservation and management measures, or other conditions under this Chapter are not met; or
- c they have not received a reply within the stipulated deadline; or
- d they have received a reply which does not provide pertinent answers to the questions raised in the request.

3 In the event that the importation of fishery products is refused pursuant to paragraphs 1 or 2, Member States may confiscate and destroy, dispose of or sell such fishery products in accordance with national law. The profits from the sale may be used for charitable purposes.

4 Any person shall have the right to appeal against decisions taken by the competent authorities pursuant to paragraphs 1, 2 or 3 which concern him. The right of appeal shall be exercised according to the provisions in force in the Member State concerned.

5 The competent authorities of the Member States shall notify the flag State and, where appropriate, the third country other than the flag State as referred to in Article 14 of refusals of importation. A copy of the notification shall be sent to the Commission.

### *Article 19*

#### **Transit and transshipment**

1 Where, at the point of entry into the territory of the Community, fishery products are placed under a transit procedure and transported to another Member State where they shall be placed into another customs procedure, the provisions of Articles 17 and 18 shall be implemented in that Member State.

2 Where, at the point of entry into the territory of the Community, fishery products are placed under a transit procedure and transported to another place in the same Member State where they shall be placed under another customs procedure, that Member State may implement the provisions of Articles 16, 17 and 18 at the point of entry or at the place of destination. Member States shall, as soon as possible, notify to the Commission the measures adopted for the implementation of this paragraph and update this information. The Commission shall publish these notifications on its website.

3 Where, at the point of entry into the territory of the Community, fishery products are transhipped and transported by sea to another Member State, the provisions of Articles 17 and 18 shall be implemented in that Member State.

4 The Member States of transshipment shall communicate to the Member States of destination the information taken from the transport documentation on the nature of the fishery products, their weight, the port of loading and the shipper in the third country, the names of the transport vessels and the ports of transshipment and destination, as soon as possible this information is known and prior to the anticipated date of arrival in the port of destination.

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## Article 20

### Flag State notifications and cooperation with third countries

1 The acceptance of catch certificates validated by a given flag State for the purposes of this Regulation shall be subject to the condition that the Commission has received a notification from the flag State concerned certifying that:

- a it has in place national arrangements for the implementation, control and enforcement of laws, regulations and conservation and management measures which must be complied with by its fishing vessels;
- b its public authorities are empowered to attest the veracity of the information contained in catch certificates and to carry out verifications of such certificates on request from the Member States. The notification shall also include the necessary information to identify those authorities.

2 The information to be given in the notification laid down in paragraph 1 is set forth in Annex III.

3 The Commission shall inform the flag State of the receipt of the notification sent pursuant to paragraph 1. If all elements mentioned in paragraph 1 are not provided by the flag State, the Commission shall indicate to the flag State which elements are missing and request that it provide a new notification.

4 The Commission shall, where appropriate, cooperate administratively with third countries in areas pertaining to the implementation of the catch certification provisions of this Regulation, including the use of electronic means to establish, validate or submit the catch certificates and, where appropriate, documents referred to in Article 14(1) and 14(2).

Such cooperation shall aim to:

- a ensure that fishery products imported into the Community originate from catches made in compliance with applicable laws, regulations or conservation and management measures;
- b facilitate the accomplishment by flag States of the formalities linked to the access to ports of fishing vessels, the importation of fishery products and the verification requirements of catch certificates established in Chapter II and this Chapter;
- c provide for the conduct of on-the-spot audits by the Commission or a body designated by it to verify the effective implementation of the cooperation arrangement;
- d provide for the establishment of a framework for the exchange of information between the two sides in support of the implementation of the cooperation arrangement.

5 The cooperation laid down in paragraph 4 shall not be construed as a precondition for the application of this Chapter to imports originating from catches made by fishing vessels flying the flag of any State.

## Article 21

### Re-exportation

1 The re-exportation of products imported under a catch certificate in accordance with this Chapter shall be authorised through the validation by the competent authorities of the Member State from which the re-exportation is to take place of the section 're-export' of the

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catch certificate or a copy thereof where the fishery products to be re-exported are a part of the products imported.

2 The procedure defined in Article 16(2) shall apply *mutatis mutandis* where the fishery products are re-exported by an approved economic operator.

3 Member States shall notify to the Commission their competent authorities for the validation and the verification of the section 're-export' of catch certificates in accordance with the procedure defined in Article 15.

## Article 22

### Record keeping and dissemination

1 The Commission shall keep a record of States and their competent authorities notified in accordance with this Chapter which shall include:

- a Member States which have notified their competent authorities to validate, check and verify catch certificates and re-export certificates in accordance with Articles 15, 16, 17 and 21, respectively;
- b flag States for which notifications have been received in accordance with Article 20(1), indicating those for which cooperation with third countries has been established in accordance with Article 20(4).

2 The Commission shall publish on its website and in the *Official Journal of the European Union* the list of States and their competent authorities referred to in paragraph 1, and shall regularly update this information. The Commission shall make the details of the flag States authorities in charge of the validation and the verification of catch certificates available by electronic means to the authorities in the Member States responsible for the validation and verification of catch certificates.

3 The Commission shall publish on its website and in the *Official Journal of the European Union* the list of the catch documentation schemes which are recognised in accordance with Article 13 and shall update it on a regular basis.

4 Member States shall keep originals of the catch certificates submitted for importation, the catch certificates validated for exportation and the validated re-export sections of catch certificates for a period of three years or longer, in accordance with national rules.

5 Approved economic operators shall keep the original of the documents referred to in paragraph 4 for a period of three years or longer, in accordance with national rules.

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