

Impact Assessment on EU trade-related measures for the conservation of fish resources

Analysis of the replies to the consultation launched 22 March 2011 on the basis of the consultation document " Impact Assessment on the possible utilisation by the EU of trade-related measures against non-cooperating States for the purpose of conservation of fish resources"

1. TECHNICAL DETAILS

Rather than an open public consultation, a targeted one was chosen. This is mainly due to the highly specialised fields of work associated to the dossier: management of straddling and highly migratory stocks and international trade rules, on which the awareness of the wide public is supposed to be very low. The target groups were those represented in the main consultation bodies for the common fisheries policy: the Advisory Committee for Fisheries and Aquaculture (ACFA), the seven Regional Advisory Councils (RACs), and the authorities of Member States.

The Advisory Committee on Fisheries and Aquaculture (ACFA) provides a forum for ongoing dialogue with the industry. Its 21 members represent the main branches of the industry – production, processing and trade, in both fisheries and aquaculture as well as consumer groups and organisations dealing with environmental protection and development.

ACFA operates through four working groups, which deal with:

- fisheries resources and management
- aquaculture
- markets and trade policy
- general questions, including economics and the condition of the sector.

The Regional Advisory Councils (RACs) were created as part of the 2002 reform of the Common Fisheries Policy. They were established to give stakeholders (fishermen, vessel owners, processors, traders, fish farmers, women's fisheries groups, environmental and consumer organisations and others) a vehicle through which to feed recommendations into CFP policy developments. RACs must include stakeholders from at least two Member States. They each have a general assembly and an executive committee. The fisheries sector has two thirds of the representatives on each body, and other interests one third. In addition to five geographical RACs, two others have been established for pelagic stocks and the high seas fleet.

- Baltic Sea RAC
- Long Distance RAC
- Mediterranean Sea RAC
- North Sea RAC
- North-western waters RAC
- Pelagic stocks RAC

- South-western waters RAC

The period for this targeted consultation extended initially from 22 March to 10 May 2011, but was extended afterwards for two more weeks to allow having a more complete feed-back from all stakeholders. The latest contribution from Member States was received and accepted on 30 May, which makes the whole consultation period close to 10 weeks. A consultation document (Annex I) was distributed to the target groups. It contained an explanation of the basic problem, a brief analysis of the possible approaches and several closed and open questions allowing a complete feed-back. The Commission's minimum standards for consultation¹ have been fully met and the Guidelines on organisation of stakeholder consultation in DG MARE² have been followed. The Commission had the opportunity to present and explain the consultation document to the two RACs more directly affected by the problem: the LDRAC and the PELRAC (see flash reports of these two meetings in Annex Ia).

2. REPLIES RECEIVED

Very few replies were received within the deadline foreseen in the consultation (10 May). By 17 May the RACs most directly concerned (PELRAC and LDRAC) and several organizations constituting these RACs have already sent their contribution. In view of having as many replies from Member States as possible, a reminder was sent 17 May to those having failed to reply by that date. The latest contribution was received and admitted for this analysis by 30 May.

The following is a summary of the contributions received:

Target population: Member States:

	AT	DE	DK	EE	EL	ES	FR	HU	IE	IT	MT	NL	LT	PO	PT	SI	UK
Date	18/05	20/05	30/05	23/05	20/05	10/05	16/05	18/05	13/05	30/05	25/05	18/05	20/05	16/05	3/05	5/05	19/05

It should be noted that this list includes all Member States directly affected by the mackerel dispute.

Target population: stakeholders (RACs):

- PELRAC (Pelagic RAC): reply sent 11/05, but many organizations belonging to this RAC also sent their individual contributions (see below)
- LDRAC (Long-Distance RAC): its reply was sent 10/05 but it consisted of four contributions by four organizations belonging to this RAC.

¹ Towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission.

² Note to Directors – Adonis No D 00166 of 6.01.2010

- BSRAC (Baltic Sea RAC): reply sent 16 May but not responding to the consultation paper; it gave just a general support to the Commission in seeking to find a solution in dealing with third countries that do not live up to management issues, consistent with the legal framework in place.

The no participation by other RACs can be explained by the fact that it is just the above-mentioned ones that are directly affected by disputes like the one existing now with Iceland and Faroe Islands on mackerel.

Target population: stakeholders: (ACFA): One of the organizations (AIPCE-CEP) mentioned in its reply that it was to be considered in the ACFA position. However, there was no contribution from ACFA as collective entity. It is possible that some of the individual stakeholders organizations are represented both in ACFA and in the RACs, but it was not possible to attribute their reply to one or another committee.

Target population: stakeholders. Individual replies by Organizations and date:

- NPWG/EAPO (European Association of Fish Producers Organisations, member of PELRAC): 9/05
- SPFA (Scottish Pelagic Fishermen's Association, member of PELRAC): 10/05
- KFO (Killybegs Fishermen's Organisation Ltd., member of PELRAC): 10/05
- NFFO (National Federation of Fishermen's Organisations, member of PELRAC)
- FEABP (Federación de España de Armadores de Buques de Pesca, member of LDRAC): 10/05
- FEOPE (Federación Española de Organizaciones Pesqueras, member of LDRAC): 10/05
- ADAPI (Associação dos Armadores de Pesca Industrial, member of LDRAC): 10/05
- ARVI (Cooperativa de Armadores de Pesca del Puerto de Vigo, member of LDRAC): 10/05
- AIPCE-CEP (EU Fish Processors Association, CEP stands for the EU Federation of National Organisations of Importers and Exporters of Fish): 6/05
- Klondyke FPO (Klondyke Fish Producers Organization): 10/05
- RSPB Scotland (Royal Society for the Protection of Birds, Scotland): 9/05

Some of the entities consulted did not reply specifically to the questions of the consultation document but gave just a general supportive reply (EE, LT, BSRAC).

The catching sector was clearly predominant among the respondents to the consultation. The processing industry and the environmental NGOs were represented only by one organization (AIPCE-CEP and RSPB, respectively). No contributions were received by the other sectors represented in these committees, such as consumers, fish farmers, traders, etc. In any case, it must be said that these sectors are only partially or secondarily affected by situations like the mackerel dispute.

Anecdotally, a contribution was received by an individual that in the past was intimately associated to the export industry and now is retired and does not represent any of the target groups. His contribution was not included in this analysis.

3. GENERAL COMMENTS:

There is a clear general support for the way the problem is perceived and for the establishment of trade restrictions. The only exception to this general support came from the processing industry (AIPCE-CEP), a sector that does not want to see their sources of raw material restricted in any way. Among the options chosen, the weight of the opinion falls mostly in favour of options 3 (regulatory instrument banning all products) and 5 (countermeasures). Option 2 (the soft instrument) received a moderately enthusiastic support by Member States and a clear rejection by most stakeholders. Both Member States and stakeholders were clearly in favour of assuming the possible short-term negative implications of an import ban in favour of long-term sustainability. As regards whether imports should be understood to cover transshipping, there is again clear support, especially by stakeholders. Administrative burden associated to a trade ban is not perceived as a problem, either for it being relatively small or because it is fully justified as largely outweighed by the possible negative consequences of no action under a risk of overfishing.

4. MAIN RESULTS OF THE CONSULTATION:

A summary of the replies received is given in the Annex below. The main result and conclusions can be summarized as follows:

- (1) Representativeness of the replies received. Generally speaking, the replies received represented the main groups of stakeholders potentially affected by the problem. All Member States having fisheries of mackerel, blue whiting and other Atlantic species for which there is a potential or real problem of non-collaborating third-countries responded to the consultation. The industry was particularly well represented as far as the catching sector is concerned, but only a contribution was received from the processing industry. Environmental NGOs sent only one contribution.
- (2) Perception of the problem. Member States fully agreed (47%), mostly agreed (47%) or just partially agreed (6%) with the perception of the problem as described in the consultation paper (essentially, the same description as in this report, see section 3 below). The other stakeholders also showed high support: 75% fully agreed and 25% mostly agreed. Comments received point to the specific gravity of some elements of the problem (other countries and fish species) and to expression of mistrust about the Commission's will or capacity to react appropriately.

- (3) Importance of the problem. Only one Member State (7%) perceived the problem as of moderate importance; the others felt that the importance was very severe (40%) or severe (53%). Among the other stakeholders, only one (precisely that representing the processing industry) considered a moderate importance (8%); the remainder felt the importance as very severe (84%) or severe (one opinion-8%). The comments received outlined the possible outcomes of the mackerel problem, the particular economic importance of the mackerel fishery and the need to consider the gravity of the social consequences of the problem.
- (4) Need to act. 67% of Member States fully agreed and 33% mostly agreed on the need to act. The opinion of the other stakeholders was fully consistent with the opinion given on the importance of the problem: 84% fully agreed, 8% mostly agreed and 8% just partially agreed on the need to act. Comments qualified the action required as swift (preferably before the 2011 fishing season) and subject to Member States consultation. The processing industry was not convinced on the need to act since voluntary approaches by the purchasers and consumers could be enough.
- (5) Possible approaches. The consultation document gave an analysis of the possible approaches to use trade measures in order to stimulate good fishery management behaviour, by going through the existing legislation, mainly the IUU Regulation, the international framework for fisheries and trade governance and the use of trade measures by RFMOs. Among Member States, 47% fully agreed, 33% mostly agreed and 20% just partially agreed with the analysis. The opinions of the other stakeholders were more dispersed: only one organization 8% fully agreed, 67% mostly agreed, 8% partially agreed and 17% did not agree at all. Comments from Member States referred to the need to analyse settlement procedures under UNCLOS and perhaps amend the IUU regulation. Most stakeholders referred to independent legal advice pointing to the applicability of the IUU regulation in the case of mackerel; others (those disagreeing with the analysis) stated that the international framework is either useless or can just be disregarded.
- (6) Trade restrictions as a solution. The consultation paper sought confirmation about the use of trade measures as a possible solution to problems like those described for mackerel and blue whiting. Member States were divided: 21% fully agreed, 43% mostly agreed, 29% partially agreed and one Member State (7%) barely agreed. The other stakeholders were more conclusive: 75% fully agreed, 17% mostly agreed and only 8% (one organization: the processing industry) just barely agreed. Observations were made on the need to approach the problem overfishing more globally while not abandoning other routes to push for negotiated solutions.
- (7) Analysis of possible options:

Option 1: no action.

Among Member States, 20% considered it just as a last resort, while 80% judged it as ineffective. All other stakeholders (100%) considered it ineffective.

Option 2: a soft instrument, non-legislative, such as sustainability labels, "name and shame" exercises, diplomatic demarches and so on.

Member States believed this option could be more or less effective (64%), only a last resort (29%) or ineffective (7%). The other stakeholders were more conclusive in that all organizations but one (91%) considered this option as ineffective and only one (9%) as more or less effective.

Option 3: regulatory instrument addressing imports of all products originated in the country concerned and made from the species subject to dispute.

This option received most support from Member States: 43% considered it as effective and 57% as more or less effective. The other stakeholders expressed also a clear support, considering it effective (64%) or more or less effective (36%).

Option 4: more limited regulatory instrument, including only easily identifiable fish products.

Member States found this option as effective (14%), more or less effective (72%) or as a last resort (14%). The other stakeholders showed weaker support, considering it as more or less effective (22%), a last resort (56%) or ineffective (22%).

Option 5: regulatory instrument providing for countermeasures, of very diverse nature, inducing the offending State to discontinue its wrongful conduct.

Member States found this option effective (36%), more or less effective (43%) or as a last resort 21%. The other stakeholders took this option as effective (80%), more or less effective (10%) or as a last resort (10%).

Other options (ad libitum)

Some Member States pointed to the combined use of the options, the inclusion of all fish products (and not just the species in cause) in the trade restrictions and the ITLOS mechanism. The other stakeholders also pointed to the combined use of options and included the possibility to suspend the Iceland accession process, the measures that are put in place in other countries such as the USA and the banning of imports of fishmeal irrespectively of its species composition.

It can be concluded that, generally speaking, there is ample support for the way the Commission has initially approached the problem and for the use of a regulatory instrument banning trade of the fish products affected by the dispute and even going beyond these measures in the framework of "countermeasures". Attention should be paid to the effects on the processing industry in particular and to the possibility of using a combination of actions.

Annex

Consultation document including a summary of the replies received.

Note: all texts in italics belong to the original consultation document

CONSULTATION DOCUMENT

Subject: Impact Assessment on the possible utilisation by the EU of trade-related measures against non-cooperating States for the purpose of conservation of fish resources

Disclaimer: This paper has been prepared by Commission services to consult stakeholders on the above-mentioned issue. Its contents cannot be construed as reflecting or pre-empting the European Commission's definitive views or positions of the subject matters in issue. The European Commission cannot be held responsible for any use which might be made of the information contained therein.

Target Groups consulted:

- *The Advisory Committee for Fisheries and Aquaculture (ACFA)*
- *Regional Advisory Councils (RACs)*
- *Member States' experts (through the Committee for Fisheries and Aquaculture)*

Expected replies: In written, by post to the address European Commission, 1049 Brussels, BELGIUM or by e-mail to:

MARE-SHARED-STOCKS-CONSULTATIONS@ec.europa.eu

Deadline: 10 May 2011

1. DESCRIPTION OF THE PROBLEM

The UN Convention on the Law of the Sea³ as well as the UN Fish Stocks Agreement⁴ provide for the obligation of 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

³ United Nations Convention on the Law of the Sea (Montego Bay Convention), OJ L 179, 23.6.1998, p. 3.

⁴ 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), OJ L 189, 3.7.1998, p. 17.

amongst each other or via the appropriate Regional Fisheries Management Organizations (RFMOs) in their geographical context.

Disagreement on the management of straddling and highly migratory stocks is frequent and to arrive at useful arrangements the willingness of all parties concerned to cooperate, is required, including the EU, and third countries. It is not infrequent that one or more of the third parties refuse to show the willingness to cooperate and prefer to fish at a unilaterally chosen intensity for a number of years. Such behaviour may lead to considerable depletion of the fish stock in question even if other parties engage in moderating their fishing rates.

The EU is now suffering the consequences of too long and unsuccessful consultations and negotiations both between the North-East Atlantic coastal states and in the framework of the North-East Atlantic Fisheries Commission (NEAFC) before finally an arrangement was reached on the management of the North-East Atlantic stock of blue whiting. Due to a series of years of disagreement that led to very serious depletion of the stock and as a consequence, the Total Allowable Catch (TAC) for this species had to be set for 2011 at 40100t, less than 7% of the level of 2010 (540000t). This has resulted in disastrous consequences for the viability of this fish stock and therefore for certain EU fleets, and in a very meager probability of rebuilding the stock to sustainable levels in the medium term. Such outcomes run contrary to the fundamental objectives of the EU's Common Fisheries Policy.

At present the EU faces such a problem with the stock of North-East Atlantic mackerel. In this case the lack of agreement among coastal States, is compounded by the setting by Iceland and Faroe Islands of autonomous catch limits at very high and biologically unviable levels, not sustained by any objective argument either on the basis of historical rights or stock distribution, and contrary to scientific advice.

The EU cannot remain inactive in a situation where third countries refuse to abandon harmful unilateral behaviour and fail to show the necessary goodwill to achieve an arrangement for the management of migrating fish stocks (such as mackerel). Indeed, in that situation to maintain the unlimited access to a lucrative EU market for such stocks constitutes not only a political contradiction but also a stimulus to continue the intensive over-exploitation of the stock by third countries. The EU should therefore be able to have an instrument to address these cases efficiently.

As a summary, the problem is perceived at two levels:

(i) A concrete problem...

At present the EU faces the immediate threat of overexploitation of the stock of mackerel due to the attitude of certain third States, which appear to exploit the short-term benefit for part of their fleet of pelagic fishing in total disregard of the international obligations to cooperate with the other coastal States and the viability of the fish stock.

(ii) ...that raises a general problem

It is possible that such a lack of cooperation and risk of overexploitation becomes evident in the short term for other shared stocks and other parties. Any such

situation cannot be excluded in other areas where the EU shares fisheries with other States.

When facing situations of unwillingness by any given third country to cooperate on the management of a straddling and highly migratory fish stock on which the EU shares an interest, and where the attitude of such country poses a risk of overfishing that would require subsequent sacrifices by all parties engaged in rebuilding the stock to sustainable levels, there is a need to take appropriate action. However, the existing legal framework does not provide with any effective measure in support of this approach, and it becomes imperative to find new avenues.

Questions:

(1) Do you agree with this perception of the problem?

Target population: Member States' authorities:

	Fully	Mostly	Partially	Barely	Not at all
	ES, IE, FR, PO, AT, UK, IT	PT, SI, NL, HU, EL, DE, MT, DK			

Observations:

ES: Iceland and Faroe are willing to get a place in the fishery that they didn't have historically.

FR: The problem becomes aggravated by the suspension of quota exchanges under the bilateral agreements (Faroese case) and by the distortion of the international markets (competition for the Russian market).

NL: The unilateral TACs by Iceland and Faroe Islands constitute a wrongful act, a violation of UNCLOS Articles 63 and 117-119 and in conflict with Articles 2 and 4(b) of the NEAFC Convention.

EL: Lack of cooperation endangers the viability of stocks.

UK: It is vital that the blue whiting case is not repeated for mackerel

DE: Russia's behaviour on blue whiting and redfish should be included in the analysis

DK: Agree that continued setting of unilateral quotas is unsustainable. All possibilities for reaching a negotiated agreement must be exhausted

Target population: stakeholders:

	Fully	Mostly	Partially	Barely	Not at all
	Klondyke, EAPO, SPFA, RSPB, KFO,	AIPCE, FEOPE, ADAPI			

	FEABP, ARVI, NFFO, PELRAC				
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Observations:

FEOPE: The problem is also the the EU delegation in negotiations is ill prepared and ha snot consulted duly the opinion of the fishing sector.

NFFO: The EU appears to be looking for delayed mechanisms rather than taking action, which is possible now according to legal analysis available.

PELRAC: Action in the short term should also be undertaken with priority without compromising the interests of the EU pelagic fishing fleet.

(2) What is your perception of the importance of the problem?

Target population: Member States' authorities:

	Very severe	Severe	Moderate	Appreciable	Insignificant
	PT, IE, FR, PO, AT, UK	SI, ES, NL, EL, DE, MT, IT, DK	HU		

Observations:

ES: In the case of mackerel, the risk is not imminent since the stock is good shape.

IE: The current behaviour of certain Coastal States will ultimately lead to the depletion of stocks to the detriment of all Coastal States.

NL: The threat to sustainability is confirmed by scientific projections that point towards depletion of the stock of mackerel (limit reference point reached) by 2016.

EL: In particular since there is a documented risk for the stock to fall outside safe biological limits.

UK: Scientific projections point to a rapid decline if the situation is maintained. Action should be taken therefore sooner than later.

Target population: stakeholders:

	Very severe	Severe	Moderate	Appreciable	Insignificant
	Klondyke, EAPO, SPFA, RSPB, KFO, FEABP, FEOPE, ADAPI,	ARVI	AIPCE		

	NFFO, PELRAC				
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RSPB is particularly concerned that the MSC certification can be lost and that mackerel, of high value for human consumption, be converted into fishmeal.

FEOPE: the socio-economic effects are always ignored.

ADAPI: It's about time that the EU addresses unsustainable fishing practices by our neighbours in order to avoid disloyal concurrence.

PELRAC: Mackerel is the single most valuable stock for the EU fishing industry. This in itself illustrates the importance of the problem.

(3) Do you agree on the need to take action?

Target population: Member States' authorities:

	Fully	Mostly	Partially	Barely	Not at all
	PT, ES, IE, FR, PO, AT, NL, UK, DE, IT	SI, HU, EL, MT, DK			

Observations:

IE: Strong action needs to be taken as a matter of urgency

NL: Time to act swiftly: it would be outrageous to meet the current demands of Iceland and Faroe islands.

UK: Mackerel is extremely important for the UK. Support for action that is proportionate and tailored to individual circumstances, subject to scrutiny, consultation and agreement with Member States.

DK: Action must include all possibilities of reaching a negotiated agreement.

Target population: stakeholders:

	Fully	Mostly	Partially	Barely	Not at all
	Klondyke, EAPO, SPFA, RSPB, KFO, FEABP, FEOPE, ADAPI, ARVI, NFFO, PELRAC	FEABP	AIPCE		

Observations:

AIPCE: Not convinced that action is needed: voluntary action by purchasers and consumers would be enough.

RSPB, NFFO, PELRAC: Furthermore, action should be expedient, with a view to solve the problem as a matter of urgency, before the 2011 fishing season.

ADAPI: Better late than never. Action should be taken without regard to the international importance of the country concerned.

2. POSSIBLE APPROACHES

The present initiative aims at exploring the possibility of using trade-related measures against countries and products from stocks that are in situations such as those described above for blue whiting and mackerel. These measures would mainly aim at promoting conservation of the stocks concerned by inducing a reduction of the intensity of fishing of the third parties concerned, this without prejudice to the need to continue consultations and, where required, use the existing mechanisms of dispute settlement. They would only be implemented when bilateral or regional cooperation has failed to establish an appropriate management regime for the stocks concerned.

The "IUU Regulation"⁵ contemplates inter alia the use of trade restrictions for vessels engaged in illegal, unreported and unregulated fishing. However, it is not considered as applicable for the problem described above. The IUU Regulation addresses issues of lack of compliance with applicable international and domestic conservation and management measures, whilst the measures that are being envisaged in the present context target fisheries not covered by agreed conservation and management measures, conducted in absence of cooperation with other coastal States and constituting a threat to sustainability.

Other examples of the application of trade restrictions for conservation purposes are the CITES Convention, transposed in EU legislation by Regulation (EC) No 338/97⁶, and certain recommendations made in the context of RFMOs. None of these instruments can be used in the cases above-mentioned. In the case of CITES, mainly because this Convention allows trade restrictions only when the danger is imminent and very serious, which may be too late when the threat is just overexploitation and not necessarily complete depletion of the stock. In the case of RFMOs, trade restrictions have been agreed in certain cases (bluefin tuna in ICCAT, toothfish in CCAMLR), but this is not a generalized approach. Furthermore, RFMOs adopt rules for the management in their

⁵ 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

⁶ Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein. OJ L 61, 3.3.1997, p. 1-69

regulatory area, which does not necessarily coincide with the area where the problem is found, as it was the case for mackerel and blue whiting described above.

The approach that is being envisaged needs to be analyzed in the context of the relevant international law, including international customary law, the International Law of the Sea, international treaty law, international trade law, mainly the GATT Agreement, and any other bilateral or multilateral international agreements such as the EEA. Any measure imposing trade restrictions will have to be fully consistent with this legal framework

Questions:

(4) Do you agree with this analysis of the possible approaches?

Target population: Member States' authorities:

	Fully	Mostly	Partially	Barely	Not at all
	ES, IE, AT, UK, DE, IT, DK	SI, FR, PO, HU, EL	PT, NL, MT		

Observations:

PT: The IUU regulation should be applied to Iceland and Faroe Islands.

FR: The economic sanctions should cover all other species concerned. As an example, deep water fish from Faroe Islands.

NL: The analysis of possible measures should include "countermeasures" and dispute settlement procedures under UNCLOS (although it is recognized that this will be a lengthy process).

EL: Agree that the existing framework does not allow to cover the cases described.

UK: Need to re-consider the use of the IUU scheme, possibly by amending the Regulation. Further consideration also to use the ITCLOS mechanism This also a good opportunity to reconsider the remit and powers of RFMOs.

MT: Better coordination is required in RFMOs.

DK: Important to ensure full consistency with international law.

Target population: stakeholders:

	Fully	Mostly	Partially	Barely	Not at all
	ARVI	AIPCE, Klondyke, EAPO, RSPB, KFO, FEABP, ADAPI, PELRAC	NFFO		SPFA, FEOPE

Observations:

EAPO, KFO, ADAPI, PELRAC: In addition, independent legal advice suggests that the IUU regulation could be applied.

SPFA, NFFO: Action should be taken regardless of being outside perceived international law

FEOPE: Do not think that the IUU Regulation, CITES, UNCLOS, GATT or EEA are of any use. Furthermore, RFMO measures are not always compulsory and contracting parties can object.

(5) Do you agree in particular that trade restrictions may be a solution?

Target population: Member States' authorities:

	Fully	Mostly	Partially	Barely	Not at all
	FR, NL, IT	PT, SI, IE, PO, DE, MT	AT, HU, EL, UK	DK	

Observations:

PT: Attention to fish products entering the EU via a third country.

SI: Trade restrictions are largely ineffective.

ES: The effect of trade restrictions may be limited in the case of mackerel, since there are other markets.

IE: Fully supportive, but are concerned as to the long time it may take to put concrete measures in place.

AT: The question is whether EU import restrictions can solve the worldwide problem of overexploitation of fish stocks. Aquaculture may give a better solution.

NL: Yes to trade measures but also continue pushing for a negotiated solution.

EL: Trade restrictions do not address the problem globally. There should be complementary measures

UK: Trade related sanctions play a role in encouraging parties back to negotiation table, but are not the only means to solve the crisis.

DE: Trade restrictions could help to push certain countries to adopt more constructive positions.

MT: Trade restrictions serve only partially. Soft tools such as eco-labels may undermine sustainable development.

DK: The trade restrictions mentioned are seen prima facie to be against international law (Notably WTO/GATT). Furthermore such steps could escalate the friction between the parties.

Target population: stakeholders:

	Fully	Mostly	Partially	Barely	Not at all
	Klondyke, EAPO, SPFA, RSPB, KFO, FEABP, ARVI, NFFO, PELRAC	FEOPE, ADAPI		AIPCE	

Observations:

AIPCE: The legislative route is not necessarily appropriate.

KFO, PELRAC: Yes, and they should progressively include other products and other fish, including whitefish.

FEOPE: Within the current setup it is difficult to get the measures in time.

ADAPI: Yes, but we need to be careful of possible entries via a third country.

3. POSSIBLE OPTIONS TO ADDRESS THE IDENTIFIED PROBLEM

A first option would be to take no action and expect that external circumstances change, inducing a change in the attitude of the third countries in cause. As an example, in the case of mackerel one could expect a change in the distribution and migration of the stock, so it becomes unavailable or scarce in the waters of Faroe Islands and Iceland, as it was the case a few years ago. This scenario is however associated to the risk of a worsening of the situation if the expected changes operate in opposite direction.

A second option would be 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. Such measures would aim at discouraging consumers from buying the fish products originating from a non-cooperating country or to put direct political pressure on that country. Such mechanisms have to be studied to see if they can be effective but there may also be (technical or other) drawbacks that need to be studied carefully, since in addition their associated administrative burden can be non-negligible.

A third option would be to provide the common fisheries policy with a regulatory instrument allowing a quick response to the problem by imposing trade-related measures on fish products derived from the relevant fish stock and that have an origin in the country concerned. At first sight, this would seem to be an effective approach, but it should be carefully defined so that it is compliant with multilateral and bilateral trade agreements and obligations. The approach also necessitates identifying and determining

the origin of the products at the customs, in particular where the products have been transformed or elaborated substantially in different countries.

A fourth option would be to impose limited trade restrictions so as to exclude from them products for which the determination of the origin would be disproportionately difficult.

A fifth option would consist of a regulatory instrument providing for "counter-measures" in response to an "internationally wrongful act" committed by another State. Recourse to such "counter-measures" is recognised under customary international law provided that due process and proportionality requirements are met. "Counter-measures" could consist of trade-restrictive measures, limitations of access to ports and/or of any other measures that are capable of inducing the offending State to discontinue its wrongful conduct.

In the cases of options 2 to 4, the measures taken should be either limited in time or subject to revision on account of a change in the circumstances that had led to their adoption. In the case of "counter-measures", the measures taken must be reversible; they must actually be lifted once the offending State has put an end to its wrongful conduct.

The burden associated to the legislative process not only for the adoption of the regulation setting out the instrument, but also for subsequent specific acts applying the instrument to one or another situation, should also be weighed against the expected benefits.

Other options are possible and can be suggested for consideration.

Questions:

- (6) Which kind of measures would you consider effective in solving the problem identified?**

Target population: Member States:

	Effective	More or less effective	Last resort	Ineffective
Option 1: no action			ES, FR, UK	PT, SI, IE, PO, AT, NL, HU, EL, UK, DE, MT, IT
Option 2: soft instrument		PT, SI, ES, PO, AT, HU, UK, DE, MT	IE, FR, NL, EL	IT
Option 3: regulatory instrument (trade restrictions on fish products derived from the relevant fish stock)	PT, ES, NL, HU, MT	SI, IE, FR, AT, EL, UK, DE, IT		
Option 4: regulatory instrument (more limited trade restriction)	ES	PT, SI, IE, FR, AT, NL, EL, UK, DE, IT	HU, MT	
Option 5: regulatory instrument ("counter-	PT, ES, IE, NL, IT	SI, FR, AT, HU, EL, UK	DE, MT	

measures")				
Other options (describe below)	IE, FR	NL, UK		

Observations:

ES: Neither the accession process (Iceland) nor the special relations with Denmark (Faroe Islands) should be an obstacle.

IE: Suggests an incremental approach, starting by prohibition of imports of mackerel, followed by prohibiting imports of fish meal and, if necessary, of any fishery product. Shortfalls of fish products can be covered by other imports.

FR: As said before, import restrictions should cover other species. Diplomatic démarches only can aggravate the atmosphere for negotiations.

PO: For option 2, rather less than more effective.

NL: Options 3 and 4 are, respectively, potentially effective and potentially more or less effective. The "name and shame" option might backfire on the EU.

EL: Better use a combination of options. Use UNCLOS, the Fish Stocks Agreement and the FAO Code of Conduct for Responsible Fisheries

UK: Soft measures may help but are insufficient by themselves; option 3 should be subject to scrutiny and consultation with Member States before its application to individual cases. On option 4, all efforts should be made to identify as many products as possible. Countermeasures could be taken in combination with options 2 and 3. As "other options", consideration should be given to the ITLOS mechanism.

DE: the soft instrument is necessary but not sufficient.

MT: Option 3 is the preferred one.

IT: Option 3 requires long time

DK: Any measure imposing trade restrictions must be fully consistent with international law. The outlined trade restrictive measures give rise to serious concern regarding compatibility with international law. This is especially the case with option 2, 3 and 5, which risk violating the national treatment principle in GATT.

Target population: Stakeholders:

	Effective	More or less effective	Last resort	Ineffective
Option 1: no action				Klondyke, EAPO, SPFA, RSPB, KFO, FEABP FEOPE,

				ADAPI, NFFO, PELRAC
Option 2: soft instrument		ADAPI		Klondyke, EAPO, SPFA, RSPB, KFO, FEABP FEOPE, NFFO, PELRAC
Option 3: regulatory instrument (trade restrictions on fish products derived from the relevant fish stock)	Klondyke, EAPO, SPFA, FEABP, ADAPI, ARVI, NFFO	RSPB, KFO FEOPE, PELRAC		
Option 4: regulatory instrument (more limited trade restriction)		FEABP, ADAPI	Klondyke, EAPO, SPFA, KFO, PELRAC	FEOPE, NFFO
Option 5: regulatory instrument ("counter-measures")	Klondyke, EAPO, SPFA, KFO FEOPE, ADAPI, NFFO, PELRAC	RSPB	FEABP	
Other options (describe below)	EAPO, NFFO	Klondyke, KFO, PELRAC		

Observations:

AIPCE: None of the said measures is preferred.

EAPO, KFO: Use the IUU regulation, suspension of accession talks. Trade on mackerel is relatively small, and therefore trade sanctions should include all fish and fish products;

SPFA: Combinations of measures should also be foreseen.

KFO: A major diplomatic offensive would be "more or less effective".

FEOPE: It would be interesting to copy correlated systems in force in other countries as the USA.

NFFO: Ban all fish meal coming from Iceland and Faroe islands, since it is difficult to recognize whether it contains mackerel. Escalate the ban to include other species if necessary. Suspend accession negotiations with Iceland.

PELRAC: A restriction of the imports of all fish and fishery products from Iceland and the Faroe Islands should be considered as a serious option.

4. POSSIBLE EFFECTS OF IMPORT LIMITATIONS OR RESTRICTIONS

This section enters into some detail about the specific effects of one or another option.

The EU market of fish products is partly dependent on imports. Any limitation or restriction of these may have a non-negligible impact on the supply to the EU market. The degree of such impact will depend very much on the type of product, the quantities being subject to restriction or allowed, the possibility to find alternative sources of supply and the final destination of the product (direct human consumption, fish processing industry, fish meal and oil industry, etc). Although at this juncture it would be difficult to evaluate the effects of trade restrictions as a general measure, perhaps stakeholders could give an opinion on the following assertion:

"It is possible to assume the implications of a trade restriction or limitation on the EU market in the short term, if this is done for the sake of ensuring the sustainability of the stock and avoid stock depletions, which is the main condition to guarantee the long-term supply of the EU market"

Question:

(7) Do you agree with this assertion?

Target population: Member States' authorities:

	Fully	Mostly	Partially	Barely	Not at all
	ES, FR, IT	PT, SI, IE, PO, AT, NL, UK	HU, EL, MT, DK		

Observations:

PT: Need to supply the market; the strategic orientation of the CFP towards fleet reduction does not help.

ES: The EU fleet production can compensate largely the losses resulting from an import ban.

IE, FR: Long term losses of mackerel for our fishing industry largely outweigh any short term discomfort strong trade restrictions may pose.

AT: Such a general question cannot be usefully commented by stakeholders.

NL: Attention should be paid to proportionality.

EL: As it difficult to assess the effectiveness of trade restrictions, it is difficult to justify whether their implications can be assumed.

UK: In every individual case it should be possible to assess rather accurately the positive and negative impacts. UK has a perception of the potential negative impacts to be limited.

MT: if there are socio-economic negative effects, then measures should be taken to mitigate them

Target population: stakeholders:

	Fully	Mostly	Partially	Barely	Not at all
	Klondyke, EAPO, SPFA, KFO, ARVI, NFFO, PELRAC	FEABP FEOPE, ADAPI		AIPCE	

Observations:

AIPCE: Trade measures applied only to the EU might unintentionally have significant impact on legitimate trade flows, which do not help to guarantee long-term supply for the EU.

FEOPE, PELRAC: Add: in order to protect the EU fishing industry that is to disappear soon under the current policy.

ADAPI: With such a high demand in the EU market, the downsizing EU fleet will not be able to replace losses from an import ban.

The effects of the possible introduction of import limitations or restrictions will also be highly dependent on what is meant by "import". For example, the IUU Regulation defines importation as "the introduction of fisheries products into the territory of the Community, including for transshipment purposes at ports in its territory". This definition encompasses therefore goods that are landed in the EU in transit towards other countries and has therefore a much wider coverage than a consideration of imports as goods having the EU market as immediate destination.

Observations on the definition of imports:

Target population: Member States:

PT, DK, IE: Should include all products

AT: The difference is substantial: including all imports may entail considerable administrative burden.

NL: Precise details of the scope of the restrictions are to be discussed at a later stage.

EL: There is need of a harmonised definition of "imports".

UK: The issue should be considered on a case-by-case basis.

MT: Regulatory frameworks should be simple to implement and solution-oriented.

DK: The IUU Regulation is not relevant in this case, and hence neither its definition of "imports".

Target population: stakeholders:

Klondyke: Should include all products

EAPO, SPFA, KFO FEOPE, NFFO: In the case of mackerel apply the restriction to all mackerel products entering the EU, include if their destination is further afield, and having been originated in Iceland or Faroes, even if they have been rerouted via a third country.

As evoked in the description of the options, any trade restriction, including by "soft" approaches, will impose a certain administrative burden. In some occasions this additional burden may be alleviated by the rational use of existing administrative mechanisms, but in any case the increase in costs may be substantial. You are requested to synthetically describe, for your preferred option, how you perceive this additional administrative burden.

Observations on the administrative burden:

Target population: Member States:

PT: Needs to be done despite the cost.

SI: It is important not to add administrative burden.

AT, DK: Most likely there will be administrative burden, and this should be carefully considered.

IE: Existing structures and procedures for custom control are expected to be largely sufficient to implement the new legislation.

NL, UK: Additional administrative cost will always appear, so they need to be limited.

MT: Administrative workload seems higher for option 3.

Target population: stakeholders:

Klondyke, EAPO, SPFA, ADAPI: damage if not action taken outweighs administration costs

FEOPE: Additional burden can be compensated with simplification of unnecessary rules.

ARVI: The administrative burden should be similar to what is found following a health alert or a safeguard clause

NFFO. Not an issue: a blanket ban is easy to administrate.

Final question:

(8) Please include below any other comments you may have on this proposal

Target population: Member States:

PT: one could consider cancellation of bilateral agreements, but with careful consideration of the effects on our own industry.

DK: important that introduced measures are proportional.

IE: Ireland advocates strong trade measures including the possibility to cover all fish products.

EL: The solution should be effective (not simply exhortations) and adopted at the international level under the EU leadership.

EE: The IUU regulation should be applied, and not only in the case of mackerel, but also on blue whiting and redfish as far as Russia is concerned.

LT: The scientific analysis should be of the higher scale and quality, and other third countries concerned should be consulted

UK: concerned by the timing. Measures for mackerel should be specific, targeted, easily reversible. The general instrument should not allow trade measures without proper consultation to Member States. On the consultation about options, there are not single responses covering all possible cases. The interests of all sectors, not only the catching sector, should be considered. Sustainability should be at the forefront of fisheries and marine management.

DE: Admits that certain behaviours and the shortcomings of the existing management frameworks makes it necessary to consider and examine certain trade measures. However, this does not predetermine the German position on any future specific proposal in this regard.

DK: Important that introduced measures are proportional and fully consistent with international law. Such measures should only be brought into effect if all other appropriate measures have been exhausted.

Target population: stakeholders:

Klondyke: danger for the Commission to be seen as a weak institution.

EAPO, SPFA, KFO: Do not leave the results of this consultation as an appeasement exercise. Keep Norway abreast of developments.

KFO: the output of the exercise should be a meaningful short-term solution that utilises all existing instruments, followed immediately by a wider scoped legal instrument.

ADAPI: cancellation of existing bilateral agreements can be a possibility, but careful attention should be paid to the possible damages to the EU industry.

NFFO: the EU has left this issue to go on for far too long. Need to act immediately following the advice prepared for the North Atlantic Fishing Company Limited (Owen and Churchill, 2011).

PELRAC: the issue is very technical and it is expected that the Commission could take note of the discussion held by the PELRAC Executive Committee on 12 April at Bilbao.

Many thanks for your cooperation