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ENFORCEMENT AND SURVEILLANCE: WHAT ARE OUR TECHNICAL CAPACITIES AND HOW MUCH ARE WE WILLING TO PAY?

This document has been prepared by M. Serge BESLIER of the European Commission.

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For further information, please contact:
Carl-Christian SCHMIDT (E-mail: carl-christian.schmidt@oecd.org)

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Introduction

1. The role of our political institutions, be they national or international, is to draw up rules of law that are conducive to the harmonious and sustainable development of society.
2. If those rules are to be effective, they must be enforced. Law without enforcement and without sanctions is nonexistent.
3. There is a cost to enforcement. It is therefore important for policymakers to be aware of that cost when drawing up the rules governing any economic activity. In the fishing industry, costs can be assessed in a variety of ways. The term “cost” can be defined alternatively as financial or economic.
4. First there is the budgetary cost. What financial resources are the public authorities ready to allocate to enforcement in a given industry?
5. Then there is the environmental cost. What are the risks to the environment when inadequate funding is allocated to the goal of achieving sustainable fisheries management? What are the risks to endangered species and biodiversity?
6. Finally there is the economic and social cost. What are the repercussions on stock management if these measures are not conducive to optimal yields, and what are the implications for firms and workers?
7. No-one would dispute the need for sound enforcement, which is crucial to sustainable fishing as well as being in the interests of society at large, and firms and workers in particular.
8. Surprisingly, some hold the view that all is not well in the best of all possible worlds.
9. The real issue is the cost to society and how much we are willing to pay. The current trend is towards budgetary restraint, and the OECD is the first to stress the need for spending controls.
10. Another aspect of the issue is the cost to firms, and the subsequent implications for competitiveness and fair competition at international level.

The cost to society

11. Monitoring at sea is costly. This is nothing new, merely a fact that has to be faced. However, there is some uncertainty clouding the issue. This is why the European Commission attaches so much importance to the work being done by the OECD to assess the economic and social effects of IUU fishing.

12. The overall cost of monitoring fishing activities in the EU and its Member States amounts to some €300 million. That may be a somewhat conservative figure, however, as fishery surveillance is not always targeted and there is no approved method for collecting such information. The figure should be set against the value of landings by EU fishing vessels, estimated at around €5.5 billion. This puts monitoring and surveillance costs at around 5% of the value of production. In the specific case of NAFO, the cost of monitoring EU vessels amounts to some €4 million, for a total of around €55 million in landings (in 2002), i.e. over 7% of the value of production.

13. These two examples highlight the relatively high cost of enforcement and surveillance in this industry. It certainly exceeds fishing firms' profit-margins. Consequently, the cost of this type of government action cannot be viewed solely in terms of the benefits to the sector directly concerned, but should instead be assessed in terms of the industry as a whole and – even harder – its impact on society (including the environmental and other effects).

14. Those are just the direct costs of fisheries enforcement and surveillance. But there is also a need to assess the cost of customs inspections for fishery products. The EU market, along with the Japanese and North American markets, is one of the three major outlets for fishery products. So both the EU authorities and the customs authorities in individual Member States have their part to play here. Yet it should be borne in mind that trafficking in illegal fishery products is not the only form of international crime of concern to the authorities. Others are considered to be far more of a threat to social equilibrium, including drug trafficking, people trafficking, arms dealing and money laundering, all of which take up a huge amount of resources and energy. However, all of these different forms of crime stem from the same rationale, namely unbridled globalisation and the inability of individual countries to resolve such problems alone.

15. It is clear that, in an open environment like the sea, international co-operation is vital. It is – not without reason – one of the pillars of the United Nations Convention on the Law of the Sea. International co-operation is not only an obligation in terms of conserving and managing fishery resources, it is also a necessity in terms of enforcement and surveillance. It has become even more vital now that budget constraints demand that the system be as cost-effective as possible.

16. International co-operation is all the more necessary because the economic interests of the countries concerned may not necessarily converge. The interests of a coastal state are not those of a flag state, which in turn differ from those of a port state or the state in which fishery products are actually used.

17. As part of its work on Common Fisheries Policy reform, the European Union looked into the efficiency of the EU system. It concluded that the separation of powers in the traditional system, with the EU wielding legislative powers and Member States the executive powers, did not satisfactorily meet the need for co-operation, including co-operation between EU Member States.

18. This is one of the reasons why the European Union is envisaging the creation of a Community Fisheries Control Agency. This would not only enhance the quality and effectiveness of the EU control system, but also give better value for money in terms of EU and Member State budget expenditure. Another advantage of the new Agency would be to foster international co-operation with the introduction of a system of information exchange as it would, for instance, be a member of the MCS (monitoring, control and surveillance) network currently under development.

19. International co-operation necessarily involves the regional fishing organisations (RFO) too. The introduction of streamlined control schemes in all of the RFOs is bound to generate savings and improve efficiency. The EU attaches great importance to the fact that the inspection and control schemes in each RFO are tailored to the profile of the relevant fishery. One example is the process used by the Indian

Ocean Tuna Commission (IOTC) to develop its own inspection and control scheme, namely by systematically analysing all known control techniques and selecting the most cost-effective for the Indian Ocean tuna fishery. The process also took account of the capacities of each contracting party, since the RFO includes among its members both developed and developing countries. This goes to show that economic assessment and monitoring tools are diverse, and their costs may vary considerably. So the question is therefore how to optimise the financial resources invested in control and achieve optimal synergy between the various types of monitoring, be it at sea, from the air, at the dockside, or at the import stage. To date, the analysis appears to have been more empirical than rational. Economic analysis may provide scope to find the most appropriate mix of monitoring tools.

20. The drive for a more cost-effective approach calls for the use of more readily controllable techniques, such as lists of vessels authorised to fish. This should help to counter the practice of “open registries”, also known by the non-legal term of “flag registries”, which deliver what are commonly called flags of convenience.

21. The European Union is increasingly turning to technologies that combine performance with cost-savings. The development of satellite systems has led to remarkable advances in this field. There are currently plans to make the VMS – Vessel Monitoring System – compulsory for all vessels over 15 metres in length. Satellite monitoring makes it possible to track vessels that are not necessarily fitted with transceivers, and the technology certainly holds as yet untapped development potential for the fishing industry. Satellites combined with computers are also offering scope to improve fishing and fishery surveillance, for instance with electronic log-books for real-time monitoring.

22. These techniques are relatively cheap and in any case less of a burden on the public purse than the classic at-sea monitoring or quayside-inspection techniques, owing to their efficiency. An overview conducted some time ago showed VMS to be cost-effective if it could achieve a 10% cut in the cost of at-sea monitoring.

23. Enforcement and surveillance costs are not confined to the public purse, however, and enterprises are having to shoulder a growing share.

The cost to firms

24. Fishing firms are having to compete on two fronts. There is not only competition for the resource but also competition for access to the fishery product market.

25. The economic conditions governing access to fishery resources determine how competitive firms must be to gain access to the markets. For fishing fleets, inspection costs are a decisive factor when it comes to competitiveness.

26. The constraints imposed on firms by monitoring and inspection costs can be measured at two levels:

- At the firm or microeconomic level, vessel-owners must shoulder the cost of keeping log-books, declaring catches, installing VMS transceivers and using selective fishing techniques. The fact that vessels flying flags of convenience avoid these costs is bound to give them a competitive advantage. However, the factor that most seriously distorts competition may not lie there but, more importantly, in the opportunities those vessels have to avoid compliance with conservation and management rules, and in particular restrictions on catches. Vessels that do comply with such restrictions are clearly not competing on an equal footing with vessels that have no limitations on their fishing. Another point to bear in mind is that the

vessels involved in IUU fishing are also the first to breach the standards on navigational safety, vessel safety, crew safety and conservation of the marine environment.

- At the macroeconomic level, that of the economic environment in which firms operate, the absence of an enforcement and surveillance policy is a major competitive advantage for vessel-owners. Whether monitoring and inspection costs are passed on to firms via a cost-recovery scheme (ITQs, licence-fees or a similar system) or there is a beneficial tax regime, vessel registration under a flag of convenience often goes hand in hand with firm registration in a tax haven, and gives owners operating under flags of convenience a competitive advantage over their competitors operating under the flags of “civilized” countries.

27. If fishery management systems were watertight, control cost assessments would focus mainly on the costs that governments are willing to pay.

28. Paradoxically, the more resources are allocated to fisheries enforcement and surveillance, the more vessel-owners are tempted to circumvent the system.

29. Even if fraud is not confined to fishing by vessels flying flags of convenience, the scope for avoiding increasingly tighter controls is certainly encouraging some owners to change flags. The ease with which they can re-register their vessels is specific to the marine environment, and common to maritime transport and sea fishing. In both industries, it only takes an entry in a register for firms to relocate under a new flag, whereas land-based firms would also have to move premises.

30. The “convenience” issue is not confined to flags. Fishing vessels are so mobile that they can choose where to land their catches and hence where to market them and obtain the best prices. That choice may be based on legitimate economic criteria such as proximity to fishing grounds, markets for specific catches or the commercial performance of port operators. But ports may be chosen for illegal reasons, for instance the absence of inspections. So the problem is not just flags of convenience but ports of convenience. There is fairly little incentive for a country to inspect catches landed in its ports when those catches are not from stocks harvested by its own fleet. It can enjoy the economic spin-offs from its port activities, without suffering any loss or unfair competition from the predatory harvesting of its own stocks.

31. Because of the competitive distortion they bring to economic relations, flags of convenience and ports of convenience – by their very existence – hamper the development of enforcement and surveillance schemes by countries wishing to set up sustainable resource management systems, combined with effective control mechanisms.

32. An economic analysis of all these factors should provide policymakers with more insight into the implications of their decisions on the conservation and management of fish stocks, and the controls that necessarily accompany them. It should enable them to identify the most urgent areas for improvement in the international legal system and tackle the challenges facing the international community, if the formal commitments made by governments to promote sustainable development are not to remain devoid of meaning.