

COMMISSION IMPLEMENTING DECISION

of 26 November 2013

identifying the third countries that the Commission considers as non-cooperating third countries pursuant to Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing

(2013/C 346/02)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 ⁽¹⁾, and in particular Article 31 thereof,

Whereas:

1. INTRODUCTION

- (1) Regulation (EC) No 1005/2008 (the IUU Regulation) establishes a Union system to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing.
- (2) Chapter VI of the IUU Regulation lays down the procedure with respect to the identification of non-cooperating third countries, démarches in respect of countries identified as non-cooperating third countries, the establishment of a list of non-cooperating countries, removal from the list of non-cooperating countries, publicity of the list of non-cooperating countries and any emergency measures.
- (3) Pursuant to Article 31 of the IUU Regulation, the European Commission may identify third countries that it considers as non-cooperating countries in fighting IUU fishing. A third country may be identified as a non-cooperating third country if it fails to discharge the duties incumbent upon it under international law as flag, port, coastal or market State, to take action to prevent, deter and eliminate IUU fishing.
- (4) The identification of non-cooperating third countries shall be based on the review of all information as set out under Article 31(2) of the IUU Regulation.
- (5) In accordance with Article 33 of the IUU Regulation, the Council may establish a list of non-cooperating countries. The measures set out in Article 38 of the IUU Regulation apply to those countries
- (6) Pursuant to Article 20(1) of the IUU Regulation, third-country flag states are requested to notify the Commission of their arrangements for the implementation, control and enforcement of laws, regulations and conservation and management measures which must be complied with by their fishing vessels.
- (7) Pursuant to Article 20(4) of the IUU Regulation, the Commission cooperates administratively with third countries in areas pertaining to the implementation of that Regulation.
- (8) In accordance with Article 32 of the IUU Regulation, with the Commission Decision of 15 November 2012, the Commission notified eight third countries that the Commission considered as possible of being identified as non-cooperating countries pursuant to Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.
- (9) In its Decision of 15 November 2012 the Commission included the information concerning the essential facts and considerations underlying such preliminary identification.
- (10) Also on 15 November 2012, the Commission notified the eight third countries with separate letters of the fact that it was considering the possibility of identifying them as non-cooperating third countries. The Decision of 15 November 2012 was attached to those letters.
- (11) The Commission highlighted, in these letters, that in order to avoid being identified and proposed for formal listing as a non-cooperating third country as foreseen respectively in Articles 31 and 33 of the IUU Regulation, the third countries concerned were invited to establish and implement, in close cooperation with the Commission, an action plan to rectify the shortcomings identified in the Commission Decision of 15 November 2012. A timely and effective implementation of the action plan by the concerned countries could have avoided them being identified as non-cooperating third countries and proposed for final listing.
- (12) As a consequence, the Commission invited the eight third countries concerned: (i) to take all necessary measures to implement the actions contained in the action plans suggested by the Commission; (ii) to assess the implementation of the actions contained in the action plans suggested by the Commission; (iii) to send every six months detailed reports to the Commission assessing the implementation of each action as regards, inter alia, their individual and/or overall effectiveness in ensuring a fully compliant fisheries control system.
- (13) The eight third countries concerned were given the opportunity to respond in writing on issues explicitly indicated in the Commission Decision as well as on other relevant information, allowing them to submit evidence in order to refute or complete the facts

⁽¹⁾ OJ L 286, 29.10.2008, p. 1.

invoked in the Decision of 15 November 2012 or to adopt, as appropriate, a plan of action to improve and measures taken to rectify the situation. The eight countries were guaranteed of their right to ask for, or to provide, additional information.

- (14) Therefore, by its Decision and letters of 15 November 2012, the Commission opened a dialogue process with the eight third countries and highlighted that it considered a period of 6 months as being in principle sufficient for settling this matter.
- (15) The Commission continued to seek and verify all information it deemed necessary. The oral and written comments submitted by the eight countries following the Commission Decision of 15 November 2012 were considered and taken into account. The eight countries were kept informed either orally or in writing on the Commission's considerations.
- (16) As explained in this Commission Implementing Decision, Belize, the Kingdom of Cambodia and the Republic of Guinea failed to refute facts invoked by the Commission or to address them in a plan of action.
- (17) This Commission Implementing Decision identifying Belize, the Kingdom of Cambodia and the Republic of Guinea as third countries that the Commission considers as non-cooperating in fighting illegal, unreported and unregulated fishing is made in the context of the implementation of the IUU Regulation and is the result of investigation and dialogue process which were carried out in line with the substantive and procedural requirements laid out in the IUU Regulation, which refers, inter alia, to the third states' duties incumbent upon them under international law as flag, port, coastal or market State to prevent, deter and eliminate IUU fishing.
- (18) The Commission Implementing Decision to identify Belize, the Kingdom of Cambodia and the Republic of Guinea as third countries that the Commission considers as non-cooperating third countries in fighting illegal, unreported and unregulated fishing entails, where appropriate, the consequences stated in Article 18(1)(g) of the IUU Regulation.

2. PROCEDURE WITH RESPECT TO BELIZE

- (19) On 15 November 2012, the Commission notified Belize with a Commission Decision pursuant to the provisions of Article 32 of the IUU Regulation that it considered the possibility of identifying Belize as a non-cooperating third country⁽²⁾.
- (20) The Commission invited Belize to establish in close cooperation with its services an action plan to rectify the shortcomings identified in the Commission Decision.
- (21) The Commission identified in the suggested action plan several failures to implement international law obligations, linked in particular to the adoption of an adequate legal framework, lack of an adequate and efficient monitoring, control and inspection scheme,

lack of a deterrent sanctioning system, and of a proper implementation of the catch certification scheme. The identified shortcomings relate, more generally to the compliance with international obligations including Regional Fisheries Management Organisations (RFMOs) recommendations and resolutions and conditions for registration of vessels according to international law. Lack of compliance with recommendations and resolutions from relevant bodies such as the International Plan of Action against Illegal, Unreported and Unregulated fishing of the United Nations (IPOA-UN) has also been identified. However, the lack of compliance with non-binding recommendations and resolutions has been considered only as supporting evidence and not as a basis for the identification.

- (22) On 20 November 2012, the Commission met with the Belizean authorities in Brussels to clarify the state of play and future steps following the Commission Decision of 15 November 2012.
- (23) Belize accepted, through its submission of 10 December 2012, to initiate discussions with the Commission and expressed its wish to agree mutually upon a road map.
- (24) Belize submitted written representations on 28 December 2012, 29 January 2013 and 13 February 2013.
- (25) With the letter of 24 January 2013, the Commission requested Belize to provide updated information on the key areas of the suggested action plan.
- (26) On 26 February 2013, the Belizean authorities submitted the following documents: (i) cover letter and explanatory letter; (ii) update on Belize's strategic action plan; (iii) updated information on key areas of the suggested action plan; (iv) draft high seas fishing inspection schedule in ports; (v) list of infringements and sanctions in 2011 and 2012; (vi) statistical data on catch certificates; (vii) list of vessels licensed to operate on the High Seas; (viii) list of vessels authorised to operate in the International Commission for the Conservation of Atlantic Tuna (ICCAT), Inter-American Tropical Tuna Commission (IATTC), Indian Ocean Tuna Commission (IOTC) and Western and Central Pacific Fisheries Commission (WCPFC) areas; (ix) list of other vessels authorised to operate under the Belizean flag.
- (27) Technical consultations between the Commission and Belize took place on 5 March 2013 in Brussels. During that meeting, the Belizean authorities submitted to the Commission a presentation on the measures adopted to manage and control its High Seas Fishing Fleet.
- (28) With the letter of 14 March 2013, the Commission provided Belize with the detailed and updated overview of the remaining shortcomings following the technical consultations held in Brussels on 5 March 2013, and invited Belize to examine the Commission's observations in relation to the proposed action plan and to provide all additional information and documentation that Belize deemed relevant.

⁽²⁾ Letter to the Minister of Agriculture and Fisheries of Belize of 15.11.2012.

- (29) Belize submitted additional written representation on 30 May 2013 including the following documents: (i) table on Belize's progress in accordance with the Commission's suggested action plan; (ii) draft National Plan of Action to prevent, deter and eliminate IUU fishing (dating from 2005); (iii) draft high seas sanction regulation; (iv) overview of the national observer programme; (v) list of Belize flagged vessels (as of 20 May 2013); (vi) report of a training workshop on biological data collection for tuna-like species; (vii) the major features of the new vessel monitoring and 'e-log' system.
- (30) On 24 July 2013, Belize enquired on the status of the proceedings. The Commission responded to Belize with a letter of 5 August 2013.
- (31) The Commission continued to seek and verify all information it deemed necessary. The oral and written comments submitted by Belize following the Commission Decision of 15 November 2012 were considered and taken into account while Belize was kept informed either orally or in writing on the Commission's considerations.
- (32) In the light of the elements gathered, as shown in Section 3 of the present Decision, the Commission believes that the areas of concern and shortcomings as described in the Commission Decision of 15 November 2012 have not been addressed sufficiently by Belize. Moreover, the measures suggested in the accompanying action plan have not been fully implemented either.
- 3. IDENTIFICATION OF BELIZE AS A NON-COOPERATING THIRD COUNTRY**
- (33) Pursuant to Article 31(3) of the IUU Regulation the Commission hereby reviews the compliance of Belize with its international obligations as flag, port, coastal or market State, in line with the findings in the Commission Decision of 15 November 2012 and with relevant information provided thereon by Belize, with the proposed plan of action as well as with the measures taken to rectify the situation. For the purpose of this review the Commission took into account the parameters listed in Article 31(4) to (7) of the IUU Regulation.
- 3.1. Recurrence of IUU Vessels and IUU trade flows (Article 31(4)(a) of the IUU Regulation)**
- (34) As highlighted in recital 20 of the Commission Decision of 15 November 2012 the Commission established on the basis of information retrieved from several RFMOs IUU vessel lists that a number of IUU vessels in these lists carried the flag of Belize after their inclusion in the RFMO IUU vessel lists⁽³⁾. Those vessels were as of 15 November 2012: Goidau Ruey No 1, Orca, Reymar 6, Sunny Jane, Tching Ye No 6 and Wen Teng No 688.
- (35) The Commission established on the basis of the information retrieved from several RFMOs IUU vessels lists that currently eight IUU vessels in these lists carried the flag of Belize after their inclusion in the RFMO IUU vessel list⁽⁴⁾. Those vessels are: Amorinn, Chia Hao No 66, Orca, Ray, Reymar 6, Tchaw, Tching Ye No 6 and Wen Teng No 688. Vessels Amorinn, Ray, Tchaw are listed in Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) and South East Atlantic Fisheries Organisation (SEAFO), vessels Orca, Reymar 6, Tching Ye No 6 and Wen Teng No 688 in IATTC while vessel Chia Hao No 66 is listed in both IATTC and ICCAT. In addition, the Commission established that according to the SEAFO list of IUU vessels the vessel Ray is flying the flag of Belize.
- (36) As highlighted in Section 3.1 of the Commission Decision of 15 November 2012, the existence of a number of IUU vessels in the RFMOs IUU list that carried the flag of Belize after their inclusion of these lists is a clear indication that Belize has failed to undertake its flag state responsibilities under international law.
- (37) Moreover, since the Commission Decision of 15 November 2012 the number of the vessels that carried the flag of Belize after their inclusion in the RFMO IUU vessels list has increased to eight. Thus, Belize has failed to exercise its responsibilities effectively and to comply with RFMO conservation and management measures which highlight the failure of Belize to fulfil its obligations under Article 94(2)(b) of the United Nations Convention on the Law of the Sea (UNCLOS) stipulating that a flag state assumes jurisdiction under its internal law over each ship flying its flag and its master, officers and crew. It also demonstrates the failure of Belize to ensure that fishing vessels entitled to fly its flag do not engage in or support IUU fishing, which is not in line with the recommendation of point 34 of the IPOA IUU stipulating that states should ensure that fishing vessels entitled to fly their flag do not engage in or support IUU fishing.
- (38) In addition, pursuant to Article 18(1) and (2) of the United Nations Agreement for the Implementation of

⁽³⁾ See Part B of the Annex to Commission Regulation (EU) No 724/2011 of 25 July 2011 establishing the EU list of vessels engaged in illegal, unreported and unregulated fishing (OJ L 194, 26.7.2011, p. 15).

⁽⁴⁾ See Part B of the Annex to Commission Regulation (EU) No 672/2013 of 15 July 2013 establishing the EU list of vessels engaged in illegal, unreported and unregulated fishing (OJ L 193, 16.7.2013, p. 15).

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 (UNFSA), the flag state is responsible vis-à-vis its vessels operating on the high seas. It is recalled that UNFSA regulates matters pertaining to the conservation and management of straddling fishing stocks and highly migratory fish stocks. As highlighted in the recital (35) of the present Decision, five IUU vessels are listed in the RFMOs IUU list as managing such type of fish stocks. The Commission considers that the existence of five IUU vessels in the IATTC and ICCAT IUU list that carried the flag of Belize after their inclusion in these lists is a clear indication that Belize has failed to undertake its flag state responsibilities under international law. Furthermore, the existence of five IUU vessels in the IATTC and ICCAT RFMOs IUU list that carried the flag of Belize after their inclusion in these lists also highlights the failure of Belize to fulfil its obligations under Article 19(1) and (2) UNFSA. This situation is also in contravention with the provisions of Article 20 UNFSA which set out obligations of states to investigate, cooperate with each other and sanction IUU vessels activities since Belize has failed to fulfil for these five IUU vessels its obligations under international law with respect to international cooperation and enforcement.

- (39) Thus the existence of eight IUU vessels in the RFMOs IUU lists that carried the flag of Belize after their inclusion in these lists highlights the failure of Belize to fulfil its flag state obligations. Indeed, recognised IUU fishing vessels undermine conservation and management of living resources. In such a way, Belize does not act in accordance with Article 118 UNCLOS, which stipulates that states shall cooperate with each other in the conservation and management of living resources in the areas of the high seas.
- (40) The failure of Belize to fulfil its compliance and enforcement obligations infringes also Article III(8) of FAO Compliance Agreement stating that each party shall take enforcement measures in respect of fishing vessels entitled to fly its flag which act in contravention of the provision of the Food and Agriculture Organisation of the United Nations Compliance Agreement (FAO Compliance Agreement), including, where appropriate, making the contravention of such provisions an offence under national legislation. Sanctions applicable in respect of such contraventions shall be of sufficient gravity as to be effective in securing compliance with the requirements of the FAO Compliance Agreement and to deprive offenders of the benefits accruing from their illegal activities.
- (41) Against a background of the above verified IUU fishing by Belizean flagged vessels, as explained in recitals 22 and 23 of the Commission Decision of 15 November 2012 Belize did not ensure adequate sanctions,

discourage repetition of violations and deprive offenders of the benefits accruing from their illegal activities. It also was lacking an adequate administrative system for investigations, and monitoring of its vessels. This lack of appropriate measures had not been addressed at the moment of adopting the present Decision.

- (42) Following the adoption of the Commission Decision of 15 November 2012 Belize submitted documentation as mentioned in recitals (26) and (29) of the present Decision.
- (43) The Commission found that adequate measures in respect of recurrent IUU fishing could not be effectively taken by Belize due to the shortcomings of its legal framework. It thus suggested, in the action plan, a revision of the legal framework aimed at ensuring the conservation and management of living resources in the High Seas. However, the draft Aquatic Living Resources Bill presented by Belize has neither been adopted nor even been submitted to the House of Representatives. The draft includes in particular provisions on: conservation and management of fisheries resources; requirements and conditions on issuing of licences; fishing activities inside and outside the Exclusive Economic Zone (EEZ) of Belize; monitoring, control and surveillance; the record of the fishing vessels as well as general provisions on sanctions. However, the draft Aquatic Living Resources Bill is only a general act and in order to be fully operational it foresees in its Part XXI that several regulation may be necessary to give effect to the provisions of this Act and for the due administration thereof. It stipulates that such regulations might be needed in particular for the following areas: licensing and regulation of fisheries; conditions or circumstances on chartering Belizean flagged fishing vessels; installation and use of mobile transceiver units on an individual vessel or a category of vessels authorised to fish under this Act; the appointment, maintenance of and procedures for agents appointed to receive and respond to process pursuant to this Act; setting out the requirements for providing details of the beneficial ownership of vessels for the catching, loading, landing, handling, transshipping, transporting, possession and disposal of fish; prescribing offences against the regulations and penalties for such offences. From the above mentioned elements, following the adoption of the Commission Decision of 15 November 2012, the Belizean authorities have submitted only the draft High Seas Sanction Regulation. The pertinent draft Aquatic Living Resources Bill is in preparation already since 2011 without any further concrete development materialising since then. The draft has not yet been adopted and therefore is not legally binding. In addition, the competent Belizean authorities have not provided a concrete timetable for the enactment and implementation of this draft. No progress has been made in this respect since the Commission Decision of 15 November 2012.

- (44) The draft National Plan of Action of Belize to fight IUU dates back to 2005 and has not yet been adopted, which is not in line with points 25, 26 and 27 of IPOA IUU requesting states to develop national plan of action against IUU fishing. No progress has been made in this respect since the adoption of the Commission Decision of 15 November 2012.
- (45) The Commission found therefore that, in addition to the recurrences of IUU fishing by vessels flying its flag, Belize is not enforcing a deterrent sanction system. The current binding legislation⁽⁵⁾ foresees the following sanctions: written warning, fine, cancellation of the status and/or document and suspension or revocation of authority. The level of the maximum fine (USD 50 000) is not sufficiently deterrent and thus not in line with Article 19(2) UNFSA which stipulates, inter alia, that sanctions should be adequate in severity and deprive offenders of the benefits accruing from their illegal activities.
- (46) As described in the recital (43) of the present Decision Belize has submitted a new draft High Seas Sanction Regulation. Since this draft is a subsidiary legislation to the draft Aquatic Living Resources Bill it will not come into force before the adoption of the latter. In addition, the draft High Seas Sanction Regulation foresees merely administrative sanctions. It foresees in its scope the imposition of fines; however, it does not regulate clearly the amount of such fines. The sanctioning procedure does not foresee clear deadlines for carrying out the examination of alleged infringements. There is no clear cut division of responsibilities among the competent Belizean authorities in the implementation of the proposed sanctioning scheme. The lack of a clear definition of the amount of the fines is an indication that Belize, if the draft is adopted, would not be able to fulfil the requirements of Article 19(2) UNFSA. The lack of the clear definition of the amount of the fines, if the draft is adopted, would be furthermore not in line with the recommendations in point 21 of the IPOA IUU which advises states to ensure that sanctions for IUU fishing by vessels are of sufficient severity to effectively prevent, deter and eliminate IUU fishing and to deprive offenders of the benefits accruing from such fishing. Furthermore, the draft High Seas Sanction Regulation does not create a catalogue of sanctions for IUU activities that might be committed by Belizean flagged vessels in the third countries waters.
- (47) Consequently, the actions undertaken by Belize in light of its duties as flag state are insufficient to comply with the provisions of Articles 94 and 118 UNCLOS, Articles 18, 19 and 20 UNFSA and Article III(8) of the FAO Compliance Agreement.
- (48) In view of recitals 21 to 27 of the Commission Decision of 15 November 2012 and the developments after 15 November 2012 the Commission takes the view,

pursuant to Article 31(3) and 31(4)(a) of the IUU Regulation, that Belize has failed to discharge the duties incumbent upon it under international law as a flag state in respect of IUU vessels and IUU fishing carried out or supported by fishing vessels flying its flag or by its nationals and has not taken sufficient action to counter documented and recurring IUU fishing by vessels previously flying its flag.

3.2. Failure to cooperate and to enforce (Article 31(5)(b), (c) and (d) of the IUU Regulation)

- (49) As described in the recitals (31) to (36) of the Commission Decision of 15 November 2012 the Commission analysed whether Belize has taken effective enforcement measures in respect to operators responsible for IUU fishing and whether sanctions of sufficient severity to deprive the offenders of the benefits accruing from IUU fishing have been applied.
- (50) As described in the recital (33) of the Commission Decision of 15 November 2012 Belize did not ensure that sanctions for IUU fishing by vessels and, to the greatest extent possible, nationals under its jurisdiction are of sufficient severity to effectively prevent, deter and eliminate IUU fishing and to deprive offenders of the benefits accruing from such fishing.
- (51) As explained in the recitals (45) to (46) of the present Decision, following the adoption of the Commission Decision of 15 November 2012, Belize has not put in place a deterrent sanctioning system. The current catalogue of sanctions is not in line with Article 19(2) UNFSA which stipulates, inter alia, that sanctions should be adequate in severity and deprive offenders of the benefits accruing from their illegal activities.
- (52) Available evidence still confirms that Belize has not fulfilled its obligations under international law with respect to effective enforcement measures. In this respect, as explained in the recitals (35) to (40) of the present Decision, eight IUU vessels in the RFMOs IUU lists carried the flag of Belize after their inclusion in these lists. The existence of such IUU vessels highlights the failure of Belize to honour its responsibilities vis-à-vis its vessels operating on the high seas as set out in Article 18(1) and (2) UNFSA.
- (53) In addition, as explained in the recital (32) of the Commission Decision of 15 November 2012, the existence of a number of IUU vessels in the RFMOs IUU lists that carried the flag of Belize after their

⁽⁵⁾ Registration of Merchant Ships Disciplinary Regulations (RMSDR), 1999 (<http://www.immarbe.com/IMMARBELIB/S.I.Number-56-of-1999%20.pdf>).

inclusion in these lists constitutes corroborating evidence of the lack of Belize to exercise its full jurisdiction over its fishing vessels. At the present stage, following the Commission Decision of 15 November 2012, the number of the IUU vessels in the RFMOs IUU lists that carried the flag of Belize after their inclusion in these lists increased to eight. Thus, Belize failed to demonstrate that it fulfils the conditions of Article 94(2)(b) UNCLOS which stipulates that a flag state assumes jurisdiction under its internal law over each ship flying its flag and its master, officers and crew.

- (54) As highlighted in the recital (35) of the Commission Decision of 15 November 2012, the level of development of Belize cannot be considered as a factor undermining the capacity of the competent authorities to cooperate with other countries and pursue enforcement actions. The evaluation of the specific constraints on the development is further described in the recitals (70) to (72) of the present Decision.
- (55) With respect to the history, nature, circumstances, extent and gravity of the manifestations of IUU fishing considered, the Commission has taken into account the recurrent and repetitive IUU fishing activities of Belizean-flagged vessels until 2013. The Commission has taken into account also the developments following the Commission Decision of 15 November 2012.
- (56) Consequently, the actions undertaken by Belize in light of its duties as flag state are insufficient to comply with the provisions of Articles 94(2)(b) UNCLOS and Article 18 and 19 of the UNSFA.
- (57) In view of the recitals (31) to (36) of the Commission Decision of 15 November 2012 and the developments after 15 November 2012 the Commission takes the view, pursuant to Article 31(3) and 31(5)(b), (c) and (d) of the IUU Regulation, that Belize has failed to discharge the duties incumbent upon it under international law as flag state in respect of cooperation and enforcement efforts.

3.3. Failure to implement international rules (Article 31(6) of the IUU Regulation)

- (58) As described in the recitals (39) to (63) of the Commission Decision of 15 November 2012 the Commission analysed any information deemed relevant with respect to the status of Belize as Contracting Party of IOTC and ICCAT and as Cooperating non-Member of WCPFC. Since Belize has been a Cooperating non-Party of the North East Atlantic Fisheries Commission (NEAFC) until the end of 2011 the Commission has also analysed the information deemed relevant as regards that RFMO. In addition, the Commission carried out an analysis of the information deemed relevant with respect to the

status of Belize as Contracting Party of IOTC and ICCAT following the Commission Decision of 15 November 2012.

- (59) It is recalled that since the Commission Decision of 15 November 2012 ICCAT issued a letter of Concern in 2013 ⁽⁶⁾ to Belize. The ICCAT Secretariat expressed its concern on the following issues: on the need for further investigation on possible unreported or unauthorised transshipments of ICCAT species taken as by-catch; on the functionality of the new VMS system put in place by Belize; and on the need for further information on quota management for South Swordfish. In this respect, the ICCAT Secretariat highlighted that it will recommend appropriate actions to address data deficiencies and failure to submit information required to fully implement the ICCAT Recommendations on those issues.
- (60) The Commission also analysed information available from ICCAT on the compliance of Belize with ICCAT rules and reporting obligations. For this, the Commission used the ICCAT 2012 Compliance Summary Tables ⁽⁷⁾. According to the information available, Belize was identified for the shortcomings regarding the transshipments at sea outside of the transshipment observer programme as well as for shortcomings related to VMS transmissions. Furthermore, Belize has not yet finalised the plan for improving data collection for sharks on a species specific level.
- (61) According to information derived from the IOTC Compliance Report from 2013 ⁽⁸⁾, Belize is still not compliant or only partially compliant for the year 2012 as regards several Resolutions adopted by IOTC. In particular, as regards IOTC Resolution 12/13 for longliners on legal and administrative measures to implement the area closure, Belize has not provided information on the 2012/2013 closure period. As regards IOTC Resolution 10/08 on the list of active vessels, Belize has not provided the mandatory report of vessels in the IOTC area during 2012. Regarding to the Resolution 07/02 on list of authorised vessels of 24 m in length overall or more, Belize is partially compliant, since some mandatory information, such as: operating port, gear type and some vessels with invalid authorisation is missing. As regards IOTC Resolution 06/03 on the adoption of a Vessel Monitoring System (VMS), Belize has not provided the mandatory VMS report on the progress and implementation as required by this Resolution. Regarding the IOTC Resolution 10/02 on the mandatory statistical requirements Belize has not reported nominal catch, catch and effort and size frequency data to the standard required by this Resolution. As regards the IOTC Resolution 05/05 on

⁽⁶⁾ ICCAT letter, 11 February 2013, ICCAT Circular No 605, 11.2.2013.

⁽⁷⁾ ICCAT, Compliance Summary Tables, ICCAT Report 2012-2013, Appendix 3 to ANNEX 10.

⁽⁸⁾ IOTC Compliance Report for Belize, Compliance Committee Session, 10, 2013, CoC10-CR02.

the submission of data regarding sharks, Belize is only partly compliant, since no size data has been provided. As regards the Resolution 12/05 on transshipments carried out at sea, Belize has not provided the mandatory report. As regards the Resolution 11/04 on the observers, Belize has not implemented the observer programme as required by this Resolution. In particular, Belize has not established the observer scheme for the mandatory 5 % at sea for the vessels longer than 24 m and is not in compliance with the observer reporting obligation. As regards the IOTC Resolution 01/06 concerning the statistical document programme Belize has not provided information on institution and personal authorised to validate statistical documents of Bigeye tuna.

(62) The performance of Belize with respect to ICCAT obligations as explained in recitals (59) and (60) of the present Decision as well as its failure to provide to IOTC the information referred to in the recital (61) of the present Decision indicates the failure of Belize to fulfil its obligations as flag state laid down in UNCLOS and UNFSA. In particular, the failure to provide timely information on statistics, VMS, catch and effort, transshipment at sea, observers programme undermines the ability of Belize to fulfil its obligations under Articles 117 and 118 UNCLOS which stipulate the duties of State to adopt measure for their respective nationals for the conservation of living resources of the high seas and to cooperate on conservation and management measures for living resources in the areas of the high seas.

(63) As described in the recital (46) of the Commission Decision of 15 November 2012, a number of elements were revealed during the mission to Belize in November 2010, in particular as regards the operational abilities of VMS and the observer programme. Other elements of concern, as regards the inspection scheme and supervision of transshipment were highlighted in recital (51) of the Commission Decision of 15 November 2012 at the occasion of the IOTC Compliance Report for the year 2010. To this vein, the information submitted by Belizean authorities in relation to the creation of a reliable inspection scheme, observer programme, unloading reports, supervision of transshipment and monitoring of landing catches revealed that the authorities have not ensured effective and efficient control and monitoring of the Belizean flagged vessels in line with international obligations. In particular, Belize was invited to develop and implement a national monitoring, control and surveillance scheme, logbook and catch reporting system, landing declaration scheme, inspection and control of landing scheme, designated port scheme and an observer programme. The Belizean authorities submitted information on the national observer programme and the major features of the new vessel monitoring and e-log system. However, these documents depict only a preparatory stage of the process and do not contain a detailed timetable for the entry into force and proper implementation. The draft High Seas fishing inspection schedule in ports presented by Belize on 5 March 2013 is in a preparatory phase and

requires extensive further development before making any impact in practice. The national observer programme is still under development. The current inspection scheme does not ensure a proper coverage of Belizean flagged fleet operating in the High Seas because of inadequate means of inspection. In this respect it is recalled that Belize has serious problems in reporting data to various RFMOs which undermines the capacity of the country to exercise its obligations as flag state.

(64) As described in the recitals 41, 42, 51 and 52 of the Commission Decision of November 2012 and recital 62 of the present Decision, Belize failed to fulfil its recording and reporting obligations. Following the Commission Decision of 15 November 2012, Belize submitted that the issue of recording was not of a substantial nature, without disputing, however, the existence of the RFMOs, compliance findings. In this respect, it is noted that there are discrepancies between the official RFMOs, documentation and the statements by Belize. In particular, the Commission found that the Belizean electronic catch reporting system is only under development and requires further testing. Indeed, the information provided by Belize did not reveal any change in the compliance of this country with the RFMOs' compliance schemes indicated in the Commission Decision of 15 November 2012. Belize has not supported its statements by relevant documentation that would allow the Commission to disregard the existing RFMOs, compliance reports which, as stated already in this section, are still extremely critical on the performance of Belize to implement international rules. No progress has been made in this respect since the Commission Decision on 15 November 2012.

(65) In relation to the Vessel Monitoring System (VMS), as described in the recitals 48 and 52 of the Commission Decision of 15 November 2012 and the recital (63) of the present Decision, the Commission recalls various problems highlighted by several WCPFC, IOTC and ICCAT. Following the Commission Decision of 15 November 2012, Belize stated that it is in the process of upgrading its VMS. However, the new fish information system and e-log system is only under development and not yet operational. Moreover, Belize does not have an operational Fishing Monitoring Centre (FMC). As for the compliance with the RFMOs, VMS requirements, there are discrepancies between the official RFMOs, documentation and Belize's statements. Belize contested the findings of the RFMOs. However, information provided by Belize did not reveal any change in the performance of this country under RFMOs, compliance scheme. Belize has not supported its statement by relevant documentation that would allow the Commission to disregard the existing RFMOs compliance reports. Therefore, Belize does not fulfil the conditions stipulated in the Article 18(3)(g) UNFSA in the view of the information gathered on the monitoring, control and surveillance abilities of the Belizean authorities, in particular on the its operational ability and functionality.

(66) The elements mentioned in Section 3.3 of the present Decision demonstrate that the performance of Belize is in breach of the requirements of Article 18(3) UNFSA.

(67) As highlighted in the recital (63) of the Commission Decision of 15 November 2012, Belize keeps an International Merchant Marine Registry (IMMARBE) responsible for vessel registration which does not ensure that vessels flying the flag of Belize have a genuine link with the country. Belize submitted that it is exercising control of its fishing fleet irrespectively of the fact that IMMARBE is managed by a private entity. From publicly available information it was revealed that the Government of Belize, as of June 2013⁽⁹⁾, assumed operation control the IMMARBE. Although the nationalisation of the IMMARBE has been decided by Belize as of 13 July 2013, the Commission has not received any submission from Belize that would provide additional elements proving that the genuine link between Belize and the ships registered under its flag exist. Such situation is still not in line with the obligations set in Article 91 UNCLOS.

(68) Consequently, the actions undertaken by Belize in light of its duties as flag state are insufficient to comply with the provisions of Articles 91, 117, 118 UNCLOS and Article 18(3) of the UNSFA.

(69) In view of the recitals (39) to (63) of the Commission Decision of 15 November 2012 and the developments after 15 November 2012 the Commission takes the view, pursuant to Article 31(3) and (6) of the IUU Regulation, that Belize has failed to discharge the duties incumbent upon it under international law with respect to international rules, regulations and conservation and management measures.

3.4. Specific constraints of developing countries

(70) It is recalled that, according to the United Nations Human Development Index⁽¹⁰⁾, Belize is considered as a medium human development country (96th in 186 countries) and according to Regulation (EC) No 1905/2006, Belize is listed in the category of lower middle income countries.

(71) As described in the recital (66) of the Commission Decision of 15 November 2012 no corroborating evidence has been found to suggest that the failure of Belize to discharge the duties incumbent upon it under international law is the result of lacking development. After 15 November 2012 no additional concrete evidence has been presented to reveal that the identified shortcomings are a consequence of the lack of capacity and administrative infrastructure.

(72) In view of the recitals (65) to (66) of the Commission Decision of 15 November 2012 and the developments after 15 November 2012 the Commission takes the view, pursuant to Article 31(7) of the IUU Regulation, that the development status and overall performance of Belize with respect to fisheries are not impaired by its level of development.

4. PROCEDURE WITH RESPECT TO THE KINGDOM OF CAMBODIA

(73) On 15 November 2012, the Commission notified the Kingdom of Cambodia (Cambodia) with a Commission Decision pursuant to the provisions of Article 32 of the IUU Regulation that it considered the possibility of identifying Cambodia as a non-cooperating third country⁽¹¹⁾.

(74) The Commission invited Cambodia to establish in close cooperation with its services an action plan to rectify the shortcomings identified in the Commission Decision.

(75) The Commission identified in the suggested action plan several failures to implement international law obligations, linked in particular to the adoption of an adequate legal framework, lack of an adequate and efficient monitoring, control and inspection scheme, lack of a deterrent sanctioning system, and of a proper implementation of the catch certification scheme. The identified shortcomings relate, more generally to the compliance with international obligations and conditions for registration of vessels according to international law. Lack of compliance with recommendations and resolutions from relevant bodies such as the International Plan of Action against Illegal, Unreported and Unregulated fishing of the United Nations (IPOA-UN) has also been identified. However, the lack of compliance with non-binding recommendations and resolutions has been considered only as supporting evidence and not as a basis for the identification.

(76) On 22 November 2012, the Commission met with the Cambodian authorities in Brussels to clarify the state of play and future steps following the Commission Decision of 15 November 2012.

(77) Cambodia replied to the letter of 15 November 2012 on 7 February 2013 containing a list of measures taken in the fight against IUU fishing. Cambodia stated that it has finalised the Strategic Planning Framework for Fisheries 2010-2019, including the Cambodian Code of Conduct for Responsible Fisheries, a core document for control and development of maritime fisheries resources and for elimination of illegal fishing, the Fishing Vessel Logbook for maritime fishing and the Proclamation on

⁽⁹⁾ <http://amandala.com.bz/news/gob-assumes-control-ibc-immarbe/>

⁽¹⁰⁾ For any reference to UN Human Development Index, see ranking of countries mentioned in the present Decision updated in line with the last available UN report (http://hdr.undp.org/en/media/HDR2013_EN_Summary.pdf).

⁽¹¹⁾ Letter to the Minister of Agriculture, Forestry and Fisheries of the Kingdom of Cambodia of 15.11.2012.

technical Requirements of Fishing Vessels Management. Cambodia also stated that it has strengthened and expanded the monitoring, control and surveillance system and it has collaborated with Member States of Regional Plan of Action (RPOA) on implementation of RPOA-IUU Fishing. In the letter of 7 February 2013, Cambodia stated that it needed more time to fully meet its commitments due to its shortage of human and financial resources.

- (78) The Commission made several attempts to contact Cambodia in order to advance the discussions on the suggested action plan. A second letter was sent by the Commission on 29 April 2013 recalling the request made by the Commission on 15 November 2012 and asking for documents in support of actions already taken by Cambodia.
- (79) A video conference was organised on 24 May 2013 with the representatives of Cambodia. During the video-conference the representatives of Cambodia made the following verbal representations: the vessel registration system was changed in 2003 when the register moved from a Singapore-based private entity to a Korean-based private entity. Cambodia highlighted its commitment to respect all international and national regulations. The tool used by Cambodia to combat IUU fishing would be the deregistration of a vessel presumed to be involved in IUU fishing. Several IUU vessels would have been deregistered. Also, if a vessel is on an IUU list, it cannot be registered by Cambodia. Cambodia stated that it did not register new fishing vessels as of 2010.
- (80) During the video-conference of 24 May 2013, the Commission highlighted the findings in the Commission Decision of 15 November 2012, reminded the Cambodian authorities of the urgency of addressing the established shortcomings and submitting documents in support of the verbal and written representations made by Cambodia and explained the possible implications in case of failure in addressing the established shortcomings.
- (81) With a letter of 14 June 2013, Cambodia provided additional elements on its current policies against IUU fishing and a Plan of Action against IUU fishing applied by its Flag State Administration, the International Ship Registry of Cambodia. These were in line with the verbal representations made during the video-conference of 24 May 2013. Cambodia provided also a list of fishing vessels and fish carrier/refrigerated cargo under the Cambodian flag as of May 2013.
- (82) Cambodia did not provide indications as to when the current policies against IUU fishing and the commitments under the Plan of Action on IUU fishing will be transposed into binding legal rules and will be materialised and implemented by the Cambodian authorities.
- (83) The Commission did not receive any more detailed information on the actions undertaken by Cambodia to fight IUU fishing.

(84) The Commission continued to seek and verify all information it deemed necessary. The oral and written comments submitted by Cambodia following the Commission Decision of 15 November 2012 were considered and taken into account while Cambodia was kept informed either orally or in writing on the Commission's considerations.

(85) In the light of the elements gathered, as shown in the following section, the Commission believes that the areas of concern and shortcomings as described in the Commission Decision of 15 November 2012 have not been addressed by Cambodia. Moreover, the measures suggested in the accompanying action plan have not been fully implemented either.

5. IDENTIFICATION OF CAMBODIA AS A NON-COOPERATING THIRD COUNTRY

(86) Pursuant to Article 31(3) of the IUU Regulation, the Commission hereby reviews the compliance of Cambodia with its international obligations as flag, port, coastal or market State in line with the findings in the Commission Decision of 15 November 2012 and with the proposed plan of action, as further elaborated with the relevant information provided by Cambodia. For the purpose of this review, the Commission took into account the parameters listed in Article 31(4) to (7) of the IUU Regulation.

5.1. Recurrence of IUU Vessels and IUU trade flows (Article 31(4)(a) of the IUU Regulation)

(87) As highlighted in the recitals (75) and (76) of the Commission Decision of 15 November 2012, the Commission established on the basis of information retrieved from RFMOs and its own work that a number of vessels were sighted fishing illegally while flying the flag of Cambodia.

(88) As highlighted in the recital (75) of the Commission Decision of 15 November 2012, the Commission established on the basis of information retrieved from RFMO IUU vessel lists that several incidents of IUU activities of vessels flying the Cambodian flag or having a Cambodian fishing licence have occurred. The fishing vessel *Draco-1* (current name⁽¹²⁾: Shaanxi Henan 33; the name in November 2012 as mentioned in the recital (75) of the Commission Decision of 15 November 2012: Xiong Nu Baru 33 was sighted fishing illegally in the CCAMLR area in January 2010⁽¹³⁾ and in April 2010⁽¹⁴⁾ while flying the flag of Cambodia. In addition, the fishing vessel *Trosky* (current name⁽¹⁵⁾: Huiquan; the name in November 2012 as mentioned in the recital (75) of the

⁽¹²⁾ <http://iuu-vessels.org/iuu/iuu/vessel?uid=63>

⁽¹³⁾ CCAMLR Document COM CIRC 10/11 dated 2 February 2010.

⁽¹⁴⁾ CCAMLR Document COM CIRC 10/45 dated 20 April 2010.

⁽¹⁵⁾ <http://iuu-vessels.org/iuu/iuu/vessel?uid=102>

Commission Decision of 15 November 2012: Yangzi Hua 44 was sighted fishing illegally in the CCAMLR area in April 2010 ⁽¹⁶⁾ while flying the flag of Cambodia.

- (89) As highlighted in Section 5.1 of the Commission Decision of 15 November 2012, the existence of a number of IUU vessels in the RFMOs IUU list that carried the flag of Cambodia after their inclusion of these lists is a clear indication that Cambodia has failed to undertake its flag State responsibilities under international law.
- (90) Also, as described in the recital (76) of the Commission Decision of 15 November 2012, the Commission has gathered evidence of Cambodian non-compliance with conservation and management measures, required by the international law. Namely, the Commission has gathered factual evidence, through Union catch certificates, of repetitive infringements by a Cambodian vessel of ICCAT conservation and management measures that lead to their being classified as IUU fishing activities. Those infringements referred to a Cambodian carrier vessel that received fish at sea from purse-seiners. In accordance with ICCAT Recommendation 06-11, purse-seiners are not allowed to tranship tuna species at sea within the ICCAT area. In addition, the Cambodian carrier vessel was not registered under the ICCAT Registry of carrier vessels entitled to operate within the ICCAT area as provided for in Section 3 of ICCAT Recommendation 06-11. No actions on this matter were taken by the Cambodian authorities. The performance of Cambodia is in contravention of the requirements of Article 94(1) and (2) UNCLOS stipulating that every State shall effectively exercise its jurisdiction and control over ships flying its flag. Cambodia did not ensure adequate sanctions, discourage repetition of violations and deprive offenders of the benefits accruing from their illegal activity which is not in line with the recommendation in point 21 of IPOA IUU.
- (91) Against a background of the above verified IUU fishing by Cambodian flagged vessels, and despite the requests in that sense in the action plan, no documentation whatsoever was presented by Cambodia in support of actions undertaken on the presumed illegal fishing activities that would demonstrate the existence of adequate sanctions, discouraging repetition of violations and depriving offenders of the benefits accruing from their illegal activities. Cambodia only submitted that its policy towards IUU fishing is the cancellation of ship registration and revocation of any licence, certificate, permit or document issued to the vessel under its flag. Cambodia also lacks an adequate administrative system for investigations, and monitoring of its vessels. No progress has been made in this respect since the Commission Decision of 15 November 2012.
- (92) In relation to the revision of the legal framework in order to ensure conservation and management of living resources in the High Seas, Cambodia stated that it finalised a Strategic Planning Framework for Fisheries 2010-2019, including Cambodian Code of Conduct for Responsible fisheries. However, Cambodian submission did not confirm that any concrete measures were put in place in order to address and remedy the shortcomings highlighted in the Commission Decision of 15 November 2012. The documents submitted by Cambodia were of general nature and did not contain a concrete plan of action aiming to ensure conservation and management of living resources in the High Seas. They consisted of general principles and referred exclusively to fisheries in Cambodia (inland and marine coastal waters). Also, a description of the fisheries sector in Cambodia was included as well as the mandate of the Fisheries Administration, which is very general and does not enter into specific fisheries management. The Cambodian submission included an analysis that confirmed the weaknesses of limited governance, legal and regulatory environment in some area, lack of demarcation and weak enforcement, limited skills, standards and guidance material. In addition, despite the Commission's requests, Cambodia did not submit any documentation showing the intention to amend the legal framework further to the adoption of the above stated Strategic Planning Framework and Code of Conduct for Responsible Fisheries.
- (93) In relation to the legal framework pertaining to registration of fishing vessels, no documentation was submitted by Cambodia. Cambodia stated that has finalised a proclamation on Technical Order of Fishing Vessel Management which relates to safety at sea issues.
- (94) No documentation was submitted by Cambodia in relation to the revision of the legal framework in order to put in force a deterrent sanction system.
- (95) Cambodia did not submit the information on the points highlighted in the action plan in relation to the revision of the legal framework necessary to allow the authorities to require information and to investigate into the activities of the operators, registered owners and beneficial owners of the fishing vessels flying the flag of Cambodia.
- (96) The performance of Cambodia in the matters explained in this section of the present Decision pertaining to actions aiming at addressing recurrent IUU fishing activities are not in line with the basic responsibilities of flag States as set out under Article 94(2)(b) UNCLOS stipulating that flag States shall assume responsibility under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship. The submissions of Cambodia do not allow the Commission to consider that any demonstrable improvement has been made by Cambodia to its legal framework since the adoption of the Decision of 15 November 2012.

⁽¹⁶⁾ See footnote 14.

- (97) Consequently, the actions undertaken by Cambodia in light of its duties as flag State are insufficient to comply with the provisions of Article 94 UNCLOS. It is recalled that it is immaterial whether Cambodia has actually ratified UNCLOS since the provisions of UNCLOS on the navigation in the High Seas (Articles 86 to 115 UNCLOS) have been recognised as customary international law. These provisions indeed codify pre-existing rules of customary international law and take over almost literally the wording of the Convention on the High Seas and the Convention on the Territorial Sea and the Contiguous Zone, which Cambodia has respectively ratified and acceded to.
- (98) In view of the recitals (76) to (79) of the Commission Decision of 15 November 2012 and the developments after 15 November 2012 the Commission takes the view, pursuant to Article 31(3) and 31(4)(a) of the IUU Regulation, that Cambodia has failed to discharge the duties incumbent upon it under international law as a flag State in respect of IUU vessels and IUU fishing carried out or supported by fishing vessels flying its flag or by its nationals and has not taken sufficient action to counter documented and recurring IUU fishing by vessels previously flying its flag.
- 5.2. Failure to cooperate and to enforce (Article 31(5)(b), (c) and (d) of the IUU Regulation)**
- (99) As described in the recitals (83) to (86) of the Commission Decision of 15 November 2012, the Commission analysed whether Cambodia has taken effective enforcement measures in respect to operators responsible for IUU fishing and whether sanctions of sufficient severity to deprive the offenders of the benefits accruing from IUU fishing have been applied.
- (100) As described in the recital (84) of the Commission Decision of 15 November 2012, Cambodia did not ensure that sanctions for IUU fishing by vessels and, to the greatest extent possible, nationals under their jurisdiction are of sufficient severity to effectively prevent, deter and eliminate IUU fishing and to deprive offenders of the benefits accruing from such fishing.
- (101) Cambodia made verbal representations on the video-conference of 24 May 2013 that it deregistered vessels presumed to have carried out IUU fishing activities. In the letter of 14 June 2013, Cambodia stated that where a vessel is found to be engaged in illegal fishing, including being IUU RFMO list, immediate and decisive disciplinary actions should be taken by the International Ship Registry of Cambodia, including cancellation of the ship's registration and revocation of any licence, certificate, permit or document issued to the vessel under the flag of Cambodia. The Commission considers that the simple deregistration of a vessel without any additional fine or other sanction as a measure of inadequate severity. A simple deregistration does not effectively deprive the offender of the benefits accruing from its illegal activities. In addition, it does not hinder the offender to reflag such vessel to a flag of convenience. Furthermore, despite the Commission's requests, no documentation was submitted by Cambodia in support of these verbal and written representations. No progress has been made in this respect since the Commission Decision of 15 November 2012.
- (102) As explained in the recitals (91) to (95) of the present Decision, following the adoption of the Commission Decision of 15 November 2012, Cambodia has not put in place a deterrent sanctioning system. No progress has been made in this respect since the Commission Decision of 15 November 2012.
- (103) As highlighted in the recital (86) of the Commission Decision of 15 November 2012 Cambodia has capacity problems to cooperate with other countries and pursue enforcement actions which are linked with lack of legal and administrative environment and empowerment for the authorities to perform their duties. No progress has been made in this respect since the Commission Decision of 15 November 2012.
- (104) In relation to the training of Cambodian observers and landing officers, no documentation was submitted by Cambodia. No progress has been made in this respect since the Commission Decision of 15 November 2012.
- (105) The performance of Cambodia in the matters explained in this section of the present Decision pertaining to actions aiming at cooperation and enforcement are not in line with the basic responsibilities of flag States as set out under Article 94(1) and (2) UNCLOS stipulating that every State shall effectively exercise its jurisdiction and control over ships flying its flag as it highlights the failure of Cambodia to honour its responsibilities vis-à-vis its vessels operating on the high seas.
- (106) With respect to the history, nature, circumstances, extent and gravity of the manifestations of IUU fishing considered, the Commission has taken into account the recurrent and repetitive IUU fishing activities of Cambodian-flagged vessels until 2013. The Commission has taken into account also the developments following the Commission Decision of 15 November 2012.
- (107) Consequently, the actions undertaken by Cambodia in light of its duties as flag State are insufficient to comply with the provisions of Article 94 UNCLOS.
- (108) In view of the recitals (83) to (86) of the Commission Decision of 15 November 2012, and the developments after 15 November 2012 the Commission takes the view,

pursuant to Article 31(3) and 31(5)(b), (c) and (d) of the IUU Regulation, that Cambodia has failed to discharge the duties incumbent upon it under international law as flag State in respect of cooperation and enforcement efforts.

5.3. Failure to implement international rules (Article 31(6) of the IUU Regulation)

(109) As described in the recitals (89) to (96) of the Commission Decision of 15 November 2012, the Commission analysed information deemed relevant from available data published by RFMOs, in particular ICCAT and the Commission for the Conservation of the Antarctic Marine Living Resources (CCAMLR). In addition, the Commission carried out an analysis on the information deemed relevant with respect to the status of Cambodia as a non-contracting Party of ICCAT and CCAMLR following the Commission Decision of 15 November 2012.

(110) It is recalled that since the Commission Decision of 15 November 2012 ICCAT agreed in the ICCAT Report for the biennial period 2012-2013⁽¹⁷⁾ that the identification of Cambodia should be maintained as no reply to the ICCAT Commission's letters has been received. In the absence of a reply from Cambodia providing the requested information relating to conservation and management measures compliance, ICCAT decided to maintain Cambodia's identification in 2013. Indeed, the ICCAT Committee reviewed the available information to assess the cooperation of Non-Contracting Parties and further to the letter of identification sent to Cambodia by the Commission, no correspondence has been received by the Secretariat. In this respect, it was decided to maintain the identification of Cambodia until further information is received. This situation is a confirmation of the failure of Cambodia to fulfil any type of flag State obligations relating to management and conservation measures provided for by UNCLOS.

(111) According to information derived from the CCAMLR⁽¹⁸⁾ related to catch documentation scheme, Cambodia as a non-contracting not cooperating with CCAMLR may have been involved in the harvest and/or trade of toothfish in 2012. During 2012 CCAMLR formally approached Cambodia to seek its cooperation and to provide data regarding the trade of toothfish. However, since then no information has been provided. This situation is a confirmation of the failure of Cambodia to fulfil any type of flag State obligations relating to management and conservation measures provided for by UNCLOS.

⁽¹⁷⁾ ICCAT Report for Biennial Period 2012–13, Part I (2012), Vol. 1 describes the activities of the Commission during the first half of said biennial period and contains the Report of the 18th Special Meeting of the Commission (Agadir, Morocco, November 12–19, 2012). Report retrieved from http://www.iccat.es/Documents/BienRep/REP_EN_12-13_I_1.pdf

⁽¹⁸⁾ CCAMLR Report of the 31st Meeting of the Commission, Australia, 23 October-1 November 2012. Relevant information retrieved from CCAMLR website (<http://www.ccamlr.org/en/system/files/e-cc-xxxi.pdf>).

(112) In relation to the creation of a reliable inspection scheme, observer programme, unloading reports, supervision of transshipment and monitoring of landing catches, despite the requests in the action plan, no documentation was submitted by Cambodia. Cambodia stated that it has finalised the Fishing Vessel Logbook for maritime fishing, as well as it has strengthened and expanded the monitoring, control and surveillance system 'MCS system' without further precisions. Cambodia submitted only the template of the Fishing Vessel Logbook. No other relevant documentation was submitted to the Commission. No progress has been made in this respect since the Commission Decision of 15 November 2012.

(113) In relation to the reporting and recording obligations, no documentation was submitted by Cambodia despite the requests in the action plan. No progress has been made in this respect since the Commission Decision of 15 November 2012.

(114) In relation to the Vessel Monitoring System (VMS), Cambodia stated the fish carriers under the flag of Cambodia would be, in principle, equipped with system on board as necessary, including VMS. No documentation was submitted by Cambodia in support of this written representation despite the requests in the action plan. No progress has been made in this respect since the Commission Decision of 15 November 2012.

(115) By acting in the way described in recitals 112 to 114, Cambodia failed to demonstrate that it fulfils the conditions of Article 94(2)(b) UNCLOS which stipulates that a flag State assumes jurisdiction under its internal law over each ship flying its flag and its masters, officers and crew in respect of administrative, technical and social matters of the ship.

(116) As highlighted in the recital (96) of the Commission Decision of 15 November 2012, Cambodia keeps an International Ship Registry responsible for vessel registration, that has functions as the Flag State Administration of Cambodia, as stated in Cambodia's submission of 14 June 2013. The International Ship Registry of Cambodia is located outside Cambodia and it does not ensure that vessels flying its flag have a genuine link with the country. No documentation was submitted by Cambodia showing a change in the fishing vessel registration system, apart from a verbal and written representation that new registration of fishing vessel under the flag of Cambodia is prohibited from 2010. The letter of 14 June 2013 indicates that Cambodia has 6 fishing vessels and 78 fish carrier/reefers carrier/refrigerated cargo vessels in its vessel register in May 2013. Publicly available information⁽¹⁹⁾ would show, however, that 150 fishing vessels are registered under the Cambodian flag. This fleet represents a significant fishing capacity not submitted to an effective monitoring system, which cannot permit Cambodia to fully ensure its flag State responsibilities. The Commission has not

⁽¹⁹⁾ <http://www.world-register.org/>

received any submission from Cambodia that would provide additional elements proving that the genuine link between Cambodia and the ships registered under its flag exist. Such situation is still not in line with the obligations set in Article 91 UNCLOS.

- (117) Consequently, the actions undertaken by Cambodia in light of its duties as flag State are insufficient to comply with the provisions of Articles 91 and 94 UNCLOS.
- (118) In view of the recitals (83) to (86) of the Commission Decision of 15 November 2012 and the developments after 15 November 2012, the Commission takes the view, pursuant to Article 31(3) and (6) of the IUU Regulation, that Cambodia has failed to discharge the duties incumbent upon it under international law with respect to international rules, regulations as well as conservation and management measures.

5.4. Specific constraints of developing countries

- (119) As described in the recital (99) of the Commission Decision of 15 November 2012, Cambodia is considered as a medium human development country (138th in 186 countries)⁽²⁰⁾ and according to Regulation (EC) No 1905/2006, Cambodia is listed in the category of least developed countries.
- (120) As described in the recital (100) of the Commission Decision of 15 November 2012 no corroborating evidence has been found to suggest that the failure of Cambodia to discharge the duties incumbent upon it under international law is the result of lacking development. With the letter of 7 February 2013, Cambodia stated that it needs more time to fully meet EU-required obligations due to its shortage of human and financial resources. No additional concrete evidence has been presented to reveal that the identified shortcomings are a consequence of the lack of capacities and infrastructure.
- (121) In view of the recitals (99) to (100) of the Commission Decision of 15 November 2012 and the developments after 15 November 2012, the Commission takes the view, pursuant to Article 31(7) of the IUU Regulation, that the development status and overall performance of Cambodia with respect to fisheries are not impaired by its level of development.

6. PROCEDURE WITH RESPECT TO REPUBLIC OF GUINEA

- (122) On 15 November 2012, the Commission notified the Republic of Guinea (Guinea) with a Commission Decision pursuant to the provisions of Article 32 of

the IUU Regulation that it considered the possibility of identifying Guinea as a non-cooperating third country⁽²¹⁾.

- (123) The Commission invited Guinea to establish in close cooperation with its services an action plan to rectify the shortcomings identified in the Commission Decision.
- (124) The main shortcomings identified by the Commission in the suggested action plan were related to outstanding reforms necessary in order to ensure a sufficiently adequate and efficient monitoring of its fishing fleet, an effective implementation of national law and regulations on fisheries, enforcement of the rules by pursuing and sanctioning the IUU fishing activities detected, reinforcement of the means for inspection and surveillance, deterrent sanctioning system, fisheries policy consistent with administrative capacity in terms of control and surveillance. The identified shortcomings relate, more generally to the compliance with international obligations including RFMOs recommendations and resolutions and conditions for registration of vessels according to international law. However, the lack of compliance with non-binding recommendations and resolutions has been considered only as supporting evidence and not as a basis for the identification.
- (125) On 6 December 2012, the Commission held a meeting with the Guinean authorities in Brussels. The Commission replied to the questions of the Guinean authorities and commented the issues raised in the Commission Decision and the actions suggested in the action plan.
- (126) On 7 December 2012, Guinea submitted documents on a decision taken by the Minister of Fisheries and Aquaculture to dismiss a Guinean official linked with the delivery of forged Guinean licences to foreign vessels operating in the Guinean Exclusive Economic Zone (EEZ).
- (127) On 10 December 2012, Guinea provided an additional submission accepting to initiate the discussions with the Commission and requested the possibility to extend the deadline to reply to the notification of the Commission until 17 January 2013. Guinea submitted the following documents: (i) letter from the Minister of Economy and Finances; (ii) letter from the Minister of Fisheries and Aquaculture, with in annex a proposed action plan, an implementation budget and an implementation timetable.
- (128) On 10 January 2013, in order to complement its first representations, Guinea submitted the following documents: (i) letter of the Minister of Economy and Finances; (ii) letter of the Minister of Fisheries and Aquaculture, with in annex a proposed action plan, an implementation budget and an implementation

⁽²⁰⁾ See footnote 10.

⁽²¹⁾ Letter to the Minister of Fisheries and Aquaculture of Guinea of 15.11.2012.

- timetable; (iii) letter of Minister of Fisheries and Aquaculture with in annex a memorandum on results of the investigations and actions taken related to delivery of forged Guinean licences to EU vessels operating in the Guinean Exclusive Economic Zone (EEZ).
- (129) On 22 January 2013, Guinea submitted additional information on the concrete measures envisaged to address the main issues identified: (i) decree of 18 June 2012 on the creation of a maritime prefecture; (ii) decree of 18 June 2012 on the nomination of a prefect; (iii) decree of 15 January 2013 on the creation and composition of the national boarding commission targeting non-compliant fishing vessels; (iv) documentation on the semaphore surveillance scheme; (v) report of the inter-ministerial sea committee meetings; (vi) report of a meeting of November 2012 on the national strategy for maritime security.
- (130) On 24 January 2013, the Commission accepted a meeting with the Guinean authorities in Brussels which requested a Memorandum on the main remaining issues to be addressed.
- (131) On 4 February 2013, the Commission replied to the request of Guinea by transmitting a letter to the Guinean authorities together with a Memorandum summarising the main issues to be addressed in line with the Decision of 15 November 2012 and the suggested action plan.
- (132) On 19 February 2013, the Commission met with the Guinean authorities in Brussels in order to organise the on-the-spot mission in Guinea from 26 February to 1 March 2013
- (133) The Commission conducted a mission to Guinea from 26 February to 1 March 2013 and visited all Guinean authorities concerned, in particular the Prime Minister, Minister of Economy and Finances, Minister of Fisheries and Aquaculture and Minister of Transports, Maritime Prefect and Special Adviser to the President of the Republic of Guinea, that were all kept informed on the progress of the situation in line with the Commission Decision of 15 November 2012 and the proposed action plan. In the course of this on-the-spot mission, the Guinean authorities were also in a position to make statements and provide all relevant documents to react to the Commission Decision of 15 November 2012 and to the Memorandum summarising the main issues to be addressed, transmitted on 4 February 2013.
- (134) On 26 February 2013, Guinea submitted the following documents: (i) process of development and implementation of the action plan and information on the use of funds stemming from the implementation of the fisheries agreement in 2009; (ii) list of vessels flagged permanently and temporarily to Guinea; (iii) list of foreign vessels holding a fishing licence in 2013, in application of a State agreement concluded between Guinea and a foreign country to grant access to the Guinean living resources in its EEZ or in the framework of private fishing licences delivered to foreign fishing vessels operating in the Guinean waters; (iv) replies on each point of the Memorandum communicated by the Commission on 4 February 2013; (v) list of sanctions applied to fishing vessels operating in Guinea EEZ in 2012 and 2013; (vi) scientific campaign report for 2012; (vii) detailed budget and implementation timetable for the action plan; (viii) *Arrêté* No A/2012/942 on the conditions to tranship in the Guinean waters; (ix) State agreement concluded between Guinea and the Republic of China for 2012-2013 granting access to Chinese vessels to Guinean waters under specific conditions.
- (135) On 1 March 2013, in order to keep the Guinean authorities informed of the assessment of the situation at this stage of the process, the Commission communicated on-the-spot written observations on the outstanding issues. The same document was officially sent by letter on 14 March 2013 to all relevant Guinean authorities.
- (136) On 6 March 2013, Guinea submitted a part of the documents requested during the on-the-spot mission as followed: (i) cover letter of the Director General of the *Centre National de Surveillance et de Protection des Pêches*; (ii) table on infractions and inspections conducted in 2011 and 2012; (iii) reports on infringements committed by foreign vessels in the Guinean EEZ; (iv) table on global catches and percentages of quantities for each type of fishery for 2012; (v) several observers reports.
- (137) On 1 April 2013, Guinea submitted additional elements in order to keep the Commission informed on the conditions under which EU vessels operate in the Guinean waters in 2013.
- (138) On 14 May 2013, Guinea submitted additional elements as followed: (i) replies to the written observations communicated by the Commission on 1 March 2013; (ii) a draft Decree on sanctions and accessories sanctions applicable to infringements; (iii) articles of association of a company authorised to represent foreign vessels in Guinea.
- (139) On 30 May 2013, the Commission accepted a meeting with the Guinean authorities in Brussels who provided an updated plan of action together with its level of implementation. As requested, the Commission informed Guinean authorities that a significant number of issues highlighted in the Commission Decision of 15 November 2012 had not been addressed yet and that actions suggested in the action plan had not been implemented yet.
- (140) On 16 July 2013, Guinea submitted the following documents: (i) the list of actions that Guinea envisages to take in relation to the Memorandum communicated by the Commission on 4 February 2013 together with the

description of their level of implementation; (ii) copy of administrative *Arrêté* of 13 June 2013 creating a *Comité de suivi-évaluation* of the measures planned to be taken in relation with the Commission Decision of 15 November 2012; (iii) copy of the administrative decision of 1 July 2013 on the rules to be applied in terms of VMS tracking system on board Guinean fishing vessels and fishing vessels operating in the Guinean waters; (iv) copy of the administrative decision of 1 July 2013 creating a *Comité de suivi-évaluation* of the implementation of the Guinean Fisheries Management Plan; (v) copy of a letter of 27 June 2013 sent by the Fisheries Minister and calling for consultations with operators of the fisheries sector to apply a closed period on fishing activities '(période de repos biologique)'; (vi) copy of a letter of 15 May 2013 of the Minister of Fisheries and Aquaculture to reinforce cooperation with the *Préfecture Maritime*; (vii) draft revised Decree on new sanctions to be applied.

- (141) The Commission continued seeking and verifying all information it deemed necessary. The oral and written comments submitted by Guinea following the Commission Decision of 15 November 2012 were considered and, taken into account while Guinea was kept informed either orally or in writing on the Commission's considerations.
- (142) The Commission believes that the areas of concern and shortcomings as described in the Commission Decision of 15 November 2012 have not been addressed sufficiently by Guinea. Moreover, the measures suggested in the accompanying action plan have not been fully implemented either.

7. IDENTIFICATION OF GUINEA AS A NON-COOPERATING THIRD COUNTRY

- (143) Pursuant to Article 31(3) of the IUU Regulation the Commission hereby reviews the compliance of Guinea with its international obligations as flag, port, coastal or market State in line with the findings in the Commission Decision of 15 November 2012 and with Guinea's relevant information provided thereon, with the proposed plan of action as well as with the measures taken to rectify the situation. For the purpose of this review, the Commission took into account the parameters listed in Article 31(4) to (7) of the IUU Regulation.

7.1. Recurrence of IUU Vessels and IUU trade flows (Article 31(4)(a) of the IUU Regulation)

- (144) As highlighted in the recitals (153) to (154) of the Commission Decision of 15 November 2012, the Commission established on the basis of information retrieved from several RFMOs IUU vessel lists that a number of IUU vessels in these lists carried the flag of

Guinea after their inclusion in the RFMO IUU vessel lists⁽²²⁾. Those vessels were as of 15 November 2012 Daniaa (previous name: Carlos) and Maine.

- (145) In addition, the Commission established on the basis of information retrieved from RFMO IUU vessel lists⁽²³⁾ that one IUU vessel in the relevant IUU lists (RED, previously named KABOU) carried the flag of Guinea after its inclusion in these lists⁽²⁴⁾.
- (146) The Commission established on the basis of the information retrieved from several RFMOs IUU vessels list that currently two IUU vessels in these lists carried the flag of Guinea after their inclusion in the RFMO IUU vessel list⁽²⁵⁾. Those vessels are Daniaa and Maine.
- (147) As highlighted in Section 9.1 of the Commission Decision of 15 November 2012, the Commission considers that the existence of IUU vessels in RFMOs IUU lists currently flagged to Guinea or carried the flag of Guinea after its inclusion in these lists is a clear indication that Guinea has failed to undertake its flag State responsibilities under international law.
- (148) In addition to these Guinean vessels currently listed under RFMO IUU vessels lists, as highlighted in the recitals (155), (156), (174) and (175) of the Commission Decision of 15 November 2012, the Commission established that three additional Guinean flagged purse-seiner vessels have repeatedly conducted fishing operations in 2010 and 2011 in violation of ICCAT Recommendations. The Commission established that these Guinean vessels, which represent the whole Guinean fleet of tuna fishing vessels operating in the ICCAT area, continuously conducted in 2010 and during several months in 2011 fishing operations without international fishing licences and without VMS devices on board, and carried out at least 30 illegal transshipments at sea in violation of ICCAT rules. According to information at the disposal of the Commission these operations referred to a significant amount of fish caught under illegal conditions (8 922 tonnes of tuna species in 2010) as well as to a significant quantity of fish illegally transhipped at sea (at least 14 200 tonnes in 2010 and 2011). Furthermore, the Commission received in July 2013 additional information from one Member State authority on presumed IUU fishing activities of these three purse-seiner vessels occurring during 2012. Taking into consideration the repetitiveness and continuity during a long period of time of the illegal behaviour of these tuna fishing vessels representing the

⁽²²⁾ See Part B of the Annex to Commission Regulation (EU) No 724/2011 of 25 July establishing the EU list of vessels engaged in illegal, unreported and unregulated fishing (OJ L 194, 26.7.2011, p. 15).

⁽²³⁾ The relevant RFMOs are NEAFC, NAFO and SEAFO.

⁽²⁴⁾ See Commission Implementing Regulation (EU) No 724/2011 (OJ L 194, 26.7.2011, p. 14).

⁽²⁵⁾ See Part B of the Annex to the Commission Regulation (EU) No 672/2013 of 15 July 2013 establishing the EU list of vessels engaged in illegal, unreported and unregulated fishing (OJ L 193, 16.7.2013, p. 6).

whole Guinean fleet operating under ICCAT, the Commission considered these established facts as a relevant indication that fishing vessels flying the flag of Guinea were carrying out recurrent IUU fishing. As it is clearly demonstrated in this section of the present Decision these vessels continue to operate under Guinea flag without any changes in their operational and regulatory modalities, except installation of VMS devices on board. The Commission observed that no sufficient progress has been made since the adoption of the Commission Decision of 15 November 2012 to ensure an effective control and monitoring of the activities of the Guinean fishing vessels operating in the ICCAT area.

- (149) The Commission also established that Guinea did not take adequate measures to detect continuous and repeated violations of international law and to prevent fisheries products stemming from IUU fishing from entering the EU market. In this respect it is recalled that the Union had introduced measures prohibiting entry into the EU of fisheries products because of sanitary reasons⁽²⁶⁾. The Commission established that the three additional Guinean flagged purse-seiner vessels mentioned in the recital (148) systematically obtained catch certificates in 2010 to be in a position to export these fisheries products illegally caught and transhipped to the EU market. In this context, the Commission established that, in doing so, the Guinean authorities have validated catch certificates presenting clear indications that these three vessels were carrying out illegal transshipments at sea in relation with the fishery products intended to be exported to the EU (operations of transshipments at sea were mentioned on the catch certificates with the signatures of the masters of both providing and collecting vessels, and geographical positions of the transshipments at sea).
- (150) As highlighted in the recital (161) of the Commission Decision of 15 November 2012, the existence of a number of IUU vessels in the RFMOs IUU list that carried the flag of Guinea after their inclusion of these lists demonstrates the lack of ability of Guinea to ensure that fishing vessels entitled to fly its flag do not engage in or support IUU fishing, which is not in line with the recommendation in point 34 of the IPOA IUU.
- (151) Moreover, since the Commission Decision of 15 November 2012 the number of the vessels that carried the flag of Guinea after their inclusion in the RFMO IUU vessels list has not decreased and the conditions under which the Guinean tuna fishing fleet operates in the ICCAT area have not been fundamentally corrected. The Commission established in the course of the mission in February 2013 that Guinea has installed VMS devices on board of these vessels but without being

in a position to really monitor and control their fishing and transhipment activities at sea. In this respect, the Commission established that these vessels in absence of reform of the Guinean Fisheries Code still operate without international fishing licences and that no measures have been taken to ensure that these vessels comply effectively with the ICCAT rules in terms of ban of transshipments at sea (e.g. in contradiction with ICCAT rules, there are no observers on board that would improve the capacity of Guinea to control and monitor the activities at sea of its fishing vessels operating on the high seas). In this respect, while Guinea is not in a position to control its vessels operating in the high seas and cannot ensure compliance by vessels flying its flag with regional conservation and management measures for straddling fish stocks and highly migratory fish stocks, the Commission considers that Guinea fails to fulfil its duties as flag State under Article 18 and 19 UNFSA.

- (152) In this context, the Commission considered that Guinea as the flag State has failed to exercise its responsibilities to ensure the compliance of its fishing fleet with RFMO conservation and management measures. The Commission considers that the situation described in recitals (144) to (151) of the present Decision highlights the failure of Guinea to fulfil its obligations under Article 94 and 117 UNCLOS.
- (153) In addition, pursuant to Article 18(1) and (2) UNFSA, the flag State is responsible vis-à-vis its vessels operating on the high seas. It is recalled that UNFSA regulates matters pertaining to the conservation and management of straddling fishing stocks and highly migratory fish stocks. As highlighted in the recitals (144) to (151) of the present Decision, the Guinean flagged fishing fleet operating in the ICCAT area was in 2010 and 2011 repeatedly and continuously violating rules of ICCAT which is a RFMO managing such type of fish stocks. In this context, taking into account that it was established that the whole Guinean fleet operating in ICCAT area was behaving systematically and during a long period of time in violation of ICCAT rules, the Commission considers that Guinea has failed to undertake its flag State responsibilities under international law. In addition to the above mentioned facts, the existence of one IUU Guinean vessel in the ICCAT RFMOs IUU list that carried the flag of Guinea after its inclusion in these lists also highlights the failure of Guinea to fulfil its obligations under Article 19(1) and (2) UNFSA.
- (154) Thus, the generalised non-compliance of Guinean tuna fishing vessels operating in the ICCAT area highlights the failure of Guinea to fulfil its flag State obligations. Indeed, the established IUU fishing activities carried out by the Guinean fishing fleet operating in the ICCAT area undermine conservation and management of living resources. In such a way, Guinea does not act in accordance with Article 118 UNCLOS, which states

⁽²⁶⁾ See Commission Decision of 2 February 2007 on emergency measures suspending imports from the Republic of Guinea of fishery products intended for human consumption available online (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:028:0025:0026:EN:PDF>)

that states shall cooperate with each other in the conservation and management of living resources in the areas of the high seas.

- (155) With regard to measures taken by Guinea in relation to the situation described in recitals (144) to (154) of the present Decision, the Commission found that adequate measures in respect of recurrent IUU fishing carried out by fishing vessels flying its flag could not be effectively taken by Guinea due to the shortcomings of its legal framework to ensure an effective control and monitoring of activities of its vessels operating on the high seas. It thus suggested, in the action plan, that Guinea conduct the necessary reforms so that an effective control and monitoring of its vessels operating on the high seas can be ensured. The Commission has reiterated its suggestion to initiate a reform of the Guinean legal framework in a written document transmitted to the Guinean authorities on 1 March 2013. In their submissions mentioned in Section 6 of the present Decision, Guinea announced that it intends to revise its fisheries law and regulations. However, until now, Guinea has not initiated a reform of its legal framework. No concrete timetable for the enactment of such reform has been provided. Therefore, no progress has been made in this respect since the adoption of the Commission Decision of 15 November 2012.
- (156) With regard to measures taken by Guinea in relation to the situation described in recital (148) of the present Decision, and as explained in the recital (162) of the Commission Decision of 15 November 2012, the Commission found that Guinea did not ensure adequate sanctions, discourage repetition of violations and deprive offenders of the benefits accruing from their illegal activities. It also was lacking an adequate administrative system for investigations, and monitoring of its vessels. This lack of appropriate measures had not been addressed at the moment of adopting the present Decision.
- (157) In relation to the revision of the legal framework and efficient enforcement of deterrent sanction system, Guinea adopted a new Decree on 1 March 2012 that has reinforced the level of sanctions. However, the scope of the Guinean Fisheries Code does not cover possible illegal fishing activities carried out on the high seas by fishing vessels flagged to Guinea. In this context and in light of the established recurrence and extent of IUU fishing activities conducted by the Guinean fishing vessels operating in the high seas as explained in the recital (155) of the Commission Decision of 15 November 2012, the Commission considers that this measure cannot achieve the objective of ensuring adequate sanctions, discouraging repetition of violations and depriving offenders of the benefits accruing from their illegal activities. Therefore, no concrete progress has been made in this respect since the adoption of the Commission Decision of 15 November 2012. Thus, while Guinea is not in a position to take measures for its respective nationals as may be necessary for the conservation of the living resources of the high seas, the Commission considers that Guinea fails to fulfil its duties as flag State under Article 117 UNCLOS. In the same manner, while Guinea is not in a position to ensure compliance by vessels flying its flag with regional conservation and management measures for straddling fish stocks and highly migratory fish stocks, the Commission considers that Guinea fails to fulfil its duties as flag State under Article 19 UNFSA.
- (158) The Commission considers that the performance of Guinea with respect to effective enforcement measures is not in accordance with the recommendations in point 21 of the IPOA IUU which advises States to ensure that sanctions for IUU fishing by vessels and, to the greatest extent possible, nationals under their jurisdiction are of sufficient severity to effectively prevent, deter and eliminate IUU fishing and to deprive offenders of the benefits accruing from such fishing. In this regard, Guinea has not implemented a Plan of Action to fight against IUU, being also not in accordance with the recommendations in point 25 of the IPOA IUU.
- (159) In the course of the mission carried out in May 2011, based on suitably documented evidences communicated by the Guinean authorities, the Commission established that recurrent IUU fishing was carried out by fishing vessels operating in its maritime waters.
- (160) As explained in the recital (163) of the Commission Decision of 15 November 2012, the Commission established that in relation with these recurrent IUU fishing activities Guinea did not take appropriate measures for preventing, detecting and sanctioning recurrent IUU fishing activities carried out by fishing vessels operating in its waters.
- (161) As from the adoption of the Commission Decision of 15 November 2012, with regard to these recurrent IUU fishing activities, Guinea has taken some measures in order to improve the detection of IUU fishing activities in its EEZ. Guinea reinforced its means to control and monitor activities at sea in its EEZ (up to 50 nautical miles) with the construction of a semaphore on Tamara island and the creation of a *Prefecture Maritime* in charge of coordinating surveillance operations at sea (patrol vessels of the Navy are used to detect IUU fishing activities in the EEZ).
- (162) As from the adoption of the Commission Decision of 15 November 2012, with regard to actions to combat these recurrent IUU fishing activities, Guinea has not yet taken several crucial measures suggested in the Action Plan communicated on 15 November 2012, mentioned in the Memorandum transmitted to the Guinean authorities on 4 February 2013 and laid out in the written observations on the outstanding issues transmitted to the Guinean authorities on 1 March 2013: no sanction taken against infringements detected on basis of documentary evidences (catch reports, observers reports, VMS reports); the status and prerogatives of the observers on board have not been reinforced; many obligations foreseen under the Guinean law are still not implemented and

enforced by the Guinean authorities (e.g. obligation to report VMS positions; sanction against operators that do not report VMS signals; obligation to transmit copies of logbooks at the end of a fishing campaign; obligation to declare entry/exit of the Guinea EEZ) at the date of adoption of the present Decision.

(163) In addition, the Commission considers that the measures adopted by Guinea described in recital (161) of the present Decision merely constitute general pre-conditions which are as such insufficient for preventing, detecting and eradicating recurrent IUU fishing carried out by fishing vessels operating in the Guinean maritime waters. Indeed, as highlighted in the recital (163) of the Commission Decision of 15 November 2012, as coastal state, Guinea has until now failed to effectively implement its legal framework and has failed to properly prosecute IUU fishing and enforce sanctions against vessels and operators involved in IUU fishing. In this respect, the Commission considers that Guinea as from 2011 has applied a non-effective policy on prosecution and enforcement action in respect of recurrent IUU fishing activities in its maritime waters. In particular, the Commission established in the course of the mission conducted from 26 February to 1 March 2013 that at this date seven infringements committed by foreign vessels operating in the Guinean waters detected by the Guinean authorities were sanctioned with the lowest possible fine foreseen in the Guinean Law. Indeed, while Article 7 of Decree No 27 of 1 March 2012 provides for fines ranging from USD 15 000 to USD 30 000 with automatic seizure of the fishing gears in case of fishing activities with illegal fishing gears or nets, three infringements of illegal fishing activities with illegal nets committed on 8 November 2012 by three vessels were sanctioned by the Guinean authorities with the lowest level of administrative fine (USD 15 000) and without seizure of the fishing gears concerned. In the same manner, while Article 6 of Decree No 27 of 1 March 2012 provides for fines ranging from USD 30 000 to USD 50 000 with automatic seizure of the catches and fishing gears in case of illegal fishing activities in a forbidden area or area reserved for artisanal fisheries, four infringements of illegal fishing activities in forbidden areas committed on 30 November 2012 by four vessels were, in spite of the seriousness of the infringements, sanctioned by the Guinean authorities with the lowest level of administrative fine (USD 30 000) and without seizure of the fishing gears and catches concerned in contradiction with the Guinean law.

(164) In light of the situation described in recitals (159) to (163) of the present Decision, the Commission considers that Guinea, by failing to effectively implement its legal framework to properly prosecute recurrent IUU fishing in its waters and to enforce sanctions against vessels and operators involved, acts in contradiction with Article 61 and 62 UNCLOS which create an obligation for coastal states to promote the objective of optimum utilisation of the living resources in their EEZs and to ensure that these living resources are not endangered by over-exploitation.

(165) Consequently, the actions undertaken by Guinea in light of its duties as flag and coastal state are insufficient to comply with the provisions of Articles 61, 62, 94, 117 and 118 of the UNCLOS and Articles 18, 19 and 20 UNFSA.

(166) In view of the recitals (153) to (163) of the Commission Decision of 15 November 2012 and the developments after 15 November 2012 the Commission takes the view, pursuant to Article 31(3) and 31(4)(a) of the IUU Regulation, that Guinea has failed to discharge the duties incumbent upon it under international law as a flag and coastal state in respect of IUU vessels and IUU fishing carried out or supported by fishing vessels flying its flag or operating in its maritime waters or by its nationals and has not taken sufficient action to counter documented and recurring IUU fishing by vessels flying its flag or operating in its maritime waters.

7.2. Failure to cooperate and to enforce (Article 31(5)(b) of the IUU Regulation)

(167) As described in the recitals (165) to (180) of the Commission Decision of 15 November 2012, the Commission analysed whether Guinea has taken effective enforcement measures in respect to operators responsible for IUU fishing and whether sanctions of sufficient severity to deprive the offenders of the benefits accruing from IUU fishing have been applied.

(168) As described in the recitals (165) to (175) of the Commission Decision of 15 November 2012, Guinea did not ensure that sanctions for repeated IUU fishing conducted by vessels flying its flag and nationals under their jurisdiction are of sufficient severity to effectively prevent, deter and eliminate IUU fishing and to deprive offenders of the benefits accruing from such fishing.

(169) In relation to the recitals (165) to (175) of the Commission Decision of 15 November 2012, in the course of the procedure initiated by the Commission under Article 27 of the IUU Regulation, Guinea imposed administrative sanctions against the three Guinea-flagged purse-seiner vessels in order to avoid the IUU listing of three vessels flagged to Guinea. The Commission considered that the global level of sanctions applied was not adequate in severity to be effective in securing compliance and to discourage violations to ICCAT rules. In addition, taking into account the repetitiveness and duration of the violations as well as the quantities and the type of catches concerned by these illegal activities, the Commission considered that the final sanctions applied were still manifestly inadequate to effectively deprive the offender of the benefits accruing from its illegal activities. In application of its legal framework, Guinea was not in a position to apply a more dissuasive sanction against these vessels.

Furthermore, as explained in recital (157) of the present Decision, the sanctions taken by Guinea against vessels operating in the high seas in contravention of international ICCAT rules have not a firm legal basis as the Guinean Fisheries Code cannot apply to facts located outside the Guinean maritime waters. In this context, Guinea is not in a position to apply sanctions adequate in severity to be effective in securing compliance, to discourage violations and to deprive offenders of the benefits accruing from their illegal activities. Consequently, the Commission considers that Guinea fails to fulfil its duties as flag State under Article 117 UNCLOS and Article 19(2) UNFSA. No progress has been made in this respect since the adoption of the Commission Decision of 15 November 2012.

- (170) In relation to the recital (173) of the Commission Decision of 15 November 2012, despite the adoption of the Decree of 1 March 2012 mentioned above in recital (157), the level of sanctions is still manifestly inadequate to effectively deprive offenders of the benefits accruing from their illegal activities. Furthermore, as explained in recital (157) of the present Decision, taking into account that the Guinean Fisheries Code can only apply to fishing activities in the Guinean waters, without a more fundamental revision of the Guinea Fisheries Code this measure cannot cover possible illegal fishing activities carried out on the high seas by fishing vessels flagged to Guinea. In this context, Guinea is not in a position to ensure compliance by vessels flying its flag with international conservation and management measures for straddling and high migratory fish stocks. Consequently, the Commission considers that Guinea fails to fulfil its duties as flag State under Article 117 UNCLOS and Article 19(1) UNFSA. No progress has been made in this respect since the adoption of the Commission Decision of 15 November 2012.
- (171) As described in the recital (168) of the Commission Decision of 15 November 2012, Guinea has a legal framework that does not allow adequate conditions for the cooperation with the EU, or, for that matter, third countries or RFMOs to follow up IUU fishing activities conducted by long distance fishing vessels operating on the high seas and to take effective enforcement measures in respect of operators and vessels responsible for IUU fishing. In this context, Guinea has not cooperated with the Commission and the ICCAT to ensure compliance with and enforcement of international conservation and management measures for straddling and high migratory fish stocks. Consequently, the Commission considers that Guinea fails to fulfil its duties as flag State under Article 118 UNCLOS and Article 20 UNFSA. No progress has been made in this respect since the adoption of the Commission Decision of 15 November 2012.
- (172) As described in the recital (176) of the Commission Decision of 15 November 2012, Guinea as coastal state fails to enforce the obligations of the vessels and

economic operators operating in its EEZ and fails to appropriately sanction the vessels and operators for which IUU fishing activities have been detected. The Commission established in the course of the mission conducted from 26 February to 1 March 2013 that the situation described in the Commission Decision has not been improved as it was observed that many infringements are still not pursued (e.g. absence of VMS signals; repeated infringements related to rules on by-catches) or not appropriately sanctioned by the Guinean authorities (e.g. the last seven infringements detected in the Guinean waters by the Guinean authorities at the date of the mission in February 2013 were sanctioned with the lowest fine possible, even if serious infringements took place). By failing to effectively implement its legal framework to properly prosecute recurrent IUU fishing in its waters and to enforce sanctions against vessels and operators involved, Guinea has acted in contradiction with Article 61 and 62 UNCLOS which obligates coastal states to ensure that no over-exploitation takes place.

- (173) In the same manner, in relation to a case pertaining to the delivery of forged Guinean licences to foreign vessels that operated in the Guinean waters in 2012, the Commission established in the course of the mission conducted from 26 February to 1 March 2013 that the Ministry for Fisheries and Aquaculture has not initiated criminal investigations and proceedings against the natural and legal persons involved in the fraudulent practice, in contradiction with the procedure foreseen in Article 10 of *Décret* of 1 March 2012 on sanctions and accessories sanctions. On this concrete case, in the Memorandum summarising the main issues to be addressed transmitted on 4 February 2013, Guinea was officially notified and invited by the Commission to enforce the relevant provisions of the Guinean law and regulations in order to sanction and deter these fraudulent practices which directly risk to provoke over-exploitation of the living resources in the EEZ of Guinea. By failing to take effective actions in this particular case, Guinea as coastal state has acted in contradiction with Article 61 and 62 UNCLOS, and as flag State has acted in contravention with Article 19(2) UNFSA which provides for an obligation to carry out expeditiously all investigations and judicial proceedings.
- (174) As described in the recitals (177) and (178) of the Commission Decision of 15 November 2012, Guinea as coastal state also fails to actively cooperate with the other states concerned to ensure compliance and enforcement of conservation and management measures for straddling fish stocks and highly migratory fish stocks. In this respect, the Commission observed in the course of the mission conducted from 26 February to 1 March 2013 that the Guinean *Plan de Pêche* for 2013 does not implement a sustainable and credible fishing

licences policy for certain highly migratory species and straddling stocks (small pelagic fishes) consistent with the scientific advice elaborated at international level. In particular, the fishing opportunities foreseen in 2013 for small pelagic fish are in breach of the scientific advice provided by Fishery Committee for the Eastern Central Atlantic⁽²⁷⁾ (FCECA). While the 2011 FCECA report recommended that global catches of small pelagic fish caught in Guinea Bissau, Guinea, Sierra Leone and Liberia EEZs do not exceed 112 000 tonnes/year, Guinea acted in contradiction with this recommendation by establishing only for 2013 a national quota amounting to 100 000 tonnes for the Guinean EEZ. No progress has been made in this respect since the adoption of the Commission Decision of 15 November 2012. To the contrary, the attitude of the Guinean authorities since 15 November 2012 highlights the lack of cooperation with the international community in the fight against IUU fishing.

(175) In addition, while the Guinean *Plan de Pêche* 2012 provided for legal restrictions based on vessels capacity to limit the fishing effort in the Guinean EEZ and protect the small pelagic fishery resource, the competent Guinean authorities have eased the restrictions in the *Plan de Pêche* 2013 so that fishing licences could be delivered to bigger vessels in 2013. Indeed, according to the Guinean *Plan de Pêche* for 2012, only small pelagic fishing vessels not exceeding 2 000 TJB (tonneaux de jauge brut, gross registered tons) were authorised to operate in Guinea. The Commission observed that the *Plan de Pêche* for 2013 has been modified in order to authorise the activity of fishing vessels with a higher capacity (up to 4 500 TJB) in Guinean waters. Due to this modification of the Guinean *Plan de Pêche* 2013, five additional pelagic fishing vessels with significant fishing capacity have been authorised to operate within the Guinean maritime waters in 2013 under Guinean fishing licences delivered by the Ministry of Fisheries and Aquaculture.

(176) In the context described in the above recitals (174) and (175), it has been established that Guinea has adopted in 2013 a National Fisheries Management Plan in contradiction with sub regional and regional conservation and management measures for straddling and highly migratory fish stocks. Consequently, the Commission considers that Guinea fails to fulfil its duties as flag State under Article 20 UNFSA stating that states must cooperate promptly and expeditiously in order to ensure compliance with and enforcement of conservation and management measures. In the same manner, it was established that Guinea decided in 2013 to modify conservation and management measures on small pelagic fisheries without taking into account scientific advice. The Commission observed that Guinea has acted in contradiction with the principle of optimum utilisation of the living resources in its EEZ, endangering the fishery stock concerned by over-exploitation. In doing so, the

Commission considers that Guinea fails to fulfil its duties as coastal state under Article 61 and 62 UNCLOS.

(177) In respect of the history, nature, circumstances, extent and gravity of the manifestations of IUU fishing activities of the IUU fishing considered, the Commission has taken into account the recurrent and repetitive IUU fishing activities of Guinean-flagged vessels until 2013, the recurrent and repetitive IUU fishing activities carried out by fishing vessels operating in its maritime waters as well as IUU fishing activities supported by its nationals. The Commission has taken into account also the developments following the Commission Decision of 15 November 2012.

(178) In addition, the Commission has established that there is still a significant lack of coordination between the newly created *Préfecture Maritime* and the *Centre National de Surveillance des Pêches*. In this respect, it was established by the Commission in the course of the mission conducted from 26 February to 1 March 2013 and communicated to the Guinean authorities that the coordination between the *Préfecture maritime* (under the authority of the Presidency) and the *Centre National de Surveillance des Pêches* (Ministry of Fisheries and Aquaculture) should be improved in order to ensure concrete results in terms of detection and sanctioning of IUU fishing in the Guinean EEZ. This situation undermines the effectiveness of the enforcement procedures put in place by Guinea as coastal and flag State and thus is not consistent with the UNFSA.

(179) Consequently, the actions undertaken by Guinea in light of its duties as flag and coastal state are insufficient to comply with the provisions of Articles 61, 62, 94, 117 and 118 UNCLOS and Articles 18, 19 and 20 UNFSA

(180) In view of the recitals (165) to (180) of the Commission Decision of 15 November 2012 and the developments after 15 November 2012, the Commission takes the view, pursuant to Article 31(3) and 31(5) of the IUU Regulation, that Guinea has failed to discharge the duties incumbent upon it under international law as flag and coastal state in respect of cooperation and enforcement efforts.

7.3. Failure to implement international rules (Article 31(6) of the IUU Regulation)

(181) As described in the recitals (183) to (205) of the Commission Decision of 15 November 2012, the Commission analysed information deemed relevant with respect to the status of Guinea as Contracting Party of IOTC and ICCAT. In addition, the Commission carried out an analysis of the information deemed relevant with respect to the status of Guinea as Contracting Party of IOTC and ICCAT following the Commission Decision of 15 November 2012.

⁽²⁷⁾ <http://www.spcsrp.org/>

- (182) The Commission observed that since the Commission Decision of 15 November 2012, ICCAT issued a letter of Concern in 2013⁽²⁸⁾ to Guinea. Despite the efforts made by Guinea, the ICCAT Secretariat expressed its concern regarding its reporting deficiencies in 2012. In particular, in that letter Guinea has been identified for its failure to fully and effectively comply with its obligation to submit relevant information related to trade as set out in ICCAT Recommendation 06-13. Indeed, ICCAT expressed its concern to Guinea's failure to provide all the necessary information and reports on: statistics reporting obligation (ICCAT Recommendation 05-09); the Part II of the Annual report; data on Task 1 (fleet statistics or size data); and information related to management measures for large-scale longline tuna vessels and compliance tables. It is also pertinent to note that ICCAT has requested information to Guinea related to the actions taken in respect to Daniaa vessel, which is under IUU list since 2008. Indeed, as regards the ICCAT Recommendation 11-18, on List of vessels presumed to have carried out IUU fishing activities, ICCAT has requested Guinea to investigate and inform them about the current flag of Daniaa vessel.
- (183) The Commission also analysed information available from ICCAT on the compliance of Guinea with ICCAT rules and reporting obligations. To this end, the Commission assessed the ICCAT 2012 Compliance Summary Tables⁽²⁹⁾. According to information available, Guinea was identified on basis of shortcomings regarding the lack of reporting on quotas and catch limits, on conservation and management measures for vessels 20 m in length overall or more, on Part II of the Annual Report, on Task 1 regarding to fleet and size data. Furthermore, Guinea has not reported of actions taken in respect of one vessel on ICCAT IUU vessels list (Daniaa).
- (184) According to information derived from the IOTC Compliance Report from 2013⁽³⁰⁾, Guinea is still not compliant for the year 2012 as regards several Resolutions adopted by IOTC. In particular, Guinea has not provided its Report of Implementation, in accordance to Article X of the IOTC Agreement. As regards IOTC Resolution 10/09 on implementation obligation, Guinea has not provided the completed Compliance Questionnaire. As regards IOTC Resolution 12/11 on reporting of vessels, Guinea has not provided the mandatory report on its baseline capacities for tropical tunas and/or swordfish and albacore. As regards IOTC Resolution 10/02 on the mandatory statistical requirements, Guinea has not reported nominal catch, catch and effort and size frequency data as required by this Resolution. As regards IOTC Resolution 05/05 on the submission of data regarding sharks, Guinea has not complied with this Resolution since the mandatory report of data on sharks has not been provided.
- (185) The performance of Guinea with respect to ICCAT obligations as explained in recitals (182) and (183) of the present Decision as well as its failure to provide to IOTC the information referred to in the recital (184) of the present Decision indicates the failure of Guinea to fulfil its obligations as flag State laid down UNCLOS and the UNFSA. In particular, the failure to provide information on statistics, catch and effort, baseline capacities for tuna, swordfish and albacore and date on sharks undermines the ability of Guinea to fulfil its obligations under Articles 117 and 118 UNCLOS which stipulate the duties of State to adopt measures for their respective nationals for the conservation of living resources of the high seas and to cooperate on conservation and management measures for living resources in the areas of the high seas.
- (186) In light of the new elements exposed in recitals (182) to (184) of the present Decision that reinforce the demonstration of recitals (200) to (205) of the Commission Decision of 15 November 2012, the Commission considers that Guinea fails to fulfil its duties as flag State under Article 18(3) and 18(4) UNFSA. No progress has been made in this respect since the adoption of the Commission Decision of 15 November 2012.
- (187) In addition, in relation to the recital (191) of the Commission Decision of 15 November 2012, and the breach of ICCAT Recommendation 03-14 (concerning minimum standards for the establishment of a VMS in the ICCAT convention area), Guinea has taken measures to repair and make operational the VMS as of 1 January 2013. Nevertheless, the Commission observed in the course of the mission conducted from 26 February to 1 March 2013 and communicated to Guinea that the conditions under which the VMS is currently used cannot ensure an effective and efficient monitoring and control on the fishing activities of vessels flagged to Guinea and of foreign vessels operating within the Guinean EEZ (e.g. non continuous service during nights and weekends; several-fishing vessels do not report their VMS positions; discriminatory enforcement of the obligations in force; lack of training of staff; lack of cooperation and coordination between the *Centre National de Surveillance des Pêches* operating under the authority of the Ministry of Fisheries and Aquaculture and the semaphore operating under the authority of the *Préfecture Maritime*). The Commission considers that the administrative decision of 1 July 2013 on the rules to be applied in terms of VMS tracking system as indicated in recital (140) of the present Decision is positive but not

⁽²⁸⁾ ICCAT letter, 11 February 2013, ICCAT Circular No 620, 11.2.2013.

⁽²⁹⁾ ICCAT, Compliance Summary Tables, ICCAT Report 2012-2013.

⁽³⁰⁾ IOTC Compliance Report for Guinea, Compliance Committee Session, 10, 2013, CoC10-CR08 [E].

sufficient under an operational point of view to ensure an effective and efficient monitoring and control on the fishing activities of vessels flagged to Guinea and of foreign vessels operating within the Guinean EEZ. In this context, while Guinea is at the date of the present Decision not in a position to effectively monitor and control the activities of vessels flying its flag and operating in the ICCAT area with a fully operational Fisheries Monitoring Centre, the Commission considers that Guinea fails to fulfil its duties as flag State under Article 18(3)(g) UNFSA. Therefore, no sufficient progress has been made in this respect since the adoption of the Commission Decision of 15 November 2012.

(188) In the same manner, in relation to the recital (192) of the Commission Decision of 15 November 2012, and the breach of ICCAT Recommendation 06-11 (establishing a programme for transshipments), Guinea submitted as indicated in recital (134) of the present Decision a Decree adopted in its quality of coastal state enforcing a ban on transshipments at sea in its maritime waters and regulating transshipments at port. Nevertheless, since the adoption of the Commission Decision of 15 November 2012, Guinea in its responsibility as a flag State did not take any preventive and corrective measures to ensure an effective control and enforcement on the ban of transshipment at sea in the ICCAT area concerning the three purse-seiners flagged to Guinea that were repeatedly and continuously violating the ICCAT Recommendation 06-11 in 2010 and 2011. In this context, while Guinea is at the date of the present Decision not in a position to effectively regulate transshipment on the high seas of vessels flying its flag and operating in the ICCAT area, the Commission considers that Guinea fails to fulfil its duties as flag State under Article 18(3)(h) UNFSA. Therefore, no sufficient progress has been made in this respect since the adoption of the Commission Decision of 15 November 2012.

(189) With regard to the duties of Guinea as coastal state under international law, in relation to the recitals (193) and (194) of the Commission Decision of 15 November 2012 and as explained in the recitals (174) and (175) of the present Decision, the Commission established that the situation in terms of management of the fishing effort is currently even worse than it was at the moment of the adoption of the Commission Decision of 15 November 2012. As a result of the current policy applied by the Ministry of Fisheries and Aquaculture, the Commission observed that the number of foreign fishing vessels authorised to operate in the Guinean waters has increased from 60 in 2010 and 56 in June 2011 to 70 in February 2013 while Guinea is not in a position to effectively monitor and control fishing activities taking place in its EEZ. In this respect, the Commission considers that the Fisheries Policy applied by Guinea (increased fishing effort in its maritime waters inconsistent with best scientific information available, and disconnected with the administrative capacity to monitor and control) is in

contradiction with the principle of optimum utilisation of the living resources in its EEZ, which is likely to endanger the fishery stocks concerned (small pelagic species; demersal species and crustaceans) by over-exploitation.

(190) In this context, as highlighted in the recitals (206) to (208) of the Commission Decision of 15 November 2012, contrary to the duties incumbent upon Guinea under international law as coastal state, the current fishery policy applied by Guinea does not ensure proper conservation and management measures on the basis of best scientific evidence so that the living resources in the EEZ cannot be endangered by over-exploitation. Therefore, no progress has been made in this respect since the adoption of the Commission Decision of 15 November 2012. To the contrary, the Commission established that Guinea has taken new measures that are contrary to the best scientific evidence available, and has modified conservation and management measures in a sense that could endanger the living resources in its EEZ and the high migratory and straddling stocks without cooperating with the other coastal states of the area. In doing so, the Commission considers that Guinea fails to fulfil its duties as coastal state under Article 61 and 62 UNCLOS. In this respect, this action of the Guinean competent authorities may have diminished the effectiveness of Guinean law and regulations, and international conservation and management measures.

(191) In this respect, pursuant to Article 31(6)(c) of the IUU Regulation, the Commission observed in the course of the mission conducted from 26 February to 1 March 2013 the existence of modifications on the Guinean *Plan de Pêche* by the Ministry of Fisheries and Aquaculture as described in the recitals (174) and (175) of the present Decision. These modifications that the Guinean authorities have adopted in 2013 have diminished the effectiveness of the applicable laws and regulations. In addition, the fishing licences policy implemented by the Guinean authorities is in contradiction with the scientific advice elaborated at international level (FCECA) for certain highly migratory species and straddling stocks (small pelagic species). The Commission considers that the administrative decision of 1 July 2013 creating a *Comité de suivi-évaluation* of the implementation of the Guinean Fisheries Management Plan as described in recital (140) cannot in itself correct the situation that would rather require a fundamental revision of the Guinean *Plan de Pêche* in order to pursue the objective of avoiding over-exploitation of the living resources in the Guinean EEZ.

(192) In relation to recital (209) of the Commission Decision of 15 November 2012, Guinea has not taken any measures to develop a national plan of action against IUU fishing in the sense of points 25, 26 and 27 of IPOA IUU. Therefore, no progress has been made in this respect since the adoption of the Commission Decision of 15 November 2012.

- (193) In relation to recital (210) of Commission Decision of 15 November 2012, the Commission established that Guinea has not taken any measures to repeal or modify the procedure enabling temporary registration of vessels under the Guinean flag with no guarantees to deter and prevent registration of IUU vessels. In addition, the Commission observed during the mission conducted from 26 February to 1 March 2013 and communicated to Guinea that the lack of coordination between the *Agence de Navigation Maritime (ANAM)* under the authority of the Ministry of Transport and the Ministry of Fisheries and Aquaculture creates an additional risk to register IUU vessels under the Guinean flag. In this context, while Guinea is at the date of the present Decision not in a position to effectively exercise its jurisdiction and control over ships that could be temporary registered under its flag, the Commission considers that Guinea fails to fulfil its duties as flag State under Article 94(2)(b) UNCLOS stipulating that a flag State assumes jurisdiction under its internal law over each ship flying its flag and its master, officers and crew. Therefore, no progress has been made in this respect since the adoption of the Commission Decision of 15 November 2012.
- (194) In addition, in relation to the implementation of an adequate licensing system for Guinean-flagged vessels fishing on the High Seas, the Commission observed in the course of the on-the-spot mission in Guinea from 26 February to 1 March 2013 that no progress has been made in this respect since the adoption of the Commission Decision of 15 November 2012. In this context, while Guinea is at the date of the present Decision not in a position to effectively control vessels flying its flag by means of fishing licences and establishment of regulations to apply terms and conditions to these fishing licences, the Commission considers that Guinea fails to fulfil its duties as flag State under Article 18(b) UNFSA.
- (195) Consequently, the actions undertaken by Guinea in light of its duties as flag and coastal state are insufficient to comply with the provisions of Articles 61, 62, 94, 117 and 118 UNCLOS and Articles 18 and 20 UNFSA.
- (196) In view of the recitals (182) to (210) of the Commission Decision of 15 November 2012 and the developments after 15 November 2012, the Commission takes the view, pursuant to Article 31(3) and (6) of the IUU Regulation, that Guinea has failed to discharge the duties incumbent upon it under international law with respect to international rules, regulations as well as conservation and management measures.
- 7.4. Specific constraints of developing countries**
- (197) As described in the recital (212) of the Commission Decision of 15 November 2012 Guinea is considered as a low human development country (178th in 186 countries)⁽³¹⁾ and according to Regulation (EC) No 1905/2006, Guinea is listed in the category of least developed countries.
- (198) As described in the recitals (215) and (216) of the Commission Decision of 15 November 2012, the EU has provided Guinea with financial and technical assistance in the last years.
- (199) In addition, in relation to the recital (180) of the Commission Decision of 15 November 2012, the Commission observed that Guinea received additional technical and financial support from an EU Member State to develop its monitoring, control and surveillance system in order to improve its capacity to detect and fight against IUU fishing in its maritime waters (e.g. equipment of two semaphores; technical cooperation and assistance provided on-the-spot by a military person for creation of the *Prefecture Maritime* and coordination of actions and operations at sea).
- (200) In view of the recital (217) of the Commission Decision of 15 November 2012 and the developments after 15 November 2012, the Commission takes the view, pursuant to Article 31(7) of the IUU Regulation, that the development status of Guinea may be impaired by its level of development. However, account taken of the nature of the established shortcomings of Guinea, the assistance provided by the EU and the Member States, and actions taken to rectify the situation, the development level of that country cannot explain the overall performance of Guinea as flag or coastal state with respect to fisheries and the insufficiency of its action to prevent, deter and eliminate IUU fishing.
- 8. CONCLUSION ON THE IDENTIFICATION OF NON-COOPERATING THIRD COUNTRIES**
- (201) In view of the conclusions reached above with regard to the failure of Belize, Cambodia and Guinea to discharge the duties incumbent upon them under international law as flag, port, coastal or market State and to take action to prevent, deter and eliminate IUU fishing, those countries should be identified, in accordance with Article 31 of the IUU Regulation, as countries the Commission considers to be non-cooperating third countries in fighting IUU fishing.
- (202) Having regard to Article 18(1)(g) of the IUU Regulation, the competent authorities of the Member States are bound to refuse, where appropriate, the importation into the Union of fishery products without having to request any additional evidence or send a request for assistance to the flag State where they become aware

⁽³¹⁾ See footnote 10.

that the catch certificate has been validated by the authorities of a flag State identified as a non-cooperating State in accordance with Article 31.

- (203) It should be stated that the identification of Belize, Cambodia and Guinea as countries the Commission considers to be non-cooperating for the purposes of this Decision does not preclude any subsequent step taken by the Commission or the Council for the purpose of establishment of a list of non-cooperating countries.

9. COMMITTEE PROCEDURE

- (204) The measures provided for in this Decision are in accordance with the opinion of the Committee for Fisheries and Aquaculture,

HAS DECIDED AS FOLLOWS:

Sole Article

Belize, the Kingdom of Cambodia and the Republic of Guinea are identified as third countries that the Commission considers as non-cooperating third countries in fighting illegal, unreported and unregulated fishing.

Done at Brussels, 26 November 2013.

For the Commission
Maria DAMANAKI
Member of the Commission
